

Monday 29th May 2017

Mr David Hatfield  
ACCC Offices  
Level 2 West,  
23 Marcus Clarke St,  
Canberra ACT 2600

Dear David,

### **Independent Review of Tyre Stewardship Australia Ltd**

Tyre Stewardship Australia (**TSA**) is pleased to present the outcomes of this independent review of the operation of the ACCC-authorized Tyre Stewardship Scheme (**TSS**) undertaken by Marsden Jacob Associates. The review acknowledges the achievements of the TSS, and highlights challenges that will need to be addressed.

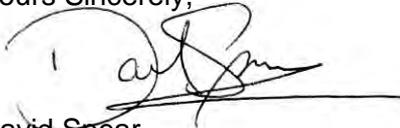
TSA continues its growth and today counts over 1,200 participants in the TSS. These include major importers, retailers, recyclers, collectors, fleets and local government.

In line with TSA's Strategic Plan, resources will continue to be allocated to encourage greater participation in the TSS of vehicle manufacturers, local government and fleets.

TSA will continue to invest in the Tyre Stewardship Research Fund, to enhance demand for Australian recycled tyre product. This will support domestic recyclers and create more productive outcomes for the approximately 50 million equivalent passenger units Australian's generate annually.

As Independent Chair of TSA, I believe the work underway, and achievements to date, are consistent with the ACCC Determination, and is significantly contributing to the broader public interest.

Yours Sincerely,



David Spear  
Independent Chair

Further to the independent report conducted by Marsden Jacob Associates on the progress of Tyre Stewardship Australia and the Tyre Stewardship Scheme, the Board of Tyre Stewardship Australia provides the following responses to the recommendations.

## **Marsden Jacob recommendations:**

### **Performance targets, reporting and data collection**

#### **1. Recommended revised outcomes focussed performance targets to include the ambitions:**

- **The percentage of end of life tyres that go to an environmentally sound use (ESU), both in Australia and overseas, increases to 50% by 2020;**
- **The volume of locally recycled tyre product sold as an input into new products and/or processes is 15% of the volume of end-of-life tyres by 2020.**

The Board of Tyre Stewardship Australia (TSA) acknowledges the clarification of performance targets in relation to environmental sound use and recycling rates.

While aspirational in nature, they do provide a metric to ascertain the effectiveness of the TSS. The refinement of these targets, from those in the initial TSS, provide greater clarity on the intent of the targets and the data required to measure. Therefore, TSA will look to adopt these targets for annual reporting purposes in future.

#### **2. Recommended revised outputs focussed targets include the ambitions:**

- **The percentage of tyre importers that are participants/members in the scheme increases to 90% by 2020 (measured as volume market share of total tyre imports).**
- **The percentage of vehicle manufacturers/ importers that are participants/members in the scheme increases to 90% by 2020 (measured as market share of total new vehicle sales).**
- **The percentage of tyre retailers that are participants/members in the scheme increases to 90% by 2020 (measured as market share of total tyre sales).**
- **The percentage of tyre recyclers that are participants in the scheme increases to 90% by 2020 (measured as market share of end of life tyres).**
- **TSA's short-term focus should be on improving reporting systems (including compliance with reporting) and setting and implementing well-articulated strategies to identify how growth is to be achieved.**

The Board of TSA acknowledges the challenges associated with the ambitious targets related to high category participation within the voluntary TSS. As challenging as these may be, retaining importers and manufacturers is very important in terms of ensuring adequate resources to implement the TSS effectively. Similarly, strong waste tyre recycling supply chain participation is required to ensure material moves through TSA audited and accredited entities. Given the importance of these participant categories to the success of the TSS, TSA will continue to endeavour to meet these challenging targets moving forward and will increase resources to retain and grow participation in all categories.

- 3. TSA establish appropriate criteria for ex-ante assessment of proposals for funding through the Tyre Stewardship Research Fund (TSRF). The criteria should be consistent with the objectives of the TSRF. The TSA should also undertake an ex-post assessment of funded projects to assess whether they have been successful in furthering the objectives of the TSRF with results of the evaluations being published.**

As TSA operates under an authority to collect an ACCC endorsed levy for 5 years, the TSA Board supports transparency and accountability with the funds we invest in all areas of the organisation. TSA currently has an extensive process for assessing all TSRF applications that involves publicly available, predefined assessment criteria and process. Appropriate assessment expertise has also been engaged via a publicly advertised process to recruit a Research Advisory Committee that fulfils the skills requirements of section 4.4 of the TSA Guidelines.

The TSA Board acknowledge the Marsden Jacob Associates comments regarding ex-post assessment programs. At the time of writing this document, 17 TSRF projects have been approved, with 1 having recently been completed which will now enable ex-post assessment to occur.

As more projects reach completion, greater emphasis will now be placed upon ex-post assessment of projects to ensure they've been successful in achieving the objectives of the Scheme.

- 4. A set of communications outcomes should be developed focussing on further enhancing communications to Scheme members, potential members and consumers and on consumer awareness.**

The Board of TSA acknowledges the importance of continually engaging and increasing communication with stakeholders, including raising general awareness in the community and with prospective new participants to the Scheme.

The following initiatives are in place to ensure continual communication with stakeholders:

- Strategic Plan 2017 – 2020;
- Broad Communications Strategy;
- Marketing & Communications Manager recently employed;
- Continual substantial media investment to ensure broader public awareness of TSS and its activities.

A full-time Marketing & Communications Manager has been employed to work directly with and add value to the existing agency work which is currently in place. The Marketing and Communication Manager will further develop the communication strategy in line with the overall TSA strategic plan, with renewed focus on social media, increased frequency of direct communication channels such as eNews, partnering with TSA stakeholders, government agencies and through Tyre Importer and other stakeholder forums.

**5. The following changes to reporting and data collection are recommended:**

- **TSA should continue to require accredited TSA importers and vehicle manufacturers and importers to provide data on tyre type and number of tyres imported. This is not expected to be company specific data due to commercial sensitivities and could be consolidated by ATIC where necessary.**
- **TSA should continue with current reporting arrangements with respect to obtaining detailed tyre type and end of life destination data from retailers, recyclers and collectors. Ideally, over time this should extend to other market participants such as miners, governments and fleet owners.**
- **Where practicable, TSA should expand the reporting categories for end of life tyres that are exported to be consistent with the categories used for end of life tyres that are not exported.**
- **Into the medium term, as participant data continues to develop, the TSA should also seek to obtain more comprehensive and granular data from ATRA and all tyre recyclers and collectors on the extent and nature of tyres being recycled.**
- **TSA should undertake to rectify key system functionality issues as soon as is practicable while also putting in place data integrity processes. Once these are rectified it should move to strictly enforce compliance with reporting.**
- **TSA should establish data collection systems necessary to report against proposed new R&D and communications targets.**

The Board of TSA acknowledge that reporting is the fundamental and most critical factor to determine the success of the TSS. As the categories grow, so will the database need to evolve. A key factor in reporting are commercial sensitivities which have an impact on the extent of data capture.

At the commencement of the TSS, the Board deemed it necessary to show a degree of flexibility in reporting requirements to encourage participation. As the TSS and TSA matures, and the participants benefit from being an accredited entity, the Board of TSA will progress towards stricter reporting compliance requirements.

**6. The TSA should immediately devote sufficient ongoing resources to ensure that they can achieve these reporting outcomes.**

The Board of TSA supports the need to increase resources in all areas as the TSS grows and in keeping with the TSA Strategic Plan. Resource allocations may not have been as substantial as required as the organisation sought to ensure a full and adequate revenue stream. Now that TSA is firmly established, investment in these key operational areas can, and will be undertaken.

**7. A full-time Communications Manager be appointed and report to the CEO.**

A Marketing and Communications Manager has been employed and reports to the CEO.

- 8. A forum be established as a mechanism to gather stakeholder views but also provide stakeholders with information on and progress of the development of the scheme.**

The Board of TSA acknowledges the importance of stakeholder engagement at all levels, specifically through Tyre Importers and Recyclers Forums, consumer focus groups, and engagement plans with other stakeholders.

## **Governance**

- 9. TSA should list independent Board members on its website.**

The Board of TSA supports the listing of independent Board members on the TSA website and this has been implemented.

- 10. Nominating members should be required to clarify which Board position category or categories they are nominating under.**

The Board of TSA supports nominating members clarifying which Board category they are nominating for. Once appointed the successful candidates background and experience, including the category nominated for, will be listed on the TSA website.

- 11. The term ‘representatives’ in section 34.1 of the Constitution, as applied to Board positions, be defined in the Constitution but in the longer term, consideration should be given to removing references to representation in the Constitution.**

The Board of TSA acknowledges the importance of maintaining best practice governance principles. Any constitutional change will need to be adopted by members of the company in accordance with the TSA constitution.

- 12. The terms ‘representatives’, ‘members’ and ‘participants’ should be defined in the Constitution.**

The Board of TSA acknowledges the importance of maintaining best practice governance principles. Any constitutional change will need to be adopted by members of the company in accordance with the TSA constitution.

- 13. The Board should continue to view State and Commonwealth Ministers accountable for environmental matters as key stakeholders and a key audience of their Annual Report.**

The Board of TSA supports as part of the overall TSA strategy, to continue to engage with relevant Local, State and Federal members of Government and provide ongoing updates on the TSS. The 2015/16 Annual report was delivered to all relevant Government stakeholders.

**14. The TSA should seek accreditation of the TSS under the Product Stewardship Act and progress processes toward achieving accreditation.**

The Board of TSA acknowledges that accreditation under the Federal Government's Product Stewardship legislation provides an avenue for recognising and encouraging excellence in product stewardship. Attaining accreditation communicates to the public that the arrangement has been independently assessed as credible by the Australian Government. Accreditation also provides assurance to the community that voluntary product stewardship arrangements are achieving real and effective outcomes.

Accordingly, the Board will consider making an application when the Government next open a call for accreditation of voluntary product stewardship arrangements. We note that the last Government open round was back in financial year 2014-2015 and that TSA is unable to lodge a voluntary application without the Government opening a call for applications.

**15. Through the accreditation process, the Australian Government clarify accountability arrangements and requirements for the Board.**

We understand that should TSA become accredited under Government's Voluntary Product Stewardship Arrangements, accreditation will be granted with administrative requirements, specific conditions and guidelines provided.

**16. The Board develop a skills matrix and identify skill requirements for the Board and develop a transparent approach for undertaking a skills assessment for all Board applicants.**

A Board skills matrix has been completed and has identified and documented the need for an ongoing range of specific skills. This will form part of future recruitment of Directors.

A current gap in recycling expertise, skills and knowledge (preferably in the tyre sector) has been identified and a Director position seeking this skill set has been advertised and is expected to be filled shortly.

**17. The Board, clarify processes and protocols for managing conflicts of interest.**

The Board of TSA has a documented Conflict of Interest policy. Declaration of Conflict of Interest is a standard agenda item at all meetings. A Conflict of Interest register is maintained. Management of conflicts of interest is considered a key role of the Independent Chair.

**18. The Board should ensure robust ex-ante and ex-post economic evaluations are undertaken to demonstrate value for money of R and D investments.**

The Board of TSA acknowledge the recommendations regarding ex-ante and ex-post economic assessment programs. Full and complete economic evaluations will be undertaken for all completed TSA Research and Development investments.

Greater emphasis will now be placed upon ex-post assessment of projects to ensure they've been successful in achieving the objectives of the Scheme.

At the time of writing this document, 17 project proposals have been funded, with 1 having recently been completed which will undergo an ex-post assessment process.

For further information, please contact the TSA Chief Executive Officer on 03 9077 2791.

# Policy: Conflict of Interest Tyre Stewardship of Australia (TSA) Board of Directors

## Article I: Purpose

Actions and decisions taken at all levels in TSA need to be informed, objective and fair. A conflict of interest may affect the way a person acts, decisions they make, or the way they vote in a group decision.

The purpose of this policy is to ensure TSA has established protocols for recording and managing actual and perceived conflicts of interest for Directors. Furthermore, while this policy outlines the process and steps for Directors to follow in relation to Directors' interests, it does not in any way negate the need for Directors to utilise their judgement and common sense when handling any conflicts of interest.

## Article II: Scope

This policy will apply to situations where the material and or personal interests of a Director, directly or indirectly, conflict with the best interests of TSA, its members or stakeholders, or where the decisions or actions of a Director may be influenced by their personal interests rather than those of the organisation. All Directors must comply with the Corporations Act and and relevant Common Law.

### **Definitions:**

#### **1. Interested Person**

Any TSA Director who has a direct or indirect personal interest, as defined below, is an interested person.

#### **2. Material Personal Interest**

A Director has Material Personal Interest in a matter that is being considered at a Board meeting must:

- a) disclose that interest prior to the consideration of the Board of the relevant matter; and
- b) not be present while the matter is being considered at the meeting except where permitted by the Corporations Act or where the Chairman in his/her discretion permits that Director to remain as an observer; and
- c) not vote on the matter

If a Director has disclosed a an interest in a matter to the Board;

- a) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting

- b) that Director can still be involved in decision making in relation to the relevant matter, at the discretion of the Chairman, in the following circumstances;
  - I. the interest only arises only because they are an employee or representative of a Member of the company and all other Members have the same interest; or
  - II. the interest relates to an insurance contract for the Directors; or
  - III. if the other Directors are satisfied that the interest should not disqualify the Director from voting or being present, they can pass a resolution allowing the Director to be involved in making the decision;
- c) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- d) if the interest is disclosed prior to any transaction that relates to the interest being entered into, the Director may retain the benefits pursuant to any such even though the Director has the interest; and
- e) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- f) he/she is involved with another organisation that is in a competitive relationship with TSA and therefore may have access to TSA's plans or financial information
- g) he/she is bound by prior agreements or allegiances to other individuals or agencies that require them to act in the interests of that person or agency or to take a particular position on an issue
- h) close personal friends or family members are involved
- i) he/she, or their close friends or family members, may make a financial gain or gain some other form of advantage

## **Article III: Procedures**

### **1. Duty to Disclose**

In connection with any material, actual or perceived conflict of interest, an interested person must disclose the existence of material personal interest and be given the opportunity to disclose all material facts to the TSA Board who will consider the interest in the context of the agenda items of the TSA Board.

A Director must provide such a declaration to the Board Secretary in written format utilising the Affirmation Statement as illustrated in *Attachment A*, and this document will be tabled at the next Board meeting.

### **2. Determining Whether a Conflict of Interest Exists**

After disclosure of the personal interest and all material facts, the Director shall leave the Board meeting while the determination of a conflict of interest is discussed and determined by vote if required. The remaining Board members shall decide if a conflict of interest exists.

### **3. Procedures for Addressing the Conflict of Interest**

- a) A Board member may remain in a Board meeting for the discussion of an agenda item at the discretion of the Chair, but after the discussion, he/she shall leave the meeting during the further discussion of, and the vote on, the agenda item involving the deemed conflict of interest.
- b) The Chairperson of the Board shall, if appropriate, appoint a non-conflicted Director or committee of the Board to determine a recommendation on the agenda item to the Board.
- c) A register of conflicts of interest will be maintained by the Company Secretary, recording all potential and actual conflicts (as outlined in Article IV below).

### **4. Violations of the Conflict of Interest Policy**

- a) If the Board has reasonable cause to believe a Board member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.
- b) If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing Board determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## **Article IV: Records of Proceedings**

The minutes of the Board shall contain:

- a) A standing agenda item at each Board meeting requiring Directors to have considered the matters in the Board papers and issues to be discussed and to be asked to declare any conflicts of interest as a result of new or changed circumstances.
- b) The names of the persons who disclosed or otherwise were found to have a personal interest in connection with an actual or possible conflict of interest, the nature of the personal interest, any action taken to determine whether a conflict of interest was present, and the governing Board's decision as to whether a conflict of interest in fact existed.
- c) The names of the persons who were present for discussions and votes relating to the agenda item, the content of the discussion, the decision and a record of any votes taken in connection with the proceedings.

The Company Secretary shall maintain a file specifically for Director's interests and declarations, and ensure:

- a) All notifications are recorded in the meeting minutes as noted in the above paragraph;
- b) Appropriate disclosure documentation is provided at each meeting;
- c) Directors with a conflict of interest in an agenda item do not receive the paper or the section of the minutes relating to the discussion on the item; and
- d) The Annual Standing Notices are maintained (refer *Attachment B*).

## **Article V: Annual Statements**

Each TSA Board Director shall annually sign a statement which affirms he/she:

- a) Has received a copy of the conflicts of interest policy;
- b) Has read and understands the policy; and
- c) Has agreed to comply with the policy.

At this time, the policy itself will also be reviewed in order to ensure all Board Directors are satisfied with the content of the policy and that it complies with ASX Governance Guidelines.

Additionally, each Director must annually review his/her personal interests and provide a signed copy of any declared interests to the Company Secretary in the format of an Annual Standing Notice (refer *Attachment B*). This will be tabled at the following Board meeting along with a signed copy of the Conflict of Interest Affirmation Statement (refer *Attachment A*). The declarations shall be recorded in the minutes and a copy retained by the Company Secretary in the Declaration of Interests file (as outlined in Article IV).

# Attachment A: Conflict of Interest Affirmation Statement Tyre Stewardship Australia (TSA) Board of Directors

This document is a direct statement by each Director of any current conflict and/or whether any conflict existed in the period since the Director last made such a statement. It also confirms the Director’s obligation to advise the Chairperson if a conflict arises.

“This is to confirm that I ..... (*print name*)

- (do/do not) (***cross out one option***) have a Conflict of Interest in any of the areas in which I have been acting as a Director of Tyre Stewardship Australia
- (have/have not) (***cross out one option***) had a Conflict of Interest in any of the areas in which I have been acting as a Director of Tyre Stewardship Australia since I last completed this affirmation.

\* If you have/have had a Conflict of Interest, please fill in items 1-3 below.

If any potential Conflict of Interest should arise, I will immediately advise the Chairperson of the nature and extent of the potential Conflict of Interest and its relation to the affairs of Tyre Stewardship Australia, and request a ruling. In the case of the Chairperson, The Chairperson of the Board shall, appoint a non-conflicted Director or committee of the Board to determine a recommendation on the agenda item to the Board.

**Nature of Conflict of Interest**

.....  
.....  
.....

**Extent of Conflict of Interest**

.....  
.....  
.....

**The relation of the Conflict of Interest to the affairs of TSA**

.....  
.....  
.....

**Comments**

.....  
.....

Signed .....

Date .....

# Attachment B: Conflict of Interest Annual Standing Notice Tyre Stewardship Australia (TSA) Board of Directors

This Notice is completed annually by Directors and seeks to help Directors consider all relationships that could give rise to a possible conflict of interest.

NAME:

POSITION:

Nature of relationship which may give rise to a Conflict of Interest	Extent of Conflict of Interest	Relation of Conflict of Interest to affairs of GRSA
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		

Signed .....

Date .....

# CONSTITUTION

## TYRE STEWARDSHIP AUSTRALIA LIMITED

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ABN 67 123 354 129

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Tyre Stewardship Australia, Company Limited by Guarantee, ACN 164 971 939

## Constitution

### PRELIMINARY

#### 1 DEFINITIONS

In this Constitution:

Annual Fee	means the fee payable by Members annually in an amount determined by the Board.
Attending Member	means, in relation to a meeting of Members, the Member present at the place of the meeting through its Corporate Representative in person, by proxy or by attorney.
Board	means the Directors of the Company from time to time
Business Day	means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.
Corporate Representative	means a person authorised in accordance with the Corporations Act (or a corresponding previous law) by a Member which is a body corporate to act as its representative at a meeting of Members.
Corporations Act	means the Corporations Act 2001 (Commonwealth).
Director	means a person who is, for the time being, a director of the Company..
Independent Director	Directors who are not: (a) a director, majority shareholder or employee of a Member or a Corporate Representative; (b) a trustee of a trust under which a Member is capable of benefiting; (c) an agent for a Member in any transaction or dealing; or (d) an attorney of a Member under a power of attorney.
Initial Members	Means founding members of the Company who became members upon incorporation, namely Goodyear & Dunlop Tyres (Aust) Pty Ltd, Michelin Australia Pty Ltd, Yokohama Pty Ltd, Continental Pty Ltd, Australian Motor Industry Federation Ltd (now called MTAA), the Australian Tyre Recyclers Association Inc, Toyo and Pirelli.

Fee	means a fee referred to in the Constitution which is not the Annual Fee or the Levy.
Legal Costs	of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.
Levy	means the levy payable by certain participants of the Scheme, in accordance with the Scheme guidelines.
Liability of a person	means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.
Member	means a person whose name is entered in the Register as a member of the Company and unless the contrary intention appears includes a Representative Member.
Notice	means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.
Register	means the register of Members kept pursuant to the Corporations Act and, where appropriate, includes any branch register.
Relevant Officer	means a person who is, or has been, a Director or Secretary.
Representative Member	means a person admitted as a Member as a representative of an unincorporated association or body under Article 8.3.
Scheme	means the End-of-life Tyre Stewardship Scheme for the collection, recycling and responsible disposal of end-of-life tyres in Australia.
Secretary	means a person appointed as, or to perform the duties of, secretary of the Company for the time being

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## 2 INTERPRETATION

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

- a) a word importing the singular includes the plural (and vice versa);
- b) a word indicating a gender includes every other gender;
- c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- d) the word "includes" in any form is not a word of limitation;
- e) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form;
- f) a reference to a "person" includes a natural person and a body corporate;
- g) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law; and
- h) a reference to a statute includes its delegated legislation and a reference to a statute, delegated legislation or a guideline or a provision of any of them includes consolidations, amendments, re-enactments and replacements.

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## 3 APPLICATION OF CORPORATIONS ACT

- a) Unless the context indicates a contrary intention, in this Constitution:
  - i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
  - ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution; and
- b) The replaceable rules in the Corporations Act do not apply to the Company.

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## 4 ENFORCEMENT

- a) Each Member submits to the non-exclusive jurisdiction of the courts of Victoria, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.
- b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:

- i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

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## OBJECTS

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### 5 OBJECTS OF THE COMPANY

- a) The principal objects of the Company are:
  - i) implement the product stewardship Scheme for end-of-life tyres;
  - ii) administer the accreditation of participants in the Scheme;
  - iii) monitor audit and report on the development of the Scheme;
  - iv) undertake education, awareness and information activities to promote the scheme and the value of end-of-life tyres utilisation;
  - v) contribute to technology and market development activities that are consistent with goal of increased utilisation of end-of-life tyres.
- b) In support of the principal objects, the further objects of the Company are:
  - c) to pro-actively invest in research and development projects, skills development, national outreach and international engagement for the benefit of the Australian community and the Australian public at large;
  - d) to advance and accelerate innovative technologies in Australia by supporting focused collaborative research in high priority technologies;
  - e) to retain local expertise in, and attract international expertise to, Australia;
  - f) to support growth in skills and capacity in Australian technologies for the domestic and international markets;
  - g) to engage with government, industry and the community in promoting, developing and implementing EOL tyre technologies and the interests of the Australian research and development community;
  - h) to provide a forum to discuss ideas and promote multidisciplinary research and institutional collaboration;
  - i) to do all other things as may be incidental or ancillary to the attainment of these objects.
- j) The Company must pursue its objects and undertake its activities principally in Australia. Article 5 is a complete list of all the Company's objects.

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## INCOME AND PROPERTY

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### 6 APPLICATION OF INCOME AND PROPERTY

- a) Subject to Articles 6(b) and 6(c), the Company must apply the profits (if any) or other income and property of the Company solely towards the promotion of the objects of the Company set out in Article 5 and no portion of it may be paid or transferred, directly or indirectly, to any Member whether by way of dividend, bonus or otherwise.
- b) Nothing in Article 6(a) prevents the Company making any payment in good faith of:
  - i) reasonable and proper remuneration to any Member for any services actually rendered or goods supplied to the Company in the ordinary and usual course of business of the Company;
  - ii) the payment or reimbursement of out-of-pocket expenses incurred by a Member on behalf of the Company where the amount payable is approved under the appropriate delegations and procurement policies in place at the time;
  - iii) reasonable and proper rent or fees to a Member for premises leased or licensed by any Member to the Company;
  - iv) money to any Member, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
  - v) interest to a Member at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Member; or
  - vi) an amount pursuant to Article 57.
- c) The Company may make payments to a Director or Secretary in good faith for:
  - i) any salary or wage due to the Director or Secretary as an employee of the Company where the terms of employment have been approved by the Board;
  - ii) an insurance premium in respect of a contract insuring a Director or Secretary for a liability incurred as an officer of the Company where the Board has approved the payment of the premium;
  - iii) any payment pursuant to Article 35; or
  - iv) any payment pursuant to Article 42(a), 42(c) or 42(d) or a payment pursuant to any agreement or deed referred to in Article 42(e).

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## LIABILITY OF MEMBERS

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### 7 EXTENT OF LIABILITY

Each Member undertakes to contribute an amount not exceeding \$100.00 to the property of the Company if the Company is wound up at a time when that person is a Member, or within one year of the time that person ceased to be a Member, for:

- a) payment of the Company's debts and liabilities contracted before that person ceased to be a Member;
- b) payment of the costs, charges and expenses of winding up the Company; and
- c) adjustment of the rights of the contributories among themselves.

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## MEMBERSHIP

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### 8 MEMBERS

8.1 Article 8.2 does not apply to the Initial Members.

#### 8.2 Applications

- a) Any organisation, but no natural person, which is an accredited participant in the Scheme is eligible to apply to become a Member.
- b) Each applicant to become a Member must sign and deliver to the Company an application in the form which the Board determines, and pay any Fee which the Board determines.
- c) The Board must consider any application to become a Member delivered to the Company, which satisfies the requirements of Article 8.2b) and make a decision to accept or reject the application.
- d) The Board is not required to give any reason for the rejection of any application to become a Member.
- e) If an application to become a Member is accepted by the Company:
  - i) the Company must give written notice of the acceptance to the applicant and enter the applicant's name in the Register; and
  - ii) the Member must pay the Annual Fee in accordance with Article 14.
- f) If an application to become a Member is rejected by the Company, the Company must give written notice of the rejection to the applicant and refund in full any Fee paid by the applicant.
- g) Failure by the Company to comply with any notice requirement in Article 8.2e) and 8.2f) does not invalidate the decision regarding an application.

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### 8.3 Representative Members

- a) This Article 8.3 applies to unincorporated associations or bodies which are accredited participants of the Scheme.
- b) If a person is admitted as a Member as a representative of an unincorporated association or body, the name of the Member, the name of the unincorporated association or body and the fact that the member is its representative must be entered in the register of Members.
- c) Subject to the Company's right to decline to accept any person as a Member, and subject to Articles 11 and 12 the unincorporated association or body may replace the Member who is its representative with another person by notice in writing to the Company signed by any officer of the association or body concerned and setting out the details of the new representative, without it being necessary for the outgoing Member to resign or the incoming Member to apply to become a Member.

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- 8.4 In the event that a Member's accreditation under the Scheme lapses or ceases for any reason, that Member will resign from the Company under Article 10 immediately, and within 7 days.

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## 9 NO TRANSFERS

The rights of being a Member are not transferable whether by operation of law or otherwise.

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## 10 RESIGNATION OF A MEMBER

- a) Subject to Article 10c), a Member may at any time resign as a member of the Company by giving the Company 4 weeks prior notice in writing.
- b) A Member who resigns in accordance with this Article 10 remains liable for any Levy, Annual Fee or Fee payable up to completion of the notice period required in Article **Error! Reference source not found.**
- c) If at any time there is only one Member and the Member gives proper notice of resignation, or on the same day all of the Members give proper notice of resignation, the notice or notices will be ineffective and the Member or Members cannot resign until either another person is appointed as a Member or the Company is wound up.
- d) If a Member resigns in accordance with this Article 10, the Company must remove the Member's name from the Register.

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## 11 SUSPENSION OR EXPULSION OF A MEMBER

- a) Subject to Article 11b), if:
  - i) a Member is in breach of a provision of this Constitution;

- ii) any act or omission of a Member is, in the opinion of the Board, unbecoming of a Member, or prejudicial to the interests or reputation of the Company;
- iii) a Member is, or any step is taken for that Member to become, either an insolvent under administration or an externally administered body corporate; or
- iv) the succession by another body corporate or entity to the assets and liabilities of the Member;

the Company may:

- A) suspend the Member from such rights and privileges of membership of the Company as the Board may determine for a specified period; or
  - B) expel the Member by a resolution of the Board and remove the Member's name from the Register.
- b) The Company must not suspend or expel a Member pursuant to Article 11a) unless:
- i) at least 5 Business Days notice has been given to the Member stating the date, time and place at which the question of expulsion of that Member is to be considered by the Board, and the nature of alleged event giving rise to the expulsion; and
  - ii) the affected Member is given the opportunity of explaining to the Board, orally or in writing, why the Member should not be expelled.

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## 12 OTHER CESSATION EVENTS

If a Member, being a body corporate, is deregistered pursuant to the laws of the jurisdiction in which the Member is incorporated, the Member ceases to be a member of the Company and the Company may remove the Member's name from the Register.

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## 13 EFFECT OF CESSATION

- a) A person who ceases to be a Member under Article 10 and 11:
  - i) remains liable to pay, and must immediately pay, to the Company all amounts that at date of cessation were payable by the person to the Company as a Member; and
  - ii) must pay to the Company interest at the rate the Board resolves on those amounts from the date of cessation until and including the date of payment of those amounts.
- b) The Company may by resolution of the Board waive any or all of its rights pursuant to this Article 13.

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## FEES AND OTHER PAYMENTS

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### 14 ANNUAL FEE

- a) All Members must pay the Annual Fee by its due date, as determined by the Board and notified in accordance with Article 16.
- b) Failure by a Member to pay the Annual Fee may result in suspension of that Member in accordance with Article 11.

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### 15 SETTING OF FEES

- a) Subject to the Corporations Act, the Company may by resolution of the Board require the payment of Fees by Members of any amount, on any terms and at any times as the Board resolves, including payment by instalments.
- b) The Company may when admitting Members make Fees payable for one or more Members for different amounts and at different times as the Board resolves.
- c) The Company may by resolution of the Board revoke or postpone a Fee or extend the time for payment of a Fee, at any time prior to the date on which payment of that Fee is due.

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### 16 NOTICE OF FEES

- a) For the purposes of this Article 16, the reference to Fees includes the Annual Fee.
- b) The Company must give notice of Fees to the Members who are required to pay the Fees at least 10 Business Days before the due date for payment. The notice must specify the amount of the Fee, the time or times and place of payment and any other information as the Board resolves.
- c) The non-receipt of a notice of a Fee by, or the accidental omission to give notice of a Fee to, any Member does not invalidate the Fee.

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### 17 PAYMENT OF FEES

- a) For the purposes of this Article 17, the reference to Fees includes the Annual Fee.
- b) Each Member must pay to the Company the amount of each Fee payable by the Member in the manner, at the time and at the place specified in the notice of the Fee.
- c) In a proceeding to recover a Fee, or an amount payable due to the failure to pay or late payment of a Fee, proof that:
  - i) the name of the person is entered in the Register as a Member;

- ii) there is a record in the minute books of the Company of the resolution determining the Fee; and
- iii) notice of the Fee was given or taken to be given to the person in accordance with this Constitution, is conclusive evidence of the obligation of that person to pay the Fee.

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## 18 INTEREST PAYABLE

- a) For the purposes of this Article 18, the reference to Fees includes the Annual Fee.
- b) If an amount payable to the Company as a Fee is not paid before or on the time for payment, the person who owes the amount must pay to the Company:
  - i) interest on the unpaid part of the amount from the date payment is due to the date of payment at the rate that the Board resolves; and
  - ii) all costs and expenses that the Company incurs due to the failure to pay or the late payment.
- c) Interest pursuant to Article 18(a) accrues daily and may be capitalised at any interval that the Board resolves.
- d) The Company may by resolution of the Board waive payment of some or all of the interest, costs or expenses payable pursuant to Article 18(a).

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## PROCEEDINGS OF MEMBERS

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### 19 WRITTEN RESOLUTIONS OF MEMBERS

- a) While the Company has only one Member, the Company may pass a resolution by that Member signing a record in writing of that resolution.
- b) While the Company has more than one Member, unless the Corporations Act requires otherwise, the Members may pass a resolution without a general meeting being held if a majority (or, where the context requires it, a special majority) of the Members who are entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- c) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- d) A resolution under this Article 19 is taken to be passed (and if it is required to be a special resolution to be effective, passed as a special resolution), as if it had been passed at a duly convened general meeting, at the time the Secretary has evidence that the last Member has signed it.

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**20 CALLING MEETINGS OF MEMBERS**

- a) The Company may by resolution of the Board call a meeting of Members to be held at the time and place (including 2 or more venues using technology which gives Attending Members as a whole a reasonable opportunity to participate) and in the manner that the Board resolves.
- b) No Member may call or arrange to hold a meeting of Members except where permitted by the Corporations Act.

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**21 NOTICE OF MEETINGS OF MEMBERS**

- a) Where the Company has called a meeting of Members, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Corporations Act.
- b) A person may waive notice of any meeting of Members by written notice to the Company.
- c) A person who has not duly received notice of a meeting of Members may, before or after the meeting, notify the Company of the person's agreement to anything done or resolution passed at the meeting.
- d) A person's attendance at a meeting of Members waives any objection which that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.
- e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a person does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.

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**22 BUSINESS OF MEETINGS**

Except with the approval of the Board, with the permission of the chairperson of the meeting or pursuant to the Corporations Act, no person may move at any meeting of Members:

- a) any resolution (except in the form set out in the notice of meeting given pursuant to Article 21a)); or
- b) any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Members to inspect or obtain.

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**23 QUORUM**

- a) No business may be transacted at a meeting of Members except, subject to Article 24, the election of the chairperson of the meeting unless a quorum for a meeting of Members is present at the time when the meeting commences.
- b) A quorum for a meeting of Members is at least 60% of Members entitled to vote on a resolution at that meeting or if only one Member is entitled to vote at that meeting, then that person (or an Attending Member representing that person). Each individual present may only be counted once towards a quorum. If a Member has appointed more than one proxy or attorney or Corporate Representative, only one of them may be counted towards a quorum.
- c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting of Members, the meeting is dissolved unless the chairperson of the meeting or the Board adjourn the meeting to a date, time and place determined by that chairperson or the Board.
- d) If a quorum is not present within 30 minutes after the time appointed for the commencement of an adjourned meeting of Members, the meeting is dissolved.

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**24 CHAIRPERSON OF MEETINGS OF MEMBERS**

- a) Subject to Articles 24(b) and 24(c), the chairperson of the Board must chair each meeting of Members.
- b) If at a meeting of Members:
  - i) there is no chairperson of the Board; or
  - ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of a meeting of Members or is not willing to chair all or part of the meeting,the Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Attending Members may elect one of their number, to chair that meeting.
- c) A chairperson of a meeting of Members may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her.

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**25 CONDUCT OF MEETINGS OF MEMBERS**

- a) Subject to the Corporations Act and the Constitution, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- b) For the purposes of 25a), the chairperson of a meeting of Members may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.

- c) The chairperson of a meeting of Members may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- d) The chairperson of a meeting of Members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- e) The chairperson of a meeting of Members may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- f) The chairperson of a meeting of Members may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting.
- g) The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
  - i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
  - ii) has any audio or visual recording or broadcasting device;
  - iii) has a placard or banner;
  - iv) has an Article the chairperson considers to be dangerous, offensive or liable to cause disruption;
  - v) behaves or threatens to behave in a dangerous, offensive or disruptive manner;
  - vi) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession; or
  - vii) is not entitled pursuant to the Corporations Act or this Constitution to attend the meeting.
- h) If the chairperson of a meeting of Members considers that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the chairperson may nominate a separate meeting place using any technology that gives Attending Members as a whole a reasonable opportunity to participate.
- i) The chairperson of a meeting of Members may delegate any power conferred by this Article 25 to any person.
- j) Nothing contained in this Article 25 limits the powers conferred by law on the chairperson of a meeting of Members.

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## 26 ATTENDANCE AT MEETING OF MEMBERS

- a) Subject to this Constitution, a Member who is entitled to attend and cast a vote at a meeting of Members, may attend and vote in person through its Corporate Representative, by proxy or by attorney.

- b) The chairperson of a meeting of Members may require a person acting as a proxy, attorney or Corporate Representative at that meeting to establish to the chairperson's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the chairperson may exclude the person from attending or voting at the meeting.
- c) A Director is entitled to receive notice of and to attend all meetings of Members and is entitled to speak at those meetings.
- d) A person requested by the Board to attend a meeting of Members is, regardless of whether that person is a Member or not, entitled to attend that meeting and, at the request of the chairperson of the meeting, is entitled to speak at that meeting.

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## 27 VOTING AT MEETING OF MEMBERS

- a) A resolution put to the vote at a meeting of Members must be decided on a show of hands, unless a poll is demanded in accordance with Article 29 and that demand is not withdrawn.
- b) The Board may determine that Members entitled to attend and vote at a meeting of Members may vote at that meeting without an Attending Member in respect of that person being present at that meeting (and voting in this manner is referred to in this Article 27(b) as direct voting). The Board may determine rules and procedures in relation to direct voting, including the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Member casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible Members, a direct vote cast by an eligible Member is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with.
- c) Subject to this Constitution, on a show of hands at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote, provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote.
- d) Subject to this Constitution, on a poll at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote for each Member that the Attending Member represents.
- e) Subject to this Constitution, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Members on any resolution to be put at a meeting of Members, each Member having a right to vote on the resolution has one vote.
- f) An objection to a right to vote at a meeting of Members or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Article 27(f) must be decided by the chairperson of the meeting of Members, whose decision, made in good faith, is final and conclusive.

- g) Except where a resolution at a meeting of Members requires a special majority pursuant to the law, the resolution is passed if more votes are cast by Members entitled to vote in favour on the resolution than against it.
- h) In the case of an equality of votes on a resolution at a meeting of Members, the chairperson of that meeting has a casting vote on that resolution.
- i) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a meeting of Members following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

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## 28 RESTRICTIONS ON VOTING RIGHTS

- a) An Attending Member is not entitled to vote on any resolution on which any Fee or other amount due and payable to the Company in respect of that Member's membership of the Company has not been paid.
- b) An Attending Member is not entitled to vote on a resolution at a meeting of Members where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.

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## 29 POLLS

- a) A poll on a resolution at a meeting of Members may be demanded by a Member only in accordance with the Corporations Act or by the chairperson of that meeting.
- b) No poll may be demanded at a meeting of Members on the election of a chairperson of that meeting, or unless the chairperson of the meeting otherwise determines, the adjournment of that meeting.
- c) A demand for a poll may be withdrawn.
- d) A poll demanded on a resolution at a meeting of Members for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Members must be taken in the manner and at the time and place the chairperson of the meeting directs.
- e) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- f) A demand 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.

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## 30 PROXIES

- a) A Member who is entitled to attend and vote at a meeting of Members may appoint a person as proxy to attend and vote for the Member in accordance with the Corporations Act but not otherwise.

- b) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Member on the basis and subject to the restrictions provided in the Corporations Act.
- c) A form of appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.
- d) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Member is not filled in, the proxy of that Member is:
  - i) the person specified by the Company in the form of proxy in the case that Member does not choose; or
  - ii) if no person is so specified, the chairperson of that meeting.
- e) The authority of a proxy or attorney for a Member to speak or vote at a meeting of Members to which the authority relates is suspended while the Member, through its Corporate Representative, is present in person at that meeting.
- f) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the person so appointed has the same rights to speak, demand a poll, join in demanding a poll or act generally at a meeting of Members to which the appointment relates, as the appointing Member would have had if that Member was present at the meeting.
- g) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the appointment is taken to confer authority to:
  - i) vote on any amendment moved to a proposed resolution and on any motion that a proposed resolution not be put or any similar motion; and
  - ii) vote on any procedural motion, including any motion to elect the chairperson of the meeting of Members to which the appointment relates, to vacate the chair or to adjourn the meeting, even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Corporate Representative how to vote on particular resolutions.
- h) Unless otherwise provided in the document or resolution appointing a person as proxy, attorney or Corporate Representative of a Member, the appointment is taken to confer authority to attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.
- i) If a proxy of a Member purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Member to cast in a given way must be treated as cast in that way.

- j) Subject to this Constitution and the Corporations Act, a vote cast at a meeting of Members by a person appointed by a Member as a proxy, attorney or Corporate Representative is valid despite the revocation of the appointment (or the authority pursuant to which the appointment was executed), if no notice in writing of that matter has been received by the Company before the commencement of that meeting.

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### 31 RECEIPT OF APPOINTMENTS

- a) An appointment of proxy or attorney for a meeting of Members is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the meeting to commence or (in the case of an adjourned meeting) resume.
- b) Where a notice of meeting specifies an electronic address or other electronic means by which a Member may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Member and received by the Company if the requirements set out in the notice of meeting are complied with.

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### 32 ADJOURNMENTS

- a) The chairperson of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson.
- b) If the chairperson of a meeting of Members exercises the right to adjourn that meeting pursuant to Article 32(a), the chairperson may (but is not obliged to) obtain the approval of Attending Members to the adjournment.
- c) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- d) The Company may give such notice of a meeting of Members resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- e) Only business left unfinished is to be transacted at a meeting of Members which is resumed after an adjournment.

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### 33 CANCELLATIONS AND POSTPONEMENTS

- a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a meeting of Members or change the place for the meeting, prior to the date on which the meeting is to be held.

- b) Article 33(a) does not apply to a meeting called in accordance with the Corporations Act by Members or by the Board on the request of Members, unless those Members consent to the cancellation or postponement of the meeting.
- c) The Company may give notice of a cancellation or postponement or change of place of a meeting of Members as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- d) The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the original notice calling the meeting.

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## DIRECTORS

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### 34 DIRECTORS

- 34.1 The Board of Tyre Stewardship Australia Limited will comprise up to eleven (11) members, including:
- a) A minimum of 4 and up to 5 representatives of member organisations involved in the importation of tyres into Australia as elected by the Members in accordance with article 34.2;
  - b) A minimum of 1 and up to 2 representatives from the tyre recycling industry with suitable knowledge and experience as elected by the Members in accordance with article 34.2;
  - c) A minimum of 1 and up to 2 representatives from the tyre retail industry with suitable knowledge and experience as elected by the Members in accordance with article 34.2;
  - d) At least 2 and up to 3 Independent Directors as mutually agreed by a majority of the Directors.
- 34.2 Directors filling the categories specified in Articles 34.1a), 34.1b) and 34.1c) above are to be elected in accordance with the following procedure:
- a) The Secretary will act as receiving officer and will put out a call to all Members for nominations at least 3 months prior to the next annual general meeting;
  - b) Nominations may be made within twenty-one (21) days after the Secretary makes the call;
  - c) The Secretary will assess all nominations for their eligibility against the criteria set out in Article **Error! Reference source not found.** and the Members may only elect a person or persons to the Board provided they

fall within one of the categories specified in Articles **Error! Reference source not found.** to c);

- d) The Secretary will table all nominees and provide to the Members;
- e) The vote for elected Directors will be carried out by vote at the annual general meeting;
- f) If a nominee is not elected under this Article 34.2 and meets the definition of Independent Director, he or she is not prevented from being selected for the Board by the Directors pursuant to Article 34.1d).

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### 34.3 Change of number of Directors

The Company in a general meeting may by resolution increase or reduce the number of Directors to be appointed pursuant to clause 34.1d), and may also determine the rotation in which the increased or reduced number is to retire from office.

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- 34.4 This Article 34 does not affect the legitimacy of the Directors appointed as at the date of adoption of this amended Constitution.

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## 35 REMUNERATION AND BENEFITS OF DIRECTORS

- a) Subject to any agreement with the Company and Articles 6 and 35(f), Directors may be paid such remuneration as is determined by the Board pursuant to the procedure described in Article 47.
- b) The remuneration pursuant to Article 35(a) may be provided in cash or any other manner agreed between the Company and the relevant Director. The Board must determine the manner in which the value of any non-cash benefit is to be calculated.
- c) The fees of a Director are taken to accrue from day to day, except that fees in the form of a non-cash benefit are taken to accrue at the time the benefit is provided to the Director, subject to the terms on which the benefit is provided.
- d) The Company may pay money to any Director or Secretary, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service.
- e) The Company may pay or reimburse all reasonable travelling, accommodation and other expenses that a Director properly incurs in attending meetings of the Board, committees of the Board, meetings of Members, or otherwise in connection with the business of the Company, where such payment or reimbursement is approved under the appropriate delegations and procurement policies in place at the time.
- f) Subject to the Corporations Act, the Company may, or may agree to, pay provide or make any payment or other benefit to a Director, a director of a

related body corporate of the Company or any other person in connection with that person's or someone else's retirement, resignation from or loss of office, or death while in office.

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## 36 RETIREMENT OF DIRECTORS

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- 36.1 Each member of the Board will serve a term of three (3) years but be eligible for re-election. The maximum number of terms each Director can serve is three (3) terms.
- 36.2 The persons named in the Schedule to the Constitution constitute the Initial Directors.
- a) The first named 3 Directors must retire at the commencement of the first Annual General Meeting following commencement of this amended Constitution but will be eligible for re-election.
  - b) The second named 3 Directors must retire at the commencement of the second Annual General Meeting following commencement of this amended Constitution but will be eligible for re-election.
  - c) The remaining Directors must retire at the commencement of the third Annual General Meeting following commencement of this amended Constitution but will be eligible for re-election.
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- 36.3 A Director who retires pursuant to Article 36.2 holds office as a Director until the end of the meeting at which the Director retires and is eligible for re-election.

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## 37 TERMINATION OF OFFICE

A person ceases to be a Director if the person:

- a) fails to attend Board meetings for 3 consecutive Board meetings without the consent of the Board;
- b) resigns by notice in writing to the Company;
- c) retires pursuant to Article 36 and is not re-elected;
- d) is removed from office pursuant to the Corporations Act;
- e) is an employee (whether full-time or part-time) of the Company or of any related body corporate of the Company and ceases to be an employee of the Company or of a related body corporate of the Company;
- f) is an employee of a Member, and ceases to be an employee of a Member, unless the Member provides written consent for the person to continue as a Director;
- g) becomes an insolvent under administration;
- h) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health; or

- i) is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act.
- j) was an Independent Director and the following applies:
  - i) only 2 other Directors satisfy the definition of Independent Director; and
  - ii) the person ceases to satisfy the definition of Independent Director.

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### 38 CASUAL VACANCY

- a) A casual vacancy in the office of a member of the Board occurs if the member ceases to be Director under Article 37 prior to an annual general meeting.
- b) In the event of a casual vacancy occurring in the Board in relation to a Director appointed under Articles 34.1a), 34.1b) and 34.1c), the Board may appoint a representative of a Member to fill the vacancy with consideration of the existing composition of the Board of Directors appointed under Articles 34.1a), 34.1b) and 34.1c).
- c) In the event of a casual vacancy occurring in the Board in relation to an Independent Director appointed under Article 34.1d), if immediately prior to the casual vacancy the Board included 2 Independent Directors, the Board will appoint a person who satisfies the definition of an Independent Director within a three (3) month period;
- d) An Independent Director appointed under Article 38b) or 38c) is to hold office, subject to the Constitution, until the annual general meeting next following the date of the appointment.

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### 39 INTERESTS OF DIRECTORS

- a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
  - i) holding an office (except auditor) or place of profit or employment in the Company or a related body corporate of the Company;
  - ii) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;
  - iii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
  - iv) entering into any agreement or arrangement with the Company; or
  - v) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- b) Each Director must comply with the Corporations Act in relation to the disclosure of the Director's interests.

- c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must:
  - i) disclose that interest prior to the consideration of the Board of the relevant matter; and
  - ii) not be present while the matter is being considered at the meeting except where permitted by the Corporations Act or where the Chairman in his discretion permits that Director to remain as an observer; and
  - iii) not vote on the matter.
- d) If a Director has disclosed an interest in a matter to the Board:
  - i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
  - ii) that Director can still be involved in decision making in relation to the relevant matter, at the discretion of the chairman, in the following circumstances:
    - A) the interest only arises because they are an employee or representative of a Member of the company and all other Members have the same interest; or
    - B) the interest relates to an insurance contract for the Directors; or
    - C) if the other Directors are satisfied that the interest should not disqualify the Director from voting or being present, they can pass a resolution allowing the Director to be involved in making the decision;
  - iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
  - iv) if the interest is disclosed prior to any transaction that relates to the interest being entered into, the Director may retain the benefits pursuant to any such even though the Director has the interest; and
  - v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.

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## OFFICERS

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### 40 CHIEF EXECUTIVE OFFICER

- a) The Board may appoint one Chief Executive Officer of the Company, for any period and on any terms (including, subject to Article 6, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Chief Executive Officer, the Board may vary or

terminate the appointment of the Chief Executive Officer of the Company at any time, with or without cause.

- b) The Board may delegate any of its powers to the Chief Executive Officer of the Company for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the Chief Executive Officer of the Company.
- c) A Chief Executive Officer of the Company must exercise the powers delegated to him or her in accordance with any directions of the Board.

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#### 41 SECRETARY

The Board may appoint one or more Secretaries, for any period and on any terms (including, subject to Article 6, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

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#### 42 INDEMNITY AND INSURANCE

- a) To the extent permitted by law, the Company may indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- b) The indemnity pursuant to Article 42(a):
  - i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
  - ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
  - iii) applies to Liabilities and Legal Costs incurred both before and after this Article became effective.
- c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- d) To the extent permitted by law, the Company may:
  - i) enter into, or agree to enter into; or
  - ii) pay, or agree to pay, a premium for, a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
  - i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;

- ii) indemnify that person against any Liability and Legal Costs of that person;
- iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and
- iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

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## **POWERS OF THE BOARD**

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### **43 GENERAL POWERS**

- a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 48, a resolution passed by signing a document in accordance with Article 47, or in accordance with a delegation of the power pursuant to Article 40, 45 or 46. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Article 40, 45 or 46.

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### **44 EXECUTION OF DOCUMENTS**

- a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, the Chief Executive Officer, a Secretary, or another person appointed by the Board for that purpose.
- b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, the Chief Executive Officer, a Secretary, or another person appointed by the Board for that purpose.
- c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

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### **45 COMMITTEES AND DELEGATES**

- a) The Board may establish committees on such matters, and with such terms of reference and delegations, as the Board thinks fit.

- b) The Board may delegate any of its powers to a committee of the Board, a Director, the Chief Executive Officer, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- c) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- d) Subject to the terms of appointment or reference of a committee, Article 48 applies with the necessary changes to meetings and resolutions of a committee of the Board.

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#### **46 ATTORNEY OR AGENT**

- a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

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#### **PROCEEDINGS OF DIRECTORS**

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#### **47 WRITTEN RESOLUTIONS OF DIRECTORS**

- a) The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document containing a statement that they are in favour of the resolution set out in the document.
- b) A resolution pursuant to Article 49(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority of the Directors. A facsimile transmission or other document produced by electronic means under the name of a Director with the Director's authority is taken to be a document signed by the Director for the purposes of Article 49(a) and is taken to be signed when received by the Company in legible form.

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#### **48 BOARD MEETINGS**

- a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.

- c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board). Notice of a Board meeting may be given in person, or by post or by fax or other electronic means.
- d) A Director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by fax or other electronic means.
- e) A person who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.
- f) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- g) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
  - i) telephone;
  - ii) video;
  - iii) any other technology which permits each Director to communicate with every other participating Director; or
  - iv) any combination of these technologies.
- h) A Director may withdraw the consent given pursuant to Article 48(g) in accordance with the Corporations Act.
- i) If a Board meeting is held in 2 or more places linked together by any technology:
  - i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
  - ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- j) Until otherwise determined by the Board, a quorum for a Board meeting is at least 60% of Directors entitled to vote on a resolution that may be proposed at that meeting including at least one Independent Director. A quorum for a Board meeting must be present at all times during the meeting. Each individual present is counted towards a quorum.

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## 49 CHAIRPERSON OF THE BOARD

- a) The Board appoint a chairperson from one of the Independent Directors of the Board appointed under Article 34.1d) for any period that it resolves, or if no period is specified, until that person ceases to be a Director. The Board may remove the chairperson of the Board at any time.

- b) The chairperson of the Board must not:
  - i) be a director, majority shareholder or employee of a Member or a Corporate Representative;
  - ii) be a trustee of a trust under which a Member is capable of benefiting;
  - iii) act as agent for a Member in any transaction or dealing;
  - iv) be an attorney of a Member under a power of attorney; or
  - v) have been appointed by a Member as the Member's attorney under a power of attorney.
- c) Subject to Article 49d), the chairperson of the Board must chair each Board meeting.
- d) If at a Board meeting:
  - i) a chairperson has not been appointed pursuant to Article 49a); or
  - ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

the Directors present must elect one of their number to chair that meeting or part of the meeting.
- e) A person does not cease to be a chairperson of the Board if that person retires as a Director at a meeting of Members and is re-elected as a Director at that meeting (or any adjournment of that meeting).

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## 50 BOARD RESOLUTIONS

- a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- b) Subject to Articles 39 and this Article 50, each Director present in person has one vote on a matter arising at a Board meeting.
- c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and more than two Directors are present and entitled to vote on the resolution.

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## 51 VALID PROCEEDINGS

- a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
  - i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or

- ii) a person so appointed being disqualified or not being entitled to vote, if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.
- b) If the number of Directors is below the minimum required by this Constitution, the Board must not act, except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Members.

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## NOTICES

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### 52 NOTICES TO MEMBERS

- a) The Company may give Notice to a Member by any of the following means in the Board's discretion:
  - i) delivering it to that Member;
  - ii) delivering it or sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member for that purpose;
  - iii) sending it to the fax number or electronic address (if any) nominated by that Member for that purpose;
  - iv) if permitted by the Corporations Act, notifying that Member of the notice's availability by an electronic means nominated by the Member for that purpose; or
  - v) any other means permitted by the Corporations Act.
- b) The Company must send all documents to a Member whose address for Notices is not within Australia by air-mail, air courier, fax or electronic transmission.
- c) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

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### 53 NOTICE TO DIRECTORS

The Company may give Notice to a Director by:

- a) delivering it to that person;
- b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- c) sending it to the fax number or electronic address (if any) nominated by that person for that purpose; or
- d) any other means agreed between the Company and that person.

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**54 NOTICE TO THE COMPANY**

A person may give Notice to the Company by:

- a) delivering it or sending it by post to the registered office of the Company;
- b) delivering it or sending it by post to a place nominated by the Company for that purpose;
- c) sending it to the fax number at the registered office of the Company nominated by the Company for that purpose;
- d) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- e) any other means permitted by the Corporations Act.

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**55 TIME OF SERVICE**

- a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- b) A Notice sent by fax or other electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.
- c) A Notice given in accordance with Article 52(a)(iv) is taken to be given on the day after the date on which the Member is notified that the Notice is available.
- d) A certificate by a Director or Secretary to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

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**56 NOTICE REQUIREMENTS**

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- a) the classes of, and circumstances in which, Notices may be sent;
- b) verification (whether by encryption code or otherwise); and
- c) the circumstances in which, and the time when, the Notice is taken to be given.
- d) Winding up

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**57 WINDING UP**

On a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must not be paid to or distributed among the Members, but must be given or transferred to:

- a) one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Members by resolution at or before the dissolution of the Company:
  - i) having objects similar to the objects of the Company; and
  - ii) whose constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Article 6; or
- b) if there are no bodies corporate, associations or institutions which meet the requirements of Article 57(a), to one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Members by resolution at or before dissolution of the Company, the objects of which are regarded as charitable or such that the entity is regarded as an income tax exempt scientific or research institute for the purposes of the Income Tax Assessment Act 1997 (Cth) and whose constitution prohibits the distribution of its or their income or property such that it or they are not carried on for the profit or gain of any member, whether by way of dividend, bonus or otherwise; or
- c) if the Members do not make a selection pursuant to Article 57(a) or 57(b) for any reason, to one or more bodies corporate, associations or institutions meeting the requirements of either Article 57(a) or 57(b) selected by the Board, subject to the Board obtaining court approval pursuant to the Corporations Act to exercise this power.

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## SCHEDULE

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1. Clifford, Steven Peter
2. Kreitals, Peter
3. Brown, Stephen George
4. Sutton, Alan John
5. Siebert, Justin William
6. Wilson, David Gwynne
7. Moffatt, Andrew James
8. Spear, David Anthony
9. Holzberger, Melissa Kate
10. de La Rue, Lawrie