



## **CONSTITUTION**

### **MOUNTAIN BIKE AUSTRALIA LIMITED**

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# 1. Definitions and Interpretations

## 1.1 Definitions

In this Constitution unless the context requires otherwise:

**Affiliate** means a legally constituted body admitted to the Company under **clause 5.4** and the Policies which:

- has aims which are compatible to those of the Company; and
- which conducts cycling or cycling related programs; and
- does not conduct activities which conflict with the interests of the Company or as agreed by the Company; and
- which has been granted affiliation with the Company under this constitution.

**AGM** or **Annual General Meeting** means the annual General Meeting of the Company required to be held by the Company in each calendar year under section 250N(2) of the Corporations Act.

**Appointed Director** means a Director appointed under **clause 13.10**.

**CEO** means a person appointed as chief executive officer of the Company by the Directors.

**Chairperson** or **Chair** means the person elected as the Chair of the Company under **clause 15.7(a)**.

**Committee** means a committee established by the Directors under **clause 19**.

**Company Secretary** means a person appointed as a company secretary of the Company by the Directors under **clause 18**.

**Constitution** means this Constitution as amended from time to time, and a reference to a particular clause is a reference to a clause of this Constitution.

**Corporations Act** means the *Corporations Act 2001 (Cth)* as modified and amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

**Director** means a director of the Company and includes Elected Directors and Appointed Directors.

**Directors** means, as the case requires, all or some of the Directors acting together in accordance with their powers and authority under this Constitution.

**Elected Director** means a Director elected under **clause 13**.

**First Appointed Directors** means the persons referred to in **clause 13.2(b)**.

**First Elected Directors** means the persons referred to in **clause 13.2(a)**.

**General Meeting** means a general meeting of Members and includes the AGM.

**Individual Member** means a person admitted to the Company as an individual member under **clause 5.5**.

**Governing Body UCI** means Union Cycliste Internationale, the International Sport Federation for cycling, and other bodies the Board chooses to recognise for the purpose of developing the sport of mountain biking.

**Life Member** means a person admitted to the Company as a life member under **clause 5.3**.

**Member** means a member of the Company under **clause 5**.

**Objects** means the objects of the Company in **clause 2**.

**Official Position** means, in connection with any body corporate or organisation, a person who:

- (a) holds a position, whether elected or appointed, as president, vice president, secretary, treasurer, director or equivalent of that body corporate or organisation; or
- (b) has, directly or indirectly, a material ownership or financial interest in that body corporate or organisation.

**Policy** means a policy made under **clauses 7.2, 20.1(a) and 20.1(b)**. Policies made by Mountain Bike Australia Inc shall be deemed to be policies of Mountain Bike Australia Ltd until they are cancelled or replaced.

**President** means a Director elected by the Board as the public face of the Company. The President will normally also be the person elected as the Chairperson of the Company under **clause 15.7(a)** and have President powers assigned to them by the Board.

**Registration** means registration or affiliation of an Individual Member, such registration being in the form of a signed or electronic application form and, in the case of Individual Members, their consent to membership of the Company as required by **clause 5.2**. **Registered** has a corresponding meaning.

**Sport** means the "sport" of **Mountain Biking** as recognised and regulated by the UCI and other international bodies from time to time and includes sport for athletes with disabilities.

**Sporting Power** means that power delegated to the Company by the UCI or other international or national bodies recognised at the discretion of the Board, either directly or indirectly for the exclusive control and management of Mountain Biking in Australia.

**Special Resolution** means a resolution that must be passed by a majority of at least 75% of votes exercisable by Members entitled to vote at the relevant General Meeting in accordance with this Constitution and/or the Corporations Act.

**State** means the States of Australia, which shall be deemed to include each of the Northern Territory and the Australian Capital Territory.

**Statutes and Regulations** means the statutes and regulations of Sporting Powers or MTBA in force from time to time.

**Telecommunications Meeting** means a meeting held by telephone, video, any other technology (or any combination of these technologies), which permits each Director at a meeting of Directors or each Voting Member at a meeting of members to communicate with any other participant.

**Voting Member** means, in relation to a General Meeting, those Members present and entitled to vote. A member is only entitled to vote if they are a financial and in-date member. Members who have not paid a current membership subscription or for whom the membership fee is zero (for example free trial members) have no voting rights.

## 1.2 Interpretation

In this Constitution unless the context requires otherwise:

- (a) a reference to the Company is a reference to Mountain Bike Australia Limited, a company limited by guarantee;
- (b) **(presence of a Member)** a reference to a Member present at a General Meeting means the Member present in person or by proxy;
- (c) **(document)** a reference to a document or instrument includes any amendments made to it from time to time and, unless the contrary intention appears, includes a replacement;
- (d) **(gender)** words importing any gender include all other genders;
- (e) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (f) **(successors)** a reference to an organisation includes a reference to its successors;
- (g) **(singular includes plural)** the singular includes the plural and vice versa;
- (h) **(instruments)** a reference to a law includes regulations and instruments made under it;
- (i) **(amendments to legislation)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a State or the Commonwealth or otherwise;
- (j) **(include)** the words include, includes, including and for example are not to be interpreted as words of limitation;

- (k) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (l) **(writing)** writing and written includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

### **1.3 Corporations Act**

- (a) In this Constitution, unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act.
- (b) The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

### **1.4 Headings**

Headings are inserted for convenience and do not affect the interpretation of this Constitution.

## **2. Objects**

The UCI is an international sporting authority entitled to make and enforce regulations for the encouragement and control of Mountain Biking for the disciplines that the UCI recognises. So that the above authority may be exercised in a fair and equitable manner, the UCI has drawn up the Statutes and Regulations governing Mountain Biking and the off-road disciplines of cycling. This does not prevent the Company from creating or modifying statutes and regulations to permit the conduct of new types of mountain biking, or adapting mountain biking to suit Australian conditions. The Company may also recognise the statutes and regulations of other international bodies for certain disciplines of mountain biking.

Each national federation, including the Company belonging to the UCI, shall be presumed to acquiesce in and be bound by the Statutes and Regulations for international events controlled by the UCI. Subject to such acquiescence and restraint, one single national federation per country shall be recognised by the UCI as the sole international sporting power for the enforcement of the present



Statutes and Regulations and control of Mountain Biking in its own country for UCI events. The Company has been so recognised by the UCI through the UCI's recognised national federation and delegated by the UCI with exercising the Sporting Power for Australia.

The Objects of the Company shall be to:

- (a) conduct, encourage, promote, advance, control and manage all levels of Mountain Biking in Australia interdependently with Members and others;
- (b) adopt and exercise the Sporting Power as the national federation for Mountain Biking in Australia and act as the Australian affiliated member of the UCI through UCI appointed delegate(s) in accordance with the Statutes and Regulations;
- (c) adopt, formulate, issue, interpret and amend Policies for the control and conduct of Mountain Biking in Australia;
- (d) encourage the provision and development of appropriate facilities for participation in Mountain Biking;
- (e) maintain and enhance standards, quality and reputation of Mountain Biking for the collective and mutual benefit and interests of members and Mountain Biking;
- (f) promote the sport of Mountain Biking for commercial, government and public recognition and benefits;
- (g) be the only body entitled to prepare and enter Australian teams in international Mountain Bike competitions through UCI recognised national federations and the UCI, and other international bodies as required;
- (h) promote, control, manage and conduct Mountain Bike events, competitions and championships;
- (i) have regard to the public interest in its operations;
- (j) affiliate and liaise with the Australian Sports Commission, the Australian Olympic Committee, the Australian Commonwealth Games Committee and any other organisations in pursuit of these objectives; and
- (k) undertake other actions or activities necessary, incidental or conducive to advance these Objects.

### **3. Powers**

Solely for furthering the Objects under **clause 2**, the Company, in addition to the Sporting Power and any other powers it has under the Corporations Act, has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the Corporations Act.

## **4. Income and Property of Company**

### **4.1 Sole Purpose**

The income and property of the Company will only be applied towards the promotion of the Objects of the Company.

### **4.2 Payments to Members**

No income or property will be paid or transferred directly or indirectly to any Member except for payments to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
- (b) who is entitled to payment(s) associated with results they have achieved in sporting events; or
- (c) who receives grants the Company as has chosen to make from time to time in accordance with established Company policies for awards or sporting development; or
- (d) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent; or
- (e) of reasonable rent for premises let to the Company by them.

## **5. Membership**

### **5.1 Categories of Members**

Members of the Company shall fall into one of the following categories:

- (a) Life Members;
- (b) Affiliates;
- (c) Individual Members; or
- (d) Such other category of Member as may be created by the Board. Any category of Member created by the Board under this **clause 5.1(d)** may not be granted voting rights.

### **5.2 Admission of Members**

A person will become a Member, and the Directors will direct the Company Secretary to record their name in the register of Members kept by the Company, only upon meeting the criteria applicable to the relevant category of membership

set out in this Constitution and provided the Member has submitted an application, which is accepted by the Directors, in which the Member undertakes to:

- (a) be bound by this Constitution, the Statutes and Regulations and the Policies (including Policies specific to the relevant category of Membership);
- (b) pay the fees and subscriptions determined to apply to the Member under **clause 9**; and
- (c) support the Company in the encouragement and promotion of its Objects.

### **5.3 Life Members**

- (a) Life Membership is the highest honour that can be bestowed by the Company for longstanding and valued service to Mountain Biking in Australia.
- (b) Any Member may forward a proposed nomination to the Directors for its consideration.
- (c) On the nomination of the Directors, any individual may be elected as a Life Member at any AGM by Special Resolution, subject to that individual completing an application in accordance with **clause 5.2**.
- (d) Nominations for Life Membership shall include a written report outlining the history of services of any nominee, together with comments on the suitability of the honour.
- (e) The Board will establish Policies will set out:
  - (i) the categories of Life Membership which exist;
  - (ii) the criteria to be met by each category of Life Member; and
  - (i) the privileges and benefits of each category of Life Member which shall include the right to receive notice, attend and vote at, General Meetings.
- (f) A person may be posthumously recognised as a Life Member.
- (g) Subject to **clause 5.2**, at the time of adoption of this Constitution, the first Life Members of the Company shall be the persons listed in **Schedule 1** to this Constitution.

### **5.4 Affiliates**

- (a) Only a legal entity may become an Affiliate. The primary types of affiliates include Affiliated Clubs and Affiliated Promoters. Members may choose to associate with Affiliated Clubs. Affiliated Promoters are not permitted to have members.

- (b) In order to become an Affiliate, a legal entity must submit an application accompanied by an up-to-date copy of that legal entity's constituent documents.
- (c) Affiliate Membership may be granted by the Directors in respect of an application made under **clause 5.4(b)** on such terms and conditions as the Directors may see fit.
- (d) Affiliate Membership may be suspended or cancelled by the Directors provided that the Directors comply with the procedure set out in the relevant Policy.
- (e) The Board will establish policies which will set out:
  - (i) the categories of Affiliate Membership which exist;
  - (ii) the criteria to be met by each category of Affiliate Member;
  - (iii) the privileges and benefits of each category of Affiliate Member which shall not include the right to receive notice, attend or to vote at, General Meetings; and
  - (ii) the procedure for suspending or cancelling Affiliate Membership.
- (f) Subject to **clause 5.2**, at the time of adoption of this Constitution, the first Affiliate Members of the Company shall be those entities recorded as current Affiliated Clubs or Affiliated Promoters of Mountain Bike Australia Inc.

## **5.5 Individual Members**

- (a) No individual shall be Registered with the Company as an Individual Member except in accordance with this **clause 5.5**. The Company may at its discretion refuse to accept a person as an Individual Member and shall not be required or compelled to provide any reason for such rejection.
- (b) Subject to **clause 5.5(a)**, an individual may apply to become an Individual Member of the Company and is subject to the provisions of this Constitution.
- (c) In addition to the effect of membership set out in **clause 5.2**, an Individual Member is bound by and must comply with this Constitution and the Policies of the Company and support the Company and the Objects.
- (d) An Individual Member is entitled to any benefits of membership prescribed to apply to Individual Members in the Policies and is entitled to attend General Meetings. They may only vote at General Meetings if they are a financial member.

## 5.6 General

- (a) The Company must keep a register of all Members in accordance with the Corporations Act.
- (b) No Member whose membership ceases has any claim against the Company or the Directors for damages or otherwise arising from cessation or termination of membership.
- (c) Membership is personal to each Member. No Member shall, or purport to, assign the rights comprising or associated with membership to any other person and any attempt to do so shall be void.
- (d) A Member must treat all staff, contractors and representatives of the Company with respect and courtesy at all times.
- (e) A Member must not act in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company or Mountain Biking, or both.

## 5.7 Limited Liability

Members have no liability in that capacity except as set out in **clause 25**.

# 6. Cessation of Membership

## 6.1 Cessation

A person ceases to be a Member on:

- (a) resignation;
- (b) death;
- (c) the termination of their membership according to this Constitution or the Policies;
- (d) a body corporate being dissolved or otherwise ceasing to exist;
- (e) and without limiting the foregoing:
  - (i) in the case of Members who are not Member States, that Member no longer meeting the requirements for membership according to **clause 5**; and
  - (ii) in the case of Members who are Member States, that Member ceasing to be a Member in accordance with **clause 8**.

## 6.2 Resignation

For the purposes of **clause 6.1(a)**, a Member may resign as a member of the Company by giving 14 days written notice to the Directors..

### **6.3 Forfeiture of Rights**

A Member who or which ceases to be a Member shall forfeit all right in and claim upon the Company or the Directors for damages or otherwise, or claim upon its property including its intellectual property rights.

## **7. Grievances and Discipline of Members**

### **7.1 Jurisdiction**

All Members will be subject to, and submit unreservedly to, the jurisdiction, procedures, penalties and appeal mechanisms of the Company whether under the Policies or under this Constitution.

### **7.2 Policies**

- (a) The Directors may make a Policy or Policies:
  - (i) for the hearing and determination of:
    - (A) grievances by any Member who feels aggrieved by a decision or action of the Company, a Member, an Affiliate or a Life Member; and
    - (B) disputes between Members relating to the conduct or administration of Mountain Biking;
  - (ii) for the discipline of Members and Affiliates;
  - (iii) for the formation and administration of an Appeals Tribunal which must be independent of any party before it on the matter which is the subject of the appeal in question; and
  - (iv) for the termination of Members).
- (b) The Directors in their sole discretion may refer an allegation (which in the opinion of the Directors is not vexatious, trifling or frivolous) by a complainant (including a Director or a Member) that a Member has:
  - (i) breached, failed, refused or neglected to comply with a provision of this Constitution, the Policies or any other resolution or determination of the Directors or any duly authorised committee; or
  - (ii) acted in a manner unbecoming of a Member or prejudicial to the Objects and interests of the Company or Mountain Biking, or both; or
  - (iii) prejudiced the Company or Mountain Biking or brought the Company or Mountain Biking or themselves into disrepute;

for investigation or determination either under the procedures set down in the Policies or by such other procedure and/or persons as the Directors consider appropriate.

- (c) During investigatory or disciplinary proceedings under this **clause 7**, a respondent may not participate in Mountain Biking, pending the determination of such proceedings (including any available appeal) unless the Directors decide continued participation is appropriate having regard to the matter at hand.
- (d) The Directors may include in any Policy or Policies a final right of appeal to an independent body outside the control of the Mountain Biking.

## **8. Termination of membership of Affiliates**

### **8.1 Sanctions for Discipline of Affiliates**

Without limiting matters that may be referred to in the Policies, any Affiliate that is determined by the Directors to have acted in a manner set out in **clause 7.2(b)** shall be liable for the sanctions set out in that Policy, including termination of affiliation (which shall only take place in accordance with the procedure set out in this **clause 8**).

### **8.2 Termination of Membership of Affiliates**

- (a) No recommendation can be made by the Directors under this **clause 8** unless all avenues of appeal available to the relevant Affiliate under the Policies have been exhausted.
- (b) Subject to compliance with **clause 8.2(a)** (and the Policies), the Directors may recommend to a General Meeting to terminate the membership of an Affiliate.
- (c) Upon recommendation from the Directors under **clause 8.2(b)**, a General Meeting may, by Special Resolution, terminate the membership of an Affiliate.
- (d) Where the membership of an Affiliate is terminated in accordance with this **clause 8.2**:
  - (i) the Directors may admit another body, which meets the requirements of an Affiliate; and
  - (ii) Members who were associated with a terminated Affiliated Club shall automatically become general members of the Company until they decide, individually, to be associated another Affiliated Club, or their term of membership expires.

## 9. Fees and Subscriptions

### 9.1 Membership Fee

- (a) The Directors must determine from time to time:
  - (i) the amount (if any) payable by an applicant for membership;
  - (ii) the amount of the annual subscription fee payable by each Member, or any category of Members;
  - (iii) any other amount to be paid by each Member, or any category of Members, whether of a recurrent or any other nature; and
  - (iv) the payment method and the due date for payment.
- (b) Each Member must pay to the Company the amounts determined under this **clause 9** in accordance with **clause 9.1(iv)**.

### 9.2 Non-Payment of Fees

The right of a Member to attend and vote at a General Meeting is suspended while the payment of any subscription or other amount determined under **clause 9** is in arrears greater than 90 days.

### 9.3 Deferral or reduction of subscriptions

- (a) The Directors may defer the obligations of a Member to pay a subscription or other amount, or reduce (including to zero) the subscription or other amount payable by a Member, if the Directors are satisfied that:
  - (i) there are reasonable grounds for doing so;
  - (ii) the Company will not be materially disadvantaged as a result; and
  - (iii) the Member agrees to pay the deferred or (if greater than zero) the reduced subscription or other amount within a time fixed by the Directors.
- (b) If the Directors defer or reduce a subscription or other amount payable by a Member under this **clause 9.3**, that Member will retain their rights to attend and vote at a General Meeting, unless otherwise specified by the Directors.

## 10. General Meetings

### 10.1 Annual General Meeting

AGMs of the Company are to be held:

- (a) according to the Corporations Act; and



- (b) at a date and venue determined by the Directors.

## **10.2 Power to convene General Meeting**

- (a) The Directors may convene a General Meeting when they think fit and must do so if required by the Corporations Act.
- (b) The Voting Members may convene a General Meeting, which must comply with the requirements under the Corporations Act.

## **10.3 Notice of a General Meeting**

- (a) Notice of a General Meeting of Members must be given:
  - (i) individually to each Member entitled to vote at the Meeting, the Directors, and the auditor of the Company; and
  - (ii) in accordance with **clause 23** and the Corporations Act.
- (b) At least 45 days prior to the proposed date of the AGM, the CEO will request from Voting Members notices of motions, which must be received no less than 28 days prior to the AGM.
- (c) At least 21 days notice of the time and place of a General Meeting must be given, together with:
  - (i) all information required to be included in accordance with the Corporations Act;
  - (ii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
  - (iii) where applicable, any notice of motion received from any Voting Member or Director in accordance with the Corporations Act; and
  - (iv) where applicable, a list of all valid nominations received and endorsed by the nominations committee for positions to be elected at the relevant General Meeting.

## **10.4 No other business**

No business other than that stated in the notice of meeting may be transacted at a General Meeting.

## **10.5 Cancellation or postponement of General Meeting**

Where a General Meeting (including an AGM) is convened by the Directors they may, if they think fit, cancel the meeting or postpone the meeting to a date and time they determine. This clause does not apply to a General Meeting convened by:

- (a) Members according to the Corporations Act;
- (b) the Directors at the request of Members; or
- (c) a court.

#### **10.6 Written or email notice of cancellation or postponement of General Meeting**

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to:

- (a) each Member entitled to attend the General Meeting; and
- (b) each other person entitled to notice of a General Meeting under the Corporations Act.

#### **10.7 Contents of notice postponing General Meeting**

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting;
- (b) the place where the meeting is to be held, which may be either the same as or different to the place specified in the notice originally convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to hold the meeting in that manner.

#### **10.8 Number of clear days for postponement of General Meeting**

The number of clear days from the giving of a notice postponing a General Meeting to the date specified in that notice for the postponed meeting must not be less than the number of clear days' notice of that General Meeting required to be given by **clause 11.8** or the Corporations Act.

#### **10.9 Business at postponed General Meeting**

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the meeting.

#### **10.10 Proxy at postponed General Meeting**

Where:

- (a) by the terms of an instrument appointing a proxy, that appointed person is authorised to attend and vote at a General Meeting on behalf of the appointing Member to be held on a specified date or at a General Meeting or General Meetings to be held on or before a specified date; and
- (b) the date for the meeting is postponed to a date later than the date specified in the instrument,

then that later date is substituted for the date specified in the instrument appointing that appointed person, unless the appointing Member notifies the Company in writing to the contrary at least 48 hours before the time at which the postponed meeting is to be held.

#### **10.11 Non-receipt of notice**

The non-receipt of a notice convening, cancelling or postponing a General Meeting by, or the accidental omission to give a notice of that kind to, a person entitled to receive it, does not invalidate any resolution passed at the General Meeting or at a postponed meeting or the cancellation or postponement of the meeting.

#### **10.12 Right to appoint proxy**

- (a) A Voting Member entitled to attend a General Meeting of the Company is entitled to appoint a person as their proxy to attend the meeting in their place in accordance with the Corporations Act.
- (b) A proxy may be revoked by the appointing Member at any time by notice in writing to the Company.

#### **10.13 Form of proxy**

The instrument appointing a proxy may be in form determined by the Directors from time to time provided it complies with the requirements under the Corporations Act.

#### **10.14 Lodgment of proxy documents**

- (a) A proxy may vote at a General Meeting or adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy, is received by the Company:
  - (i) at the office, the facsimile number at the office or at such other place, facsimile number or electronic address specified for that purpose in the notice of meeting; and
  - (ii) at least 48 hours before the scheduled commencement time for the meeting or adjourned or postponed meeting (as the case may be) at which the person named in the instrument proposes to vote. The scheduled commencement time is as specified in the notice of meeting.
- (b) An undated proxy is taken to be dated on the day that it is received by the Company.

## 10.15 Authority given by appointment

- (a) Unless the terms of the appointment specify to the contrary, an appointment by a Voting Member confers authority on a proxy:
  - (i) to agree to a General Meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
  - (ii) to speak to any proposed resolution; and
  - (iii) to demand or join in demanding a poll on any resolution.
- (b) Unless the terms of the appointment specify to the contrary, even if the instrument of appointment refers to specific resolutions and directs the proxy on how to vote on those resolutions, the appointment is taken to confer authority:
  - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
  - (ii) to vote on any procedural motion; and
  - (iii) to act generally at the meeting.
- (c) Unless the terms of the appointment specify to the contrary, if the instrument of appointment refers to a specific meeting to be held at a specified time or venue and the meeting is postponed or adjourned or changed to another venue, then the appointment confers authority to attend and vote:
  - (i) at the postponed or adjourned meeting; or
  - (ii) at the new venue.
- (d) An appointment of a proxy may be a standing proxy — that is, the appointment under the proxy remains valid until it is revoked by the Voting Member that made the appointment.
- (e) The instrument appointing a proxy may provide for the Chairperson to act as proxy in the absence of any other appointment or if the person or persons nominated fails or fail to attend the meeting.
- (f) The instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution.
- (g) If a proxy is appointed to vote on a particular resolution by more than one Voting Member and the instruments appointing the proxy direct the proxy to vote on the resolution in different ways, then the proxy must not vote on a show of hands taken on the resolution.

## **11. Proceedings at General Meeting**

### **11.1 Number for a quorum**

The number of Members who must be present and eligible to vote for a quorum to exist at a General Meeting is six.

### **11.2 Requirement for a quorum**

An item of business may not be transacted at a General Meeting unless a quorum is present at the commencement of, and remains throughout, the General Meeting.

### **11.3 Quorum and time**

If, within 30 minutes after the time appointed for a General Meeting, a quorum is not present, the meeting:

- (a) if convened by, or on requisition of, Members, is dissolved; and
- (b) in any other case stands adjourned to such other day, time and place as the Chair determines.

### **11.4 Adjourned meeting**

If a quorum is not present within 30 minutes after the time appointed for the adjourned meeting, those members then present shall constitute a quorum.

### **11.5 Chairperson to preside over General Meetings**

- (a) The Chairperson is entitled to preside as Chair at General Meetings.
- (b) If a General Meeting is convened and there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the meeting, or is unable or unwilling to act, the following may preside as Chair (in order of entitlement):
  - (i) a Director (or other person) chosen by a majority of the Directors present;
  - (ii) the only Director present; or
  - (iii) a Voting Member who is entitled to vote and is chosen by a majority of the Voting Members present.

### **11.6 Conduct of General Meetings**

- (a) The Chair:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted;

- (ii) may require the adoption of any procedure which in his or her opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes; and
  - (iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever he considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the Chair under this **clause 11.6** is final.

### **11.7 Adjournment of General Meeting**

- (a) The Chair may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting.
- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the members present.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

### **11.8 Notice of adjourned meeting**

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for 30 days or more.
- (b) In that case, at least the same period of notice as was originally required for the meeting must be given for the adjourned meeting.

### **11.9 Questions decided by majority**

Subject to the requirements of the Corporations Act and except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution are in favour of it.

### **11.10 Equality of votes**

Where an equal number of votes are cast in favour of and against the resolution, the resolution is not carried.

### **11.11 Declaration of results**

- (a) At any General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and

the demand is not withdrawn. Where electronic votes have been cast, they shall be added to the tally of the show of hands but only after the show of hands has been conducted.

- (b) A declaration by the Chair that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the minutes of the meetings of the Company, is conclusive evidence of the fact.
- (c) Neither the Chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

#### **11.12 Poll**

- (a) If a poll is properly demanded in accordance with the Corporations Act or by the Chair of the meeting, it must be taken in the manner and at the date and time directed by the Chair, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

#### **11.13 Objection to voting qualification**

- a) An objection to the right of a person to attend or vote at a General Meeting (including an adjourned meeting):
  - (i) may not be raised except at that meeting; and
  - (ii) must be referred to the Chair, whose decision is final.
- b) A vote not disallowed under the objection is valid for all purposes.

#### **11.14 Chair to determine any poll dispute**

If there is a dispute about the admission or rejection of a vote, the Chair must decide it and the Chair's decision made is final.

## **12. Votes of Members**

### **12.1 Votes of Members**

- (a) At a General Meeting, on a show of hands and on a poll, each of the Voting Members shall have the votes set out in this **clause 12.1**.
- (b) Each Voting Member will receive one vote.

- (c) No Member other than voting members shall be entitled to vote at General Meetings.

## 12.2 Election of Directors

- (a) Elections for Elected Directors shall be by an online voting system for those voting members absent from the meeting and who have not submitted a proxy, and by ballot for those voting members present in accordance with this **clause 12.2** at the relevant General Meeting on papers prepared by the CEO.
- (b) The ballot for an election to fill one or more Elected Director positions will be conducted in accordance with the following procedure:
  - (i) if at the close of nominations for an election to fill one or more Elected Director positions the number of eligible nominees is equal to or less than the number of positions to be filled, then no election is to take place and those eligible nominees will be taken to be elected to fill one or more of the Elected Director positions; and
  - (ii) if at the close of nominations for an election to fill one or more Elected Director positions there are more eligible nominees than the number of positions to be filled, a ballot will be conducted as a poll and the eligible nominee/s who receives the highest number of votes will be elected to fill the Elected Director positions. If two or more nominees get the same number of votes and at the relevant time there is only one Elected Director position to be filled then the CEO is to draw the name of one of those nominees by lot. That nominee is to be elected as an Elected Director.

## 12.3 Resolutions not in General Meeting

- (a) If all Members entitled to vote sign a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is deemed to have been passed at a General Meeting of the Company held at the time on which the document was signed by the last Member entitled to vote.
- (b) For the purposes of **clause 12.3(a)**, two or more separate documents containing statements in identical terms, each of which is signed by one or more Members entitled to vote, are deemed together to constitute one document containing a statement in those terms signed by those Members on the respective days on which they signed the separate documents.



- (c) A facsimile transmission or other form of visible or other electronic communication purported to be signed by a Member for the purpose of this clause is deemed to be a document in writing signed by that Member.

## 13. Directors

### 13.1 Number of Directors

- (a) There must be not less than six Directors and not more than nine Directors.
- (b) Subject to **clause 13.1(a)**, not more than six Directors are to be elected by the Members (**Elected Directors**), and not more than three Directors are to be appointed under **clause 13.10**.

### 13.2 First Directors

- (a) The First Elected Directors are:
- (i) the following individuals in continuity from the Management Committee of Mountain Bike Australia Inc:
- Russell Baker;
  - Tony Hancock;
  - Peter McKendry;
  - Richard (Courtenay) Lee Shoy;
  - Clinton McAlister; plus
- (ii) one new Director to be elected by the Members at the Special General meeting at which the Members adopt this constitution:
- (b) The First Appointed Directors are to be appointed by the Elected Directors within 3 months of the establishment of the Company from nominations called for by the Directors and assessed by the Nominations Committee.
- (c) Subject to the Corporations Act and **clause 13.3**:
- (i) at the Annual General Meeting held following the adoption of this Constitution and after 30 June 2017, the two of the First Elected Directors who were the longest serving members of the Mountain Bike Australia Inc Management Committee will retire from office (and in the absence of agreement as to who will retire, those to retire will be determined by lot from the longest serving First Elected Directors) and an election will be held to elect two Elected Directors. Those retiring First Elected Directors will, subject to the requirement of this Constitution, be eligible for re-election;

- (ii) at each subsequent Annual General Meeting the two longest continually serving Directors will retire from office (and if there are more than two who are equal longest serving, those to retire will be determined by lot from the longest serving Directors) and an election will be held to elect two Elected Directors. Contiguous time spent as a member of the Mountain Bike Australia Inc Management Committee will be included in determining the length of service of a Director. Those retiring Elected Directors will, subject to the requirement of this Constitution, be eligible for re-election; and

### 13.3 Eligibility

- (a) For the period from the date of this Constitution a person who:
  - (i) is an employee of the Company; or
  - (ii) holds an Official Position with an Affiliated Club ; or
  - (iii) is under the age of 18; or
  - (iv) is not an Australian Citizen; or
  - (v) was a Director of the Company and **clause 13.8** applies, **(each a disqualifying position)** must not hold office as a Director.
- (b) An employee of Mountain Bike Australia Inc or the Company is ineligible for election or appointment as a Director for a period of five years from the cessation of their employment as Chief Executive Officer or Executive Officer, or three years for other employees.
- (c) A Director who accepts a disqualifying position must notify the other Directors of that fact immediately and is deemed to have vacated office as a Director.
- (d) A person elected or appointed as a Director at the time of holding a disqualifying position must resign from that disqualifying position within 30 days.
- (e) No person shall be eligible to stand for an Elected Director position if, during the proposed term of office, they would be in breach of **clause 13.8**.
- (f) The Board may determine position or role descriptions or necessary qualifications for Director positions.

### 13.4 Nomination for election

- (a) A Nominations Committee shall be formed, the role of which shall include the task of identifying candidates to fill Board vacancies (including casual vacancies) and assess all nominees for Board vacancies. The Nominations Committee has the power to determine that a nomination is unsuitable for further consideration by the Company, the Directors or the Members but only if this decision is unanimous. The complete and specific duties, functions and rules of the Nominations Committee are to be defined in the Nominations Committee terms of reference.
- (b) At least 45 days prior to the proposed date of the Annual General Meeting at which a resolution or resolutions will be proposed to fill a vacancy in an Elected Director position, the CEO will request from Members nominations (which comply with this **clause 13.4**) for elections to positions falling vacant, which must be received no less than 28 days prior to the AGM.
- (c) Any **Voting** Member may nominate a person to fill a vacancy in an Elected Director position that is to be the subject of an election at the next AGM.
- (d) A nomination for an elected member must:
  - (i) be in the form required by the Directors; and
  - (ii) signed by the nominator and nominee, each of whom shall be eligible voting members at the time of nomination and at the time of the General Meeting at which the election is conducted.

### **13.5 Term of office of Directors generally**

Subject to **clauses 13.2, 13.8 and 13.9**, an Elected Director will hold office for a maximum term of three years.

### **13.6 Office held until end of meeting**

A retiring Elected Director holds office until the end of the meeting at which that Elected Director retires but, subject to the requirement of this Constitution, including **clause 13.8**, is eligible for re-election.

### **13.7 Elected Director elected at General Meeting**

- (a) At a General Meeting:
  - (i) at which an Elected Director retires; or
  - (ii) at the commencement of which there is a vacancy in the office of an Elected Director,there will be a vote of the Members conducted in accordance with **clause 12.2** to fill the vacancy by electing someone to that office.

- (b) Subject to **clauses 13.8** and **13.13**, an Elected Director elected under this **clause 13.7** takes office at the end of the meeting at which they are elected for a period of three years.

### **13.8 Maximum term of office for Directors**

- (a) A Director may not serve more than three consecutive terms as a Director, including where one of the terms is as an Appointed Director. All terms start from the adoption of this constitution.
- (b) For the purpose of **clause 13.8(a)**, service:
  - (i) by a person filling a casual vacancy in an Elected Director position under **clause 13.9(b)** for any period will be treated as a term;
  - (ii) by a person in an Appointed Director position under **clause 13.10** for any period will be treated as a term.
- (c) A Director who has served a maximum term in accordance with **clause 13.8(a)** shall not be eligible to be a Director for six years following the completion of their maximum term.
- (d) A Director shall not be eligible to serve more than three terms in any fifteen-year period.

### **13.9 Casual vacancy in ranks of Elected Directors**

- (a) The Directors may at any time appoint a person to fill a casual vacancy (as defined in **clause 13.14**) in the rank of the Elected Directors.
- (b) A person appointed under **clause 13.9(a)** holds office until the next Annual General Meeting at which time they can offer themselves for re-election.

### **13.10 Appointed Directors**

- (a) In addition to the Elected Directors, the Directors may themselves appoint up to three persons to be Directors because of their special business acumen and/or technical skills. These persons will be known as the “**Appointed Directors**”. The first Appointed Directors are set out in **clause 13.2(b)**.
- (b) Subject to **clauses 13.8** and **13.13**, an Appointed Director holds office for a term determined by the Directors not to exceed three years and the appointment will be on such other terms as the Directors determine.
- (c) A person may only serve two terms as an Appointed Director but, subject to the other requirement of this Constitution, are otherwise eligible to be elected to an Elected Director position.

- (d) The Directors may at any time appoint a person to fill a casual vacancy (as defined in **clause 13.14**) in the rank of the Appointed Directors on whatever terms the Directors decide.

### **13.11 Remuneration of Directors**

Subject to **clause 13.14**, a Director may not be paid for services as a Director but, with the approval of the Directors and subject to the Corporations Act, may be:

- (a) paid by the Company for services rendered to it other than as a Director; and
- (b) reimbursed by the Company in accordance with policies established by the Company for their reasonable travelling, accommodation and other expenses when:
  - (i) travelling to or from meetings of the Directors, a Committee or the Company; or
  - (ii) otherwise engaged in the affairs of the Company.

### **13.12 Honorarium**

The Company may in General Meeting by ordinary resolution determine to pay a Director an ex-gratia payment.

### **13.13 Removal of Director**

- (a) Subject to the provisions of the Corporations Act, the Company may in General Meeting by ordinary resolution remove any Director prior to the expiration of that Director's term of office.
- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with **clause 13.13(a)** cannot be re-appointed as a Director within three years of their removal.

### **13.14 Vacation of office**

The office of a Director becomes vacant when the Corporations Act says it does and also if the Director:

- (a) is removed in accordance with **clause 13.13**;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (c) resigns from office by notice in writing to the Company;

- (d) accepts appointment to, or becomes the holder of, a disqualifying position as set out in **clause 13.3** and does not resign from that position within 30 days;
- (e) is not present at three consecutive Directors' meetings without leave of absence from the Directors; or
- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Act.

### **13.15 Alternate Director**

A Director cannot appoint an alternate.

## **14. Powers and Duties of Directors**

### **14.1 Directors to manage the Company**

The Directors for the Board of the Company and are to manage the Company's business and may exercise those of the Company's powers that are not required, by the Corporations Act or by this Constitution, to be exercised by the Company in General Meeting.

### **14.2 Specific powers of Directors**

Without limiting **clause 14.1**, the Directors may exercise all the Company's powers to borrow or raise money, to charge any property or business or give any other security for a debt, liability or obligation of the Company or of any other person.

### **14.3 Time, etc**

Subject to the Corporations Act, where this Constitution requires that something be done by a particular time, or within a particular period, or that an event is to occur or a circumstance is to change on or by a particular date, the Directors may at their absolute discretion extend that time, period or date as they think fit.

### **14.4 Appointment of attorney**

The Directors may appoint any person to be the Company's attorney for the purposes, with the powers, authorities and discretions, for the period and subject to the conditions they think fit.

### **14.5 Provisions in power of attorney**

A power of attorney granted under **clause 14.4** may contain any provisions for the protection and convenience of persons dealing with the attorney that the

Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

#### **14.6 Delegation of powers**

- (a) Without limiting **clause 17.4** the Directors may, by resolution or by power of attorney or writing under seal, delegate any of their powers to the CEO or any employee of the Company or any other person as they think fit.
- (b) Any delegation by the Directors of their powers:
  - (i) must specify the powers delegated, any restrictions on, and conditions attaching to, the exercise of those powers and the period during which that delegation is to be in force;
  - (ii) may be either general or limited in any way provided in the terms of the delegation;
  - (iii) need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position; and
  - (iv) may include the power to delegate.
- (c) If exercising a power depends on a person's opinion, belief or state of mind, then that power may be exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.
- (d) Any power exercised by a delegate is as effective as if it had been exercised by the Directors.

#### **14.7 Code of Conduct**

The Directors must:

- (a) adopt a code of conduct for Directors; and
- (b) periodically review the code of conduct in light of the general principles of good corporate governance.
- (c) The code of conduct must include the requirement for Directors to sign a statutory declaration that they have never used or promoted performance-enhancing drugs as defined by WADA.

### **15. Proceedings of Directors**

#### **15.1 Directors meetings**

- (a) Subject to **clause 15.1(b)** the Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.

- (b) The Directors must meet at least six times in each calendar year.

## **15.2 Questions decided by majority**

A question arising at a Directors' meeting is to be decided by a majority of votes of the Directors present in person and entitled to vote. Each Director present has one vote on a matter arising for decision by Directors.

## **15.3 Chair's casting vote**

The Chair of the meeting will not have a casting vote. A motion which results in a tied vote shall be deemed to have not passed.

## **15.4 Quorum**

The required number of Directors present in person to constitute a quorum shall be the greater of:

- (a) four, or
- (b) the whole number equal to or greater than 60% of the number of Directors serving at the time the meeting was called.

## **15.5 Effect of vacancy**

- (a) The continuing Directors may act despite a vacancy in their number.
- (b) However, if the number of Directors is reduced below the number required for a quorum, the remaining Directors may act only for the purpose of filling the vacancies to the extent necessary to bring their number up to that required for a quorum or to convene a General Meeting.

## **15.6 Convening meetings**

- (a) A Director may, and the CEO on the request of a Director must, convene a Directors' meeting.
- (b) Reasonable notice of a meeting of Directors must be given individually to each Director (except a Director on leave of absence approved by the Directors). Notice of a meeting of Directors may be given in person, or by post or by telephone, facsimile or other electronic means. Reasonable notice periods begin when the agenda and supporting material for a meeting have been distributed to Directors and do not include the day of issuing the notice and the day of the meeting. They are defined as:
  - (i) Physical meetings. 7 calendar days.



(ii) Telecommunication meetings. 48 hours which shall not include a Saturday, Sunday or public holiday in the State of Queensland.

(iii) Notwithstanding the provisions on 15.6(b) (i) and (ii), if less than 14 days notice of a meeting has been given and a number of Directors equal to or greater than one third of the current Directors advise the Company Secretary prior to the meeting commencing that insufficient notice has been received to duly consider the matters at hand, then reasonable notice is deemed not to have been given and the meeting is invalid and its resolutions void and of no effect.

(iv) The requirement for reasonable notice for a nominated meeting of Directors can be waived if at least 75% of Directors consent.

- (c) A Director may waive notice of a meeting of Directors by giving notice to that effect to the Company in person or by post or by telephone, facsimile or other electronic means.
- (d) A person who attends a meeting of Directors waives any objection that person may have in relation to a failure to give notice of the meeting.
- (e) The non-receipt of a notice of a meeting of the Directors or the accidental omission to give notice of a meeting to a person entitled to receive notice does not invalidate any thing done (including the passing of a resolution) at a meeting of Directors.

## 15.7 Election of Chairperson

- (a) The Directors will elect one of their number to be the Chairperson by a majority vote. The Chairperson will also perform the public role as the President of the Company.
- (b) The Director elected to be Chairperson under **clause 15.7(a)** will remain Chairperson for the duration of their term of office as Director and shall chair any meeting of Directors unless the resolution electing a person as the Chairperson specifies a fixed term for the appointment.
- (c) Despite **clause 15.7(b)**, if:
  - (i) there is no person elected as Chair; or
  - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of the meeting; or
  - (iii) the Chair is unwilling to act,the Directors present will elect one of their number to be Chair of the meeting.

## **15.8 Circulating resolutions**

- (a) The Directors may pass a resolution without a Directors' 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) Separate copies of the document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy. 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 **clause 15.8(a)** and is taken to be signed when received by the Company in legible form.
- (c) The resolution is passed when the last Director signs.

## **15.9 Validity of acts of Directors**

Everything done at a Directors' meeting or a Committee meeting, or by a person acting as a Director, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

## **15.10 Directors' Interests (Conflict of Interest)**

- (a) A Director shall declare to the Directors any material personal interest or related party transaction, as defined by the Corporations Act, as soon as practicable after that Director becomes aware of their interest in the matter.
- (b) Where a Director declares a material personal interest or in the event of a related party transaction, that Director must absent himself or herself from discussion of such matter and shall not be entitled to vote in respect of such matter unless otherwise determined by the Directors.
- (c) In the event of any uncertainty in this regard, the issue shall immediately be determined by a vote of the Directors or, if this is not possible, the matter shall be adjourned or deferred to the next meeting.
- (d) The CEO shall maintain a register of declared interests.

## **15.11 Minutes**

The Directors must cause minutes of meetings to be made and kept according to the Corporations Act.

## **16. Telecommunication Meetings of the Company**

### **16.1 Telecommunication Meeting**

- (a) A Directors' Meeting may be held by means of a Telecommunication Meeting, provided that:
  - (i) the number of Directors participating is not less than a quorum required for a Directors' Meeting; and
  - (ii) the meeting is convened and held in accordance with the Corporations Act.
- (b) All provisions of this Constitution relating to a meeting apply to a Telecommunication Meeting in so far as they are not inconsistent with the provisions of this **clause 16**.

### **16.2 Conduct of Telecommunication Meeting**

The following provisions apply to a Telecommunication Meeting of the Company:

- (a) all persons participating in the meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the meeting;
- (b) each of the persons taking part in the meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the meeting;
- (c) at the commencement of the meeting each person must announce his or her presence to all other persons taking part in the meeting;
- (d) a person may not leave a Telecommunication Meeting by disconnecting his or her telephone, audio-visual or other communication equipment unless that person has previously notified the Chair;
- (e) a person may conclusively be presumed to have been present and to have formed part of a quorum at all times during a Telecommunication Meeting unless that person has previously notified the Chair of leaving the meeting; and
- (f) a minute of proceedings of a Telecommunication Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the Chair.

## **17. Chief Executive Officer**

### **17.1 Appointment of CEO**

- (a) The Directors shall appoint a CEO.
- (b) The CEO is not a Director. The CEO is not a member of the Board.

- (c) A person who has been appointed as the Company CEO shall not be eligible to be appointed or elected as a Director of the Company within five years of leaving the role of CEO.

### **17.2 Powers, duties and authorities of CEO**

- (a) The CEO holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Directors.
- (b) The exercise of those powers and authorities, and the performance of those duties, by the CEO are subject at all times to the control of the Directors.

### **17.3 Suspension and removal of CEO**

Subject to the terms and conditions of the appointment, the Directors may suspend or remove the CEO from that office.

### **17.4 Delegation by Directors to CEO**

The Directors may delegate to the CEO the power (subject to such reservations on the power as are decided by the Directors) to conduct the day-to-day management and control of the business and affairs of the Company. The delegation will include the power and responsibility to:

- (a) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Directors and to implement them to the extent approved by the Directors;
- (b) manage the financial and other reporting mechanisms of the Company;
- (c) approve and incur expenditure subject to specified expenditure limits;
- (d) sub-delegate his or her powers and responsibilities to employees or internal management committees of the Company; and
- (e) any other powers and responsibilities which the Directors consider appropriate to delegate to the CEO.

### **17.5 CEO to attend meetings**

The CEO is entitled, subject to a determination otherwise by the Directors, to attend all meetings of the Company, all meeting of the Directors and any Committees and may speak on any matter, but does not have a vote. There will be Directors meetings to which the CEO will not be invited (for example, to consider the performance and remuneration of the CEO).

## **18. Company Secretary**

### **18.1 Appointment of Company Secretary**

There must be at least one Company Secretary who is to be appointed by the Directors. The Company Secretary is not a Director, and can be an approved third-party from staff or external sources.

### **18.2 Suspension and removal of Company Secretary**

The Directors may suspend or remove a Company Secretary from that office, or remove the role of Company Secretary from a person who has additional roles with the Company.

### **18.3 Powers, duties and authorities of Company Secretary**

A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Directors.

## **19. Committees and Commissions**

### **19.1 Committees and Commissions**

The Directors may delegate any of their powers to Committees or Commissions consisting of those persons they think fit (including Directors, individuals and consultants), and may vary or revoke any delegation. Membership of the company is not a requirement of a Committee or Commission member.

### **19.2 Powers delegated to Committees and Commissions**

- (a) A Committee or Commission must exercise the powers delegated to it according to the terms of the delegation and any directions of the Directors.
- (b) Powers delegated to and exercised by a Committee or Commission are taken to have been exercised by the Directors.

### **19.3 Committee and Commission Meetings**

Unless otherwise determined by the Directors, committee and commission meetings are governed by the provisions of this Constitution dealing with Directors' meetings, as far as they are capable of application.

## **20. Policies**

### **20.1 Making and amending Policies**

- (a) In addition to policies made under **clause 7.2**, the Directors may from time to time make policies:
  - (i) that are required to be made under this Constitution; and
  - (ii) which in their opinion are necessary or desirable for the control, administration and management of the Company's affairs and may amend, repeal and replace those policies.
- (b) The Company in General Meeting may amend, repeal or replace any policy made by the Directors without affecting the validity of acts or decisions made by the Directors or anyone authorised to act pursuant to that policy.
- (c) Unless required to be implemented earlier by law, the Policies referred to in **clauses 7.2** and **20.1(a)** take effect 28 days after the service of the Policy on the Member and shall be of force and effect on that date.

### **20.2 Effect of Policies**

A Policy:

- (a) is subject to this Constitution;
- (b) must be consistent with this Constitution;
- (c) when in force, is binding on all Members and has the same effect as a provision in this Constitution; and
- (d) may be overruled if a resolution to that effect is passed by the Members at a General Meeting.

## **21. Inspection of Records**

### **21.1 Right of the Members to Inspect Records**

A Member does not have the right to inspect any document of the Company (including registers kept by the Company) except as required by law.

## **22. Accounts**

### **22.1 Accounting Records**

The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Corporations Act.

## **22.2 Auditor**

A properly qualified auditor or auditors shall be appointed by the Directors and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the Corporations Act.

## **23. Service of Documents**

### **23.1 Document includes notice**

In this **clause 23**, document includes a notice.

### **23.2 Methods of service on a Member**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the recorded address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a facsimile number or electronic address nominated by the Member.

### **23.3 Methods of service on the Company**

A Member may give a document to the Company:

- (a) by delivering it to the Registered Office;
- (b) by sending it by post to the Registered Office; or
- (c) by sending it to a facsimile number or electronic address nominated by the Company.

### **23.4 Post**

A document sent by post if sent to an address:

- (a) in Australia, may be sent by ordinary post; and
- (b) outside Australia, or sent from an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the second business day after the date of its posting.

### **23.5 Facsimile or electronic transmission**

If a document is sent by facsimile or electronic transmission, delivery of the document is taken to:

- (a) be effected by properly addressing and transmitting the facsimile or electronic transmission; and
- (b) have been delivered on the business day following its transmission.

## **24. Indemnity**

### **24.1 Indemnity of officers**

- (a) This **clause 24** applies to every person who is or has been:
  - (i) a Director, CEO or Company Secretary of the Company; and
  - (ii) to any other officers, employees, former officers or former employees of the Company or of its related bodies corporate as the Directors in each case determine.

Each person referred to in this paragraph **(a)** is referred to as an “**Indemnified Officer**” for the purposes of the rest of **clause 24**.

- (b) The Company will indemnify each Indemnified Officer out of the property of the Company against:
  - (i) every liability (except a liability for legal costs) that the Indemnified Officer incurs as an Officer of the Company or of a related body corporate of the Company; and
  - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the Indemnified Officer becomes involved as an officer of the Company or of a related body corporate of the Company,unless:
  - (iii) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
  - (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **24.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Indemnified Officer against liability that the Indemnified Officer incurs as an officer of the Company or of a related body corporate of the Company including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium;  
or



- (b) the contract would, if the Company paid the premium, be made void by statute.

### **24.3 Deed**

The Company may enter into a deed with any Indemnified Officer or a deed poll to give effect to the rights conferred by **clause 24.1** on the terms the Directors think fit (as long as they are consistent with **clause 24**).

## **25. Winding Up**

### **25.1 Contributions of Members on winding up**

- (a) Each Voting Member must contribute to the Company's property if the Company is wound up while they are a Member or within one year after their membership ceases.
- (b) The contribution is for:
  - (i) payment of the Company's debts and liabilities contracted before their membership ceased;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves,
  - (iv) and the amount is not to exceed \$1.00.
- (c) No other Member must contribute to the Company's property if the Company is wound up.

### **25.2 Excess property on winding up**

- (a) If on the winding up or dissolution of the Company, and after satisfaction of all its debts and liabilities, any property remains, that property must be given or transferred to another body or bodies:
  - (i) Having, in the opinion of the Company Directors, objects similar to those of the Company; and
  - (ii) whose constitution prohibits (or each of whose constitutions prohibit) the distribution of its or their income and property among its or their members to an extent at least as great as is imposed under this Constitution.
- (b) That body is, or those bodies are, to be determined by the Voting Members at or before the time of dissolution or, failing that determination, by a judge who has or acquires jurisdiction in the matter.

## **SCHEDULE 1**

### **Life Members (at 17 December 2016)**

1999	Ms Yolande Joubert
1999	Mr Peter Gaull
1999	Dr Tony Scott
2016	Mr Cadel Evans
2016	Ms Mary Grigson
2016	Mr Glen Jacobs
2016	Mr Rob Eva