

Corporations Act
A company limited by guarantee

Constitution
of
Wine Industry Tasmania Ltd

Updated: October 2014

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Name

1. The name of the company is Wine Industry Tasmania Ltd.

Replaceable Rules Displaced

2. The provisions of the *Corporations Act* 2001 (Cth) that operate as replaceable rules do not apply to the company.

Interpretation

3.

(a) In this constitution:

"**the board**" or "the board of directors" means the directors of the company holding office pursuant to this constitution.

"**the company**" means Wine Industry Tasmania Ltd.

"**general meeting**" means a meeting of the company's members.

"**regulation**" means a regulation made by the board in accordance with **clause 52(b)(5)**.

"**the seal**" means the common seal (if any) of the company.

"**secretary**" means any person appointed to perform the duties of a secretary of the company and includes an honorary secretary.

(b) In this Constitution, unless the contrary intention appears:

(1) the singular includes the plural and vice versa and words importing a gender include other genders;

(2) words importing natural persons include corporations;

(3) headings are for ease of reference only and do not affect the construction of this Constitution; and

(4) a reference to the *Corporations Act* is a reference to the *Corporations Act 2001* (Cth) as modified or amended from time to time.

- (c) Except so far as the contrary intention appears in this constitution, an expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the *Corporations Act*, the same meaning as in that provision of the *Corporations Act*.

Objects

4. The objects for which the company is established are:
- (a) to assist in the development and promotion of the Tasmanian grape-wine industry;
 - (b) to assist in the establishment and maintenance of standards appertaining to the production and sale of Tasmanian wine;
 - (c) to acquire and disseminate information concerning viticulture and grape wine production in Tasmania and the sale of Tasmanian wine;
 - (d) to do all such acts as are incidental and conducive to the furtherance of the above objects, with a focus on supporting member businesses;
 - (e) to represent the Tasmanian grape wine industry in its dealings with government, the media, other national and international wine industry organizations and other interested bodies and parties.

Powers

5. Solely for the purpose of carrying out the aforesaid objects and not otherwise, the company has the following powers:
- (a) to make such grants to or in aid of or to make donations or give assistance to or to make contracts with such individuals, trusts, corporations, associations, societies, institutions or other organisations or authorities whether within or outside the Commonwealth of Australia as may be necessary or desirable;
 - (b) to print, publish and distribute any papers, journals and other publications that the company may think desirable for the promotion of its objects;
 - (c) as far as the law will permit and subject to the provisions of any relevant statute, rule, regulation, by-law or any licence issued in pursuance thereof to collect funds and to solicit, receive, enlist and accept financial and other aid, subscriptions, donations and bequests from individuals, trusts, companies, associations, societies, institutions and other organisations or authorities, and from governments and public bodies;
 - (d) to undertake and execute any trusts the undertaking of which may be necessary or desirable for the carrying out of any of the objects of the company;
 - (e) to accept any gift, endowment or bequest made to the company generally or for the purpose of any specific object and to carry out any trusts attached to any gift,

- endowment or bequest, provided that the company must deal with any property which is subject to any trusts only in such manner as is allowed by law having regard to such trusts;
- (f) to subscribe to, become a member of, cooperate with or amalgamate with any other association or organisation, whether incorporated or not, whose objects are similar to those of the company;
 - (g) to buy, sell and deal in all kinds of apparatus and all kinds of provisions, liquid and solid, required by the members of the company or persons frequenting the company's premises;
 - (h) to purchase, take on lease or in exchange, hire and otherwise acquire any lands, building, easement or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the company;
 - (i) to enter into any arrangements with any government or authority, supreme, municipal, local or otherwise, that may seem conducive to the company's objects or any of them and to obtain from any such government or authority any rights, privileges and concessions which the company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
 - (j) to appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the company;
 - (k) to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the company or the dependents or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects; or for any public, general or useful object;
 - (l) to construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, building, grounds, works or conveniences which may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
 - (m) to insure against fire or otherwise any insurable property of the company and to pay premiums on insurance or assurance policies which the company may acquire by any means;

- (n) to invest and deal with the money of the company not immediately required in such manner as may be permitted by an Act of the Commonwealth, a State Act, or a law of a Territory of the Commonwealth for the investment of trust funds without special authorisation but the company may hold or retain any property or gift including any stocks funds and shares in the original form in which it was received by the company without selling or converting it into money and the powers authorities and discretions in relation to securities conferred upon trustees by the applicable State Trustee Act as amended apply to any such property or gift;
- (o) to borrow or raise or secure the payment of money in such manner as the company may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way and in particular by the issue of mortgages, charges or debentures, perpetual or otherwise, charged upon all or any of the company's property (both present and future), and to purchase, redeem or pay off such securities;
- (p) to make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (q) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;
- (r) to take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the company's property of whatsoever kind sold by the company or any money due to the company from purchasers and others;
- (s) to take any gift of property whether subject to any special trust or not, for any 1 or more of the objects of the company;
- (t) to hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith;
- (u) to purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any 1 or more of the companies, institutions, societies or associations with which the company is authorised to amalgamate;
- (v) to transfer all or any part of the property, assets, liabilities and engagements of the company to any 1 or more of the companies, institutions, societies or associations with which the company is authorised to amalgamate;
- (w) to ensure that the company complies with the requirements in regard to ethical and other standards for human and animal experimentation imposed from time to time by institutions or organisations which may provide accommodation or premises for use by the company; and

- (x) to do all such other acts matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.
6. The powers set forth in subsection 124(1) of the *Corporations Act* do not apply to the company except in so far as they are included in **clauses 4 and 5**.

Income and Property

- 7.
- (a) The income and property of the company whencesoever derived must be applied solely towards the promotion of the objects of the company as set forth in this constitution.
- (b) Subject to **clause 8**, no portion of the income and property of the company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever to members or directors of the company.

Payments to Directors and Members

- 8.
- (a) The payment of directors' fees, in whatever form, is prohibited to directors for serving in that capacity other than to board members who are not ordinary members of the company.
- (b) Despite **clause 8(a)**, payments may be made to a director or a member:
- a. for out-of-pocket expenses incurred on behalf of the company including, in the case of a director, in carrying out the duties of a director, where the payments do not exceed an amount previously approved by the board;
 - b. for any service rendered to the company in a professional or technical capacity, where the provision of that service has the prior approval of the board and the amount payable is approved by a resolution of the board and is on reasonable commercial terms;
 - c. of any amount expended on or in connection with the promotion and setting up of the company;
 - d. of consideration for goods supplied in the ordinary and usual way of business;
 - e. of interest on money lent to the company at a rate not exceeding the rate of interest charged by the company's principal bankers from time to time on its overdrawn account or, if the company's account with its principal bankers is not overdrawn at the relevant time, the rate of interest certified by the company's principal bankers as the rate which they would charge the company if its account were overdrawn at that time;

- f. of reasonable and proper rent for premises leased to the company; or
- g. as an employee of the company, where the terms of employment have been approved by a resolution of the board.

Liability of Members Limited

9. The liability of the members of the company is limited.

Guarantee by Members

10. Every member of the company undertakes to contribute to the property of the company, in the event of it being wound up while the member is a member or within 1 year after the member ceases to be a member, for payment of the debts and liabilities of the company contracted before the member ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding \$10.00.

Winding Up

11. If upon the winding up or dissolution of the company there remains after satisfaction of all its debts and liabilities any property whatsoever, that property may not be paid to or distributed amongst the members of the company but must be given or transferred to 1 or more other funds, authorities or institutions which or each of which:
- (a) has objects similar to the objects of the company;
 - (b) is eligible to receive tax deductible gifts; and
 - (c) whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the company under or by virtue of **clause 7**, to be determined by the board at or before the time of dissolution and in default thereof by application to the Supreme Court for determination.

Financial Records

12. Financial records must be kept by the company in accordance with Part 2M.2 of the *Corporations Act*.

Membership

13. The membership of the company shall comprise the following classes of members:
- (a) Ordinary members;
 - (b) Associate (non-voting) members; and

- (c) Life (non-voting) members.

14. Ordinary members

- (a) An ordinary member must be a registered business or an individual with demonstrable professional involvement in the production of grapes and/or grape wine in Tasmania, and/or marketing of Tasmanian grape wines which they have produced.
- (b) Where an ordinary member is a registered business, a director, employee or individual shareholder of that registered business must be nominated by the registered business as the formal representative of that business (called an "authorised representative").
- (c) An ordinary member shall be entitled to 1 vote in elections of office bearers and at general meetings.
- (d) Except as specified in **clause 14(e)**, an individual ordinary member may not also be the authorised representative of a registered business ordinary member.
- (e) The rule provided in **clause 14(d)** does not apply to an individual who is an individual ordinary member in their own right and who is also an authorised representative of a registered business ordinary member, provided that the registered business ordinary member operates a separate business activity to that of the individual ordinary member.
- (f) An authorised representative of a registered business ordinary member may remain as such only while that individual remains a director, employee or individual shareholder of that registered business. If an authorised representative ceases to be a director, employee or individual shareholder of a registered business ordinary member, the registered business must nominate a new authorised representative under **clause 14(b)**.

15. Associate (non-voting) members

- (a) Associate members will be classified into one of the following membership classes:
 - (1) corporate;
 - (2) government;
 - (3) employee;
 - (4) individual; or
 - (5) student.
- (b) Corporate associate members shall be registered businesses or individuals who do not satisfy the criteria for ordinary membership but who have commercial or other

interests in the wine industry, including but not limited to, wine distributors, wine writers, educators, grape or wine researchers, commercial suppliers to the wine industry, interested consumers, etc. Where a member is a registered business, an individual person will be nominated as the formal representative of that business. Additional employees, other than the nominated representative, may be employee associate members.

- (c) Government associate members shall be government and semi-government departments or individuals with interests in the wine industry. Where a member is a government department, an individual person will be nominated as the formal representative of that department. Additional employees, other than the nominated representative, may be employee associate members.
- (d) Employee associate members shall be individuals employed by ordinary members, corporate members or government members, which are registered businesses, in addition to the nominated representative of those members.
- (e) Student associate members shall be individuals who are currently studying a minimum of 50% of one full-time student equivalent load in a recognised Australian viticulture, oenology or other relevant course.

16. Life (non-voting) members

- (a) Life membership may be awarded to an individual who is no longer professionally involved in the industry, but who has given outstanding service to the company and/or the industry.
- (b) Life memberships are to be awarded by the board.

17. Associate and Life members may attend and speak at meetings but will not be counted towards a quorum and will not be entitled to any voting rights.

18. Every applicant for ordinary or associate membership must:

- (a) sign an application for membership in such form as may from time to time be prescribed by regulation; and
- (b) undertake, as a condition of admission, to pay to the company such application fee (if any) and annual subscription as may from time to time be payable to the company in accordance with this constitution.
- (c) The requirement to pay an application fee (if any) and annual subscription provided in **clause 18(b)** does not apply to life members.

19. At the next meeting of the board after the receipt of any application for membership, that application must be considered by the board, which must thereupon determine upon the admission or rejection of the applicant or request further information concerning the

application. If further information concerning the application is required then the board's determination in relation to the admission or rejection of the applicant will be delayed until the next available meeting of the board. In no case is the board required to give any reason for the rejection of an applicant.

20.

- (a) When an applicant has been accepted for membership, the secretary must forthwith send to the applicant written notice of his or her acceptance and a request for payment of his or her application fee (if any) and first annual subscription.
- (b) Upon payment of the application fee (if any) and first annual subscription, the applicant becomes a member of the company.
- (c) If the payment is not made within 2 calendar months after the date of the notice, the board may in its discretion cancel its acceptance of the application for membership of the company.

21.

- (a) The application fee (if any) and annual subscriptions payable by members are as prescribed from time to time by the board.
- (b) All annual subscriptions become due and payable in advance on or before 1 July in every year.
- (c) The board may, if hardship or other sufficient cause is shown, reduce or remit any entrance fee or annual subscription payable by a member.

Cessation of Membership

22. If the subscription or application fee of a member remains unpaid for a period of 2 calendar months after it becomes due then the member may after notice of the default has been sent to him or her by the secretary be debarred by resolution of the board from all privileges of membership, but the board may reinstate the member on payment of all arrears if the board thinks fit to do so.

23. A member may at any time by giving notice in writing to the secretary resign his or her membership of the company but continues to be liable for any annual subscription and all arrears due and unpaid at the date of his or her resignation and for all other moneys due by him or her to the company and in addition for any sum not exceeding \$10.00 for which he or she is liable as a member of the company under **clause 10**.

24. Subject to **clause 25**, if any member willfully refuses or neglects to comply with the provisions of the constitution of the company or is guilty of any conduct which in the opinion of the board is unbecoming of a member or prejudicial to the interests of the

company the board may by resolution censure, fine, suspend or expel the member from the company.

25.

- (a) At least 1 week before the meeting of the board at which a resolution of the kind mentioned in **clause 24** is to be considered, the member concerned must be given written notice of the meeting and of what is alleged against him or her and of the intended resolution, and the member must at that meeting and before the passing of that resolution be given an opportunity to give orally or in writing any explanation which the member may think fit.
- (b) Any such member may by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the board, elect to have the question dealt with by the company in general meeting.
- (c) If any such member elects to have the matter dealt with by the company in general meeting, a general meeting of the company must be called for the purpose and, if at the general meeting such a resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot) the member concerned will be punished accordingly, and in the case of a resolution for his or her expulsion, the member will be expelled.

General Meetings

26. An annual general meeting of the company must be held in accordance with the provisions of the *Corporations Act*.

27. Any director may whenever he or she thinks fit convene a general meeting. General meetings may also be convened on such requisition or in default may be convened by such requisitionists as provided by sections 249D or 249E of the *Corporations Act*.

28. Subject to the provisions of the *Corporations Act* relating to special resolutions and agreements for shorter notice, 21 days notice at least (exclusive of the day on which the notice is served or taken to be served, and exclusive of the day for which notice is given) must be given to such persons as are entitled to receive such notices from the company.

29. A notice of general meeting must:

- (a) set out the place (which may be within or outside Australia), date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be transacted at the meeting;

- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement that an ordinary member has the right to appoint a proxy who must be an ordinary member of the company.

Proceedings at General Meetings

30.

- (a) No business may be transacted at any general meeting unless a quorum of ordinary members is present at the time when the meeting proceeds to business.
- (b) No resolution may be passed at any general meeting unless a quorum of ordinary members is present at the time when the resolution is put to the vote of the meeting.
- (c) Save as herein otherwise provided, 15% of the number of ordinary members present on the day of the meeting shall constitute a quorum.
- (d) If an ordinary member attending a general meeting is also a proxy for an ordinary member, he or she is to be counted only once in determining whether a quorum is present.

31. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, is dissolved; in any other case it stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the ordinary members present (being not less than 10% of the number of ordinary members present on the day of the meeting) constitutes a quorum.

32. The chair must preside as chair at every general meeting of the company, or if there is no chair, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, then the ordinary members present may elect 1 of their number to be chair of the meeting.

33. The chair may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Save as aforesaid it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

34. At any general meeting a resolution put to the vote of the meeting is to be decided on a show of hands of ordinary members unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (a) by the chair; or
 - (b) by at least 25% of the number of ordinary members present in person or by proxy.
- Unless a poll is so demanded a declaration by the chair that a resolution has on a show of hands of ordinary members been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.
35. If a poll is duly demanded it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair directs, and the result of the poll is the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chair or on a question of adjournment must be taken forthwith.
36. In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.
37. An ordinary member may vote in person or by proxy.
38. An ordinary member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his or her committee or trustee or by such other person as properly has the management of his or her estate, and any such committee, trustee or other person may vote by proxy.
39. No member may attend or vote at any general meeting if his or her annual subscription (if any) is more than 2 months in arrears at the date of the meeting.
- 40.
- (a) An instrument appointing a proxy must be in writing under the hand of the appointer or of his or her attorney duly authorised in writing.
 - (b) A proxy must be an ordinary member of the company or an authorised representative of an ordinary member.
 - (c) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

- (d) An instrument appointing a proxy may specify that the proxy is to abstain from voting in respect of a particular resolution and, where an instrument of proxy so provides, the proxy may not vote in respect of the resolution.
- (e) Unless otherwise instructed, a proxy may vote or abstain from voting as he or she thinks fit.
- (f) An instrument appointing a proxy is taken to confer authority to demand or join in demanding a poll.

41. An instrument appointing a proxy must be in the following form or in a form that is as similar to the following form as the circumstances allow:

Wine Industry Tasmania Ltd

I, _____ of _____, being an ordinary member of the company, hereby appoint _____ of _____ or, failing him/her, _____ as my proxy to vote for me and on my behalf at the *Annual General/*General Meeting of the company to be held on the _____ day of _____ 20____ and at any adjournment of that meeting.

This form is to be used in accordance with the directions below. Unless the proxy is directed, he or she may vote or abstain as he or she thinks fit.

//Description of Resolution//	For	Against	Abstain
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

*Strike out whichever is not desired.

Instructions

To direct the appointee to cast your vote in respect of an item of business in a particular manner either on a show of hands or on a poll, place a sufficient indication (including, without limitation, a tick or a cross) in the relevant box in respect of that item of business.

- 42. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority must be deposited at the registered office of the company, or at such other place as is specified for that purpose in the notice convening the meeting, not less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll. In default the instrument of proxy is not treated as valid.
- 43. A vote given in accordance with the terms of an instrument of proxy or attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no

intimation in writing of such death, unsoundness of mind or revocation as aforesaid has been received by the company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

44. Notwithstanding **clauses 30 to 43** inclusive, the company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

The Board of Directors

45. The office-bearers of the company consist of a chair (director), together with up to 6 additional board directors. At least 4 board members must be ordinary members of the company or authorised representatives of registered business ordinary members of the company and 3 may be non-members of the company.
46. Within the number of directors permitted by article 45, the board of directors may appoint up to 2 ordinary member or non-member representatives to the board. Such directors hold office until the next annual general meeting of the company after their appointment, or, in the case of any appointment made within 45 days prior to an annual general meeting, then such director holds office until the end of the second annual general meeting of the company after the date of appointment. The purpose of this article is to enable the board to facilitate appointments to assist in ensuring the board retains an appropriate skills mix for the benefit of the company's members. The procedure for nomination and appointment of such directors as are appointed under this article is to be set by the board of directors.
47. An elected board member shall hold office to the conclusion of the second annual general meeting of the company after that appointment. Board members are to retire by rotation as relates to their particular appointment and term of office. Such directors are eligible for re-election.
- (a)
48. The election of directors (those to be elected pursuant to clause 45) is to take place in the following manner:
- (a) Any 2 ordinary members of the company may nominate any other ordinary member, authorised representative of an ordinary member or non-member to serve as a director.
- (b) The nomination, which must be in writing and signed by the nominee and his or her proposer and seconder, must be lodged with the secretary at least 14 days before the annual general meeting at which the election is to take place. If insufficient written nominations have been received 14 days prior to an annual general meeting, nominations may be called at the annual general meeting.

- (c) If required, separate votes are to be held for ordinary member and non member nominees to satisfy the conditions of **clause 45**.

49. A director elected in accordance with this constitution takes office at the conclusion of the annual general meeting at which he or she is elected.
50. The chair will be elected by the board of directors following each annual general meeting, decided by a majority of votes of the directors present.
51. The company may by resolution of which notice pursuant to section 203D of the *Corporations Act* has been given remove any office-bearer or other director before the expiration of his or her period of office, and may by a resolution appoint another person in his or her stead; the person so appointed holds office only until the next following annual general meeting.
52. The office of a director becomes vacant if the director:
- (a) becomes an insolvent under administration or makes any arrangement or composition with his or her creditors generally;
 - (b) becomes prohibited from being a director of a company by reason of any order made under the *Corporations Act*;
 - (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (d) resigns his or her office by notice in writing to the company;
 - (e) for more than 6 months is absent without permission of the board from meetings of the board held during that period;
 - (f) holds any office of profit under the company otherwise than as provided by **clause 8**;
 - (g) ceases to be an ordinary member of the company or the authorised representative of a registered business ordinary member (where the individual is elected in that respective capacity);
 - (h) is suspended from membership of the company by virtue of **clause 22** or **clause 24** or **clause 25**; or
 - (i) dies.
53. If a casual vacancy occurs on the board, the board may appoint another ordinary member or non-member (in accordance with **clause 45** or **clause 46** as appropriate respectively) to fill the vacancy for the balance of the term of office which the former office-bearer or other director would otherwise have served.

Powers and Duties of the Board

- 54.

- (a) Subject to the *Corporations Act* and to any other provision of this constitution, the business and affairs of the company are to be managed by the board, which may exercise all such powers of the company as are not, by the *Corporations Act* or by this constitution, required to be exercised by the company in general meeting; subject, nevertheless, to such directions, not being inconsistent with the *Corporations Act* or this constitution, as may be given by the company in general meeting, but no such direction invalidates any prior act of the board which would have been valid if that direction had not been given.
- (b) Without limiting the generality of **clause 52(a)**, the board may exercise all the powers of the company:
- (1) to borrow and raise money;
 - (2) to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person;
 - (3) to determine who is entitled on behalf of the company to sign, draw, accept, endorse or otherwise execute cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, receipts, acceptances, endorsements, releases, contracts and documents;
 - (4) to pay the costs, charges and expenses incidental to the promotion, management and regulation of the company; and
 - (5) to make, amend and repeal regulations, not being inconsistent with the *Corporations Act* or this constitution, in relation to the affairs of the company.

55. Any regulation for the time being in force is binding on the members of the company as if it were included in this constitution.

56. The board must cause minutes to be made:

- (a) of all appointments of officers and servants;
- (b) of the names of the directors present at all meetings of the company and of the board; and
- (c) of all proceedings at all meetings of the company and of the board.

Such minutes must be signed by the chair of the meeting at which the proceedings were held or by the chair of the next succeeding meeting.

Proceedings of the Board of Directors

57. The board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A director may at any time and the secretary must on the requisition of a director convene a meeting of the board.

58. Subject to this constitution questions arising at any meeting of the board are to be decided by a majority of votes and a determination by a majority of the directors present is for all purposes taken to be a determination of the directors. In case of an equality of votes the chair of the meeting has a second or casting vote.
59. The quorum necessary for the transaction of the business of the board is 4 or such greater number as may be fixed by the directors.
60. The continuing directors may act notwithstanding any vacancy in the board, but if and so long as their number is reduced below the number fixed by **clause 57** as the necessary quorum of the board, the continuing director or directors may act for the purpose of increasing the number of directors to that number or of convening a general meeting of the company, but for no other purpose.
61. The chair must preside at every meeting of the board, or if there is no chair, or if at any meeting he or she is not present within 10 minutes after the time appointed for holding the meeting or if being present he or she is unwilling to preside, then the ordinary members may choose 1 of their number to be chair of the meeting.
62. A director may not vote in respect of any contract or proposed contract with the company in which he or she is interested, and if the director does so vote his or her vote is not to be counted.
63. The board may delegate any of its powers and/or functions (not being duties imposed on the board as the directors of the company by the *Corporations Act* or the general law) to 1 or more committees consisting of such member or members of the company as the board thinks fit. Any committee so formed must conform to any regulations that may be given by the board and subject thereto has power to co-opt any member or members of the company and all members of such committees have 1 vote.
64. The board may appoint 1 or more advisory committees consisting of such member or members of the board as the board thinks fit. Such advisory committees act in an advisory capacity only. They must conform to any regulations that may be given by the board and subject thereto have power to co-opt any member or members of the company and all members of such advisory committees have 1 vote.
65. Every committee or advisory committee may meet and adjourn as it thinks proper. Questions arising at any meeting are to be determined by a majority of votes of the members present, and in the case of an equality of votes the chair has a second or casting vote.
66. All acts done by any meeting of the board or of a committee or by any director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such board, committee or director, or that the directors or any of them

were disqualified, as valid as if every such person had been duly appointed and was qualified to be a director or committee member.

67.

- (a) If all of the directors have signed a document containing a statement that they are in favour of a resolution of the board in terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at time at which, the document was last signed by a director.
- (b) For the purpose of **clause 65(a)**, 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more directors are together taken to constitute 1 document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.
- (c) A reference in **clause 65(a)** to all of the directors does not include a reference to a director who, at a meeting of the board, would not be entitled to vote on the resolution.

68.

- (a) If all of the directors consent, the directors may participate in a meeting of the board by means of any technology allowing all persons participating in the meeting to hear each other at the same time. Any director participating in such a meeting is for the purposes of this constitution taken to be personally present at the meeting.
- (b) The consent of a director to the use of technology may be a standing one.
- (c) Any consent of a director to the use of technology may be withdrawn only within a reasonable period prior to a meeting at which the technology is to be used.

Secretary

69. The board may in accordance with section 204D of the *Corporations Act* appoint a secretary for such term, and upon such conditions as it thinks fit, and any secretary so appointed may be removed by it. Nothing herein prevents the board from appointing a member of the company as honorary secretary, and any member so appointed forthwith becomes an office-bearer of the company and is subject to the provisions of **clause 8**.

Seal

70.

- (a) If the company has a seal, the board must provide for its safe custody.

- (b) The seal may be used only by the authority of the board or of a committee of the board authorised by the board to authorise the use of the seal, and every instrument to which the seal is affixed must be signed by a director and be countersigned by another director or by a secretary.

Inspection of Books

71. The directors may determine whether and to what extent, and at what time and places and under what conditions, the books of the company or any of them will be open to the inspection of members other than directors, and a member other than a director has no right to inspect any document of the company except as provided by law or authorised by the directors or by the company in general meeting.

Financial Report

72. The board must distribute copies of every:

- (a) annual financial report;
- (b) report of the directors for the year; and
- (c) report of the auditor or auditors on the financial report as required by the *Corporations Act*.

73. The board must lay before each annual general meeting:

- (a) the financial report;
- (b) the report of the directors; and
- (c) the report of the auditor or auditors

for the last financial year ended before the annual general meeting.

Audit

74. A properly qualified auditor or auditors must be appointed and his or their duties regulated in accordance with section 327 of the *Corporations Act*.

Notice

75.

- (a) A notice may be given by the company to any member either by serving it on the member personally or by sending it by post to the member at his or her registered address or the address if any supplied by the member to the company for the giving of notices to the member.

- (b) Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the second day after the date of its posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) Notwithstanding the foregoing, if a member has supplied to the company a facsimile number for the service of notices on the member, then any notice may be served by the company on that member by facsimile.
- (d) A notice sent by facsimile (provided a status report is received by the sender which shows the notice has been transmitted) is taken to be served immediately upon completion of sending if such completion is within business hours in the place where the addressee's facsimile machine is located, but if not, then at 9:00 am next occurring during business hours at such place.
- (e) For the purposes of this clause, "**business hours**" means from 9:00 am to 5:00 pm on a day on which the major trading banks are open for business at the place or in the postal district where the addressee's facsimile machine is located.

76.

- (a) Notice of every general meeting must be given in the manner authorised by **clause 73** to:
 - (1) every member except those members for whom the company has no registered address or other address for the giving of notices to him or her; and
 - (2) the auditor or auditors for the time being of the company.
 - (3) No other person is entitled to receive notices of general meetings.

Indemnity

77. Except to the extent that it is prohibited from doing so by the *Corporations Act*, the company:

- (a) indemnifies every person who is or has been a director or secretary of the company or of any related body corporate of the company against:
 - (1) any liability (other than a liability for legal costs) incurred in that capacity; and
 - (2) any liability for legal costs incurred in connection with proceedings relating to, or in defending an action for a liability incurred in, that capacity; and
- (b) may pay or agree to pay a premium in respect of a contract insuring any such person against any such liability.