
CONSTITUTION

AUSTRALIAN PACKAGING COVENANT ORGANISATION

LIMITED ACN 614 026 587

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Corporations Act 2001 (Cth)

Public company limited by guarantee

Australian Packaging Covenant Organisation Limited ACN 614 026 587

PRELIMINARY

1. Name of Company

- 1.1 The name of the **Company** is Australian Packaging Covenant Organisation Limited (the **Company**).

2. Nature of Company

- 2.1 The **Company** is a not-for-profit public company limited by guarantee.

3. Limited liability of Members and guarantee on winding up

- 3.1 The liability of the **Members** is limited to the amount of the guarantee in clause 32.
- 3.2 Each **Member** undertakes to contribute an amount not more than \$20.00 (the guarantee) to the assets of the **Company** if the **Company** is wound up while the **Member** is a Member, or within 12 months afterwards, for:
- a) payment of the **Company's** debts and liabilities contracted before the **Member** ceased to be a Member; and
 - b) costs and expenses of winding up.

4. Definitions

- 4.1 In this **Constitution**, words and phrases have the meaning set out in clauses 83 and 84.

CHARITABLE PURPOSES AND POWERS

5. Objects

- 5.1 The **Company's** principal objects are to pursue the following for public charitable purposes:
- a) the protection and enhancement of the natural environment or of a significant aspect of the natural environment; and
 - b) the provision of information or education, or the carrying on of research, about the natural environment or a significant aspect of the natural environment.

5.2 The Company may pursue its **Objects** through activities including, without limitation, the following activities:

- a) designing, developing and promoting sustainable consumer packaging options optimised to achieve a reduced impact on, conserving and protecting the natural environment;
- b) designing, developing and promoting the efficient recovery, collection and recycling of consumer packaging to achieve a reduced impact on, conserving and protecting the natural environment;
- c) providing industry organisations with tools to design, develop and promote sustainable consumer packaging options optimised to achieve reduced environmental impact;
- d) providing industry organisations with tools to design, develop and promote the efficient recovery, collection and recycling of consumer packaging to conserve and protect the natural environment including reducing waste;
- e) increasing public support for the protection of the natural environment through sustainable packaging designs and the recovery and recycling of used packaging materials;
- f) providing information and education to the Australian population about conservation of the natural environment through the use of sustainable packaging designs;
- g) raising funds and providing funds to initiatives which conserve and protect the natural environment by designing and developing sustainable consumer packaging options;
- h) raising funds and providing funds to initiatives researching means to reduce the environmental impacts of consumer packaging waste;
- i) working collaboratively with industry and governments under the auspices of the **Australian Packaging Covenant**, or similar agreements as negotiated from time to time;
- j) establishing and maintaining a public fund to be called the Australian Packaging Covenant Fund (the **Fund**) for the specific purpose of supporting the environmental **Objects** of the **Company**. The **Fund** is established to receive all gifts of money or property for this purpose and any money received because of such gifts must be credited to its bank account. The **Fund** must not receive any other money or property into its account and it must comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.

5.3 For the avoidance of doubt the term 'natural environment' has the same meaning as in the *Income Tax Assessment Act 1997* (Cth), and includes waste

minimisation and the promotion of the principles of ecologically sustainable development.

- 5.4 The purpose of the Company is to pursue the **Objects** in clause 5.1 only and to apply the income and property of the Company whensoever derived solely to promote the **Objects**.
- 5.5 The Company may do all such things as are incidental or conducive to the attainment of the **Company's Objects**.

6. Powers

- 6.1 Subject to clause 7, the **Company** has the following powers, which may only be used to carry out its **Objects** set out in clause 5.1:
- a) the powers of an individual; and
 - b) all the powers of a company limited by guarantee under the **Corporations Act**.

7. Not-for-profit

- 7.1 The income and property of the **Company** shall be used and applied solely in promotion of its **Objects** as set out in clause 5.1, and no portion shall be distributed, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to members, directors or trustees of the **Company**.
- 7.2 Clause 7.1 does not stop the **Company** from making a payment to any person:
- a) for goods or services they have provided to the **Company**, or expenses they have properly incurred in the course of supplying goods or services to the **Company**, at fair and reasonable rates, or rates more favourable to the **Company**; and,
 - b) in carrying out the **Objects** under clause 5.1,
- provided that payment is made in good faith.

8. Conduit policy

- 8.1 Any allocation of funds or property to other persons or organisations will be made in accordance with the **Objects** of the **Company** and not be influenced by the preference of the donor.

9. Amending the Constitution

- 9.1 Subject to clause 9.2, the **Members** may amend this **Constitution** by passing a **Special Resolution**.
- 9.2 The **Members** must not pass a **Special Resolution** that amends this **Constitution** if passing it causes the **Company** to:

- a) act contrary to its **Objects**;
- b) disqualify itself from holding **Charitable** status;
- c) be in breach of any relevant law; or
- d) bring itself into disrepute.

MEMBERSHIP

10. Members

10.1 The Members of the Company are:

- a) on registration of the **Company** under the **Corporations Act**, the persons, corporations and organisations which have agreed to become or remain **Members** of the **Company** and are named in the application for registration; and
- b) any other persons, corporations or organisations, which are admitted to membership in accordance with this **Constitution**.

11. Rights and obligations

11.1 The rights of **Members** are not transferable, and terminate when the **Member** ceases to be a **Member**.

11.2 **Members** must at all times comply with this **Constitution**, the **Member Charter** and **By-laws** as determined by the **Board** and amended from time to time.

12. Eligibility and admission for membership

12.1 An individual or **Body Corporate** that supports the **Objects** of the **Company** and meets the membership criteria set out in the **Member Charter** as set by the **Board** from time to time, is eligible to apply to be a **Member** of the **Company** under clause 12.2.

12.2 An application for membership of the **Company** must be:

- a) in writing in a form approved by the **Board**; and
- b) accompanied by such documents or evidence as to qualification for membership, including any criteria as the **Board** determines in its sole and absolute discretion.

12.3 Notwithstanding the provisions of clause 12.2 an application for membership must include:

- a) the name and contact details of the applicant. If the applicant is a **Body Corporate**, the proper legal entity name, **ABN** or **ACN**, and details of its **Registered Office**;

- b) a statement of support for the **Objects** of the Company;
- c) an unqualified agreement to be bound by the terms of this **Constitution**, including paying the guarantee under clause 3.2 if required; and
- d) an unqualified agreement to be bound by the **Member Charter** and **By-laws** as determined by the **Board** from time to time.

- 12.4 An application for membership must be determined in accordance with the membership criteria in the **By-laws**.
- 12.5 An application for membership of the **Company** must be determined as soon as reasonably practicable after its receipt.
- 12.6 Determinations of membership applications by the **Board** are final and binding. Neither the **Board** nor the **Company** needs to provide any reasons to any person for accepting or rejecting an application for membership.
- 12.7 If an application for membership is rejected, the **Secretariat** must notify the applicant in writing of that fact within a reasonable period and refund to the applicant any annual subscription paid by the applicant.
- 12.8 If an applicant is accepted for membership, the **Secretariat** must notify the applicant of admission in such form as the **Board** may determine from time to time and the name and details of the applicant must be entered in the **Register**.
- 12.9 An applicant that is accepted for membership becomes a **Member** when the applicant's name is entered in the **Register** and all fees and subscriptions have been paid in full.

13. Annual subscription

- 13.1 The annual subscription and any other sums payable by a **Member** is such sum as the **Board** may prescribe from time to time in the schedule of membership fees in the **By-laws**.
- 13.2 All annual subscriptions are due and payable in accordance with the schedule of membership fees in the **By-laws**.
- 13.3 Subject to any relevant **By-law**, if any annual subscriptions payable by the **Member**, or portion thereof, remain unpaid, a **Member**:
 - a) ceases to be entitled to any of the rights or privileges of membership; and
 - b) may be further subject to disciplinary action in accordance with clause 17.
- 13.4 The rights and privileges of a **Member** may be reinstated on payment of all annual subscriptions and any other sums owing in arrears.

14. Register of Members

14.1 A **Register** of the **Members** of the **Company** must be kept and maintained by the **Company**.

14.2 The following details must be entered in the **Register**:-

- a) For each **Member**:
 - i name;
 - ii address;
 - iii any alternative address nominated by the **Member** for the service of notices; and
 - iv date the **Member** was entered on to the **Register**.
- b) For each individual or **Body Corporate** who ceased to be a **Member** in the last seven (7) years:
 - i name;
 - ii address;
 - iii any alternative address nominated by the **Member** for the service of notices; and
 - iv dates the membership started and ended.

14.3 The **Company** must give **Members** access to the **Register** upon written request.

14.4 Information that is accessed from the **Register** must only be used in a manner that is consistent with the interests and/or rights of **Members** and the **Corporations Act**.

15. Ceasing to be a Member

15.1 A person elects not to be a **Member** of the **Company** if they:

- a) give the **Secretary** written notice of resignation, which is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice;
- b) are expelled under clause 17.4(c);
- c) fail to comply with the **Constitution, By-laws** or **Member Charter**, or fail to respond to a written request to comply with a provision of the **Constitution, By-laws** or **Member Charter** within 30 days from the date of such a request;

- d) are a natural person who:
 - i dies;
 - ii becomes of unsound mind, or a person whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - iii becomes bankrupt or compounds with his or her creditors or assigns his estate for the benefit of his or her creditors; or
- e) are a **Body Corporate** that becomes **Insolvent**.

DISPUTE RESOLUTION AND DISCIPLINING MEMBERS

16. Dispute resolution

- 16.1 The dispute resolution procedure in this clause applies to disputes (including disagreements) between any **Member** and the **Company** in relation to:
 - a) this **Constitution**;
 - b) any **Member Charter**; or
 - c) the **By-laws**.
- 16.2 A **Member** (including a previous Member expelled under clause 17.4) must not commence a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 The affected party to the dispute must notify the other party in writing of the dispute within 14 days of the act or omission. The notifying party is to provide particulars including the factual and/or legal basis of the dispute.
- 16.4 Within 28 days of the giving of the notice of the dispute, a representative of each party must meet to attempt to resolve the dispute. For the purposes of this clause 16.4, the representative of the **Company** shall be the **Chief Executive Officer**, or such other person determined by the **Board**.
- 16.5 If the dispute is not resolved within 14 days after the parties have convened in accordance with sub-clause 16.4, the **Chief Executive Officer** of the **Company** must notify the **Board** of the dispute within seven (7) days.
- 16.6 Upon notification of the dispute, the **Board** may:
 - a) seek to resolve the dispute in good faith within 14 days; or
 - b) with the agreement of the other party(s), appoint an independent expert to determine the dispute.

- 16.7 If the parties fail to agree on the appointment of an independent expert within 14 days of receiving notification under clause 16.6, the **Chief Executive Officer** is to nominate the independent expert.
- 16.8 When nominating an independent expert, the **Chief Executive Officer** is not to nominate:
- a) an Officer or employee of the **Company**;
 - b) another **Member** of the **Company**;
 - c) any person connected with the dispute; or,
 - d) any person upon whose appointment the parties have previously failed to agree.
- 16.9 When the person to be the independent expert has been agreed on or nominated, the **Company**, on behalf of both parties is to appoint the independent expert in writing, with a copy of the written appointment to be provided to the other party, setting out:
- a) the dispute being referred to the independent expert;
 - b) the independent expert's fees;
 - c) the procedures detailed in this clause 16; and,
 - d) any other matters which are relevant to the engagement.
- 16.10 The parties are to share equally the independent expert's fees and out-of-pocket expenses, including a security deposit if required. Each party is to otherwise bear their own costs and share equally any other costs of the process.
- 16.11 Each party is to make written submissions to the independent expert and provide a copy of those written submissions to the other party as follows:
- a) within 7 days after the appointment of the independent expert, the notifying party is to submit details of the claimed act or omission; and
 - b) within 14 days after receiving a copy of that submission, the other party is to submit a written response.
- 16.12 In making the decision, the independent expert acts as an expert and not as an arbitrator and is:
- a) not liable for acts, omissions or negligence;
 - b) to make a decision on the basis of the written submissions from the parties and without formalities such as a hearing;

- c) required within 35 days of appointment to give the decision in writing, with brief reasons, to each party; and
- d) bound by the rules of natural justice.

16.13 Within 14 days of receiving the decision of the independent expert, if either party gives notice in writing to the other that the party is dissatisfied with the independent expert's decision, the independent expert's decision is of no effect, and either party may then commence litigation.

16.14 Unless a party has a right to commence litigation under clause 16.13 the parties are to treat the determination of the independent expert as final and binding and to give effect to it.

17. Disciplining Members

17.1 A **Member** may be warned, have its rights and privileges suspended or be expelled from membership of the **Company** only in accordance with the provisions of this clause 17.

17.2 Where the **Chief Executive Officer** forms a reasonable opinion that a **Member**, either directly or through the acts or omissions of its **Representative**, is in contravention of any provision of this **Constitution**, the **Chief Executive Officer** may do any of the following:

- a) send a written warning to the **Member**; or
- b) by notice in writing, temporarily suspend the membership of that **Member**, until the **Board** can make a determination under clause 17.4.

17.3 The **Chief Executive Officer** must notify the **Board** within seven (7) days of any act performed pursuant to clause 17.2.

17.4 Subject to clauses 17.5, 17.6, 17.7 and 17.9, upon receipt of a notification under clause 17.3, the **Board** may resolve, in its absolute and sole discretion:

- a) to take no further action regarding the matter;
- b) to suspend the **Member's** rights and privileges of membership for a period of up to 12 months commencing on the date of the resolution;
- c) to expel the **Member** from the **Company**; or
- d) to require the matter to be determined at a **General Meeting**.

17.5 At least fourteen (14) days before the **Directors** meeting at which a resolution under clause 17.4 will be considered, the **Secretary** must notify the **Member** in writing:

- a) that the **Directors** are considering a resolution to warn, suspend or expel the **Member**;

- b) the date, time and location of the meeting;
- c) the allegations against the **Member** and any other information relevant to the matter;
- d) the nature of the resolution that has been proposed; and
- e) that the **Member** may provide an explanation to the **Directors**, and details of how to do so.

17.6 Before the **Board** passes any resolution under clause 17.4, the **Member** must be given the opportunity to make representations at the meeting by:

- a) sending the **Directors** a written explanation, which must be tabled at that **Directors** meeting; and/or
- b) speaking at the meeting.

17.7 Before the **Board** passes any resolution under clause 17.4, the **Directors** must consider the nature of the allegations, any information they deem relevant to the matter and the representations of the **Member** (if any) made under clause 17.6.

17.8 The **Secretary** must give written notice to the **Member** of any decision under clauses 17.4 as soon as reasonable practicable.

17.9 Disciplinary procedures under this clause 17 must be completed within a reasonable time.

17.10 The **Company**, each of the **Directors** and the **Chief Executive Officer** has no liability for any loss or damage the **Member** suffers arising as a consequence of, or in connection with, a decision under this clause 17.

GENERAL MEETINGS

18. General Meetings called by Directors

18.1 The **Directors** may call a **General Meeting**.

19. General Meetings called by members

19.1 If members with at least 5% of the votes that may be cast at a **General Meeting** make a written request to the **Company** for a **General Meeting** to be held, the **Board** must:

- a) within 21 days of the **Members'** request, give all **Members** notice of a **General Meeting**; and
- b) hold the **General Meeting** within 2 months of the **Members'** request.

19.2 The **Members** who make the request for a **General Meeting** must:

- a) state in the request any resolution to be proposed at the **General Meeting**;
 - b) sign the request; and
 - c) give the request to the **Company**.
- 19.3 Separate copies of a document setting out a notice or request for the purpose of clause 19.1 may be signed by **Members**, if the wording is the same in each copy.
- 19.4 For the purpose of clause 19.1, the percentage of votes that **Members** have is to be worked out as at midnight before the request in clause 19.1 is given to the **Company**.
- 19.5 If the **Directors** do not call the meeting within twenty-one (21) days of being requested under clause 19.1, 50% or more of the **Members** who made the request may call and arrange to hold a **General Meeting**.
- 19.6 To call and hold a **General Meeting** under clause 19.5 the **Members** must:
- a) follow the procedures for **General Meetings** set out in this **Constitution**;
 - b) call the meeting using the list of **Members** on the **Company's Register**, which the **Company** must provide to the **Members** making the request at no cost; and
 - c) hold the **General Meeting** within three months after the request was given to the **Company**.
- 19.7 The **Company** must pay the **Members** who request the **General Meeting** any reasonable expenses they incur because the **Directors** did not call and hold the meeting.
- 20. Members' resolutions and statements**
- 20.1 **Members** with at least 5% of the votes that may be cast on a resolution, or at least 100 members who are entitled to vote at the meeting, may give:
- a) written notice to the **Company** of a resolution they propose to move at a **General Meeting (Members' Resolution)**; and/or
 - b) a written request to the **Company** that the **Company** give all of its **Members** a statement about a proposed resolution or any other matter that may properly be considered at a **General Meeting (Members' Statement)**.
- 20.2 A notice of a **Members' Resolution** or request for a **Members' Statement** must:

- a) set out the wording of the proposed resolution or statement to be distributed, as applicable;
 - b) be signed by the **Members** proposing the notice or request, as applicable; and
 - c) be provided to the Company.
- 20.3 Separate copies of a document setting out a notice or request for the purpose of 20.1 may be signed by **Members** if the wording is the same in each copy.
- 20.4 For the purpose of clause 20.1, the percentage of votes that **Members** have is to be worked out as at midnight before the request or notice is given to the **Company**.
- 20.5 If the **Company** has been given notice of a **Members' Resolution** under clause 20.1, the resolution must be considered at the next **General Meeting** held more than two months after the notice is given.
- 20.6 This clause 20 does not limit any other right that a **Member** has to propose a resolution at a **General Meeting**.
- 20.7 The **Company** must give notice of a proposed resolution or distribute any statement under this clause 20.
- 20.8 If the **Company** has been given a notice or request under 20.1:
- a) in time to send the notice of proposed **Members' Resolution** or a copy of the **Members' Statement** to **Members** with a notice of meeting, it must do so at the **Company's** cost; or
 - b) too late to send the notice of proposed **Members' Resolution** or a copy of the **Members' Statement** to **Members** with a notice of meeting, then the **Members** who proposed the resolution or made the request must pay the expenses reasonably incurred by the **Company** in giving **Members** notice of the proposed **Members' Resolution** or a copy of the **Members' Statement**. However, at a **General Meeting**, the **Members** may pass a resolution that the **Company** will pay these expenses.
- 20.9 The **Company** does not need to send the notice of proposed **Members' Resolution** or a copy of the **Members' Statement** to **Members** if:
- a) it is more than 1000 words long;
 - b) the **Board** considers it may be defamatory;
 - c) clause 20.8(b) applies, and the **Members** who proposed the resolution or made the request have not paid the **Company** adequate compensation to cover the cost of sending the notice of the proposed **Members' Resolution** or a copy of the **Members' Statement** to **Members**; or

- d) in the case of a proposed **Members' Resolution**, the resolution does not relate to a matter that may be properly considered at a **General Meeting** or is otherwise not a valid resolution able to be put to the **Members**.

21. Annual General Meeting

- 21.1 A **General Meeting**, called the annual general meeting, must be held at least once in every calendar year (**Annual General Meeting**).
- 21.2 Before or at the **Annual General Meeting**, the **Board** must give information to the **Members** on the **Company's** activities and finances during the period since the last **Annual General Meeting**.
- 21.3 The **Chair** of the **Annual General Meeting** must give **Members** as a whole a reasonable opportunity at the **Annual General Meeting** to ask questions or make comments about the management of the **Company**.

22. Notice of General Meetings

- 22.1 Notice of a **General Meeting** must be given to:
 - a) each **Member** entitled to vote at the **General Meeting**;
 - b) each **Director**; and
 - c) the **Auditor** (if any).
- 22.2 Notice of a **General Meeting** must be provided in writing at least twenty-one (21) days before the **General Meeting**.
- 22.3 Subject to clause 22.4, notice of a **General Meeting** may be provided less than twenty-one (21) days before the meeting if:
 - a) for an **Annual General Meeting**, all the **Members** entitled to attend and vote at the **Annual General Meeting** agree beforehand; or
 - b) for any other **General Meeting**, **Members** with at least 95% of the votes that may be cast at the **General Meeting** agree beforehand.
- 22.4 Notice of a **General Meeting** cannot be provided less than twenty-one (21) days before the **General Meeting** if a resolution will be moved to:
 - a) remove a **Director**;
 - b) appoint a **Director** in order to replace a **Director** who was removed; or
 - c) remove an **Auditor**.
- 22.5 A notice calling a **General Meeting** must:

- a) set out the place, date and time for the **General Meeting** (and, if the **General Meeting** is to be held in two (2) or more places, the technology that will be used to facilitate this;
- b) state the general nature of the business to be transacted at the **General Meeting**;
- c) if a **Special Resolution** is to be proposed at the **General Meeting**, set out an intention to propose the **Special Resolution** and state the **Special Resolution**; and
- d) a statement that **Members** have a right to appoint a proxy, and setting out the following information:
 - i whether or not the proxy needs to be a **Member**;
 - ii that the proxy form must be delivered to the **Company** at its **Registered Office** or the address (including an electronic address) specified in the notice of the **General Meeting**; and
 - iii the proxy must be delivered to the **Company** at least forty-eight (48) hours before the **General Meeting**.

22.6 The failure or accidental omission to send a notice of a **General Meeting** (including a proxy appointment form) to any **Member** or the non-receipt of a notice (or form) by any **Member** does not invalidate the proceedings at or any resolution passed at the **General Meeting**.

23. Business to be conducted at a General Meeting

23.1 The ordinary business of an **Annual General Meeting** shall include:

- a) to confirm the minutes of the previous **Annual General Meeting** and any other **General Meetings** held since the last **Annual General Meeting**;
- b) to receive from the **Board** the finance reports for the financial year that has just ended; and
- c) to elect **Directors** in place of those retiring.

23.2 The **Annual General Meeting** may also transact any special business of which notice is given.

23.3 No other business except as stated in the notice of **General Meeting** shall be transacted at that **General Meeting**. Any **Member** desiring to bring business to a **General Meeting** may give notice of business in writing to the **Board**, who shall include that business in the notice for the next **General Meeting**.

24. Using technology to hold meetings

- 24.1 A **General Meeting** may be held (including at more than one venue) using any technology that gives **Members** as a whole a reasonable opportunity to participate in the **General Meeting**.
- 24.2 Anyone using this technology is taken to be present in person at the **General Meeting**.

PROCEEDINGS AT GENERAL MEETING

25. Quorum at General Meetings

- 25.1 The **Members** in **General Meeting** may not transact any business unless a quorum of **Members** is present for the whole **General Meeting**.
- 25.2 A quorum of **Members** is eight (8) **Members** entitled to vote at the **General Meeting** (whether in person, by **Representative**, or by proxy).
- 25.3 If a quorum is not present within thirty (30) minutes after the starting time stated in the notice of **General Meeting** then:
- a) if the **General Meeting** was called on the requisition of **Members** as set out in clause 19, it is automatically cancelled; or
 - b) in any other case:
 - i it will stand adjourned to a date, time and place that the **Chair** specifies. If the **Chair** does not specify one or more of those things, the meeting is adjourned to:
 - A. if the date is not specified – the same day in the next week;
 - B. if the time is not specified – the same time;
 - C. if the place is not specified – the same place; and
 - ii if at the adjourned **General Meeting** a quorum is not present within thirty (30) minutes after the time appointed for that **General Meeting**, the **General Meeting** is cancelled.

26. Auditor's right to attend meetings

- 26.1 The **Auditor** (if any) is entitled to attend any **General Meeting** and to be heard by the **Members** on any part of the business of the **General Meeting** that concerns the **Auditor** in the capacity of **Auditor**.
- 26.2 The **Company** must give the **Auditor** (if any) any communications relating to the **General Meeting** that a **Member** of the **Company** is entitled to receive.

27. Appointment of Chair

27.1 Every **General Meeting** must have a **Chair**. The **Chair** will be determined as follows:

- a) The person elected as the **Independent Chair** by the **Directors** in accordance with clause 57 may chair each **General Meeting**. On the election of a new **Independent Chair**, the new **Independent Chair** will **Chair** each subsequent **General Meeting**;
- b) Secondly, the **Directors** present at the **General Meeting** must elect one of their number to **Chair** that **General Meeting** if the **Independent Chair** is not present within thirty (30) minutes after the time appointed for the holding of the **General Meeting**, or if present is not willing to act; or
- c) Thirdly, the **Members** entitled to vote at the **General Meeting** present in person, by **Representative** or by proxy at the **General Meeting** must elect one of those **Members** to **Chair** that **General Meeting** if either of the following applies:
 - i there are no **Directors** present within thirty (30) minutes after the time appointed for the holding of the **General Meeting**; or
 - ii all **Directors** present decline to **Chair** the **General Meeting**.

28. Chair's powers

28.1 The **Chair** is responsible for the conduct of the **General Meeting**, and for this purpose must give **Members** a reasonable opportunity to make comments and ask questions.

28.2 The **Chair** does not have the casting vote, except as defined in clause 38.6.

28.3 The **Chair** may temporarily vacate the **Chair** at a **General Meeting** in favour of another person present at any time and for any reason they see fit.

28.4 The **Chair's** rulings on all matters relating to the order of business, procedure and conduct of the **General Meeting** is final and no motion of dissent from a ruling of the **Chair** may be accepted.

28.5 The **Chair** may, in his or her absolute discretion, refuse any person admission to a **General Meeting**, or expel the person from the **General Meeting** and not permit them to return, if the **Chair** reasonably considers that the person's conduct is inappropriate. Inappropriate conduct in a **General Meeting** includes:

- a) the use of offensive or abusive language which is directed to any person, object or thing;
- b) disrupting the **General Meeting** to a point where the **General Meeting** is not able to continue; or

- c) possession of any articles, including a recording device or other electronic device or a sign or banner, which the **Chair** considers is dangerous, offensive or disruptive or likely to become so.

29. Adjournment of meetings

29.1 The **Chair** of a **General Meeting** at which a quorum is present:

- a) in his or her discretion, may adjourn the **General Meeting**; or
- b) must adjourn the **General Meeting** if a majority of **Members** present direct the **Chair** to do so.

29.2 The only business that can be transacted at an adjourned **General Meeting** is the unfinished business of the initial **General Meeting**.

29.3 Notice of an adjourned **General Meeting** need not be given in accordance with clause 22 unless the **General Meeting** has been adjourned for more than twenty-one (21) days.

30. Voting at General Meetings

30.1 Every **Member** present in person, by proxy, or **Representative** has one vote.

31. Objections

31.1 No objection may be raised to the qualification of a voter except at the **General Meeting**, or adjourned **General Meeting**, at which the vote objected to is given or tendered.

31.2 An objection to the qualification of a voter must be referred to the **Chair**, whose decision is final.

31.3 A vote which the **Chair** does not disallow pursuant to an objection under this clause is valid.

32. Conducting a vote

32.1 Voting may be conducted and decided by:

- a) a show of hands; or
- b) a vote in writing (**Poll**).

32.2 Before a vote is taken, the **Chair** must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

32.3 On a show of hands, the **Chair's** decision is conclusive evidence of the result of the vote.

32.4 The **Chair** and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

33. Demand for a Poll

- 33.1 A **Poll** may be demanded on any resolution instead of or after a vote by show of hands by either:
- a) the **Chair**;
 - b) at least five (5) **Members** present; or
 - c) a **Member** present with at least 5% of the votes that may be cast on the resolution.
- 33.2 The demand for a **Poll** may be withdrawn.
- 33.3 The demand for a **Poll** does not prevent the continuance of a meeting for the transaction of business other than the question on which a **Poll** is demanded.
- 33.4 If a **Poll** is duly demanded, it must be taken in the manner and timing determined by the **Chair**, except if it relates to the appointment of a **Chair** under clause 27 or on a question of adjournment under clause 29, where the **Poll** must occur immediately. The result of the **Poll** is the resolution of the **General Meeting** at which the **Poll** was demanded.

REPRESENTATIVES AND PROXIES

34. Representatives of Members

- 34.1 Each **Member** entitled to vote in **General Meeting** may appoint a **Representative** to attend and vote on their behalf.
- 34.2 A person attending as a **Representative** of a body corporate which is a **Member**, has all the powers of a **Member**, except where expressly notified in writing to the contrary by the **Member**.

35. Appointment and Removal of Representatives

- 35.1 A **Member** which is a body corporate may from time to time appoint a natural person(s) as its **Representative(s)** in any matters connected with the **Company**, including as permitted by the **Corporations Act**.
- 35.2 A **Member** may appoint, and remove, its **Representative(s)** by written notice to the **Company**.

36. Appointment of Proxies

- 36.1 A **Member** may appoint another person as their proxy to attend and vote instead of the **Member**. A proxy need not be, or be associated with, a **Member**.
- 36.2 A document appointing a proxy must:
- a) be in writing and signed by the **Member**;

- b) contain the **Member's** name and address;
 - c) include the proxy's name or the name of the office held by the proxy; and
 - d) state the **General Meeting** at which the appointment may be used.
- 36.3 A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- 36.4 To be valid, the proxy must be nominated on a proxy form as provided by the **Company**.
- 36.5 Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the **Member** can do in respect of a **General Meeting**.
- 36.6 The appointment of a proxy must be received by the **Company** at the **Registered Office** at least forty-eight (48) hours before the **General Meeting**.

APPOINTMENT AND RETIREMENT OF DIRECTORS

37. Number of Directors

- 37.1 The number of **Directors** must not be less than three (3) or more than eleven (11).

38. Appointment of Directors

- 38.1 Subject to the provisions of clause 38.7, apart from **Independent Directors**, **Skills Based Directors**, and **Directors** appointed under clause 38.2, **Director** appointments are determined by a **Member** vote on a resolution passed in a **General Meeting**.
- 38.2 The **Directors** may appoint a person as a **Director** to fill a casual vacancy if that person qualifies for the relevant category of **Director** under clause 39.
- 38.3 The **Directors** must appoint at least one (1), but no more than three (3) **Independent Directors**. To be eligible to be appointed as an **Independent Director** the person must be able to demonstrate their independence and satisfy clause 39.3.
- 38.4 The **Directors** may appoint up to two (2) **Skills Based Directors**. To be eligible to be appointed as a **Skills Based Director** the person must be able to satisfy the requirements set out in clause 39.4.
- 38.5 If the number of **Directors** is reduced to fewer than three (3) or is less than the number required for a quorum, the continuing **Directors** may act for the purpose of increasing the number of **Directors** to three (3) (or higher if required for a quorum) or calling a **General Meeting**, but for no other purpose.

- 38.6 In the event of an equal vote for two or more candidates, the **Chair** of the **General Meeting** will have the casting vote.
- 38.7 Where the number of **Approved Candidates** for a category is equal to or less than the number of vacancies for that category, those **Approved Candidates** will be deemed to have been elected without a vote being necessary. Where there is not a sufficient number of **Approved Candidates** for a category, the **Board** may, at its discretion appoint an appropriate person to fill a vacancy, provided the person is able to demonstrate their ability to satisfy clause 39 for the relevant category of **Director**.
- 38.8 If there are no vacant positions, an election will not be held at the **Annual General Meeting**.

39. Eligibility for Appointment as a Director

- 39.1 A person is eligible for election as an **Industry Association Director** if they:
- a) are an **Industry Expert**, or an Officer or employee of an **Industry Association** that is a **Member** of the **Company**;
 - b) meet the requirements for a proposed **Director** set out in the **By-Laws** from time to time;
 - c) are supportive of the **Company's Objects**;
 - d) give the **Company** their signed consent to act as a **Director** of the **Company**; and
 - e) are not disqualified or ineligible from being a **Director** under the **Corporations Act** or the **ACNC Act**.
- 39.2 A person is eligible for election as a **Brand Owner Director** if they:
- a) are an Officer or employee of a **Brand Owner** that is a **Member** of the **Company**;
 - b) meet the requirements for a proposed **Director** set out in the **By-Laws** from time to time;
 - c) are supportive of the **Company's Objects**;
 - d) give the **Company** their signed consent to act as a **Director** of the **Company**; and
 - e) are not disqualified from becoming a **Director** under the **Corporations Act** or the **ACNC Act**.
- 39.3 A person is eligible for appointment as an **Independent Director** of the **Company** if they:

- a) are independent from the **Company**;
- b) meet the requirements for a proposed **Director** set out in the **By-Laws** from time to time ;
- c) are supportive of the **Company's Objects**;
- d) give the **Company** their signed consent to act as a **Director** of the **Company**; and
- e) are not disqualified or ineligible from being a **Director** under the **Corporations Act** or the **ACNC Act**.

39.4 A person is eligible for appointment as a **Skills Based Director** of the **Company** if they satisfy the requirements of either clause 39.1 or 39.2.

40. Nomination Process for Appointment of Directors

40.1 Each year the **Secretary** is to notify **Members** of the number of vacant directorships (as determined by the Board, and excluding vacancies created by the retirement of Directors at the **Annual General Meeting** appointed to fill casual vacancies) to be filled at the next **Annual General Meeting**. This notice is to be issued no later than fifty-six (56) days prior to the **Annual General Meeting**, and if there is a vacancy the notice must include information on eligibility and the nomination process.

40.2 Nominations for the position of **Director** to be voted upon by **Members** at a **General Meeting** may be submitted by any person, including a **Member**, except where such nomination is for an **Industry Expert**, which may be submitted by an **Industry Association** or the **Board**. Any such nomination must be:

- a) in writing and signed by the proposer and (if not identical to the proposer) the nominee for election;
- b) accompanied by a consent to act as a **Director** signed by the nominee for election, as required under the **Corporations Act**;
- c) accompanied by a nomination form identifying the category of **Director** for which nomination is made, and addressing core criteria, as determined by the **Board** in the **By-laws** from time to time (including evidence of the nominee meeting the criteria set out in the 'Board Skills map' developed by the **Board** in accordance with the **By-Laws**, as amended from time to time);
- d) accompanied by a letter of support from the candidate's nominee; and
- e) received by the **Secretary** no later than twenty-one (21) days after the notification outlined in clause 40.1.

- 40.3 A nomination may be withdrawn by the relevant nominee for election at any time prior to the relevant **Annual General Meeting** by giving written notice to the **Secretary**.
- 40.4 The **Secretary** must present nominations for a directorship to the **Board** and the **Board** must determine if the nominees are eligible, based on the provisions of this **Constitution** and any other criteria as stated in the **By-laws** from time to time. Once endorsed by the **Board** the nominee becomes an **Approved Candidate**.

41. Election of Chair

- 41.1 The **Directors** must elect one of the appointed **Independent Directors** as the **Independent Chair**.
- 41.2 The **Directors** may elect one of the appointed **Independent Directors** as the **Company's** deputy chair.
- 41.3 In the absence of any **Independent Directors**, the **Directors** must elect one **Director** as the **Company's** Chair while they undertake recruitment of **Independent Directors**.
- 41.4 An appointment made under clause 41.3 must relinquish office within six (6) months.

42. Term of office

- 42.1 Subject to the terms of this **Constitution**, a **Director** will hold office for a maximum period of three (3) years.
- 42.2 For **Industry Association Directors** and **Brand Owner Directors**, their term of office starts at the end of the **Annual General Meeting** at which they are elected, and ends at the earlier of:
- a) the close of the **Annual General Meeting** that is in the third year following the year in which they are appointed as a **Director** at the **Annual General Meeting**; and
 - b) a date determined by the **Members** in accordance with clause 42.4.
- 42.3 For **Independent Directors** and **Skills Based Directors**, their term of office starts from the date they are appointed as a **Director**, and ends at the earlier of:
- i the date that is the three (3) year anniversary of the date of their appointment; and
 - ii a date determined by the **Board** at the time of their appointment.
- 42.4 **Members** may determine the period for which a **Director** who is appointed in accordance with clause 38.1 or 38.7 may hold office by passing a resolution at a **General Meeting**.

- 42.5 A retiring **Director** is eligible for re-election or re-appointment, save that a **Director** will be ineligible for re-election or re-appointment after holding office for four (4) consecutive terms.
- 42.6 Clause 42.5 does not prevent a former **Director** from subsequently being elected or appointed as a **Director** in accordance with this **Constitution**, provided that a period of at least twelve (12) consecutive calendar months has passed since the person last held the office of **Director**.
- 42.7 At each **Annual General Meeting**, any **Director** appointed by the **Directors** to fill a casual vacancy must retire and may stand for re-election as an **Approved Candidate**. This clause does not apply to **Directors** appointed as **Independent Directors** or **Skills Based Directors**.

43. Retirement of Directors

- 43.1 A **Director** may retire from office by giving notice in writing to the **Company** of that **Director's** intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the **Company** and the date of resignation, if any, specified in the notice.

44. Vacation of office

- 44.1 In addition to the circumstances in which the office of a **Director** becomes vacant by virtue of another provision of this **Constitution**, the office of **Director** immediately becomes vacant if the **Director**:
- a) dies;
 - b) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
 - c) becomes bankrupt or **Insolvent** or makes any arrangement or composition with his or her creditors generally;
 - d) is absent from three (3) consecutive **Directors'** meetings without approval of the **Board**;
 - e) in the case of a **Brand Owner Director** or **Industry Association Director** (other than an **Industry Expert**):
 - i their employer, or **Company** of which they are an Officer, ceases to be a **Member** of the **Company**; or
 - ii they cease to be employed by, or be an Officer of, the **Member** under which they were nominated;
 - f) in the case of an **Independent Director**, they gain employment with, or become an Officer of, a **Member**; or

- g) become ineligible to be a **Director** of the **Company** under the **Corporations Act** or the **ACNC Act**.

45. Removal and automatic disqualification from office

- 45.1 The **Members** in a **General Meeting** may by ordinary resolution remove a **Director** from office before the expiration of his or her term of office and may by ordinary resolution elect another person as a replacement.
- 45.2 Notwithstanding the provisions of clause 45.1, if the **Director** that is removed from office is an **Independent Director** or **Skills Based Director**, then the **Members** are prohibited from electing another person as a replacement, and the **Board** must pass a resolution to appoint a person as an **Independent Director** or **Skills Based Director** (as applicable) in accordance with clause 38.3 or 38.4 (as applicable).

PAYMENTS TO DIRECTORS

46. Basis for payments to Directors

- 46.1 Subject to clause 46.2, a **Director** may:
 - a) receive remuneration for their services as a **Director**, provided that such remuneration has been approved by the **Board** and that the rate of remuneration is no more than a reasonable fee in accordance with usual market practice, or is at a rate more beneficial to the **Company**;
 - b) be reimbursed for expenses properly incurred by the **Director** in connection with the affairs of the **Company**, where payment does not exceed any amount previously approved by the **Board**;
 - c) be paid for any goods provided or services rendered to the **Company**, other than as a **Director**, where the provision of that service has the prior approval of the **Board** and the amount paid is no more than a reasonable fee in accordance with usual market practice for the work done, or is at a rate more beneficial to the **Company**, and is on reasonable commercial terms; and
 - d) receive remuneration as an employee of the **Company**, where the terms of employment have been approved by resolution of the **Board**, and the rate of remuneration, also approved by resolution of the **Board**, is no more than a reasonable fee in accordance with usual market practice or is at a rate more beneficial to the **Company**.
- 46.2 Payments to **Directors** are limited by the following:
 - a) if it is a requirement of an authority or approval conferred on the **Company** that the remuneration of **Directors** be limited or prohibited, nothing contained in the **Constitution** authorises a payment beyond the scope of the limitation imposed on the **Company** by that authority or

approval, and the making of payments is to be conditional upon a variation, waiver or revocation of the applicable authority or approval; and

- b) any permitted remuneration of a **Director** must be in line with and not exceed the then current remuneration guidelines and policies applicable to an organisation of the type and kind of the **Company** or in the absence of any such guidelines and policies, those nearest to the type and kind of the **Company**, including guidelines and policies for government bodies or government appointments.

POWERS OF THE BOARD

47. Powers of the Board

- 47.1 The **Directors** are responsible for managing and directing the activities of the **Company** to achieve the **Objects** set out in clause 5.1.
- 47.2 The **Board** may exercise all those powers of the **Company** as are not, by the **Corporations Act** or by this **Constitution**, required to be exercised by the **Members** in a **General Meeting** or otherwise.
- 47.3 The **Directors** must decide on the responsible financial management of the **Company** including any suitable written delegations of power under clause 48.

48. Delegation of powers

- 48.1 The **Board** may delegate any of its powers and functions to the **Chief Executive Officer**, the **Secretary**, a committee, or any other person, as the **Board** considers appropriate from time to time.
- 48.2 The delegation must be recorded in the **Company's** minute book.

49. Execution of documents

The **Company** may execute a document without using a common seal if the document is signed by:

- a) two **Directors** of the **Company**; or
- b) a **Director** and the **Secretary**.

DUTIES OF DIRECTORS

50. Directors duties

The **Directors** must comply with their duties as **Directors** under legislation and common law, and with the duties under **Governance Standard 5**.

51. Conflicts of interest

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

- a) to the other **Directors**; or
- b) if all of the **Directors** have the same conflict of interest, to the **Members** at the next **General Meeting**, or at an earlier time if reasonable to do so.

51.2 The disclosure of a conflict of interest by a **Director** must be recorded in the minutes of the meeting of **Directors** or minutes of the **General Meeting**.

51.3 Each **Director** who has a material personal interest in a matter that is being considered at a meeting of **Directors** (or that is proposed in a circular resolution) must not, except as provided under clause 51.4:

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

51.4 A **Director** may still be present and vote if:

- a) their interest arises because they are a **Member** of the **Company**, and the other **Directors** have the same interest;
- b) their interest relates to an insurance contract that insures, or would insure, the **Director** against liabilities that the **Director** incurs as a **Director** of the **Company** (see clause 75);
- c) their interest relates to a payment by the **Company** under clause 74 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**;
- d) **ASIC** makes an order allowing the **Director** to vote on the matter; or
- e) the **Directors** who do not have a material personal interest in the matter pass a resolution that:
 - i identifies the **Director**, the nature and extent of the **Director's** interest in the matter and how it relates to the affairs of the **Company**, and
 - ii says that those **Directors** are satisfied that the interest should not stop the **Director** from voting or being present.

PROCEEDINGS OF DIRECTORS' MEETINGS

52. Frequency

52.1 The **Directors** shall decide how often, where and when they meet.

53. Convening of Board Meetings

- 53.1 A **Director** may, and a **Secretary** must on the requisition of a **Director**, convene a **Board Meeting** by giving reasonable notice to all other **Directors**.

54. Notice of Board Meetings

- 54.1 The person convening a **Board Meeting** must ensure that notice of the **Board Meeting** is given to each **Director** at least twenty-four (24) hours before the meeting or at another time determined by **Board** resolution, except:

- a) all **Directors** may waive in writing the required period of notice for a particular meeting; and
- b) it is not necessary to give a notice of a **Board Meeting** to a **Director** who has requested and been given leave of absence by the **Board**.

55. Mode of meeting for Directors

- 55.1 A **Board Meeting** may be called or held using any technology agreed to by all the **Directors**. The agreement may be a standing one. A **Director** may only withdraw their consent within a reasonable period before the **Board Meeting**. The **Board** may otherwise regulate **Board Meetings** as it considers fit.

56. Quorum at Board Meetings

- 56.1 At a **Board Meeting**, the number of **Directors** whose presence is necessary to constitute a quorum is one half of the number of **Directors** holding office at the time (rounded up to the next highest whole number).

57. Appointment of Chair for Board Meeting

- 57.1 The **Independent Chair** is entitled to chair **Board Meetings**.
- 57.2 The deputy chair assumes the role and entitlements of the **Independent Chair**, when the **Independent Chair** is absent from a **Board Meeting**.
- 57.3 If there is no **Independent Chair** or deputy chair, or if at any **Board Meeting** neither the **Independent Chair** nor deputy chair is present within ten (10) minutes after the time appointed for holding the **Board Meeting**, or the **Independent Chair** and deputy chair are unwilling or unable to act, the **Directors** present must choose one of their number to chair the **Board Meeting**.

58. Voting at Board Meetings

- 58.1 Subject to this **Constitution**, questions arising at a **Board Meeting** are to be decided by a majority of votes of the **Directors** present and entitled to vote.
- 58.2 Each **Director** has one (1) vote.

- 58.3 In the case of an equality of votes at a **Board Meeting**, the **Independent Chair** does not have a second or casting vote in addition to their deliberative vote as a **Director**.

59. Circular Resolutions of Directors

- 59.1 The **Directors** may pass a circular resolution without a **Board Meeting** being held.
- 59.2 A circular resolution is passed if more than half of the **Directors** entitled to vote on the resolution sign:
- a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - b) separate copies of the document referred to in (a), as long as the wording of the resolution is the same in each copy.
- 59.3 A circular resolution of **Directors** is passed if the **Company** sends a circular resolution by email to the **Directors** and more than one half of the **Directors** entitled to vote on the resolution agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

60. Validity of acts of Directors

- 60.1 If it is discovered that:
- a) there was a defect in the appointment of a person as a **Director** or member of a **Board** committee; or
 - b) a person appointed to one of those positions was disqualified;
- all acts of the **Board** or the **Board's** committees before the discovery was made are valid as if the person had been duly appointed and was not disqualified.

BOARD OPERATIONS

61. Committees

- 61.1 The **Board** may in its absolute discretion establish one or more committees to provide advice and recommendations to the **Board** on specified matters.
- 61.2 The **Board** may, with respect to a committee:
- a) specify in writing from time to time the terms of reference and functions of the committee;
 - b) appoint any person the **Board** considers appropriate to the committee and remove any person from the committee at any time by written notice or otherwise in accordance with the terms of reference of that committee;

- c) specify the period and conditions (including as to remuneration, if any) from time to time of any such appointment to the committee; and
- d) terminate the committee at any time.

61.3 Except as provided in this **Constitution** or in a direction of the **Board**, the meetings and proceedings of a committee formed by the **Board** and/or other persons must be governed by the provisions of this **Constitution**, the **Member Charter** and **By-laws** in so far as they are applicable.

62. Minutes and records

62.1 The **Company** must, within one month of any action, make and keep the following records of that action:

- a) minutes of proceedings and resolutions of **General Meetings**;
- b) a copy of a notice of each **General Meeting**; and
- c) a copy of a **Members' Statement** distributed to **Members** under clause 20.

62.2 The **Company** must, within one month, make and keep the following records:

- a) minutes of proceedings and resolutions of **Board Meetings** (including meetings of any committees); and
- b) minutes of circular resolutions of **Directors**.

62.3 To allow **Members** to inspect the **Company's** records the **Company** must give a **Member** access to the records set out in clause 62.1.

62.4 The **Directors** must ensure that minutes of a **General Meeting** or a **Board Meeting** are signed within a reasonable time after the meeting by:

- a) the chair of the meeting, elected in accordance with either clause 27 or 41, or
- b) the chair of the next meeting, elected in accordance with either clause 27 or 41.

63. Financial and related records

63.1 The **Company** must make and keep written financial records that:

- a) correctly record and explain its transactions, financial position and performance; and
- b) enable true and fair financial statements to be prepared and to be audited.

- 63.2 The **Company** must also keep written records that correctly record its operations.
- 63.3 The **Company** must retain its records for at least 7 years.
- 63.4 The **Directors** must take reasonable steps to ensure that the **Company's** records are kept safe.

64. Reports

- 64.1 To the extent required by the **Corporations Act**, the **ACNC Act** or otherwise required by law, the **Board** must cause the **Company** to:
- a) prepare financial reports;
 - b) prepare **Directors'** reports;
 - c) notify each **Member** of the **Member's** right to receive reports from the **Company**; and
 - d) provide **Members** with reports, in a form and within such timeframe as required by the **ACNC Act** or otherwise required by law.

65. Audit

- 65.1 A registered company **Auditor** must be appointed. The remuneration of the **Auditor** must be fixed and the **Auditor's** duties regulated in accordance with the **ACNC Act** or as otherwise required by law.

66. Right of inspection

- 66.1 Except as otherwise required by the **Corporations Act**, a **Member** other than a **Director** does not have the right to inspect any accounting records or other documents of the **Company**, other than those set out in clause 62.1, unless the **Member** is authorised to do so by a court order or a resolution of the **Board**.

NOTICES

67. Notice

- 67.1 Unless otherwise specified, anything written to or from the **Company** in accordance with any clause in this **Constitution** constitutes written notice, and is subject to clauses 68 and 69.

68. Notice to the Company

- 68.1 Written notice or any communication under this **Constitution** may be given to the **Company**, the **Board** or the **Secretary** by any of the following means:
- a) by delivering it to the **Company's Registered Office**;

- b) by sending it by prepaid ordinary post (airmail if outside of Australia) to the **Company's Registered Office**, or to another address chosen by the **Company** for notice to be provided; or
- c) By sending it by email to the email address notified by the **Company** to the **Members** as the **Company's** email address.

69. Notice to Members

69.1 Written notice or any communication under this **Constitution** may be given to a **Member** by any of the following means:

- a) in person;
- b) by delivering it to a street address of the addressee;
- c) by sending it by prepaid ordinary post (airmail if outside of Australia) to a street or postal address of the addressee;
- d) by sending it by email to the email address nominated by the **Member** for receipt of notices from the Company; or
- e) by notifying the **Member** at an email or other electronic address nominated by the **Member**, that the notice is available at a specified place or address (including an electronic address).

69.2 A notice:

- a) when delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- b) when sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- c) when sent by email:
 - i at the time shown in the delivery confirmation report generated by the sender's email system; or
 - ii if the sender's email system does not generate a delivery confirmation report within 12 hours of the time the email is sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar, at the time which is 24 hours from the time the email was sent; and
- d) when given under the provisions of clause 69.1(e), is taken to be given on the next business day after the notification has been sent.

However, if the notice is deemed to be received on a day which is not a business day or after 5pm, it is deemed to be received at 9am on the next business day.

Financial year

70. Company's financial year

- 70.1 The **Company's** financial year is from 1 July to 30 June, unless the **Board** passes a resolution to change the financial year.

By-laws and Member Charter

71. By-laws and Member Charter

- 71.1 The **Board** may pass a resolution to make, vary or remove the **By-laws** to give effect to this **Constitution**.
- 71.2 The **Board** may pass a resolution to adopt, vary or remove the **Member Charter** to give effect to this **Constitution**.
- 71.3 Members and **Directors** must comply with the **By-laws** and **Member Charter**.

EXECUTIVE OFFICERS

72. Secretaries

- 72.1 The **Board** must appoint at least one (1) **Secretary**.
- 72.2 The appointment of a **Secretary** may be for such period, at such remuneration and upon such conditions as the **Board** thinks fit.
- 72.3 Subject to any contract between the **Company** and the **Secretary**, the **Secretary** may be removed or dismissed by the **Board** at any time, with or without cause.
- 72.4 The **Secretary** must be a natural person but is not required to be a **Representative** or a **Member**.
- 72.5 Prior to their appointment, a person must give the **Board** their signed consent to act as **Secretary** of the **Company**.
- 72.6 The role of the **Secretary** shall include:
- a) maintaining the **Register** of the **Company's Members**;
 - b) attending **General Meetings**;
 - c) maintaining the **Records** of the **Company**; and
 - d) any other administrative functions of the **Company**, as required by the **Board** or this **Constitution**.

73. Chief Executive Officer (CEO)

- 73.1 The **Board** must appoint a person to the position of **Chief Executive Officer**.

- 73.2 The appointment of a **Chief Executive Officer** may be for such a period, at such remuneration and upon such conditions as the **Board** thinks fit and shall include the power and responsibility to:
- a) develop business plans, budgets, strategies, policies, processes, codes of conduct, **By-laws** and charters for consideration by the **Directors** and to implement them to the extent approved by the **Board**;
 - b) manage the financial and other reporting mechanisms of the **Company**;
 - c) approve and incur expenditure subject to specified expenditure limits; and
 - d) manage the day to day operations of the **Company**.
- 73.3 Subject to any relevant laws and the contract of employment between the **Company** and the **Chief Executive Officer**, the **Chief Executive Officer** of the **Company** may be removed or dismissed by the **Board** at any time.
- 73.4 The **Board** may:
- a) confer on the **Chief Executive Officer** such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by a **Director**) as the **Board** thinks fit;
 - b) withdraw, suspend or vary any of the powers, discretions and duties conferred on the **Chief Executive Officer**; and
 - c) authorise the **Chief Executive Officer** to delegate all or any of the powers, discretions and duties conferred on the **Chief Executive Officer**.
- 73.5 The **Chief Executive Officer** must be a natural person but must not be a **Representative** or a **Member**.
- 73.6 An act done by a person acting as **Chief Executive Officer** is not invalidated by reason only of:
- a) a defect in the person's appointment as the **Chief Executive Officer**; or
 - b) the withdrawal, suspension or variation of the powers, discretions or duties conferred on the **Chief Executive Officer**,
- if that circumstance was not known by the person when the act was done.
- 73.7 Notwithstanding any other provision of this **Constitution**, the **Company** in **General Meeting** has no power to terminate the appointment of the **Chief Executive Officer** nor appoint a person to the position of **Chief Executive Officer**.
- 73.8 The **Board** may confer such powers, directions and duties upon the **Chief Executive Officer** in accordance with clause 73.4 by any means it sees fit including, but not limited to:

- a) by resolution;
- b) in any terms of reference for a **Committee**;
- c) in any **By-laws**; or
- d) in any charter, policy, or guideline used in the governance of the **Company**.

INDEMNITY AND INSURANCE

74. Indemnity

- 74.1 The **Company** indemnifies each officer of the **Company** out of the assets of the **Company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **Company**.
- 74.2 In this clause, 'officer' means a **Director, Secretary, Chief Executive Officer** or other person considered an officer of the **Company** and includes such persons after they have ceased to hold that office.
- 74.3 In this clause, 'to the relevant extent' means:
- a) to the extent that the **Company** is not precluded by law (including the **Corporations Act**) from doing so; and
 - b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 74.4 The indemnity is a continuing obligation and is enforceable by a person even though that person is no longer an officer of the **Company**.

75. Insurance

- 75.1 To the extent permitted by law (including the **Corporations Act**), the **Company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Company** against any liability incurred by the person as an officer of the **Company**.

ESTABLISHMENT OF THE PUBLIC FUND

76. Establishment of Fund

- 76.1 The **Company** may establish and maintain a public fund to be called the Australian Packaging Covenant Fund (the **Fund**). If the **Company** establishes the **Fund**, it must apply donated funds for the purpose of supporting the environmental **Objects** of the **Company**:
- a) to which gifts of money or property for that purpose are to be made;

- b) to which any money received by the **Company** because of such gifts is to be credited to its bank account;
- c) that does not receive any other money or property; and
- d) that will comply with subdivision 30-E of the *Income Tax Assessment Act 1997*.

77. Requirements of the Fund

77.1 If the **Company** establishes the **Fund**, it must inform the **Department** responsible for the environment as soon as possible if:

- a) it changes its name, or the name of the **Fund**;
- b) there is any change to the membership of the management committee of the **Fund**; or
- c) there has been any departure from the model rules for public funds for organisations on the **Register of Environmental Organisations**.

78. Ministerial Rules

78.1 The **Company** agrees to comply with any rules that the **Treasurer** and the **Minister** with responsibility for the environment may make to ensure that gifts made to the **Fund** are only used for the **Company's Objects**.

79. Statistical Information

79.1 Statistical information requested by the **Department** on donations to the public **Fund** will be provided within four (4) months of the end of the financial year.

79.2 An audited financial statement for the **Company** and its **Fund** will be supplied with the annual statistical return. The statement will provide information on the expenditure of **Fund** monies and the management of **Fund** assets.

80. Regulation and management of the Fund

80.1 The objective of the **Fund** (if any) is to support the **Company's** environmental purposes.

80.2 Members of the public are to be invited to make gifts of money or property to the **Fund** (if any) for the environmental purposes of the **Company**.

80.3 Money from interest on donations, income derived from donated property, and money from the realisation of such property is to be deposited into the **Fund** (if any).

80.4 Where the **Company** establishes a **Fund**, a separate bank account is to be opened to deposit money donated to the **Fund**, including interest accruing

thereon, and gifts to it are to be kept separate from other funds of the **Company**.

- 80.5 Receipts are to be issued in the name of the **Fund** (if any) and proper accounting records and procedures are to be kept and used for the **Fund** (if any).
- 80.6 The **Fund** (if any) will be operated on a not-for-profit basis.
- 80.7 A committee of management of no fewer than three persons will administer the **Fund** (if any). The **Committee** will be appointed by the **Company**. A majority of the members of the committee are required to be 'responsible persons' as defined by the **Guidelines to the Register of Environmental Organisations**.

WINDING UP

81. Winding up of the Fund or revocation of endorsement

- 81.1 At the first occurrence of the winding up of the **Fund** (if any), or if the Company is endorsed under Subdivision 30-BA of the *Income Tax Assessment Act 1997*, the revocation of its endorsement, any **Surplus Assets** of the **Fund** remaining after the satisfaction of all debts and liabilities must be transferred to a fund, authority or organisation:
- a) with charitable purpose(s) similar to, or inclusive of, the **Objects** in clause 5.1;
 - b) to which income tax deductible gifts can be made; and
 - c) that is listed on the **Register of Environmental Organisations**.

82. Winding up of the Company

- 82.1 If the **Company** is wound up, any **Surplus Assets** that remain after the satisfaction of all debts and liabilities must not be distributed to a **Member** or a former **Member** of the **Company**, unless that **Member** or former **Member** is a **Registered Charity**.
- 82.2 Any **Surplus Assets** that remain after the satisfaction of all debts and liabilities after the **Company** is wound up must be distributed to one or more **Registered Charities**:
- a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 5.1;
 - b) which also prohibit the distribution of any **Surplus Assets** to its members to at least the same extent as the **Company**; and
 - c) which is exempt from income tax.

- 82.3 For the avoidance of doubt, any winding-up of the **Fund** must be carried out in accordance with clause 81.

DEFINITIONS AND INTERPRETATION

83. Definitions and interpretation

- 83.1 In this **Constitution**, unless the context requires otherwise, the following definitions will apply:

ABN means Australian Business Number.

ACN means Australian Company Number.

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

Approved Candidate means a person whose candidacy for election as a **Director** has been approved by the **Board** in accordance with clause 40.4.

ASIC means the Australian Securities and Investments Commission, its successors, or a replacement body.

Auditor means the **Company's** auditor (if any).

Australian Packaging Covenant (formerly the *National Packaging Covenant*), means the agreement first entered into on 27 August, 1999 between industry and government as a co-operative venture to achieve a nationally consistent approach to the lifecycle management of consumer packaging, and includes any replacement agreement entered into for the same purpose after that date.

Board means **Directors** acting as the board of the **Company**.

Board Meeting means a meeting of **Directors** held in accordance with clauses 52 to 58.

Body Corporate has the same meaning as defined in the Corporations Act.

Brand Owner means:

- a) a person who is the owner or licensee in Australia of a trade mark under which a product is sold or otherwise distributed in Australia, whether the trade mark is registered or not;
- b) a person who is the franchisee in Australia of a business arrangement which allows an individual, partnership or company to operate under the name of an already established business;
- c) in the case of a product that has been imported, the first person to sell that product in Australia;

- d) in respect of in-store packaging, the supplier of the packaging to the retailer; or
- e) in respect of plastic bags, the importer or manufacturer of the plastic bags or the retailer who provides the plastic bag to the consumer for the transportation of products purchased by the consumer at the point of sale.

Brand Owner Director means a **Director** who is employed by, or is an Officer of, a **Brand Owner Member** and elected by **Members** at a **General Meeting** or appointed by the **Directors** in accordance with clause 38.2 to fill a casual vacancy of a **Brand Owner Director**.

By-laws means the rules made by the **Board** under the provisions of clause 71.1 to control the actions of the **Members**.

Chair means the chair of the **General Meeting** appointed in accordance with clause 27.

Charitable has the same meaning as defined in the *Charities Act 2013* (Cth).

Chief Executive Officer has the meaning given in clause 73.

Company means the company referred to in clause 1.

Constitution means this document.

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

Department means the Department of Environment, or such other name by which the Australian government department with responsibility for the environment is known from time to time.

Director means a person occupying the position of a director of the **Company**.

Fund means the fund established under clause 76.

General Meeting means a meeting of the **Members** of the **Company** and includes the **Annual General Meeting** under clause 21.

Governance Standard 5 means the duties of responsible persons set out in the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth) regulation 45.25 as amended, superseded, substituted or replaced from time to time.

Guidelines to the Register of Environmental Organisations refers to the document of the same name, including any amendments or substituted versions of that document, as published by the **Department**.

Independent Chair means the **Independent Director** elected by the **Directors** in accordance with clause 41.1.

Independent Director means a person who satisfies the provisions of clause 39.3 and is appointed by the **Directors** under 38.3.

Industry Association means an organisation registered under the *Associations Incorporation Act 2009* (NSW) or any other comparable Australian federal, state or territory legislation.

Industry Association Director means a **Director** who is an Industry Expert, or is employed by, or is an Officer of, an **Industry Association Member** elected by **Members** at a **General Meeting** or appointed by the **Directors** in accordance with clause 38.2 to fill a casual vacancy of an **Industry Association Director**.

Industry Expert means a person who:

- a) from the person's training and study, has specialised knowledge in; and
- b) has at least 10 years experience in,

a field or business specified for the purposes of this definition in the By-laws from time to time.

Insolvent means any of the following events affecting a person:

- a) the person disposes of the whole or any part of its assets, operations or business other than in the normal course of business;
- b) any step is taken to enter into any arrangement between the person and its creditors;
- c) the person ceases to be able to pay its debts as they become due;
- d) the person ceases to carry on business;
- e) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of the person's assets or business;
- f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or controller or other like person of the whole or any part of the person's assets or business;
- g) if the Member is a partnership or joint venture and any person of the partnership or joint venture commits or is subject to any of the events set out in (a) to (f);
- h) the Member is a partnership or joint venture and any step is taken to dissolve the partnership or joint venture; or
- i) an application for winding-up is made which is not stayed within 14 days or a winding-up order is made.

Member means a **Signatory** whose name is entered in the **Register** as a **Member** of the **Company**.

Member Charter means a written code of conduct, membership behaviour and actions required, by whatever name, by the **Company** (if any).

Minister means the Minister of the Commonwealth of Australia with responsibility for the **Department**.

Objects means the **Company's** principal objects, which are set out in clause 5.1.

Officer has the same meaning as defined in section 9 of the **Corporations Act**.

Poll means **Members** voting on a proposed resolution or other question by means of a ballot.

Register means the register of **Members** kept by the **Company** under the **Corporations Act**.

Register of Environmental Organisations means the Register of Environmental Organisations administered by the Department of the Environment in consultation with the Australia Taxation Office and enabled under the *Income Tax Assessment Act 1997* (Cth).

Registered Charity means a charity that is registered under the **ACNC Act**.

Registered Office has the same meaning as defined in the **Corporations Act**.

Representative means the person appointed by a **Member** in accordance with clauses 34 or 35 to be its representative.

Secretariat means any person delegated to perform administrative functions for the **Company**. It may include the **Secretary**, **Chief Executive Officer** or any other employee of the **Company**

Secretary means any person appointed to perform the duties of a secretary of the **Company** under clause 72.

Signatory means a person that accedes to the **Australian Packaging Covenant** after it is made.

Skills Based Director means a person who satisfies the provisions of clause 39.4 and is appointed by the **Directors** under clause 38.4.

Special Resolution means a resolution:

- a) of which notice has been given under clause 22.5(c); and,
- b) that has been passed by at least 75% of the votes cast by **Members** present and entitled to vote on the resolution.

Surplus Assets means any assets (including property) of the **Company** that remain after paying all debts and other liabilities of the **Company**, including the costs of winding up.

Treasurer means the Treasurer of the Commonwealth of Australia.

83.2 In this **Constitution**, unless the context otherwise requires:

- a) the singular includes the plural and vice versa, and words importing a gender include other genders;
- b) words importing natural persons include corporations;
- c) headings are for the ease of reference only and do not affect the construction of this **Constitution**;
- d) The words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- e) Reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

84. Reading this Constitution with the Corporations Act

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

84.2 While the **Company** is a **Registered Charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this **Constitution**, which are inconsistent with those Acts.

84.3 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this **Constitution**.