

# Constitution of the Speckle Park International Limited

a company limited by guarantee

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## Contents

Introduction .....	3
Purposes and powers .....	4
Members .....	5
Dispute resolution and disciplinary procedures .....	9
General meetings of members .....	11
Members' resolutions and statements.....	15
Voting at general meetings .....	16
Directors.....	18
Powers of directors.....	21
Duties of directors.....	23
Directors' meetings.....	24
Secretary.....	26
Minutes and records.....	26
By-laws and regulations.....	27
Administrative matters .....	27
Indemnity, insurance and access.....	29
Winding up.....	30

## Introduction

### 1. Definitions

1.1 In this Constitution:

- (a) **Association** means Speckle Park International Incorporated, which transferred its registration to the Corporations Act when the Company was registered
- (b) **Company** means the Company referred to in clause 4 and includes the **Association** when the context requires
- (c) **Corporations Act** means the Corporations Act 2001 (Cth)
- (d) **elected chair** means a person elected by the directors to be the Company's President and chair under clause 47
- (e) **general meeting** means a meeting of members and includes the annual general meeting, under clause 25.1
- (f) **Herdbook** means the herdbook of Speckle Park cattle maintained by the Company which records animals owned by members and registered with the Company
- (g) **initial member** means a person who is named in the application for registration of the Company, with their consent, as a proposed member of the Company
- (h) **member representative** means an individual nominated by a body corporate member to represent it in Company matters pursuant to clause 17
- (i) **person** includes a body corporate
- (j) **present** means, in connection with a general meeting, a member present in person, by member representative or by proxy at the venue or venues for the meeting and including attending by technology
- (k) **special resolution** means a resolution:
  - i. of which notice has been given under clause 26.5(c), and
  - ii. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and
- (l) **stud** in relation to an animal means an animal registered on the Herdbook
- (m) **surplus assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.
- (n) **signed** and **signing** include signing by electronic means.

### 2. Interpretation

2.1 In this Constitution:

- (a) Words denoting the singular include the plural and vice versa, and words denoting one gender include all genders
- (b) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and

- (c) 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).

**3. Application of the Corporations Act**

- 3.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 3.2 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.

**4. Name of the Company**

- 4.1 The name of the Company is Speckle Park International Limited ACN 058 202 449.

**5. Type of Company**

- 5.1 The Company is a not-for-profit public company limited by guarantee.
- 5.2 The liability of members is limited to the amount of the guarantee in clause 6.

**6. The guarantee**

- 6.1 Each member must contribute an amount not more than \$100 (the guarantee) to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:
  - (a) debts and liabilities of the Company incurred before the member stopped being a member, or
  - (b) costs of winding up.

## **Purposes and powers**

**7. Objects**

- 7.1 The Company's objects are to pursue the following purposes:
  - (a) to encourage the breeding of Speckle Park cattle and to develop, promote, and advance the Speckle Park cattle industry in Australia, New Zealand, Canada and internationally
  - (b) to collect and publish information on Speckle Park cattle
  - (c) to administer the Herdbook for Speckle Park cattle in Australia and internationally, and to ensure its integrity
  - (d) to carry out or promote the carrying out of scientific research relevant to advancing the Speckle Park breed, or
  - (e) to do such things as necessary, helpful or incidental to furthering the other purposes of the Company.

## **8. Powers**

- 8.1 The Company has the powers of a natural person and of a body corporate but does not have the power to issue shares.
- 8.2 The Company must exercise its powers in furtherance of the objects of the Company.

## **9. Not-for-profit**

- 9.1 The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 9.2 and 80.
- 9.2 Clause 9.1 does not prevent the Company from, in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company, or
  - (b) the payment of market value rent by the Company to a member for premises leased by the member to the Company.
- 9.3 All payments to a member, or agreements to make future payments, pursuant to clause 9.2 must be disclosed to the members at the next general meeting.

## **Members**

### **10. Membership and register of members**

- 10.1 The number of members of the Company is unlimited.
- 10.2 The members of the Company are:
- (a) the initial members, and
  - (b) any other person that the directors allow to be a member in accordance with this Constitution.
- 10.3 All persons who were members of the Association on the day of registration of the Company are entitled to be registered as members of the Company without application.
- 10.4 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member or member representative:
    - iii. name
    - iv. address
    - v. email address
    - vi. any alternative address nominated by the member for the service of notices
    - vii. membership category, and
    - viii. date the member was entered on to the register.
  - (b) for each person who stopped being a member in the last 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.

- v. The Company must give current members access to the register of members (for a proper purpose).

10.5 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

10.6 Members must continue to meet the criterion set out in this constitution to be eligible to be members of the Company.

## 11. Categories of membership

11.1 The categories of membership are:

- (a) ordinary members
- (b) associate members
- (c) life members
- (d) commercial members
- (e) junior members, and
- (f) international members.

11.2 Additional categories of members, if recommended by the directors, may be created from time to time by the members in general meeting.

## 12. Who can be a member

12.1 **Ordinary membership:** a person who:

- (a) supports the purposes of the Company,
- (b) is at least 18 years of age, and
- (c) owns at least 5 stud Speckle Park animals registered on the Herdbook,

is eligible to apply to be an ordinary member of the Company.

12.2 **Associate membership:** a person who:

- (a) supports the purposes of the Company,
- (b) is at least 18 years of age, and
- (c) owns at least 1 stud Speckle Park animal registered on the Herdbook,

is eligible to apply to be an associate member of the Company.

12.3 **Life membership:** a person who:

- (a) supports the purposes of the Company
- (b) is at least 18 years of age, and
- (c) in the opinion of the directors, has over a period of years made a significant contribution to the Company,

is eligible to be appointed by the directors as a life member of the Company.

12.4 **Commercial membership:** a person who:

- (a) supports the purposes of the Company,
- (b) is at least 18 years of age, and
- (c) is breeding cattle or marketing cattle through a commercial enterprise,

is eligible to apply to be a commercial member of the Company.

12.5 **Junior membership:** a person who:  
(a) supports the purposes of the Company, and  
(b) is less than 25 years of age,  
is eligible to apply to be a junior member of the Company.

12.6 **International member:** a person who:  
(a) Supports the purposes of the Company  
(b) Is at least 18 years of age and  
(c) Resides outside of Australia and New Zealand,  
Is eligible to apply to be an international member of the Company.

### **13. Members' rights**

- 13.1 All members:
- (a) may attend general meetings and functions of the Company. and
  - (b) will receive notice of general meetings.
- 13.2 Associate members, commercial members, international members and junior members have the responsibilities of membership but are not entitled to vote for directors or on any other resolution of the members.
- 13.3 Ordinary members receive all of the rights and responsibilities of membership of the Company.
- 13.4 New members are not entitled to vote for a period of 2 months from them becoming a member.

### **14. How to apply to become a member**

- 14.1 A person may apply to become a member of the Company by completing the Company's membership application form and sending it to the secretary, including a statement that the person:
- (a) wants to become a member
  - (b) supports the purpose(s) of the Company
  - (c) agrees to comply with the Company's Constitution, regulations and by-laws, policies and codes of conduct, including paying the guarantee under clause 6 if required, and
  - (d) enclosing or otherwise paying the annual subscription fee (if any) and any membership application fee (if any) set by the directors.

### **15. Directors decide whether to approve membership**

- 15.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 15.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 16).
- 15.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected and return their annual subscription fee, but does not have to give reasons.

15.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clause 14.1. In that case, by applying to be a member, the applicant agrees to those three matters.

**16. When a person becomes a member**

16.1 Other than initial members, an applicant will become a member when they are entered on the register of members.

**17. Body corporate members and member representatives**

17.1 If an initial member or applicant for membership is a body corporate, a partnership or a trustee of a trust, it must nominate 1 individual (member representative) to represent it in the Company. The nomination form must:

- (a) state the name and address of the member representative,
- (b) be signed by the member representative consenting to their appointment,
- (c) be executed by the member, and
- (d) be provided to the secretary at least 48 hours prior to a general meeting that the member representative will attend.

17.2 A member representative is entitled to act on behalf of the member in all Company matters, including attending meetings, proposing and voting on resolutions.

17.3 Any change to a member's member representative must be promptly notified to the secretary in writing within 14 days.

17.4 An individual may not be the member representative of more than 1 member at one time.

**18. Attorneys for members**

18.1 An attorney for a member may act on behalf of the member, but if the attorney is to vote at a meeting of members or a class of members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

**19. Annual subscriptions & moneys owed to the Company**

19.1 The annual subscription payable by a member of the Company, if any, is the sum the directors determine.

19.2 The annual subscription must be paid by the date each year the directors determine.

19.3 If:

- (a) the annual subscription of a member, or any other moneys owing by the member to the Company, remains unpaid for 3 months after it becomes payable, and
- (b) the member is notified that their subscription is overdue,



then 14 days after such notification the member ceases to be entitled to any of the rights or privileges of membership and may not attend or vote at general meetings, but these will be reinstated on payment of all arrears.

- 19.4 For the avoidance of doubt, a resolution passed including the vote of a member whose right to vote has been removed by this clause 19.3, remains a valid resolution.
- 19.5 If the any moneys remain owing from a member to the Company for 3 months after the member has been notified of it being overdue, the secretary may remove the member from the register of members and the member remains liable for all debts to the Company. The secretary must notify the person of their removal from the register of members.
- 19.6 The directors may waive or suspend the payment of any money to the Company by any member or class of members, either generally or in any particular case, where the directors consider it in the best interests of the Company.

## **20. Cessation of membership**

- 20.1 A person immediately stops being a member if they:
- (a) die
  - (b) are wound up or otherwise dissolved or deregistered (for a body corporate member)
  - (c) resign, by writing to the secretary
  - (d) are expelled under clause 22
  - (e) are removed for failure to pay membership subscription, or
  - (f) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.
- 20.2 Notwithstanding clause 20.1(a), an executor or administrator of a deceased estate of a deceased member remains a member and entitled to register animals with the Company and must pay annual subscriptions when due, but is not entitled to vote or speak at meetings of the Company.

## **Dispute resolution and disciplinary procedures**

### **21. Dispute resolution**

- 21.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a member or director and:
- (a) one or more members
  - (b) one or more directors, or
  - (c) the Company.
- 21.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 22 until the disciplinary procedure is completed.
- 21.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

21.4 If those involved in the dispute do not resolve it under clause 21.3, they must within 10 days:

- (a) tell the directors about the dispute in writing
- (b) agree or request that a mediator be appointed, and
- (c) attempt in good faith to settle the dispute by mediation.

21.5 The mediator must:

- (a) be chosen by agreement of those involved, or
- (b) where those involved do not agree:
  - i. for disputes between members, a person chosen by the directors, or
  - ii. for other disputes, a person chosen by the president or chief executive officer of the law institute or society in the state or territory in which the Company has its registered office.

21.6 A mediator chosen by the directors under clause 21.5(b)(i):

- (a) may be a member or former member of the Company
- (b) must not have a personal interest in the dispute, and
- (c) must not be biased towards or against anyone involved in the dispute.

21.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard
- (b) allow those involved a reasonable chance to review any written statements
- (c) ensure that those involved are given natural justice, and
- (d) not make a decision on the dispute.

21.8 The mediator may set rules for the conduct of the mediation within the parameters of clause 21.7.

## **22. Disciplining members**

22.1 In accordance with this clause, the directors may resolve to suspend or expel a member from the Company if the directors consider that:

- (a) the member has breached this Constitution or the Company's bylaws or regulations, or
- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Company (including its reputation).

22.2 At least 14 days before the directors' meeting at which a resolution under clause 22.1 will be considered, the secretary must notify the member in writing:

- (a) that the directors are considering a resolution to suspend or expel the member
- (b) that this resolution will be considered at a directors' meeting and the date of that meeting
- (c) what the member is said to have done or not done
- (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.

22.3 Before the directors pass any resolution under clause 22.1, the member must be given a chance to explain or defend themselves by:

- (a) sending to the directors a written explanation before that directors' meeting, and/or

- (b) speaking at the meeting.
- 22.4 Explanations in writing must be delivered to the secretary at least 48 hours prior to the directors' meeting at which it will be considered.
- 22.5 After considering any explanation under clause 22.3, the directors may:
  - (a) take no further action
  - (b) warn the member
  - (c) suspend the member's rights as a member for a period of no more than 12 months
  - (d) expel the member
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - (f) require the matter to be determined at a general meeting.
- 22.6 Disciplinary procedures must be completed as soon as reasonably practical. The secretary must give written notice to the member of the decision under clause 22.5 as soon as possible.
- 22.7 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.
- 22.8 A member expelled under this clause will remain liable for all debts owed to the Company, provided that the directors may determine to waive the debts.

## **General meetings of members**

### **23. General meetings called by directors**

- 23.1 The directors may call a general meeting.
- 23.2 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 directors 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.
- 23.3 The percentage of votes that members have (in clause 23.2) is to be worked out as at midnight before the members request the meeting.
- 23.4 The members who make the request for a general meeting must:
  - (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the Company.
- 23.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

**24. General meetings called by members**

- 24.1 If the directors do not call the meeting within 21 days of being requested under clause 23.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 24.2 To call and hold a meeting under clause 24.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this Constitution
  - (b) call the meeting using the list of members on the Company's member 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.
- 24.3 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.

**25. Annual general meeting**

- 25.1 A general meeting, called the annual general meeting, must be held:
- (a) within 18 months after registration of the Company, and
  - (b) after the first annual general meeting, at least once in every calendar year within 5 months of the end financial year.
- 25.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Company's activities
  - (b) a review of the Company's finances
  - (c) any auditor's report
  - (d) the election of directors, and
  - (e) the appointment and payment of auditors, if any.
- 25.3 Before or at the annual general meeting, the directors must give information to the members on the Company's activities and finances during the period since the last annual general meeting.
- 25.4 The chair of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.
- 25.5 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor, or that representative, questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

**26. Notice of general meetings**

- 26.1 Notice of a general meeting must be given to:
- (a) each member
  - (b) each director, and
  - (c) the auditor (if any).
- 26.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

- 26.3 Subject to clause 26.4, notice of a meeting may be provided less than 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 meeting agree beforehand.
- 26.4 Notice of a meeting cannot be provided less than 21 days before the 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.
- 26.5 Notice of a general meeting must include:
- (a) 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)
  - (b) the general nature of the meeting's business
  - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - i. the proxy does not need to be a member of the Company
    - ii. the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - iii. the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 26.6 The accidental omission to give notice of a general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting does not invalidate the proceedings at or any resolution passed at the meeting.
- 26.7 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## **27. Quorum at general meetings**

- 27.1 For a general meeting to be held, at least 10 ordinary members (a quorum) must be present for the whole meeting. When determining whether a quorum is present, an individual may only be counted once (even if that person is a member representative or proxy of more than one member).
- 27.2 No business may be conducted at a general meeting if a quorum is not present.
- 27.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the 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, and
  - (c) if the place is not specified – the same place.

27.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

**28. Auditor's right to attend meetings**

28.1 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 meeting that concerns the auditor in the capacity of auditor.

28.2 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.

**29. Using technology to hold meetings**

29.1 The Company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.

29.2 Anyone using this technology is taken to be present in person at the meeting.

**30. Chair for general meetings**

30.1 The President is entitled to chair general meetings.

30.2 If:

- (a) there is no President
- (b) the President is not present within 30 minutes after the starting time set for the meeting, or
- (c) the President is present but says they do not wish to act as chair of the meeting,

then the Vice President, if any, is entitled to chair general meetings.

30.3 The members present and entitled to vote at a general meeting may choose a director or member to be the chair for that meeting if:

- (a) there is no President or Vice President, or
- (b) the President and Vice President are both not present within 30 minutes after the starting time set for the meeting, or
- (c) the President and Vice President are present but say they do not wish to act as chair of the meeting.

**31. Role of the chair**

31.1 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 (including to the auditor (if any)).

31.2 The chair does not have a casting vote at general meetings.

**32. Adjournment of meetings**

32.1 If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chair to adjourn it.

32.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members' resolutions and statements**

### **33. Members' resolutions and statements**

- 33.1 Members with at least 5% of the votes that may be cast on a resolution 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).
- 33.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 33.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 33.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 33.5 The percentage of votes that members have (as described in clause 33.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 33.6 If the Company has been given notice of a members' resolution under clause 33.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 33.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

### **34. Company must give notice of proposed resolution or distribute statement**

- 34.1 If the Company has been given a notice or request under clause 33:
- (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.
- 34.2 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 1,000 words long
  - (b) the directors consider it may be defamatory
  - (c) clause 34.1(b) applies, and the members who proposed the resolution or made the request have not paid the Company enough money 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.

### **35. Circular resolutions of members**

- 35.1 Subject to clause 35.3, the Company may pass a resolution without a general meeting being held (a circular resolution).
- 35.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 35.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, or
  - (b) where not allowed by the Corporations Act.
- 35.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 35.5 or clause 35.6.
- 35.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 35.6 The Company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply and containing a statement that they agree to the resolution.

## **Voting at general meetings**

### **36. How many votes a member has**

- 36.1 Each ordinary member and life member has one vote.

### **37. Challenge to member's right to vote**

- 37.1 A member or the chair may only challenge a person's right to vote at a general meeting at that meeting.
- 37.2 If a challenge is made under clause 37.1, the chair must decide whether or not the person may vote. The chair's decision is final.

### **38. How voting is carried out**

- 38.1 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.
- 38.2 Voting must be conducted and decided by:
- (a) a show of hands
  - (b) a vote in writing (a poll)
  - (c) electronic voting (which is also a vote in writing/a poll), or



- (d) another method chosen by the chair that is fair and reasonable in the circumstances.

38.3 On a show of hands, the chair's decision is conclusive evidence of the result of the vote.

38.4 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.

### **39. When and how a vote in writing must be held**

39.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least five ordinary members present
- (b) ordinary members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
- (c) the chair.

39.2 A vote in writing must be taken when and how the chair directs, unless clause 39.3 applies.

39.3 A vote in writing must be held immediately if it is demanded under clause 39.1:

- (a) for the election of a chair under clause 30.3, or
- (b) to decide whether to adjourn the meeting.

39.4 A demand for a vote in writing may be withdrawn.

### **40. Appointment of proxy**

40.1 An ordinary member may appoint a proxy to attend and vote at a general meeting on their behalf.

40.2 A proxy does not need to be a member.

40.3 A proxy appointed to attend and vote for a member has the same rights as the member to:

- (a) speak at the meeting
- (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
- (c) join in to demand a vote in writing under clause 39.1.

40.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:

- (a) the member's name and address
- (b) the Company's name
- (c) the proxy's name or the name of the office held by the proxy, and
- (d) the meeting(s) at which the appointment may be used.

40.5 Proxy forms must be received by the Company at the address stated in the notice under clause 26.5(d) or at the Company's registered address at least 48 hours before a meeting.

40.6 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

40.7 Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:

- (a) dies
- (b) is mentally incapacitated
- (c) revokes the proxy's appointment, or
- (d) revokes the authority of a representative or agent who appointed the proxy.

40.8 A proxy appointment may specify the way the proxy must vote on a particular resolution.

#### **41. Voting by proxy**

41.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).

41.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
- (b) if the way they must vote is specified on the proxy form, must vote that way, and
- (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Directors**

#### **42. Directors**

42.1 The Company will have at least five and no more than nine directors.

#### **43. Election and appointment of directors**

43.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company.

43.2 A person is eligible for election as a director of the Company if they:

- (a) are an ordinary member or a member representative of an ordinary member,
- (b) give the Company their signed consent to act as a director of the Company, and
- (c) are not ineligible to be a director under the Corporations Act.

43.3 The directors may appoint a person as a director to fill a casual vacancy if that person:

- (a) is a member, or a member representative
- (b) gives the Company their signed consent to act as a director of the Company, and
- (c) is not ineligible to be a director under the Corporations Act.

43.4 If the number of directors is reduced to fewer than three 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 (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

**44. Directors' election procedure**

- 44.1 There shall be an election of directors prior to each annual general meeting as set out in this clause 44, provided that there shall be no election of directors in 2019.
- 44.2 Directors are elected for a period of 3 years and can serve a maximum of 9 years.
- 44.3 Each candidate for election as a director must be nominated by at least one ordinary member who is not the candidate.
- 44.4 At least 70 days and not more than 90 days prior to the date of the annual general meeting at which the directors are to be appointed the secretary shall:
- (a) by notice in writing to all members call for nominations for the election of directors; and
  - (b) appoint a Returning Officer to supervise the nomination and election of directors.
- 44.5 The Returning Officer must not be a serving director or a candidate for election as a director.
- 44.6 A nomination of a candidate for election as a director must:
- (a) be in writing, and
  - (b) be signed by the nominator.
- 44.7 The written consent of any person nominated for election as a director must be provided to the secretary not later than the closing date for the receipt of nominations, which must be at least 40 days prior to the annual general meeting.
- 44.8 If the number of candidates for election as directors is equal to or less than the number of vacancies, the Returning Officer will declare those candidates to be duly elected as directors without requiring a ballot for those directors. If an election is required, the ballots will be issued.
- 44.9 In respect of each ballot paper issued:
- (a) The ballot paper shall set out in alphabetical order the surname followed by the Christian names of such person who has been nominated for election as a director.
  - (b) The ballot paper shall be accompanied by written instructions for voting.
  - (c) The number of board meetings attended by any incumbent director during the course of their preceding term of office shall be stated in a notice accompanying the ballot paper.
  - (d) The ballot paper may be electronic and delivered and returned by email or other electronic means if the Returning Officer and the directors are satisfied that appropriate measures are taken to ensure the process accurately records the votes of members.
- 44.10 Where a ballot is required:

- (a) Any ballot paper which records more votes than there are candidates to be elected shall be rejected as informal. A ballot paper which has less votes than candidates is valid for the votes cast.
- (b) Any ballot for the election of directors shall be secret and all measures necessary to ensure secrecy shall be adopted by the secretary and the Returning Officer.
- (c) The ballot for the election of directors shall close at 4.00 o'clock in the afternoon on the day being 7 days prior to the day of the annual general meeting at which the directors are to be appointed to the board. Ballot papers received after this time will not be counted.
- (d) The candidates recording the most number of votes in the ballot shall be appointed as directors until the required number of directors is attained.
- (e) If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the Returning Officer will determine which candidate is successful by lot.
- (f) The Returning Officer shall examine all nominations and all ballot papers received, and after counting the votes recorded by the members, shall certify in writing the result of the ballot and:
  - i. shall deliver the notice of the result to the chair who shall declare the result; and
  - ii. shall notify the result of the ballot by email to the members.
- (g) The Returning Officer's decision shall be final and binding in respect of all matters affecting the nomination, election and appointment of directors.
- (h) The appointment of each Director shall take effect as at the close of the Annual General Meeting at which the declaration is made by the chair.

44.11 Notwithstanding the earlier provisions of this clause the members in general meeting may by ordinary resolution:

- (a) remove a director from office; or
- (b) elect a director provided that such election does not exceed the maximum number of directors pursuant to clause 42, even if that director has not been nominated pursuant to clause 44.5.

#### **45. Term of office**

45.1 At each director's election:

- (a) any director appointed by the directors to fill a casual vacancy must retire, and
- (b) at least one-third of the remaining directors must retire.

45.2 The directors who must retire at each annual general meeting under clause 45.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.

- 45.3 A director's term of office starts at the end of the general meeting after the directors' election (or on the day they are appointed by the directors to fill a casual vacancy) and ends at the end of the annual general meeting at which they retire.
- 45.4 Each director must retire from office at least once every three years.
- 45.5 A director who retires under clause 45.1 or 45.4 may nominate for re-election subject to clause 45.6.
- 45.6 A director who has held office for a continuous period of 9 years or more may only be re-appointed or re-elected after spending a period of at least 1 year not being a director.

#### **46. When a director stops being a director**

- 46.1 A director stops being a director if they:
- (a) give written notice of resignation as a director to the Company
  - (b) die or lose capacity to conduct their affairs
  - (c) are removed as a director by a resolution of the members
  - (d) stop being a member of the Company
  - (e) are a representative of a member, and that member stops being a member
  - (f) have reached the 9 year limit as a director of the Company
  - (g) are a representative of a member, and the member notifies the Company in writing that the representative is no longer a representative
  - (h) are absent for 3 consecutive directors' meetings without approval from the directors, or
  - (i) become ineligible to be a director of the Company under the Corporations Act.

#### **47. Office bearers**

- 47.1 The office bearers of the Company are:
- (a) President and elected chair
  - (b) Vice President and deputy chair
  - (c) the Treasurer, and
  - (d) the secretary.
- 47.2 Only directors (except the secretary) may be officer bearers.
- 47.3 Office bearers are elected by the directors at the first meeting of the directors held after the immediately preceding annual general meeting and hold office until the end of the first meeting of the directors held after the next annual general meeting.
- 47.4 The directors present must appoint one of their number to act as chair of the meeting for the purpose of the election.

## **Powers of directors**

#### **48. Powers of directors**

- 48.1 The directors are responsible for managing and directing the activities of the Company to achieve the purposes set out in clause 7.

- 48.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this Constitution, may only be used by members.
- 48.3 The directors must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power under clause 50, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 48.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.
- 48.5 Where this Constitution refers to the directors doing something, that is done by a resolution of the majority of the directors.

**49. Acts valid notwithstanding defects**

- 49.1 The acts of a director or secretary of the Company are valid despite any defect that may afterwards be discovered in their appointment or qualification.
- 49.2 Where a person whose office as director of the Company is vacated under a provision of the Corporations Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

**50. Delegation of directors' powers & attorneys**

- 50.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (such as a chief executive officer) or any other person, as they consider appropriate, including by way of appointment of an attorney.
- 50.2 The delegation must be recorded in the Company's minute book.

**51. Committees**

- 51.1 The directors may delegate any of their powers to 1 or more committees of directors which may include also any individual who is not a director.
- 51.2 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.
- 51.3 The meetings and proceedings of any committee consisting of 2 or more people are governed by the provisions in this Constitution regulating the meetings and proceedings of the directors.

**52. Alternate directors**

- 52.1 A director may appoint any person who is qualified to be a director and who is approved by a majority of the other directors to act as an alternate director in place of the appointing director for a meeting or for a specified period, or as a standing appointment.

- 52.2 An alternate director is entitled to notice of meetings of the directors, is entitled to attend all meetings and, if the appointor is not present at a meeting, is entitled speak and vote in their stead.
- 52.3 A director may revoke or suspend the appointment of an alternate director appointed by him or her.
- 52.4 The directors may suspend or remove an alternate director by resolution after giving the appointor reasonable notice of their intention to do so.
- 52.5 The appointment of an alternate director automatically terminates:
- (a) if the appointor ceases to hold office as director
  - (b) on any event occurring to the alternate director which causes a director to vacate the office of director, or
  - (c) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.
- 52.6 Every notice of appointment, revocation or suspension of an alternate director must be in writing and a copy must be given to the Company.

### **53. No payments to directors**

- 53.1 The Company must not pay fees to a director for acting as a director.
- 53.2 The Company may:
- (a) pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- 53.3 Any payment made under clause 53.2 must be approved by the directors.
- 53.4 Any payment made to a director or a company, partnership or trust in which a director has an interest, or any spouse or relative of the director has an interest, must be approved by the directors and must be disclosed to the members at the next general meeting.
- 53.5 The Company may pay premiums for insurance indemnifying directors, as allowed for by law and this Constitution.

## **Duties of directors**

### **54. Duties of directors**

- 54.1 The directors must comply with their duties as directors under legislation and common law:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company
  - (b) to act in good faith in the best interests of the Company and to further the purposes of the Company
  - (c) not to misuse their position as a director
  - (d) not to misuse information they gain in their role as a director

- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 55
- (f) to ensure that the financial affairs of the Company are managed responsibly, and
- (g) not to allow the Company to operate while it is insolvent.

54.2 Directors have a duty to comply with any codes of conduct and policies of the Company.

## **55. Conflicts of interest**

55.1 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.

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

55.3 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 clauses 55.4:

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

55.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the Company, and the other members 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 77)
- (c) their interest relates to a payment by the Company under clause 76 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
- (d) the Australian Securities and Investments Commission (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:
  - iii. 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
  - iv. says that those directors are satisfied that the interest should not stop the director from voting or being present.

## **Directors' meetings**

### **56. When the directors meet**

56.1 The directors must meet at least 6 times a year.



**57. Calling directors' meetings**

57.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

57.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

**58. Chair for directors' meetings**

58.1 The President is entitled to chair directors' meetings.

58.2 If the President is:

- (a) not present within 30 minutes after the starting time set for the meeting, or
  - (b) present but does not want to act as chair of the meeting,
- then the Vice President is entitled to chair the meeting.

58.3 The directors at a directors' meeting may choose a director to be the chair for that meeting if the President and Vice President are:

- (a) not present within 30 minutes after the starting time set for the meeting, or
- (b) are present but do not want to act as chair of the meeting.

**59. Quorum at directors' meetings**

59.1 The quorum for a directors' meeting is five directors.

59.2 A quorum must be present for the whole meeting.

**60. Using technology to hold directors' meetings**

60.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors and allows all directors to hear and be heard.

60.2 The directors' agreement may be a standing (ongoing) one.

60.3 A director may only withdraw their consent within a reasonable period before the meeting.

**61. Passing directors' resolutions**

61.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

61.2 The elected chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

**62. Circular resolutions of directors**

62.1 The directors may pass a circular resolution without a directors' meeting being held.

62.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 62.3 or clause 62.4.

62.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

- 62.4 The Company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply and containing a statement that they agree to the resolution.
- 62.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 62.3 or clause 62.4.

## Secretary

### 63. Appointment and role of secretary

- 63.1 The Company must have at least one secretary, who may also be a director.
- 63.2 A secretary must be appointed by the directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the directors.
- 63.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 63.4 The role of the secretary includes:
- (a) maintaining a register of the Company's members
  - (b) maintaining the Herdbook, and
  - (c) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.
- 63.5 The secretary may but need not be a member or member representative.

## Minutes and records

### 64. Minutes and records

- 64.1 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings
  - (b) minutes of circular resolutions of members
  - (c) a copy of a notice of each general meeting, and
  - (d) a copy of a members' statement distributed to members under clause 33.
- 64.2 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of directors.
- 64.3 To allow members to inspect the Company's records:
- (a) the Company must give a member access to the records set out in clause 64.1, and
  - (b) the directors may at their discretion, authorise a member to inspect other records of the Company, including records referred to in clause 64.2 and clause 65.1, provided that the directors must not

do so if the directors reasonably consider such access is for an improper purpose, breaches any laws or orders of the Court.

- 64.4 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chair of the meeting, or
  - (b) the chair of the next meeting.
- 64.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

## **65. Financial and related records**

- 65.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 65.2 The Company must also keep written records that correctly record its operations.
- 65.3 The Company must retain its records for at least 7 years.
- 65.4 The directors must take reasonable steps to ensure that the Company's records are kept safe.

## **By-laws and regulations**

### **66. By-laws**

- 66.1 The directors may pass a resolution to make by-laws, regulations and/or policies to:
- (a) give effect to this Constitution, or
  - (b) govern any matter relating to the Company, the members or the Company's activities.
- 66.2 Members and directors must comply with by-laws, regulations and policies as if they were part of this Constitution.

## **Administrative matters**

### **67. What is notice**

- 67.1 Anything written to or from the Company under any clause in this Constitution is written notice and is subject to clauses 68 to 70, unless specified otherwise.
- 67.2 Clauses 68 to 70 do not apply to a notice of proxy under clause 40.5.

### **68. Notice to the Company**

- 68.1 Written notice or any communication under this Constitution may be given to the Company, the directors or the secretary by:
- (a) delivering it to the Company's registered office
  - (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided

- (c) sending it to an email address or other electronic address notified by the Company to the members as the Company's email address or other electronic address, or
- (d) sending it to the fax number notified by the Company to the members as the Company's fax number, (if any).

**69. Notice to members**

69.1 Written notice or any communication under this Constitution may be given to a member:

- (a) in person
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified webpage, place or address (including an electronic address).

69.2 If the Company does not have contact details for a member, the Company is not required to give notice to them.

**70. When notice is taken to be given**

70.1 A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 69.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

**71. Company's financial year**

71.1 The Company's financial year is from 1 July until 30 June, unless the directors pass a resolution to change the financial year.

**72. Amending the Constitution**

72.1 The members may amend this Constitution by passing a special resolution.

**73. Execution of documents**

73.1 The Company will not have a common seal.

73.2 The Company may execute a document by:

- (a) two directors of the Company signing it, or
- (b) a director and the secretary signing it.

The same person may not sign in the dual capacities of director and secretary.

73.3 In addition to the execution method in clause 73.2, the directors may authorise a person to execute documents on behalf of the Company.

**74. Formalities omitted**

74.1 If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

**75. Governing jurisdiction**

75.1 The law of New South Wales and the Commonwealth of Australia will govern all matters concerning or arising from Constitution, and the members and directors submit to the jurisdiction of the Courts of New South Wales and the Commonwealth of Australia for the adjudication of any matter between them.

## **Indemnity, insurance and access**

**76. Indemnity**

76.1 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.

76.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

76.3 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).

76.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

**77. Insurance**

77.1 To the extent permitted by law, and if the directors consider it appropriate, 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.

77.2 The Company must not obtain or contribute towards the cost of insurance against a liability incurred by the person as an officer of the Company or a related body corporate arising out of:

- (a) conduct involving a wilful breach of duty in relation to the Company, or
- (b) a contravention of section 182 or 183 of the Corporations Act.

77.3 Notwithstanding clause 55, a director is not precluded from voting in respect of proposed insurance, merely because the contract insures or

would insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

**78. Directors' access to documents**

78.1 A director has a right of access to the financial records of the Company at all reasonable times.

78.2 If the directors agree, the Company must give a director or former director access to:

- (a) documents of the Company determined by the directors, including documents provided for or available to the directors, and
- (b) any other documents referred to in those documents.

78.3 Directors must only access documents of the Company for a proper purpose (including to defend themselves from litigation or claims).

## **Winding up**

**79. Surplus assets not to be distributed to members**

79.1 If the Company is wound up, any surplus assets must not be distributed to a member or a former member of the Company.

**80. Distribution of surplus assets**

80.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more organisations:

- (a) with purposes similar to, or inclusive of, the purposes in clause 7, and
- (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.

80.2 The decision as to the organisation to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.