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CONSTITUTION

OF

**THE AMERICAN CHAMBER OF
COMMERCE IN AUSTRALIA**

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Corporations Act

Company Limited by Guarantee

CONSTITUTION

OF

THE AMERICAN CHAMBER OF COMMERCE IN AUSTRALIA

1. Name

The name of the association is “The American Chamber of Commerce in Australia” (the **Chamber**).

2. Office

The registered office of the Chamber will be situated at Sydney or elsewhere in the State of New South Wales as may be determined by the Directors from time to time.

3. Objects

The objects for which the Chamber is established are:

- (a) to promote the development of any or all of Australian Primary and Secondary Resources particularly as it relates to commerce between the United States of America and Australia. This primary object is supported by the additional objects below;
- (b) to foster the use by member firms in Australia of the highest standards of international commercial practice with the objective of having the entire international business community in Australia maintain such standards;
- (c) to disseminate information concerning existing or projected laws affecting members’ interests, to promote or oppose legislative and other measures affecting the commercial interests of members;
- (d) to represent, express and give effect to the opinion of the Membership in Australia on questions of trade, commerce, finance, industry and taxation pertaining to Membership interests;
- (e) to secure and disseminate among members statistical and other information concerning trade and commerce, and other matters of business, financial or professional interest, and to provide the facilities of a reference library;
- (f) to assist members and other citizens of the United States of America engaged in trade with Australia, or considering such enterprises, by advice as to sources of commercial information, including customs duties, transportation, credit and agencies; and
- (g) to interpret the point of view of Australian commercial interests to the American business public, and to lend all practical assistance to Australian interests seeking to enter the American market or wishing to develop their activities in the United States of America.

4. Income and Property

The income and property of the Chamber shall be applied solely towards the promotion of the objects of the Chamber as set out in this Constitution. No part of the Chamber's income and property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the persons who at any time are or have been members of the Chamber or to any person claiming through any of them. However, this clause does not prevent:

- (a) The payment in good faith of remuneration to any employee of the Chamber or to any member or other person in return for any services actually rendered to the Chamber;
- (b) The payment to a director of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the Board;
- (c) The payment to a member of the Board for any service rendered to the Chamber in a professional or technical capacity where:
 - (i) the provision of that service has the prior approval of the Board; and
 - (ii) the amount payable is approved by a resolution of the Board and is on reasonable commercial terms;
- (d) the payment to a director as an employee of the Chamber where the terms of employment have been approved by a resolution of the Board;
- (e) the payment to members of interest on any money borrowed from such members for the purpose of the Chamber at a rate not exceeding the lowest rate paid for the time being by the Chamber's principal bank in New South Wales in respect of term deposits of \$50,000.00 for six months;
- (f) the payment to members of reasonable market rent for premises leased by any member of the Chamber.

5. Liability of Members is Limited

Every member of the Chamber undertakes to contribute such amount as may be required (not exceeding \$20.00) to the assets of the Chamber if the Chamber is wound up during the time he or she is a member or within one year afterwards for:

- (a) payment of the debts and liabilities of the Chamber contracted before the time he or she ceased to be a member;
- (b) the costs, charges and expenses of winding up the Chamber; and
- (c) the adjustment of the rights of the members among themselves.

6. Definitions

In this Constitution, the following words and expressions have the meanings indicated unless the context requires otherwise:

Auditor means the Chamber's auditor.

Australian Primary and Secondary Resources means those industries and resources referred to in Items 8.1, 8.2 and 8.3 of Section 50-40 of the Income Tax Assessment Act 1997 (as amended).

Board means the Chamber's Board of Directors assembled at a meeting of Directors in accordance with this Constitution.

Chairman means the Chairman elected by the Board.

Chamber means The American Chamber of Commerce in Australia.

Chief Executive Officer means the Chief Executive Officer of the Chamber appointed by the Board.

Constitution means the Constitution of the Chamber as amended from time to time.

Director means a member of the Board appointed pursuant to clause 30.

Members mean the persons shown as members on the Register.

Membership means membership of the Chamber.

Notice includes all written communication to members.

Office means the Chamber's registered office.

Register means the Chamber's register of members.

Registered address means the last known address of a member as noted in the Register.

Secretary means any person appointed by the Board to perform the duties of a secretary of the Chamber and includes an Honorary Secretary.

Voting Members means Members who are entitled to vote at a general meeting of the Chamber.

7. Interpretation

- (a) Words importing the singular number include the plural and the converse applies.
- (b) Words importing persons include corporations, companies, associations and institutions.
- (c) A reference to the *Corporations Act* is a reference to the *Corporations Act 2001* (Cth) as modified or amended from time to time.
- (d) Unless the context otherwise requires, headings are for ease of reference only and do not affect the construction of this Constitution.
- (e) References to clauses are to clauses of this Constitution.

8. Application of Corporations Act

Unless the contrary intention appears in this Constitution:

- (a) an expression in this Constitution has the same meaning as in that part of the *Corporations Act* which deals with the same matter as this Constitution; and
- (b) an expression which is given a general meaning by the *Corporations Act* has the same meaning in this Constitution; and
- (c) the replaceable rules set out in the *Corporations Act* do not apply.

9. Membership of the Chamber

- (a) The Chamber shall have, unless otherwise agreed by the Chamber, 6 classes of Members.

- (b) The Chamber has the following classes of members:
 - (i) Corporate 1 – corporations having over 100 employees;
 - (ii) Corporate 2 – corporations having 51 to 100 employees;
 - (iii) Corporate 3 – corporations having 21 to 50 employees;
 - (iv) Corporate 4 – corporations having 3 to 20 employees;
 - (v) Corporate 5 – corporations having 1 to 2 employees; and
 - (vi) Honorary members.

10. Rights of Members

Only Corporate Members in classes 1 and 2 are entitled to vote at any meeting of the Chamber, but all members are entitled to attend such meetings.

11. Application for Membership

Any corporation wishing to become a member must complete such application forms as may be approved from time to time by the Board and provide such additional information as may be required by the Board.

12. Admission to Membership

Applicants for Membership must be approved by the Board.

13. Nomination of Representative

All applications for Membership must specify on the application form the name of the applicant's authorised representative. A member may change its authorised representative at any time by further written notice to the Board, effective on receipt of the notice by the Board.

14. Honorary Members

14.1 Eligibility as an Honorary Member

A person is eligible to become an Honorary Member if:

- (a) he or she is a natural person;
- (b) he or she has been nominated to become a Honorary Member by the Board.

14.2 Rights of Honorary Members

An Honorary Member is:

- (a) entitled to attend but not vote at general meetings of the Chamber; and
- (b) exempt from the payment of Membership fees.

14.3 Term of Appointment as Honorary Member

An Honorary Member remains an Honorary Member until:

- (a) he or she dies;
- (b) he or she resigns by written notice to the Office;
- (c) the term of his or her appointment, as set out by the Board, expires; or
- (d) the Board resolves to terminate the appointment.

whichever occurs first.

The Board may reappoint a person as an Honorary Member at any time by resolution.

15. Subscriptions, Dues and Levies

15.1 The Board Sets Fees

The Board must set the Membership fees to be paid by Members except for Honorary Members who are not required to pay fees.

15.2 Level of Fees

The Board may set Membership fees at different rates for each class of Members and within each class of Members. Fees within a class of Members may be set by reference to the number of employees of the Member.

15.3 Waiver and Reduction of Fees

The Board may:

- (a) waive the payment of Membership fees by any Member; or
- (b) reduce the membership fees payable by a Member in any circumstances the Board, in its discretion, determines.

15.4 Payment

Except for a new Member who must pay the annual fee applicable to its class of Membership at the time of its application for Membership, membership fees must be paid annually in advance.

16. Cessation of Membership

16.1 Withdrawal

A Member may cancel its Membership by notice in writing to the Board, such notice to be effective on receipt by the Board.

16.2 Automatic Cessation

A Member automatically ceases to be a Member if the Member is expelled under clause 17.

17. Expulsion of Members

17.1 Grounds for expulsion

Subject to sub-clause 17.6, the Board may by resolution expel a Member where:

- (a) the Member has wilfully refused or neglected to comply with the provisions of this Constitution;
- (b) the Member has been guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or is prejudicial to the interests or reputation of the Chamber;
- (c) the Member fails to pay its Membership fees for a period of 90 days from the due date;
- (d) a liquidator or an administrator is appointed to the Member;
- (e) a resolution is passed by the shareholders or members of the Member resolving to wind up or dissolve the Member; or
- (f) an order is made by any court to wind up the Member.

17.2 Notice of Expulsion

Expulsion on the grounds in sub-clause 17.1(c) is automatic as of the 91st day after the due date for payment of Membership fees and following a Board resolution. On all other grounds, a Member must be given written notice at least one week before the meeting of the Board at which the expulsion of the Member is to be considered.

17.3 Notice

The notice referred to in sub-clause 17.2 must contain particulars of:

- (a) what is alleged against the Member; and
- (b) the intended resolution for the Member's expulsion, and will inform the Member of its rights to appear before the Board to give any explanation or defence the Member may think fit, either orally or in writing.

17.4 Appearance at meeting

A Member has the right to appear before the Board to give any explanation or defence the Member may think fit, before the intended resolution for the Member's expulsion is put to the Board.

17.5 Resolution

- (a) Subject to sub-clause 17.6, a resolution to expel a Member will be carried if passed by a simple majority of the Board present and voting.
- (b) The Chief Executive Officer must inform the Member in writing within 7 days of the Board's decision.

17.6 Appeal to Members

- (a) Within 14 days after receipt of notice from the Chief Executive Officer pursuant to sub-clause 17.5(b), the Member may notify the Board that it wishes to have the Board's resolution reviewed by the Members in general meeting, failing which the Member will be deemed to have been expelled from the date of the Board resolution.

- (b) If the Member does notify the Board that it wishes to have the resolution reviewed, at the next general meeting of the Members, the Voting Members must vote to confirm or reject the resolution. Voting is by simple majority. If the Board resolution is confirmed, the Member is expelled from the Chamber with effect from the date of the Members' resolution. If the resolution is rejected, the Member continues to be a Member unless subsequently expelled under the provisions of clause 17.

18. General Meetings – General Provisions

18.1 Annual General Meeting

An Annual General Meeting must be held once in every calendar year and no later than 15 calendar months after the previous general meeting at the place the Board determines.

18.2 Extraordinary General Meetings

All general meetings other than the Annual General Meeting are extraordinary general meetings.

18.3 Convening Extraordinary General Meetings

The Board may convene an extraordinary general meeting whenever it thinks fit.

18.4 Amount of Notice

A meeting, other than a meeting for the passing of a special resolution, must be convened by not less than 14 days' written notice. A meeting for the passing of a special resolution must be convened by not less than 21 days' written notice.

19. Requisitioned General Meeting

19.1 Power to Requisition

The Board must convene an extraordinary general meeting of Members upon a requisition made by:

- (a) not less than 1% in number of the Voting Members; or
 - (b) 100 Voting Members,
- whichever is the greater.

19.2 Contents of the Requisition

The requisition:

- (a) must state the objects of the meeting;
- (b) must state the names of and be signed by the requisitioning Members;
- (c) must be deposited at the Office; and
- (d) may consist of several documents in like form, each signed by one or more of the requisitioning Members.

19.3 Failure to convene

If within 21 days from the date of the deposit of the requisition the Board has not convened a meeting, the requisitioning Members or any 10 or more of them, may convene a meeting. Any meeting convened by the Members in this way must be held within 3 months after the date on which the requisition was deposited at the Office.

19.4 Convening the Meeting

A meeting convened by the requisitioning Members must be convened in the same manner as nearly as possible as that in which meetings are to be convened by the Board.

19.5 Expenses

Any reasonable expenses incurred by the requisitioning Member or Members by reason of the failure of the Board to convene a meeting must be repaid to the requisitioning Member or Members by the Chamber.

20. Notices of General Meetings

20.1 Contents of the Notice

A notice of a general meeting must specify the place, date and hour of the meeting and, except as provided by sub-clause 20.2, must state the general nature of the business to be transacted at the meeting.

20.2 Notice of Annual General Meeting

It is not necessary for a notice of an Annual General Meeting to state that the business to be transacted at the meeting includes the consideration of accounts and the reports of the Board and the Auditors, the election of Directors in the place of those retiring or the appointment and fixing of the remuneration of the Auditors.

20.3 Entitlement to Receive Notice

All Members are entitled to receive notice of general meetings of the Chamber.

20.4 Failure to Give Notice

Accidental failure to give notice of a meeting to 1 or more Members and non-receipt of a notice of meeting by 1 or more Members does not invalidate proceedings at any meetings.

21. Quorum for General Meetings

21.1 Requirement for Quorum

No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

21.2 Quorum

Ten Voting Members present in person or by their representatives constitute a quorum.

21.3 Failure to Achieve a Quorum

If a quorum is not present within half an hour from the time appointed for the meeting:

- (a) the meeting is dissolved where the meeting was convened on the requisition of Members; or
- (b) in any other case:
 - (i) the meeting stands adjourned to such day, and at such time and place, as the Board determines or, if no determination is made by the Board, to the same day in the next week at the same time and place; and
 - (ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting:
 - (A) five Voting Members present in person or by their representatives will constitute a quorum; or
 - (B) where five Voting Members are not present in person or by their representatives, the meeting is dissolved.

22. Chairman at General Meetings

22.1 Chairman

The Chairman will be chairman at general meetings.

22.2 Alternative Chairman

At a general meeting where the Chairman is not present within 15 minutes after the time appointed for the holding of the meeting, or is unwilling to act, the other Directors present must elect 1 of their number to act as chairman of the meeting.

23. Adjournment of General Meeting

23.1 Adjournment

The Chairman may, and shall if directed by resolution of the Voting Members present at the meeting, adjourn a general meeting from time to time and from place to place, as follows:

- (a) no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place;
- (b) when a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of any original meeting; and
- (c) except as provided in this sub-clause, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

24. Voting at General Meetings

24.1 Resolutions by show of hands unless Poll demanded

At any general meeting a resolution put to the vote of the meeting will be decided on a show of hands, unless a poll is demanded (before or on the declaration of the results of the show of hands) by:

- (a) the Chairman; or

(b) at least 5 Voting Members present in person or by representative or by proxy.

24.2 Passing a Resolution

Unless a poll is so demanded, a declaration by the chairman that a resolution has been carried unanimously, or by a particular majority, or lost, on a show of hands and an entry to that effect in the minute book of the proceedings of the Chamber is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

24.3 Withdrawal of Demand for Poll

The demand for a poll may be withdrawn.

24.4 Time for Poll

If a poll is duly demanded, it must be taken in such manner, either at once or after an interval or adjournment or otherwise as the chairman directs. A poll demanded on the election of a chairman or on a question of adjournment must be taken forthwith.

24.5 Result of Poll

The result of the poll will be the resolution of the meeting at which the poll was demanded.

25. Voting Entitlement

25.1 Voting

At any general meeting, on a show of hands every Voting Member has 1 vote and on a poll Voting Members (present in person or by proxy or duly authorised representative) also have 1 vote. No other Members are entitled to vote.

25.2 Inability to Vote

A Voting Member is not entitled to vote at any general meeting unless all moneys presently payable by the Member to the Chamber have been paid.

25.3 Objections to Vote

- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any such objection shall be referred to the chairman of the meeting, whose decision is final.
- (c) A vote not disallowed pursuant to such an objection is valid for all purposes.

25.4 Chairman's Casting Vote

In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, has a casting vote.

26. Proxies

26.1 Entitlement to Appoint a Proxy

A Voting Member is entitled to appoint another Voting Member or the authorised representative of another Voting Member as that Member's proxy to attend and vote on its behalf at any general meeting.

26.2 Form of Proxy

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:

"I, (name) of (address), being a Voting Member of The American Chamber of Commerce in Australia, hereby appoint (name) of (address) or, in his absence, (name) of (address) as my proxy to vote for me on my behalf at the annual general / extraordinary general meeting of The American Chamber of Commerce in Australia to be held on the (day) day of (month) (year) and at any adjournment of that meeting. This form is to be used in favour of / against* the resolution.*

Signed this (date) date of (month) (year) strike out whichever is not desired.*

26.3 Lodgement of Proxy

An instrument appointing a proxy is invalid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, are deposited at the Office not less than 48 hours before the time of holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote.

26.4 Proxy Containing Voting Instructions

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.

26.5 Voting of Proxy

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the revocation of the instrument (or of the authority under which the instrument was executed) of the power, if no written notice of its revocation has been received by the Chamber at the Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

26.6 Ability to Demand a Poll

An instrument appointing a proxy is deemed to confer authority to demand or join in demanding a poll.

27. Patrons

27.1 Appointment of Patrons

The Board may appoint as Patrons of the Chamber one or more natural persons whom the Board considers are:

- (a) sympathetic to the objects and aims of the Chamber;
- (b) capable of promoting the Chamber; and
- (c) of suitable standing in the business community.

27.2 Non-member May be Patron of the Chamber

A person may be appointed a Patron even though he or she is not the representative of a Member.

27.3 Termination of Appointment of Patrons

The Board may terminate the appointment of a person as a Patron at any time by written notice to the person.

28. Governors

28.1 Councils of Governors

- (a) Councils of Governors may be established in each Australian state or territory by the Chamber's general manager in each state or territory where the Chamber has an office.
- (b) Members of the Board will automatically be Members of the Board of Governors in the state in which they normally reside.
- (c) Governors shall be nominated by the relevant general manager and must be approved by the Board.
- (d) Governors will be appointed for a term of 3 years and be eligible for re-appointment.
- (e) Each Board of Governors must meet at least once a year.
- (f) The role of each Board of Governors is purely advisory to assist the general manager, and where appropriate, the Chief Executive Officer, in advancing the objects of the Chamber.

29. Chief Executive Officer

29.1 Appointment

The Board will appoint a Chief Executive Officer on such terms and conditions as it thinks fit. The Chief Executive Officer will be paid a salary for services rendered to the Chamber provided the amount is on reasonable commercial terms and is approved by a majority of the Directors.

29.2 Other Offices of the Chief Executive Officer

While he remains Chief Executive Officer, the Chief Executive Officer is automatically a Director and Secretary of the Chamber. The Chief Executive Officer may not be elected as Chairman or Treasurer.

30. The Board

30.1 Composition

Until otherwise resolved by a General Meeting, the Board will consist of up to 10 natural persons comprising:

- (a) Up to 8 who are representatives of Voting Members;
- (b) No more than 1 who is a representative of a Corporate Member in classes 3, 4 or 5; and
- (c) The Chief Executive Officer.

30.2 Election of Directors

- (a) Each year the Board must call for nominations for Directors, not less than 30 days before the Annual General Meeting. The period for receiving nominations must be at least 30 days.
- (b) Nominations for Directors must be made in writing by a Voting Member and seconded by a Voting Member.
- (c) Nominations must be signed by the person nominated, signifying that person's consent for nomination and must be signed by the proposer and the seconder.
- (d) If there are more than 8 nominations, then the Voting Members must elect the Directors at the next Annual General Meeting from among those persons who have been nominated. If there are less than 8 nominations, then the persons nominated automatically become Directors with effect from the end of the next Annual General Meeting. Similarly, if there is more than 1 nomination for the person referred to in sub-clause 30.1(b), then the Voting Members must elect one of the nominees as a Director at the next Annual General Meeting. If there is only 1 nomination, then that person shall be deemed to have been elected and take office at the next Annual General Meeting.

30.3 Rotation

At the Annual General Meeting in every year all Directors except the Chief Executive Officer automatically retire from office but shall be eligible for re-election.

30.4 Appointments

Following each Annual General Meeting, the Board shall elect from among their number a Chairman and a Treasurer.

30.5 Termination of Appointment as Director

In addition to the circumstances in which the office of Director becomes vacant by virtue of the *Corporations Act*, the office of Director becomes vacant if the Director:

- (a) Becomes an insolvent under administration;
- (b) Becomes prohibited from being a Director by reason of an 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 Board;

- (e) Is absent without the consent of the Board from all its meetings held during a period of 6 months;
- (f) Without the consent of the Chamber in general meeting, holds any other office of profit under the Chamber other than the office of Chief Executive Officer;
- (g) Is directly or indirectly interested in any contract or proposed contract with the Chamber and fails to declare the nature of his or her interest as required by the *Corporations Act*; or
- (h) Being a representative of a Member, ceases to be that representative or if the Member for whom the person is representative ceases to be a Member.

30.6 Board Vacancies

The Board may at any time appoint a Member's representative as a Director to fill a casual vacancy, provided that the Member is a Voting Member in the case of a Director elected under sub-clause 30.1(a).

30.7 Defect in Appointment

If it is discovered that:

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

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

31. Directors' Expenses

Any expenses incurred by Directors in attending Directors' meetings, committee meetings, or general meetings are at their charge and will not normally be reimbursed by the Chamber.

32. Proceedings of the Board

- (a) The Board may meet together for the dispatch of business, adjourn or otherwise regulate its meetings and proceedings as it thinks fit.
- (b)
 - (i) A Board meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
 - (ii) The Directors need not all be physically present in the same place for a Board meeting to be held.
 - (iii) A Director who participates in a meeting held in accordance with this clause is taken to be present and entitled to vote at the meeting.

33. Chairman of Board Meetings

The Chairman must take the chair at all Board meetings. If at any meeting the Chairman is not present within 10 minutes after the time appointed for holding the meeting, the Directors present must choose one of their numbers to be chairman of the meeting.

34. Board Quorum

The quorum necessary for the transaction of the business of the Board is 4.

35. Voting at Board Meetings

Questions arising at a Board meeting are decided by a majority of the votes of the Directors present and voting. In case of an equality of votes, the Chairman of the meeting has a casting vote in addition to his or her deliberative vote.

36. Convening of Special Board Meetings

Upon the written requisition of any two Directors the Chairman or in his or her absence the Secretary, must convene a special meeting of Board to be held within 14 days after the receipt of the requisition. The requisition must set out the purposes for which the meeting is required.

37. Board Resolutions without a Meeting

- (a) If all the Directors, who are eligible to vote on a resolution, have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Board meeting held on the day on which the Secretary, or other officer authorised by the Board to collect such documents, received the document signed by all the Directors.
- (b) For the purposes of sub-clause 37(a):
 - (i) two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors; and
 - (ii) the reference to all the Directors excludes any Director who, at the time the statement is provided or sent, is on leave of absence formally approved by the Board.
- (c) Any document referred to in this clause may be in the form of electronic mail or facsimile transmission.
- (d) The minutes of Board meetings must record that a meeting was held in accordance with this clause.
- (e) This clause applies to meetings of Board committees as if all Members of the committee were Directors.

38. Material Personal Interest

- (a) Unless permitted by the *Corporations Act*, a Director who has a material personal interest in a matter that is to be considered at a Board meeting:
 - (i) must not vote on the matter or be present while the matter is being considered at the meeting; and
 - (ii) must not be counted in a quorum in relation to that matter.
- (b) Sub-clause 38(a) does not apply to an interest that the Director has as a Member in common with the other Members.

- (c) The quorum for consideration at a Board meeting of a matter in which one or more Directors have a material personal interest is 3 Directors who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.
- (d) Each Director must disclose to the Chamber any material contract in which the Director is interested, and must provide the Chamber with the names of the parties to the contract, particulars of the contract, and the Director's interest in the contract.
- (e) A Director's failure to make disclosure under this clause does not render void or voidable a contract in which the Director has an interest.

39. Minutes

- (a) The Board must cause minutes to be made of:
 - (i) the names of the Directors present at all general meetings, Board meetings and meetings of Board committees;
 - (ii) all proceedings of general meetings, Board meetings and meetings of Board committees;
 - (iii) all appointments of officers;
 - (iv) all orders made by the Board and Board committees; and
 - (v) all disclosures of interests made pursuant to clause 38.
- (b) Minutes must be signed by the chairman of the meeting or by the chairman of the next meeting of the relevant body and if so signed are as between the members of that body conclusive evidence of the matters stated in such minutes.

40. Committees

The Board may delegate any of its powers to committees consisting of such person or persons as it thinks fit and may revoke such delegation. Any committee so formed must conform to any rules imposed upon it by the Board. The meetings and proceedings of any such committee consisting of two or more members are governed by the clauses of this Constitution for regulating the meetings and proceedings of the Board so far as the same are applicable and are not superseded by any rule made by the Board under this clause.

41. Common Seal

- (a) The Board must provide for the safe custody of the Common Seal. Subject to the next paragraph, the Common Seal must not be used without the authority of the Board and in the presence of at least one Director who must sign every document to which the Common Seal is affixed and every such document must be countersigned by one other Director or the Secretary or some other person appointed by the Board.
- (b) Where as a matter of urgency a document is required to be executed under the Common Seal, the Chairman may direct the Secretary to affix the Common Seal to that document and at the first opportunity the Secretary must report to the Board the action taken.

42. Indemnity

- (a) Each officer is, to the maximum extent permitted by law, indemnified out of the property of the Chamber against any liability the officer may incur to another person as such an officer, except to the extent the liability is any of the following:
- (i) a liability owed to the Chamber or a related body corporate;
 - (ii) a liability for a pecuniary penalty order under section 1317G of the *Corporations Act* or a compensation order under sections 1317H or 1317HA of the *Corporations Act*; or
 - (iii) a liability that is owed to someone other than the Chamber or a related body corporate and did not arise out of conduct in good faith.

This clause does not apply to a liability for legal costs.

- (b) Each officer is, to the maximum extent permitted by law, indemnified out of the property of the Chamber against any liability for legal costs the officer may incur as such an officer, except to the extent the liability is a liability for legal costs incurred in defending an action for a liability incurred as such an officer and the costs are incurred:
- (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under the previous clause;
 - (ii) in defending or resisting criminal proceedings in which the officer is found guilty;
 - (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
 - (iv) in connection with proceedings for relief to the officer under the *Corporations Act* in which the court denies the relief.

Sub-clause 42(b)(iii) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

- (c) For the purposes of the previous clause, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.
- (d) Sub-clauses 42(a) and 42(b) are separate and independent indemnities and one is not to be read down by reference to the other.
- (e) The Chamber may pay a premium in respect of a contract insuring a person who is or has been an officer of the Chamber against a liability incurred by the person as an officer of the Chamber except in circumstances prohibited by the *Corporations Act*.

43. Secrecy Obligations

Every Director and other agent or officer of the Chamber must keep secret all aspects of all transactions of the Chamber, except:

- (a) to the extent necessary to enable the person to perform his or her duties to the Chamber;

- (b) as required by law;
- (c) when requested to disclose information by the Board to the Chamber's Auditor or a general meeting of the Chamber;
- (d) as otherwise permitted by the Board.

44. Accounts

44.1 Proper Accounts to be Kept

The Directors must cause proper accounting and other records to be kept and distribute copies of balance sheets as required by the *Corporations Act*.

44.2 Presentation of Accounts at Annual General Meeting

The Directors must cause to be made out and laid before the Members at each Annual General Meeting a profit and loss account and balance sheet complying in all respects with the provisions of the *Corporations Act*.

44.3 Copy of Accounts to be sent to Members

A copy of every profit and loss account and balance sheet (including every document required by the *Corporations Act* to be attached thereto) which is to be laid before the Members in general meeting accompanied by a copy of the Auditor's report must not less than 14 days before the date of the meeting be sent to all persons entitled to receive notices of general meetings.

44.4 Copy of Accounts on Request

On request and without charge, any Member, whether or not entitled to have sent to it copies of the Chamber's profit and loss accounts and balance sheets, is entitled to be furnished with a copy of the Chamber's last profit and loss account and balance sheet (including every document required by the *Corporations Act* to be attached thereto) together with a copy of the relevant Auditor's report.

45. Audit

45.1 Annual Audit

At least once in every year, the Chamber's accounts must be audited in accordance with the provisions of the *Corporations Act*.

45.2 Appointment of Auditors

The Chamber must at each Annual General Meeting appoint an Auditor or Auditors to hold office until the next Annual General Meeting and their appointment, rights and duties will be regulated by the *Corporations Act*. The Auditors' remuneration will be set by the Board.

46. Inspection of Records

The Board must determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Chamber or any of them will be open to the inspection of Members other than Directors. A Member other than a Director does not have the right to inspect any document of the Chamber except as provided by law or authorised by the Directors or by the Chamber in general meeting.

47. Notices

- (a) Notices must be in writing.
- (b) A notice may be served by the Chamber on a Member by any of the following methods:
 - (i) by serving it personally on the Member;
 - (ii) by leaving it at the registered address;
 - (iii) by sending it by post in a prepaid envelope addressed to the Member at the registered address;
 - (iv) by sending it by facsimile transmission to a facsimile number nominated by the Member for the purpose of serving notices on the Member; or
 - (v) by sending it by electronic mail to an electronic mail address nominated by the Member for the purpose of serving notices on the Member.
- (c) Each Member whose registered address is not in Australia may notify the Chamber of an address in Australia which is taken to be that Member's registered address for the purpose of serving notice.
- (d) Any notice sent by post, air-mail or air courier is taken to have been served on the business day following that on which the envelope containing the notice is posted or delivered to the air courier. In proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier. A certificate in writing signed by any officer of the Chamber that the envelope containing the notice was so addressed and posted is conclusive.
- (e) Any notice sent by facsimile transmission or electronic mail is taken to have been served when the transmission is sent.
- (f) The signature to any notice given by the Chamber may be written or printed or a facsimile of the signature may be affixed by mechanical or other means.

48. Winding Up

- (a) If, on the Chamber's winding up or dissolution, there remains after satisfaction of all of its liabilities any property, such property must not be distributed among the members, but must be given to an institution or institutions which:
 - (i) have an object similar to the Chamber's objects; and
 - (ii) prohibit the distribution of income and property among its or their members to an extent at least as great as is imposed on the Chamber under clause 4; and

- (iii) are classified by the Australian Commissioner of Taxation as income tax exempt.
- (b) Such institution or institutions are to be determined by the members of the Chamber at or before the time of dissolution and, in default, by the Chief Judge in Equity of the Supreme Court of New South Wales or such other Judge of that Court or any other Court as may have or acquire jurisdiction in the matter.
- (c) If effect cannot be given to this provision, then such property must be given to some charitable object which prohibits the payment of any income or property to its members.