

# **Constitution of Badminton Australia Limited**

**ABN: 48 339 746 219**

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# Constitution

## 1. NAME OF COMPANY

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The name of the Company is Badminton Australia Limited.

## 2. DEFINITIONS AND INTERPRETATION

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### 2.1 Definitions

In this Constitution, the following words and phrases have the following meanings unless the context requires otherwise.

**Act** means the *Corporations Act 2001* (Cth) as amended from time to time.

**Annual General Meeting** means a meeting of Members convened under **clause 23**.

**Appointed Director** means a Director appointed under **clause 16**.

**Board** means the body consisting of the Directors.

**BWF** means Badminton World Federation.

**Delegate** means the person(s) appointed from time to time to act for and on behalf of a State Member and to represent the State Member at General Meetings.

**Company** means Badminton Australia Limited incorporated under the Act.

**Constitution** means this Constitution of the Company.

**Director** means a member of the Board and includes any person acting in that capacity from time to time appointed in accordance with this Constitution.

**Chief Executive Officer** means the Chief Executive Officer of the Company for the time being appointed under **clause 20.1**.

**Elected Director** means a Director elected under **clause 15**.

**Financial Year** means a period of 12 months commencing on 1 July and ending on 30 June each year.

**General Meeting** means the Annual General Meeting or any Special General Meeting of the Company.

**Intellectual Property** means all rights subsisting in copyright, business names, names, trade marks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Company or any activity of or conducted, promoted or administered by the Company in Australia.

**Life Member** means an individual appointed as a Life Member of the Company under **clause 5.2**.

**Member** means a member for the time being of the Company under **clause 5**.

**Objects** mean the objects of the Company in **clause 3**.

**President** means the Director appointed as president under **clause 14.2**.

**Registered Individual** means an individual who is a registered, financial member of a Badminton club or association (which is a Badminton club or association recognised by or affiliated with a State Member).

**Regulations** mean any Regulations made by the Board under **clause 40**.

**Seal** means the common seal of the Company.

**Special General Meeting** means a General Meeting convened under **clause 24**.

**Special Resolution** means a special resolution defined in the Act. For the avoidance of doubt a Special Resolution is one that has been passed by at least 75% of the votes cast by State Members.

**State Member** means a State or Territory Badminton association recognised as a Member of the Company under **clause 6**.

## 2.2 Interpretation

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority or the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons include corporations and incorporated associations;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction); and
- (h) a reference to writing shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

## 2.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise shall be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

## 2.4 The Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act.

## 2.5 Replaceable Rules

The replaceable rules referred to in the Act are expressly displaced by this Constitution.

## 3. OBJECTS OF THE COMPANY

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The Company is established solely for the Objects. The Objects of the Company are to:

- (a) participate as a member of BWF so Badminton can be conducted, encouraged, promoted, advanced and administered in Australia;
- (b) conduct, encourage, promote, advance and administer Badminton throughout Australia;
- (c) ensure the maintenance and enhancement of the Company, the Members and Badminton and its standards, quality and reputation for the benefit of the Members and Badminton;
- (d) at all times promote mutual trust and confidence between the Company, and the Members in pursuit of these Objects;
- (e) at all times act on behalf of, and in the interest of, the Members and Badminton in Australia;
- (f) promote the economic and community service success, strength and stability of the Company, the Members and Badminton in Australia;
- (g) formulate, adopt and implement a rule and policy framework to further these Objects and Badminton;
- (h) use and protect the Intellectual Property;
- (i) apply the property and capacity of the Company towards the fulfilment and achievement of these Objects;
- (j) strive for Government, commercial and public recognition of the Company as the controlling body for Badminton in Australia;
- (k) abide by, promulgate, enforce and secure uniformity in the application of the rules of Badminton as may be determined from time to time by the Company or BWF and as may be necessary for the management and control of Badminton and related activities in Australia;
- (l) advance the operations and activities of the Company throughout Australia;
- (m) conduct and manage national and international Badminton competitions and events;
- (n) further develop Badminton into an organised institution and with these Objects in view, foster, regulate, organise and manage group insurance

plans, examinations, competitions, displays and other activities and to issue badges, medallions, certificates and award trophies;

- (o) select, prepare and enter Australian teams in international competitions;
- (p) review and/or determine any matters relating to Badminton which may arise, or be referred to it, by any Member;
- (q) recognise any penalty imposed by any Member;
- (r) act as arbiter or mediator to any agreed extent (as requested by parties in a dispute) on all matters pertaining to the conduct of Badminton including disciplinary matters;
- (s) pursue such commercial arrangements, including sponsorship and marketing opportunities as are appropriate to further the interests of Badminton in Australia;
- (t) formulate, adopt and implement such policies such as member protection, anti-doping, health and safety, junior sport, infectious diseases and such other matters as may arise as issues to be addressed in Badminton;
- (u) represent the interests of its Members and of Badminton generally in any appropriate forum in Australia;
- (v) have regard to the public interest in its operations;
- (w) promote the health and safety of Members and all other participants in Badminton in Australia;
- (x) seek and obtain improved facilities for the enjoyment of Badminton in Australia;
- (y) provide players, coaches, court officials and administrators within Badminton across Australia with the equal opportunity to compete and develop their skills and abilities; and
- (z) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of these Objects and to enable Members to receive the benefits which these Objects are intended to achieve.

#### **4. POWERS OF THE COMPANY**

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Solely for furthering the Objects, the Company has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the Act.

#### **5. MEMBERS**

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##### **5.1 Categories of Members**

The Members of the Company shall consist of:

- (a) State Members, which subject to this Constitution, shall be represented by a Delegate, and shall have the right to receive notice of General Meetings and to be present, debate and vote on behalf of the State Member at General Meetings;

- (b) Life Members, who subject to this Constitution, shall have the right to receive notice of General Meetings and to be present and to debate at General Meetings, but shall have no voting rights; and
- (c) Registered Individuals, who subject to this Constitution, shall have the right to be present at General Meetings, but shall have no right to receive notice of or debate at or vote at General Meetings.

## 5.2 Life Members

- (a) The Board may recommend to the Annual General Meeting that any natural person who has rendered long and distinguished service to the Company or Badminton, where such service is deemed to have assisted the advancement of Badminton in Australia, be appointed as a Life Member.
- (b) A resolution of the Annual General Meeting to confer life membership (subject to **clause 5.2(c)**) on the recommendation of the Board must be a Special Resolution.
- (c) Following approval at the Annual General Meeting, the person's details shall be entered upon the register of Members (in accordance with **clause 7**), and from the time of entry on the register the person shall be a Life Member.

## 6. APPLICATION AND ELIGIBILITY FOR STATE MEMBERS

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### 6.1 State Members

- (a) To be, or remain, eligible for membership, a State Member must be incorporated as a legal entity (being either an incorporated association under the relevant State or Territory association incorporation legislation or as a company limited by guarantee under the Act).
- (b) The Company will recognise only one entity in each State as a State Member and as the controlling body responsible for ensuring the efficient administration of Badminton in the whole of that State in accordance with the Objects.

### 6.2 Application

An application for membership by a State or Territory Badminton Association in Australia must be:

- (a) in writing on the form prescribed from time to time by the Board (if any), from the applicant or its nominated representative and lodged with the Company;
- (b) accompanied by a copy of the applicant's constitution (which must be acceptable to the Company and must substantially conform to this Constitution) and the applicant's register of members (if applicable);
- (c) be otherwise in accordance with any requirements set out in this Constitution (if applicable); and
- (d) accompanied by the appropriate fee (if any).

### **6.3 Discretion to accept or reject application**

- (a) The Company may accept or reject an application whether the applicant has complied with the requirements in **clause 6.2** or not. The Company shall not be required or compelled to provide any reason for such acceptance or rejection.
- (b) Where the Company accepts an application, the applicant shall become a Member. Membership shall be deemed to commence upon acceptance of the application by the Company. The Chief Executive Officer shall amend the register of Members accordingly as soon as practicable.
- (c) Where the Company rejects an application the Company shall refund any fees forwarded with the application and the application shall be deemed rejected by the Company.

### **6.4 Re-affiliation**

- (a) State Members must re-affiliate annually with the Company in accordance with the procedures set down by the Company in Regulations from time to time.
- (b) Upon re-affiliation a State Member must lodge with the Company:
  - (i) an updated copy of its constitution (including all amendments). Each State Member must ensure that its constitution is amended to conform to any amendments made to this Constitution provided that such amendment is not unlawful with or in conflict with the State Member's own relevant incorporation legislation;
  - (ii) details of any change in its Delegate;
  - (iii) a list of Registered Individuals recognised by or affiliated with the State Member (which will be maintained by the Company under clause 7.1); and
  - (iv) and any other information reasonably required by the Company.

### **6.5 Deemed Membership**

- (a) All Members which or who are, prior to the approval of this Constitution under the Act, members of the Company, shall be deemed Members from the time of approval of this Constitution under the Act.
- (b) State Members shall provide the Company with such details as are reasonably required by the Company under this Constitution within 1 month of the approval of this Constitution under the Act.

## **7. REGISTER OF MEMBERS**

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### **7.1 Company to keep register**

The Company shall keep and maintain a register of Members in which shall be entered such information as is required under the Act from time to time.

## 7.2 Inspection of register

A Member's right to inspect the register of Members shall be in accordance with the Act.

## 7.3 Use of register

Subject to the Act, confidentiality considerations and privacy laws, the register may be used to further the Objects, in such manner as the Board considers appropriate but which shall not extend to include the sale of register details.

## 8. EFFECT OF MEMBERSHIP

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- (a) Members acknowledge and agree that:
- (i) this Constitution constitutes a contract between each of them and the Company and that they are bound by this Constitution and the Regulations;
  - (ii) they shall comply with and observe this Constitution and the Regulations and any determination, resolution or policy which may be made or passed by the Board or other entity with delegated authority;
  - (iii) by submitting to this Constitution and Regulations they are subject to the jurisdiction of the Company;
  - (iv) the Constitution and Regulations are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Badminton in Australia; and
  - (v) they are entitled to all benefits, advantages, privileges and services of Company membership.
- (b) A State Member of the Company that is entitled to vote has the right:
- (i) to receive notice of General Meetings and of proposed special resolutions in the manner and time prescribed by this Constitution;
  - (ii) to submit any items of business for consideration at a General Meeting;
  - (iii) to attend and be heard at General Meetings;
  - (iv) to vote at a General Meeting;
  - (v) to have access to the minutes of the General Meetings and other documents of the Company as provided under **clause 28.7**; and
  - (vi) subject to **clause 7**, to inspect the register of Members.
- (c) A right, privilege or obligation of a Member by reason of their membership of the Company is not capable of being transferred or transmitted to another Member.

## 9. DISCONTINUANCE OF MEMBERSHIP

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### 9.1 Notice of resignation

- (a) A Member (other than a State Member) may resign by notice in writing to the Company.
- (b) A State Member having paid all arrears of fees payable to the Company may resign or withdraw from membership of the Company by giving one months' notice in writing to the Company of such resignation or withdrawal.
- (c) A State Member may not resign, disaffiliate or otherwise seek to withdraw from the Company without approval by Special Resolution of the State Member. A copy of the relevant minutes of that State Member's general meeting showing that the Special Resolution has been passed must be provided to the Company.
- (d) If a State Member ceases to be a Member under this Constitution, the Company membership of all Registered Individuals affiliated or registered with or through the State Member shall not automatically cease at that time, but shall be dealt with in accordance with the Regulations.
- (e) Upon resignation of membership given in accordance with this **clause 9** an entry in the register shall be made recording the date on which the Member who or which gave notice ceased to be a Member.

### 9.2 Discontinuance for breach

- (a) Membership of the Company may be discontinued by the Board upon breach of any clause of this Constitution or the Regulations, including but not limited to the failure to pay any monies owed to the Company, failure to comply with the Regulations or any resolutions or determinations made or passed by the Board or any duly authorised committee.
- (b) Membership shall not be discontinued by the Board under **clause 9.2(a)** without the Board first:
  - (i) giving the accused Member the opportunity to explain the breach and/or remedy the breach; and
  - (ii) providing the Member an opportunity to attend a Board meeting to discuss the matter in dispute.
- (c) In providing the Member the opportunity to attend a Board meeting to discuss the matter in dispute, the Board must, as soon as practicable, serve on the Member a notice in writing:
  - (i) setting out the alleged breach of the Member and the grounds on which it is based;
  - (ii) stating that the Member may address the Board at a meeting of the Board and state the date, place and time of the meeting; and
  - (iii) informing the Member that it may do one or more of the following:
    - (A) attend the meeting; and/or

- (B) give the Company, before the date of that meeting, a written statement regarding the alleged breach.
- (d) At a meeting of the Board held in accordance with **clauses 9.2(b)** and **9.2(c)**, the Board shall:
  - (i) give the member the opportunity to be heard;
  - (ii) give due consideration to any statement submitted by the Member;  
and
  - (iii) by resolution determine whether the alleged breach occurred.
- (e) Where a Member fails, in the Board's view, to adequately explain the breach, the Member's membership shall be discontinued under **clause 9.2(a)** by the Company giving written notice of the discontinuance to the Member. The register shall be amended to reflect any discontinuance of membership under this **clause 9.2** as soon as practicable.

### **9.3 Discontinuance for failure to re-affiliate**

Membership of the Company may be discontinued by the Board if a State Member has not re-affiliated with the Company within one month of re-affiliation falling due. The register shall be amended to reflect any discontinuance of membership under this **clause 9.3** as soon as practicable.

### **9.4 Member to re-Apply**

A Member whose membership has been discontinued under **clause 9.2** or **9.3**:

- (a) may seek renewal or re-apply for membership in accordance with this Constitution; and
- (b) may be re-admitted at the discretion of the Board.

### **9.5 Forfeiture of rights**

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all rights in and claims upon the Company and its property and shall not use any property of the Company including Intellectual Property. Any Company documents, records or other property in the possession, custody or control of that Member shall be returned to the Company immediately. Where a State Member ceases to be a Member it shall also forfeit all rights.

### **9.6 Delegate position lapses**

The position of Delegate shall lapse immediately on cessation of membership of a State Member.

### **9.7 Membership may be reinstated**

Membership which has been discontinued under this **clause 9** may be reinstated at the discretion of the Board, with such conditions as it deems appropriate.

## 9.8 Refund of Membership Fees

Membership fees or subscriptions paid by the discontinued Member shall be refunded on a pro-rata basis to the Member upon discontinuance.

## 10. DISCIPLINE

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- (a) Where the Board is advised or considers that a Member has allegedly:
- (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the Regulations or any resolution or determination of the Board or any duly authorised committee; or
  - (ii) acted in a manner unbecoming of a Member, or prejudicial to the Objects and interests of the Company and/or Badminton; or
  - (iii) brought the Company, themselves, any other Member or Badminton into disrepute,

the Board may commence or cause to be commenced, disciplinary proceedings against that Member, and that Member, will be subject to, and submits unreservedly to the jurisdiction, procedures, penalties and the appeal mechanisms of the Company set out in the Regulations.

- (b) The Board may appoint a disciplinary committee to deal with any disciplinary matter referred to it. Such a disciplinary committee shall operate in accordance with the procedures expressed in the Regulations but subject always to this Constitution and the Act.

## 11. SUBSCRIPTIONS AND FEES

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- (a) The annual membership subscription (if any) and any fees or other levies payable by Members to the Company, the time for and manner of payment, shall be as determined by the Board. Where the Board intends to implement a fee increase it will conduct prior consultation with Members.
- (b) Members will be informed in writing of any increase to annual membership subscriptions.
- (c) The method of calculation of annual membership subscriptions will be as follows:
- (i) State Member rate x subscription rate = \$ [annual membership subscription] (GST exclusive); and
  - (ii) State Member rate is set as follows:
    - (A) Australian Capital Territory = 3.82
    - (B) Western Australia = 12.27
    - (C) South Australia = 12.27
    - (D) Tasmania = 12.27
    - (E) Queensland = 12.27

- (F) New South Wales = 12.27
  - (G) Victoria = 32.92; and
  - (H) Northern Territory = 1.91; and
- (iii) the subscription rate set by the Board will be the same for each State Member.

## **12. EXISTING DIRECTORS**

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- (a) The members of the administrative or governing body (by whatever name called) of the Company in office immediately prior to approval of this Constitution under the Act shall continue in those positions until the next Annual General Meeting following such adoption of this Constitution. After this General Meeting the positions of Directors shall be filled, vacated and otherwise dealt with in accordance with this Constitution.
- (b) The person known and appointed to the position of Chief Executive Officer (or similar title) immediately prior to approval of this Constitution under the Act shall continue in that position following such approval, subject to any contractual arrangements.

## **13. POWERS OF THE BOARD**

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Subject to the Act and this Constitution, the business of the Company shall be managed, and the powers of the Company shall be exercised, by the Board. Any right or power of the Company which is not expressed to be a right or power of the Members in General Meeting may only be exercised by the Board. The Board as the governing body for Badminton in Australia shall be responsible for acting in accordance with the Objects and shall operate for the benefit of the Members and the community throughout Australia and shall govern Badminton in Australia in accordance with this Constitution and in particular the Objects.

## **14. COMPOSITION OF THE BOARD**

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### **14.1 Composition of the Board**

The Board shall comprise:

- (a) five Elected Directors who must all be Registered Individuals and who shall be elected under **clause 15**; and
- (b) up to two Appointed Directors who need not be Registered Individuals and who may be appointed under **clause 16** by the Elected Directors.

### **14.2 President**

The position of President shall be appointed by the Board from amongst the Elected Directors as soon as practicable after each Annual General Meeting. The appointee will hold the position of President until the conclusion of the next Annual General Meeting following their appointment. An Elected Director may be re-appointed to the position of President.

### **14.3 Qualifications for Directors**

- (a) Nominees for Director positions on the Board must be over the age of 18 years, reside in Australia and meet the qualifications as prescribed from time to time by the Board and set out in the Regulations (if any).
- (b) An employee of a State Member or of the Company cannot also be a Director.
- (c) A member of a board or committee of management of a State Member cannot also be a Director.
- (d) A Delegate cannot also be a Director.
- (e) A Director, who is a member of a State Member board or committee of management or is an employee of a State Member, must resign that position immediately should they be elected or appointed to the Company's Board.
- (f) An outgoing CEO cannot be appointed to the Board for three years after leaving the CEO position.
- (g) A Nominations Committee will be established to assess review and make recommendations concerning Director and Committee nominations, elections or appointments as set out in the Regulations. The Nominations Committee is to perform an advisory role in considering nominations for election to the Board. The Board remain elected by the Members in accordance with clause 15.

### **14.4 General Duties**

- (a) As soon as practicable after being elected or appointed to the Board, each Director must become familiar with this Constitution and the Act.
- (b) The Board is collectively responsible for ensuring that the Company complies with the Act and that the Directors comply with this Constitution.
- (c) The Board must ensure that the Company complies with all requirements in the Act regarding financial statements.
- (d) The Board will arrange and co-ordinate an evaluation process of the Board's performance which will occur in every second Financial Year. Such evaluation may involve input from those independent from, and external to, the Company.

## **15. ELECTED DIRECTORS**

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### **15.1 Nominations**

- (a) Nominations for Elected Director positions shall be called for 60 days prior to the Annual General Meeting. When calling for nominations, details of the necessary qualifications and position descriptions for the roles shall also be provided. Qualifications and position descriptions shall be as determined by the Board from time to time.
- (b) Nominees for Elected Director positions must declare any position they hold in a State Member including as an officer (howsoever described including as a Delegate) or as an employee.

## 15.2 Form of nomination

- (a) Nominations must be:
  - (i) in writing;
  - (ii) on the prescribed form (if any) provided for that purpose;
  - (iii) signed by an authorised representative from a State Member;
  - (iv) certified by the nominee (who must be a Registered Individual) expressing their willingness to accept the position for which they are nominated; and
  - (v) delivered to the Company not less than 35 days before the date fixed for the Annual General Meeting.
- (b) Nominations will be considered by the Nominations Committee as set out in the Regulations.

## 15.3 Elections

- (a) If the number of nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient nominations received to fill all vacancies on the Board, then those nominated shall be declared elected only if approved by the majority of Members entitled to vote.
- (b) If there are insufficient nominations received to fill all vacancies on the Board, or if a person is not approved by the majority of Members under **clause 15.3(a)**, the positions will be deemed casual vacancies under **clause 17.2**.
- (c) If the number of nominations exceeds the number of vacancies to be filled, voting papers shall be prepared containing the names of the candidates in alphabetical order, for each vacancy on the Board.
- (d) Voting shall be conducted in such manner and by such method as set out in the Regulations.

## 15.4 Term of appointment for Elected Directors

- (a) Directors elected under this **clause 15** shall be elected for a term of 2 years. Subject to provisions in this Constitution relating to earlier retirement or removal of Directors, Elected Directors shall remain in office from the conclusion of the Annual General Meeting at which the election occurred until the conclusion of the second Annual General Meeting following.
- (b) 3 Elected Directors shall retire in each even year and 2 Elected Directors shall retire in each odd year.
- (c) The sequence of retirements under **clause 15.4(b)** to ensure rotational terms shall be determined by the Board. If the Board cannot agree it will be determined by lot.
- (d) Following the adoption of this Constitution, no person who has served as an Elected Director for a period of 4 consecutive full terms shall be eligible for election as an Elected Director until the next Annual General Meeting following the date of conclusion of his or her last term as an Elected Director.

For the avoidance of doubt, the effect of this clause shall commence on the date this Constitution is adopted and any term served prior to the adoption of this Constitution shall not be counted for the purposes of this clause.

## **16. APPOINTED DIRECTORS**

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### **16.1 Appointment of Directors**

The Elected Directors may appoint up to 2 Appointed Directors.

### **16.2 Qualifications for Appointed Directors**

The Appointed Directors may have specific skills in commerce, finance, marketing, law or business generally or such other skills which complement the Board composition. They do not need to be Registered Individuals but must be natural persons.

### **16.3 Term of appointment**

- (a) Appointed Directors may be appointed by the Elected Directors under this Constitution for a term of 2 years, which shall commence from the first Board meeting after the Annual General Meeting until after the conclusion of the second Annual General Meeting following.
- (b) Appointed Directors may be appointed to ensure rotational terms that coincide with the Elected Directors' rotational terms.
- (c) Any adjustment to the term of Appointed Directors necessary to ensure rotational terms under this Constitution, shall be determined by the Board.
- (d) Following the adoption of this Constitution, no person who has served as an Appointed Director for a period of four consecutive full terms shall be eligible for appointment as an Appointed Director until the next Annual General Meeting following the date of conclusion of his or her last term as an Appointed Director.

## **17. VACANCIES ON THE BOARD**

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### **17.1 Grounds for termination of Director**

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

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with his/her creditors generally;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in anyway under the law relating to mental health;
- (d) resigns his or her office in writing to the Company;
- (e) is absent without the consent of the Board from meetings of the Board held during a period of 6 months;
- (f) holds any office of employment with the Company;

- (g) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his or her interest;
- (h) in the opinion of the Board (but subject always to this Constitution):
  - (i) has acted in a manner unbecoming or prejudicial to the Objects and interests of the Company; or
  - (ii) has brought themselves or the Company into disrepute;
- (i) is removed by Special Resolution; or
- (j) would otherwise be prohibited from being a director of a corporation under the Act.

## 17.2 Casual vacancies

- (a) The Board may appoint an eligible member of the Company to fill a position as an Elected Director on the Board where the position:
  - (i) has become vacant under **clause 17.1**; or
  - (ii) was not filled by election at the last Annual General Meeting.
- (b) Any Appointed Director casual vacancy may be filled by the remaining Directors from among appropriately qualified persons, for the remainder of the Appointed Director's term.
- (c) A Director appointed in accordance with this **clause 17.2** will hold office for the remainder of the period of office of the relevant Director whose vacancy is being filled

## 17.3 Board may act

In the event of a casual vacancy or vacancies in the office of a Director or Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum.

## 18. MEETINGS OF THE BOARD

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### 18.1 Board to meet

The Board shall meet as often as is deemed necessary and at least 5 times in every Financial Year for the dispatch of business (and shall be at least as often as is required under the Act) and subject to this Constitution may adjourn and otherwise regulate its meetings as it thinks fit. Two Directors may at any time convene a meeting of the Board within a reasonable time.

### 18.2 Decisions of Board

Subject to this Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes and a determination of a majority of Directors shall for all purposes be deemed a determination of the Board. All Directors shall have one vote on any question. Where voting is equal, the chairperson cannot exercise a casting vote and the motion will be lost. Voting by proxy is not permitted.

### 18.3 Resolutions not in meeting

- (a) A resolution in writing, signed or assented, to by facsimile or electronic mail or other form of visible or other electronic communication by all the Directors for the time being present in Australia shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors.
- (b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where 1 or more of the Directors is not physically present at the meeting, provided that:
  - (i) all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously whether by means of telephone or other form of communication;
  - (ii) notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or laid down from time to time by the Board or this Constitution and such notice specifies that Directors are not required to be present in person;
  - (iii) if a failure in communications prevents **clause 18.3(b)(i)** from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this clause to be held then the meeting shall be suspended until **clause 18.3(b)(i)** is satisfied again. If such condition is not satisfied within 15 minutes from the interruption the meeting shall be deemed to have terminated or adjourned; and
  - (iv) any meeting held where 1 or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the chairperson of the meeting is located.

### 18.4 Quorum

- (a) No business may be conducted at a meeting of the Board unless a quorum is present.
- (b) At meetings of the Board the number of Directors whose presence is required to constitute a quorum is 4.

### 18.5 Notice of Board meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their apology or presence) not less than 14 days' written notice of the meeting of the Board (stating the date, time and place of meeting) shall be given to each Director. The agenda shall be forwarded to each Director not less than 4 days prior to such meeting.

### 18.6 Chairperson

The President shall be the chairperson. The President shall be the nominal head of the Company and will act as chair of any Board meeting at which they are present. If

the President is not present, or is unwilling or unable to preside at a Board meeting the remaining Directors shall appoint another Director to preside as chair for that meeting only.

### **18.7 Minutes of Board meeting**

- (a) The Board must ensure that minutes are taken and kept of each Board meeting.
- (b) The minutes must record the following:
  - (i) the names of the Directors in attendance at the meeting;
  - (ii) the business considered at the meeting; and
  - (iii) any resolution on which a vote is taken and the result of the vote.
- (c) The Board will make available to each State Member a summary of relevant decisions made following each Board meeting.

### **18.8 Leave of absence**

- (a) The Board may grant a Director leave of absence from Board meetings for a period not exceeding 6 months.
- (b) The Board must not grant leave of absence retrospectively unless it is satisfied that it was not feasible for the Director to seek the leave in advance.

### **18.9 Directors' interests**

A Director is disqualified from holding any place of profit or position of employment in the Company or in any company or incorporated association in which the Company is a shareholder or otherwise interested or from contracting with the Company either as vendor, purchaser or otherwise except with express resolution of approval of the Board. Any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested will be void unless approved by the Board.

### **18.10 Conflict of interest**

A Director shall declare his interest in any:

- (a) material personal interest or related party transaction (as defined by the Act);
- (b) contractual matter;
- (c) selection matter;
- (d) disciplinary matter;
- (e) financial matter; or

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent himself or herself from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent himself from discussions and refrain from voting,

the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

### **18.11 Disclosure of interests**

- (a) The nature of any interest referred to in **clause 18.10** of such Director must be declared by the Director at the meeting of the Board at which the relevant matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.
- (b) All disclosed interests must also be disclosed to each Annual General Meeting in accordance with the Act.

### **18.12 General disclosure**

A general notice that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **clause 18.11** as regards such Director and the said transactions. After such general notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

### **18.13 Recording disclosures**

- (a) Any declaration made, any disclosure or any general notice given by a Director in accordance with clauses 18.10, 18.11 and/or 18.12, must be recorded in the minutes of the relevant meeting.
- (b) The Chief Executive Officer must maintain a register of declared interests.

## **19. COMPANY SECRETARY**

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The Board must appoint a secretary of the Company under the Act. A person so appointed may also be removed by the Board.

## **20. CHIEF EXECUTIVE OFFICER**

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### **20.1 Appointment of Chief Executive Officer**

A Chief Executive Officer may be appointed by the Board for such term and on such conditions as the Board thinks fit and such person shall administer and manage the Company in accordance with the Act and this Constitution.

### **20.2 Specific duties**

The Chief Executive Officer shall:

- (a) as far as practicable attend all Board meetings and all General Meetings;
- (b) prepare the agenda for all Board and General Meetings;
- (c) record and prepare minutes of the proceedings of all Board meetings and General meetings, and shall use their best endeavours to distribute the minutes of the General Meetings to State Members promptly from the date of the meeting; and

- (d) regularly report on the activities of, and issues relating to, the Company.

### **20.3 Board power to manage**

Subject to the Act, this Constitution, the Regulations and any policy directive of the Board, the Chief Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of the Company. No resolution passed by the Company in General Meeting shall invalidate any prior act of the Chief Executive Officer or the Board which would have been valid if that resolution had not been passed.

### **20.4 Employment of personnel**

The Board may delegate to the Chief Executive Officer the power to employ such personnel as are deemed necessary or appropriate from time to time.

## **21. DELEGATIONS**

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### **21.1 Board may delegate functions**

- (a) The Board may by instrument in writing create or establish or appoint special committees, individual officers and consultants to carry out such duties and functions, and with such powers, as the Board determines from time to time.

- (b) The Board shall establish the following committees:

- (i) Audit and Risk Committee; and
- (ii) Nominations and Remuneration Committee;

the composition and functions of which shall be set out by the Board in the Regulations.

### **21.2 Delegation by instrument**

The Board may in the establishing instrument delegate such functions as are specified in the instrument, other than:

- (a) this power of delegation; and
- (b) a function imposed on the Board or the Chief Executive Officer by the Act, any other law, this Constitution or by resolution of the Company in General Meeting.

### **21.3 Delegated function exercised in accordance with terms**

A function, the exercise of which has been delegated under this clause, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

### **21.4 Procedure of Delegated Entity**

The procedures for any entity exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under **clause 18**. The entity exercising delegated powers shall make decisions in accordance with the Objects, and shall

promptly provide the Board with details of all material decisions and shall provide any other reports, minutes and information as the Board may require from time to time.

#### **21.5 Delegation may be conditional**

A delegation under this clause may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

#### **21.6 Revocation of delegation**

The Board may by instrument in writing, at any time revoke wholly or in part any delegation made under this clause, and may amend or repeal any decision made by such body or person under this clause.

### **22. SEAL**

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- (a) The Company may have a Seal which complies with the Act and any such Seal shall be kept in the care and control of the Chief Executive Officer.
- (b) The Seal must not be used without the express authorisation of the Board, and every use of the Seal shall be recorded in the minute books of the Company. The affixing of the Seal must be witnessed by 2 Directors or 1 Director and the Chief Executive Officer.

### **23. ANNUAL GENERAL MEETING**

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- (a) An Annual General Meeting of the Company shall be held in accordance with the Act and this Constitution and on a date and at a venue to be determined by the Board.
- (b) All General Meetings other than the Annual General Meeting shall be Special General Meetings and shall be held in accordance with this Constitution.

### **24. SPECIAL GENERAL MEETINGS**

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#### **24.1 Special General Meetings may be held**

- (a) The Board may, whenever it thinks fit, convene a Special General Meeting of the Company and, where, but for this clause more than 15 months would elapse between Annual General Meetings, shall convene a Special General Meeting before the expiration of that period.
- (b) A Special General Meeting may be held electronically. A Member not physically present at a Special General Meeting may participate in the meeting by the use of technology that allows that Member and the Members present at the meeting to clearly and simultaneously communicate with each other.
- (c) A Member participating in a Special General Meeting as permitted under **clause 24.1(b)** is taken to be present at the meeting and, if the Member votes at the meeting, is taken to have voted in person.

## **24.2 Requisition of Special General Meetings**

Where required by the Act, on the requisition in writing of a State Member, the Chief Executive Officer shall call and arrange a Special General Meeting in accordance with the Act.

## **25. NOTICE OF GENERAL MEETING**

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Notice of every General Meeting shall be given in accordance with the Act and in the manner authorised in **clause 43**.

## **26. BUSINESS AT ANNUAL GENERAL MEETING**

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- (a) The business to be transacted at the Annual General Meeting includes the consideration of financial accounts, the reports of the Board and auditors, the election of Directors and the appointment of the auditors.
- (b) The Board will produce a budget for the forthcoming Financial Year. The Board has ultimate authority and responsibility for financial operations and budgeting to ensure the achievement of strategic directions.
- (c) All business that is transacted at a General Meeting and all business that is transacted at an Annual General Meeting, with the exception of those matters set down in **clauses 26(a)**, shall be special business.
- (d) No business other than that stated on the notice for a General Meeting shall be transacted at that meeting.

## **27. NOTICES OF MOTION**

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- (a) Subject to **clause 29**, Members entitled to vote may submit notices of motion for inclusion as special business at a General Meeting where the subject of such notices of motion relates to a matter which is expressed in this Constitution to be a right or power of the Members in General Meeting.
- (b) Where the subject of a notice of motion relates to a matter which is not expressly stated in this Constitution to be a right or power of the Members in General Meeting, it will not be considered a valid notice of motion and will not be included as special business at a General Meeting.
- (c) All notices of motion must be submitted in writing (in the required form) to the Chief Executive Officer in accordance with the Act.

## **28. PROCEEDINGS AT GENERAL MEETINGS**

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### **28.1 Quorum**

No business shall be transacted at any General Meeting unless a quorum is present at the time when the meeting proceeds to business. A quorum for General Meetings shall be at least 5 State Members represented by their Delegates.

### **28.2 Chairperson to preside**

- (a) The President of the Board shall, subject to this Constitution, preside as chair at every General Meeting except:

- (i) in relation to any election for which the chairperson is a nominee; or
  - (ii) where a conflict of interest exists.
- (b) If the President is not present, or is unwilling or unable to preside, the Delegates present shall appoint another Director to preside as chairperson for that meeting only.

### **28.3 Adjournment of Meeting**

- (a) If within half an hour from the time appointed for the meeting, a quorum is not present, the meeting:
- (i) if convened upon the requisition of State Members under **clause 24.2**, shall be dissolved; and
  - (ii) in any other case, shall be adjourned until the same day in the next week at the same time and place or to such other day and at such other time and place as the chairperson may determine and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will lapse.
- (b) The chairperson may, with the consent of any meeting at which a quorum is present, and shall, if so directed by the meeting, adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) Except as provided in **clause 28.3(c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

### **28.4 Voting procedure**

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

- (a) the chairperson; or
- (b) a simple majority of Delegates on behalf of their State Members.

### **28.5 Recording of determinations**

Unless a poll is demanded under **clause 28.4**, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

## **28.6 Where poll demanded**

If a poll is duly demanded under **clause 28.4** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairperson directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

## **28.7 Minutes**

- (a) The Chief Executive Officer must ensure that minutes are taken and kept of each General Meeting.
- (b) The minutes must record:
  - (i) the business considered at the meeting;
  - (ii) proxy forms given to the Chief Executive Officer under **clause 30**;
  - (iii) any resolution on which a vote is taken and the result of the vote; and
  - (iv) the names of persons present at the meeting.
- (c) In addition, the minutes of each Annual General Meeting must include:
  - (i) the financial statements submitted to the Members in accordance with **clause 26(a)**; and
  - (ii) any audited accounts and auditor's report or report of a review accompanying the financial statements that are required under the Act.
- (d) The minutes of General Meetings shall be available for inspection and copying by the Members upon request and copies shall be provided to the State Members.

## **28.8 Cancellation of, change of venue for, or postponement of General Meeting**

- (a) Where a General Meeting is convened by the Directors they may, if they think fit and at least 48 hours prior to the time the meeting is to be held, cancel the meeting, change the venue for the meeting, or postpone the meeting to a date and time they determine.
- (b) If a General Meeting is called and arranged to be held under **clause 24.2**, the Directors may not cancel it without the consent of the requisitioning Members.

## **28.9 Written notice of cancellation of, change of venue for, or postponement of General Meeting**

Notice of cancellation of, change of venue for, or postponement of a General Meeting must state the reason for doing so and be given to:

- (a) each Member entitled to receive notice of a meeting; and
- (b) each other person entitled to notice of a General Meeting under this Constitution.

## 28.10 Contents of notice postponing General Meeting

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting;
- (b) the place where the meeting is to be held, which may be either the same as or different to the place specified in the notice originally convening the meeting; and
- (c) if the meeting is to be held in 2 or more places, the technology that will be used to hold the meeting in that manner.

## 28.11 Number of clear days for postponement of General Meeting

The number of clear days from the giving of a notice postponing a General Meeting to the date specified in that notice for the postponed meeting may not be less than the number of clear days' notice of the General Meeting required to be given by this Constitution.

## 28.12 Observers at General Meeting

Each State Member is entitled to nominate an observer who may attend a General Meeting. An observer may be present at a General Meeting but shall not be entitled to receive notice of General Meetings nor to vote at such meetings. An observer may be invited to speak by the chairperson.

## 29. VOTING AT GENERAL MEETINGS

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### 29.1 Members entitled to vote

- (a) The voting entitlement of Members will be as follows:
  - (i) For any vote on resolutions relating to the election or removal of Directors, each State Member shall be entitled to one (1) vote at General Meetings which, subject to this clause, shall be exercised by the State Member's Delegate;
  - (ii) For all other resolutions each State Member:
    - (A) with up to 3,099 Registered Individuals shall be entitled to one (1) vote at General Meetings; and
    - (B) with 3,100 or more Registered Individuals shall be entitled to two (2) votes;which, subject to this clause, shall be exercised by the State Member's Delegate.
- (b) For the avoidance of doubt, any State Member which has not paid all monies due and payable by that Member to the Company shall not be entitled to exercise a vote until such time as the monies are fully paid.
- (c) No other Member shall be entitled to vote but shall subject to this Constitution have and be entitled to exercise, those rights set out in **clause 5.1**.

- (d) The Directors and Chief Executive Officer shall have no right to vote at General Meetings.

## **29.2 Chairperson may not exercise casting vote**

The chairperson cannot exercise a casting vote at a General Meeting. If voting at a General Meeting is equal the motion will be lost.

## **30. PROXY VOTING**

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- (a) Proxy voting shall be permitted at all General Meetings provided a proxy form in the form approved by the Board from time to time, has been duly completed and executed and is lodged with the Chief Executive Officer at or before the commencement of the meeting. Proxies shall only be exercised by Members entitled to vote. No Member entitled to vote shall exercise more than 1 proxy vote at a time.
- (b) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll. A Delegate shall be entitled to instruct his or her proxy to vote in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may exercise the proxy vote as he or she thinks fit.

## **31. GRIEVANCE PROCEDURE**

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- (a) The grievance procedure set out in this clause applies to disputes under this Constitution between a Member and:
  - (i) another Member; or
  - (ii) the Company.
- (b) The parties to the dispute must meet (which may, if agreed by the parties, take place by using any technology that allows the parties to clearly and simultaneously communicate with each other) and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all parties.
- (c) If the parties are unable to resolve the dispute at the meeting or if a party fails to attend that meeting, then the parties may, within 10 days, refer the dispute to the Dispute Settlement Centre of Victoria (Department of Justice) for resolution.
- (d) The Board may prescribe additional grievance procedures in Regulations consistent with this **clause 31**.

## **32. RECORDS AND ACCOUNTS**

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### **32.1 Records**

The Company shall establish and maintain proper records and minutes concerning all transactions, business, meetings and dealings of the Company and the Board and shall produce these as required under the Act at each Board or General Meeting.

### **32.2 Records kept in accordance with Act**

Proper accounting and other records shall be kept in accordance with the Act. The books of account shall be kept in the care and control of the Chief Executive Officer.

### **32.3 Company to retain records**

The Company shall retain such records for such time as it determines appropriate (in accordance with the Act and any other legal requirements).

### **32.4 Board to submit accounts**

The Board shall submit to the Members at the Annual General Meeting the statements of account of the Company in accordance with this Constitution and the Act.

### **32.5 Accounts to be sent to Members**

The Chief Executive Officer shall cause to be sent to all persons entitled to receive notice of Annual General Meetings in accordance with this Constitution, a copy of the statements of account, the Board's report, the auditor's report and every other document required under the Act (if any).

### **32.6 Negotiable instruments**

All cheques, promissory notes, bankers, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 duly authorised Directors or in such other manner as the Board determines.

### **32.7 Inspection of Records**

- (a) If requested by a Member, the Board must permit such Member to inspect:
  - (i) the rules and Regulations of the Company;
  - (ii) the register of Members; and
  - (iii) the minutes of each General Meeting.
- (b) Upon written request and payment of a fee determined by the Board from time to time, a Member may obtain a copy of the documents listed at **clause 32.7(a)**.
- (c) Subject to the Act and this Constitution, no Member is entitled to inspect the financial records, accounts, books, securities, minutes of Board meetings or other documents of the Company unless authorised in writing by the Board.

## **33. AUDITOR**

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- (a) A properly qualified auditor or auditors shall be appointed by the Company in General Meeting. The auditor's qualifications and duties shall be regulated in accordance with the Act, generally accepted principles and/or any applicable code of conduct. The auditor may only be removed by the Company in General Meeting or otherwise in accordance with the Act.

- (b) The accounts of the Company shall be examined and the correctness of the profit and loss accounts and balance sheets ascertained by an auditor or auditors at the conclusion of each Financial Year.

#### **34. SOURCE OF FUNDS**

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The funds of the Company may be derived from annual membership subscriptions, fees and levies payable by Members, donations, grants, sponsorships and such other sources as the Board determines.

#### **35. APPLICATION OF INCOME**

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- (a) The income and property of the Company shall be applied solely towards the promotion of the Objects.
- (b) Except as prescribed in this Constitution or the Act:
  - (i) no portion of the income or property of the Company shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise to any Member; and
  - (ii) no remuneration or other benefit in money or money's worth shall be paid or given by the Company to any Member who holds any office of the Company.
- (c) Nothing in **clauses 35(a) or (b)** shall prevent payment in good faith of or to any Member for:
  - (i) any services actually rendered to the Company whether as an employee, Director or otherwise;
  - (ii) goods supplied to the Company in the ordinary and usual course of operation;
  - (iii) interest on money borrowed from any Member;
  - (iv) rent for premises let by any Member to the Company; and
  - (v) any out-of-pocket expenses incurred by the Member on behalf of the Company,

provided that any such payment shall not exceed the amount ordinarily payable between commercial parties dealing at arm's length in a similar transaction.

#### **36. MANAGEMENT OF FUNDS**

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The Company must open an account (or accounts) with a financial institution from which all expenditure of the Company is made and into which all of the Company's revenue is deposited.

#### **37. WINDING UP**

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- (a) Subject to this Constitution the Company may be wound up in accordance with the Act.

- (b) The liability of the Members of the Company is limited.
- (c) Every Member undertakes to contribute to the assets of the Company if it is wound up while a Member, or within 1 year after ceasing to be a Member, for payment of the debts and liabilities of the Company contracted before the time at which it ceases to be a Member and the costs, charges and expenses of winding up the Company, such an amount not exceeding \$1.00.

### **38. DISTRIBUTION OF PROPERTY ON WINDING UP**

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If upon winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members but shall be given or transferred to another organisation or organisations having objects similar to the Objects and which prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Company by this Constitution. Such organisations are to be determined by the Members in General Meeting at or before the time of dissolution, and in default thereof by such judge of the Supreme Court of Victoria or other Court as may have or acquire jurisdiction in the matter.

### **39. ALTERATION OF CONSTITUTION**

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This Constitution shall not be altered unless such alteration is approved by the Members by passing a Special Resolution.

### **40. REGULATIONS**

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#### **40.1 Board to formulate Regulations**

Subject to this **clause 40**, the Board may formulate, issue, adopt, interpret and amend such Regulations for the proper advancement, management and administration of the Company, the advancement of the Objects and Badminton in Australia as it thinks necessary or desirable. Such Regulations must be consistent with the Constitution, Regulations and any policy directives of the Board.

#### **40.2 Board will consult**

Prior to the Board exercising its powers under **clause 40.1** it shall consult with State Members regarding the application and effect of any particular set of Regulations. Such consultation will be undertaken by the Board in good faith and in such reasonable manner as the Board determines.

#### **40.3 State Members' right to object**

- (a) Three State Members acting together may object to any particular Regulation or set of Regulations. Subject to **clause 40.3(b)** if 3 State Members object to any proposed Regulations, they will not take effect until the objection is resolved.
- (b) An objection under this clause must:
  - (i) be made in writing within 60 days of the proposed Regulations being distributed to State Members for consultation;
  - (ii) be made in good faith; and

- (iii) demonstrate how the Regulations adversely impact or prejudice the State Members or the conduct of Badminton in the State Members' state.
- (c) The State Members and the Board shall meet and/or discuss the objection as soon as practicable to resolve the issues raised in the objection.

#### **40.4 Regulations binding**

All Regulations are binding on the Company and all Members.

#### **40.5 Regulations deemed applicable**

All clauses, rules, by-laws and regulations of the Company in force at the date of the approval of this Constitution insofar as such clauses, rules by-laws and regulations are not inconsistent with, or have been replaced by this Constitution, shall be deemed to be Regulations and shall continue to apply. The Regulations will align with this Constitution.

#### **40.6 Bulletins binding on Members**

Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by means of bulletins approved by the Board and prepared and issued by the Chief Executive Officer. State Members shall take reasonable steps to distribute information in the bulletins to their Registered Individuals. The bulletins are binding on all Members.

### **41. STATUS AND COMPLIANCE OF COMPANY**

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#### **41.1 Recognition of Company**

The Company is a member of BWF and is recognised by BWF as the controlling authority for Badminton in Australia and subject to compliance with this Constitution shall continue to be so recognised and shall administer Badminton in Australia in accordance with the Objects.

#### **41.2 Compliance of Company**

The Members acknowledge and agree the Company shall:

- (a) be or remain incorporated in Australia;
- (b) apply its property and capacity solely in pursuit of the Objects and Badminton;
- (c) do all that is reasonably necessary to enable the Objects to be achieved;
- (d) act in good faith and loyalty to ensure the maintenance and enhancement of Badminton, its standards, quality and reputation for the benefit of the Members and Badminton;
- (e) at all times act in the interests of the Members and Badminton;
- (f) not resign, disaffiliate or otherwise seek to withdraw from BWF without approval by Special Resolution; and
- (g) abide by the Constitution and Regulations.

### **41.3 Operation of Constitution**

The Company and the Members acknowledge and agree:

- (a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects and Badminton are to be conducted, promoted, encouraged, advanced and administered throughout Australia and;
- (b) to ensure the maintenance and enhancement of Badminton, its standards, quality and reputation for the benefit of the Members and Badminton;
- (c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Badminton and its maintenance and enhancement;
- (d) to promote the economic and community service success, strength and stability of each other and to act interdependently with each other in pursuit of their respective objects;
- (e) to act in the interests of Badminton and the Members; and
- (f) that should a State Member have administrative, operational or financial difficulties the Company may act to assist the Member in whatever manner the Company considers appropriate.

## **42. STATUS AND COMPLIANCE OF STATE MEMBERS**

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### **42.1 Compliance**

State Members acknowledge and agree that they shall:

- (a) be or remain incorporated in Australia;
- (b) nominate a Delegate annually to attend General Meetings and shall inform the Company of the details of that person accordingly;
- (c) provide the Company with copies of their audited accounts, reports and other associated documents as soon as practicable, following the State Member's annual general meeting;
- (d) recognise the Company as the authority for Badminton in Australia;
- (e) adopt and implement such communications and policies as may be developed by the Company from time to time; and
- (f) have regard to the Objects in any matter of the State Member pertaining to Badminton.

### **42.2 Register**

State Members shall maintain, in a form acceptable to the Company, a register of all Registered Individuals of the State Member. Each State Member shall provide a copy of the register at a time and in a form acceptable to the Company and shall provide regular updates of the register to the Company.

#### **43. NOTICE**

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- (a) Notices may be given by the Company to any person entitled under this Constitution to receive any notice by sending the notice by pre-paid post or facsimile transmission or where available, by electronic mail, to the Member's registered address or facsimile number or electronic mail address, or in the case of a Delegate, to the last notified address, facsimile number or electronic mail address.
- (b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting the notice. Service of the notice is deemed to have been effected 5 business days after posting.
- (c) Where a notice is sent by facsimile transmission, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent to/or received at the facsimile number to which it was sent.
- (d) Where a notice is sent by electronic mail, service of the notice shall be transmitted by also requesting a delivery and read receipt, and shall be deemed to be effected on the next business day after its successful transmission was confirmed.
- (e) Any notice required to be given to the Company or the Board may be given:
  - (i) by handing the notice to a Director;
  - (ii) by sending the notice by post to the registered address;
  - (iii) by leaving the notice at the registered address; or
  - (iv) if the Board determines that it is appropriate in the circumstances by:
    - (A) email to the email address of the Company or the company secretary; or
    - (B) facsimile transmission to the facsimile number of the Company.

#### **44. PATRONS AND VICE PATRONS**

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The Company at its Annual General Meeting may appoint annually on the recommendation of the Board a chief patron and such number of patrons as it considers necessary, subject to receiving written acceptance from that person or persons.

#### **45. INDEMNITY**

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- (a) Every Director and employee of the Company shall be indemnified out of the property and assets of the Company against any liability incurred by them in their capacity as Director or employee in defending any proceedings, whether civil or criminal, in which judgement is given in their favour or in which they are acquitted or in connection with any application in relation to any such proceedings in which relief is granted by the Court.
- (b) The Company shall indemnify its Directors and employees against all damages and losses (including legal costs) for which any such Director or employee may be or become liable to any third party in consequence of any

act or omission except wilful misconduct or where the Director or employee has acted fraudulently:

- (i) in the case of a Director, performed or made whilst acting on behalf of and with the authority, express or implied of the Company; and
- (ii) in the case of an employee, performed or made in the course of, and within the scope of their employment by the Company.

#### **46. REGISTERED ADDRESS**

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The registered address of the Company is the address determined from time to time by resolution of the Board.