

This is the annexure of 25 pages marked "A" referred to in Form 5 signed by me and dated:

Signature

Name

Dated

CONSTITUTION

11 APRIL 2019

Association of Mining & Exploration Companies (Inc)

ABN 33 362 864 696



CONTENTS

1	Name	3
2	Definitions	3
3	Objects	5
4	Powers	5
5	Association Property	6
6	Membership	7
7	Annual Subscriptions	8
8	Election of Members	9
9	Registers and Inspection of Documents	10
10	Cessation of Membership	11
11	Compliance with this Constitution	12
12	General Meetings	12
13	The Council	15
14	Powers and Duties of the Council	20
15	Material Personal Interests	21
16	Disqualification of Councillors	22
17	Dispute Resolution	22
18	Execution of Deeds and Documents	22
19	Financial Matters	23
20	Audit	23
21	Notices	24
22	Liability of Members, Councillors and Employees	24
23	Winding Up or Dissolution	25
24	Governing Law	25

1 NAME

The name of the Association is “Association of Mining and Exploration Companies (Inc.)” (“the Association”).

2 DEFINITIONS

In this Constitution the following expressions unless the context otherwise requires have the following meanings:

“**the Act**” means the *Associations Incorporation Act 2015*;

“**Advisory Committee**” means a state or territory advisory committee established by the Council in accordance with clauses 13.5(g) and 13.5(h);

“**Advisory Committee Chair**” means the person presiding as chair of an Advisory Committee who must be a member of that Advisory Committee;

“**the Association**” means this Association;

“**the Annual General Meeting**” of the Association, means the annual meeting of the Association that all members are entitled to receive notice of and to attend;

“**books**” of the Association, includes the following:

- (a) a register;
- (b) financial records, financial statements or financial reports, however compiled, recorded or stored;
- (c) a document; and
- (d) any other record of information;

“**Business Day**” means a day that is not a Saturday, Sunday, gazetted or official public holiday or bank holiday in Perth, Australia;

“**Chair**” means the Councillor or person presiding as chair of either the Council meeting or General Meeting as the case may be;

“**Chair of the Finance and Management Committee**” means the person presiding as chair of the Association’s Finance and Management Committee, being the committee that assists the Council to discharge its responsibilities under clauses 19 and 20;

“**Chief Executive Officer**” means the person employed by the Association to hold the position of Chief Executive Officer of the Association;

“**Commissioner**” means the person for the time being designated as the Commissioner under section 153 of the Act;

“**committee**” means any committee established by the Council in accordance with clause 13.5(g) and includes each Advisory Committee;

“**company**” means a company as defined in section 9 of the *Corporations Act 2001* (Cth);

“**this Constitution**” means this Constitution and rules;

“**the Council**” means the Council referred to in clause 13;

“**Councillor**” means a member of the Council;

“**financial records**” includes:

- (a) invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes and vouchers; and
- (b) documents of prime entry; and
- (c) working papers and other documents needed to explain:
 - (i) the methods by which financial statements are prepared; and
 - (ii) adjustments to be made in preparing financial statements;

“financial report” has the meaning given in section 63 of the Act and consists of the financial statements for the year, the notes to the financial statements and the Council’s declaration about the statements and notes;

“financial statements” means the financial statements in relation to the Association required under Part 5 Division 3 of the Act;

“financial year of the Association” commences on 1 January and expires on 31 December in each year;

“General Meeting” means a Special General Meeting or the Annual General Meeting;

“member” includes Full Member, Associate Member, Individual Member and Honorary Life Member as respectively defined in clause 6. For the avoidance of doubt, subject to clauses 7.4 and 7.6, a member is a financial member if that member has paid its annual subscription within 3 months of the due date for payment of the subscription (i.e. on or before 1 April in every year);

“Office” means the principal office of the Association in Western Australia as from time to time determined by the Council;

“ordinary resolution” means a resolution passed by no less than fifty per centum (50%) of the Full Members who are entitled to cast, and cast a vote, at the General Meeting;

“person” means a natural person;

“the President” means the Councillor holding office as the President of the Association;

“the Regulations” means the *Associations Incorporation Regulations 2016*;

“Special General Meeting” of the Association, means a meeting of the Association that all members are entitled to receive notice of and attend, other than the Annual General Meeting;

“special resolution” means a resolution passed by no less than seventy five per centum (75%) of the Full Members who are entitled to cast, and cast a vote, at the General Meeting;

“surplus property”, in relation to the Association, means property remaining after satisfaction of:

- (a) the debts and liabilities of the Association; and
- (b) the costs, charges and expenses of dissolution, winding up or cancelling the incorporation of the Association

but does not include books relating to the management of the Association; and

“Vice-President” means a Councillor holding office as a Vice-President of the Association.

3 OBJECTS

The objects of the Association are:

- (a) to generally promote the interests of the mining and mineral exploration industry;
- (b) to assist in any lawful manner in the growth, stability and economic wellbeing of the mining and mineral exploration industry;
- (c) to consider all issues connected with the mining and mineral exploration industry and to stimulate government and public interest in those issues;
- (d) to promote, oppose or propose any legislation, or to petition any Government, Government Minister or legislative or administrative body, State or Federal, on any matters affecting the interests of the Association or any of the members;
- (e) to arrange technical discussion groups, seminars and lectures involving visiting or resident experts in various fields including but not limited to mining, mineral exploration, mineral processing, financing, marketing and mining law and to arrange visits to mining and mineral exploration projects;
- (f) to assist in the advancement of the mining and mineral exploration industry, by promoting and encouraging the dissemination of general and technical information among the public and also among people employed in the industry;
- (g) to provide, maintain, manage and carry on principal and branch offices and places of meeting, study, research, instruction and recreation;
- (h) to assist in bringing together people associated with the mining and mineral exploration industry and to promote friendly relations through social intercourse and discussion of matters of mutual interest; and
- (i) to affiliate, cooperate, associate or amalgamate with any other association, club or organisation having similar objects to the Association.

4 POWERS

For the purpose of carrying out its objects the Association has the power:

- (a) to purchase, lease, hire or otherwise acquire any real or personal property on such terms and conditions and subject to such encumbrances, liabilities and obligations as may be required or agreed;
- (b) to construct, maintain and alter any houses, buildings or works necessary or convenient for the purposes of the Association;
- (c) to sell, manage, lease, hire, mortgage, charge, dispose of or otherwise deal with any real or personal property of the Association;
- (d) to take such steps by personal or written appeals, public appeals, meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions to the funds of the Association or to any particular fund established by the Association;
- (e) to establish any fund designated by name or record of the Association for a particular purpose or the achievement of a particular objective or the completion

of a particular project, and to seek contributions to any such fund by donations, allocation of part or the whole of incoming subscriptions and otherwise;

- (f) to incur any liability and undertake any obligation of, or incidental to, the objects of the Association;
- (g) to apply or invest any monies of the Association in such manner as may from time to time be determined and any such investment is within the discretion of the Association and is not limited to those investments which are legally permissible for the investment of trust funds;
- (h) to:
 - (i) borrow money, with or without security, for the purpose of carrying out any of the objects or exercising any of the powers of the Association;
 - (ii) lend money to such persons, companies or organisations on such terms as may seem expedient;
 - (iii) guarantee the performance of contracts and obligations by any person, company or organisation (including the payment to any bank or other lender on demand or otherwise of any monies, loans, advances or banking accommodation and interest and charges);
 - (iv) give security by the issue of bonds, debentures or other security; or
 - (v) otherwise encumber the whole or any part of the assets of the Association in support of any such borrowing or guarantee,

provided that the Council does not borrow more than \$500,000 in any financial year of the Association without the approval, by ordinary resolution, of the General Meeting;

- (i) to engage and dismiss agents and advisers of, and to, the Association;
- (j) engage, appoint, control, suspend or dismiss such representatives, agents and employees in respect to permanent, temporary or special services as the Council may from time to time think fit and to determine their salary, wages or other remuneration;
- (k) to open and operate bank accounts of all kinds and to draw and accept cheques or other negotiable instruments; and
- (l) to do all such acts and things as are or may be incidental or conducive to the attainment or furtherance of any of the objects, or the exercise of any of the powers, of the Association, in accordance with this Constitution.

5 ASSOCIATION PROPERTY

5.1 The income and property of the Association must be applied solely towards the promotion of the objects of the Association as outlined in this Constitution and no portion of that property or income may be paid or otherwise transferred, directly or indirectly, to, or amongst, the members of the Association provided that:

- (a) nothing in this clause 5.1 prevents the payment of:

- (i) in good faith, reasonable and proper remuneration to any officers or employees of the Association, or to any member of the Association or any representative of any Full Member or Associate Member, of the Association in return for any services rendered to the Association; or
 - (ii) interest at a rate not exceeding interest at the rate for the time being charged by bankers in Australia for overdrawn accounts on money lent; or
 - (iii) reasonable and proper rent for premises leased by any member to the Association;
- (b) no Councillor will be appointed to any salaried office of the Association or any officer of the Association paid by fees other than for the provision of professional services. No remuneration or other benefit in money or money's worth will be given by the Association to any Councillor; and
- (c) nothing in this clause 5.1 prevents the:
- (i) allowance of an honorarium to any Councillor in respect of special honorary services rendered; or
 - (ii) repayment to any Councillor of out-of-pocket expenses and interest on money lent or for hire of goods or rent for premises leased to the Association,

provided that, with the exception of repayments for out-of-pocket expenses, the allowance or repayment is authorised by an ordinary resolution of a General Meeting.

5.2 On the cancellation of the incorporation, winding up or dissolution of the Association, any surplus property must be distributed to another association incorporated under the Act which:

- (a) has similar objects and is not carried on for the purposes of profit or gain to its individual members; and
- (b) is determined in accordance with the special resolution passed under clause 23.

6 MEMBERSHIP

- 6.1 (a) There will be four classes of membership of the Association:
- (i) "Full Members";
 - (ii) "Associate Members";
 - (iii) "Individual Members"; and
 - (iv) "Honorary Life Members".
- (b) A Full Member must be a company engaged in mining and/or mineral exploration and which the Council in its absolute discretion resolves to admit as a Full Member.
- (c) An Associate Member must be a company or partnership or individual which the Council is satisfied is carrying on or is engaged in a business, service, profession or industry incidental to mining or mineral exploration, and which the Council in

its absolute discretion accepts as having sufficient standing in the mining or mineral exploration industry to be able to assist in the furtherance of the objects of the Association.

- (d) An Individual Member must be:
 - (i) a person who was, but is no longer, carrying on or had engaged in a business, service, profession or industry or in a public service or academic position in or in relation to mining or mineral exploration; or
 - (ii) a person who is employed by a Full Member or Associate Member, whom the Council, in its absolute discretion, accepts as having or having had sufficient standing in the mining or mineral exploration industry to be able to assist in the furtherance of the objects of the Association.

- (e) Subject to clauses 7.7 and 12, only Full Members have a right to vote at any General Meeting.

6.2 (a) A Full Member must nominate by notice in writing to the Chief Executive Officer one natural person to act as its representative who will have the right to receive notices from the Association on behalf of the Full Member, to attend and vote at General Meetings and to generally exercise all rights of membership on behalf of the Full Member. The Full Member may from time to time revoke the nomination of any such representative and nominate by notice in writing to the Chief Executive Officer another representative in the place of the person whose nomination has been revoked.

- (b) The same person may be nominated as the representative of more than one Full Member and in such case, the representative is, at any General Meeting, entitled to cast one vote for each Full Member.

- (c) A representative of a Full Member at the date this clause is adopted is deemed (subject to this Constitution) to continue to be the representative of that Full Member until the conclusion of the Annual General Meeting following the adoption of this clause.

6.3 (a) An Associate Member must nominate by notice in writing to the Chief Executive Officer one natural person to act as its representative who will have the right to receive notices from the Association, on behalf of the Associate Member, to attend General Meetings and generally exercise all rights of membership on behalf of the Associate Member. The Associate Member may from time to time revoke the nomination of any such representative and nominate by notice in writing to the Chief Executive Officer another representative in the place of the person whose nomination has been revoked.

- (b) The same person may be nominated as the representative of more than one Associate Member.

7 ANNUAL SUBSCRIPTIONS

7.1 (a) Full Members, Associate Members and Individual Members must pay their respective annual subscriptions, as determined by the Council. The Council may, subject to clause 7.3, prescribe different annual subscription amounts in respect of, and within, each class of membership.

(b) No annual subscription is payable by an Honorary Life Member.

7.2 The Council may from time to time prescribe or vary a nomination fee payable in respect of an application for membership of the Association or for any class or classes of membership. A nomination fee, once paid, is not refundable in any circumstances where an application for membership to which that fee relates has been approved by the Council.

7.3 In determining the annual subscriptions under clause 7.1 and any nomination fee under clause 7.2, the Council must take into account, in its absolute discretion, the amount it considers necessary to provide sufficient funds for the purposes of conducting the Association's affairs and furthering its objects, and the provisions of clause 7.4.

7.4 Advance Payments

(a) Subject to the approval of the Council, a Full Member, Associate Member or Individual Member may pay in advance three times its annual subscription amount (consisting of the current year annual subscription and two (2) additional years of annual subscriptions) ("**Advance Amount**").

(b) A member who pays an Advance Amount is:

- (i) a financial member for the financial year of the Association and for the next succeeding two financial years of the Association; and
- (ii) entitled to a discount, which is determined by the Council in its absolute discretion at the time of payment of the Advance Amount.

7.5 No subscription whether paid in advance or otherwise is refundable despite the member ceasing for any reason to be a member during the period to which that subscription applies or for any other reason.

7.6 Subject to clause 7.4, a member's annual subscription is due and payable on the date of becoming a member and thereafter, on 1 January in every year, covering the twelve (12) month period ending 31 December. Where a new member joins after 1 January in any year, the Council, in its absolute discretion, may fix the annual subscription payable by that new member for the period ending on 31 December in that year on a pro rata basis using the following calculation:

$$\text{(Days remaining in year ending 31 December)/365} \times \text{\$(current annual subscription)}$$

= new member subscription amount.

7.7 A member is deemed not to be a financial member if that member's annual subscription is three (3) months in arrears. While a Full Member, Associate Member or Individual Member is not a financial member, that member and their representative (if any) may not exercise any rights under this Constitution, or hold any office, nominate any representative or be nominated.

7.8 Where a member is not a financial member for more than three (3) months, that member's membership may be cancelled and the member may be expelled by resolution of the Council in accordance with the procedure in clause 10.

8 ELECTION OF MEMBERS

8.1 Subject to clause 8.4(a), the Council is responsible for the election of members. Applications for membership must be submitted to the Chief Executive Officer on the application form

prescribed by the Council, accompanied by any nomination fee. Membership applications will be considered by the Council out of session in the order they are received by the Chief Executive Officer. Approval of not less than fifty per centum (50%) of Councillors is required for election to membership. The Council may reject any application without giving any reason to the applicant.

- 8.2 An applicant approved by the Council is required to pay the applicable annual subscription within thirty (30) days of notice of approval of the application being posted to the applicant at its, his or her address shown on the applicant's application form. Failing such payment the approval of the application will become null and void. Upon payment of the annual subscription the applicant will become a member of the applicable class of membership.
- 8.3 Full Members and Associate Members who are financial members when this clause is adopted will continue to be financial members until the expiration of the period for which their respective subscriptions have been paid.
- 8.4 Honorary Life Members
- (a) The Council may from time to time appoint as Honorary Life Members, individual persons who in the opinion of the Council have rendered to the Association in any capacity distinguished or outstanding assistance in relation to its formation, operation, representation, standing or attainment of the Association's objects.
 - (b) Nominations for Honorary Life Membership may be made by any Full Member, Associate Member or Individual Member.
 - (c) Any nomination for Honorary Life Membership must be delivered to the Council in writing, and be accompanied by a written statement setting out the reasons why the nominator considers the nominee a suitable person to receive Honorary Life Membership.
 - (d) The decision to appoint or reject the nomination of an Honorary Life Member is in the absolute discretion of the Council and in the case of any rejection, the Council is not obliged to give any reasons for its decision.

9 REGISTERS AND INSPECTION OF DOCUMENTS

- 9.1 The Chief Executive Officer, on behalf of the Association, must keep and maintain in an up to date condition at the Office:
- (a) a register of:
 - (i) the members of the Association, including only each member's name, membership classification and either a residential, postal or email address;
 - (ii) the names and addresses of the respective representatives nominated by Full Members and Associate Members;
 - (iii) the names and addresses of the Councillors, other persons who hold office in the Association and any trustees of the Association; and
 - (b) a copy of this Constitution.
- 9.2 The Council must give a copy of this Constitution to:

- (a) each person or company who becomes a member of the Association, on commencement of the member's membership; and
- (b) any member of the Association who makes a request to be provided with a copy of this Constitution.

9.3 The Council must give or make available, a copy of the register of members to any member that makes a written request for a copy of the register to the Chief Executive Officer, provided that member has paid the applicable fee, as determined by the Council.

9.4 A member who wishes to inspect any of the documents under clause 9.1 must submit a request to the Chief Executive Officer. Within fourteen (14) days, or such shorter period as the Council may determine, of receipt of a request, the Council must make the requested document available at the Office for inspection by the member. The member may make a copy of, or take an extract from, the document but does not have a right to remove the document from the Office for that purpose.

9.5 If the document requested for inspection under clause 9.4 is any of the registers under clause 9.1(a), the member must not use or disclose information in the register except for a purpose:

- (a) that is directly connected with the affairs of the Association; or
- (b) that is related to complying with a requirement of the Act.

9.6 If:

- (a) a member inspecting the register of members wishes to make a copy of, or take an extract from, the register; or
- (b) a member makes a written request under clause 9.3 to be provided with a copy of the register of members,

the Council may require the member to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose is connected with the affairs of the Association.

9.7 If a member wishes to inspect any other document or record of the Association including the financial records, the Council may, at its absolute discretion, make that document or record available for inspection. If a document or record is made available for inspection, the member must not use or disclose any information in that document or record.

10 CESSATION OF MEMBERSHIP

10.1 A member may resign from membership of the Association at any time by giving notice in writing to the Chief Executive Officer, but will remain liable for any outstanding annual subscription and all other arrears due and unpaid as at the date of receipt of the resignation.

10.2 If any member or representative of a member:

- (a) fails to comply with the provisions of this Constitution; or
- (b) is not a financial member for more than three (3) months; or
- (c) is, in the opinion of the Council, guilty of any conduct deemed by the Council to be unbecoming of a member or prejudicial to the interests of the Association,

that member's membership may be cancelled and the member may be expelled by resolution of the Council ("**Decision**").

10.3 The Council resolution under clause 10.2 need not state the grounds, facts or opinions upon which it is based provided that at least twenty one (21) days written notice of the Council meeting at which the resolution is proposed, is served on:

- (a) the member or member's representative ("**affected member**"), outlining the proposed resolution, together with a request to the affected member to be present or represented at the meeting and, prior to voting on the resolution, the affected member is given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Council about the proposed Decision; and
- (b) all Councillors, outlining the circumstances relating to the affected member and the proposed resolution.

A resolution under this clause 10.3 is passed with a simple majority of the votes of the Councillors present and voting.

10.4 Any Decision made by the Council under clause 10.2 takes immediate effect.

10.5 The Council must give the affected member written notice of the Council's Decision under clause 10.2 within seven (7) days of the Council meeting held under clause 10.3. The affected member may, within fourteen (14) days of receipt of that notice, give written notice to the Chief Executive Officer requesting the appointment of a mediator under the dispute resolution procedure in clause 17. If the affected member gives a notice requesting such an appointment, the member who gives the notice and the Council are the parties to the mediation.

10.6 Cancellation of a member's membership does not:

- (a) entitle that member to any refund of all or any part of that member's annual subscription (whether paid in advance or otherwise), or any nomination fee; or
- (b) release that member from liability for any annual subscription up to and including the date of cancellation of membership, or for any arrears or other monies due but unpaid by the member to the Association at that date.

11 COMPLIANCE WITH THIS CONSTITUTION

Every member and every representative of a Full Member or of an Associate Member must comply with:

- (a) this Constitution; and
- (b) the rules relating to any premises owned, occupied or used by the Association,

and any failure to do so may, subject to clause 10, result in cancellation of the membership of that member at the absolute discretion of the Council.

12 GENERAL MEETINGS

12.1 (a) The Council must determine the date, time and place of the Annual General Meeting. If it is proposed to hold the Annual General Meeting more than six (6) months after the end of the financial year of the Association, the Chief Executive

Officer, on behalf of the Council, must apply to the Commissioner for permission under section 50(3)(b) of the Act within four (4) months after the end of the financial year.

- (b) All other General Meetings of the Association are Special General Meetings.
- (c) At least fourteen (14) clear days notice of each General Meeting must be served on each member but accidental omission to give notice to any member will not invalidate the General Meeting.
- (d) The notice under clause 12.1(c) must:
 - (i) specify the date, time and place of the General Meeting;
 - (ii) indicate the general nature of each item of business to be considered at the General Meeting;
 - (iii) if the meeting is the Annual General Meeting, include the names of the Full Members' representatives and Associate Members' representatives who have nominated for election to the Council in accordance with clause 13.1(e);
 - (iv) if the meeting is the Annual General Meeting, include a copy of the annual report, which includes a copy of the financial report and the auditor's report on the financial report; and
 - (v) if a special resolution is proposed, set out the wording of the proposed resolution and state that the resolution is intended to be proposed as a special resolution.

- 12.2
- (a) The Council may in its absolute discretion call a Special General Meeting of the Association.
 - (b) The Council must call a Special General Meeting upon receipt of a written request signed by representatives of at least twenty per centum (20%) of Full Members. The written request must state the purpose of the Special General Meeting. The Special General Meeting must be called within thirty (30) days of receipt of the written request.
 - (c) If the Council does not call a Special General Meeting within the thirty (30) day period under clause 12.2(b), any of the Full Members who requested the meeting may call the Special General Meeting. A Special General Meeting called under this clause 12.2(c) must be held within three (3) months after the date of the original request and may only consider the business stated in the request. The Association must reimburse any reasonable expenses incurred by the Full Members who called the Special General Meeting.
 - (d) This clause 12.2 is subject to clause 7.7.

- 12.3
- (a) At every General Meeting of the Association the President, or in his or her absence one of the Vice-Presidents, or in the absence of both, a Chair to be elected by the Full Members' representatives present and entitled to vote, must preside as Chair. In the case of an equality of votes the Chair will have a second or casting vote.
 - (b) Unless a poll is demanded by representatives of at least two (2) Full Members, a declaration by the Chair that a resolution has been carried or lost is final. If a poll is demanded, it must be taken in the manner determined by the Chair.

- (c) The minutes of all resolutions and proceedings of General Meetings must be taken and entered in a book kept for that purpose by the Chief Executive Officer.
 - (d) This clause 12.3 is subject to clause 7.7.
- 12.4
- (a) All members are entitled to be present at all General Meetings but only representatives of Full Members are entitled to address, and vote at, any General Meeting.
 - (b) A representative of an Associate Member or an Individual Member may, with the approval of the Chair of the meeting, address a General Meeting.
 - (c) On a show of hands or on a poll, every representative of a Full Member present in person or by proxy will have one vote on behalf of each Full Member he or she represents.
 - (d) This clause 12.4 is subject to clause 7.7.
- 12.5
- (a) Subject to clause 7.7, a Full Member's representative may appoint another Full Member's representative or the Chair of the General Meeting as that representative's proxy to vote and speak on his or her behalf at a General Meeting.
 - (b) The instrument appointing a proxy must be in the following form or any other form that clearly identifies the person appointed as the Full Member's representative proxy and has been signed by the Full Member's representative:

Association of Mining and Exploration Companies (Inc)

Proxy Form

I, _____
of _____
being a representative of _____
a Full Member of the above named Association, hereby appoint

of _____
or failing him, the Chair of the meeting as my proxy to vote for me on my behalf at the (Annual or Special, as the case may be) General Meeting of the Association, to be held on the _____ day of _____ 20____, and at any adjournment of the General Meeting in the manner indicated below or, in the absence of indication, as he thinks fit.
Signed this _____ day of _____ 20_____

- 12.6 An instrument appointing a proxy confers authority on the appointee to demand or join in demanding a poll.
- 12.7 An instrument appointing a proxy and any power of attorney or other authority under which it is signed, is of no effect unless deposited at the Office:
- (a) not less than forty eight (48) hours before the commencement of the General Meeting for which the proxy is appointed; or
 - (b) in the case of a poll, not less than twenty four (24) hours before the time appointed for the taking of the poll.

- 12.8 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the revocation of the instrument or the authority under which the instrument was executed, if no written confirmation of the revocation is received by the Association at the Office before the commencement of the General Meeting.
- 12.9 Subject to clause 7.7, eight (8) representatives of Full Members or not less than ten per centum (10%) of the representatives of Full Members, whichever is greater, will constitute a quorum for the conduct of business at a General Meeting. No business is to be conducted at a General Meeting unless a quorum is present.
- 12.10 This Constitution may only be altered, added to or rescinded by special resolution at a General Meeting and otherwise in accordance with the procedures set out in Division 2 of Part 3 of the Act.

13 THE COUNCIL

- 13.1 The management and control of the affairs of the Association will be vested in a Council constituted and elected pursuant to the following:
- (a) Council Structure
- Subject to clause 13.2, the Council will consist of seventeen (17) Councillors comprising:
- (i) nine (9) elected from and by the representatives of the Full Members;
- (ii) three (3) elected from and by the representatives of Associate Members; and
- (iii) each Advisory Committee Chair.
- (b) Elections
- (i) Elections will occur for the Councillors referred to in clauses 13.1(a)(i) and 13.1(a)(ii) at each Annual General Meeting by electronic or postal ballot (or a combination of these methods) in the manner set out in clauses 13.1(e) and 13.1(f).
- (ii) Immediately following the elections of the Councillors in clauses 13.1(a)(i) and 13.1(a)(ii) pursuant to clause 13.1(b)(i), each Advisory Committee Chair is automatically deemed to be a Councillor for a term of one (1) year subject to this Constitution.
- (c) Retirement of Councillors at Annual General Meeting
- At every Annual General Meeting, subject to clause 13.2, one half (1/2) of the Councillors referred to in clauses 13.1(a)(i) and 13.1(a)(ii) will retire from office.
- (d) Determination of Retirement of Councillors
- The Councillors referred to in clauses 13.1(a)(i) and 13.1(a)(ii) hold office for a term of two (2) years. For the avoidance of doubt, the Councillors who are to retire under clause 13.1(c) at an Annual General Meeting are those Councillors who have held office for the greatest period of time (and, in respect of a casual vacancy, the person nominated under clause 13.2 will be deemed to have held office from the beginning of the term of the person he or she replaced (or of his or her immediate predecessor (if applicable) he or she replaced)), since their last election.

- (e) Nominations
- (i) Any Full Member, by its representative, may nominate its representative or the representative of any other Full Member to fill a position on the Council reserved under clause 13.1(a)(i).
 - (ii) Any Associate Member, by its representative, may nominate its representative or the representative of any other Associate Member to fill a position on the Council reserved under clause 13.1(a)(ii).
 - (iii) Nominations for the Council must be lodged in writing with the Chief Executive Officer (together with the nominee's signed consent to the nomination) between the period beginning on 1 January and ending on 28 February in any year.
 - (iv) If the Chief Executive Officer receives nominations for not more than the number of each category of Councillors referred to at clauses 13.1(a)(i) to 13.1(a)(iii) who are due to retire at the next Annual General Meeting, then the person or persons nominated will be deemed to be elected to the Council, subject to this Constitution.
 - (v) If the Chief Executive Officer receives nominations for more than the number of each category of Councillor referred to at clauses 13.1(a)(i) to 13.1(a)(iii) who are due to retire at the next Annual General Meeting, then the Chief Executive Officer must, when forwarding to members notices of the Annual General Meeting, include a separate ballot paper listing:
 - (a) the names of the nominees in alphabetical order;
 - (b) the category for which each nominee is nominated; and
 - (c) the number of Councillors to be elected for each category.
- (f) Voting by Ballot
- (i) A member is only entitled to vote for that category of Councillor to which the member belongs.
 - (ii) A member intending to vote in the ballot must vote (subject to this Constitution) either by its representative or personally, whichever the case may be, on the ballot form in numerical order of preference.
 - (iii) A ballot form must be completed by numbering each of the nominees in the preferred ascending sequence (commencing with the number 1). The duly completed ballot paper must be returned to the Chief Executive Officer not less than two (2) Business Days prior to the relevant Annual General Meeting.

A ballot form showing a faulty or incomplete sequence, or is not returned within the time specified above, will not be counted.
 - (iv) The numbers respectively allocated to each category of nominee on the ballot form must be added.
 - (v) Where four (4) of the Councillors referred to at clause 13.1(a)(i) retire from office, the nominees for the positions on the Council which receive the first, second, third and fourth lowest total number pursuant to clause 13.1(f)(iv) are elected to the Council subject to this Constitution.

- (vi) Where five (5) of the Councillors referred to at clause 13.1(a)(i) retire from office, the nominees for the positions on the Council which receive the first, second, third, fourth and fifth lowest total number pursuant to clause 13.1(f)(iv) are elected to the Council subject to this Constitution.
- (vii) Where one (1) of the Councillors referred to at clause 13.1(a)(ii) retires from office, of the nominees for the position on the Council, the nominee who received the lowest total number pursuant to clause 13.1(f)(iv) is elected to the Council subject to this Constitution.
- (viii) Where two (2) of the Councillors referred to at clause 13.1(a)(ii) retire from office, the nominees for the positions on the Council which receive the first and second lowest total number pursuant to clause 13.1(f)(iv) are elected to the Council subject to this Constitution.
- (g) Notwithstanding any failure or delay in the appointment of a replacement Councillor to fill a casual vacancy, the Council may continue to meet and its decisions will, if made at a duly convened meeting with an appropriate quorum, bind the Association.
- (h) A Councillor who is due to retire or is retiring, may be nominated, and is eligible, for re-election to that office.
- (i) This clause 13.1 is subject to clauses 13.4(a) and 7.7.

13.2 Casual Vacancies

Any casual vacancy in the position of a Councillor may be filled, subject to clause 7.7, by a person nominated by the remaining Councillors from the representatives of Full Members or of Associate Members or, from the members of the relevant Advisory Committee (as the case may respectively require), and that person will hold office for the balance of the term of the Councillor whose position has become vacant.

13.3 Additional Members of Council

- (a) The Council may in its discretion appoint a maximum of three (3) persons as non-voting members of the Council, where in the opinion of the Council those persons possess skills and experience which are relevant to the objectives of the Association or will assist the Council with its objectives.
- (b) A person appointed to the Council in accordance with clause 13.3(a) is a member of the Council until the next Annual General Meeting and must not vote on any matter put before the Council.
- (c) If a person appointed to the Council in accordance with clause 13.3(a) vacates that position for any reason (including resignation or removal), such vacation does not create a casual vacancy for the purposes of clause 13.2.

13.4 Continuation of Councillors

- (a) If no nominations for membership of the Council are received for the purposes of an election under clause 13.1 the Councillors in office must continue to hold office until the next Annual General Meeting of the Association provided they continue to be qualified.
- (b) If fewer nominations are received than the number of vacancies to be filled the persons nominated will, if duly qualified, be declared to have been elected and the

remainder of the vacancies filled by persons selected by the elected Councillors in accordance with the structure in clause 13.1(a).

- (c) Any Councillor who without the prior leave of the Council is absent from three (3) consecutive meetings of the Council must forfeit his or her membership of the Council, but will remain eligible for:
 - (i) re-election at the next Annual General Meeting of the Association where the relevant Councillor is a Councillor referred to at clauses 13.1(a)(i) or 13.1(a)(ii); or
 - (ii) membership of the Council where the relevant Councillor is a Councillor referred to at clause 13.1(a)(iii).
- (d) A paid officer of the Association is not eligible for election to the Council and does not have the right to vote at any Council meeting.
- (e) The continuing Councillors may act notwithstanding any vacancy in their body, but if the number falls below seven (7), the Councillors may only act in emergencies or for the purpose of filling the vacancies. The continuing Councillors must use their best endeavours to fill any vacancy in their number as soon as possible.
- (f) The Association may, by special resolution of a General Meeting, remove any Councillor before the expiration of his or her period of office and may, by ordinary resolution, subject to clause 7.7, appoint another qualified person from the representatives of Full Members or of Associate Members, or from the members of the relevant Advisory Committee (as the case may require) to hold office for the balance of the term of the removed Councillor.

13.5 Proceedings of the Council

- (a) The Councillors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings and proceedings as they think fit.
- (b) Seven (7) Councillors is the quorum for any meeting of the Council.
- (c) At any time the Chief Executive Officer must, upon the request of not less than three (3) Councillors, convene a meeting of the Council. At least seven (7) days notice must be given to all Councillors of any meeting so convened.
- (d) Questions arising at any meeting of the Council must be decided by a simple majority of votes of those Councillors present and in the case of an equality of votes, the Chair will have a second or casting vote. A Councillor who is a representative of more than one Full Member, more than one Associate Member or, more than one Advisory Committee (as the case may be) must not exercise more than one vote on any resolution of the Council.
- (e) At the first meeting of the Council after each Annual General Meeting, the Councillors must elect from amongst themselves a President and at least one Vice-President of the Association, who will hold office until the conclusion of the next Annual General Meeting. The President is the Chair of the Council and, in the President's absence, the Vice President (and if more than one, any one of their number) is the Chair of the Council. If at any Council meeting the President or any Vice-President are not present, the Councillors present must choose one of their number to be Chair of the Council meeting. If any vacancy occurs in the office of

the President or Vice-President, the Council may, as often as may be necessary, elect one of the other Councillors to fill the vacancy for the balance of the term of office.

- (f) Provided a quorum is present, a Council meeting is competent to exercise all or any of the authorities, powers and discretions by or under this Constitution or for the time being vested in or exercisable by the Councillors.
- (g) Other than duties imposed on the Council by the Act or another written law, the Councillors may delegate any of their powers to committees consisting of, subject to clause 13.5(h), such Councillor or Councillors as they think fit and may from time to time revoke such delegation. Any power delegated to a committee under this clause 13.5(g) or clause 13.5(h) must be exercised by the committee in accordance with any regulations imposed on the delegation by the Council. The meetings and proceedings of any committee consisting of two (2) or more members must be conducted in accordance with this clause 13.5 or in a manner determined by the Council. A committee may, with the approval of the Council, appoint any other person from amongst the representatives of Full Members or of Associate Members or from Individual Members to the committee.
- (h) The Councillors may, from time to time, establish and delegate any of their powers to Advisory Committees that consist of the Advisory Committee Chair and such other persons as the Council thinks fit provided those persons are representatives of Full Members or Associate Members or from Individual Members. The number of Advisory Committees established by the Council under this Constitution may be less, but must not be greater, than the following five (5) Advisory Committees:
 - (i) the Queensland Advisory Committee;
 - (ii) the New South Wales and Australian Capital Territory Advisory Committee;
 - (iii) the Northern Territory Advisory Committee;
 - (iv) the South Australia Advisory Committee; and
 - (v) the Victoria and Tasmania Advisory Committee.

During the month of February or March, and in any event prior to 31 March, of each year, each Advisory Committee must elect from amongst themselves an Advisory Committee Chair who will hold office until the election of the Advisory Committee Chair during the month of February or March of the following year.

- (i) The Council of the Association may delegate any of the secretarial and treasurer powers and duties outlined under clauses 13.6 and 13.7 to such other persons, including the Chief Executive Officer and the Chair of the Finance and Management Committee, as the Council may think fit. The Council may revoke such delegation. Any person to whom any powers or duties are delegated under this clause 13.5(h) must, in the exercise of those powers or duties, conform to any regulations or directions that may be imposed on the delegation by the Council.
- (j) A resolution in writing signed by all the Councillors is as valid and effective as if passed at a meeting of the Council duly called and constituted. Any such resolution may consist of several documents in the same form, each signed by one or more Councillors.

13.6 Secretarial powers and duties

The Chief Executive Officer, or another person authorised by the Council, must:

- (a) coordinate the correspondence of the Association;
- (b) keep full and correct minutes of the proceedings of the Council and of the General Meetings;
- (c) comply on behalf of the Association with:
 - (i) Division 5 of Part 4 of the Act in respect of the register of members;
 - (ii) Sections 35 and 36 of the Act in respect of this Constitution; and
 - (iii) Section 58 of the Act in respect of the record of the office holders, and any trustees of the Association;
- (d) have custody of all books of the Association including those referred to in clause 13.6(c), other than those required by clause 13.7 to be kept in the custody of the Chair of the Finance and Management Committee; and
- (e) perform such other duties as are delegated by the Council under this Constitution.

13.7 Treasurer powers and duties

The Chair of the Finance and Management Committee, or another person authorised by the Council, must:

- (a) be responsible for the receipt of all monies paid to or received by, or by him on behalf of, the Association and must issue receipts for those monies in the name of the Association;
- (b) pay all monies referred to in clause 13.7(a) into accounts of the Association as the Council may from time to time direct;
- (c) make payments from the funds of the Association with the authority of the Council;
- (d) comply on behalf of the Association with Part 5 of the Act in respect of the financial report of the Association;
- (e) whenever directed by the Council to do so, submit to the Council a report, balance sheet or financial statement in accordance with that direction;
- (f) have custody of all financial records and financial reports of the Association; and
- (g) perform such other duties as are delegated by the Council under this Constitution.

14 POWERS AND DUTIES OF THE COUNCIL

14.1 The Council has the power to:

- (a) make such by-laws, rules, regulations or charters not inconsistent with this Constitution as, in the opinion of the Council, are necessary or desirable for the proper control, corporate governance, administration and management of the Association's finances, affairs, interests, effects and property;
- (b) amend or rescind any by-laws, rules, regulations or charters made under clause 14.1(a); and

- (c) exercise any of the powers of the Association set out in clause 4.
- 14.2 The Council must cause minutes to be recorded in a book of:
- (a) all appointments of officers made by the Council;
 - (b) the names of the Councillors and others present at each meeting of the Council and of any committee of the Council; and
 - (c) all resolutions and proceedings at all General Meetings, meetings of the Council and meetings of committees of the Council.
- 14.3 All acts of the Council or a committee, or of a Councillor or member of a committee, are valid notwithstanding any defect that may afterwards be discovered in the election, appointment or qualification of a Councillor or member of a committee.

15 MATERIAL PERSONAL INTERESTS

- 15.1 Where a Councillor, or a Full Member or an Associate Member represented by a Councillor, has a material personal interest in a matter being considered at a meeting of the Council, that Councillor must:
- (a) as soon as he or she becomes aware of that interest, disclose the nature and extent of that interest to the Council and at the next General Meeting; and
 - (b) not be present while the matter is being considered at the meeting or vote on the matter
- 15.2 The requirements under clause 15.1 do not apply in respect of a material personal interest that:
- (a) the Councillor, or the Full Member or Associate Member represented by a Councillor, has in common with all, or a substantial proportion of, the members of the Association; or
 - (b) exists only because the Councillor, or the Full Member or Associate Member represented by a Councillor, is a member of a class of persons for whose benefit the Association is established.
- 15.3 The requirement under clause 15.1(a) does not apply in respect of a material personal interest that exists only because the Councillor, or the Full Member or Associate Member represented by the Councillor, is an employee of the Association.
- 15.4 Where a Councillor, or a Full Member or an Associate Member represented by a Councillor, or a member of a committee established by the Association, or an officer or employee of the Association, has a material personal interest in a matter being considered at an Association committee meeting, that person must:
- (a) as soon as he or she becomes aware of that interest, disclose the nature and extent of that interest to the relevant Association committee; and
 - (b) not be present while the matter is being considered at the meeting or vote on the matter.

16 DISQUALIFICATION OF COUNCILLORS

The office of a Councillor will become vacant if the person:

- (a) holds any office of profit under the Association;
- (b) becomes ineligible to accept an appointment or act as a Councillor under section 39 of the Act;
- (c) becomes prohibited from being a Councillor by reason of any order made pursuant to the *Corporations Act 2001* (Cth);
- (d) dies or becomes permanently unable to act as a Councillor because of a mental or physical disability;
- (e) resigns as a Councillor by notice in writing to the Chief Executive Officer;
- (f) the Advisory Committee of which he or she is the Advisory Committee Chair ceases to be a committee pursuant to clauses 13.5(h) and 13.5(g); or
- (g) the company or partnership of which he or she is the representative ceases to be a Full Member or Associate Member.

17 DISPUTE RESOLUTION

17.1 The dispute resolution procedure, being model rules 17-25, provided for in Schedule 2 of the Regulations, is incorporated into this Constitution with the following amendments:

- (a) A reference to a “person” includes a company;
- (b) “secretary” means the Chief Executive Officer;
- (c) “committee” means the Council;
- (d) A reference to a “rule” is a reference to a clause; and
- (e) A reference to “rule 15(7)” is a reference to clause 10.5.

17.2 For the avoidance of doubt, model rule 25 referred to in clause 17.1, is deleted and replaced with the following clause:

If mediation takes place pursuant to a notice under clause 10.5 and as a result of the mediation, the Council resolution to cancel the member’s membership or expel the member is revoked, that revocation does not affect the validity of any decision made at a Council meeting or General Meeting during the period of cancellation or expulsion.

18 EXECUTION OF DEEDS AND DOCUMENTS

18.1 All deeds, instruments and documents executed on behalf of the Association may be in such form and contain such powers, conditions, covenants and agreements as the Council thinks fit. The deed, instrument or document is executed by the Association if signed on behalf of the Association by the Chief Executive Officer or any other two (2) persons authorised by the Council.

18.2 All:

- (a) bills of exchange, promissory notes or other negotiable instruments must be accepted, made, drawn or endorsed; and
- (b) cheques or orders for payment must be signed,

for and on behalf of the Association by the Chair of the Finance and Management Committee or any other two (2) persons authorised by the Council.

- 18.3 Cheques or other negotiable instruments received by the Association must be deposited by the Chair of the Finance and Management Committee into an account nominated by the Council or a person authorised by the Council, for that purpose within five (5) Business Days after receipt.

19 FINANCIAL MATTERS

- 19.1 The Council must ensure proper financial records are kept with respect to:
- (a) all sums of money received and expended by the Association and the purpose for which the receipt and expenditure takes place;
 - (b) all sales and purchases of goods by the Association; and
 - (c) the assets and liabilities of the Association.
- 19.2 The books and any securities of the Association must be kept:
- (a) in the custody of the Chief Executive Officer or the Chair of the Finance and Management Committee (as the case may be) in accordance with clauses 13.6(d) and 13.7(f); and
 - (b) at the Office or at a place determined by the Council.
- 19.3 The books of the Association must be retained for at least seven (7) years.
- 19.4 For each financial year of the Association the Council must ensure that the requirements under Part 5 of the Act relating to the financial report of the Association are met, including:
- (a) the preparation of the financial report;
 - (b) the audit of the financial report;
 - (c) the presentation of the financial report to the Annual General Meeting; and
 - (d) the presentation of the copy of the auditor's report on the financial report to the Annual General Meeting.

20 AUDIT

- 20.1 For each financial year of the Association, the Council will appoint one (1) auditor in accordance with Division 7 of Part 5 of the Act for the purpose of conducting an audit of the financial report.
- 20.2 The Council must ensure the auditor conducts the audit of the financial report of the Association in accordance with the requirements under Divisions 5 and 6 of Part 5 of the Act.
- 20.3 Subject to clauses 20.4 and 20.5, the auditor holds office until the auditor's report has been presented for consideration at the Annual General Meeting.

- 20.4 The auditor may, by written notice given to the Association, resign as auditor of the Association.
- 20.5 The auditor may only be removed from office by ordinary resolution at a General Meeting in accordance with Division 7 of Part 5 of the Act.

21 NOTICES

- 21.1 A notice may be given by the Association to any member or Councillor by personal delivery, or by sending it by post or electronically to the recorded address of the member or Councillor in the register of members.
- 21.2 Where a notice is sent by post, provided the notice is properly addressed, prepaid and posted, service of the notice is effected:
- (a) in the case of a notice convening a meeting including a General Meeting, on the second day after the day the notice was posted; and
 - (b) in any other case, the day the notice would have been delivered in the ordinary course of the post.

If a member or Councillor has no, or has not supplied a, registered address within Australia for the receipt of notices, a notice posted up on the Association's website or such other place as the Council thinks fit is effective notice on the member or Councillor forty eight (48) hours after the notice is posted up. A notice served on a representative of a Full Member or Associate Member is duly served on that Full Member or Associate Member (as the case may be).

22 LIABILITY OF MEMBERS, COUNCILLORS AND EMPLOYEES

- 22.1 Every Councillor, manager, auditor, other officer or employee of the Association is indemnified by the Association, out of the funds of the Association, against all costs, losses and expenses which any officer or employee may incur or become liable for, by reason of any contract entered into, or act or thing done by him or her as officer or employee or in any way in the discharge of his or her duties including travelling expenses.
- 22.2 No Councillor, officer or auditor of the Association is liable for:
- (a) the acts, receipts, negligence or defaults of any other Councillor or officer;
 - (b) any loss or expense of the Association through the insufficiency or deficiency to title of any property acquired by the Association, or for the insufficiency or deficiency of any security in or upon which any of the monies of the Association are vested;
 - (c) any loss or damage arising from the bankruptcy, insolvency, or tortuous act of any person, company or organisation with whom any monies or securities are deposited; or
 - (d) any loss occasioned by any error of judgement, omission, default, or oversight on his or her part, or any other loss, damage or misfortune occurring in the execution of his or her duties unless it is the result of his or her own wilful act, neglect, default, or dishonesty.

23 WINDING UP OR DISSOLUTION

The Association may be dissolved, wound up or the incorporation of the Association cancelled by a special resolution at a Special General Meeting called for that purpose and otherwise in accordance with the procedures set out in Parts 9 and 10 of the Act.

24 GOVERNING LAW

The law governing this Constitution must be the law for the time being in force in the State of Western Australia.
