

**CONSTITUTION OF**

**ELEVATING WORK PLATFORM ASSOCIATION LTD**

**A Not-For-Profit Company Limited by Guarantee**

ACN 662 381 428

ABN 32 545 830 419

This is the constitution for the company limited by guarantee arising from the transfer of Elevating Work Platform Association of Australia Incorporated from an incorporated association to a public company limited by guarantee.

18 October 2021

Registered as Elevating Work Platform Association of Australia Incorporated (Inc No Y2742811) on 2 Feb 1998.

Current constitution approved by Members on 18 November 2021.

Transferred to Elevating Work Platform Association Ltd on 15 September 2022.

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## 1. Name of the company

The name of the company is Elevating Work Platform Association Ltd and is referred to as the Company in this Constitution.

## 2. Purpose

2.1 The Purpose of the Company is to advance the elevating work platform industry.

2.2 The Company pursues its Purpose by:

- (a) providing standards, conditions of trading and standards of conduct and of ethics for Members;
- (b) advocating on matters of relevance to Members and the industry;
- (c) facilitating education of and informed discussion about the industry; and
- (d) doing anything ancillary to the Object.

## 3. Type of entity

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

## 4. Guarantee

4.1 Each member must contribute an amount not more than \$1 (the guarantee) to the property of the company if the company is wound up while the member is a member, or within one year after they cease to be a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the company incurred before the member stopped being a member; or
- (b) costs of winding up.

4.2 This undertaking continues for one year after an entity ceases to be a member.

## 5. Replaceable rules

The Replaceable Rules of the Corporations Act 2001 do not apply to this Constitution.

## 6. Definitions and interpretation

6.1 In this Constitution unless it is inconsistent with the subject or context in which it is used:

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

**AGM** means an annual general meeting of the Company.

**Board-Appointed Director** means a Director appointed the Board in accordance with this Constitution.

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**the Company** means Elevating Work Platform Association Ltd.

**Board** means some or all of the Directors acting as the board of directors of the Company in accordance with the Act.

**Business Day** means a day not being Saturday, Sunday or a public holiday on which the banks (as defined in the Banking Act 1959) are open for business in New South Wales.

**Constitution** means these rules as amended or supplemented from time to time.

**Entity** means an individual and any partnership, association, body corporate or entity whether incorporated or not.

**Financial Year** is a period of twelve months ending on 30 June in each year.

**By-law** means a requirement for the control, administration and management of the Company's operations, finances, interests, effects or property as determined by the Board.

**Representative** means the individual, appointed by a Member and notified to the Secretary from time to time, as the Member's representative empowered to exercise all of the powers that may be exercised by the Member.

**Special Resolution** has the same meaning as in the Act.

**State-Appointed Director** means the individual, elected by a State Committee as a Director.

**State Committee** means a grouping of Members operating in a geographic region of Australia and recognised by the Board as a State Committee.

**Year** means the period between the close of one AGM and the close of the next AGM.

6.2 A reference in a rule in general terms to a person holding or occupying a particular position or office includes a reference to any person who occupies or performs the duties of that position or office for the time being.

6.3 In this Constitution, the following rules of interpretation apply unless the context requires otherwise:

- (a) a gender includes all genders;
- (b) singular includes plural and vice versa;
- (c) where a word or phrase is defined, its other grammatical forms or parts of speech have corresponding meaning;
- (d) a reference to a rule or sub-rule is to a rule or sub-rule of this Constitution and includes any further embedded content;

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- (e) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislation substituted for it and any By-laws and statutory instruments issued under it; and
  - (f) the words 'writing' and 'written' include any mode of representing or reproducing words, figures, drawings or symbols in a visible or communicable form.
- 6.4 Headings, bold type and italics are for convenience only and do not affect the interpretation of this Constitution.

## **7. Actions authorised under the Act**

- 7.1 The Company has all the powers of a natural person and as a Company Limited by Guarantee pursuant to the Act, provided they are used only to achieve its Object. The income and property of the Company must be applied only towards promoting

## **8. Not-for-profit**

- 8.1 The Company must not distribute any income or assets directly or indirectly to its members, except as otherwise advised.
- 8.2 Clause 8.1 does not stop the Company from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
  - (b) interest at a rate not exceeding interest at the rate for the time being payable to the Company's bankers for money lent or that would be lent to the Company.
  - (c) reasonable and proper rent for premises leased by any Member to the Company.

## **9. Members**

- 9.1 The Members of the Company are the Members named in the Register of Elevating Work Platform Association of Australia Incorporated that transfer to the Company and any entity that the directors subsequently admit to membership.
- 9.2 There are two classes of membership:
- (a) Voting Members that are entities whose principal business is in the manufacture, distribution, supply, service, rental, support and/or training for the elevating work platform industry and that satisfies any additional requirements for voting membership as may be prescribed by the Board in a By-law from time to time.
  - (b) Non-voting Members that are entities interested in the Objects and the elevating work platform industry but not eligible to be a Voting Member.
- 9.3 Unless otherwise provided by the terms of membership of a class of Members:

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- (a) all or any of the rights or privileges attached to a class may be varied, whether or not the Company is being wound up, with the consent in writing of the members of that class where at least 75% of any responses are in favour, or with the approval of a special resolution adopted at a meeting of the members of that class;
  - (b) the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each meeting of the members of that class.

9.4 The number of Members in any class of Member is unlimited.

9.5 The Company must maintain the Register of Members

## **10. Rights of Members**

10.1 A Voting Member has rights:

- (a) to attend and to speak at general meetings;
- (b) to nominate a Representative to be a Director;
- (c) to vote at general meetings and on resolutions put to the membership;
- (d) to vote on the election of committee members to the State Committee in any state in which the Member operates.

10.2 A Non-voting Member has rights:

- (a) to attend general meetings;
- (b) to speak at general meetings at the invitation of the chair.

10.3 Application for membership:

- (a) Any eligible entity may apply for membership.
- (b) The application for membership must be in writing in the form the Board prescribes from time to time, and be accompanied with the Fee. Such form must provide the email address of the applicant.
- (c) The Directors are not required to give a reason for the rejection of any application for membership.

10.4 An applicant becomes a Member and is entitled to exercise the rights and privileges of membership when its name is entered in the Register.

## **11. Membership not transferable**

11.1 A right, privilege or obligation which an entity has by reason of being a Member:

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- (a) is particular to the Member and not capable of being transferred to another entity by a Member's own act or by operation of law; and
  - (b) terminates upon the cessation of membership by whatever cause.

## **12. Ceasing to be a Member**

### **12.1 A Member shall cease to be a Member:**

- (a) if the Member resigns, by notice in writing, on the date the notice is received by the Secretary;
- (b) immediately, if the Member becomes insolvent or is wound up;
- (c) immediately, if the Member is expelled;
- (d) in any other circumstances prescribed in the terms of membership applicable to the Member or in the failure to satisfy any undertaking given by the Member upon it being admitted as a Member, on the date that the Board resolves to cease the membership;
- (e) immediately, if the member does not pay any membership fee imposed by the directors in accordance with his Constitution in full within 90 days;
- (f) if a Voting Member and they cease to be eligible to be a Voting Member, on the date that the Board resolves to cease the membership; or
- (g) if the Member fails to provide any information required by the Board as part of the renewal process unless the Board resolves otherwise.

### **12.2 Any Member ceasing to be a Member:**

- (a) shall not be entitled to any refund, in full or part, of any fee paid; and
- (b) shall not be readmitted as a Member until any unpaid monies outstanding at the time they ceased to be a Member are paid including any interest or other charges levied on any outstanding moneys unless the Board waives this requirement.

## **13. Disciplining of Members**

### **13.1 Subject to this rule the Board may resolve by a majority of at least 75% of Directors present and eligible to vote to expel any Member, or to suspend any Member from membership for a specified period, if the Member:**

- (a) in the opinion of the Board, has through its Representative, engaged in derogatory or discriminatory conduct or harassment;
- (b) has failed to comply with a written direction issued by the Board in accordance with the Constitution or any rules and regulations of the Company regarding good conduct or administration of the Company;



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- (c) has been found to have acted dishonestly in any civil proceedings in a court or tribunal;
  - (d) has breached this Constitution, or any by-laws, rules or By-laws of the Company; or
  - (e) is causing, has caused, or is likely to cause harm to the Company.
- 13.2 If the Board passes a resolution to expel or suspend or sanction a Member, the Secretary must give the Member written notice:
- (a) setting out the resolution and the grounds upon which it was based; and
  - (b) stating that the Member has 14 calendar days from the date of the notice to give written submissions to the Board in response to the resolution.
- 13.3 If the Member gives written submissions in response to the resolution, then the Board must consider those submissions at its next practical meeting and the Secretary must then give the Member written notice:
- (a) whether the Board still intends to proceed with the resolution; and
  - (b) if the Board does so intend, that the Member has 14 calendar days from the date of the notice to advise the Directors in writing that the Member requires the matter to be referred to mediation pursuant to this Constitution.
- 13.4 If the Member does not give written submissions in response to the resolution within time, then the Board may proceed with the resolution.
- 13.5 If the matter is referred to mediation, then the mediation must be conducted in such manner as the Board reasonably determines; and in accordance with the rules of procedural fairness.
- 13.6 A Member must not start a dispute resolution procedure in relation to a matter which is subject to a disciplinary procedure until the disciplinary procedure is completed.
- 13.7 The parties involved in a dispute must try to resolve it between themselves within 14 days of becoming aware of the dispute.
- 13.8 If the parties involved in the dispute do not resolve it between themselves then they must within a further 14 days:
- (a) advise the Secretary in writing about the dispute;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to resolve the dispute by mediation.
- 13.9 The mediator must:
- (a) be agreed by the parties to the dispute; or

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- (b) if the parties to the dispute do not agree the matter is to be referred to the closest dispute resolution centre of an appropriate community justice institution for mediation.
  - (c) A mediator chosen by the Board:
    - (i) may not be a Member or former Member or Representative or former Representative;
    - (ii) must not have a personal interest in the dispute; and
    - (iii) must not be biased towards or against any party to the dispute.

13.10 When conducting the mediation, the mediator must:

- (a) allow the parties involved a reasonable chance to be heard;
- (b) allow the parties involved a reasonable chance to review any written statements:
  - (i) ensure that the parties involved receive procedural fairness; and
  - (ii) not make a decision on the dispute which is for the parties involved to resolve if they can.

13.11 Nothing in this clause affects the rights of Members at law.

#### **14. Payments by Members**

14.1 The Board may set Member's fees comprising joining fees, annual subscriptions and specific purpose levies and charges.

14.2 The Board may determine different fees for amounts charged to Members as between different classes, if any, of Members and as between Members within a class of membership. The Board may determine that no fee is payable.

14.3 Any amounts charged to Members are payable in such manner and at such times as are determined by the Board.

#### **15. State Committees**

15.1 The Board may make By-laws relating to:

- (i) establishing a State Committee;
- (ii) establishing rules and conditions applying to a State Committee;
- (iii) closing or combining State Committees; and
- (iv) the role of the Board in respect of State Committees.

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## **16. Calling a General Meeting**

- 16.1 The Board may, whenever it thinks fit, call and arrange to hold a general meeting of the Company, and must call and hold an AGM in accordance with the Act.
- 16.2 The Board must also call and arrange to hold a general meeting of the Company when requested by Members in accordance with the Act.
- 16.3 The Members may put resolutions at a General Meeting in accordance with the Act.
- 16.4 Except in the case of a meeting called in accordance with the Act the Board may change the venue for, postpone or cancel a general meeting of the Company.
- 16.5 A general meeting of the Company may be convened to occur at two or more venues, including a virtual meeting, using any technology that gives the Members attending a reasonable opportunity to participate in the meeting.
- 16.6 A Member is taken to be present at a general meeting if the Member is present by Representative or by proxy or by direct vote.
- 16.7 A meeting of Members may be held virtually if the Corporations Act permits it, or ASIC publishes a notice to the effect that it will not object to meetings held virtually;
- 16.8 A hybrid meeting is taken as held at the place decided by the chair of the meeting, as long as at least one of the members involved was at that place for the duration of the meeting. A virtual meeting is taken as held at the Company's registered office.

## **17. Notice of a General Meeting**

- 17.1 Subject to this Constitution and the Act, notice of a general meeting must be given at least 21 clear days to each:
- (a) Member;
  - (b) Director; and
  - (c) auditor of the Company.
- 17.2 A notice of a general meeting of Members may be given by any form of communication permitted by the Act, and;
- (a) if a physical meeting, must specify the place, the day and the hour of meeting; and
  - (b) additionally, if a virtual or hybrid meeting, must also include information about:
    - (i) how those entitled to attend can participate in the meeting (including how they can participate in a vote taken at the meeting, and speak at the meeting); and

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- (ii) the technologies deployed (which must give all entities entitled to attend a reasonable opportunity to participate despite them not being physically present); and
    - (c) state the general nature of the business of the meeting, and in the case of business requiring a Special Resolution, the terms of the Special Resolution and set out or include any other information or documents specified by the Act including the right to appoint a proxy and the conditions of that appointment;
  - 17.3 Except as required by the Act, no business other than that specified in the notice convening a general meeting may be transacted at that general meeting.
  - 17.4 It is not necessary for a notice of an AGM to state that the business to be transacted at the meeting includes the consideration of any annual financial report, any report from the Directors, any report from the auditor, the appointment of Directors, the appointment of the auditor or the fixing of the auditor's remuneration.
  - 17.5 A Member may waive notice of a general meeting by notice in writing to the Company.
  - 17.6 The accidental failure to give notice of any general meeting to, or the non-receipt of notice of a general meeting by, any Member entitled to receive notice will not invalidate the proceedings at or any resolution passed at the general meeting.
  - 17.7 A Member's attendance at a general meeting waives any objection that that entity may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the Member at the beginning of the meeting objects to the holding of the general meeting.
  - 18. Cancellation or postponement of a general meeting**
  - 18.1 Subject to the Act and this Constitution, the Board may cancel a general meeting of the Company that:
    - (a) has been convened by the Board; or
    - (b) at the request of the members who requisitioned the meeting, if the consequence is that there are less than half the requisitioning Members remaining who still want the meeting to be convened.
  - 18.2 The Board may postpone a general meeting or change the venue at which it is to be held except where it has been validly convened at the requisition of a Member or Members.
  - 18.3 No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original general meeting.
  - 18.4 Where any general meeting is cancelled or postponed or the venue for the general meeting is changed:
    - (a) the Board must make a reasonable attempt to notify in writing each Member entitled to receive notice of the general meeting of the cancellation, the change of venue or the postponement of the general meeting by any means permitted by

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this Constitution and in the case of the postponement of a general meeting, the new place, date and time for the meeting.

- (b) any failure to notify in writing any Member entitled to receive notice of the general meeting or failure of a Member to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the general meeting.

## **19. Quorum at a general meeting**

19.1 No business may be transacted at any general meeting unless a quorum of Members entitled to vote is present at all times during the meeting.

19.2 A quorum for a general meeting of Members entitled to vote shall be the number that is equivalent to twice the number of Directors in office at the time of the meeting.

19.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) the meeting, if convened upon the requisition of Members shall be dissolved; and
- (b) in any other case:
  - (i) the meeting stands adjourned to such day, and at such time and place, as the President determines or, if no determination is made by the President, to the same day in the next week at the same time and place; and
  - (ii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the quorum shall be the number of Members entitled to vote equal to the number of Directors in office at that time plus one, and failing that the meeting must be dissolved.

## **20. Chair of a general meeting**

20.1 The President shall preside as chair at each general meeting unless:

- (a) there is no President;
- (b) the President is not present within 15 minutes after the time appointed for the meeting or the time at which a quorum is present, whichever is the later; or
- (c) the President is present within that time but is not willing to act as chair of the meeting.

20.2 When the President does not preside in accordance with rule 20.1 then:

- (a) the Vice President must chair the meeting if present and willing to act; or
- (b) when the President or Vice President is not present or not willing to act then:
  - (i) the Directors present must elect as chair of the meeting another Director who is present and willing to act; or

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- (ii) if no other Director willing to act is present at the meeting, the Representatives or proxies eligible to vote who are present in person at the meeting must elect as chair of the meeting a Representative who is present and willing to act and who is entitled to vote at the meeting.

20.3 If the President, Vice President and/or any other Director or Directors later attend a general meeting or later are willing to act, one of them (elected, if necessary, where two or more Directors are later in attendance) from time to time who is willing to act must take over as chair of the general meeting.

20.4 The chair of a general meeting:

- (a) shall ensure that all items on the agenda are dealt with, and in the sequence set out, unless the Members and Representatives eligible to vote who are present in entity consent to the order being changed;
- (b) shall conduct the meeting in a manner designed to facilitate decision making and the transaction of business; and
- (c) shall superintend and control the proceedings in accordance with the requirements of the relevant law, this Constitution, and the broad conventions of debate.

## **21. Conduct of a general meeting**

21.1 A Member's Representative, a Director and where applicable an auditor are entitled to attend and to speak at a general meeting.

21.2 Subject to the Act and any relevant provisions in the By-laws, the chair of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting and rulings by the chair on such matters made in good faith shall be prima facie binding on the meeting and its Members.

21.3 The chair of a general meeting of Members must give those entitled to attend and speak at such meetings a reasonable opportunity to ask questions and make comments at the meeting, including the auditor if any.

21.4 The powers conferred on the chair of a general meeting of Members do not limit any powers conferred at law upon a chair of a meeting.

## **22. Decisions at a general meeting**

22.1 Subject to the Act and other than for Special Resolutions, a resolution of Members is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than are cast against the resolution.

22.2 Unless a poll is requested, a resolution put to the vote at a meeting of Members is to be decided on a show of hands.

22.3 A declaration by the chair of a meeting of Members that a resolution has been passed on a show of hands, passed by a particular majority, or not passed, and an entry to that

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effect in the minutes of the meeting, is sufficient evidence of that fact, unless proved incorrect.

### **23. Voting rights at a general meeting**

- 23.1 Subject to this Constitution, at a general meeting every Member who is entitled to vote and who is present has one vote.
- 23.2 The Board may put a matter that has been voted on by direct vote to a general meeting.
- 23.3 Where the Board has allowed Members to cast a direct vote by electronic or postal means on a matter, the voting must be done in a way that identifies that a Member has voted but not the how the vote has been cast.
- 23.4 A Board-Appointed Director has a right to attend and to speak at a general meeting but has no right to a vote at a general meeting unless as a Representative of a Member.
- 23.5 A proxy is entitled to a separate vote for each Member the proxy represents, in addition to any vote they may have as a Representative in their own right.
- 23.6 An objection to the qualification of a Member to vote at a general meeting:
- (a) must be raised before or at the meeting at which the vote objected to is given or tendered; and
  - (b) must be referred to the chair of the meeting whose decision on the qualification to vote is final.
- 23.7 A vote not disallowed by the chair of the meeting is valid for all purposes.

### **24. Polls**

- 24.1 A poll may be requested on any resolution at a meeting of Members except:
- (a) the election of a chair of that meeting; or
  - (b) the adjournment of that meeting.
- 24.2 A poll on a resolution at a meeting of Members may be requested by:
- (a) at least five Members present and entitled to vote on that resolution; or
  - (b) the chair of that meeting.
- 24.3 A poll on a resolution at a meeting of Members may be requested:
- (a) before a vote on that resolution is taken; or
  - (b) before, or immediately after, the result of the vote on that resolution on a show of hands is declared.
- 24.4 A request for a poll may be withdrawn.

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- 24.5 A poll requested on a resolution at a meeting of Members must be taken in the manner and at the time and place the chair directs.
- 24.6 The result of a poll requested and taken on a resolution of a meeting of Members is a resolution of that meeting.
- 24.7 A request for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business pending the taking of the poll or the declaration of the result of the poll.

## **25. Representation at a general meeting**

- 25.1 Subject to this Constitution, each Member entitled to vote at a general meeting may vote:
- (a) by Representative;
  - (b) by direct vote using electronic and/or postal means where such an option is offered by the Board; or
  - (c) by proxy.
- 25.2 A proxy may be appointed for all general meetings, or any number of general meetings, or for a particular general meeting.
- 25.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting;
  - (b) join in to demand a poll; and
  - (c) vote in a poll (but only to the extent allowed by the appointment).
- 25.4 The proxy must vote on a proposed resolution in accordance with a direction (if any).
- 25.5 Where:
- (a) the proxy form directs the proxy how to vote; and
  - (b) the person appointed as proxy is not the chair of the meeting; and
  - (c) the proxy does not exercise the vote when a poll is called,
- the chair of the meeting is taken, before voting on the resolution closes, to have been appointed as the proxy for the purposes of voting on the resolution in the manner directed by the Member.
- 25.6 An instrument appointing a proxy should be substantially in a form prescribed by the Board or the By-laws, but will be valid provided it is in writing, contains the Member's name and address, the Company's name, the proxy's name or the office held by the proxy, the meetings at which the appointment may be used and either:



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- (a) be signed by the appointer or the appointer's attorney; or
  - (b) be authenticated in such manner as the Board may determine.
- 25.7 A proxy is valid only if notice of the appointment is received in or at the places, fax numbers or electronic addresses specified at least 48 hours prior to the meeting.
- 25.8 Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 25.9 The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy must not vote as the appointer's proxy on the resolution.
- 25.10 If a Member has cast a direct vote on a matter and the Board puts that matter to a general meeting for a vote, they must not vote on the matter at the general meeting. Their direct vote will be counted if a poll is taken on the matter.
- 25.11 The chair of a general meeting may require any Representative acting as a proxy to establish the validity of their our we note appointment. If the Representative is unable to establish their identity, they may be excluded from voting.

## **26. Board Composition**

- 26.1 There must be not less than 3 directors.
- 26.2 The Board comprises:
- (a) the State-Appointed Directors;
  - (b) Seven Board-Appointed Directors; and
  - (c) the Immediate Past President.
  - (d) the Telescopic Handler Association representative
- 26.3 The term for a State-Appointed Director shall be two years. There is no limit on the number of terms a State-Appointed director may be appointed.
- 26.4 The State-Appointed Directors to retire at an AGM are those who have been longest in office since their appointment, but, if there is more than one, the State-Appointed Directors to retire shall be as agreed among themselves or alternatively as determined by lot.

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26.5 The term for a Board-Appointed Director shall be such time as the Board determines at the time of appointment up to two years. Prior to the conclusion of the Board-Appointed Director's current term the Board may re-appoint the Board-Appointed Director for a further term. There is no limit on the number of terms a Board-Appointed Director may be appointed.

**27. Casual vacancies on the Board**

27.1 If a casual vacancy in the position of a State-Appointed Director occurs, the Secretary must inform the chair of the relevant State Committee. The relevant State Committee may proceed to provide a replacement State-Appointed Director to complete the term.

27.2 Because of the nature of Board-Appointed Directors, the Board may decide whether or not to fill any vacant position for a Board-Appointed Director.

**28. Becoming a Director**

28.1 Candidates for appointment as a Director must sign and submit to the Secretary a written consent to act as Director.

28.2 The Board will establish By-Laws for the process of election and appointment of Directors.

28.3 State-Elected Directors will be elected by Members from that State.

28.4 Board-Appointed Directors will be appointed by the Board.

**29. Vacation of office**

29.1 A person vacates their office of State-Appointed Director at the conclusion of the AGM at which they retire, or their term of office expires, but they are eligible to be re-appointed or to continue as a Director in accordance with this Constitution.

29.2 Any Director may resign by giving one month's written notice to the Secretary.

29.3 The office of a Director shall become vacant if the Director:

- (a) is subject to any of the circumstances prescribed by the Act;
- (b) becomes of unsound mind or an entity who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health unless (in the opinion of a majority Directors) can fully participate in the governance of the Company, despite their mental incapacity;
- (c) dies;
- (d) becomes bankrupt or makes any arrangement or composition with their creditors generally, unless, subject to the Act, the Board resolves otherwise;
- (e) is convicted on indictment of an offence and the Board does not at the next meeting after that conviction resolve to confirm the Director's appointment to the office of Director;

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- (f) is absent from three consecutive meetings of the Board, with or without the consent of the Board, unless at the next meeting of the Board, the Board resolves otherwise;
  - (g) fails to disclose a material personal interest in breach of the law unless at its next meeting the Board resolves otherwise;
  - (h) is a State-Appointed Director and ceases to be a Member or Representative of the relevant State Committee;
  - (i) is removed as a Director by at least a majority resolution of the Company in general meeting;
  - (j) becomes a paid employee of the Company; or
  - (k) is found guilty of engaging in derogatory or discriminatory conduct or harassment towards employees of the Company or other Members or their employees.

### **30. Alternate Directors**

30.1 Directors are not entitled to appoint alternate Directors.

### **31. Directors with a Specified Interest**

31.1 A Director may not be the independent external auditor.

31.2 Provided that their interest is fully disclosed, 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.

31.3 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.

### **32. Conflict of Interest**

32.1 The Secretary shall maintain a register of conflicts of interest.

32.2 A Director, who is in any way, interested in any contract or arrangement or proposed contract or arrangement, irrespective of whether the interest is financial, must disclose that interest.

32.3 The Director may, despite that interest:

- (a) be counted, if they are present at the time of commencing to deal with the matter, in determining whether or not a quorum is present at any meeting of the Board that is considering that contract or arrangement or proposed contract or arrangement;

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- (b) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
  - (c) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement that the Company may execute.

32.4 Clause 32.1 does not apply if, and to the extent that, it would be contrary to the Act including without limitation any provisions of the Act that may regulate matters concerning material personal interests of directors.

32.5 The Board may make a By-law requiring the disclosure of interests in the register of conflicts that a Director, and any entity deemed by the Board to be related to or associated with the Director, may have in any matter concerning the Company or a related incorporated body and any By-law made under this Constitution shall bind all Directors.

### **33. Payments to Directors**

33.1 Payments may be made to any Director for:

- (a) out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously agreed by the Board; and
- (b) any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as a Director, where the provision of the service has the prior approval of the Board and is not more than an amount which commercially would be reasonable for the service.

### **34. Duties of Directors**

34.1 The Directors are responsible for the control, governance and conduct of the Company.

34.2 The Board may exercise all the powers of a company that are not required by the Act or by this Constitution to be exercised by the Company in general meeting.

34.3 The Board may from time to time may make, amend, or repeal the By-laws as it determines are necessary and appropriate for the control, administration and management of the Company's operations, finances, interests, effects and property. Any such By-law:

- (a) must not be inconsistent with any provision in this Constitution; and
- (b) when in force is binding on all Members,

provided that if a By-law directly impinges on how a Member may exercise a right as a Member under this Constitution, then the By-law does not come into force until that By-law has been approved by an ordinary resolution at a general meeting of Members.

34.4 The Board must adopt such measures as it considers appropriate to bring to the notice of Members any relevant By-law, amendment to a By-law or repeal of a By-law.

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## **35. Board Meetings**

- 35.1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 35.2 A meeting of the Board may be held, virtually or remotely at more than one venue, using any technology consented to by all Directors and in such case a Director is taken to be present in entity at the meeting.
- 35.3 All provisions of this Constitution relating to meetings of the Directors apply, so far as they can and with such changes as are necessary, to meetings of Directors by such technologies.
- 35.4 A meeting by means of technology is to be taken to be:
- (a) if virtually, at the Company's registered office; or
  - (b) if held remotely at more than one venue, at the place determined by the chair of the meeting provided that at least one of the Directors involved was at that place for the duration of the meeting.

## **36. Convening a Board Meeting**

- 36.1 The President or any two or more Directors may, whenever they think fit, convene a Board meeting.
- 36.2 A Secretary must, when requested by the President or on the requisition of any two or more Directors, convene a Board meeting.

## **37. Notice of a Board Meeting**

- 37.1 Subject to this Constitution, notice of a Board meeting must be given to each Director, other than a Director on leave of absence approved by the Board, or a Director outside of Australia who has notified the Secretary that they will not be contactable.
- 37.2 A notice of a Board meeting:
- (a) must specify the time and place of the meeting;
  - (b) should, where practicable, state the nature of the business to be transacted at the meeting;
  - (c) may be given immediately before the meeting;
  - (d) may be given in entity or by post or by telephone, fax, email or other electronic means; and
  - (e) if technological connection of Directors is to be involved, identify how that connection is to be made.
- 37.3 Subject to circumstances, notice of a Board meeting of at least 7 days should be given.

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37.4 A Director may waive notice of any Board meeting by notifying the Secretary to that effect.

37.5 The non-receipt of notice of a Board meeting by, or failure to give notice of a meeting to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting:

(a) if the non-receipt or failure occurred by accident or error;

(b) if before or after the meeting, the Director;

(i) has waived or waives notice of that meeting; or

(ii) has notified or notifies the Company of their agreement to a proposed resolution; or

(c) the Director attended the meeting.

37.6 Attendance by a person at a Board meeting waives any objection that that entity may have to a failure to give notice of the meeting.

### **38. Quorum at a Board Meeting**

38.1 No business may be transacted at a Board meeting unless a quorum of Directors is present during the time the business is dealt with.

38.2 A quorum at a Board meeting is 50% of the Directors entitled to attend the meeting.

38.3 A Director who is present and is disqualified from voting on a matter due to a conflict of interest shall be counted in the quorum despite that disqualification.

38.4 If the number of Directors in office at any time is less than the minimum number required by this Constitution, the remaining Directors must act as soon as possible to increase the number of Directors to a number sufficient to satisfy the minimum number of Directors required under the Act. Until then, the Directors must only act if and to the extent that there is an emergency requiring them to act.

### **39. Office Bearers**

39.1 The Board:

(a) shall elect a Director to the office of President annually at the scheduled meeting of the Board immediately following the AGM; and

(b) shall elect a Director to the office of President if there is a vacancy in the office of President.

39.2 If an election to the office of President is tied, then the successful candidate must be determined by lot.

39.3 The President has such powers and duties as specified in this Constitution, as required by law, and as determined by the Board.

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39.4 The President must if present within 15 minutes after the time appointed for the holding of the meeting, and if willing to act, preside as chair of each meeting of Directors.

39.5 The Directors must elect a Director to the office of Vice President following the same process as for the President.

#### **40. Board Decisions**

40.1 Subject to the Act, in case of an equality of votes on a resolution at a Board meeting, the resolution is lost. The chair of that meeting does not have a casting vote.

40.2 Subject to the Act, each Director has one vote on a matter arising at a Board meeting.

#### **41. Circular Resolutions**

41.1 The Board may pass a resolution, without a meeting of the Board being held if the proposed resolution is sent to the Directors and a majority of Directors, assent to the resolution in writing.

41.2 A Director may signify assent to a circular resolution by signing the document or by notifying the Company of that assent in a manner permitted by this Constitution.

41.3 A circular resolution is taken to have been passed on the date the resolution was assented to by the last Director who constituted the majority of Directors in favour.

#### **42. Board Committees**

42.1 The Board may establish committees of the Board. and define their purpose and operations.

42.2 The President shall not be eligible to be a member of an audit or finance committee of the Board.

42.3 The Board may delegate any of its powers to a Director or an Officer who must exercise the powers delegated in accordance with any directions of the Board.

#### **43. Validity of acts**

43.1 All acts done:

- (a) at any meeting of the Board; or
- (b) by any individual acting as a Director; or
- (c) by a committee of the Board attended by an individual acting as a Director,

shall be valid even if it is later discovered that there was a defect in the appointment of the individual as a Director or the individual not being entitled to vote.

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#### **44. Secretary**

- 44.1 The Board must appoint at least one Secretary who is eligible under the Act and who may, but need not, be a Director or a Member's Representative or an employee.
- 44.2 Subject to the Act, the Secretary holds office on such terms and conditions as to remuneration and otherwise as the Board determines.
- 44.3 The Board may remove any Secretary so appointed, subject to the terms of any contract and the law.
- 44.4 The Secretary has such powers and duties as specified in this Constitution, as required by the Act and as determined by the Board.
- 44.5 The Secretary is responsible for keeping and managing access to the Register of Members.

#### **45. Minutes**

- 45.1 The Directors through the Secretary must ensure that minutes of proceedings and resolutions of general meetings of the Company and of Board meetings, including committees of the Board and resolutions without a meeting, are recorded in books kept for that purpose within one month following the relevant meeting.
- 45.2 The minutes of a meeting must be signed within a reasonable time after the meeting by the chair of the meeting or the chair of the following meeting.
- 45.3 The minutes of a passing of a resolution without a meeting must be signed by a Director within a reasonable time after the resolution is passed.

#### **46. Inspection of records**

- 46.1 The Directors must ensure that the minute books for general meetings of the Company are open for inspection by Members in accordance with the Act.
- 46.2 Only a Director has the right to inspect any books, records or documents of the Company except as provided by law or authorised by the Board.
- 46.3 Previous Directors have a right to inspect minute books for Board meetings and committees of the Board for the period covering when they were Directors.

#### **47. Obligation to Keep Financial Records**

- 47.1 The Board Charter shall govern the approval of expenditure and delegation limits.
- 47.2 The Company must keep written financial records that:
  - (a) correctly record and explain the transactions and financial position and performance of the Company;
  - (b) enable true and fair financial statements to be prepared and audited; and



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- (c) permit preparation of any other documents required by the Act or this Constitution.

#### **48. Location of Financial Records**

48.1 The financial records of the Company shall be kept:

- (a) in such manner as to enable them to be conveniently and properly audited;
- (b) for seven (7) years after the completion of the transactions or operations to which they relate; and
- (c) at the Registered Office or at such other place as the Board thinks fit.

#### **49. Access**

49.1 The financial records of the Company shall at all reasonable times be open to inspection by a Director.

49.2 The Board shall from time to time determine at what times and places and under what conditions and regulations the financial records of the Company may be open to inspection by Members.

#### **50. Financial Reporting Obligations**

50.1 A financial report in respect of the Company and a Board report must be prepared for each Financial Year.

50.2 The financial report for a Financial Year shall consist of:

- (a) the Company's financial statements for the year;
- (b) the notes to the financial statements; and
- (c) the Board's declaration about the statements and notes.

#### **51. Financial statements**

51.1 The financial statements for the year are the financial statements that are required by and made up in accordance with the Accounting Standards, including those showing the Company's:

- (a) profit and loss for the previous Financial Year of the Company;
- (b) balance sheet at the date to which the profit and loss account is made up; and
- (c) cash flows for the year.

51.2 The notes to the financial statements shall be

- (a) required by the Act and its regulations;
- (b) notes required by the Accounting Standards; and

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- (c) any other information necessary to give a true and fair view of the financial position and performance of the Company.

## **52. Declaration of solvency**

52.1 The Board's declaration is a declaration by the Board that, in its opinion:

- (a) there are reasonable grounds to believe that the Company will be able to pay its debts as and when they become due and payable; and
- (b) the financial statement and notes are in accordance with the Act.

## **53. Reports and financial year**

53.1 A Board report shall consist of the matters prescribed in the Act.

53.2 The financial report in respect of the Company and the Board report for the Financial Year must be sent to all persons entitled to receive notice of general meetings of the Company not less than seven days before the meeting at which they are to be considered.

## **54. Notices**

54.1 A notice must be in writing, and may be given by the Company to a Member:

- (a) by serving it on the Member personally;
- (b) by sending it by prepaid post to the Member's address as shown in the Register;
- (c) by sending it to the email address or such other address the Member has supplied to the Company for the giving of notices;
- (d) by making a copy of it accessible electronically on a website of, or related to, the Company and advising the Member of its availability via the Electronic Contact Address; or
- (e) by publishing it in a regular newsletter publication of the Company to Members which publication may be printed or be electronic or internet based.

54.2 The fact that a Member has supplied an email address for the giving of notices:

- (a) does not require the Company to give any notice to that entity electronically; or
- (b) does not prevent the Company from giving notice pursuant to clause 54.1.

54.3 Subject to this Constitution, a notice may be given by the Company to any Director either by serving it personally at, or by sending it by prepaid post to, the Director's usual residential or business address, or by sending it to the fax number, email address, or such other address as the Director has supplied to the Company for the giving of notices.

54.4 Subject to this Constitution, a notice may be given by a Member or a Director to the Company by serving it on the Company at, or by sending it by prepaid post to, the

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registered office or principal place of business if any of the Company or by sending it to the principal fax number.

## **55. Time of service of notices**

55.1 A notice sent by prepaid post to an address within Australia is taken to be given:

- (a) in the case of a notice of meeting, two Business Days after it is posted; or
- (b) in any other case, at the time at which the notice would be delivered in the ordinary course of post.

55.2 A notice sent by prepaid post to an address outside Australia is taken to be given:

- (a) in the case of a notice of meeting, four Business Days after it is posted; or
- (b) in any other case, at the time at which the notice would be delivered in the ordinary course of post.

55.3 A notice sent by electronic or digital means is taken to be given on the Business Day it is sent.

## **56. Execution of documents**

Without limiting the manner in which the Company may execute any approved contract, including as permitted under the Act, the Company may execute any agreement, deed or other document by two Directors or a Director and secretary signing.

## **57. Indemnity and insurance**

57.1 Subject to the Act, the Company must indemnify each Officer on a full indemnity basis and to the full extent permitted by law against all liabilities, including a loss, liability, cost, charge or expense, incurred by the Officer as an Officer, including without limitation:

- (a) a liability for negligence; and
- (b) a liability for reasonable legal costs.

57.2 The indemnity does not operate in relation to any liability, except in relation to costs, which:

- (a) is a liability of the Company or any of its related bodies corporate;
- (b) is a liability for a pecuniary penalty order under the law or a compensation order under the law; or
- (c) arises out of conduct of the Officer which was not in good faith, or which involved wilful misconduct, gross negligence, reckless misbehaviour or fraud.

57.3 The indemnity does not operate in relation to legal costs incurred by the Officer in defending any action for a liability if the costs are incurred:

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- (a) in defending or resisting proceedings in which the Officer is found to have a liability;
  - (b) in defending or resisting criminal proceedings in which the Officer is found guilty;
  - (c) in defending or resisting proceedings brought by regulators or a liquidator for a court order if the grounds for making the order are found by the court to have been established. This does not include costs incurred in responding to actions taken by regulators or a liquidator as part of an investigation before commencing proceedings for the court order; or
  - (d) in connection with proceedings for relief to the Officer under the law where the court denies the relief.

57.4 If there is any appeal in relation to any proceedings, it is the outcome of the final appeal that is relevant for the purposes of the indemnity.

57.5 The indemnity:

- (a) does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void, unenforceable or not permitted by law; and
- (b) does not operate in respect of any liability of the Officer to the extent that that liability is covered by insurance.

57.6 To the extent permitted by law the Company may:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

against any liability incurred by the Officer as an Officer including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal

57.7 Nothing in this clause:

- (a) affects any other right or remedy that an entity to whom those rules apply may have in respect of any liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide or pay for insurance for any entity to whom those rules do not apply.

## **58. Jurisdiction**

Each Member is subject to the non-exclusive jurisdiction of the Supreme Court of New South Wales.

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## **59. Severing invalid provisions**

- 59.1 If at any time any provision of this Constitution is or becomes illegal, invalid, or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:
- (a) the legality, validity, or enforceability in that jurisdiction of any other provision of this Constitution; or
  - (b) the legality, validity, or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

## **60. Winding up**

- 60.1 If any property remains following the winding up or dissolution of the Company after satisfaction of all its debts and liabilities, must not be paid to or distributed amongst Members, but must be given or transferred to another institution or incorporated body that has:
- (a) objects which are similar to the Object;
  - (b) a constitution which requires its income and property to be applied to promoting its objects; and
  - (c) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by this Constitution.
- 60.2 The identity of the institution or incorporated body is to be determined by resolution of the Members at or before the time of dissolution and failing such determination being made then in accordance with the Act.

## **61. Changes to this Constitution**

This Constitution may only be amended in accordance with the Act.

END OF CONSTITUTION