

A COMPANY LIMITED BY GUARANTEE



# CONSTITUTION

ABN 25 064 052 615

# CONSTITUTION & BY-LAWS

Driving business success for professional services firms in the built and natural environment

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## 1. PRELIMINARY

### 1.1 Name and nature of Consult Australia

- a) The name of the Company is "Consult Australia" (hereinafter referred to as "**the Company**").
- b) The Company is a public company limited by guarantee.
- c) Each Member undertakes to contribute an amount not exceeding \$20 to the property of the Company if the Company is wound up:
  - (i) at a time when that person is a Member; or
  - (ii) within one year of the time that person ceased to be a Member,for:
  - (iii) payment of the debts and liabilities of the Company contracted or incurred before that person ceased to be a Member; and
  - (iv) payment of the costs, charges and expenses of winding up the Company.

### 1.2 Replaceable rules

The replaceable rules in the *Corporations Act* do not apply to the Company.

### 1.3 Objects

- a) The objects for which the Company is established are:
  - (i) to define and maintain a Code of Ethics dedicated to the interests of the community and the maintenance and development of professions and Members involved in the provision of consulting services for the built and/or natural environment;
  - (ii) to promote the interests of Members which are either resident in or which carry on business in the Commonwealth and which provide consulting services for the built and/or natural environment;
  - (iii) to initiate, promote and conserve the interests and status of the professions involved in the provision of consulting services for the built and/or natural environment and generally to represent and advance such professions and, in particular, the Members of the Company;
  - (iv) to promote the maintenance and development of the professional skills and practice of the Members;
  - (v) to advocate and promote the views and interests of Members to all levels of government, educational institutions and the community;
  - (vi) to promote excellence in the built and natural environment through education and professional practice development; and
  - (vii) to develop and maintain, in a lawful manner, alliances with other organisations having similar objects in order to further the interests of the Members and the Company.

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- b) In fulfilling these Objects the Company will:
  - (i) uphold and maintain the concept of the free enterprise system;
  - (ii) affiliate with organisations with similar objects; and
  - (iii) take an interest in legislative, economic and social matters in order to protect and promote the interests of the Members.
- c) The Company:
  - (i) will only apply the income and property of the Company in promoting the objects of the Company; and
  - (ii) must not subscribe to, support with its funds, or amalgamate with, any organisation which does not, to the same extent as this Constitution, restrict the application of its income and property and prohibit the making of distributions to its members.

## 1.4 No distribution to Members

- a) Subject to clause 1.4(b), the Company must not make any distributions to any Members, whether by way of dividend, surplus on winding up or otherwise.
- b) Clause 1.4(a) does not prevent the Company, with the approval of the Directors and acting in good faith, paying:
  - (i) reasonable remuneration to any officer or Director of the Company;
  - (ii) reasonable remuneration in consideration for services rendered or goods supplied by a Member to the Company in the ordinary course of business;
  - (iii) interest, at a reasonable rate, on money borrowed by the Company from a Member;
  - (iv) reasonable rent for premises leased to the Company by a Member;
  - (v) out-of-pocket expenses incurred by a Member for, or on behalf of, the Company; or
  - (vi) any other reasonable amount of a similar character to those described in this clause 1.4(b).

## 1.5 Definitions

In this Constitution:

**“AGM”** means the Annual General Meeting of Members;

**“Alternate Director”** means a person for the time being holding office pursuant to an appointment as an alternate director of the Company in accordance with this Constitution;

**“Board of Directors”** or **“Board”** means the board of management of the Company which is constituted by the persons who hold office as Directors, from time to time;

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**“By-Laws”** means the by-laws of the Company prescribed, adopted or amended by the Directors from time to time in accordance with this Constitution;

**“Business Day”** means a day except a Saturday, Sunday or public holiday anywhere in the Commonwealth;

**“Cessation Event”** means, in respect of a Member:

- c) the death, bankruptcy or insolvency of that Member; or
- d) that Member's name being entered on the register of persons who have been disqualified from managing corporations kept by the Australian Securities and Investments Commission in accordance with the *Corporations Act*;

**“Chair”** or **“Chairperson”** means a person elected as chairperson in accordance with this Constitution;

**“Chief Executive Officer”** or **“CEO”** means the person appointed in accordance with this Constitution to the office of Chief Executive Officer, being an employee (whether full-time or part-time) of the Company or a related body corporate of the Company;

**“Code of Ethics”** means the code of ethics and standards of conduct for Members, as prescribed by the Directors, from time to time;

**“Commonwealth”** means the Commonwealth of Australia and its external territories;

**“Company”** means Consult Australia (ABN 25 064 052 615);

**“Congress”** means the Congress appointed or elected in accordance with this Constitution;

**“Congress Member”** means a member of Congress;

**“Corporations Act”** means the *Corporations Act 2001* (Cth) as amended from time to time;

**“Director”** means a director of the Company for the time being;

**“Division”** means a division of the Company as referred to in this Constitution;

**“Division Committee”** means each division committee established in accordance with this Constitution;

**“Election Regulations”** means the regulations determined by the Board, including those set out in the By-Laws which set the procedure by which up to seven (7) Members, or Representatives of Members, are elected to the Board;

**“Expulsion Event”** means, in respect of a Member:

- a) that Member has been convicted in criminal proceedings brought in connection with a contravention of the *Corporations Act* or otherwise relating to actions or omissions of that person in managing corporations;
- b) that Member becomes disqualified from managing corporations; or

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- c) the conduct of that Member, in the opinion of no less than two thirds of the Directors (present at a meeting of the Directors and entitled to vote), is unbecoming of a Member or prejudicial or contrary to the objects, interests or reputation of the Company;

**"Fee"** means a fee, subscription or levy payable by Members in accordance with this Constitution;

**"Legal Costs"**, of a person, means legal costs incurred by that person in defending an action for a Liability of that person;

**"Liability"**, of a person, means a liability incurred by that person as an officer or Director of the Company or a related body corporate of the Company;

**"Life Member"** means a principal of a Member elected as a life member in accordance with this Constitution;

**"Member"** means a person whose name is entered in the Register as a member of the Company;

**"officer"** has the same meaning set out in the *Corporations Act*;

**"Prescribed Notice"** means the Prescribed Period of notice or any shorter period of notice for a meeting allowed under the *Corporations Act*;

**"Prescribed Period"** means twenty one (21) days;

**"President"** means the President of the Company for the time being;

**"principal"** means, as the context requires, a natural person who:

- a) carries on sole practice;
- b) is a partner in a partnership;
- c) is a director of a company; or
- d) is a professionally qualified staff member nominated by a Member and is required to and accepts professional responsibilities on behalf of the Member which in the Board's opinion are equivalent to those ordinarily accepted by the principals in (a), (b) and (c) above.

**"Register"** means the register of Members kept under the *Corporations Act* and, where appropriate, includes any Division register;

**"Relevant Officer"** means a person who is, or has been, a Secretary, a Chief Executive Officer, a Director or an officer of the Company;

**"Representative"** means a representative of a Member appointed or nominated by the Member to act as the Member's representative for the purposes of this Constitution;

**"Retired Member"** means a principal of a Member elected as a retired member in accordance with this Constitution;



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“**Secretary**” means the company secretary of the Company for the time being;

“**Term**” means the term of office of each Director (other than the Chief Executive Officer), being a period commencing on the date that the Director takes office and terminating on the date that the Director retires or ceases as a Director of the Company; and

“**Vice President**” means the Vice President or Vice Presidents of the Company for the time being.

## 1.6 Interpretation

- a) In this Constitution:
- (i) a reference to a meeting of Members includes a meeting of any class of Members;
  - (ii) a Member is taken to be present at a meeting of Members if the Member is present in person or by proxy or attorney; and
  - (iii) a reference to a notice or document in writing includes a notice or document given by fax or another form of written communication.
- b) In this Constitution, headings are for convenience only and do not affect interpretation, and unless the context indicates a contrary intention:
- (i) words importing the singular include the plural (and vice versa);
  - (ii) words indicating a gender include every other gender;
  - (iii) the word “**person**” includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership, a trust and a Life Member;
  - (iv) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
  - (v) the word “**includes**” in any form is not a word of limitation.
- c) Unless the context indicates a contrary intention, in this Constitution:
- (i) a reference to a clause or a Schedule, is to a clause or a Schedule of this Constitution;
  - (ii) a reference in a Schedule to a paragraph is to a paragraph of that Schedule;
  - (iii) a Schedule is part of this Constitution; and
  - (iv) a reference to this Constitution, is to this Constitution (and where applicable any of its provisions) as modified or repealed from time to time.
- d) Unless the context indicates a contrary intention, in this Constitution, a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it.
- e) Unless the context indicates a contrary intention, in this Constitution:

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- (i) an expression that deals with a matter dealt with by a provision of the *Corporations Act* has the same meaning as in that provision; and
- (ii) an expression that is defined in section 9 of the *Corporations Act* has the same meaning as in that section.

## 1.7 Exercise of powers

- a) Subject to the Corporations Act, where this Constitution confers a power or imposes a duty, then, unless the contrary intention appears, the power may be exercised and the duty shall be performed, from time to time, as the occasion requires.

## 1.8 Severing invalid provisions

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:

- a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

## 2. MEMBERS

### 2.1 Classes of membership

The Directors may, from time to time, determine:

- a) the various classes of membership of the Company;
- b) any restriction in the number of Members, including the number of Members within each class;
- c) the qualifications for admission to each class; and
- d) the rights attached to being a Member in each class.

### 2.2 Applications

- a) Any person or organisation who:
  - (i) the Directors are satisfied will carry out their obligations as a member honestly and fairly and with business integrity; and
  - (ii) agrees to be bound by, and to comply with, the Code of Ethics and this Constitution, is eligible to apply to become a Member.
- b) Each applicant to become a Member must:

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- (i) sign and deliver to the Company an application in the form (including in electronic form) prescribed by the Directors from time to time; and
  - (ii) pay any initial fee, and annual membership fee, which the Directors determine, from time to time.
- c) The Directors will determine, in their absolute discretion, whether an applicant may become a Member.
- d) The Directors are not required to give any reason for the rejection of any application to become a Member.
- e) If an application to become a Member is accepted, the Company must:
  - (i) give written notice of the acceptance to the applicant including details of the class of membership and the rights that are then attached to that class;
  - (ii) request payment of any amount owing for the initial fee and annual membership fee (being a pro rata sum if so determined by the Directors); and
  - (iii) upon payment of that amount, enter the applicant's name in the Register.
- f) If an application to become a Member is rejected, the Company must:
  - (i) give written notice of the rejection to the applicant; and
  - (ii) refund in full any fees paid by the applicant.

## 2.3 No transfers

The rights of being a Member are not transferable whether by operation of law or otherwise.

## 2.4 Ceasing to be a Member

A person will cease to be a Member if:

- a) that Member resigns in accordance with clause 2.5;
- b) that Member is expelled under clause 2.6; or
- c) a Cessation Event occurs in respect of that person.

## 2.5 Resignation

- a) A Member may immediately resign as a Member by giving the Company notice in writing stating that the resignation takes effect immediately.
- b) Subject to clause 2.5(a) and unless the notice provides otherwise, a resignation by a Member takes effect thirty (30) days after the receipt of that notice by the Company.

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## 2.6 Expulsion or suspension

- a) Subject to clause 2.6(c), the Directors may resolve to:
- (i) expel a Member; or
  - (ii) suspend a Member:
    - A. for such period; and
    - B. from enjoying such rights and privileges of membership, as the Directors may determine;
- if:
- (iii) an Expulsion Event (other than the non payment of a Fee) occurs in respect of the Member; and
  - (iv) the Company gives that Member at least ten (10) Business Days' notice in writing:
    - A. stating the Expulsion Event and that the Member is liable to be expelled; and
    - B. informing the Member of his or her right under clause 2.6(c) (i).
- b) The Directors may resolve to expel a Member if the Member does not pay a Fee within ninety (90) days after the due date for its payment.
- c) Before passing any resolution under clause 2.6(a), the Directors:
- (i) must allow the Member to give to the Directors, either orally or in writing, any explanation or defence of the Expulsion Event; and
  - (ii) may resolve to adopt other procedures to aid the resolution of complaints against the Member, including the appointment of complaints committees and mediators.
- d) Where a resolution is passed under clauses 2.6(a), 2.6(b) or 2.6(c), the Company must give the Member, notice ("**Discipline Notice**") in writing of the expulsion or suspension, within ten (10) Business Days of the resolution.
- e) A resolution under clauses 2.6(a), 2.6(b) and 2.6(c) takes effect on the date of the resolution.
- f) The Directors may reinstate an expelled Member on any terms and at any time as the Directors resolve, including a requirement that all amounts due but unpaid by the expelled Member are paid.

## 2.7 Variation of classes and class rights

Subject to the *Corporations Act* and the terms of a particular class of membership, the Company may:

- (i) vary or cancel rights attached to being a Member of that class; or
- (ii) convert a Member from one class to another, by special resolution of the Company.

## 2.8 Certificates

- a) The Company may issue to each Member, free of charge, a certificate evidencing that person as a Member.

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- b)** The Company may issue a replacement certificate for a Member if:
  - (i) the Company receives and cancels the existing certificate; or
  - (ii) the Company is satisfied that the existing certificate is lost or destroyed, and the Member pays any fee as the Directors resolve.

## 2.9 Life Member

- a)** A Member may nominate a principal of a Member who has rendered distinguished service to the Company and who personifies the professional values Members respect and encourage, for election as a Life Member of the Company.
- b)** The Directors must consider the nomination for election as a Life Member at a meeting of Directors and may recommend election as a Life Member at an AGM.
- c)** The Directors' recommendation pursuant to clause 2.9(b) must be determined by a resolution of Directors. The resolution is successful if at least 75 per cent of all Directors present and eligible to vote, vote in favour of the recommendation.
- d)** Election to Life Membership must take place at an AGM.
- e)** The notice convening the AGM which will hold elections to Life Membership must specify:
  - (i) that the meeting will hold such elections; and
  - (ii) the Directors' recommendations for such elections to Life Membership.
- f)** Election to Life Membership requires the approval of at least 75% of the Members present and voting.
- g)** Each Life Member is deemed to be and is entitled to all the privileges and is subject to all the duties of a Member during that Life Member's life without any further payment of fees, subscriptions or levies.
- h)** Each Life Member remains a Life Member regardless of retirement from practice.
- i)** A certificate of Life Membership may be given to the Life Member to commemorate the Life Member's election to that position.

## 2.10 Retired Member - Non Voting

- a)** A person who is or was a principal of a Member which:
  - (i) has been a Member for at least five years; and
  - (ii) has consented to the person becoming a Retired Member, may apply to the Directors for the person to become a Retired Member of the Company if the person is at least substantially retired from practice.
- b)** The Directors may from time to time determine what constitutes substantial retirement from practice.

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- c) A Retired Member must pay such annual membership fees as may be determined by the Directors.
- d) Subject to clause 2.10 (e), a Retired Member is entitled to all the privileges and is subject to the duties of a Member.
- e) A Retired Member is not entitled to hold any elected office in the Company and is not entitled to any voting rights.
- f) A Retired Member becomes ineligible to remain a Retired Member if the Retired Member ceases to be at least substantially retired from practice.
- g) If there is no conflict of interest, a Retired Member may be a director of a Member.

## 2.11 Appointment of Representatives

- a) A Member who is not a natural person shall appoint or nominate a natural person or persons to be the Member's Representative or Representatives to exercise, upon behalf of the Member, all rights conferred by this Constitution and otherwise to represent and vote for and on behalf of that Member:
  - (i) at general meetings of the Company;
  - (ii) at meetings of the Division at which the Member is entitled to vote;
  - (iii) at meetings of the Congress at which the Member is entitled to vote;
  - (iv) at meetings of any council or committee of which the Member is a member; and
  - (v) in all ballots held by the Company in which the Member is entitled to vote.
- b) Subject to this Constitution, the Directors may:
  - (i) determine the number of Representatives a Member is entitled to appoint; and
  - (ii) accept or refuse the appointment of a Representative by a Member.
- c) The Representative, or any one of them for a Member with more than one Representative, is deemed to be the designated contact point for receiving all communications from the Company on behalf of their Member.
- d) A Member may revoke the appointment of its Representative at any time. The revocation of the appointment of a Representative takes effect when the Company receives valid notification of the revocation from the Member. To be valid, a revocation notification must include the contact details of an eligible replacement Representative.
- e) If the Member has not appointed or nominated a Representative or Representatives to represent and vote for and on behalf of that Member, the chief executive officer, managing partner or similar equivalent will be eligible to vote on all matters at which the Member is entitled to vote.

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## 3. PROCEEDINGS OF MEMBERS

### 3.1 Who can call meetings of Members

- a) Subject to the *Corporations Act*, the Directors may call a meeting of Members at a time and place as the Directors resolve.
- b) The Directors must call and arrange to hold a general meeting on the request of Members made in accordance with the *Corporations Act*.
- c) The Members may call and arrange to hold a general meeting as provided by the *Corporations Act*.

### 3.2 Annual General Meeting

- a) The Company must hold an AGM if required by, and in accordance with, the *Corporations Act*.
- b) The business of an AGM may include any of the following, even if not referred to in the notice of the meeting:
  - (i) the consideration of the annual financial report, the Directors' report and the auditor's report for the Company;
  - (ii) the appointment of the auditor of the Company; and
  - (iii) the fixing of the remuneration of the auditor of the Company.

### 3.3 How to call meetings of Members

- a) The Company must give not less than the Prescribed Notice of a meeting of Members.
- b) Notice of a meeting of Members must be given to each Member, each Director, each Alternate Director and the existing auditor of the Company.
- c) Subject to clause 3.11(h), a notice of a meeting of Members must:
  - (i) set out the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (ii) state the general nature of the business of the meeting; and
  - (iii) set out or include any other information or documents specified by the *Corporations Act*.
- d) Subject to the *Corporations Act*, anything done (including the passing of a resolution) at a meeting of Members is not invalid if either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.

### 3.4 Right to attend meetings

Each Member and the existing auditor of the Company is entitled to attend any meetings of Members. Subject to this Constitution, each Director is entitled to attend and speak at all meetings of Members.

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## 3.5 Meeting at more than one place

- a) A meeting of Members may be held in two or more places linked together by any technology that:
  - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the Chairperson to be aware of proceedings in each place; and
  - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- b) If a meeting of Members is held in two or more places under clause 3.5(a):
  - (i) a Member present at one of the places is taken to be present at the meeting; and
  - (ii) the Chairperson of that meeting may determine at which place the meeting is taken to have been held.

## 3.6 Quorum

- a) Subject to clause 3.6(e), a quorum for a meeting of Members is at least ten (10) Members entitled to vote at that meeting.
- b) In determining whether a quorum for a meeting of Members is present:
  - (i) where a person is present as a Member and as a proxy or attorney of another Member, that person is counted separately for each appointment provided that there is at least one other Member present; and
  - (ii) where a person is present as a proxy or attorney for more than one Member, that person is counted separately for each appointment provided that there is at least one other Member present.
- c) A quorum for a meeting of Members must be present at the commencement of the meeting. If a quorum is present at the commencement of a meeting of Members, it is taken to be present throughout the meeting unless the Chairperson otherwise determines.
- d) If a quorum is not present within thirty (30) minutes after the time appointed for a meeting of Members:
  - (i) if the meeting was called under clause 3.1(b) or clause 3.1(c), the meeting is dissolved; and
  - (ii) any other meeting is adjourned to the date, time and place as the Directors may, by notice to the Members, appoint, or failing any appointment, to the same day in the next week at the same time and place as the meeting adjourned.
- e) If a quorum is not present within thirty (30) minutes after the time appointed for an adjourned meeting of Members:
  - (i) if there are not less than five (5) Members present, they shall constitute a quorum; and
  - (ii) otherwise, the meeting is dissolved.



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## 3.7 Chairperson

- a) The President shall (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Members.
- b) If at a meeting of Members:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of a meeting of Members; or
  - (iii) the Chairperson is present within that time but is not willing to chair all or part of that meeting, the Directors present may, by majority vote, elect another Director or another person present to chair all or part of the meeting of Members.
- c) Subject to clause 3.7(a), if at a meeting of Members:
  - (i) a Chairperson of that meeting has not been elected by the Directors under clause 3.7(b); or
  - (ii) the Chairperson elected by the Directors is not willing to chair all or part of a meeting of Members,the Members present must elect another person, present and willing to act, to chair all or part of that meeting.

## 3.8 General conduct of meetings

- a) Subject to the *Corporations Act*, the Chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- b) The Chairperson of a meeting of Members may delegate any power conferred by this clause to any person.
- c) The powers conferred on the Chairperson of a meeting of Members under this clause 3.8 do not limit the powers conferred by law.

## 3.9 Resolutions of Members

- a) Subject to the *Corporations Act*, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than against the resolution.
- b) Unless a poll is requested in accordance with clause 3.10, a resolution put to the vote at a meeting of Members must be decided on a show of hands.
- c) A declaration by the Chairperson of a meeting of Members that a resolution has on a show of hands been passed, passed by a particular majority, or not passed, and an entry to that effect in the minutes of the meeting, are sufficient evidence of that fact, unless proved incorrect.

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## 3.10 Polls

- a) A poll may be demanded on any resolution at a meeting of Members except:
  - (i) the election of a Chairperson of that meeting; or
  - (ii) the adjournment of that meeting.
- b) A poll on a resolution at a meeting of Members may be demanded by:
  - (i) at least three Members present and entitled to vote on that resolution;
  - (ii) Members with at least five percent (5%) of the votes that may be cast on the resolution on a poll; or
  - (iii) the Chairperson of that meeting.
- c) A poll on a resolution at a meeting of Members may be demanded:
  - (i) before a vote on that resolution is taken; or
  - (ii) before, or immediately after, the result of the vote on that resolution on a show of hands is declared.
- d) A demand for a poll may be withdrawn.
- e) A poll demanded on a resolution at a meeting of Members must be taken in the manner and at the time and place the Chairperson directs.
- f) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- g) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

## 3.11 Adjourned, cancelled and postponed meetings

- a) Subject to the *Corporations Act*, the Chairperson must, if the Members present with a majority of votes that may be cast at that meeting agree or direct the Chairperson to do so, adjourn a meeting of Members to any day, time and place.
- b) No person other than the Chairperson of a meeting of Members may adjourn that meeting.
- c) Only business left unfinished is to be transacted at a meeting of Members resumed after an adjournment.
- d) Subject to the *Corporations Act* and this clause 3.11, the Directors may at any time postpone or cancel a meeting of Members by giving notice, not less than five (5) Business Days before the time at which the meeting was to be held, to each person to whom the notice of the meeting was required to be given.
- e) A general meeting called under clause 3.1(b) must not be cancelled or postponed by the Directors without the consent of the Members who requested the meeting.

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- f) A general meeting called under clause 3.1(c) must not be cancelled or postponed by the Directors without the consent of the Members who called the meeting.
- g) A notice adjourning or postponing a meeting of Members must set out the place, date and time for the revised meeting (and if the revised meeting is to be held in two or more places, the technology that will be used to facilitate this).

## 3.12 Number of votes

- a) Subject to this Constitution and any rights or restrictions attached to a class of Membership, on a show of hands or on a poll at a meeting of Members, every Member present has the number of votes specified in clause 3.15.
- b) In the case of an equality of votes on a resolution at a meeting of Members, the Chairperson of that meeting has a casting vote on that resolution both on a show of hands and on a poll, in addition to any vote the Chairperson has in respect of that resolution.
- c) A Member present at a meeting of Members is not entitled to vote on any resolution if any amount due and payable in respect of that person's Membership has not been paid within ninety (90) days after the due date for payment.
- d) A Member present at a meeting of Members is not entitled to vote on a resolution at that meeting where that vote is prohibited by the *Corporations Act* or an order of a court of competent jurisdiction.
- e) The Company must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members where that person is not entitled to vote on that resolution.
- f) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members is suspended while the Member is present in person at that meeting.

## 3.13 Objections to qualification to vote

- a) An objection to the qualification of any person to vote at a meeting of Members may only be made:
  - (i) before that meeting, to the Directors; or
  - (ii) at that meeting (or any resumed meeting if that meeting is adjourned), to the Chairperson of that meeting.
- b) Any objection under clause 3.13(a) must be decided by the Directors or the Chairperson of the meeting of Members (as the case may be), whose decision, made in good faith, is final and conclusive.

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## 3.14 Proxies and attorneys

- a) A Member, who is entitled to attend and cast a vote at a meeting of Members, may vote on a show of hands and on a poll:
  - (i) in person;
  - (ii) by not more than one proxy; or
  - (iii) by not more than one attorney.
- b) A proxy or attorney of a Member need not be a Member.
- c) A Member may appoint a proxy or attorney for:
  - (i) all meetings of Members; or
  - (ii) any one or more specified meetings of Members.
- d) An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains:
  - (i) the name and address of that Member;
  - (ii) the name of the Company;
  - (iii) the name of the proxy or the name of the office held by the proxy; and
  - (iv) the meetings of Members at which the proxy may be used.
- e) The Chairperson of a meeting of Members may determine that an instrument appointing a proxy is valid even if it contains only some of the information specified in clause 3.14(d).
- f) An instrument appointing an attorney must be in a form as the Directors may prescribe or accept, from time to time.
- g) Subject to the *Corporations Act*, the decision of the Chairperson of a meeting of Members as to the validity of an instrument appointing a proxy or attorney is final and conclusive.
- h) Unless otherwise provided in the *Corporations Act* or in the appointment, a proxy or attorney may:
  - (i) agree to a meeting of Members being called by shorter notice than is required by the *Corporations Act* or this Constitution;
  - (ii) agree to a resolution being either or both proposed and passed at a meeting of Members of which notice of less than the Prescribed Period is given;
  - (iii) speak on any resolution at a meeting of Members on which the proxy or attorney may vote;
  - (iv) vote at a meeting of Members (but only to the extent allowed by the appointment);
  - (v) demand or join in demanding a poll on any resolution at a meeting of Members on which the proxy or attorney may vote; and
  - (vi) attend and vote at any meeting of Members which is rescheduled or adjourned.

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- i)** Unless otherwise provided in the *Corporations Act* or in the appointment, a proxy or attorney may vote on:

  - (i) any amendment to a resolution on which the proxy or attorney may vote;
  - (ii) any motion not to put that resolution or any similar motion; and
  - (iii) any procedural motion relating to that resolution, including a motion to elect the Chairperson of a meeting of Members, vacate the chair or adjourn that meeting.
- j)** The Company must only send a form of proxy to Members in respect of a meeting of Members which provides for the Member:

  - (i) to appoint a proxy of the Member's choice, but may specify who is to be appointed as proxy if the Member does not choose; and
  - (ii) to vote for or against each resolution, and may also provide for the Member to abstain from voting on each resolution.
- k)** If the name of the proxy or the name of the office of the proxy in a proxy form of a Member is not filled in, the proxy of that Member is:

  - (i) the person specified by the Company in the form of proxy in the case where the Member does not choose; or
  - (ii) if no person is so specified, the Chairperson of that meeting.
- l)** A Member may specify the manner in which a proxy or attorney is to vote on a particular resolution at a meeting of Members but, unless specified, the proxy or attorney may vote as he or she thinks fit.
- m)** An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority under which the appointment was signed or a certified copy of the authority) not less than forty eight (48) hours before the time scheduled for commencement of that meeting (or any adjournment of that meeting, unless the adjourned meeting is held within forty eight (48) hours of the original meeting).
- n)** Unless the Company has received notice in writing before the time scheduled for the commencement or resumption of a meeting of Members, a vote cast at that meeting by a person appointed by a Member as a proxy or attorney is, subject to this Constitution, valid even if, before the person votes, the appointing Member:

  - (i) dies; or
  - (ii) is mentally incapacitated;
  - (iii) revokes the appointment of that person;
  - (iv) revokes the authority under which the person was appointed by a third party.

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## 3.15 Voting Formula Schedule

- a) A Member other than a Life Member or a Retired Member has the following number of votes at a meeting of Members:

Number of Staff*	VOTES	Number of Staff*	VOTES
1	1	163 TO 186	16
2 TO 6	2	187 TO 210	17
7 TO 11	3	211 TO 239	18
12 TO 20	4	240 TO 269	19
21 TO 30	5	270 TO 300	20
31 TO 40	6	301 TO 330	21
41 TO 49	7	331 TO 350	22
50 TO 59	8	351 TO 380	23
60 TO 70	9	381 TO 410	24
71 TO 82	10	411 TO 440	25
83 TO 94	11	441 TO 460	26
95 TO 106	12	461 TO 490	27
107 TO 123	13	491 TO 510	28
124 TO 143	14	511 TO 540	29
144 TO 162	15	541 PLUS	30

- b) A Life Member has one vote.
- c) A Retired Member is not eligible to vote.
- d) \*Number of Staff means the total number (determined on the basis of the latest membership survey undertaken by the Company) of staff employed by the Member in Australia.

## 4. FEES AND LEVIES

### 4.1 Fees

- a) The Company may require the payment of Fees, including an annual membership fee, by Members in the amounts and at the times as the Directors resolve.

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- b) The Company may make Fees payable for one or more Members, or classes of Members, for different amounts and at different times.
- c) Pursuant to clause 4.1(a), the Directors may, from time to time, give notice to Members:
  - (i) revoking or postponing Fees;
  - (ii) extending the time for payment of Fees;
  - (iii) allowing for payment of Fees by instalments; or
  - (iv) stipulating the amount, the time, the method and the place of payment of Fees.

## 4.2 Special Levy

If any matter arises which in the opinion of the Directors affects the interests of the Company or of its Members and which involves any unusual expenditure or commitments, the Directors are empowered to levy the Members on such basis as they may consider just and equitable and fix the method of payment provided that in any one financial year such levy or levies must not exceed an amount equal to the annual membership fee of that Member unless first approved by a general meeting of the Members.

## 4.3 Failure to Pay Levy or Annual Membership fee

If any Member fails to pay the levy within ninety (90) days after notice of the levy or if the Member is in arrears for ninety (90) days in payment of the Member's annual membership fee, the Member may not take part in any proceedings of the Company unless the Directors extend the time for payment or waive the requirement to pay.

## 4.4 Interest

- a) A Member must pay to the Company:
  - (i) interest at the rate reasonably determined by the Directors, on any Fees which are not paid on, or before, the time appointed for payment, from the time appointed for payment to the time of the actual payment; and
  - (ii) expenses incurred by the Company because of the failure to pay, or late payment of, that amount.
- b) The Directors may waive payment of all or any part of an amount payable under clause 4.4(a).

## 4.5 Exercise of powers

The powers of the Company under this clause 4 may only be exercised by the Directors.

# 5. DIRECTORS

## 5.1 Number of Directors and Composition

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- a) The Company must have not less than seven (7) nor more than ten (10) Directors constituted as follows:
  - (i) up to seven (7) Members, or Representatives of Members, elected by and from the Members in accordance with the Company's Election Regulations; and
  - (ii) up to three (3) individuals nominated by the President and elected to the Board by no less than five (5) of the elected Board Members referred to in clause 5.1(a)(i). The period of their appointment shall not exceed the term of office of the existing President at the time of their appointment, without being re-elected by the Board. The appointed Board Members do not need to be Members or Representatives of Members but there is nothing to prevent the appointed Board Members being Members or Representatives of Members. The appointed Directors must retire when the existing President ceases to be President or the existing President retires as President. The appointed Directors are eligible to be re-appointed to the Board in accordance with this Constitution.
- b) If the number of Directors is below the minimum fixed by this Constitution, the Directors must not act except for appointing one or more additional Directors or to call, and arrange to hold, a meeting of Members.

## 5.2 Officers

The following Officers will be appointed from amongst the Directors:

- a) the President, who shall be Chairperson of the Board of Directors and shall hold office as a Board Member ex-officio. The President must be a Member or a Representative of a Member; and
- b) one or more Vice Presidents who shall hold office as Board Members ex-officio. The Vice Presidents must be Members or Representatives of Members.

## 5.3 President

- a) The President holds office for two (2) years until the end of the second AGM after he or she became President, at which time he or she automatically ceases to be President.
- b) A President cannot hold office as the President for more than two (2) consecutive Terms.

## 5.4 Vice Presidents

- a) The Directors must appoint at least one (1) Vice President from amongst their number and may appoint one (1) additional Vice President from amongst their number, provided that there are never more than two (2) Vice Presidents at any one time.
- b) A Vice President holds office for two (2) years as Vice President or until the term of the existing President, whichever occurs first.



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- c) A Director who vacates the office of Vice President at an AGM is eligible for reappointment as a Vice President.

## 5.5 Officers must be Directors

Any President or Vice President who ceases to be a Director automatically ceases at the same time to be the President or Vice President.

## 5.6 Director not to hold more than one office

- a) A Director must not hold more than one of the following offices simultaneously:
  - (i) President; or
  - (ii) Vice President.

## 5.7 Retirement at AGM

- a) At every second AGM one half of the elected Directors must retire effective from the end of the meeting.
- b) A Director retiring from office is eligible for re-election.
- c) The Directors who must retire at each AGM in accordance with clause 5.7(a) are those who have been longest in office but, as between persons who were last elected as Directors on the same day, those to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.
- d) If the calculation under clause 5.7(a) to determine the number which is one half the relevant Directors results in a number which is not a whole number (the Number), then the number of Directors which must retire is the nearest whole number which is smaller than the Number.
- e) If the office of a Director becomes vacant otherwise than by retirement at the AGM at which the election of Directors occurs, it must be filled by the Directors as soon as is practicable after the vacancy occurs by:
  - (i) in the case of the President appointing one of the Directors to fill the vacancy; and
  - (ii) in the case of any other Director, appointing a person nominated by one or more of the Directors and any person appointed holds office for the period the vacating Director would have held office if the office had not been vacated by that Director

## 5.8 Vacation of office

- a) A Director may resign from office by giving the Company notice in writing.
- b) Subject to the *Corporations Act* and the Constitution, the Company in a general meeting convened on Prescribed Notice, may, by ordinary resolution, remove any Director and, if thought fit, appoint another person in place of that Director.

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- c) A Director (including an Alternate Director) ceases to be a Director if the *Corporations Act* so provides or if that Director:
  - (i) becomes of unsound mind;
  - (ii) is absent without the consent of the Directors from all meetings of the Directors held during a period of six (6) months and the other Directors resolve that his or her office be vacated;
  - (iii) resigns or is removed under this Constitution;
  - (iv) becomes bankrupt; or
  - (v) ceases to be a Member of the Company or ceases to be a Representative of a Member of the Company.

## 5.9 Alternate Directors

- a) A Director ("**Appointer**") may appoint a person as his or her Alternate Director for any period provided that, if a Director was a Member, or a Representative or employee of a Member, then the Alternate Director must be a Member or a Representative of a Member or an employee of a Member.
- b) The Appointer may terminate the appointment of his or her Alternate Director at any time.
- c) A notice of appointment, or termination of appointment, of an Alternate Director is effective only if:
  - (i) the notice is in writing;
  - (ii) the notice is signed by the Appointer; and
  - (iii) the Company is given a copy of the notice.
- d) If the Appointer is not present at a meeting of Directors, his or her Alternate Director may, subject to this Constitution and the *Corporations Act*:
  - (i) attend, count in the quorum of, speak at, and vote at that meeting in place of the Appointer; and
  - (ii) exercise any other powers (except the power under clause 5.1(a)(ii)) that the Appointer may exercise.
- e) An Alternate Director cannot exercise any powers of his or her Appointer if the Appointer ceases to be a Director.
- f) An Alternate Director is an officer of the Company and not an agent of his or her Appointer.
- g) If an Appointer ceases to be a Director, his or her Alternate Director (if any) immediately ceases to be an Alternate Director except that when an Appointer resigns but is eligible for re-appointment for a further Term and is re-appointed as a Director for a further Term, his or her Alternate Director (if any) will remain an Alternate Director for that Appointer unless the instrument of appointment, or terms on which that Alternate Director was appointed, otherwise provides.

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## 6. OFFICERS

### 6.1 Chief Executive Officer

- a) The Directors may appoint a person as the Chief Executive Officer, for any period and on any terms (including as to remuneration) as the Directors resolve.
- b) The Chief Executive Officer cannot be elected or appointed to the Board.
- c) Subject to any agreement between the Company and the Chief Executive Officer, the Directors may remove or dismiss or suspend the Chief Executive Officer at any time, with or without cause.
- d) The Directors may delegate any of their powers (including the power to delegate) to the Chief Executive Officer as provided in clause 7.3.
- e) The Directors may revoke or vary:
  - (i) the appointment of the Chief Executive Officer; or
  - (ii) any power delegated to the Chief Executive Officer.
- f) The Chief Executive Officer must exercise the powers delegated to him or her in accordance with any directions of the Directors.
- g) The exercise of a delegated power by the Chief Executive Officer is as effective as if the Directors exercised the power.

### 6.2 Secretary

- a) As at the date of adoption of this Constitution, the Secretary is the person specified as company secretary in the ASIC Register.
- b) A Secretary or Secretaries may be appointed by the Board of Directors for any period and on any terms (including as to remuneration) as the Directors resolve.
- c) Subject to any agreement between the Company and a Secretary, the Directors may remove or dismiss a Secretary at any time, with or without cause.
- d) The Directors may revoke or vary the appointment of a Secretary.

### 6.3 Indemnity and insurance

- a) To the extent permitted by law, the Company must indemnify each Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person.
- b) To the extent permitted by the law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- c) To the extent permitted by the law, the Company may pay, or agree to pay, a premium for a contract insuring a Relevant Officer against:

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- (i) a Liability of that person; and
- (ii) Legal Costs of that person.
- d)** To the extent permitted by law, the Company must enter into an agreement or deed with:
  - (i) a Relevant Officer; or
  - (ii) a person who is, or has been, an officer of the Company or a related body corporate of the Company,
 under which the Company must do all or any of the following:
  - (iii) keep books of the Company and allow that officer, and his or her advisers, access to those books on the terms agreed;
  - (iv) indemnify that officer against any Liability of that officer;
  - (v) make a payment (whether by way of advance, loan or otherwise) to that officer in respect of Legal Costs of that officer; and
  - (vi) keep that officer insured in respect of any act or omission by that officer, while a Relevant Officer or an officer of the Company or a related body corporate of the Company, on the terms agreed (including as to payment of all or part of the premium for a contract of insurance).

## 7. POWERS OF THE COMPANY AND DIRECTORS

### 7.1 General powers

- a)** Subject to this Constitution, the Company may exercise, in any manner permitted by the *Corporations Act*, any power which a public company limited by guarantee may exercise under the *Corporations Act*.
- b)** The business of the Company is to be managed by, or under the direction of, the Directors.
- c)** The Directors may exercise all the powers of the Company except any powers that the *Corporations Act* or this Constitution requires the Company to exercise in general meeting.

### 7.2 Execution of documents

- a)** If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by:
  - (i) two Directors; or
  - (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Directors for that purpose.
- b)** The Company may execute a document without a common seal if the document is signed by:
  - (i) two Directors; or

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- (ii) a Director and a Secretary;
  - (iii) a Director and another person appointed by the Directors for that purpose; or
  - (iv) delegated representatives appointed by the Board of Directors.
- c)** The Directors may resolve, generally or in a particular case, that any signature on certificates for membership, or other common use documents specified by the Directors, may be affixed by mechanical, electronic or other means.
- d)** Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Company in the manner, and by the persons, as the Directors resolve.

## 7.3 Committees and delegates

- a)** The Directors may delegate any of their powers (including this power to delegate) to a committee of any one or more Directors, a Division Committee, Congress, the Chief Executive Officer, an employee of the Company or a Member.
- b)** The Directors may revoke or vary any power delegated under clause 7.3(a).
- c)** A committee or delegate must exercise the powers delegated in accordance with any directions of the Directors.
- d)** The exercise of a delegated power by the committee or delegate is as effective as if the Directors exercised the power.
- e)** Clause 8 applies (with the necessary changes) to meetings of a committee of Directors.

## 7.4 Attorney or agent

- a)** The Directors may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Directors resolve.
- b)** The Directors may delegate any of their powers (including the power to delegate) to an attorney or agent.
- c)** The Directors may, at any time, revoke or vary:
- (i) an appointment under Clause 7.4(a); or
  - (ii) any power delegated to an attorney or agent.

## 8. PROCEEDINGS OF DIRECTORS

### 8.1 Written resolutions of the Directors

- a)** The Directors may pass a resolution, without a meeting of the Directors being held, if all the Directors, entitled to vote on the resolution, assent to a document containing a statement that they are in favour of the resolution set out in the document.

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- b)** Separate copies of a document referred to in clause 8.1(a) may be used for assenting to by Directors if the wording of the resolution and the statement is identical in each copy.
- c)** A Director may signify assent to a document under this clause 8.1 by signing the document or by notifying the Company of that assent:
  - (i) in a manner permitted under this Constitution; or
  - (ii) by any technology including any electric means.
- d)** Where a Director signifies assent to a document under clause 8.1(c) other than by signing the document, the Director must, by way of confirmation, sign the document before, or at, the next meeting of Directors attended by that Director.
- e)** The resolution the subject of a document under clause 8.1(b) is not invalid if a Director does not comply with clause 8.1(d).

## 8.2 Meetings of the Directors

- a)** The Directors may meet, adjourn and otherwise regulate their meetings as they think fit.
- b)** A meeting of the Directors may be held using any technology consented to by all Directors.
- c)** The consent of the Directors under clause 8.2(b) may be for all meetings of the Directors or for any one or more specified meetings.
- d)** A Director may withdraw his or her consent under clause 8.2(b) within a reasonable period before the meeting.
- e)** If a meeting of the Directors is held in two or more places linked together by any technology:
  - (i) a Director present at one of the places is taken to be present at the meeting unless and until that Director states to the Chairperson of the meeting that he or she is discontinuing participation in the meeting; and
  - (ii) the Chairperson of that meeting may determine at which place the meeting will be taken to have been held.

## 8.3 Who can call meetings of the Directors

- a)** A Director may call a meeting of the Directors at any time.
- b)** On request of any Director, a Secretary must call a meeting of the Directors.

## 8.4 How to call meetings of the Directors

- a)** Notice of a meeting of the Directors must be given to each Director and each Alternate Director.
- b)** A notice of meeting of the Directors must:

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- (i) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
- (ii) state the general nature of the business of the meeting.
- c) The Company must give not less than twenty four (24) hours' notice of a meeting of the Directors, unless all Directors agree otherwise.
- d) A Director or an Alternate Director may waive notice of a meeting of the Directors by notice in writing to the Company to that effect.

## 8.5 Quorum

- a) Subject to the *Corporations Act*, a quorum for a meeting of the Directors is four (4) Directors present at the meeting.
- b) In determining whether a quorum for a meeting of the Directors is present:
  - (i) where a Director has appointed an Alternate Director, that Alternate Director is counted if the Appointer is not present;
  - (ii) where a person is present as a Director and an Alternate Director for another Director, that person is counted separately provided that there is at least one other Director or Alternate Director present; and
  - (iii) where a person is present as an Alternate Director for more than one Director, that person is counted separately for each appointment provided that there is at least one other Director or Alternate Director present.
- c) A quorum for a meeting of the Directors must be present at all times during the meeting.
- d) If there are not enough persons to form a quorum for a meeting of the Directors, one or more of the Directors (including those who have an interest in a matter being considered at that meeting) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

## 8.6 Resolutions of the Directors

- a) A resolution of the Directors is passed if more votes are cast in favour of the resolution than against it.
- b) Subject to the *Corporations Act* and this Constitution, each Director has one vote on a matter arising at a meeting of the Directors.
- c) In determining the number of votes a Director has on a matter arising at a meeting of the Directors:
  - (i) where a person is present as a Director and an Alternate Director for another Director, that person has one vote as a Director and one vote as an Alternate Director; and
  - (ii) where a person is present as an Alternate Director for more than one Director, that person has one vote for each appointment.

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- d) Subject to the *Corporations Act*, in case of an equality of votes on a resolution at a meeting of the Directors, the Chairperson of that meeting has a casting vote on that resolution in addition to any vote the Chairperson has in his or her capacity as a Director.

## 8.7 Chairperson

- a) The President shall (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors.
- b) If at a meeting of Directors:
  - (i) there is no Chairperson;
  - (ii) the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of a meeting of Directors; or
  - (iii) the Chairperson is present within that time but is not willing to chair all or part of that meeting,
- c) the Directors present may, by majority vote, elect another Director present to chair all or part of the meeting of Directors.

## 9. DIVISIONS

### 9.1 Establishment

- a) A Division may be established in each State, Territory or region to determine matters relating to relevant areas of professional or commercial practice within that State, Territory or region in accordance with this Constitution and any applicable By-Laws.
- b) Any Divisions established will be subject to the By-Laws in this Constitution.

## 10. CONGRESS

### 10.1 Appointment and removal of Congress

- a) The Congress of the Company, if applicable shall comprise:
  - (i) the President for the time being, who shall be Chairperson of Congress;
  - (ii) the Vice Presidents for the time being;
  - (iii) each other Director for the time being of the Board;
  - (iv) two representatives from each Division Committee, not being Directors, as determined by that Division Committee; and
  - (v) any other Members, or Representatives of Members, that are invited to be Congress Members by the President or the Board of Directors.



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## 10.2 Nomination of Congress Members

The nomination of Congress Members by a Division pursuant to this Constitution shall be conducted in such manner and at such times as determined by each Division Committee from time to time.

## 10.3 Role of Congress

- a) The role of Congress is:
  - (i) to act as a general advisory body to the Board;
  - (ii) to act as an advisory body to the Board with respect to membership matters or issues affecting or likely to affect Members generally, including membership fees; and
  - (iii) to exercise any powers and perform any functions delegated by the Board to Congress from time to time in accordance with clause 7.3.
- b) Neither the Congress nor any Congress Member has any responsibility for managing the business of the Company.

## 10.4 Convening of meetings of Congress

- a) A meeting of the Congress Members shall be held no less than once in every financial year.
- b) The President shall be the Chairperson of Congress. If, at a meeting of Congress the President is not present within fifteen (15) minutes after the time appointed for the commencement of the Congress meeting, the Congress Members may, by majority vote, elect another Congress member present to chair all or part of the Congress meeting.

## 10.5 Proceedings at meetings of Congress

The provisions in this Constitution relating to meetings apply to meetings of Congress, so far as they can and with such changes as are necessary, subject to the following:

- a) all references to the Directors are to be construed as references to Congress Members and all references to the Board of Directors are to be construed as references to the Congress;
- b) a quorum consists of four (4) Congress Members (not otherwise being Directors) present at the meeting of Congress; and
- c) each Congress Member has one vote.
- d) voting on all matters by the Congress Members shall be determined by a majority vote. In the case of an equality of votes the President, or in his or her absence the Chairperson of that meeting, has a casting vote on that resolution in addition to any vote the President, or the Chairperson, has in his or her capacity as a Congress Member.

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## 11. BALLOT

### 11.1 Ballot of Members

Unless otherwise determined and resolved by the Directors as a By-Law, any ballot of Members must be conducted as follows:

- a) the Chief Executive Officer or the Returning Officer appointed by the Board (**“Returning Officer”**), must conduct the ballot;
- b) the Directors must cause to be prepared and submitted to Members a ballot notice which:
  - (i) must set out the matters requiring the vote of Members; and
  - (ii) may be accompanied by submissions for or against the matters requiring the vote of Members;
- c) the Directors must specify the time within which the ballot notice must be submitted to the Returning Officer by Members which must be at least thirty (30) days after the ballot papers are sent;
- d) the non-receipt by any Member of a ballot notice does not invalidate the ballot.
- e) the Returning Officer must reject any ballot paper which has not been completed in accordance with this clause or which was not submitted within the time prescribed. Any doubts relating to the proper completion of the ballot paper and its validity must be determined in accordance with clause 11.1(i);
- f) if the Returning Officer receives any ballot paper after the date of return fixed by the Directors the ballot paper must be excluded from the ballot;
- g) the Returning Officer must notify the Directors in writing:
  - (i) of the result of the voting upon each and every one of the matters to be determined by ballot; and
  - (ii) the number of votes for and against each matter to be determined by ballot;
- h) the Members must be informed of the result of the ballot in a manner prescribed by the Directors; and.
- i) if there is any doubt concerning the validity of a ballot paper or of its receipt by the Returning Officer within the time prescribed by the Directors, the question must be referred to the President whose decision is final and binding.

## 12. BY LAWS

### 12.1 By-Laws

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- a) The Directors may from time to time prescribe By-Laws of the Company on such matters considered necessary or expedient to give effect to this Constitution, to carry out the purposes of the Company or for the regulation, management and control of the Company's affairs.
- b) By-Laws shall be prescribed, amended, repealed or adopted by the Board of Directors in meeting by a majority of no less than two thirds of the Directors present and entitled to vote.
- c) In the event of any inconsistency between this Constitution and the By-Laws, this Constitution prevails.

## 13. CODE OF ETHICS AND STANDARDS OF CONDUCT

### 13.1 Code of Ethics

- a) The Directors will, from time to time, submit for adoption as the Code of Ethics of the Company:
  - (i) a code of professional ethics and general standards of professional conduct and practice; or
  - (ii) any alterations or additions to or omissions from the existing Code of Ethics.
- b) Any submission made by the Directors under clause 13.1(a) (with or without amendment) requires the approval of Members representing at least 75% of the votes entitled to be cast by the Members:
  - c) present in person or by proxy or attorney at a general meeting; or
  - d) whose votes are admitted to ballot in a ballot conducted in accordance with this Constitution.
- e) The Code of Ethics adopted for the time being by the Company is binding upon all Members.

## 14. COMPLAINTS AND DISCIPLINARY PROCEDURES

### 14.1 Handling complaints and disciplinary procedures

- a) Without limiting the generality of the Directors rights to make By-Laws, the Directors may make By-Laws setting out the Company's disciplinary procedures, including in relation to:
  - (i) the investigation, handling and resolution of complaints against Members, regulation of the professional conduct of Members, breaches of the Code of Ethics or this Constitution and such other matters as determined by the Board from time to time;
  - (ii) establishing one or more bodies that are responsible for administering the Company's disciplinary procedures as determined by the Directors from time to time;
  - (iii) actions required of Members to assist the Company with any disciplinary procedures; and
  - (iv) the production of documents, access to documents and premises and the provision of information for the purposes of the Company's compliance, investigation and disciplinary proceedings including regulations for the disclosure of such documents and information (other

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than those subject to legal professional privilege) during and for the purposes of the conduct of disciplinary proceedings.

- b) The Directors may enter into a memorandum of understanding or other agreement with a dispute resolution scheme with respect to the hearing and determination of complaints against Members and for the exchange of information between the Company and the approved external dispute resolution scheme, and such other matters considered appropriate by the Directors.

## 15. NOTICES

### 15.1 Notice to Members

- a) Subject to clause 15.1(b), the Company may give notice to a Member:
  - (i) by hand delivery;
  - (ii) by sending it by prepaid post to the address of the Member in the Register or the alternative address (if any) nominated by that Member;
  - (iii) by sending it to the fax number or electronic address (if any) nominated by that Member; or
  - (iv) with the approval, given by special resolution, of the Directors, by advertisement in accordance with clause 15.1(c).
- b) If the address of any Member in the Register is not within Australia and that Member does not nominate an alternative address within Australia, unless otherwise specified by the *Corporations Act*, the Company may (in addition to any method of service specified in clause 15.1(a)) give a notice to that Member by:
  - (i) posting it on the Company's internet website (if any); or
  - (ii) advertisement in accordance with clause 15.1(c).
- c) Any notice allowed to be given by the Company to Members by advertisement is sufficiently advertised if advertised once in a daily newspaper circulating in the States and Territories of Australia.
- d) A notice sent by prepaid post may be included:
  - (i) separately with; or
  - (ii) as part of the text of,
  - (iii) any other document, sent by prepaid post, by the Company to Members.

### 15.2 Notice to Directors, Congress Members and Committee Members

The Company may give notice to a Director, an Alternate Director, Congress Member or Committee Member:

- a) by hand delivery;

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- b) by sending it by prepaid post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- c) by sending it to the fax number or electronic address (if any) nominated by that person; or
- d) by any other means agreed between the Company and that person.

## 15.3 Notice to the Company

A person may give notice to the Company:

- a) by leaving it at the registered office or principal place of business of the Company;
- b) by sending it by prepaid post to the registered office of the Company;
- c) by sending it to the fax number at the registered office or principal place of business of the Company;
- d) by sending it to the electronic address (if any) nominated by the Company for that purpose; or
- e) by any other means permitted by the *Corporations Act*.

## 15.4 Time of service

- a) A notice sent by prepaid post to an address within Australia is taken to be given:
- b) in the case of a notice of meeting, one Business Day after it is posted; or
- c) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- d) A notice sent by prepaid post to an address outside Australia is taken to be given:
- e) in the case of a notice of meeting, three Business Days after it is posted; or
- f) in any other case, at the time at which the notice would be delivered in the ordinary course of post.
- g) A notice sent by fax or electronic means is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole notice was sent to the correct fax number or electronic address.
- h) The giving of a notice by prepaid post is sufficiently proved by evidence that the postage was paid and the notice:
  - i) was addressed to the correct address of the recipient; and
  - j) was placed in the post.

## 15.5 Signatures

The Directors may decide, generally or in a particular case, that a notice given by the Company be signed by mechanical or other means.

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## 16. WINDING UP

### 16.1 Transfer of surplus

On a winding up of the Company, the Members must determine one or more companies, associations or institutions whose constitutions:

- a) require them to pursue only objects similar to those in clause 1.3 and to apply their income in promoting those objects;
- b) prohibit them from making distributions to their members to at least the same extent as in clause 1.4; and
- c) if companies, prohibit them from paying fees to their directors and require their directors to approve all other payments the companies make to their directors, to whom the liquidator must give or transfer any surplus on winding up.

### 16.2 Application to Supreme Court

If the Members fail to make a determination under clause 16.1 within twenty (20) Business Days of the winding up of the Company, the liquidator may make an application to the Supreme Court to make that determination.

## 17. ACCOUNTS AND AUDIT

### 17.1 Accounting Records

- a) The Board of Directors must cause proper accounting and other records to be kept and must ensure the distribution to every Member of copies accompanied by a copy of the directors' report and the auditor's report as required by the *Corporations Act*.
- b) The Board of Directors may from time to time determine whether and at what times and place and under what conditions or regulations the accounting and other records of the Company are to be open for inspection of Members, subject to the Constitution and the *Corporations Act*.
- c) The accounting and other records of the Company must be examined and a report prepared by a registered company auditor in accordance with the *Corporations Act*.
- d) The appointment, removal, remuneration, functions, rights, duties and liabilities of such registered company auditor are to be regulated by and be subject to the provisions of the *Corporations Act*.

## 18. INSPECTION OF RECORDS

18.1 Subject to the *Corporations Act*, the Directors shall decide whether and to what extent, and at what time and places and under what conditions, the Register, the accounting records and other documents of the Company or any of them will be open to the inspection of Members (other than those who are also Directors).

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18.2 A Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in a Meeting of Members.

A COMPANY LIMITED BY GUARANTEE



# BY-LAWS

ABN 25 064 052 615



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## BY-LAW 1 – COMPLAINTS AND DISCIPLINARY PROCEDURE

### 1. PRELIMINARY

#### 1.1 Definitions

In addition to definitions in the Constitution the following definitions apply to this By-Law:

- a) **"Appointed Board Member"** means an existing Director of the Company appointed by the Board to consider a complaint lodged under clause 2.1 of this By-Law.
- b) **"Complainant"** means in relation to a complaint lodged under clause 2.1, the person who lodged the complaint.
  - (i) **"Complaine"** means in relation to a complaint lodged under clause 2.1:
  - (ii) if the subject of the complaint is a Member (being a natural person), that Member; or
- c) if the subject of the complaint is a firm or business, or Representative of a firm or business, that is a Member, the principal of the firm or business determined by the CEO of the Company to be held responsible to answer the complaint under clause 2.1.
- d) **"Complaints Tribunal"** means the complaints tribunal established under clause 2.2(b).
- e) **"Institution"** means Engineers Australia, or other professional body of similar standing determined by the Board of Directors to be relevant.

#### 1.2 Application of the Corporations Act

- a) This By-Law is to be interpreted subject to the *Corporations Act*.
- b) Unless the contrary intention appears, an expression in a By-Law that deals with a matter dealt with by a provision of the *Corporations Act* has the same meaning as in that provision of the *Corporations Act*.
- c) Subject to clause 1.2(b), unless the contrary intention appears, an expression in a By-Law that is defined in section 9 of the *Corporations Act* has the same meaning as in that section.

#### 1.3 Delegation of Director's Powers

The Directors hereby delegate such of their powers to the persons contemplated in this By-Law to the extent and as may be necessary to give full force and effect to this By-Law.

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## 2. COMPLAINTS AND DISCIPLINARY PROCEDURE

### 2.1 Complaints

Any person may lodge with the Company a complaint against a Member or a Representative of a Member by submitting a signed complaint statement which:

- a) must set out all matters giving rise to the complaint; and
- b) may be accompanied by other statements or material relating to the matters giving rise to the complaint.
- c) A person may only lodge a complaint under paragraph (a) if the complaint alleges that the Complainee:
  - (i) is in breach of or has breached the Constitution;
  - (ii) is in breach of or has breached the By-Laws;
- d) is in breach of or has breached the Code of Ethics; or
- e) has engaged in any other conduct likely to bring the relevant profession or the Company into disrepute.
- f) If the Complainant or the Complainee is an office bearer or Director of the Company, the office bearer or Director of the Company must not participate in any subsequent investigation, proceedings and determination in respect of that complaint.

### 2.2 Determinations of the Appointed Board Member and the CEO of the Company

- a) The Appointed Board Member and the CEO of the Company must consider each complaint and determine whether:
  - (i) the matter is one which should be referred for mediation. If the matter is referred for mediation but mediation does not resolve the matter, the Appointed Board Member and the CEO of the Company shall determine whether or not there may have been improper conduct;
  - (ii) the matters giving rise to the complaint, whether or not substantiated, are trivial, would not amount to improper conduct or for other reasons in the Appointed Board Member and the CEO of the Company's discretion do not warrant further action. The Appointed Board Member and the CEO of the Company may dismiss the allegation or take such other action, not involving a sanction, which the Appointed Board Member and the CEO of the Company deem appropriate; or
  - (iii) the matters giving rise to the allegation may, if substantiated, amount to improper conduct.
- b) If the Appointed Board Member and the CEO of the Company determine that there may have been improper conduct under paragraphs (a) (i) or (a) (iii), the Appointed Board Member and the CEO of the Company must institute disciplinary proceedings by establishing a Complaints Tribunal consisting of three (3) Directors of the Company.

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- c) If the Appointed Board Member and the CEO of the Company institute, or intend to institute, disciplinary proceedings under paragraph (b), the CEO of the Company must notify the Complainee of that fact.

## 2.3 Notice of the institution of disciplinary proceedings

A notice referred to in clause 2.2(c) must:

- a) be sent to the Complainee in writing;
- b) set out the nature of the matters giving rise to the allegation;
- c) indicate the substance of any statements or other material accompanying the allegation;
- d) specify the provisions of the Code of Ethics, the Constitution or the By-Law or the conduct likely to bring the relevant profession or the Company into disrepute as the case may be which, the matters giving rise to the allegation may, if substantiated, contravene;
- e) set out the penalties which may be imposed; and
- f) set out the rights of response, and the time, which must not be less than 28 days from the date of receipt of the notice by the Complainee, within which the Complainee may respond.

## 2.4 Response by Complainee

The Complainee may within the time specified in the notice:

- a) respond in writing setting out an explanation; and
- b) request a hearing by the Complaints Tribunal

## 2.5 Disciplinary proceedings and Complaints Tribunal

- a) Complaints against Members or Member's Representatives which the Appointed Board Member and the CEO of the Company determine may have involved improper conduct under clause 2.2(a) must be dealt with by a Complaints Tribunal established under clause 2.2(b).
- b) A quorum of a Complaints Tribunal consists of two (2) persons; and
- c) The CEO, or in the CEO's absence, the President's nominee, must act as secretary of the Complaints Tribunal.

## 2.6 Procedure

The Complaints Tribunal must:

- a) consider the complaint and any explanations of the Complainee;
- b) if requested by the Complainee, conduct a hearing in such manner as the Complaints Tribunal determines;

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- c) report to the Board within thirty (30) days of being appointed, and within fourteen (14) days of receiving the explanation of the Complainee, if an explanation is submitted, and must set out in writing:
- d) its findings of fact;
- e) the evidence on which the findings of fact were based; and
- f) its recommendation to the Board; and
- g) either recommend that:
- h) the complaint be dismissed; or
- i) the Complainee be held to be in breach of the Constitution, the By-Laws, the Code of Ethics or is guilty of bringing the relevant profession or the Company into disrepute.

## 2.7 The Board

The Board must consider the report of the Complaints Tribunal and must either:

- a) dismiss the allegation;
- b) determine that the allegation is justified but that no disciplinary sanction should be imposed on the Complainee;
- c) determine that the allegation is justified and:
  - (i) issue a reprimand; and/or
  - (ii) suspend or terminate the Complainee's membership; and/or
  - (iii) suspend or terminate the Representative's status as a Representative of a Member.

## 2.8 Complainee to be notified of result of disciplinary proceedings

- a) The Complainee and the CEO must be sent a copy of:
  - (i) the Complaints Tribunal's recommendations; and
  - (ii) the decision and reasons for decision of the Directors.

## 2.9 Notices

- a) Any notice given under clause 2 is deemed to be properly served if sent by registered mail to the last address advised in writing of the Member.
- b) If a Complainee, either before or within thirty (30) days after the conclusion of the disciplinary proceedings against the Complainee, satisfies the relevant body that:
  - (i) any notice to the Complainee was not in fact delivered or was delivered later than delivery might have been expected in the ordinary course of mail;

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- (ii) in consequence the Complainee was unaware at the time which he or she should have been aware that disciplinary proceedings had been instituted against him or her; and
- (iii) the Complainee requests that the proceedings be re-opened, the relevant body must re-open the proceedings notwithstanding that they may have been concluded.

## 2.10 Suspension of proceedings

- a) If the commencement or continuation of disciplinary proceedings may:
- b) be or give rise to conduct being in contempt of any court or tribunal having power to punish for contempt; or
- c) prejudice the fair hearing of any proceeding relating to the matters giving rise to the allegation before, or likely to come before, a court or tribunal having power to determine rights or liabilities in relation to those matters,
- d) the proceedings may be terminated or suspended in relation to the allegation for such period as the relevant body considers appropriate.

## 2.11 Disciplinary proceedings to be kept confidential

- a) No member of the public, and in particular no representative of the media, may attend:
- b) the hearing; or
- c) any of the deliberative proceedings of the Complaints Tribunal or the Directors.
- d) All disciplinary proceedings must be held confidential other than the final determination made by the Board in accordance with clause 2.7 of this By-Law.

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## BY-LAW 2 – ELECTION REGULATIONS

### ELECTIONS OF DIRECTORS

Elections for Directors must be held in accordance with the *Corporations Act* and the Consult Australia Constitution and By-Laws.

#### Eligibility to Stand for Election at an Annual General Meeting

A member firm may put forward any employee or representative of their firm to stand for election at the AGM provided that the Member<sup>1</sup> is a Financial Member<sup>2</sup> at the time of nomination.

#### Annual General Meetings (as per clause 5.7 of the Consult Australia Constitution)

At every second Annual General Meeting (AGM) one half of the Directors must retire effective from the end of the meeting, however they may stand for re-election

The Directors who must retire at the AGM are those who have in office longest since their last election but, in the situation where they were elected on the same day, those to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.

In the event that one half of the Directors does not equal a whole number, then the number of Directors that must resign is the nearest whole number after rounding downwards.

*For example: If the number of Directors equals seven (7) then at least four (3) Directors must resign.*

#### Notices to Members

In accordance with the *Corporations Act*, Consult Australia must give at least 21 days notice to the members in order to hold an AGM. This includes when the meeting involves the appointment of Directors. For those members who have elected to receive their Notices by means other than electronic, the Notice must reach them no less than 21 clear days of the date of the meeting.

#### Election Procedure and Timing

##### *Call for Nominations*

To ensure compliance with the *Corporations Act* a call for nominations is to be sought nine (9) weeks prior to the date of the meeting and must be submitted no less than five (5) weeks prior to the date of the meeting.

##### *Collation and Preparation of Notices*

<sup>1</sup> "Member" means a person whose name is entered in the Register as a member of the Company

<sup>2</sup> "Financial Member" means that a firm has paid the required levy and/ or fee as determined by the Board and that that amount is not more than three (3) months in arrears

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Following the close of the nomination period, the Secretary<sup>3</sup> will collate the nominations and prepare the appropriate notices. This process includes a check of whether the nominated individual is eligible to stand for election under the Constitution.

## *Issuing of Notices*

To ensure compliance with the *Corporations Act* notices to all voting members are issued twenty eight (21) days prior to the date of the meeting, regardless of their preferred method to receive notices.

## **Board Composition**

Consult Australia aspires to promote diversity in the Board in order to achieve exceptional management of its affairs through the unique contributions of people with diverse backgrounds, experiences and perspectives. To achieve this, the Board of Directors has set out the following aspirational guidelines in relation to the composition of the Board:

- a) Two (2) Members or Representatives of Members from Small to Medium Enterprises;
- b) Three (3) Members or Representatives of Members that represent the diversity of professions and industries:
  - (i) involved in the provision of consulting services for the built and/or natural environment; and
  - (ii) other professions that assist in the provision and maintenance of good governance, including the management of the financial and legal affairs of the company;
- c) One (1) Member or Representative of a Member from a Regional Area, being an area that is located outside a capital city, with the exception of Hobart and Darwin;
- d) One (1) Chief Executive Officer, Managing Director, Managing Partner or principal that is a Representative of a Member where that Member is a Large Enterprise; and
- e) The seven (7) Members or Representatives in (a) – (d) above should be from at least 3 States or Territories.

## **First Meeting of the Board Following the AGM**

At the first meeting of the newly elected Board following the AGM, the elected Directors must appoint the officers of the Board in accordance with the Consult Australia Constitution Clauses 5.2 – 5.6.

## **Voting at general meeting**

- (a) The appointment of directors is generally determined by members at the company's AGM. The Constitution contains a number of rules regarding how members may make decisions in general meeting.

<sup>3</sup> "Secretary" means the company secretary of the Company for the time being.

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- (b) Clause 3.9 provides that a resolution is passed if more votes are cast in favour of the resolution than there are against. Unless a poll is requested by members, a resolution is voted on by a show of hands. Clause 3.15 sets out the number of votes that each member has, which depends generally on the total number of staff employed by that member as indicated in the latest membership survey. Accordingly, a resolution at a meeting of members will pass if more votes are passed in favour than there are against, taking into account the number of votes of each member as set out in clause 3.15.
- (c) In the event of an equal number of votes for and against a resolution, clause 3.12 provides that the Chairperson has a casting vote in addition to any vote(s) they may already have. Accordingly, the Chairperson has the ability to break any voting tie on a resolution at a general meeting of members. In the event of a deadlock (tied votes), the Chairman will direct the returning Officer to draw the winner by lot and then the Chairman will exercise his/her casting vote by voting in favour of the individual that was drawn by lot.

## Timeline

The below table outlines the timeline of events in the lead up to a Consult Australia election of Directors. The responsibility for carrying out the below tasks in accordance with the Constitution and the *Corporations Act* lies with the Company Secretary.

Time	Action
11 weeks prior	Prepare call for nominations
9 weeks prior	Issue call for nominations
9 – 5 weeks prior	Respond to queries
9 – 5 weeks prior	Start to prepare meeting notices
5 weeks prior	Call for nominations close
5 weeks prior	Finalise meeting notices
21 days prior	Issue meeting notices as per voting holders instructions
3 weeks prior	Make arrangements for the AGM/ EGM vote to be scrutineered
1 week prior	Finalise in-person voting forms
3 days prior	Collate and prepare apologies and proxies Prepare voting spreadsheet (including eligibility to vote)



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Day of meeting	Ensure those in attendance are eligible to vote, distribute voting forms, advise proxies held, carry out vote, calculate and report election results
Week following the election	<p>Advise successful and non-successful candidates (if not present)</p> <p>Update ASIC registers</p>

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## BY-LAW 3 – MEMBERSHIP CATEGORIES

Membership Category	Full Membership	Associate Membership	Affiliate Membership
<b>Subscription Fee</b>	Full fee	2/3 fee	By negotiation
<b>Eligibility</b>	<p>A Firm or Business that provides consulting services for the built and/or natural environment.</p> <p>Firm or Business is primarily run by professionals (i.e. those who are members or eligible to be members of a professional institute with a code of ethics).</p> <p>Firm or Business must have an ABN.</p>	Other Firms or Businesses who don't fully meet the spirit and intent of the Objects as determined by the Board	Government Agencies/Authorities.
<b>Typical Types of Firms or Businesses</b>	<p>Engineers</p> <p>Architects</p> <p>Planners</p> <p>Quantity Surveyors</p> <p>Environmental Scientists</p> <p>Project Managers</p>	<p>Contractors</p> <p>Suppliers</p> <p>Recruitment firms</p> <p>Non-professional businesses</p> <p>Banks</p> <p>Universities</p> <p>Management Consultants</p> <p>Research Consultants</p> <p>Lawyers</p> <p>IT Consultants</p>	Corporatised government authorities.

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<p><b>Membership Rights</b></p>	<p>Full rights</p>	<p>Receive limited membership services, get no vote at Consult Australia AGM and are not eligible to sit on Committees (State, Policy or Governance).</p>	<p>Receive limited membership services, get no vote at Consult Australia AGM and are not eligible to sit on Committees (State, Policy or Governance).</p>
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Firms and Businesses can self select but Board has absolute right of discretion to deny approval of membership in any category and suggest re-application in another category.

## **BY-LAW 3(a)**

In the event that a member resigns their membership prior to the 31<sup>st</sup> July they will be entitled to have their invoice for that financial year waived. Should the resignation be received after this date in any given financial year the member will be required to pay the annual membership fee up to the 30<sup>th</sup> June in that financial year.

## **BY-LAW 3(b) Life Membership Post nominal**

The following post nominal may be used by Life Members of Consult Australia;  
 Consult Australia (Life)  
 OR  
 CA (Life).