

# Constitution

---

Hydrogen Mobility Australia Ltd

**gadens**

Level 13, Collins Arch  
447 Collins Street  
Melbourne VIC 3000  
Australia

T +61 3 9252 2555  
F +61 3 9252 2500

BAA: 30073794

# Contents

1. General	1
2. Reading this Constitution with the Corporations Act	1
3. Charitable purpose and activities	1
4. Income and property of the Company	2
5. Membership	3
6. Variation of Member Rights	5
7. Cessation of membership	5
8. General meetings	6
9. Proceedings at general meetings	8
10. Board	13
11. Board meetings	17
12. Observers and standing attendees at Board meetings	18
13. Board Committees	18
14. Delegation	19
15. Conflict of interests	19
16. Minutes and Registers	20
17. Policies	21
18. Execution of documents	21
19. Secretary	21
20. Chief Executive Officer	22
21. Accounts and Audit	22
22. Confidentiality	23
23. Notice	23
24. Amendments	24
25. Winding up	24
26. Indemnity and access	24
27. Interpretation	26

*Corporations Act 2001*

*Public Company Limited by Guarantee*

# **Hydrogen Mobility Australia Ltd**

## **ACN 619 400 556**

### **1. General**

---

#### **1.1 Company Name**

The name of the company is Hydrogen Mobility Australia Ltd (**the Company**).

#### **1.2 Company formed to be a charity**

The Company is not-for-profit public company limited by guarantee which is established to be, and continue as, a charity.

#### **1.3 Defined meanings**

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretations clause at the back of this document.

### **2. Reading this Constitution with the Corporations Act**

---

#### **2.1 Application of the Replaceable Rules**

The Replaceable Rules in the Corporations Act are displaced by this Constitution in their entirety and do not apply to the Company.

#### **2.2 Application of the ACNC Act and the Corporations Act**

- (a) If the Company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this Constitution that are inconsistent with those Acts, as they apply to a registered charity.
- (b) If the Company is not a registered charity (even if it remains charitable), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- (c) A word or expression that is defined or used in the Corporations Act and covering the same subject has the same meaning as in this constitution

### **3. Purpose and activities**

---

#### **3.1 Purpose and activities**

The purpose for which the Company is established is to represent the Australian hydrogen industry and connect it with its stakeholders to support industrial decarbonisation and hydrogen's role in the energy transition via a range of derivatives and end uses.

### **3.2 Powers under the Corporations Act**

The Company has the powers of a company limited by guarantee under the Corporations Act but only to do all things that are necessary, convenient or incidental to carry out the Objects.

## **4. Income and property of the Company**

---

### **4.1 Application of income and property**

The income and property of the Company will only be applied towards the promotion of the Objects.

### **4.2 Restriction on distribution of income and property**

No portion of the income or property will be paid or transferred directly or indirectly to any Member, except as provided in clause 4.3 and clause 25.2, as long as these actions are done in good faith:

### **4.3 Payment of Company expenses**

Clause 4.2 does not prevent the following payments to a Member:

- (a) reasonable and proper payments to a Member in return for any services rendered or goods supplied by a Member to the Company;
- (b) reimbursement of out-of-pocket expenses to a Member incurred on reasonable commercial terms in carrying out the duties of a Member where the amount does not exceed an amount previously approved by a resolution of the Board; or
- (c) interest on money borrowed from a Member for any of the purposes of the Company (provided the interest rate does not exceed the rate charged by the Company's bank on similar borrowings).

### **4.4 Payments to Directors**

Nothing in clause 4.2 prevents the payment to a Director in good faith of reasonable and proper:

- (a) Remuneration to an Appointed Director in return for any services rendered by the Director to the Company, as determined by a resolution of the Board upon recommendation of the Nominations Committee and subject to compliance with any applicable regulatory requirements;
- (b) reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director where the amount does not exceed an amount previously approved by a resolution of the Board;
- (c) payment for any service rendered to the Company in a professional or technical capacity, other than in a capacity as a Director, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Board; or
- (d) relating to an indemnity in favour of a Director or a contract of insurance, as provided for in clause 26.

## 5. Membership

---

### 5.1 Membership

The membership of the Company shall be comprised of:

- (a) the existing members of the Company at the time of the adoption of this Constitution; and
- (b) such further members admitted in accordance with clause 5.3.

### 5.2 Classes of Membership

- (a) Members of the Company shall fall into one of the following classes:
  - (i) Executive Members;
  - (ii) Industry Members;
  - (iii) Small Business Members; and
  - (iv) Any other membership class created or prescribed by the directors of the Company under clause 5.2(c).

(each a **Class of Members**).
- (b) The Board must prescribe and publish on the Company's website the details of the membership rights and obligations for all membership classes, including without limitation voting rights, which subject to any other requirements in the Corporations Act, may be amended pursuant to clause 6.
- (c) Subject to any other requirements in the Corporations Act, the Board may create new classes of Members of the Company from time to time by resolution.

### 5.3 Eligibility, applications for membership and admission of Members

- (a) The Board of the Company may from time to time determine and publish eligibility requirements for admissions to the membership of the Company.
- (b) Any incorporated body which supports the purposes of the Company can apply in writing to become a member of the Company in a form and together with any supporting information prescribed, and in accordance with the eligibility requirements for admissions as determined, by the Board.
- (c) Without limiting any specific eligibility requirements prescribed by the Board, by applying for membership in the Company, an applicant:
  - (i) consents to the admission to membership;
  - (ii) agrees to support the purposes of the Company; and
  - (iii) agree to comply with this Constitution, the Code of Conduct and all Policies, rules or conventions made by the Board from time to time.
- (d) Applications for membership will be considered within a reasonable period after they are received. Admissions of further Members shall be determined by a resolution of the Board.

- (e) If an application for membership is accepted, the Secretary (or another delegate of the Board) must as soon as possible arrange for the applicant:
  - (i) to be entered on the Register of Members; and
  - (ii) to be informed in writing that their application was approved and the date their membership commenced. The date the applicant was added to the Register of Members is the day their membership commences.
- (f) If an application for membership is rejected, the applicant will be informed in writing and reasons need not be given for such rejection.

#### **5.4 Member representatives**

- (a) Each Member shall appoint an individual as its representative for the purposes of its membership in the Company.
- (b) The appointment may be a standing one.
- (c) The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (d) The Member may appoint more than one (1) representative but only one (1) representative may exercise the Member's powers at any one time.
- (e) Unless otherwise specified in the appointment, the representative may exercise on a Member's behalf all of the rights and powers of the Member under this Constitution and at law, including representing the Member at general meetings.

#### **5.5 Register of Members**

A Register of Members must be kept by the Secretary in accordance with Corporations Act.

#### **5.6 Access to Register of Members**

- (a) The Company must allow current Members to inspect the Register of Members. To inspect the Register, the person must submit their request in writing with their name, address and the purpose of their request.
- (b) Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

#### **5.7 Change of Member details**

Each Member must notify the Secretary in writing of any change in the name, corporate identifier (as applicable), address, telephone number, or electronic mail address of the Member, within one (1) month after the change.

#### **5.8 Membership rights and obligations**

- (a) Each Member is entitled to all the privileges of membership and must observe this Constitution and any other rules and conventions adopted by the Board or by the Company at general meetings from time to time.
- (b) Subject to the Corporations Act and the rights of a particular Class of Members:
  - (i) the Members must pay membership fees and such other fees or levies in the amount and at such times as the Board may from time to time determine; and

- (ii) the Board may differentiate between Classes of Members as to the amount of fees or levies payable.
- (c) The rights and privileges of each Member are personal to the Member and are not transferrable.

### **5.9 Members' liability**

The liability of the Members is limited to \$100.

## **6. Variation of Member Rights**

---

Subject to the Corporations Act, the rights of a particular Class of Members may be varied or cancelled by a resolution of the Board, provided that two (2) month's written notice has been provided to the affected Members.

## **7. Cessation of membership**

---

### **7.1 Resignation**

A Member may at any time by giving notice in writing to the Secretary resign their membership of the Company.

### **7.2 Cessation of membership**

The membership of a Member will cease if:

- (a) the Member provides a written notice of resignation to the Secretary, from the date of receipt of that notice by the Secretary or such later date as is provided in the notice;
- (b) the Member:
  - (i) is wound up; or
  - (ii) enters into liquidation whether compulsory or voluntarily (not being a voluntary liquidation for the purposes of amalgamation or reconstruction); or
  - (iii) has a receiver or manager appointed; or
  - (iv) makes or enters into any composition or scheme of arrangement with its creditors; or
- (c) the Member ceases to satisfy the eligibility requirements for admission to membership referenced in clause 5.3; or
- (d) the membership of the Member is terminated in accordance with clause 7.3.

### **7.3 Suspension or expulsion of Members**

- (a) Subject to clauses 7.3(b) and 7.3(c), the Board may by resolution suspend or expel any Member if it is determined by the Board that that Member:
  - (i) wilfully refuses or neglects to comply with the provisions of the Constitution of the Company or to support the purposes of the Company; or

- (ii) breaches any of the rules contained in the Code of Conduct; or
- (iii) has engaged in any conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests or reputation of the Company; or
- (iv) has been suspended pursuant to clause 7.3(c) and its rights have not been reinstated,

upon which, notice of such resolution will be given to the Member and, in the case of expulsion, the membership of that Member will be deemed to have ceased from the date of such resolution and notwithstanding any other clause of this Constitution the Board may in its absolute discretion reject any later application by any person so removed from the Register of Members without being bound to give reasons or may admit such person on such terms and conditions as it may in its absolute discretion think fit.

- (b) Subject to clause 7.3(c), if the Board or the Chief Executive Officer has reason to suspect that a Member is engaging, or has engaged, in conduct described in any of clauses 7.3(a)(i) to 7.3(a)(iii) then, prior to the Board exercising its powers under clause 7.3(a), the Chief Executive Officer will write to that Member advising the Member of the details of the suspicion and the intended resolution, and, in doing so, give that Member at least seven (7) days to give in writing any explanation or defence the Member may think fit.
- (c) If any fees or levies remain unpaid by the Member for a period of two (2) calendar months after notice of such default is given to the Member by the Company, the privileges of membership (including the right to vote) of that Member will be suspended automatically without the need for a resolution of the Board.

#### **7.4 Effect of resignation, cessation, suspension and expulsion**

- (a) During any period of a Member's suspension, the Member will have no right to vote at any general meeting or a meeting of the Class of Members. The Directors may reinstate the privileges of membership if and when the Directors think fit to do so and, in the case of clause 7.3(c), if all arrears have been paid.
- (b) A person ceasing to be a Member will not be relieved from liability for payment of any money (if any) owing to the Company by the Member at the time of cessation of membership in any way, unless the Board determines otherwise.
- (c) Any Member who resigns or for any reason ceases membership or is expelled from the Company must, in order to regain membership, follow the procedure required for those originally seeking membership.

## **8. General meetings**

---

### **8.1 Annual general meetings**

The Company must hold an annual general meeting at least once each calendar year.

### **8.2 Extraordinary general meetings**

All general meetings of the Company other than the annual general meeting will be called extraordinary general meetings. All business shall be deemed special that is transacted at a general meeting with the exception of the election of Directors, consideration of the accounts, balance sheet and other financial statements of the Company, the consideration

of the ordinary reports to the Board and the report of the Auditor at the annual general meeting.

### **8.3 Board may call a meeting of Members**

The Board may, at any time, convene a general meeting of Members of the Company.

### **8.4 Power to cancel or postpone a general meeting**

If a general meeting is convened in accordance with clause 8.3, the Board may cancel or postpone the meeting convened by them by notice in writing to all persons who were entitled to receive notice of that meeting. Any failure to give notice of cancellation or postponement does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

### **8.5 Calling of general meetings pursuant to Members' request**

- (a) The Board must call and arrange to hold a general meeting on the request of Members holding at least 5% of the votes among all Members.
- (b) The Members' request must be in writing, state any resolution to be proposed at the meeting and be signed by the Members making the request.
- (c) The Board must call the meeting within twenty-one (21) days after the request is given to the Company pursuant to this clause 8.5, and the meeting must be held no later than two (2) months after the request is given to the Company.
- (d) If the Board fails to organise a general meeting pursuant to a Members' request in accordance with this clause 8.5, the Members who made the request may call and arrange to hold a general meeting and:
  - (i) in calling such a general meeting, the Members may ask the Company for a copy of the Register of Members. The Company must give the Members a copy of the Register of Members free of charge; and
  - (ii) if such a general meeting is called, the Company must pay the reasonable expenses incurred by the Members resulting from the Board's failure to call and arrange to hold the meeting.

### **8.6 How general meetings may be held**

- (a) Subject to this Constitution, a general meeting including an annual general meeting may be held:
  - (i) at one or more physical venues;
  - (ii) at one or more physical venues and using virtual meeting technology; or
  - (iii) using virtual technology only.
- (b) For the avoidance of doubt, the Board is under no obligation to offer to provide any virtual meeting technology for a general meeting.

### **8.7 Notice of general meeting**

- (a) Subject to this Constitution, all general meetings require at least twenty-one (21) days' notice (exclusive of the day on which the notice is served or deemed to be served and exclusive of the day for which notice is given) to be given individually to

such Members entitled to vote at the meeting and to each Director and the Auditor except where:

- (i) in the case of an annual general meeting, all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
- (ii) in the case of any other general meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand,

to a shorter notice, unless a general meeting proposes a resolution to remove a Director or the Auditor, in which case the meeting cannot be called with less than twenty-one (21) days' notice.

- (b) The notice calling a general meeting:
  - (i) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the virtual meeting technology that will be used to facilitate this;
  - (ii) must state the general nature of the business to be transacted at the meeting and if a special resolution is to be proposed at the meeting set out an intention to propose the special resolution and state the resolution;
  - (iii) will contain a brief description of all special business to be conducted at the meeting; and
  - (iv) will specify a place and electronic address for the purposes of proxy appointment.
- (c) The failure or accidental omission to send notice of any meeting to any Member or the non-receipt of any such notice by any Member will not invalidate any resolution passed at any such meeting.

## **9. Proceedings at general meetings**

---

### **9.1 Time, place and purpose for general meetings**

A general meeting must be held at a reasonable time and place for a proper purpose.

### **9.2 Use of technology**

- (a) A general meeting including the annual general meeting may be held by any virtual meeting technology as determined by the Board provided the Members are able to simultaneously hear each other and to participate in the discussion.
- (b) If virtual meeting technology is used and fails part way through the general meeting, the general meeting or that part of the general meeting affected by the technology failure will be valid unless a Member did not have a reasonable opportunity to participate and a majority of all the Members attending agree to invalidate the meeting by a written declaration to that effect.

### **9.3 Quorum**

- (a) No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- (b) The quorum for general meetings comprises 10% of the Members present (through a representative appointed under clause 5.2).

- (c) The quorum must be present at all times during the meeting.

#### **9.4 No quorum present**

In the event that a quorum is not present thirty (30) minutes after the time appointed for a meeting:

- (a) where it was convened upon a request made by Members, the meeting will be automatically dissolved;
- (b) in any other case:
  - (i) it will stand adjourned to the same day in the next week at the same time and place, or to such other day (not being more than fourteen (14) days after such meeting), time and place as the Board may determine; and
  - (ii) if at such an adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting, those Members who are present (through a representative appointed under clause 5.2) and entitled to vote, being not less than 10% of the Members, will constitute a quorum and may transact the business of the meeting for which the same was called.

#### **9.5 Chairing general meetings**

- (a) The Chair of the Board will preside at every general meeting. If the Chair of the Board is absent or is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act then, unless either:
  - (i) the Board elects an individual present at the meeting; or
  - (ii) Members present at the meeting resolve to elect another one of their number (or, if a Member is not an individual, the individual authorised to participate in the Meeting on behalf of the Member),
- (b) In the case of an equality of votes, whether on a show of hands or on a poll, the person presiding at the general meeting will be entitled to a second or casting vote if that person is a Director, Member or individual authorised to participate in the Meeting on behalf of a Member that is not an individual.
- (c) The chair of general meetings is responsible for the conduct of general meetings, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the Auditor).

#### **9.6 Adjournment of general meetings**

- (a) The chair of a general meeting at which a quorum is present:
  - (i) in their discretion may adjourn the general meeting with the consent of a majority of Members present; and
  - (ii) must adjourn the general meeting if a majority of Members present directs them to do so.
- (b) An adjourned meeting may take place at a different venue to the initial general meeting.
- (c) No business will be transacted at any adjourned meeting other than the business left unfinished at the general meeting from which the adjournment took place.

- (d) When a general meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

### **9.7 Recommendations to the Board**

A general meeting of the Company may make recommendations to the Board, and the Board shall consider such recommendations at its next meeting.

### **9.8 Motions**

Any motion submitted to a general meeting shall be capable of amendment without prior notice by a majority of the Members present (through a representative appointed under clause 5.2 or a proxy) and entitled to vote. The motion as so amended shall then be treated as the original motion.

### **9.9 Member(s)' resolutions or Member(s)' statements**

- (a) Any Member or Members may give the Company notice of a resolution that they propose to move at a general meeting.
- (b) Any Member or Members may request the Company to give to all its Members a statement provided by the Member or Members making the request about:
  - (i) a resolution that is proposed to be moved at a general meeting; or
  - (ii) any other matter that may be properly considered at a general meeting.
- (c) The notice under clause 9.9(a) or the request under clause 9.9(b) must be in writing, set out the wording of the proposed resolution (in the case of a notice) and be signed by the Member(s) proposing to move the resolution or making the request (as applicable).
- (d) Separate copies of a document setting out the notice or the request (as applicable) may be used for signing by members if the wording of the notice or the request is identical in each copy.

### **9.10 Company giving notice of Member(s)' resolutions or distributing Member(s)' statements**

- (a) If a Company has been given notice of a resolution under clause 9.9(a), the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given. The Company must give all its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (b) After receiving the request under clause 9.9(b), the Company must distribute to all its Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.
- (c) The Company is responsible for the cost of giving Members notice of the resolution or making the distribution of a statement (as applicable) if the Company receives the notice or statement in time to send it out to Members with the notice of meeting.
- (d) The Members giving notice or making the request are jointly and individually liable for the expenses reasonably incurred by the Company in giving members notice of the resolution or distributing the statement if the Company does not receive the Member(s)' notice or statement in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

- (e) The Company need not give notice of the resolution or comply with a request to distribute a statement:
  - (i) if it is more than 1,000 words long or defamatory; or
  - (ii) if the Member(s) making the request are to bear the expenses of sending the notice out or making the distribution - unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

### **9.11 Voting and Members' decision-making**

Subject to this Constitution:

- (a) Subject to the rights attaching to each Class of Members, on a show of hands and on a poll every Member entitled to vote that is present in person by its representative or by proxy, will have voting rights as determined by the Board in relation to each Class of Members from time to time as provided in clause 5.2(b).
- (b) Notwithstanding this Constitution, a Member will not be entitled to vote on any question, by proxy or by a representative appointed under clause 5.2, at any general meeting or on a poll if the Member is subject to a resolution of the Board pursuant to clause 7.3(a), or if clause 7.3(c) applies, and such entitlement to vote has not been reinstated in accordance with clause 7.4.
- (c) All resolutions and decisions required by the Corporations Act, the ACNC Act or by this Constitution to be made by the Members require approval by a resolution of the Members at a general meeting.
- (d) In the case of any dispute as to the admission or rejection of a vote, the chairperson may determine the dispute and such determination made in good faith shall be final and conclusive, provided that no objection to the qualification of any person to vote will be raised except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at that meeting is valid for all purposes.

### **9.12 Voting procedure at a general meeting**

- (a) Except where a Special Resolution of the Members is required pursuant to this Constitution or the Corporations Act, any resolution of the Members in a general meeting is carried if a majority of the votes cast by the Members present (through a representative appointed under clause 5.2 or a proxy) and entitled to vote on the resolution, are in favour of the resolution.
- (b) For the avoidance of doubt, a Special Resolution of the Members in a general meeting is carried if 75% of the votes cast by the Members present (through a representative appointed under clause 5.2 or a proxy) and entitled to vote on the resolution, are in favour of the resolution.
- (c) Every question submitted to a meeting will be decided in the first instance by a show of hands unless a poll is demanded in accordance with clause 9.13.
- (d) Unless a poll is demanded:
  - (i) a declaration by the chair that a resolution has been carried, carried by a particular majority, or lost; and
  - (ii) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The chair is under no obligation to make such a declaration if he or she considers it desirable that the question be decided on a poll and in such case the chair must direct a poll to be taken.

### **9.13 Poll**

- (a) A poll may be demanded on any Members' resolution.
- (b) At a general meeting of the Members, a poll may be demanded by:
  - (i) at least five (5) Members entitled to vote on the resolution; or
  - (ii) members with at least 5% of the votes that may cast on the resolution on a poll; or
  - (iii) the chair of the meeting.
- (c) The poll may be demanded:
  - (i) before a vote is taken;
  - (ii) before the voting results on a show of hands are declared; or
  - (iii) immediately after the voting results on a show of hands are declared.
- (d) If a poll is demanded or directed on a matter other than the election of a chair or the question of an adjournment it must be taken in such manner and at such time and place as the chair of the meeting directs and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. The demand of a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the chair must determine the same and such determination made in good faith will be final and conclusive.
- (e) Any poll demanded on the election of a chair of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.
- (f) The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

### **9.14 Appointment of proxies**

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members, may appoint another person, who does not need to be a Member of the Company, as proxy to attend and vote at a general meeting on their behalf. For the avoidance of doubt, where another Member is appointed as a proxy, the representative of that Member that is appointed as a proxy will act as the proxy.
- (b) A proxy appointed to attend and vote for a Member has the same rights as the Member to:
  - (i) speak at the meeting; and
  - (ii) vote (but only to the extent allowed by the appointment); and
  - (iii) join in the demand for a poll under clause 9.13.
- (c) An appointment of proxy must be signed by the Member appointing the proxy and

must contain:

- (i) the Member's name and address;
  - (ii) the Company's name;
  - (iii) the proxy's name or the name of the office held by the proxy; and
  - (iv) the meeting(s) at which the appointment may be used.
- (d) A proxy appointment may be standing.
- (e) Proxy appointment forms must be received by the Company at the place or electronic address specified in the notice of meeting at least 48 hours before a meeting.
- (f) A proxy appointment form may be delivered in person, by post, facsimile or by electronic means.
- (g) A proxy does not have the authority to speak and vote for a Member at a meeting while the Member is at the meeting.
- (h) Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member revokes the proxy's appointment.
- (i) A proxy appointment may specify the way the proxy must vote on a particular resolution. If it does:
- (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
  - (ii) if the proxy has two (2) or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands; and
  - (iii) if the proxy is the chair of the meeting at which the resolution is voted on - the proxy must vote on a poll, and must vote that way; and
  - (iv) if the proxy is not the chair of the meeting at which the resolution is voted on - the proxy need not vote on the poll, but if the proxy does so, the proxy must vote that way.

## **10. Board**

---

### **10.1 Powers and duties of the Board**

Subject to the Corporations Act and this Constitution, the business of the Company is to be managed by or under the direction of the Board. The Board may exercise all the powers of the Company that are not required by law or this Constitution to be exercised by the Members.

### **10.2 Size of Board**

- (a) The Board shall comprise a minimum of three (3) and a maximum of eight (8) Directors, as the Directors may determine from time to time.

- (b) The Company in general meetings may by ordinary resolution increase or reduce the maximum or minimum number of Directors, provided that the minimum will not be less than three (3).

### 10.3 Composition of Board

The Board shall be comprised as follows:

- (a) up to two (2) of the Directors shall be appointed by the Board in accordance with clause 10.7 (**Appointed Directors**), provided that the number of Elected Directors must always exceed the number of Appointed Directors; and
- (b) the rest of the Directors shall be elected by the Members in accordance with clause 10.6 (**Elected Directors**).

### 10.4 Transitional provision

Notwithstanding any other provision in this Constitution, Directors in office at the date of adoption of this Constitution shall continue in office and shall be deemed to hold office as Elected Directors under clause 10.3(b).

### 10.5 Nominations of Directors for Office

- (a) A person is not eligible for election or appointment as a Director unless a nomination for a position on the Board has been submitted in accordance with clause 10.5(b) and the nomination has been approved by the Board on the recommendation of the Nominations Committee.
- (b) Nominations must be made to the Secretary in writing and accompanied by:
  - (i) a duly signed consent of each candidate to act as Director;
  - (ii) the person's Director Identification Number as issued to them by the Australian Business Registry Services;
  - (iii) a declaration that the person is not disqualified from being a director under the Corporations Act or, if the Company is a charity, the ACNC Act;
  - (iv) a short statement of the candidate's skills, qualifications and experience in support of their nomination; and
  - (v) such other information as prescribed by the Directors from time to time.
- (c) In making recommendations to the Board on the received nominations, the Nominations Committee, without limitation to other criteria and guidelines contained in the Nominations Committee Charter:
  - (i) will have regard to the skills and experience of the nominated candidates in any discipline, profession or field of knowledge which may be beneficial to the Company; and
  - (ii) will consider the skills/competencies matrix adopted by the Board from time to time.

### 10.6 Election of Directors

- (a) At least forty-five (45) Business Days before the date upon which it is proposed to hold an annual general meeting, a notice must be sent to all Members indicating Elected Director position(s) that will become vacant at the next annual general meeting and call for nominations for the available vacancies.

- (b) To be valid, nominations must be completed in accordance with clause 10.5(a) and must be received by the Secretary at least thirty-five (35) Business Days prior to the annual general meeting.
- (c) The Board will approve eligible nominations for election on recommendation of the Nominations Committee and provide details in the notice of the annual general meeting of nominated candidates standing for election at that meeting.
- (d) If the number of approved eligible candidates pursuant to clause 10.6(c) standing for election as an Elected Director is less than or equal to the number of vacant positions of Directors to be elected, the Chair at the annual general meeting must declare each of those candidates to be elected to the positions. If the number of candidates nominated exceeds the number to be elected, an election shall be held in the manner determined by the Board.

## **10.7 Appointment of Directors**

The Board may from time to time in its discretion determine appointments to the Appointed Director positions upon recommendation of the Nominations Committee in accordance with clause 10.5.

## **10.8 Term**

- (a) Each Elected Director:
  - (i) will hold office from the conclusion of the annual general meeting at which the Director is elected until the third annual general meeting following the election, unless the Director's term of office ceases earlier in accordance with clause 10.10, after which that Director must retire from office;
  - (ii) shall be eligible for re-election subject to a maximum of three (3) consecutive terms in office, unless otherwise determined by a Special Resolution of the Members.
- (b) Notwithstanding clause 10.8(a), at each annual general meeting the lesser of two or one-quarter (or, if that is not a whole number, the next lowest whole number) of the Elected Directors who have been longest in office shall retire from office. If the minimum number of Elected Directors who would be required to retire under this clause have been in office for the same period of time, they may agree as between themselves who must retire. If they cannot agree, the Elected Directors must select by lot who retires.
- (c) Each Appointed Director:
  - (i) will hold office for a period of three (3) years from the date of the person's appointment, unless the person's term of office ceases earlier in accordance with clause 10.10, after which he or she must retire from office; and
  - (ii) shall be eligible for re-appointment subject to a maximum of three (3) consecutive terms in office, unless otherwise determined by a Special Resolution of the Board.
- (d) Any period served by a person as a casual vacancy does not count towards the maximum tenure under this clause 10.8.

## **10.9 Casual vacancy in Elected Director positions**

- (a) If:
  - (i) at any annual general meeting of the Company each vacancy in the number of Elected Directors is not filled; or
  - (ii) a casual vacancy arises in the office of an Elected Director at any time,then the vacancy or vacancies in the office of the Elected Director may be filled by the Board on recommendation of the Nominations Committee.
- (b) Any such appointed person will hold office until the next annual general meeting at which time they must retire, and the person is then eligible for election.

## **10.10 Vacation of office**

The office of Director is vacated automatically if:

- (a) the person ceases to be a Director by virtue of the Corporations Act;
- (b) the person is prohibited by the Corporations Act, or by an order made under the Corporations Act, from holding office or continuing as a Director;
- (c) the person submits their resignation in writing to the Company, from the date specified in the resignation;
- (d) the person is removed by a resolution of the Members in accordance with the Corporations Act;
- (e) the term of office of a Director ceases in accordance with clause 10.8;
- (f) the person becomes bankrupt or makes any general arrangement or composition with its creditors;
- (g) the person is absent from more than three (3) consecutive Board meetings without the prior leave of the Board or fails to respond to three (3) consecutive requests for a circular resolution in accordance with clause 11.5 to be passed without a Board meeting, unless the Board determines otherwise;
- (h) the person becomes disqualified from being a director under the ACNC Act (if the Company is a charity).

## **10.11 Less than minimum number of Directors**

- (a) Subject to clause 10.11(b), the continuing Directors may act despite any vacancy in their body.
- (b) If the number of Directors falls below the minimum number fixed in accordance with this Constitution, the Directors may act only:
  - (i) to appoint a person to fill a casual vacancy of the Board in accordance with clause 10.9;
  - (ii) to call a general meeting; or
  - (iii) in emergencies.

## **11. Board meetings**

---

### **11.1 Board meetings**

The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

### **11.2 Quorum**

- (a) A quorum of the Board comprises a majority of the Directors eligible to vote, provided also that the number of Elected Directors (excluding directors appointed to fill a casual vacancy) present must exceed the number of Appointed Directors present. The quorum must be present at all times during the meeting.
- (b) Where a quorum cannot be established for a Board meeting (or consideration of a particular matter), a Director may convene a general meeting of Members to deal with the matter or matters in question.

### **11.3 Chair of the Board**

- (a) The Chair of the Board will be appointed by the Board from among the Directors.
- (b) Subject to clause 11.3(f), the Chair of the Board will hold office for such term as the Board shall determine, and failing such determination, for the duration of the person's term of office as a Director as prescribed in clause 10.7.
- (c) A person is eligible to be reappointed as a Chair of the Board if the person is re-elected or re-appointed to serve a further term as a Director under clause 10.8(c).
- (d) The Chair of the Board will preside at Board meetings.
- (e) Where a Board meeting is held and the Chair of the Board is absent or not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, any person appointed by the Directors as Deputy Chair will chair the meeting but, if that person is absent or not present within 15 minutes after the time appointed for the holding of the meeting, the Directors present must choose one of their number to be chair of such meeting.
- (f) The office of the Chair of the Board shall become and be vacant:
  - (i) if the Chair of the Board ceases to be a Director in accordance with clause 10.9;
  - (ii) by the written resignation of the Chair of the Board from the office; or
  - (iii) by written notice of removal given by the Board or.
- (g) Where the office of the Chair of the Board becomes vacant, a new Chair of the Board will be appointed in accordance with this clause 11.3.

### **11.4 Voting**

- (a) At a Board meeting, each Director present will have one (1) vote.
- (b) Questions arising at any Board meeting shall be decided by a majority of votes of the Directors present and entitled to vote and a determination by a majority of Directors shall for all intents and purposes be deemed a determination of the Directors.

- (c) In case of an equality of votes, the Chair of the Board meeting shall have a second or casting vote.

### **11.5 Circular resolutions of the Board**

- (a) If at least 75% of the Directors have provided consent in writing that they are in favour of a resolution of the Directors which has been circulated to all of the Directors, such resolution is treated as having been passed at a meeting of the Directors held on the day on which the written consent was provided by the last Director necessary for the resolution to pass. If the Directors provide written consent on different days, then a resolution is treated as having been passed on the day on which written consent was provided by the last Director. A resolution is not treated as passed on that day if the circular resolution, by its terms, is said to take effect from another specified date.
- (b) For the purposes of this clause, two (2) or more separate documents containing written consent in identical terms each of which is signed by one (1) or more Directors are together treated as constituting one (1) document containing written consent in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (c) The document or documents referred to in clauses 11.5(a) and 11.5(b) are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

### **11.6 Validity of acts of Directors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **12. Observers and standing attendees at Board meetings**

---

The Board may request the attendance at any meeting of the Board of any person who in the opinion of the Board may be able to assist the Board regarding any matter before it. Any person so invited shall be in attendance for such part of a Board meeting as the Board considers appropriate in its discretion.

## **13. Board Committees**

---

### **13.1 Establishment**

There are to be established and maintained Committees of the Board as determined by the Board from time to time.

### **13.2 Terms of reference**

Subject to this Constitution, each Committee will have terms of reference specified by the Board.

### **13.3 Membership**

The membership of each Committee will be determined by the Board, provided that at least one member of a Committee must be a Director, and the Board will appoint the chair of each Committee.

## **14. Delegation**

---

### **14.1 Delegation by the Board**

The Board may, by resolution and instrument of the delegation in writing, delegate to such one (1) or more Directors, a committee established under clause 13, any other employee or any other person (delegate or delegates, as the case may be) the performance or exercise of such of the duties, functions, powers and authorities imposed or conferred on it by this Constitution, other than those which by law must be dealt with by the Board.

### **14.2 Terms of delegation**

- (a) A delegation made under this Constitution may be subject to such conditions and/or limitations as to the performance or exercise of any of the specified duties, functions, powers and authorities delegated or as to time or other circumstances the Board thinks expedient, but not to the exclusion of, or in substitution for, all or any of the powers of the Board, as specified in the resolution and instrument of delegation. The Board may at any time or times alter, revoke, withdraw or vary all or any delegations.
- (b) An instrument of delegation shall be signed by the Chair of the Board and one (1) other Director who is not a delegate pursuant to that instrument, provided that, if the Chair of the Board is to be a delegate pursuant to an instrument of delegation, that instrument shall be signed by two (2) Directors who are not delegates pursuant to it.
- (c) The Board may at any time revoke, withdraw, alter or vary all or any of such powers.
- (d) Any act or thing done by the delegate or delegates when acting within the terms of the delegation will have the like force and effect as if the act or thing had been done by the Board.
- (e) Notwithstanding any delegation made under this Constitution, the Board may continue to perform or exercise all or any of the duties, functions, powers and authorities delegated.

## **15. Conflict of interests**

---

### **15.1 Disclosure of conflict of interest**

A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the Directors; or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.

## **15.2 Disclosure recorded in minutes**

The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

## **15.3 Material personal interest**

Each Director who has a material personal interest in a matter that is being considered at a meeting of the Directors (or that is proposed in a circular resolution) must not, except as provided under clause 15.4:

- (a) be present at the meeting while the matter is being discussed; or
- (b) vote on the matter.

## **15.4 Present and voting**

A Director with a material personal interest in a matter may still be present and vote if:

- (a) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company (see clause 26.3);
- (b) their interest relates to a payment by the Company under clause 26, or any contract relating to an indemnity that is allowed under the Corporations Act;
- (c) ASIC makes an order allowing the Director to vote on the matter; or
- (d) the Directors who do not have material personal interest in the matter pass a resolution that:
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it related to the affairs of the Company; and
  - (ii) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **16. Minutes and Registers**

---

### **16.1 Minutes**

- (a) The Company must keep minute books in which it records within one (1) month:
  - (i) all appointments of Officers;
  - (ii) all proceedings and resolutions of general meetings;
  - (iii) a copy of a Members' Statement distributed to the Members under clause 9.9(b);
  - (iv) all proceedings and resolutions of Board meetings and Committee meetings;
  - (v) all circular resolutions of the Board made in accordance with clause 11.5.
- (b) Minutes of meetings must be signed by the chair of the relevant meeting or the chair of the next meeting within a reasonable time after the meeting is held.

- (c) The Company must give a Member access to the records set out in clauses 16.1(a)(i) to 16.1(a)(iii).

## **16.2 Registers**

The Company must keep all registers required under the Corporations Act.

## **17. Policies**

---

### **17.1 Power of Board to make Policies and By-Laws**

Subject to and consistent with this Constitution, the Board may from time to time make Policies or By-Laws for or with respect to all matters relating to the organisation, management and good governance of the Company and all its operations.

### **17.2 Variation of Policies and By-Laws**

The Board may, by resolution, repeal, revoke, alter, amend or otherwise modify any Policy or By-Law or part of a Policy or By-Law.

## **18. Execution of documents**

---

### **18.1 Default means of execution**

Any document or instrument will be properly executed and binding on the Company if the document is signed by any two (2) Directors or a Director and the Secretary. The Board may from time to time determine or authorise that a document or instrument on behalf of the Company may be executed in a different way.

### **18.2 Negotiable instruments and receipts**

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in accordance with delegations authorised by the Board or as otherwise approved by the Board.

## **19. Secretary**

---

### **19.1 Appointment of Secretary**

The Board shall appoint the Secretary of the Company for a term and on Remuneration and on conditions determined by it.

### **19.2 Attendance at meetings**

The Secretary is entitled to attend and be heard on any matter at all Board meetings and general meetings.

### **19.3 Termination of office**

The Board, subject to the terms of the Secretary's employment contract, may suspend, remove or dismiss the Secretary.

## **20. Chief Executive Officer**

---

### **20.1 Chief Executive Officer**

The Chief Executive Officer, subject to the directions of the Board, is responsible to the Board for the leadership, stewardship and management of the Company.

### **20.2 Appointment**

The Board shall have the power to appoint or reappoint a person as the Chief Executive Officer on such terms, conditions and Remuneration as the Board determines.

### **20.3 Delegations to the Chief Executive Officer**

The Board may from time to time delegate to the Chief Executive Officer such of the powers exercisable under this Constitution by the Board as it sees fit, and may confer such powers for such objects and purposes, and upon such terms and conditions, and with such restrictions, as the Board thinks expedient, but not to the exclusion of, or in substitution for, all or any of the powers of the Board. The Board may at any time or times alter, revoke, withdraw or vary all or any of such delegations.

### **20.4 Board meetings**

- (a) The Chief Executive Officer shall receive notice of and attend all Board meetings, except where otherwise requested by the Board.
- (b) For the avoidance of doubt, the Chief Executive Officer:
  - (i) may speak, but not vote, at Board meetings;
  - (ii) is not to be counted towards the quorum at Board meetings.

## **21. Accounts and Audit**

---

### **21.1 Preparation of accounts**

- (a) The Board must cause the Company to prepare financial accounts in accordance with the law.
- (b) The Board must cause the Company to prepare a financial report, a Directors' report and any other reports that comply with any relevant legislation.

### **21.2 Auditing of financial report**

- (a) The Auditor shall be appointed and removed by resolution of the Members, in accordance with the requirements of, as applicable, the Corporations Act and the ACNC Act.
- (b) The Board must cause the Company's financial report for each Financial Year to be audited by the Auditor and obtain an auditor's report in accordance with any requirements of any relevant legislation.

## **22. Confidentiality**

---

### **22.1 Members not entitled to access to Company records**

Subject to this Constitution and the Corporations Act:

- (a) the Board will determine whether and to what extent, at what time and place or places, and under what conditions, the accounting records and other documents of the Company will be open to the inspection of Members.
- (b) a Member does not have the right, but may in the absolute discretion of the Board be authorised, to inspect or to require or receive any information, or to require discovery of any record or document of the Company or any information respecting any detail of the Company's trading or business, or any matter which is or may be in the nature of a trade secret, confidential information, mystery of trade or secret process which may related to the conduct of the business of the Company.

### **22.2 Confidentiality**

Every Director and Secretary is bound to observe confidentiality with respect to all transactions of the Company, the state of the account of any individual, and all related matters.

## **23. Notice**

---

### **23.1 Notice by the Company**

- (a) Notice may be given by the Company to any person who is entitled to notice under this Constitution:
  - (i) personally;
  - (ii) by sending it by post to the address supplied by the person to the Company for sending notices to the person;
  - (iii) by sending it to the electronic mail address or other electronic means of communication nominated by the person; or
  - (iv) by any other means authorised by the Corporations Act.
- (b) A notice sent by post is taken to be given five (5) days after it is posted.
- (c) A notice sent by electronic mail or by other electronic means, is taken to be given on the Business Day after it is sent.
- (d) A notice of meeting given to a Member in accordance with section 110D(1)(d) of the Corporations Act is taken to be given on the Business Day after the day on which the member is notified that the notice of meeting is available.

### **23.2 Notice to Company**

Any notice or other document required to be served upon the Company may be served by leaving it with the Secretary or by forwarding it through the post in a pre-paid letter addressed to the Company at its registered office or by electronic means to the Secretary.

## **24. Amendments**

---

### **24.1 Amendment by special resolution**

Subject to clause 24.3, any amendments to this Constitution must be made by Special Resolution of the Members.

### **24.2 Board recommendations**

For the avoidance of doubt, the Board may make recommendations to the Members for amendments to the Constitution, from time to time.

### **24.3 No amendment to adversely affect charitable status (if applicable)**

If the Company is registered as a charity with the ACNC, no amendment may be made to this Constitution that would prejudice the Company's registration as a charity with the ACNC, and any resolution or document purporting to make such an amendment shall be void and of no effect with respect to that amendment.

## **25. Winding up**

---

### **25.1 Contribution by the Members**

If the Company is wound up, the Members undertake to contribute to the property of the Company for the payment of debts and liabilities of the Company and payment of costs, charges and expenses of winding up such amount as may be required, not exceeding the amount referred to in clause 5.9.

### **25.2 Distribution of surplus assets**

Upon the winding up of the Company, any surplus remaining after the satisfaction of all its debts and liabilities (or part thereof) will not be paid to or distributed to the Members but shall be given or transferred to another charitable institution, body, entity or organisation operated in Australia:

- (a) that has similar objects to the Company; and
- (b) whose governing documents prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution,

such institution, body, entity or organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of the Victoria for determination.

## **26. Indemnity and access**

---

### **26.1 Indemnity for liability**

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an Officer of the Company against any liability (other than for legal costs) incurred by that person as such an Officer of the Company (including liabilities incurred by the Officer as a director of a subsidiary of the Company where the Company requested the Officer to accept appointment as director).

## 26.2 Indemnity for reasonable legal costs

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an Officer of the Company against reasonable legal costs incurred:

- (a) in defending an action for a liability incurred by that person as an Officer of the Company (including such legal costs incurred by the officer as a director of a subsidiary of the Company where the Company requested the Officer to accept appointment as director); or
- (b) in connection with or arising from any enquiry or investigation by an Authority or External Administrator involving that person as an Officer of the Company.

## 26.3 Indemnity in respect for premiums

To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act, the Company may at any time:

- (a) pay premiums in respect of a contract insuring a person (whether with others or not) who is, or has been, an Officer of the Company; and
- (b) bind itself in any contract or deed with any person who is or has been an Officer of the Company to make the payments.

The liability insured against may not include that which the law prohibits. Any such premium in relation to a Director is in addition to, and not regarded as part of, any Remuneration that may be paid to an Appointed Director under this Constitution.

## 26.4 GST

The amount of any indemnity payable under clauses 26.1 or 26.2 or 26.3 will include an additional amount (**GST Amount**) equal to any GST payable by the Officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST amount.

## 26.5 Documentary indemnity

Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of a person who is or who has been an Officer of the Company, provided the terms of such documentary indemnity are not inconsistent with this clause 26.

## 26.6 Access to documents

Where the Board considers it appropriate, the Company may:

- (a) give a person who is or who has been an Officer of the Company, access to certain documents, including documents provided or available to the Board and other papers referred to in those documents; and
- (b) bind itself in any contract or deed with any person who is or has been an Officer of the Company to give the access.

## 26.7 Reporting on indemnities and insurances

Subject to any exception provided for in the Corporations Act, full particulars of the Company's indemnities and insurance premiums in relation to its Officers must be included each year in the Directors' report prepared in accordance with clause 21.1(b).

## 27. Interpretation

---

### 27.1 Definitions

In this Constitution unless the contrary intention appears:

**ACNC** means the Australian Charities and Not-for-profits Commission or its successor.

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

**Appointed Director** has a meaning given in clause 10.3(a).

**Auditor** means the person appointed for the time being as auditor of the Company.

**Authority** means:

- (a) a Royal Commission, Board of Inquiry, Parliamentary Committee or similar body;
- (b) the Australian Securities & Investments Commission, the Australian Competition and Consumer Commission, ACNC and any other regulatory authority;
- (c) a department of any Australian government or of any other jurisdiction;
- (d) a public authority;
- (e) an instrumentality, agent or appointee of the Crown in right of the Commonwealth, in right of a State or in right of a Territory or the equivalent of any of them in any other jurisdiction;
- (f) any other body exercising statutory or prerogative power;
- (g) a government, a governmental, semi-governmental or judicial person, authority, body or entity;
- (h) a statutory corporation; or
- (i) a person, authority, body or entity (whether autonomous or not) who is charged with the administration of law.

**Board** means the board of Directors, being the board of directors of the Company, and includes a reference to the Inaugural Board as the context requires.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Victoria.

**By-Laws** means any by-laws made by the Board under clause 17.

**Chair of the Board** means the person appointed as Chair of the Board in accordance with clause 11.3.

**Chief Executive Officer** means the person appointed by the Board to serve as the Chief Executive Officer (or any analogous role or title) of the Company in accordance with clause 20.

**Class** means a class of member as identified at clause 5.2(a) with eligibility requirements as prescribed by the Board from time to time, and **Class of Member** and **Class of Membership** have the same meaning.

**Code of Conduct** means Company's Code of Conduct as approved by the Board from time to time.

**Committee** means a committee of the Board established in accordance with clause 13.

**Company** means Hydrogen Mobility Australia Ltd ACN 619 400 556.

**Constitution** means this constitution of the Company as amended from time to time.

**Controller** has the meaning given by the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Director** means any director of the Company appointed in accordance with clause 10.3 and includes any person occupying the position of a director.

**Directors** means all or some of the Directors acting as the Board.

**Elected Director** has a meaning given in clause 10.3(a).

**External Administrator** means a liquidator, provisional liquidator, Controller or an administrator.

**Financial Year** has the same meaning as in section 9 of the Corporations Act.

**GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* as modified or amended from time to time.

**GST Amount** has the meaning provided by clause 26.4.

**Indemnified Officer** has the meaning provided by clause 26.4.

**Member** means a corporate body admitted to the membership of the Company and listed in the Company's Register of Members.

**Nominations Committee** means a Committee of the Board established by the Board and operating in accordance with Nominations Committee Charter approved by the Board.

**Objects** means the objects to which clause 3.1 refers.

**Officer** has the meaning given in section 9AD of the Corporations Act.

**Policies** means the policies made by the Board under clause 17.

**Remuneration** includes, without limitation, salaries, wages, commissions, fees, rewards, allowances or bonuses.

**Register of Members** means the register of Members of the Company kept by the Secretary in accordance with clause 5.5.

**Replaceable Rules** means the provisions referred to in section 141 of the Corporations Act.

**Secretary** means any person appointed by the Board under clause 19 to perform any of the duties of a secretary of the Board and if there are joint secretaries, any one or more of those joint secretaries.

**Special Resolution of the Board** means a resolution approved by at least 75% of votes cast by the Directors present and entitled to vote at a Board meeting.

**Special Resolution of the Members** means a resolution approved by at least 75% of votes cast by the Members present (by a representative appointed under clause 5.2 or a proxy) and entitled to vote at a meeting of Members.

## 27.2 Interpretation

- (a) In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.
- (b) In this Constitution, except where the context otherwise requires:
  - (i) the singular includes the plural and vice versa, and a gender includes other genders;
  - (ii) another grammatical form of a defined word or expression has a corresponding meaning;
  - (iii) a reference to a person includes a body corporate;
  - (iv) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
  - (v) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations), and any exemption or modification to that Act applying to the Company, including ministerial orders or other legislative instruments from time to time;
  - (vi) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
  - (vii) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
  - (viii) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.