

AUSTRALIAN CAPITAL TERRITORY

CORPORATIONS ACT

Company Limited by Shares

CONSTITUTION

of

ICON WATER LIMITED

AUSTRALIAN CAPITAL TERRITORY

CORPORATIONS ACT

Company Limited by Shares

*(as amended to reflect changes made
9 September 2015)*

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COMPANY NAME

1. The name of the company is Icon Water Limited ("**Company**").

OBJECTS OF THE COMPANY

2. The objects for which the Company is established are:
 - (a) to supply energy, including electricity, and water;
 - (b) to promote and manage the use of energy and water;
 - (c) to provide sewerage services;
 - (ca) the provision of communications services; and
 - (d) to undertake other related business or activity which may be undertaken by a natural person.

No object is to be construed to limit the extent of any other object.

LIABILITY OF MEMBERS

3. The liability of the members is limited.

THE TERRITORY OWNED CORPORATIONS ACT

4. The Constitution of the Company may not be altered in a way that is inconsistent with the provisions of Schedules 2 and 3 of the Territory Owned Corporations Act 1990 of the Australian Capital Territory ("**T.O.C. Act**") unless and until a resolution approving the alteration or addition has been passed by a resolution of the Legislative Assembly of the Australian Capital Territory.
5. The provisions of the T.O.C. Act prevail over any inconsistent Clauses of the Constitution that have not been approved by the Legislative Assembly of the Australian Capital Territory. It may be the case that not all provisions of the T.O.C. Act apply to the Company.
6. An expression used in the Corporations Law or the T.O.C. Act, that is given thereby a special meaning has, in any of this Constitution that deals with a matter dealt with by the Corporations Law or the T.O.C. Act unless the contrary intention appears, the same meaning as in the Corporations Law or the T.O.C. Act.

COMPANY MEMBERS

7. **WE**, the people whose names are set out above, wish to be formed into a company pursuant to this Constitution and we agree to take a share in the capital of the Company of the class set out opposite to our names.

Signatures of Subscribers	Number of Shares taken by each Subscriber	Signatures of Witnesses	Full Names & Addresses of Witnesses.
Anne Katherine CARNELL	One (1) Voting		
Anthony Joseph DE DOMENICO	One (1) Voting		
Michael Colin WOODS	One (1) Non-voting		
Jeffrey Vincent TOWNSEND	One (1) Non-voting		
Albert John TURNER	One (1) Non-voting		

Date:

**CORPORATIONS ACT
A COMPANY LIMITED BY SHARES**

PRELIMINARY

8. The Replaceable Rules contained in the Corporations Law shall not apply to this Company.

INTERPRETATION

9. In this Constitution the following terms shall have the meanings respectively set out after them unless the context or subject matter requires otherwise:

"A.C.T." or "Australian Capital Territory":

- (i) when used in a geographical sense, means the Australian Capital Territory; and
- (ii) when used in any other sense, means the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* of Australia.

"Auditor" means the Auditor General of the A.C.T. for the time being.

"Business Day" means the day other than a Saturday, Sunday or day gazetted as a public holiday in the A.C.T.

"Chair" means the Chair of the Board.

"Chief Executive Officer" means any person appointed to perform the duties of Chief Executive Officer of the Company.

"Chief Minister" means the Chief Minister of the A.C.T.

"Company" means Icon Water Limited.

"Constitution" means this document, which defines the rules that govern the activities of the Company.

"Corporations Law" means the *Corporations Act 2001* (Cth) and includes any regulations made under that Act and any exemption or modification to that Act which applies to the Company.

"Directors" means the Directors for the time being of the Company.

"Executive Director" means a Director in the full time employment of the Company and includes the Chief Executive Officer, if appointed as a Director.

"meeting" means a duly constituted meeting of Shareholders.

"Minister" means the Chief Minister or a Minister appointed under section 41 of the *Australian Capital Territory (Self-Government) Act 1988*.

"Non-Voting Share" means a share which is not a Voting Share.

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

"Register" means the register of Shareholders to be kept pursuant to the Corporations Law.

"Relevant Committee" means:

- (i) a standing committee of the Legislative Assembly nominated by the Speaker of the Legislative Assembly for the purposes of section 12 of the T.O.C. Act; or
- (ii) where no nomination in paragraph (i) is in effect – the standing committee of the Legislative Assembly responsible for the scrutiny of public accounts.

"resolution" means a resolution other than a special resolution.

"Seal" means the common seal of the Company and includes any official seal of the Company.

"Secretary" means any person appointed to perform the duties of secretary of the Company or any person appointed to act temporarily as such.

"Shareholder" means a person authorised under section 13 of the T.O.C. Act to participate, on behalf of the A.C.T., in the formation of the Company, or to acquire, on behalf of the A.C.T., shares in the Company, and who has been entered in the Register or is deemed by this Constitution to be a Shareholder.

"shares" means the shares into which the capital is from time to time divided.

"special resolution" means a special resolution within the meaning of section 9 of the Corporations Law.

"Statement of Corporate Intent" means the statement of corporate intent to be prepared by the Directors in accordance with the T.O.C. Act as applicable to the Company.

"T.O.C. Act" means the *Territory Owned Corporations Act 1990* of the Australian Capital Territory.

"Treasurer" means the Treasurer of the A.C.T.

"Voting Share" means a share held by a Voting Shareholder.

"Voting Shareholder" means the holder of a share in the Company that confers the right to vote at a general meeting.

10. Headings are for convenience only and shall not be used in the interpretation of this Constitution or of any part thereof to which they relate.
11. Words importing persons shall include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals.
12. A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute.

SHARE CAPITAL

13. (1) The issued capital of the Company shall consist of two (2) shares that entitle the holders to vote at a general meeting and such other shares at the Company may issue.
 - (2) The Company may issue a Non-Voting Share or a right relating to a Non-Voting Share only if the Treasurer has agreed in writing to the issue.
14. (1) Only a Minister may hold a Voting Share in the capital of the Company. A Shareholder who is a Minister ceases to be eligible to hold shares in the Company on ceasing to be a Minister, and may thereafter exercise no right as a Shareholder (except to transfer his or her shares as directed by the Chief Minister).
 - (2) All Shareholders hold their shares in the Company on trust for the A.C.T.

15. Subject to Part 3.2 of Schedule 3 to the T.O.C. Act, the Company may reduce its share capital in any manner authorised by law including:
 - (i) by extinguishing or reducing the liability on any of its shares in respect of share capital not paid-up;
 - (ii) by cancelling any paid-up share capital that is lost or is not represented by available assets; or
 - (iii) by paying off any paid-up share capital that is in excess of the needs of the Company.

SHARE CERTIFICATES

16. The certificates of title to a share shall be issued under the Seal of the Company in accordance with the provisions of this Constitution, and they must comply with the Corporations Law.
17. Every Shareholder shall be entitled free of charge to a certificate for the share registered in his or her name.
18. If any certificate or other document of title to a share is lost, worn out or defaced then the Directors may on application by the holder order it to be cancelled and may issue a new certificate in place of it, subject to the conditions prescribed by the Corporations Law.

TRANSFER OF SHARES

19. A Shareholder shall, at the direction of the Chief Minister (if a Voting Shareholder) or the Treasurer (if not a Voting Shareholder) transfer a share that the Shareholder holds in the Company to a person named in the instrument of direction. The instrument of transfer of any share shall be in writing in any usual or common form or in any other form which the Directors may approve and may be comprised of more than one document. No fee shall be charged on a transfer of any share.
20. Subject to Clause 21 the instrument of transfer of a share shall be executed by or on behalf of both the transferor and the transferee or, where permitted by the provisions of the Corporations Law, by the transferor only. The transferee shall be deemed to be the holder of the share from the time of execution of the instrument of transfer by the transferee or, where the transfer need be executed by the transferor only, by the transferor notwithstanding that the name of the transferee has not been entered in the Register as the holder of the share.

21. (1) The Company must register a transfer of a Voting Share or a right relating to a Voting Share that is signed by the Chief Minister on behalf of the transferor and is accompanied by a declaration by the Chief Minister that the signature of the holder of the share or right cannot readily be obtained.
 - (2) The Company must register a transfer of a Non-Voting Share or a right relating to a Non-Voting Share that is signed by the Treasurer on behalf of the transferor and is accompanied by a declaration by the Treasurer that the signature of the holder of the share or right cannot readily be obtained.
 - (3) The Company may only register a transfer of a share or a right if the transfer has been made under a direction under section 13 of the T.O.C. Act or under the provisions of Clauses 21(1) and 21(2).
22. All powers of attorney granted by Shareholders for the purpose (inter alia) of transferring shares which may be lodged produced or exhibited to the Company shall as between the Company and the grantors be deemed to remain in full force and effect and the same may be acted upon until such time as express notice in writing of the revocation of the same or of death of the grantor has been lodged at the Office.
23. The Directors may refuse to register any instrument of transfer of shares only:
- (1) if it is not accompanied by the certificate for the shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer;
 - (2) if the T.O.C. Act permits such refusal; or
 - (3) if the registration of the instrument of transfer would result in a contravention or failure to observe the provisions of any law applicable in the A.C.T.
24. Upon any refusal to register an instrument of transfer of shares the Directors shall give written notice of the refusal to the transferee and the reasons therefor within ten (10) Business Days after the date on which the instrument was lodged with the Company.
25. All instruments of transfer which are registered shall be retained by the Company but any instrument of transfer which the Directors may decline to register, except on the grounds of fraud, shall upon demand in writing be returned to the party presenting it.

26. In the case of the death, bankruptcy or mental incapacity of a Shareholder or if the Chief Minister at any time so decides ("the event of default") the share held by the Shareholder shall be transferred by the Shareholder to such person as shall be nominated under section 13 of the T.O.C. Act. From the time of the event of default the nominated person ("the transferee") shall be deemed to be the holder of the shares notwithstanding the name of the transferee has not been entered in the Register. Immediately upon the occurrence of the event of default, the Shareholder shall exercise no rights as a holder under this Constitution (except to transfer shares as directed under section 13 of the T.O.C. Act). All the provisions of this Constitution relating to the registration of transfers of shares shall apply to any such transfer as if the event of default had not occurred and the transfer were a transfer executed by that Shareholder.

GENERAL MEETINGS

27. In addition to the requirement for the Company, under section 250N(2) of the Corporations Law, to hold an annual general meeting, at least once in every calendar year, the Board may whenever it thinks fit and shall where required by the Corporations Law convene a general meeting.
28. If at any time there are not within the A.C.T. sufficient Directors capable of acting to form a quorum, any Director may convene a general meeting in the same manner as nearly as possible as that in which meetings may be convened by the Directors.
29. Whenever they deem fit, either one of the Voting Shareholders may convene a general meeting.
30. (1) At least 21 days notice must be given of a general meeting, exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given.
- (2) Notwithstanding Clause 30(1), the Company may call on shorter notice:
- (i) an annual general meeting, if all the Voting Shareholders agree beforehand; and
 - (ii) any other general meeting, if Voting Shareholders with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (3) Clause 30(2) does not apply to a meeting at which a resolution will be moved to:
- (i) remove a Director under section 203D of the Corporations Law;
 - (ii) appoint a Director in place of a Director so removed; or

- (iii) remove an auditor under section 329 of the Corporations Law.
 - (4) A notice of a general meeting must:
 - (i) set out the place, date and time of meeting, and state the general nature of the business to be dealt with at the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner; and
 - (ii) state that:
 - (a) a Voting Shareholder who is entitled to attend and cast a vote at the meeting has a right to appoint a proxy;
 - (b) a proxy is not required to be a member of the Company; and
 - (c) a Voting Shareholder who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes which each proxy is appointed to exercise.
 - (5) If a special resolution is to be proposed, the notice of meeting must set out an intention to propose the special resolution and state the resolution.
 - (6) Notice of meeting must be given to:
 - (i) the Shareholders;
 - (ii) the Directors;
 - (iii) the Secretary; and
 - (iv) the Auditor.
31. The accidental omission to give notice of any general meeting to or the non-receipt of any such notice by any of the Shareholders, Directors or the Auditor or the Secretary shall not invalidate the proceedings at, or any resolution passed at, such meeting.

PROCEEDINGS AT GENERAL MEETINGS

32. No business shall be transacted at any general meeting unless both Voting Shareholders are present in person or by proxy at the time when the meeting proceeds to business.
33. The business of an annual general meeting shall be to receive and consider the annual financial report, director's report and auditor's report and any other matter required to be considered by law and to transact any other business

which under this Constitution ought to be transacted at an annual general meeting.

34. All business, other than that referred to in Clause 33 which is transacted at an annual general meeting and all business transacted at a general meeting other than an annual general meeting shall be deemed special. A Voting Shareholder may at any meeting be at liberty to move any resolution dealing with special business.
35. The Chair, or in the absence of the Chair, the Deputy Chair, shall be entitled to take the chair of every general meeting. In the absence of the Chair and Deputy Chair, the Voting Shareholders may elect another Director or a Shareholder to take the chair.
36. The Chair of the Meeting at which the requisite quorum is present may with the consent of the meeting adjourn the same from time to time and from place to place as the meeting shall determine but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

VOTING AT GENERAL MEETINGS

37. (1) No Shareholder shall be entitled to vote unless he or she is a Voting Shareholder and present in person or by proxy.

(2) The quorum at a general meeting shall consist of two (2) Voting Shareholders present in person or by proxy.
38. Each Voting Shareholder shall have one vote.
39. Every question submitted to a general meeting shall be decided by a show of hands.
40. A resolution must be carried by both Voting Shareholders.
41. At any general meeting a declaration by a Voting Shareholder that a resolution has been carried or not carried and an entry in the book of minutes of proceedings of the Company signed by a Voting Shareholder shall be conclusive evidence that the resolution was carried or not carried, respectively.
42. The Voting Shareholders of any meeting shall be the sole judge of the validity of every vote tendered thereat and their determination shall be final and conclusive.
43. *[Not used]*

44. (1) An appointment of a proxy is valid if it is signed by the Voting Shareholder making the appointment and contains the following information:
- (i) the Voting Shareholder's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the office held by the proxy; and
 - (iv) the meetings at which the appointment may be used.

An appointment may be a standing one.

- (2) An undated appointment is to be taken to have been dated on the day it is given to the Company.
- (3) An appointment may specify the way the proxy is to vote on a particular resolution. In that event:
 - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (ii) if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - (iii) if the proxy is the Chair, the proxy must vote on a poll, and must vote that way; and
 - (iv) if the proxy is not the Chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a Voting Shareholder, this Clause does not affect the way that the person can cast any votes attached to shares held by that person.

- (4) Except to the extent that the appointment of a proxy expressly limits the exercise by the proxy of the power to vote at a meeting, a proxy has the same rights to attend, vote and otherwise act at the meeting as a Voting Shareholder attending the meeting in person.
- (5) An appointment of a proxy does not need to be witnessed.
- (6) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.
- (7) An instrument appointing a proxy is to be taken to confer authority to demand or join in demanding a poll.

45. Every instrument of proxy shall be in the form determined by the Directors from time to time.
46. A vote given or act done in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death of the principal or revocation of the proxy or power of attorney or transfer of the share in respect of which the vote is given or act done provided no duly authenticated intimation in writing of the death revocation or transfer shall have been received at the Office before the vote is given or act done.

APPOINTMENT AND REMOVAL OF DIRECTORS

47. (1) The number of Directors shall be determined by the Voting Shareholders from time to time, but shall not be less than four (4) nor more than eight (8).
- (2) The power of appointment and removal of Directors shall at all times vest in the Voting Shareholders.
- (3) Subject to Clause 47(4), the Voting Shareholders shall not appoint a Director or consent to the appointment of a Director of a subsidiary unless, before so doing, they have:
 - (i) consulted with the Relevant Committee; and
 - (ii) considered any recommendation made by the Relevant Committee, being a recommendation made within 30 days after the consultation.
- (4) Where, for any reason, the number of Directors falls below the minimum number of four (4), then the Voting Shareholders are not required to comply with Clause 47(3) in relation to an appointment that, when made, will raise the number of Directors to the minimum number. Directors appointed without consultation with the Relevant Committee or without consideration of the recommendations of the Relevant Committee will hold office:
 - (i) until the expiry of a period of 90 days from the day of appointment; or
 - (ii) until he or she ceases to hold office for any reason,whichever first occurs.

- (5) The removal of a Director takes effect at the time when written notice of the change signed by both Voting Shareholders is received by the Secretary.
48. (1) A person is not eligible to be appointed as a Director unless the Voting Shareholders consider that that person has the qualifications set out in section 12 of the T.O.C. Act.
- (2) If the Voting Shareholders consider that the Chief Executive Officer has the qualifications set out in section 12 of the T.O.C. Act, they must appoint him or her as a Director.
49. (1) Subject to Clauses 47 and 48, the Voting Shareholders may at any time by notice in writing to the Secretary, appoint a person as a Director.
- (2) Subject to Clause 47, any appointment made by the Voting Shareholders under this Clause shall be effective from the time specified in a notice of appointment given to the Secretary by the Voting Shareholders or if no such time is specified, from the time the notice is received by the Secretary and shall be for such term as is specified in the notice of appointment.
50. The Board is to consist of the following Directors:
- (1) a Chair, appointed by the Voting Shareholders;
- (2) a Deputy Chair, appointed by the Voting Shareholders; and
- (3) at least two (2) and up to six (6) further Directors.
51. The continuing Directors may act notwithstanding any vacancy in their body but if the number falls below the number for a quorum in accordance with Clause 62 the Directors may act only for the purpose of summoning a general meeting or in emergencies but for no other purpose.
52. Any Director may retire from office upon giving notice in writing to the Company of his or her intention to do so and such resignation shall take effect upon the expiration of the notice or its earlier acceptance.
53. In addition to the circumstances in which the office of Director becomes vacant by virtue of the Corporations Law or this Constitution, the office of Director shall be ipso facto vacated if the Director:
- (1) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (2) is removed pursuant to Clause 47; or

- (3) absents himself or herself from meetings of Directors for a continuous period of three months or from three consecutive meetings of Directors whichever is the greater without special leave of absence from the Chair and the Voting Shareholders thereupon declare his or her seat to be vacant.

CHIEF EXECUTIVE OFFICER AND EXECUTIVE DIRECTORS

54. (1) The Directors may from time to time appoint a person to be the Chief Executive Officer of the Company and (subject to the provisions of any contract between him or her and the Company) remove him or her from office or appoint another in his or her place.
 - (2) A Chief Executive Officer if appointed as a Director shall while he or she continues to hold that office subject to the provisions of any contract between him or her and the Company and this Constitution be subject to the same provisions as to resignation, disqualification and removal as a Director as the other Directors.
55. (1) The Directors may confer on a Director, the Chief Executive Officer or any Executive Director such of the powers conferred on the Directors by this Constitution, for such time, to be exercised for such purposes, on such terms and with such restrictions as they think fit and all or any of those powers may be conferred collaterally with, or to the exclusion of, the powers of the Directors and may be revoked or varied by the Directors.
 - (2) Any powers so conferred shall be concurrent with, or where specified in the instrument of conferral shall be to the exclusion of, the powers of the Directors.
 - (3) The Directors may at any time withdraw or vary any of the powers so conferred.
56. The Directors may from time to time appoint and remove a person as the Deputy Chief Executive Officer of the Company to exercise all the powers of the Chief Executive during periods of the Chief Executive's temporary absence or incapacity.
57. The remuneration of the Chief Executive Officer will be determined by the Board.

REMUNERATION OF DIRECTORS

58. The Directors shall be paid out of the funds of the Company as remuneration for their services as Directors such sum as may from time to time be determined by the Voting Shareholders.

59. The Directors shall also be entitled to be paid their reasonable travelling and other expenses incurred in connection with their attendance at Directors meetings and otherwise in the execution of their duties as Directors.
60. The remuneration of each Director for his or her services shall be deemed to accrue from day to day and shall be apportioned accordingly.

PROCEEDINGS OF DIRECTORS

61. The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit. Minutes of meetings of Directors must be kept as required by the Corporations Law, and are to be provided to a Voting Shareholder upon request.
62. A quorum for a meeting of Directors shall be determined at the commencement of the meeting, and shall be four (4) while the number of Directors in office is 6 or 7, five (5) while the number of Directors in office is 8, and otherwise shall be three (3).
63. A Director or a Voting Shareholder may at any time, and the Secretary upon the request of a Director or a Voting Shareholder shall, convene a meeting of the Directors.
64. Notice of every Directors' meeting shall be sent to each Director.
65. (1) For the purposes of this Constitution, the contemporaneous linking together by instantaneous communication device of a number of consenting Directors not less than the quorum whether or not any one or more of the Directors is out of the A.C.T., shall be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to the meetings of the Directors shall apply to such meetings held by instantaneous communication device so long as the following conditions are met:
 - (i) All the Directors for the time being entitled to receive notice of the meeting of Directors shall be entitled to notice of a meeting by instantaneous communication device and to be linked by instantaneous communication device for the purposes of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by this Constitution;

- (ii) Each of the Directors taking part in the meeting by instantaneous communication device must, at all times during the meeting, be able to hear each of the other Directors taking part;
 - (iii) At the commencement of the meeting each Director must acknowledge his presence for the purpose of a meeting of the Directors of the Company to all the other Directors taking part.
 - (2) A Director may not leave the meeting by disconnecting his or her instantaneous communication device unless he or she has distinctly advised the Chair of the meeting that he or she is leaving the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by instantaneous communication device unless he or she has previously advised the Chair of the meeting that he or she is leaving the meeting as aforesaid.
 - (3) A minute of the proceedings at such meeting by instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chair of the meeting.
 - (4) For the purpose of this Clause "instantaneous communication device" shall include telephone, television or any other audio and/or visual device which permits instantaneous communication.
66. Questions arising at any meeting of the Directors shall be decided by a majority of votes and each Director shall have one vote. In the case of an equality of votes, the Chair of the meeting, in addition to a deliberative vote shall have a casting vote. The Chair of the meeting shall be the sole judge of every vote tendered there at, and his or her determination shall be final and conclusive.
67. The Deputy Chair may in the absence of the Chair at a meeting of the Directors exercise all the power and authorities of the Chair including in addition to his or her deliberative vote the right to have a casting vote.
68. A resolution in writing signed by all the Directors for the time being entitled to receive notice of a meeting of the Directors and entitled to vote on the resolution shall be as valid and effectual as if it had been passed at a meeting of the Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more Directors. Every resolution so signed shall be as soon as practicable entered in the minutes of the Directors' meetings. A telex, telegram, facsimile message or such similar means of communication received by the Company and purporting to be signed by a Director shall for the purpose of this Clause be deemed to be writing signed by such Director.

69. The Directors may delegate any of their powers to committees consisting of such Directors with such quorum as they think fit and may from time to time revoke such delegation. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed upon it by the Directors. Save as aforesaid, the meetings and proceedings of any such committee consisting of two or more Directors shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors.
70. All acts done at any meeting of Directors or of a committee of Directors or by any person acting as a Director or by any person purporting to act as an attorney under power of the Company shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment or continuance in office of such Director or person or attorney acting as aforesaid or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a Director or attorney and was entitled to vote.

POWERS AND DUTIES OF DIRECTORS

71. All decisions relating to the operation of the Company are to be made by or under the authority of the Directors in accordance with the Statement of Corporate Intent.
72.
 - (1) Subject to any other provisions of this Constitution, the management and control of the business of the Company shall be vested in the Directors who may exercise all such powers of the Company as are not hereby or by the Corporations Law required to be exercised by the Company in general meeting.
 - (2) Notwithstanding anything express or implied in this Constitution the Directors may cancel or postpone a meeting of Shareholders where that meeting has been convened by the Directors.
 - (3) No resolution passed by the Company in general meeting shall invalidate any prior act of the Directors which would have been valid if that resolution had not been passed.
73. The Company, the Directors and Voting Shareholders shall comply with the T.O.C. Act in its application to the Company.

74. Subject to sections 25 and 28A of the T.O.C. Act, the Directors shall have power to raise or borrow any sum or sums of money and to secure the payment or repayment of such moneys and any other obligation or liability of the Company in such manner and on such terms and conditions in all respects as they think fit whether upon the security of any mortgage or by the issue of debentures of the Company charged upon all or any of the property of the Company (both present and future) or upon bills of exchange promissory notes or other obligations or otherwise.
75. All cheques promissory notes drafts bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed drawn accepted endorsed or otherwise executed as the case may be in such manner as the Directors from time to time determine.
76. The Directors may from time to time by power of attorney appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as they think fit and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in him or her.

ALTERNATE DIRECTORS

77. (1) Subject to the Corporations Law, a Director ("**appointor**") may by writing under the appointor's hand or by telegram, facsimile transmission or other form of visible communication, appoint a person approved by a Voting Shareholder and by a majority of the other Directors to act as an Alternate Director in the appointor's place whether for a stated period or periods or until the happening of a specified event or from time to time.
- (2) An Alternate Director:
 - (i) may be removed or suspended from office by writing under the appointor's hand or by notice in writing from the appointor;
 - (ii) subject to this Constitution is entitled to receive notice of meetings of the Directors and to attend and vote if the appointor is not present and, if also a Director in the Alternate Director's own right or Alternate Director for another Director as well, to have a separate vote on behalf of the appointor in addition to the Alternate Director's own or that other Director's vote;

- (iii) may exercise all the powers except the power to appoint an Alternate Director and, subject to the Corporations Law, perform all the duties of the appointor insofar as the appointor has not exercised or performed them;
- (iv) automatically ceases to be an Alternate Director if the appointor ceases to be a Director;
- (v) whilst acting as a Director is responsible to the Company for the Alternate Director's own acts and defaults and the appointor is not responsible for them;
- (vi) may not receive any remuneration from the Company as a Director except for any special services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director; and
- (vii) may not be taken into account separately from the appointor in determining the number of Directors.

DIRECTORS' INTERESTS

78. (1) No Director is disqualified by the Director's office and the fiduciary relationship established by it from holding any office or place of profit (other than that of Auditor) under the Company. Any Director may (subject to the Corporations Law):
- (i) be or become a director of or otherwise hold office or a place of profit in any other company promoted by the Company or in which the Company may be interested as vendor, shareholder or otherwise;
 - (ii) contract or make any arrangement with the Company whether as vendor, purchaser, broker, solicitor or accountant or other professional person or otherwise and any contract or arrangement entered or to be entered into by or on behalf of the Company in which any Director is in any way interested is not avoided for that reason; and
 - (iii) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company, a related body corporate or any of their respective predecessors in business or their dependants or persons connected with them.
- (2) A Director may act either personally or through his or her firm in a professional capacity (other than as Auditor) for the Company and the

Director or his or her firm is entitled to remuneration for professional services as if he or she were not a Director.

- (3) Any Director holding any office or place of profit under the Company or being a director of or otherwise holding office or a place of profit in any other company promoted by the Company or in which the Company may be interested or contracting or arranging with the Company as set out in this Clause is not by reason only of any of those facts or any interest resulting therefrom or the fiduciary relationship thereby established liable to account to the Company for any remuneration or other benefits accruing therefrom.
79. (1) Each Director must disclose his or her interests to the Company in accordance with the Corporations Law and the Secretary must record any such declaration in the minutes of the relevant meeting.
- (2) No Director may vote or take part in the debate in respect of a contract or proposed contract or arrangement in which the Director has a material interest and if the Director does so vote his or her vote may not be counted although the Director may be counted in the quorum present at any Director's meeting at which such contract or arrangement is considered.
 - (3) A Director may, notwithstanding his or her interest, and whether or not the Director is entitled to vote or does vote, participate in the execution of any instrument by or on behalf of the Company and whether through signing or sealing the same or otherwise.

SECRETARY

80. A Secretary shall be appointed by the Directors and shall hold office for such term, at such remuneration and upon such conditions as the Directors may think fit. The Directors may at any time appoint a Deputy Secretary, who may act as secretary while at any time the Secretary is in any way incapable of acting as such, or a person as an acting Secretary or as a temporary substitute for a Secretary.

MINUTES

81. The Directors shall cause minutes to be duly entered in books provided for the purpose of recording:
- (1) the names of the Directors present at each meeting of the Directors;

- (2) all orders resolutions and proceedings of general meetings and of meetings of the Directors and committees; and
- (3) such matters as are required by the Corporations Law to be contained therein.

Any such minutes as aforesaid if signed by any person purporting to be the Chair of such meeting or to be the Chair of the next succeeding meeting, after confirmation at that next succeeding meeting, shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or appearing and of the regularity thereof in all respects and that the same took place at a meeting duly convened and held.

THE SEAL

82. The seal of the Company shall be kept by the Secretary and may be affixed to a document only by the authority of the Directors or a committee of the Directors authorised by the Directors in that regard. Every document to which the seal is affixed must be signed by:
 - (i) two Directors; or
 - (ii) a Director and either:
 - (a) the Secretary or Deputy Secretary; or
 - (b) an officer or employee of the Company for the time being authorised by the Board for the purpose.

DIVIDENDS AND RESERVES

83. The Directors shall declare such dividend as is agreed to between them and the Voting Shareholders, or failing agreement, as the Voting Shareholders direct in writing.
84. The Directors may authorise the payment by the Company of such interim dividends as appear to the Directors to be justified by the profits of the Company.
85. No dividend shall be paid otherwise than out of profits nor bear interest against the Company.

86. Subject to Clause 87 the Directors may before the declaring of any dividend set aside out of the profits of the Company such sums as reserves which shall at the discretion of the Directors be applicable for any purpose to which the profits of the Company may be properly applied and pending any such application may at the like discretion either be employed in the business of the Company or be invested in such investments as the Directors may from time to time think fit. The Directors may also, without placing the same to reserve carry forward any profits which they may think prudent not to set aside. Subject to agreement by the Voting Shareholders, or failing agreement, as the Voting Shareholders direct in writing.
87. Any dividend interest or other money payable in respect of shares shall be paid in accordance with the T.O.C. Act or where the T.O.C. Act makes no provision therefore to the Australian Capital Territory.

INSPECTION OF RECORDS

88. (1) The Directors shall cause proper books of account to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place and with respect to the assets and liabilities of the Company.
- (2) The books of account and all other documents and records of the Company shall be kept at the Office, or subject to the Corporations Law at such other place or places as the Directors think fit, and upon request to the Board will always be open to inspection by any Director and by any Voting Shareholder.
- (3) Subject to this Clause no person shall have any right of inspecting any account or book or papers of the Company except as conferred by statute.

NOTICES

89. Subject to the Constitution a notice may be served by the Company upon any Shareholder either personally, by sending it by post addressed to such Shareholder at the address entered in the Register or the address supplied by him for the giving of notices to him, or, where a facsimile number or electronic address has been nominated by the Shareholder, to that facsimile number or electronic address.
90. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing prepaying and posting a letter containing the notice and to have been effected on the second Business Day after the date of its posting. Where notice is sent by facsimile transmission notice shall be deemed to be effected upon such transmission unless the Shareholder subsequently

establishes that the notice was not, in fact, received by his or her facsimile machine. Evidence of transmission will be constituted by the production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the Shareholder's facsimile machine. Where notice is sent electronically notice is deemed to be effected by properly addressing and transmitting the electronic transmission, and to have been delivered on the day following its dispatch.

91. Where a specified number of days notice or notice extending over any period is required to be given the day of service shall not be, but the day upon which such notice will expire shall be, included in such number of days or other period. The accidental omission to give any notice of a meeting to any Shareholder or the non-receipt by any Shareholder of any notice shall not invalidate the proceedings at any meeting.
92. Every summons notice order or other document required to be served upon the Company or upon any officer of the Company may be served by leaving the same at the Office.
93. The signature to any notice to be given by the Company may be written or printed or stamped.

INDEMNITY

94. (1) To the maximum extent permitted by law and subject to the restrictions in section 199A of the Corporations Law the Company indemnifies every person who is or has been an officer of the Company against:
 - (i) any liability (other than for legal costs incurred in defending an action for a liability incurred as an officer of the Company) 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); and
 - (ii) reasonable legal costs incurred 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).
- (2) The amount of any indemnity payable under Clauses 94(1)(i) or 94(1)(ii) 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.

- (3) The Company may pay a premium for a contract insuring a person who is or has been an officer of the Company and its related bodies corporate against:
 - (i) any liability incurred by that person as such an officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Corporations Law; and
 - (ii) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome.
- (4) For the purposes of this Clause, "**officer**" means:
 - (i) a Director;
 - (ii) a Secretary; or
 - (iii) executive officer.

SUBSIDIARIES

95. (1) The Company must obtain the approval of the Voting Shareholders prior to forming or participating in the formation of or acquisition of subsidiaries.
 - (2) The Company must ensure that the Constitution of its subsidiaries at all times contain provisions to the effect of those required by Schedule 3 of the T.O.C. Act in its application to the Company.
96. The Company must, to the maximum extent practicable, ensure that every subsidiary complies with its Constitution and with the requirements of the T.O.C. Act as it applies to the Company.
 97. The Company or any of its subsidiaries must obtain approval of the Voting Shareholders prior to the acquisition or disposal of shares of a company, or participation in any other transaction, resulting in the company becoming or ceasing to be a subsidiary.

98. In addition to the requirements of the Corporations Law and the T.O.C. Act, this Constitution may not be altered or added to in a way that is inconsistent with the provisions in Schedules 2 and 3 to the T.O.C. Act to the extent of its application to the Company unless and until resolutions approving the alteration or addition have been passed by the Legislative Assembly of the Australian Capital Territory.