



# Constitution

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Sydney WorldPride Limited

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# Constitution

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# Preliminary

## 1. Defined terms

In this Constitution unless the contrary intention appears:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth), and any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or national education body or otherwise for the not-for-profit sector, and includes:

- (a) any regulations made under that Act or any other such legislation; and
- (b) any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislation, having application to the Company.

**Alternate Director** means a person appointed as an alternate director under clause 38.

**Applicable Not-for-profit Laws** means any law relating to the regulation of charities or not-for-profit entities applicable to the Company, including each of the Charities Act, the ACNC Act, the Tax Act, and the Charitable Fundraising Act.

**Auditor** means the Company's auditor or Reviewer (as the case may be).

**Board** means the Directors acting collectively under this Constitution;

**Chair** means a person appointed as Chair under clause 49, and when used in relation to a general meeting or a Directors' meeting, means the person who is acting as chair of that meeting.

**Charitable Fundraising Act** means the *Charitable Fundraising Act 1991* (NSW) and any equivalent legislation in any State or Territory as may be applicable to the activities of the Company from time to time.

**Charities Act** means the *Charities Act 2013* (Cth).

**Charter** means, with respect to a Committee, a document that sets out its functions, the way it is constituted, and the manner in which it must conduct its functions.

**Chief Executive Officer** or **CEO** means a person occupying the position of the Chief Executive Officer of the Company from time to time and appointed under clause 46.

**Chief Financial Officer** or **CFO** means a person occupying the position of the Chief Financial Officer of the Company from time to time and appointed under clause 47.

**Committee** means a Committee constituted by the Directors under clause 51, and includes (but is not limited to) the Nominations Committee, Risk and Planning Committee, the Governance, Audit and Finance Committee and the Pride Committee.

**Company** means Sydney WorldPride Limited.

**Constitution** means the constitution of the Company as amended from time to time.

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

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

**Directors** means all or some of the Directors acting as a Board and includes Nominee Directors.

**Eligible Recipient** means a fund, authority or institution:

- (a) which is registered as a charity with the Australian Charities and Not-for-profits Commission;
- (b) gifts to which can be deducted under Division 30 of the Income Tax Act; and
- (c) that has constituent documents which prohibit the distribution of its income and property among its members, on terms substantially the same as clause 7.

**Gift Fund** has the meaning given in clause 6.1.

**Gift Fund Committee** has the meaning given in clause 6.4.

**Governance, Audit and Finance Committee** means the Committee constituted under clause 51.2(c).

**Imported Provisions** means the following provisions of the Corporations Act:

- (a) sections 191 to 194 (*disclosure of, and voting on matters involving, material personal interests*);
- (b) Divisions 1 to 7 of Part 2G.2 (*meetings of members of companies*); and
- (c) Part 2G.3 (*minutes and members' access to minutes*).

**Independent Director** means a Director who:

- (a) is not employed by, or an officer of, the Company, MGA or SGLMG; and
- (b) has no business or other relationship that could materially interfere with or could be reasonably perceived to materially interfere with, the independent exercise of that person's judgment.

**Initial CEO** has the meaning given in clause 46.1.

**Initial CFO** has the meaning given in clause 47.1.

**Initial Chair** has the meaning given in clause 49.1.

**Initial Directors** has the meaning given in clause 27.3.

**Initial Period** means the period beginning on the date the Company is registered as a company and ending three months after the date of confirmation of operational funding from Department of Premier and Cabinet (or other relevant department of the NSW State Government).

**Initial Pride Relations Officer** has the meaning given in clause 48.2.

**Member** means a member of the Company under clause 9, whose name is entered for the time being on the Register.

**MGA** means Mardi Gras Arts Limited ACN 158 800 018.

**Nominating Person** has the meaning given in clause 29.1.

**Nominations Committee** means the Committee constituted under clause 51.2(a).

**Nominee Director** means an individual nominated as a Director by a Nominating Person in accordance with clause 29.2.

**Notice** means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

**Objects** means the objects of the Company set out in clause 4.

**Office** means the registered office for the time being of the Company.

**Pride Committee** means the Committee constituted under clause 51.2(d).

**Pride Relations Officer** means a person occupying the position of Pride Relations Officer of the Company from time to time and appointed under clause 48.

**Register** means the register of Members of the Company.

**Registered Entity** means a body corporate registered under the ACNC Act.

**Representative** means, for each Member who is not a natural person, a person appointed by that Member to act as its representative under clause 11.

**Reviewer** means a reviewer under the ACNC Act.

**Risk and Planning Committee** means the Committee constituted under clause 51.2(b).

**Secretary** means any person appointed by the Directors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

**SGLMG** means Sydney Gay and Lesbian Mardi Gras Limited ACN 102 451 785.

**SGLMG Nominee Director** means a Nominee Director appointed by SGLMG as Nominating Person.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth) and includes any rulings or requirements of the Commissioner of Taxation of the Commonwealth of Australia having application to the Company.

## 2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) a word or expression in a clause has the same meaning as in the Corporations Act;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) another grammatical form of a defined word or expression has a corresponding meaning;
- (d) headings are for ease of reference only and do not affect interpretation;
- (e) a reference to a person includes a natural person, body corporate, association or other entity;
- (f) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (g) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (h) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (i) a reference to time is a reference to New South Wales, Australia time;
- (j) a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions; and
- (l) footnotes are for reference only and do not form part of this Constitution.

### 3. Application of the Corporations Act

- 3.1 If, while the Company is a Registered Entity, the Corporations Act operates such that an Imported Provision does not apply to the Company because the Company is a Registered Entity:
- (a) a clause in the same terms as the Imported Provision, along with any relevant definitions in the Corporations Act, is deemed to be included in this Constitution and to apply to the Company to the extent the Imported Provision would have applied to the Company were the Company not a Registered Entity (**Equivalent Clause**); and
  - (b) a reference in this Constitution to an Imported Provision is deemed to be a reference to the Equivalent Clause.
- 3.2 The provisions of the Corporations Act that apply to certain companies as replaceable rules are displaced by this Constitution in their entirety and do not apply to the Company.
- 3.3 For the purposes of this Constitution, if the provisions of the Corporations Act or the ACNC Act conflict with the terms of this Constitution on the same matter, the provisions of the relevant Act prevail to the extent of the conflict. If an Equivalent Clause conflicts with the terms of this Constitution on the same matter, the provisions of this Constitution prevail to the extent of the conflict.

## Objects and powers

### 4. Objects

The Objects for which the Company is established are to:

- (a) organise and co-ordinate WorldPride Sydney 2023;
- (b) maintain co-operative relationships with InterPride and its member organisations including arranging for attendance of representatives at relevant events;
- (c) otherwise act for the purposes of advancing the interests and well-being of gay, lesbian transgender, bisexual, queer and intersex people; and
- (d) do all things incidental or convenient in advancement of the objects contained in this clause 4.

### 5. Powers

The Company may only exercise the powers granted in section 124(1) of the Corporations Act to:

- (a) carry out the Objects; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 5(a).

# Not-for-profit and Deductible Gift Recipient

## 6. Gift Fund

- 6.1 For the purposes of allowing members of the public to make deductible gifts to the Company, the Company will establish a non-profit public fund, which will be established and operated in Australia (**Gift Fund**).
- 6.2 The public must be invited to contribute to the Gift Fund, and the Company will seek such contributions.
- 6.3 The Company:
- (a) will apply to the Gift Fund gifts and deductible contributions from the public for the purposes of carrying out the Company's Objects;
  - (b) will credit to the Gift Fund any money received by the Company because of such gifts and deductible contributions;
  - (c) will not contribute any other money or property into the Gift Fund; and
  - (d) will use any contributions to the Gift Fund and any money credited to the Gift Fund only for the purposes of carrying out the Objects.
- 6.4 The Gift Fund will be administered by a committee, with a majority of members who, because of their tenure of some public office or their position in the community, have a degree of responsibility to the community as a whole<sup>1</sup> (**Gift Fund Committee**).
- 6.5 The Gift Fund Committee will:
- (a) ensure that contributions to the Gift Fund are kept separate from other contributions to the Company;
  - (b) establish and maintain a bank account for the Gift Fund which is separate from any other bank account held by the Company; and
  - (c) establish and utilise appropriate accounting procedures to record the receipts of all contributions to the Gift Fund and to record all expenditure from the Gift Fund.
- 6.6 The Company will issue receipts for all contributions to the Gift Fund, in the name of the Gift Fund.
- 6.7 Amounts in the Gift Fund will not be distributed to the members of the Gift Fund Committee nor to officers or Members of the Company except for distributions that are:
- (a) reimbursement of out of pocket expenses incurred on behalf of the Gift Fund; or
  - (b) proper remuneration for administrative services in respect of the Gift Fund.
- 6.8 The Company will ensure that it will notify the Australian Taxation Office in writing of any amendments to the provisions of this clause 6 or otherwise to this Constitution.

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<sup>1</sup> This is an ATO requirement for non-government public funds. Examples of persons who fall within this category are professional people, members of a professional body that has a professional code of ethics and rules of conduct, mayors, councillors, members of parliament and recipients of government awards for services to the community (eg Order of Australia).



- 6.9 On the winding up of the Gift Fund, any surplus money or other assets in the Gift Fund will be given or transferred in accordance with clause 56.
- 6.10 On revocation of endorsement as a deductible gift recipient under the Tax Act, any surplus money or other assets in the Gift Fund will be given or transferred will not be paid to or distributed amongst Members, but will be given or transferred to:
- (a) MGA, provided MGA is at that time an Eligible Recipient; or
  - (b) if MGA is not at that time an Eligible Recipient, to an Eligible Recipient, such Recipient to be determined by the Members by special resolution at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.

## 7. Income and property of Company

- 7.1 The income and property of the Company will only be applied towards the promotion of the Objects.
- 7.2 No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of bonus, fee or otherwise, to any Member except for payment to a Member:
- (a) of reasonable and genuine compensation in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;
  - (b) in good faith, of reasonable remuneration as an employee of the Company;
  - (c) of an amount payable to that person as a Director in accordance with clause 36;
  - (d) as principal repayments on money lent by the Member;
  - (e) of interest on money lent by the Member at a rate not exceeding current bank overdraft rates of interest for moneys lent;
  - (f) as reimbursement of reasonable expenses properly incurred by the Member on behalf of the Company; or
  - (g) of such other payments, distributions or transfers as may be permitted by the Applicable Not-for-profit Laws.
- 7.3 The Company is not prohibited from making a payment approved by the Directors for distribution or transfer to SGLMG, but only if SGLMG is an Eligible Recipient and the distribution or transfer is in furtherance of the Object.

## 8. Applicable Not-for-profit Laws

For so long as the Company is a Registered Entity, the Company will at all times comply with the Applicable Not-for-profit Laws.

# Membership

## 9. Members

- 9.1 The Members of the Company are each person:
- (a) who is eligible to be a Member under clause 9.2;
  - (b) who has provided their consent to be a Member;

- (c) whose name is entered on the Register; and
- (d) who has not ceased to be a Member under clause 10.

9.2 Each of the following persons is eligible to be a Member:

- (a) each Director; and
- (b) SGLMG.

9.3 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or, to the extent permitted by law, by operation of law.

## 10. Ceasing to be a Member

10.1 A Member's membership of the Company will immediately cease if:

- (a) the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary, or on a later date specified in the notice;
- (b) (if the Member is eligible to be a Member by reason of holding office as a Director) the Member ceases to hold office as a Director;
- (c) the Member is a natural person and:
  - (i) dies; or
  - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
- (d) the Member is not a natural person and becomes insolvent under administration or makes any arrangement or composition with its creditors generally.

10.2 The Secretary must record a cessation of membership in the Register.

## 11. Representatives

11.1 A Member (not being a natural person) may by written notice to the Secretary:

- (a) appoint an individual who is an officer or employee of the Member to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
- (b) remove, substitute and replace a Representative.

11.2 Any appointment of a Representative will cease automatically if the relevant person ceases to be an officer or employee of the Member.

11.3 A Representative is entitled to:

- (a) exercise at the relevant general meeting all the powers which the Member could exercise if it were a natural person; and
- (b) be counted towards a quorum on the basis that the Member is considered to be personally present at the general meeting.

11.4 A Member's appointment of a Representative:

- (a) may be a standing one; and
- (b) must set out what the Representative is appointed to do, and may set out restrictions on the Representative's powers. If the appointment is to be by reference to a position held,

the appointment must identify the position.

11.5 A Member may appoint more than one Representative, but only one Representative may exercise the Member's powers at any one time.

11.6 The appointment of a Representative may set out restrictions on the Representative's powers.

## General meetings

### 12. Annual general meeting

12.1 A general meeting, called the annual general meeting, must be held once in every calendar year at such time and place as may be determined by the Directors.

12.2 While the Company is a Registered Entity, the Chair of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about and make comments on the management of the Company.

### 13. Calling a general meeting

13.1 Any Director may, at any time, call a general meeting.

13.2 A general meeting may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### 14. Notice of general meeting

14.1 At least 21 days' written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) of any general meeting must be given to Members.

14.2 A notice calling a general meeting:

- (a) must specify the place, date and time of 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) must state the general nature of the business to be transacted at the meeting; and
- (c) if a special resolution is to be proposed at the meeting, must specify an intention to propose the special resolution and state the resolution.

14.3 The Directors may postpone or cancel any general meeting (other than a meeting called as the result of a Members' requisition under section 203D of the Corporations Act at any time before the time scheduled for the commencement of the meeting).

14.4 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 54.1 entitled to receive notice of a general meeting.

14.5 An accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## 15. Business of general meetings

- 15.1 No business may be transacted at a general meeting unless the general nature of the business is stated in the notice convening the meeting.
- 15.2 No person may move any amendment to a resolution proposed at a general meeting the terms of which are set out in the notice convening the meeting, or to a document which relates to such a resolution (and a copy of which has been sent to Members or made available for them to inspect or obtain), without the approval of the Chair of the meeting (in his or her discretion).

## 16. Postponement or cancellation of general meetings

- 16.1 Without limiting the powers conferred on the Chair of a general meeting under clause 21.1, the Directors may change a venue or venues or, postpone or cancel any general meeting (other than a meeting convened as the result of a Member's requisition under the Corporations Act but including any meeting adjourned or postponed under clause 21) at any time prior to the day of the meeting.
- 16.2 The Directors must give notice of the change of venue or venues, postponement or cancellation to the persons referred to in clause 54.1.

## Proceedings at general meetings

### 17. Member

In clauses 18, 20, 23 and 24, **Member** includes a Member present in person or by Representative.

### 18. Quorum

- 18.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 18.2 A quorum of Members is a majority of Members, and must include SGLMG.
- 18.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
    - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

## 19. Chair

19.1 Subject to clause 19.2, the Chair will act as chair at every general meeting.

19.2 The Directors present may elect a chair of a general meeting if:

- (a) there is no Chair; or
- (b) the Chair is not present within 15 minutes after the time appointed for holding the general meeting; or
- (c) the Chair is unwilling to act as chair of the general meeting.

19.3 If the Directors make no election under clause 19.2 when they are entitled to do so, then:

- (a) the Members may elect one of the Directors present as chair of the meeting; or
- (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chair of the meeting.

## 20. Conduct at general meetings

20.1 Subject to applicable laws and this Constitution, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chair of the meeting.

20.2 If there is a dispute at a general meeting about a question of procedure, the chair of the meeting may determine the question.

## 21. Adjournment

21.1 The chair of a general meeting:

- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
- (b) must adjourn the general meeting if the meeting directs the chair to do so.

21.2 An adjourned general meeting may take place at a different venue to the initial general meeting.

21.3 The only business that can be transacted at any adjourned general meeting is the unfinished business of the initial general meeting.

21.4 Notice of an adjourned general meeting must only be given in accordance with clause 14.1 if a general meeting has been adjourned for more than 21 days.

## Voting at General Meetings

### 22. Entitlement to vote

Subject to this Constitution, on a show of hands and on a poll every Member has one vote.

## 23. Decision on questions

- 23.1 Subject to the Corporations Act, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution. In the event of an equality of votes on any resolution, the chair of a general meeting does not have a casting vote.
- 23.2 A resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is demanded in accordance with Part 2G.2 Division 7 of the Corporations Act.
- 23.3 Unless a poll is so demanded:
- (a) a declaration by the chair of the general meeting that a resolution has on a show of hands been carried or carried unanimously or by a specified majority, or lost; and
  - (b) an entry to that effect in the book containing the minutes of the proceedings of the Company,
- are conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 23.4 The demand for a poll may be withdrawn.
- 23.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## 24. Taking a poll

- 24.1 If a poll is duly demanded under clause 23.2, a poll will be taken when and in the manner that the chair of the general meeting directs.
- 24.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 24.3 The chair of the general meeting may determine any dispute about the admission or rejection of a vote.
- 24.4 The chair's determination, if made in good faith, will be final and conclusive.
- 24.5 A poll demanded on the election of a chair or on the question of adjournment must be taken immediately.
- 24.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## 25. Written resolutions of Members

- 25.1 Subject to the Corporations Act, the Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Member signs the document.
- 25.2 For the purposes of clause 25.1, separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

- 25.3 If the Company has only one Member, the Company may pass a resolution by the Member recording it and signing the record.
- 25.4 Any document referred to in this clause 25 may be in the form of an electronic transmission.
- 25.5 For the purposes of clause 25.3, a document will be taken to be signed by a Member if it:
- (a) includes or is accompanied by a personal identification code allocated by the Company to the Member; or
  - (b) has been authorised by the Member in another manner approved by the Directors.

## 26. Objections

- 26.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 26.2 An objection must be referred to the chair of the general meeting, whose decision is final.
- 26.3 A vote which the chair does not disallow because of an objection is valid for all purposes.

## The Board

### 27. Directors

- 27.1 The minimum number of Directors is three, unless the Company increases the minimum number by resolution passed at a general meeting.
- 27.2 A person is only eligible for appointment as a Director if the person provides their consent to act as Director.
- 27.3 The initial Directors of the Company (**Initial Directors**) are the persons who have consented to act as directors and are set out in the Company's application for registration as a company (Initial Directors). Those persons hold office subject to this Constitution.
- 27.4 On or before expiry of the Initial Period, the Board must meet the composition requirements set out in clause 28.

### 28. Board composition following Initial Period

Following expiry of the Initial Period, the Board must meet the following requirements:

- (a) up to six Directors will be Nominee Directors nominated as follows:
  - (i) a minimum of two Directors and a maximum of three Directors nominated by SGLMG in accordance with clause 29;
  - (ii) one Director may (but need not) be nominated by the NSW Government in accordance with clause 29;
  - (iii) one Director may (but need not) be nominated by the Federal Government in accordance with clause 29; and

- (iv) one Director may (but need not) be nominated by the City of Sydney in accordance with clause 29; and
- (b) a minimum of two and a maximum of six other Directors who have skills relevant to carrying out the Objects of the Company, including at least one Independent Director.

## 29. Nominee Director nomination and withdrawal of nomination

- 29.1 Subject to clause 27.2, the persons entitled to nominate Directors under clause 28(a) (**Nominating Persons**) are entitled to nominate the number of Nominee Directors referred to in that clause.
- 29.2 A Nominating Person may nominate a person as a Director by giving the Company:
- (a) a notice in writing specifying the person nominated;
  - (b) sufficient information to allow the Nominations Committee to make a recommendation to the Board regarding that person's appointment (including any additional information reasonably requested by the Board); and
  - (c) the person's consent to act as Director.
- 29.3 A Nominating Person may:
- (a) withdraw the nomination of a Nominee Director at any time by giving notice to the Company and the relevant Director, which withdrawal will take effect from the date of receipt of the notice or on any later date specified in the notice; and
  - (b) nominate another person to replace that Nominee Director by following the process set out in clause 29.2.

## 30. Appointment and removal of Directors

- 30.1 Directors are appointed as follows:
- (a) Nominee Directors are nominated in accordance with clause 29.2 and appointed by the Board following a recommendation to the Board by the Nominations Committee; and
  - (b) all other Directors are appointed by resolution passed at a general meeting on recommendation by the Board following a recommendation to the Board by the Nominations Committee.
- 30.2 A person is only eligible for appointment as a Director if they provide their consent to act as a Director.
- 30.3 If the Nominating Person withdraws the nomination of a Nominee Director under clause 29.3(a), that person will cease to be a Director on and from the date the withdrawal of nomination takes effect.

## 31. Role of Nominee Directors

- 31.1 A Nominee Director appointed by a Nominating Person is appointed on the basis that that person will have special (but not exclusive) regard to the interests of the Nominating Person and the Nominee Director is not taken to be in breach of his or her fiduciary duty to act in the best



interests of the Company by reason only that in the performance of their duties and the exercise of their powers, they have regards to the interests of the Nominating Person.

- 31.2 Subject to the duties of a Director under the Corporations Act, each Nominee Director may disclose to the Nominating Person that appointed them any information (including confidential information) relating to the Company or its business or affairs (including any board papers) that comes into the Nominee Director's possession from time to time.

## 32. Vacation of office

A person immediately ceases to be a Director if they:

- (a) become ineligible to be a Director of the Company under the ACNC Act while the Company is a Registered Entity;
- (b) cease to be a Director by operation of the Corporations Act;
- (c) are prohibited by the Corporations Act from holding office or continuing as a Director;
- (d) are prohibited from holding or is removed from the office of Director by an order made under the Corporations Act;
- (e) become of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- (f) resign by notice in writing to the Company, from the date of receipt of that notice by the Secretary, or on a later date specified in the notice;
- (g) are removed by a resolution of the Company;
- (h) become bankrupt or make any general arrangement or composition with his or her creditors;
- (i) are absent from Directors' meetings for six consecutive months without leave of absence from the Directors;
- (j) are directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- (k) die;
- (l) are a Nominee Director and the relevant Nominating Person withdraws that person's nomination in accordance with clause 29.3(a);
- (m) cease to be a Member of the Company.

## 33. Powers and duties of Directors

- 33.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.

- 33.2 Without limiting the generality of clause 33.1, the Directors may exercise all the powers of the Company to:

- (a) borrow money;
- (b) charge any property or business of the Company;
- (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and

- (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

33.3 In addition to their responsibilities at law, each Director is responsible and accountable for compliance by the Company with its Objects and must:

- (a) exercise his or her powers and discharge his or her duties in compliance with the Corporations Act;
- (b) comply with the Corporations Act in relation to the disclosure of the Director's interest(s); and
- (c) at all times while the Company is a Registered Entity, comply with the duties described in governance standard 5 of the regulations made under the ACNC Act.

## 34. Directors' meetings

34.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.

34.2 Reasonable notice of a Directors' meeting must be given to each Director, unless the Directors unanimously agree to the contrary.

34.3 It is not necessary to give notice of a meeting of the Directors to an Australian resident whom the Secretary, when giving notice to the other Directors, reasonably believes to be temporarily outside Australia.

34.4 By attending a Directors' meeting, a Director waives any objection they may have had in relation to the notice of meeting.

34.5 An accidental omission to give notice of a meeting of Directors to any Director or the non-receipt of such notice by any Director does not invalidate the proceedings at or any resolution passed at the meeting.

34.6 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.

34.7 The Directors need not all be physically present in the same place for a Directors' meeting to be held.

34.8 Subject to clause 37, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.

34.9 Clauses 34.6 to 34.7 apply to meetings of Committees as if all Committee members were Directors.

34.10 Subject to this clause 34, the Directors may meet together, adjourn and regulate their meetings as they think fit.

34.11 A quorum for meetings of Directors will be a majority of the Directors in office at the relevant time and must include at least one SGLMG Nominee Director (unless no SGLMG Nominee Director is able to be present or vote at the meeting as a result of the operation of clause 37.6).

- 34.12 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chair may call a general meeting to deal with the matter.
- 34.13 Notice of a meeting of Directors may be given in writing or in person, or the meeting may be otherwise called by email, telephone or any other technology consented to by the Directors from time to time.

## 35. Decision on questions

- 35.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 37, each Director present and voting has one vote.
- 35.2 A determination by a majority of the Directors present is for all purposes taken to be a determination of the Board.
- 35.3 The chair of a meeting does not have a casting vote in addition to his or her deliberative vote.
- 35.4 An Alternate Director has one vote for each Director for which that person is an alternate. If the Alternate Director is a Director, that person also has a vote as a Director.

## 36. Payments to Directors

- 36.1 No payment will be made to any Director of the Company other than payment:
- (a) which is in reimbursement for out of pocket expenses properly incurred by the Director in the performance of any duty as Director of the Company where the amount payable does not exceed an amount previously approved by the Board and as substantiated or supported by appropriate documentation as determined by the Company;
  - (b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service is required for the operation of the Company and has the prior approval of the Board and where the amount payable is approved by the Directors of the Company and is not more than reasonable market value;
  - (c) of any salary, wage or remuneration due to the Director if the Director is an employee of the Company where the terms of employment have been approved by the Board; and
  - (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act.
- 36.2 Notwithstanding anything else in this Constitution, a payment of any kind which is permitted to be paid to a Director by this Constitution can be made by the Company to a Director only if that payment is approved by the Directors.

## 37. Directors' interests

- 37.1 As required by the Corporations Act or this Constitution, a Director must give the Directors notice of any material personal interest in a matter that relates to the affairs of the Company.

- 37.2 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 37.3 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 37.4 A Director is not disqualified, merely because of being a Director, from contracting with the Company in any respect.
- 37.5 A Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
  - (b) hold any office or place of profit other than as auditor in the Company; and
  - (c) act in a professional capacity other than as auditor for the Company,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 37.6 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,
- unless permitted by the Corporations Act or this Constitution to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 37.7 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

## 38. Alternate Directors

- 38.1 A Director may, with the approval of the Directors, appoint any person as that person's alternate.
- 38.2 An Alternate Director is entitled to notice of Directors' meetings while they are acting in that capacity and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.

- 38.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.
- 38.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.
- 38.5 An Alternate Director's appointment ends automatically when their appointor ceases to be a Director or when the appointment ends in accordance with its terms.
- 38.6 Any appointment under this clause must be effected by written notice delivered to the Secretary.
- 38.7 An Alternate Director does not have an interest in a contract or arrangement or a material personal interest in a matter by reason only of the fact that their appointor has such an interest.

## 39. Remaining Directors

- 39.1 The Directors may act even if any of the directors' positions are vacant.
- 39.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:
- (a) appoint a Director; or
  - (b) call a general meeting; or
  - (c) resolve that:
    - (i) the Company is insolvent, or is likely to become insolvent at some future time; and
    - (ii) an administrator of the Company should be appointed; or
  - (d) where there is a proposal to wind up the Company:
    - (i) make an inquiry into the affairs of the Company for the purposes of determining whether the Company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding-up;
    - (ii) at a meeting of directors, form an opinion as to whether the Company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding-up; and
    - (iii) if they form an opinion that the Company is able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding-up, make a written declaration to that effect.

## 40. Chair of Directors' meetings

- 40.1 If the Chair is present at a Directors' meeting and is eligible to vote at that meeting, the Chair will act as chairperson at that Directors' meeting.
- 40.2 If the Chair is not present at a Directors' meeting within 15 minutes after the time appointed for the meeting to begin, or is not eligible to vote at that meeting, or is unable or unwilling to act as chair, the Directors may by simple majority appoint, remove and replace a Director as chair of the meeting.

## 41. Delegation

- 41.1 The Directors may delegate any of their powers, other than those which by law must be dealt with by the Directors as a board, to:
- (a) a committee constituted under clause 51;
  - (b) a Director;
  - (c) the Secretary; or
  - (d) an employee of the Company.
- 41.2 A person or committee that has delegated power must exercise those power in accordance with any directions of the Directors.
- 41.3 The Directors may at any time revoke any delegation of power.
- 41.4 A person or committee may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in that person or committee.

## 42. Written resolutions

- 42.1 The Directors may pass a resolution without a Director's meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 42.2 For the purposes of clause 42.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 42.3 Any document referred to in this clause may be in the form of an electronic transmission.
- 42.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.
- 42.5 This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

## 43. Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Committee; or
  - (b) a person appointed to one of those positions was disqualified,
- all acts of the Directors or the Committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 44. Minutes and Registers

- 44.1 The Directors must cause minutes to be made of:

- (a) the names of the Directors present at all Directors' meetings and meetings of Directors' committees;
- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Directors' committees;
- (c) all resolutions passed by Directors in accordance with clause 42;
- (d) all appointments of officers;
- (e) all orders made by the Directors and Directors' committees; and
- (f) all disclosures of interests made by any Director under clause 37.

44.2 Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.

44.3 The Company must keep all registers required by this Constitution and the Corporations Act, including a Register.

## 45. Appointment of attorneys and agents

45.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint a person in accordance with clause 45.2 to be the attorney or agent of the Company:

- (a) for the purposes;
- (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- (c) for the period; and
- (d) subject to the conditions, determined by the Directors.

45.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- (a) any company;
- (b) the members, directors, nominees or managers of any company or firm; or
- (c) any fluctuating body of persons whether nominated directly or indirectly by the Directors.

45.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

45.4 An attorney or agent appointed under this clause may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## Officeholders

### 46. Chief Executive Officer

46.1 The Directors must, on registration of the Company or as soon as reasonably practicable after registration, appoint a person to be the initial Chief Executive Officer of the Company (**Initial**

**CEO**) to hold office until appointment of the ongoing Chief Executive Officer in accordance with clause 46.2 (unless the Initial CEO is removed earlier under clause 46.3).

- 46.2 As soon as reasonably practicable after the Board meets the composition requirements set out in clause 28, the Directors must, after receiving a recommendation from the Nominations Committee, appoint a person to be the ongoing Chief Executive Officer. The person appointed as ongoing CEO may be the same person as the Initial CEO, provided they meet the requirements applicable to the ongoing CEO position.
- 46.3 Subject to this Constitution, the terms on which the CEO (including the Initial CEO) is appointed will be determined by the Directors, and the Directors may, subject to the terms of that appointment, suspend or dismiss the CEO from that position.
- 46.4 If, at any time, the CEO ceases to hold that position, the Directors must as soon as reasonably practicable appoint another person as CEO.
- 46.5 The Directors may:
- (a) delegate to the Initial CEO or ongoing CEO any of the powers conferred on the Directors; and
  - (b) withdraw or vary any of those powers.

## 47. Chief Financial Officer

- 47.1 As soon as reasonably practicable after registration of the Company, the Directors must appoint a person to be the initial Chief Financial Officer of the Company (**Initial CFO**) to hold office until appointment of the ongoing Chief Financial Officer under clause 47.2 (unless the Initial CFO is removed earlier under clause 47.3).
- 47.2 As soon as reasonably practicable after the Board meets the composition requirements set out in clause 28, the Directors must, after receiving a recommendation from the Nominations Committee, appoint a person to be the ongoing CFO. The person appointed as ongoing CFO may be the same person as the Initial CFO, provided they meet the requirements applicable to the ongoing CFO position.
- 47.3 Subject to this Constitution, the terms on which the CFO (including Initial CFO) is appointed will be determined by the Directors, and the Directors may, subject to the terms of that appointment, suspend or dismiss the CFO from that position.
- 47.4 If, at any time, the CFO ceases to hold that position, the Directors must as soon as reasonably practicable appoint another person as CFO.
- 47.5 The Directors may:
- (a) delegate to the Initial CFO or ongoing CFO any of the powers conferred on the Directors; and
  - (b) withdraw or vary any of those powers.



## 48. Pride Relations Officer

- 48.1 The function of the position of Pride Relations Officer is to engage with and develop relationships between the Company and InterPride, and between the Company and the community, including the gay, lesbian, transgender, bisexual, queer and intersex community.
- 48.2 As soon as reasonably practicable after registration of the Company, the Directors must appoint a person as the Pride Relations Officer (or equivalent title), (**Initial Pride Relations Officer**) to hold office until appointment of the ongoing Pride Relations Officer in accordance with clause 48.3 (unless the Initial Pride Relations Officer is removed earlier under clause 48.4).
- 48.3 As soon as reasonably practicable after the Board meets the composition requirements set out in clause 28, the Directors must, after receiving a recommendation from the Nominations Committee, appoint a person to be the ongoing Pride Relations Officer. The person appointed as ongoing Pride Relations Officer may be the same person as the Initial Pride Relations Officer, provided they meet the requirements applicable to the ongoing Pride Relations Officer position).
- 48.4 Subject to this Constitution, the terms on which the Pride Relations Officer (including the Initial Pride Relations Officer) is appointed will be determined by the Directors, and the Directors may, subject to the terms of that appointment, suspend or dismiss the Pride Relations Officer from that position.
- 48.5 If the Pride Relations Officer ceases to hold that position, the Directors must, as soon as reasonably practicable, appoint another person as the Pride Relations Officer.
- 48.6 The Directors may:
- (a) delegate to the Initial Pride Relations Officer or the ongoing Pride Relations Officer any of the powers conferred on the Directors; and
  - (b) withdraw or vary any of those powers.

## 49. Chair

- 49.1 The Initial Directors must, on registration of the Company, or as soon as reasonably practicable after registration, appoint an Independent Director to be the initial Chair of the Company (**Initial Chair**) to hold office until appointment of the ongoing Chair in accordance with clause 49.2 (unless the Initial Chair is removed earlier under clause 49.3 or clause 49.4).
- 49.2 As soon as reasonably practicable after the Board meets the composition requirements set out in clause 28, the Directors must, after receiving a recommendation from the Nominations Committee, appoint an Independent Director to be the ongoing Chair of the Company. The person appointed as ongoing Chair may be the same person as the Initial Chair, provided they meet the requirements applicable to the ongoing Chair position).
- 49.3 Subject to this Constitution, the terms on which the Chair (including the Initial Chair) is appointed will be determined by the Directors, and the Directors may, subject to the terms of that appointment, suspend or dismiss the Chair from that position.
- 49.4 The Chair (including the Initial Chair) will cease to hold office if the Chair ceases to hold office as a Director.

49.5 If, at any time, the Chair ceases to hold that position, the Directors must as soon as reasonably practicable appoint another Independent Director as Chair.

## 50. Secretary

50.1 There must be at least one Secretary of the Company appointed by the Directors for a term and on the terms determined by the Directors.

50.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.

50.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## 51. Committees

51.1 The Board may constitute Committees consisting of Directors or any other persons the Board considers appropriate for the purposes of carrying out functions allocated to those Committees under their Charters, including making recommendations to the Board on those matters. The Committees must include the Committees referred to in clause 51.2 and may include any other Committees that the Board considers appropriate.

51.2 The Board must constitute the following Committees.

- (a) Nominations Committee, with a Charter that includes a function of making recommendations to the Board about proposed Director appointments (including Director Nominees) and advising the Board on appropriate remuneration for officers and employees of the Company;
- (b) Risk and Planning Committee, with a Charter that includes a function of considering and reviewing operational planning and activities, and risks arising, including terrorism risk;
- (c) Governance, Audit and Finance Committee, with a Charter that includes a function of considering corporate governance, finance and audit matters; and
- (d) Pride Committee, with a Charter that includes a function of providing strategic advice to the Directors on engagement with InterPride and with the community, including the gay, lesbian, transgender, bisexual, queer and intersex community, and communication plans and activities.

51.3 At least one member of each Committee must be a Director with appropriate qualifications and experience. The other members of each Committee may be Directors or other persons that the Directors consider have appropriate qualifications and experience to carry out their role on the Committee.

51.4 The Board may:

- (a) delegate to a Committee any of its powers or discretions as it sees fit; and
- (b) authorise a Committee to sub-delegate any of the powers or discretions delegated to the Committee.

51.5 When carrying out any delegated powers or discretions, a Committee must comply with its Charter and any other requirements imposed by the Directors.

## Business Plan

- 51.6 At least two months before the beginning of each financial year, the Directors must prepare and adopt a business plan for the next financial year that addresses the proposed activities, budget, personnel and financial requirements for the Company.
- 51.7 The Directors must submit the business plan for approval by SGLMG before commencement of the relevant financial year.

## Inspection of records

### 52. Inspection of records

- 52.1 Except as otherwise required by law, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 52.2 Except as otherwise required by law, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.
- 52.3 Except as otherwise required by law, a Member other than a Director does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Directors.

## Notices

### 53. Service of notices

- 53.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:
- (a) serving it on the person; or
  - (b) sending it by post or electronic notification to the person at the address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 53.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the date of its posting.
- 53.3 A notice sent by electronic notification is taken to be served:
- (a) by properly addressing the electronic notification and transmitting it; and
  - (b) on the day of its transmission except if transmitted after 5.00pm in which case it is taken to be served on the next day.

- 53.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 53.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of this clause 53.
- 53.6 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 53.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 53.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

## 54. Persons entitled to notice

- 54.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director; and
  - (c) any Auditor.
- 54.2 No other person is entitled to receive notice of a general meeting.

## Audit and accounts

### 55. Audit and accounts

- 55.1 The Directors must cause the Company to keep written financial records in relation to the business of the Company as required by law.
- 55.2 The Directors must cause the financial records of the Company to be audited or reviewed as required by law.

## Winding up

### 56. Winding up

- 56.1 If the Company is wound up:
- (a) each Member; and
  - (b) each person who has ceased to be a Member in the preceding year (if any),  
undertakes to contribute to the property of the Company for the:
  - (c) payment of debts and liabilities of the Company (in relation to clause 56.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and

(d) adjustment of the rights of the contributories amongst themselves, the amount of \$1.00.

56.2 If after the Company is wound up, there is any surplus:

- (a) gifts of money or property received by the Company for the purposes of carrying out the Objects;
- (b) deductible contributions received by the Company in relation to a fund-raising event held for the purposes of carrying out the Objects;
- (c) money received by the Company because of the gifts or deductible contributions mentioned in paragraphs (a) and (b) including, without limitation, any money received because of investment of those gifts or deductible contributions; and
- (d) assets held by the Company other than those mentioned above, will not be paid to or distributed amongst Members, but will be given or transferred to:
  - (e) MGA, provided MGA is at that time an Eligible Recipient; or
  - (f) if MGA is not at that time an Eligible Recipient, to an Eligible Recipient with similar objects to the Objects, such Recipient to be determined by the Members by special resolution at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.

## Indemnity and insurance

### 57. Indemnity and insurance

57.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act and any other applicable statutory restrictions, the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any and all liabilities (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment);
- (b) any and all reasonable legal costs incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); and
- (c) any and all reasonable legal costs incurred by that person in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

57.2 To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act, the Company may, and may agree (by deed or otherwise) to:

- (a) enter into a contract insuring a person who is or has been an officer of the Company against liabilities incurred by the person as an officer of the Company; and
- (b) pay the premium under any such contract.

57.3 Subject to the Corporations Act and without limiting a person's rights under this clause 57, the Company may enter into an agreement (including a deed) with a person who is or agrees to become or has been an officer of the Company to give effect to the rights of the person under this clause 57, or to the exercise of a discretion under this clause 57, on any terms and conditions that the Directors think fit. Any such agreement may also give the person rights to

inspect and obtain copies of the books of the Company for the purposes, and on such other terms and conditions, as the Directors decide.

- 57.4 For the avoidance of doubt, the Directors may authorise the Company to enter into any agreement (including a deed) permitted by this clause 57.
- 57.5 The amount of any indemnity payable under paragraphs (a), (b) or (c) of clause 57.1 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.
- 57.6 If, for any reason and by any means, any tax is or would be imposed on a person in respect of any sum paid or payable to the person under this clause 57 (**Indemnity Payment**), then the amount of any indemnity payable under this clause 57 will include any additional amount required to ensure that the total amount retained by the person (after allowing for the amount of such tax and after taking into account any tax deduction or tax benefit available to the person, at any time, that is attributable to the liability or legal costs to which the Indemnity Payment relates) is equal to the amount that would have been retained by the person if such tax was not imposed in respect of the Indemnity Payment. Payment of any such additional amount is conditional on the person providing the Company with all information and assistance reasonably required to enable the Company to calculate and verify the amount.
- 57.7 For the purposes of this clause, officer has the meaning given to that term in section 9 of the Corporations Act and includes any Auditor and any person who is not a Director but who is, or has been, a member of a committee to which the Directors delegated any of their powers pursuant to clause 41.

## 58. Amendment

- 58.1 This Constitution may not be amended without:
- (a) a special resolution of the Company as required by the Corporations Act; and
  - (b) the approval of SGLMG.
- 58.2 The requirement in clause 58.1(b) is a further requirement as referred to in section 136(3) of the Corporations Act and any Special Resolution to change this Constitution does not have any effect unless the requirement in clause 58.1(b) has been complied with.