



Before You Dig Australia
35 Railway Road
Blackburn VIC 3130

CONSTITUTION

BEFORE YOU DIG AUSTRALIA LTD

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Corporations Act 2001 (Cth)

Public company limited by guarantee

Before You Dig Australia Ltd

ACN 089 413 650

1 NATURE OF COMPANY AND LIABILITY

Nature of Company

- 1.1 The Company is a public company limited by guarantee.

Liability of Members and guarantee on winding up

- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$100.00 to the assets of the Company if it is wound up while they are a Member, or within one year afterwards, for:

- 1.2.1 payment of the Company's debts and liabilities contracted before they ceased to be a Member; and
- 1.2.2 costs and expenses of winding up.

2 OBJECT

- 2.1 The object of the Company is to provide a community service of advancing safety in relation to Assets to reduce:

- 2.1.1 injury to persons;
- 2.1.2 damage to property and the environment; and
- 2.1.3 financial loss and inconvenience to individuals and businesses,
- by:
- 2.1.4 providing services to the public to give information about Assets;
- 2.1.5 widely promoting and publicising the need to enquire about the location of Assets before commencing any works;
- 2.1.6 encouraging participation of Asset owners and industry participants in safety activities;
- 2.1.7 facilitating cooperation among Asset owners and industry participants; and

2.1.8 doing all such lawful acts, matters and things as are incidental or conducive to the above.

3 MEMBERSHIP

Membership phases

3.1 The membership of the Company and the principles governing membership generally will be determined as follows:

Phase	Details
Transitional Membership Phase	<p>The Transitional Membership Phase commences on the date this constitution is adopted and ends at 12.01 a.m. AEST on the Transition Date.</p> <p>Clauses 3.2 and 3.3 apply during the Transitional Membership Phase and cease to apply when the Transitional Membership Phase ends.</p>
Subsequent Membership Phase	<p>The Subsequent Membership Phase commences immediately following the cessation of the Transitional Membership Phase and continues until the Company is dissolved or this constitution is amended to provide for another arrangement, whichever occurs sooner.</p> <p>Clause 3.4 applies during the Subsequent Membership Phase and commences in effect when the Subsequent Membership Phase commences.</p>

Note: clauses 3.5 to 3.25 and clause 5 apply to all Members during both the Transitional Membership Phase and the Subsequent Membership Phase.

Transitional Membership Phase

3.2 During the Transitional Membership Phase:

3.2.1 State Entities are Members.

3.2.2 Other persons may apply for membership in accordance with clause 3.12 and may be conditionally admitted to membership in accordance with clause 3.13, with each such membership to commence immediately prior to the commencement of the Subsequent Membership Phase.

- 3.3 Without limiting clause 5, each State Entity immediately ceases to be a Member when the Transitional Membership Phase ends.

Subsequent Membership Phase

- 3.4 During the Subsequent Membership Phase, the Members are:
- 3.4.1 the Initial Members (for so long as each remains a Member in accordance with this constitution); and
 - 3.4.2 such other persons as may subsequently be admitted to membership in accordance with this constitution.

Membership

- 3.5 The membership of the Company will consist only of eligible Organisations, as follows:

- 3.5.1 A Member must be an Organisation.
- 3.5.2 A Member must have an active and demonstrable interest in the Principal Purpose.

- 3.6 To avoid doubt:

- 3.6.1 Each State Entity is deemed to satisfy the requirements set out in clause 3.5 prior to the Transition Date.
- 3.6.2 Each member of a State Entity as at the date this constitution is adopted is deemed to satisfy the requirement set out in clause 3.5.2.
- 3.6.3 A person does not need to become a Member to seek Asset-related information as an end user of the Referral Service, but does need to become a Member if the person is an Organisation and wishes to nominate Assets to be included in the Referral Service and receive Referrals.

- 3.7 Unless this constitution provides otherwise, all Members have the same rights.

Membership not transferable

- 3.8 A Member's rights, privileges and benefits of membership are personal to the Member and membership of the Company is not transferable.

Trust and related arrangements

- 3.9 Except as required by law:
- 3.9.1 No person is to be recognised by the Company as holding its membership on trust or otherwise holding the membership as a representative of another person.
 - 3.9.2 Regardless of it having notice of any other interest or right, the Company is not bound by, or compelled in any way to recognise, any equitable, contingent,

future, partial or other right or interest in a Member's membership of the Company.

Members

- 3.10 All Members must do all of the following:
- 3.10.1 In order to maintain membership, pay any Fees in accordance with clause 4.1.
 - 3.10.2 Otherwise comply with the provisions of this constitution.
- 3.11 A Member has the right to receive notices of, to attend and to be heard at any general meeting, and has the right to vote at any general meeting.

Admission to membership

- 3.12 Any person that considers that they satisfy the eligibility criteria set out in clause 3.5 may apply for membership of the Company by submitting an application to the Company. An application must be in the form, and be accompanied by the documents or evidence, as the Board may determine from time to time (**Application**).
- 3.13 The Board may delegate both the review of Applications and the decision whether or not to accept or reject an Application. Clause 3.19 applies to Members whose Applications are approved by a delegate.
- 3.14 The Board or its delegate, must consider an Application as soon as practicable after its receipt and determine whether to approve it, with reference to the eligibility criteria set out in clause 3.5, but otherwise in their absolute discretion.
- 3.15 Neither the Board nor its delegate is required to give reasons for their determination of an Application.
- 3.16 If an Application is rejected:
- 3.16.1 the Secretary must notify the applicant in writing of that fact within a reasonable period; and
 - 3.16.2 any Fees paid by the applicant (in accordance with clause 4) must be refunded to the applicant.
- 3.17 If an Application is accepted, the Secretary must notify the applicant of its admission to membership in the form of a receipt for any Fees paid or in such other form as the Board or its delegate may determine from time to time. The name and details of the applicant must be entered in the Register. To avoid doubt, if an Application is conditionally accepted during the Transitional Membership Phase, the Secretary must:
- 3.17.1 Notify the applicant that it will be admitted to membership on the Transition Date.
 - 3.17.2 Enter the applicant's name in the Register only after the Subsequent Membership Phase commences, and otherwise in accordance with law.

- 3.18 All applicants conditionally accepted for membership during the Transitional Membership Phase are automatically admitted to membership on the Transition Date. In all other cases, an applicant that is accepted for membership becomes a Member when the applicant's name is entered in the Register.
- 3.19 A Member whose Application is accepted by the Board's delegate in accordance with clause 3.13 will automatically cease to be a Member on the first anniversary of the date of its admission to membership if the Board has not ratified that Member's admission to membership prior to that date.

Register of Members

- 3.20 A register of the Members of the Company must be kept in accordance with the Corporations Act.
- 3.21 The following details must be entered in the Register in respect of each Member:
- 3.21.1 The full name of the Member and the Member's ACN or ABN.
 - 3.21.2 The address of the Member (being the registered address in the case of a Member that is a body corporate).
 - 3.21.3 The date on which the entry of the Member's name in the Register is made.
- 3.22 The Register must also show the following information, which may be kept separately from the rest of the Register:
- 3.22.1 The name and details of each Organisation which stopped being a Member within the last 7 years.
 - 3.22.2 The date on which each such Organisation stopped being a Member.
- 3.23 The Company may also keep further registers recording other information about Members that is not required to be kept under the Corporations Act.
- 3.24 The following details may be entered in a register referred to in clause 3.23:
- 3.24.1 The telephone number and email address (as applicable) of the Member.
 - 3.24.2 The date of last payment of the Member's annual subscription (if applicable).
 - 3.24.3 The date on which the Board ratified that Member's admission to membership in accordance with clause 3.19 (if applicable).
 - 3.24.4 The full name, address, telephone number and email address (as applicable) of the Member's representative.
 - 3.24.5 Such other information as the Board may require.
- 3.25 Each Member must notify the Secretary in writing of any change in that Organisation's name, address, telephone number or email address within one month after the change.

4 ANNUAL SUBSCRIPTION AND OTHER FEES

Fees payable by Members

4.1 With the exception of State Entities, each Member must pay all of the following amounts to the Company (collectively, **Fees**):

4.1.1 An annual subscription of \$200 or such other sum as the Board may prescribe from time to time, which also represents an annual pre-paid, non-refundable base fee for the right to receive relevant Referrals arising from the Referral Service (to the extent that the Member is an Asset owner). All annual subscriptions are due and payable in advance on 1 July each year.

4.1.2 Any other fees that are payable by that Member under the Referral Fees Policy, as and when payable under the Referral Fees Policy.

Unpaid Fees

4.2 A Member ceases to be entitled to any of the rights or privileges of membership if Fees payable by the Member in accordance with this clause 4 remain unpaid for two months after becoming payable and a notice of default is given to the Member pursuant to a resolution of the Board. However, the rights or privileges of membership may be reinstated on payment of all arrears, including any interest that may be payable under the Referral Fees Policy, if the Board (in its absolute discretion) so resolves.

5 REMOVAL AND CESSATION OF MEMBERSHIP

Resignation

5.1 A Member may resign from membership of the Company by giving written notice to the Secretary.

5.2 Without limiting clause 5.14, the resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

Failure to pay

5.3 Without limiting clause 5.14, if a Member has not paid all arrears of Fees and any applicable interest in accordance with clause 4.2 or, if paid, the Member's rights and privileges are not reinstated by the Board in accordance with clause 4.2, all of the following applies in respect of that Member:

5.3.1 The Member remains liable for all the obligations and liabilities of membership for six months after the date of notification under clause 4.2.

5.3.2 The Member ceases to be a Member and the Member's name must be removed from the Register at the end of the six month period.

Other cessation of membership

- 5.4 Subject to the law, and without limiting clause 5.14, a Member ceases to be a Member immediately upon any Termination Event occurring in respect of the Member.
- 5.5 Without limiting clause 5.14, a Member immediately ceases to be a Member in the circumstances set out in clause 3.19.
- 5.6 Without limiting clause 5.14, each State Entity that is a Member immediately prior to the commencement of the Subsequent Membership Phase will cease to be a Member in accordance with clause 3.3.

Removal from membership

- 5.7 The Board may convene a meeting of Members to consider the removal of a Member from the Register if the Board, acting reasonably, considers that Member has breached this constitution or if the Board, in its absolute discretion, resolves that the Member is no longer considered suitable for membership of the Company including where the Board considers that the Member does not satisfy the eligibility criteria in clause 3.5.
- 5.8 The Board must provide at least two month's written notice to any Member of any intention to remove the Member from the Register, so as to enable the Member to provide a written statement to the Company.
- 5.9 Where a Member provides a written statement to the Company and requests that the representations in the statement be provided to Members, the Company must do both of the following:
- 5.9.1 State that the representations have been made in any notice of the resolution given to the Members, provided that the representations are received a reasonable period before the notice of meeting is sent to Members.
- 5.9.2 Send a copy of the representations to every Member of the Company to whom the notice of the meeting has been or is sent.
- 5.10 If a copy of the representations is not so sent because they were received too late or because of the Company's default, the Member may, without affecting any right to be heard orally, require the representations be read out at the meeting.
- 5.11 However, copies of the representations need not be sent out and the representations need not be read out at the meeting if the Board is satisfied on reasonable grounds that the rights conferred by clause 5.9 are being abused.
- 5.12 The Board does not have to give reasons for recommending the removal of any Member from the Register.
- 5.13 The Members must pass an ordinary resolution to remove a Member under clause 5.7.

Consequences of resignation or other cessation of membership

- 5.14 Despite any other provision of this constitution, resignation from membership in accordance with clause 5.1, or a Member's membership ceasing in accordance with clause 5.3, clause 5.4, clause 5.5, clause 5.6 or clause 5.13, does not limit that person's liability under this constitution, and despite that cessation of membership the former Member continues to be liable for all Fees and money owing to the Company as at the date of the cessation of its membership of the Company and for any amount payable in accordance with clause 1.2.

6 NO PROFITS FOR MEMBERS

Use of income and property

- 6.1 The Company must use its income and property solely for promoting its objects.

Transfer of income or property

- 6.2 No part of the Company's income or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its Members.

Payments, services and information

- 6.3 Nothing in this clause 6 prevents the Company making a payment in good faith of any of the following:
- 6.3.1 An amount to any Member in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual course of business or otherwise on commercial arm's-length terms.
 - 6.3.2 Reasonable and proper interest on money borrowed from any Member, at a rate per annum not exceeding the rate charged by the Company's bankers on overdue accounts.
 - 6.3.3 Reasonable and proper rent for premises let by any Member to the Company.
 - 6.3.4 Reimbursement of expenses reasonably and properly incurred by any Member on the Company's behalf with the consent of the Board.
 - 6.3.5 A grant or similar contribution made by the Company in support of the Principal Purpose.
- 6.4 Nothing in this clause 6 prevents:
- 6.4.1 A Member receiving a minor benefit that is directly related to membership of the Company.
 - 6.4.2 A Member from receiving services from the Company (including operational services and the Referral Service).

- 6.4.3 The Company from providing services or information to the Members on terms which are different from the terms on which services or information may be provided to persons who are not Members.

7 GENERAL MEETINGS

Convening of meetings by Directors

- 7.1 Any Director may convene a general meeting.

Convening of meetings by Members

- 7.2 The Board must call and arrange to hold a general meeting if required to do so under the Corporations Act and in accordance with any requirements under the Corporations Act.

Notice of general meeting

- 7.3 The Board may give notice of a general meeting by any form of communication permitted by the Corporations Act, provided that where a Member has made an election or ad hoc request under the Corporations Act about how documents are to be sent to the Member, subject to the Corporations Act, the Board must comply with that election or request.

- 7.3.1 The notice of a general meeting must specify whether the meeting is to be held wholly or partly using virtual meeting technology, the place or places (if any) of the meeting, the day and the hour of meeting and if the meeting is to be held in two or more places, the technology (if any) that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by law.

- 7.3.2 The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not affect the validity of any act, transaction, agreement, instrument resolution or other thing.

Cancellation of general meetings

- 7.4 The Board may cancel a general meeting, other than a general meeting which the Board is required to convene and hold under the Corporations Act.
- 7.5 The Board may cancel a general meeting if notice of the cancellation is given to all persons entitled to receive notice of the meeting at least two business days prior to the time of the meeting as specified in notice of meeting.

Quorum at general meetings

- 7.6 The Members in general meeting may not transact any business unless a quorum of Members is present at the time when the meeting proceeds to business.
- 7.7 Except as otherwise set out in this constitution, a quorum for the purposes of a general meeting is:

- 7.7.1 During the Transitional Membership Phase: four Members entitled to vote at the meeting (whether present by representative, proxy or attorney).
- 7.7.2 During the Subsequent Membership Phase: 10 Members entitled to vote at the meeting (whether present by representative, proxy or attorney).
- 7.8 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson:
 - 7.8.1 If the meeting was convened by or on the requisition of Members, it must be dissolved.
 - 7.8.2 Otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Board.
- 7.9 If a meeting has been adjourned to another time and place determined by the Board, not less than five business days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

Quorum at adjourned general meetings

- 7.10 At the adjourned meeting, four Members entitled to vote at the meeting present by representative, proxy or attorney is a quorum during the Transitional Membership Phase, and five Members entitled to vote at the meeting present by representative, proxy or attorney is a quorum during the Subsequent Membership Phase, but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

Appointment of chairperson

- 7.11 Every general meeting must be chaired by a chairperson. The chairperson will be determined as follows:
 - 7.11.1 If the Board has elected a Director as Chair in accordance with clause 12.8, that person is entitled to chair every general meeting.
 - 7.11.2 Secondly, if the Board has elected a Director as Deputy Chair in accordance with clause 12.9, that person is entitled to chair that meeting if either of the following applies:
 - (a) No Chair has been elected in accordance with clause 12.8.
 - (b) The Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.
 - 7.11.3 Thirdly, the Directors present at the meeting must elect one of their number to chair that meeting if either of the following applies:
 - (a) No Chair has been elected in accordance with clause 12.8, and no Deputy Chair has been elected in accordance with clause 12.9.

- (b) Neither the Chair nor the Deputy Chair is present within 15 minutes after the time appointed for the holding of the meeting, or if present neither is willing to act.

7.11.4 Fourthly, the Members entitled to vote at the meeting present by representative, proxy or attorney at the meeting must elect one of those Members to chair that meeting if either of the following applies:

- (a) There are no Directors present within 15 minutes after the time appointed for the holding of the meeting.
- (b) All Directors present decline to chair the meeting.

Chairperson's powers

7.12 The chairperson may temporarily vacate the chair at a general meeting in favour of another person present at any time and for any reason they see fit.

7.13 Subject to the terms of this constitution regarding adjournment of meetings, the chairperson has charge of the general conduct of the meeting and the chairperson's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

7.14 The chairperson may, in their absolute discretion, refuse any person admission to a general meeting, or expel the person from the general meeting and not permit them to return, if the chairperson reasonably considers that the person's conduct is inappropriate. Inappropriate conduct in a general meeting includes:

- 7.14.1 The use of offensive or abusive language which is directed to any person, object or thing.
- 7.14.2 Attendance at the meeting while under the influence of any kind of drug, or using or consuming any drug at the meeting, including any alcoholic substance.
- 7.14.3 Possession of any article, including a recording device or other electronic device or a sign or banner, which the chairperson considers is dangerous, offensive or disruptive or likely to become so.

Adjournment of meetings

7.15 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.

- 7.15.1 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- 7.15.2 When a meeting is adjourned for 20 business days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

- 7.15.3 Except when a meeting is adjourned for 20 business days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

Voting on show of hands etc

- 7.16 At a general meeting a resolution put to the vote of the meeting must be decided on either a show of hands or another method for Members to indicate their preference that is approved by the chairperson of the general meeting, unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- 7.17 If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands or other method of voting approved by the chairperson under clause 7.16 been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

Demand for a poll

- 7.18 A poll may be demanded by either:
- 7.18.1 The chairperson.
- 7.18.2 At least five Members present and entitled to vote on the resolution.
- 7.18.3 Any Member or Members present at the general meeting with at least 5% of the votes that may be cast on the resolution on a poll.
- 7.19 The demand for a poll may be withdrawn with the consent of the chairperson.
- 7.20 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- 7.21 If a poll is duly demanded, it must be taken in the manner and, except on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- 7.22 A poll demanded on a question of adjournment must be taken immediately.
- 7.23 A poll cannot be demanded at a general meeting on the election of a chairperson of the general meeting.

Voting rights of Members

- 7.24 On a show of hands or other method of voting approved by the chairperson under clause 7.16, every Member present by proxy, attorney or representative has one vote.
- 7.25 On a poll, every Member present by proxy, attorney or representative has one vote.

Vote of the chairperson at general meetings

- 7.26 In a case of an equality of votes, whether on a show of hands or other method of voting approved by the chairperson under clause 7.16 or on a poll, the chairperson of the general meeting does not have a second or casting vote in addition to any votes the chairperson may have as a representative, proxy or attorney of a Member, and the motion fails.

Objections to voter qualification

- 7.27 No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 7.28 An objection to the qualification of a voter must be referred to the chairperson, whose decision is final.
- 7.29 A vote not disallowed according to an objection as provided for in this constitution is valid for all purposes.

Mode of meeting for Members

- 7.30 A general meeting may be called or held, including at more than one place or entirely by using virtual meeting technology that satisfies the requirements of clause 7.30.2 without a specific venue.
- 7.30.1 The Company must give the Members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting.
- 7.30.2 Any virtual meeting technology that is used to hold a general meeting must be reasonable and must allow the Members who are entitled to attend the meeting, and do attend the meeting using that virtual meeting technology, as a whole, to exercise orally and in writing any rights of those Members to ask questions and make comments.
- 7.30.3 Anyone using virtual meeting technology that satisfies the requirements of clause 7.30.2 to participate in the general meeting is taken to be present in person at the general meeting while so participating.
- 7.30.4 Subject to the other provisions of this constitution, the Members may otherwise regulate their meetings as they think fit.
- 7.31 Where a general meeting is held using virtual meeting technology in accordance with clause 7.30.2:
- 7.31.1 If a person may attend the general meeting physically (whether or not the meeting is also held using virtual meeting technology), the place and time for the meeting is taken to be the main location of the meeting as set out in the notice of meeting, and the time at that place.
- 7.31.2 If the meeting is held using virtual meeting technology only, the place for the meeting is taken to be the address of the Office, and the time for the meeting is taken to be the time at the Office.

- 7.31.3 Without limiting the chairperson's powers under this constitution and at law, the general meeting must be conducted in accordance with any policies adopted by the Board from time to time concerning the use of virtual meeting technology to conduct general meetings, to the extent that such policies are consistent with the Corporations Act and this constitution.
- 7.31.4 If any technical difficulties occur before or during the general meeting, the chairperson may:
- (a) if the chairperson considers that the virtual meeting technology being used no longer satisfies the requirements of clause 7.30.2, adjourn the general meeting until those requirements are satisfied or otherwise adjourn the general meeting to such other date and time as the chairperson considers appropriate and to such other place (if any) as the chairperson considers appropriate; or
 - (b) continue the meeting, if a quorum is present (whether at the place the chairperson is present, or by means of virtual meeting technology that satisfies the requirements of clause 7.30.2) and the Members as a whole have a reasonable opportunity to participate. That continuation will not, in and of itself, affect the validity of any act, transaction, agreement, instrument, resolution or other thing..

Resolution in writing

- 7.32 A resolution in writing signed by all Members entitled to vote on the resolution is to be treated as a determination of the Members passed at a meeting of the Members duly convened and held.

Form of resolution in writing

- 7.33 A resolution in writing may consist of substantially similar documents.
- 7.33.1 Each document must be signed by at least one Member.
- 7.33.2 If the resolution in writing consists of substantially similar documents, it takes effect on the latest date on which a Member signs one of the documents.
- 7.33.3 Alternatively, such a resolution may consist of each Member affirming by electronic means that they approve the proposed resolution. A document produced by mechanical or electronic means that purports to be from a Member or the Member's representative, proxy or attorney is considered a document in writing signed by the Member and is deemed to be signed when received in readable form.
- 7.33.4 A document generated by electronic means which purports to be:
- (a) a copy of a resolution of Members is to be treated as a resolution in writing; and

- (b) a copy of a signature is to be treated as signed by the Member whose signature appears to be on it.

7.33.5 If a resolution in writing is signed or approved by a representative, proxy or attorney of a Member, it must not also be signed or approved by the appointing Member (and vice versa).

8 REPRESENTATIVES, PROXIES AND ATTORNEYS

Representatives, proxies and attorneys of Members

- 8.1 At meetings of Members each Member entitled to vote may vote by representative, proxy or by attorney in accordance with clauses 7.24 and 7.25.
- 8.2 Subject to the terms of their appointment, a person attending as a proxy, or as the attorney of a Member, or as representative of a Member, has all the powers of a Member, except where expressly stated to the contrary.

Appointment and removal of representatives

- 8.3 A Member may appoint, and remove, a natural person as its sole representative for any matters connected with the Company by written notice to the Secretary in such form as the Board may prescribe from time to time, or as permitted by the Corporations Act.
 - 8.3.1 A document executed by a Member in accordance with section 127 of the Corporations Act (where applicable to the Member) is rebuttable evidence of the appointment, or removal, of the named representative.
 - 8.3.2 For the avoidance of doubt, a representative is entitled to exercise the powers of the Member which appointed him or her (in accordance with clause 8.2) and a representative present must be counted towards a quorum on the basis that the Member is to be considered personally present at the general meeting by its representative.

Appointment of attorneys

- 8.4 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Company or the Member's membership of the Company, the Member must promptly provide the Company with any or all of the following upon written request from the Company:
 - 8.4.1 The original executed instrument appointing the attorney, for notation.
 - 8.4.2 A certified copy of the original executed instrument appointment the attorney, for the Company to retain.
 - 8.4.3 Any other evidence the Company may request from time to time regarding the power of attorney, including evidence that the power of attorney is effective and remains in force.

Appointment of proxies

- 8.5 A Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy need not be a Member.
- 8.5.1 A document appointing a proxy must be in writing, in any form permitted by the Corporations Act and signed by the Member making the appointment.
- 8.5.2 A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document.
- 8.5.3 Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting.

Verification of proxies

- 8.6 Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company:
- 8.6.1 The document appointing the proxy.
- 8.6.2 If the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority (even if previously provided to the Company in accordance with clause 8.4).
- 8.7 Those documents must be received at the Office or at the place, fax number or email address specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting.
- 8.8 If a general meeting has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

Validity of proxies

- 8.9 A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this document.

Revocation of appointment of proxy

- 8.10 A vote given in accordance with the terms of a proxy, an appointment of representative or power of attorney is valid despite:
- 8.10.1 The previous death or unsoundness of mind of the principal.
- 8.10.2 The revocation of the instrument or of the authority under which the instrument was executed.

However, the vote is only valid if no intimation in writing of any of those events has been received at the Office before the commencement of the meeting or adjourned meeting at which the document is used.

9 APPOINTMENT AND RETIREMENT OF DIRECTORS

Board phases

- 9.1 The composition of the Board and the principles governing the appointment, rotation and removal of Directors are as follows:

Phase	Duration and applicable provisions
Transitional Board Phase	<p>The Transitional Board Phase commences on the date this constitution is adopted and ends at 12.01am AEST on the Transition Date.</p> <p>Clauses 9.2 and 9.3 apply during the Transitional Board Phase and cease to apply when the Transitional Board Phase ends.</p>
Subsequent Board Phase	<p>The Subsequent Board Phase commences immediately following the cessation of the Transitional Board Phase. It continues until the Company is dissolved or this constitution is amended to provide for another arrangement, whichever occurs sooner.</p> <p>The composition of the Board, including Director appointment and retirement, will be determined in accordance with the principles set out in clauses 9.4 to 9.30 and clauses 9.34 to 9.38 during the Subsequent Board Phase.</p>
Provisions that apply during both Board phases	<p>Clauses 9.1, 9.31 to 9.33 and 9.39 apply during both the Transitional Board Phase and the Subsequent Board Phase.</p>

Transitional Board Phase

- 9.2 Immediately after the time of adoption of this constitution, the Board will consist of the Existing Directors.
- 9.3 During the Transitional Board Phase:
- 9.3.1 The number of Directors must be not less than three and not more than ten.
- 9.3.2 A Director may at any time resign from office in accordance with clause 9.31, be removed from office and replaced in accordance with clause 9.32 or have their office vacated in accordance with clause 9.33.

- 9.3.3 The Board, or if there is only one Director, that Director, may at any time appoint a person to be a Director and who will hold office for a maximum period ending at the cessation of the Transitional Board Phase.

Skills-based board

- 9.4 It is intended that the Board will be a skills-based board that is capable of providing:
- 9.4.1 a holistic view of the Industry Areas and the Regions, and the needs and objectives of Members in each of them; and
- 9.4.2 leadership and stewardship in furtherance of the Principal Purpose that draws on relevant functional and technical expertise and experience.
- 9.5 The competencies, skills and experience that are considered most relevant to the governance of the Company and the achievement of a skills-based board may be set out in the Skills Matrix.

Directors are not nominees or representatives

- 9.6 To avoid doubt:
- 9.6.1 A Director is not the nominee or representative of any person, including any Member or (if a Region Director) the relevant Region or Advisory Council, and must, like all other Directors, act in the best interests of the Company as a whole, exercise active discretions and only provide information, records or other documents to third parties if authorised to do so by the Board under clause 19.4 or otherwise by law.
- 9.6.2 Subject to the law, a Director cannot in any circumstances be removed from office or replaced as a Director by any person other than the Members or otherwise be required to vacate their office by any person other than the Members.

Structure of the Board

- 9.7 Without limiting the Members' rights under clause 9.32 or the Corporations Act, during the Subsequent Board Phase the Board will consist of:
- 9.7.1 Region Directors selected by Advisory Councils in accordance with clauses 9.14 to 9.16, 9.18.3 or 9.20 (**Region Directors**), up to a maximum number equal to the number of Advisory Councils.
- 9.7.2 Up to two Independent Directors appointed by the Board in accordance with clause 9.23.
- 9.7.3 Up to two Industry Directors appointed by the Board in accordance with clause 9.27.
- 9.7.4 A Managing Director, but only if the Board has appointed a Managing Director under clause 9.34.

- 9.8 Immediately upon the commencement of the Subsequent Board Phase:
- 9.8.1 The Board will consist of up to five Region Directors and up to two Independent Directors.
- 9.8.2 The office of each Existing Director who has not become a Region Director in accordance with clause 9.9 or an Independent Director in accordance with clause 9.26 immediately becomes vacant.
- Region Directors**
- 9.9 Not more than 10 business days prior to the Transition Date, each State Entity must provide the Company with a notice identifying the individual who will become the first Region Director for the Region in which that State Entity is based. To avoid doubt, the person named in the notice:
- 9.9.1 May, but need not be, a member of the governing body of that State Entity.
- 9.9.2 May, but need not be, an Existing Director.
- 9.9.3 Must be employed by a Member as at the date of the notice.
- 9.9.4 Must not be a person who is prohibited by the Corporations Act or another law from being a company director.
- 9.10 The person identified in the notice given by a State Entity under clause 9.9 will become the Region Director associated with the relevant Region immediately upon the commencement of the Subsequent Board Phase, provided that:
- 9.10.1 The person continues to be employed by a Member.
- 9.10.2 If the person is a Director at the time the notice is given to the Company, the person must not have ceased to be a Director for any reason in the period between the date of the notice and the Transition Date.
- 9.10.3 If the person is not a Director at the time the notice is given to the Company, the person must have provided the Company with their signed consent to act as a Director prior to the Transition Date, as required under the Corporations Act.
- 9.11 At the first Board meeting that is held after the Transition Date, the Region Directors who are present must determine and record in writing the order in which each of the initial Region Directors will retire from office, with lots to be drawn if the Region Directors are unable to reach agreement at that meeting. The initial term of office of each of those Region Directors must be a term that ends on the close of the First AGM, the Second AGM or the Third AGM, such that:
- 9.11.1 One Region Director will retire at the close of the First AGM, and is eligible to be re-selected by the relevant Advisory Council.

- 9.11.2 Two Region Directors will retire at the close of the Second AGM, and each will be eligible to be re-selected by the relevant Advisory Council.
- 9.11.3 Two Region Directors will retire at the close of the Third AGM, and each will be eligible to be re-selected by the relevant Advisory Council.
- 9.12 Each of the initial Region Directors will have an initial term of office determined in accordance with clause 9.11. Any such Region Director who is immediately re-selected as Region Director by the relevant Advisory Council in accordance with clauses 9.14 to 9.16, or any other person who is selected as Region Director by the relevant Advisory Council in accordance with clauses 9.14 to 9.16, will hold office for a further maximum period ending on the close of the third-next to occur AGM (being a maximum term of approximately three years).
- 9.13 A retiring Region Director is eligible to be immediately re-selected by the relevant Advisory Council in accordance with clauses 9.14 to 9.16 unless such re-selection would result in that person holding office for more than three consecutive terms as a Region Director (with an initial term as Region Director of less than three years being counted as a full term for these purposes). However, this clause 9.13 does not prevent a former Region Director from subsequently being selected or appointed as a Director in accordance with this constitution, provided that a period of at least 24 consecutive calendar months has passed since they last held the office of Director.
- 9.14 In a year in which the Region Director is required to retire from office under clause 9.11 or clause 9.12, the relevant Advisory Council must do all of the following:
- 9.14.1 Consult with the Board regarding any skills, competencies or experience that the Board considers it necessary or desirable to have represented at Board level at the time, including in light of the Skills Matrix, along with any information that the Board considers relevant to the Advisory Council's selection in light of clause 9.16. Such consultation must commence at least 40 business days prior to the next-to-occur AGM.
- 9.14.2 Conduct a selection process in accordance with the Advisory Council's Charter and any information provided by the Board under clause 9.14.1 to identify the individual who is proposed to become the Region Director for the Region on and from the close of the next-to-occur AGM (**Candidate**). To avoid doubt, the Candidate may but need not be the incumbent Region Director, but must not be a person who is prohibited by the Corporations Act or another law from being a company director.
- 9.14.3 Provide the Company with a notice identifying the Candidate, not less than 20 business days prior to the next-to-occur AGM.
- 9.14.4 Ensure that the Candidate provides the Company with their signed consent to act as a Director prior to the date of the next-to-occur AGM, if required under the Corporations Act.

- 9.15 A Candidate will become the Region Director associated with a particular Region on and from the close of the relevant AGM unless any of the following applies:
- 9.15.1 The Candidate is not a Director at the date of the Advisory Council's notice under clause 9.14.3 and has not provided the Company with their signed consent to act as a Director prior the relevant AGM.
 - 9.15.2 The Candidate is a person who is prohibited by the Corporations Act or another law from being a company director or their appointment would otherwise breach the law.
 - 9.15.3 The Candidate is not eligible to be appointed as a Region Director under clause 9.17.
- 9.16 If clause 9.15 prevents a Candidate from becoming a Region Director, the Board will promptly advise the Advisory Council of the reason, and the relevant Advisory Council must promptly comply with clause 9.14 a further time, with the aim of ensuring that an eligible person will become that Region Director on and from the close of the next-to-occur AGM. The Advisory Council does not have to comply with the time periods set out in clause 9.14 but must provide the Company with a notice identifying the Candidate (who must not be ineligible under clause 9.15) not later than 48 hours prior to the next-to-occur AGM.
- 9.17 Despite any other provision of this constitution, a person is not eligible to become a Region Director if their appointment would result in:
- 9.17.1 more than two Region Directors being employed by Members who conduct operations in the same Industry Area (determined as at the date of the proposed appointment); or
 - 9.17.2 more than one Region Director being an officer or employee of a particular Member (determined as at the date of the proposed appointment). For the purposes of this clause 9.17.2, any Related Body Corporate of a Member is deemed to be that Member.
- 9.18 If a Region Director ceases to be employed by a Member, the following rules apply:
- 9.18.1 The Region Director must notify the Company in writing within one month of ceasing to be employed by a Member.
 - 9.18.2 The Region Director's office immediately becomes vacant on the date that the Company receives the notice referred to in clause 9.18.1 or the date on which the Company otherwise becomes aware that the Region Director has ceased to be employed by a Member (whichever occurs sooner).
 - 9.18.3 Unless clause 9.19 applies, promptly after a Region Director's office is vacated, the relevant Advisory Council must comply with clause 9.14 to identify the individual whom the Advisory Council proposes will become the Region Director associated with that Region. The relevant Candidate will become the

Region Director at the commencement of the next Board meeting unless the Candidate has not provided the Company with their signed consent to act as a Director prior the Board meeting or either of clauses 9.15.2 and 9.15.3 applies to the Candidate. The Candidate will be the Region Director for a maximum period ending at the close of the AGM at which the former Region Director would have been required to retire from office under clause 9.11 or clause 9.12.

- 9.19 If a Region Director's office is vacated and there is less than 6 months until the AGM at which that Region Director would have been required to retire from office under clause 9.11 or clause 9.12, the Advisory Council may identify a replacement Region Director who will hold office at the close of that AGM, but not sooner than that time.
- 9.20 If a Region Director resigns from office or their office is vacated, clauses 9.18.3 and 9.19 will apply.
- 9.21 If at any time there is an increase in the number of Advisory Councils in accordance with clause 12.24, the Board may by resolution determine the maximum period for which the first Region Director associated with each such new Region will hold office, with the aim of achieving (to the greatest extent possible) a regular and even rotation of Region Directors from office going forward.
- 9.22 To avoid doubt, the Board, or if there is only one Director, that Director, has no power to appoint a person to be a Director to fill a vacant Region Director position.

Independent Directors

- 9.23 The Board, or if there is only one Director, that Director, may at any time appoint a person who is Independent at the time of appointment to be a Director (**Independent Director**). That person will hold office for a maximum period ending on the close of the third-next to occur AGM (being a maximum term of approximately three years) or such shorter period as may be specified in the relevant Board resolution. To avoid doubt, any such appointment will take effect on and from the date of the relevant Board resolution or such later date as may be specified in the relevant Board resolution.
- 9.24 A retiring Independent Director is eligible for re-appointment, unless such re-appointment would result in that person holding office for more than three consecutive terms as a Director (with any term as Independent Director of less than three years being counted as a full term for these purposes). However, this clause 9.24 does not prevent a former Independent Director from subsequently being selected or appointed as a Director in accordance with this constitution, provided that a period of at least 24 consecutive calendar months has passed since they last held the office of Director.
- 9.25 An Independent Director's office of Director immediately becomes vacant if they cease to be Independent.
- 9.26 Prior to the Transition Date, the Board may resolve that up to two Existing Directors:
- 9.26.1 are to be treated as Independent; and

- 9.26.2 will become Independent Directors upon the commencement of the Subsequent Board Phase (provided they are Directors at that time), in which case the Board must also resolve their respective terms of office as Independent Directors in accordance with clause 9.23.

Industry Directors

- 9.27 The Board, or if there is only one Director, that Director, may at any time appoint a person who in the Board's opinion has relevant skills, competencies and experience in one or more Industry Areas (including, to avoid doubt, the experience of Asset owners and users of the Referral Service), taking into account any Skills Matrix and the skills, competencies and experience represented on the Board at the time (**Industry Director**). That person will hold office for a maximum period ending on the close of the third-next to occur AGM (being a maximum term of approximately three years) or such shorter period as may be specified in the relevant Board resolution. To avoid doubt, any such appointment will take effect on and from the date of the relevant Board resolution or such later date as may be specified in the relevant Board resolution.
- 9.28 A retiring Industry Director is eligible for re-appointment, unless such re-appointment would result in that person holding office for more than three consecutive terms as a Director (with any term as Industry Director of less than three years being counted as a full term for these purposes). However, this clause 9.28 does not prevent a former Industry Director from subsequently being selected or appointed as a Director in accordance with this constitution, provided that a period of at least 24 consecutive calendar months has passed since they last held the office of Director.

Retirement of Directors

- 9.29 A Region Director retiring at an AGM may act as a director until the conclusion of that meeting and is eligible to be re-selected by the relevant Advisory Council to the extent permitted by law and this constitution.
- 9.30 An Independent Director or Industry Director retiring at an AGM may act as a director until the conclusion of that meeting and is eligible for re-appointment to the extent permitted by law and this constitution.
- 9.31 A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice.

Removal from office

- 9.32 The Members in general meeting may by ordinary resolution remove any Director from office by following the process set out in section 203D Corporations Act, including its notice requirements, and may by ordinary resolution elect another person as a replacement.

Vacation of office

- 9.33 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this constitution, the office of Director immediately becomes vacant if any of the following occurs:
- 9.33.1 The Director becomes an insolvent under administration.
- 9.33.2 The Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.
- 9.33.3 The Director is absent from all Board meetings over a consecutive period of 3 months without the prior consent of the Board.
- 9.33.4 The Director becomes prohibited from being a director by reason of an order made under the Corporations Act or the Director is removed from any office under the ACNC Act.
- 9.33.5 The Director is a Region Director and their employer ceases to be a Member.
- 9.33.6 The Director is an Independent Director and clause 9.24 applies.

Managing Director

- 9.34 The Board may appoint an employee of the Company to the office of "Managing Director" on the terms that the Board considers appropriate and for a period determined by the Board at the time of appointment that does not exceed that employee's term of employment.
- 9.35 The Board may confer any of its powers to a Managing Director, and may impose any limitations on the exercise of those powers, and may withdraw or alter the conferred powers at any time, with or without cause. Any powers delegated by the Board to a Managing Director may also be held by the Board.
- 9.36 A Managing Director's appointment ends immediately any of the following happens:
- 9.36.1 If they cease to be a Director by operation of this constitution or the law.
- 9.36.2 If their employment contract with the Company ends or is terminated.
- 9.37 Subject to the terms of their employment contract with the Company, a Managing Director's remuneration may be fixed by the Board by way of a salary (but not a commission or participation in profits).
- 9.38 To avoid doubt, the Board may appoint a person to serve as both Chief Executive Officer and Managing Director.

No power to appoint alternate

- 9.39 No Director has the power to appoint a person to be an alternate Director in their place, and a Director must not at any time purport to do so.

10 DIRECTORS' REMUNERATION

Determination of fees

- 10.1 The Board may resolve to remunerate an Independent Director for their service up to an amount (if any) specified in a Remuneration Policy. Such fees will accrue from day to day.
- 10.2 Subject to clause 10.1, a Director is not entitled to remuneration for their service as a Director.

Additional services rendered

- 10.3 A Director may be paid a fee in return for any extra services actually rendered to the Company in a professional or technical capacity (other than within their ordinary duties as a Director):
- 10.3.1 with the prior approval of the Board; and
 - 10.3.2 where the amount payable does not exceed a commercially reasonable amount.
- 10.4 A fee payable in accordance with clause 10.3 may be paid either by fixed sum or salary determined by the Board.

Payment for expenses

- 10.5 Each Director must be reimbursed for out-of-pocket expenses reasonably and properly incurred by the Director in connection with Company business (including travel and accommodation expenses). Alternatively, the Company may pay such amounts on the Director's behalf.

11 POWERS OF THE BOARD

- 11.1 The Board may exercise all those powers of the Company as are not, by the Corporations Act or by this constitution, required to be exercised by the Members in general meeting or otherwise.

12 PROCEEDINGS OF DIRECTORS

Convening of Board meetings

- 12.1 A Director may at any time, and a Secretary must on the requisition of a Director, convene a Board meeting.

Notice of Board meetings

- 12.2 The person convening a Board meeting must ensure that notice of the Board meeting is given to each Director at least 48 hours before the meeting or at another time determined by Board resolution, except:

12.2.1 All Directors may waive in writing the required period of notice for a particular meeting.

12.2.2 It is not necessary to give a notice of a meeting of Directors to a Director who is out of Australia or who has requested and been given leave of absence by the Board.

Mode of meeting for Directors

12.3 A Board meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. Anyone using such technology is taken to be present in person at the Board meeting. The Board may otherwise regulate its meetings as the Board thinks fit.

Quorum at Board meetings

12.4 At a Board meeting, the number of Directors whose presence is necessary to constitute a quorum is equal to one half of the number of Directors holding office at the time (rounded up to the next highest whole number) or another number determined by Board resolution from time to time.

12.5 If the number of Directors is reduced below the number necessary for a quorum of Directors, the continuing Director or Directors may act only to:

12.5.1 appoint additional Directors to the number necessary for a quorum in accordance with clause 12.4; or

12.5.2 convene a general meeting of the Company.

Voting at Board meetings

12.6 The Board must determine any questions arising at a Board meeting by a majority of votes of Directors present and voting.

Appointment of Chair and Deputy Chair prior to Transition Date

12.7 Each of the Chair and Deputy Chair of the Board on the date this constitution is adopted will continue to hold those offices until the cessation of the Transitional Board Phase or until such time as they resign from the relevant office or are removed from that office and replaced by Board resolution, whichever occurs sooner.

Appointment of Chair and Deputy Chair following Transition Date

12.8 The Board may elect a Director as Chair to chair Board meetings, as follows:

12.8.1 The first Chair must be a Region Director:

- (a) must be elected as Chair by the Directors present and voting at the first Board meeting of the Company held after the Transition Date; and

- (b) will hold office as Chair until the commencement of the first Board meeting following the close of the First AGM.
- 12.8.2 Subsequently, the Board will by resolution elect a Director as Chair at the first Board meeting following the First AGM or the most recent AGM (whichever is applicable), to hold office for a maximum period of approximately one year until the commencement of the first Board meeting following the next AGM.
- 12.8.3 Despite the above, the Board may by resolution remove the Chair at any time and elect another Director as Chair, provided that until the close of the Fourth AGM, only a Region Director may serve as Chair.
- 12.9 The Board may elect a Director as Deputy Chair as follows:
 - 12.9.1 The first Deputy Chair:
 - (a) must be elected as Deputy Chair by the Directors present and voting at the first Board meeting of the Company held after the Transition Date; and
 - (b) will hold office as Deputy Chair until the commencement of the first Board meeting following the close of the First AGM.
 - 12.9.2 Subsequently, the Board will by resolution elect a Director as Deputy Chair at the first Board meeting following the First AGM or the most recent AGM (whichever is applicable), to hold office for a maximum period of approximately one year until the commencement of the first Board meeting following the next AGM.
 - 12.9.3 Despite the above, the Board may by resolution remove the Deputy Chair at any time and elect another Director as Deputy Chair.

Term of office for Chair and Deputy Chair following Transition Date

- 12.10 A retiring Chair or Deputy Chair is eligible for re-election, save that a Chair or Deputy Chair will be ineligible for re-election after holding office for three consecutive terms of approximately one year each (as determined in accordance with clause 12.8 or clause 12.9, as applicable). To avoid doubt:
 - 12.10.1 Each Chair and each Deputy Chair (if any) is eligible to be re-elected for only two additional consecutive terms as Chair or Deputy Chair (as applicable) immediately following their initial term as Chair or Deputy Chair (as the case may be), even if their initial term of office is less than one year.
 - 12.10.2 Clause 12.10 does not prevent a former Deputy Chair from subsequently being elected or appointed as Chair in accordance with this constitution.
 - 12.10.3 Without limiting clause 12.10.2, clause 12.10 does not prevent a former Chair or Deputy Chair from subsequently being elected or appointed as Chair or Deputy Chair in accordance with this constitution, provided that a period of at

least 12 consecutive calendar months has passed since the person last held the office of Chair or Deputy Chair.

Chairing Board meetings

- 12.11 If no Chair is elected, or if at any meeting the Chair is not present within ten minutes after the time appointed for holding the meeting or is unwilling to act, the Deputy Chair may act as chair of that meeting.
- 12.12 If no Chair or Deputy Chair is elected, or if at any meeting the Chair and the Deputy Chair are not present within ten minutes after the time appointed for holding the meeting or are unwilling to act, the Directors present must choose one of their number to chair that meeting.

Chairperson's vote at Board meetings

- 12.13 In the case of an equality of votes at a Board meeting, the Chair (or other Director chairing the meeting in accordance with clause 12.11 or clause 12.12) does not have a second or casting vote in addition to their deliberative vote as a Director, and the motion fails.

Participation where Directors interested

- 12.14 A Director may be present and may vote on a matter before the Board if and to the extent that they are permitted to do so under the Corporations Act.
- 12.15 If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting then one or more of the Directors (including those who have the disqualifying interest in the matter) may call a general meeting of the Company and the general meeting may pass a resolution to deal with the matter.
- 12.16 Subject to compliance with the Corporations Act, a Director may execute or participate in the execution of a document by or on behalf of the Company.

No disqualification

- 12.17 Subject to compliance with the Corporations Act, a Director or any entity in which the Director has a direct or indirect interest (as applicable) may:
- 12.17.1 Enter into a contract or arrangement with an Associated Party.
- 12.17.2 Hold any office or place of profit (other than auditor) in an Associated Party.
- 12.17.3 Act in a professional capacity (or be a member of a firm that so acts) other than as auditor of an Associated Party.
- 12.18 Despite the fiduciary nature of a Director's office and the Director's fiduciary obligations:
- 12.18.1 Any contract or arrangement entered into in accordance with clause 12.17.1 by the Director or any entity in which the Director has a direct or indirect interest is not invalid or voidable

12.18.2 A Director may do any of the things specified in clause 12.17 without any liability to account to the Company or any other person for any direct or indirect benefit accruing to the Director or any entity in which the Director has a direct or indirect interest.

Exercise of rights

12.19 If the Company holds or owns membership, shares or other interests in another body corporate, trust or other entity, the Board may exercise any and all voting rights conferred by the membership, shares or interests in any manner the Board considers fit.

Delegation of powers

12.20 The Board may delegate any of its powers to any person, as the Board sees fit. This includes delegating any of the Board's powers to (as the Board sees fit):

12.20.1 Committees consisting of Directors or other persons (as the Board sees fit).

12.20.2 Advisory Councils.

12.21 An authorised delegate's exercise of a power in accordance with this constitution is to be treated as the exercise of that power by the Board.

12.22 A delegate must conform to the directions of the Board in the exercise of any powers delegated to the delegate.

Advisory Councils

12.23 Within 10 business days after the Transition Date, the Board must promptly establish five advisory councils, each associated with a single Region (**Advisory Councils**). The Board must do so using a Charter for each Advisory Council that is consistent with the requirements of this constitution.

12.24 If the number of Regions changes, the Board must do all things within the Board's power to ensure that, promptly after the change, there is one (and only one) Advisory Council per Region.

12.25 Each Advisory Council will have the primary functions of maintaining the engagement of Members located in the relevant Region, providing advice and recommendations to the Board to promote the successful operation of the Company and exercising any powers granted to the Advisory Council under this constitution or by delegation from the Board, among any other functions and/or powers set out in this constitution or otherwise as determined by the Board from time to time (any such determination not being inconsistent with this constitution).

12.26 A Member will be entitled to participate in one or more Advisory Councils if the Member carries on its operations or has its registered office in the applicable Region, subject to any additional rules that may be set out in an Advisory Council's Charter.

12.27 The Board may only dissolve an Advisory Council with the prior approval of the Members in general meeting. If the Board proposes the dissolution of an Advisory

Council, the Board must provide the Members with reasons for the proposed dissolution. If the Members in general meeting approve the dissolution of an Advisory Council, the Board must promptly establish a replacement Advisory Council for that Region.

- 12.28 The Board must ensure that each Advisory Council is provided with adequate resources to perform its functions, as determined by the Board in its absolute discretion. This may include the Company assigning employees to assist with the administration and operation of one or more Advisory Councils.
- 12.29 Subject to clauses 12.23 to 12.28, the Board may:
- 12.29.1 Specify in writing from time to time the Charter of an Advisory Council, including the Advisory Council's role and functions, and amend, revoke or replace the Charter from time to time, save that the Charter must be consistent with the requirements of this constitution. To avoid doubt, the Charter for each Advisory Council need not be identical.
 - 12.29.2 Determine which Advisory Councils a Member is entitled to participate in from time to time.
 - 12.29.3 Delegate to an Advisory Council such of the Board's powers as the Board considers necessary or prudent to promote the effective conduct of the Advisory Council's activities, including revoking or amending any such delegation.
 - 12.29.4 Determine the rules governing the election and procedures of the natural persons who will be members of an Advisory Council from time to time (**Councillors**).
 - 12.29.5 Determine the rules governing the selection of a Region Director from time to time by the relevant Advisory Council.
- 12.30 A Councillor is not entitled to remuneration from the Company or the relevant Advisory Council in respect of their office as Councillor.
- 12.31 To avoid doubt, an Advisory Council:
- 12.31.1 Has only those powers specified in this constitution or as the Board may delegate to the Advisory Council from time to time (including under the Advisory Council's Charter).
 - 12.31.2 Has no power to direct any individual Director with respect to the exercise of the Director's powers or the discharge of the Director's duties, or direct the Board with respect to the Board's exercise of its powers.
 - 12.31.3 Is not a Member and does not enjoy any of the rights or privileges of membership under this Constitution or at law.
- 12.32 Except as provided in a direction of the Board (including if applicable the Charter of the relevant Advisory Council), the meetings and proceedings of an Advisory Council's

Councillors must be governed by the provisions of this constitution, in so far as they are applicable, as if meetings and proceedings of the Advisory Council are meetings and proceedings of the Board. To avoid doubt, this includes clause 12.40 with respect to resolutions of committees.

- 12.33 All references to an "Advisory Council" in this constitution (other than in this clause 12 and clause 21.1) will be of no force or effect unless the Board has established at least one Advisory Council and at least one Advisory Council remains in existence at the relevant time.

Board committees

- 12.34 The Board may in its absolute discretion establish one or more committees to provide advice and recommendations to the Board on specified matters (among any other functions determined by the Board, which may but need not include the exercise of power delegated by the Board in accordance with clause 12.20).

- 12.35 The Board may, with respect to a committee:

12.35.1 Specify in writing from time to time the terms of reference and functions of the committee.

12.35.2 Appoint such persons as the Board considers appropriate to the committee (including, if thought fit, one or more Directors), and remove any such person from the committee at any time by written notice or otherwise in accordance with the terms of reference of that committee.

12.35.3 Specify the period and conditions (including as to remuneration, if any) of any such appointment to the committee.

12.35.4 Terminate the committee at any time.

Proceedings of committees

- 12.36 Except as provided in a direction of the Board (including if applicable the terms of reference of the relevant committee), the meetings and proceedings of a committee formed by the Directors and/or other persons must be governed by the provisions of this constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Board. To avoid doubt, this includes clause 12.40 with respect to resolutions of committees.

Validity of acts of Directors etc

- 12.37 All acts done by a Board meeting or of a committee of (or including) Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

Minutes

- 12.38 The Board must cause minutes of all proceedings of general meetings, of Board meetings and of committees formed by the Directors to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- 12.39 The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

Resolution in writing

- 12.40 A resolution in writing signed or consented to by all Directors (excluding any Director who has requested and been given leave of absence by the Board, any Director who disqualifies himself or herself from considering that resolution and any Director who would be prohibited from voting on that resolution under the Corporations Act) is to be treated as a determination of the Board passed at a Board meeting duly convened and held. The resolution is not invalidated if it is also consented to by a Director who is not entitled to vote.
- 12.40.1 A resolution in writing may consist of several documents in like form, each signed by one or more Directors, and if so signed it takes effect on the latest date on which a Director signs one of the documents.
- 12.40.2 Alternatively, a resolution in writing may consist of each Director affirming by electronic means that the Director approves the proposed resolution, and a document produced by mechanical or electronic means that purports to be from a Director is considered a document in writing signed by the Director and is deemed to be signed when received in readable form.
- 12.40.3 A document generated by electronic means which purports to be:
- (a) a copy of a resolution of Directors is to be treated as a resolution in writing; and
 - (b) a copy of a signature is to be treated as signed by the Director whose signature appears to be on it.

13 SECRETARY

- 13.1 The Board may appoint one or more Secretaries and may at any time terminate the appointment or appointments.
- 13.2 The Board may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this constitution, the Corporations Act or by any other statute to be carried out by the secretary of the Company.

14 CHIEF EXECUTIVE OFFICER

- 14.1 The Board may from time to time appoint a person to the position of Chief Executive Officer for the period and on the terms (including as to remuneration and whether the position will be full-time or part-time) as the Board sees fit.
- 14.2 The Board may from time to time appoint another person to act temporarily as Chief Executive Officer if:
- 14.2.1 the Chief Executive Officer is absent from duty or from Australia or is (in the Board's determination) incapable of acting as the Chief Executive Officer; or
 - 14.2.2 the position of Chief Executive Officer is vacant.
- 14.3 Subject to the law, the Board may terminate the appointment of the Chief Executive Officer. To avoid doubt, the Company in general meeting has no power to terminate the appointment of the Chief Executive Officer or appoint a person to the position of Chief Executive Officer.
- 14.4 To avoid doubt, the Board may appoint a person to serve as both Managing Director and Chief Executive Officer.

15 INDEMNITY AND INSURANCE

Indemnity

- 15.1 Every officer and past officer of the Company may be indemnified by the Company, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in defending an action. For the avoidance of doubt, the ways in which the Company may do so include by entering into an "Indemnity, Insurance and Access Deed" (or similar contract) from time to time with one or more officers or past officers of the Company.

Insurance premiums

- 15.2 The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company to the fullest extent permitted by law. For the avoidance of doubt, the ways in which the Company may do so include by entering into an "Indemnity, Insurance and Access Deed" (or similar contract) from time to time with one or more officers or past officers of the Company.

16 EXECUTION OF DOCUMENTS

Execution of documents

- 16.1 The Company may execute a document in any manner permitted by the Corporations Act or at general law.

17 GIFT FUND REQUIREMENTS

Company to maintain a Gift Fund

17.1 If the Company wishes to be a deductible gift recipient within the meaning of the ITAA97 and to the extent required by law, the Company must maintain at least one Gift Fund in accordance with this clause 17.

Rules applying to the Gift Fund

17.2 The following rules apply to any Gift Fund established and maintained by the Company:

17.2.1 The Gift Fund must have a name.

17.2.2 The Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations.

17.2.3 The Company must maintain a separate bank account for the Gift Fund.

17.2.4 The following must be credited to the Gift Fund:

(a) All gifts of money or property to the Company for the Principal Purpose.

(b) All money or property received by the Company because of those gifts.

17.2.5 No other money or property may be credited to the Gift Fund.

17.2.6 The Company must use any gifts, money or property of the kind referred to in clause 17.2.4 only for the Principal Purpose.

Winding up of Gift Fund

17.3 Despite clause 18, if the Company wishes to wind up a Gift Fund or the Company's deductible gift recipient endorsement is revoked (whether or not the company is to be wound up), any surplus Gift Fund must be transferred to one or more charities determined by the Board:

17.3.1 with charitable purpose(s) similar to, or inclusive of, the object in clause 2;

17.3.2 which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company; and

17.3.3 that is or are deductible gift recipients within the meaning of the ITAA97.

17.4 To avoid doubt, if a Gift Fund operated by the Company is wound up but the Company remains endorsed as a deductible gift recipient and operates any other gift fund in accordance with this clause 17, any surplus Gift Fund that is being wound up may be transferred to any other charitable gift fund operated by the Company.

18 SURPLUS ASSETS ON WINDING UP OR DISSOLUTION

18.1 If the Company is wound up, any surplus property must not be distributed to a Member or a former Member, even if the Member is a charity described in clause 18.2.

18.2 Subject always to clause 17.3, any court order, the Corporations Act and any other applicable law, upon the winding up or dissolution of the Company any surplus property that remains after satisfaction of all debts and liabilities must be distributed to one or more charities:

18.2.1 that is an institution that may be registered under section 149C of the *Taxation Administration Act 2001* (Qld);

18.2.2 that is an institution the Commissioner is satisfied has a principal object or pursuit fulfilling a charitable object or promoting the public good; or

18.2.3 for a purpose the Commissioner is satisfied is charitable or for the promotion of the public good,

as determined by ordinary resolution of the Members in general meeting at or before the time of winding up or dissolution of the Company and, in default of any such determination, by the Supreme Court of the State or Territory in which the Office is located.

19 ACCOUNTS, AUDIT AND RECORDS**Accounts**

19.1 The Board must cause proper accounting and other records to be kept in accordance with the ACNC Act or as otherwise required by law.

Reports

19.2 To the extent required by the ACNC Act or otherwise required by law, the Board must cause the company to:

19.2.1 prepare financial reports;

19.2.2 prepare directors' reports;

19.2.3 notify each Member of the Member's right to receive reports from the Company; and.

19.2.4 provide members with reports, in a form and within such timeframe,

as required by the ACNC Act or otherwise required by law.

Audit

- 19.3 A registered company auditor must be appointed. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act or as otherwise required by law.

Rights of inspection

- 19.4 Subject to the law:
- 19.4.1 The Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members, and a Member does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in general meeting.
- 19.4.2 Despite clause 19.4.1, the Board may refuse access to a document where the Board (acting reasonably) considers that such access would or would be likely to cause the Company to lose the benefit of any form of evidentiary privilege, including legal professional privilege.

20 NOTICES**Persons authorised to give notices**

- 20.1 A notice by either the Company or a Member in connection with this constitution may be given on behalf of the Company or Member by a solicitor, director, company secretary or other authorised officer of the Company or Member.
- 20.2 The signature of a person on a notice given by the Company may be written, printed or stamped, among any other methods of signing permitted by law (including through the use of technology).

Method of giving notices

- 20.3 In addition to the method for giving notices permitted by law, a notice by the Company to a Member in connection with this constitution may be given to the Member by any of the following means:
- 20.3.1 By delivering it to a street address of the Member.
- 20.3.2 By sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the Member.
- 20.3.3 By sending it by email to the email address of the Member.
- 20.4 Clause 20.3 does not limit a Member's right under the Corporations Act to make an election or ad hoc request regarding how such documents be sent to them.

20.5 In addition to the method for giving notices permitted by law, a notice by a Member to the Company in connection with this constitution may be given to the Company by any of the following means:

20.5.1 By delivering it to the street address of the Company.

20.5.2 By sending it by prepaid ordinary post (airmail if outside Australia) to the street or postal address of the Company.

20.5.3 By sending it by email to the email address of the Company.

Addresses for giving notices to Members

20.6 The street address or postal address of a Member is the street or postal address of the Member shown in the Register.

20.7 The email address of a Member is the number which the Member may specify by written notice to the Company in accordance with law as the email address to which notices may be sent to the Member.

Address for giving notices to the Company

20.8 The street and postal address of the Company is the Office.

20.9 The email address of the Company is the email address which the Company may specify by written notice to the Members as the email address to which notices may be sent to the Company.

Time notice of meeting is given

20.10 A notice of meeting given in accordance with this constitution is to be taken as given, served and received at the following times:

20.10.1 If delivered in writing to the street address of the addressee, at the time of delivery.

20.10.2 If it is sent by post to the street or postal address of the addressee, on the second business day after posting.

20.10.3 If sent by email to the email address of the addressee, on the earlier of the sender receiving an automated message confirming delivery or, provided no automated message is received stating that the email has not been delivered, three hours after the time the email was sent by the sender, such time to be determined by reference to the device from which the email was sent.

Time other notices are given

20.11 A notice given in accordance with this constitution is to be taken as given, served and received at the following times:

20.11.1 If delivered in writing to the street address of the addressee, at the time of delivery.

- 20.11.2 If it is sent by post to the street or postal address of the addressee, on the third (ninth if outside Australia) business day after posting.
- 20.11.3 If sent by email to the email address of the addressee, when the sender's email system generates a message confirming successful transmission of the entire notice or one hour after the time it is sent (as recorded by the sender's device) whichever occurs first, unless the sender receives an automated message that the email has not been delivered or within eight hours after the transmission the recipient informs the sender that it has not received the entire notice.

Proof of giving notices

- 20.12 A certificate in writing signed by a Director or a Secretary stating that a notice, document or other communication was sent to a Member by delivery, post or electronic transmission on a particular date is conclusive evidence that the notice, document or other communication was sent on that date.

Persons entitled to notice of meeting

- 20.13 Notice of every general meeting must be given by a method authorised by this constitution to all of the following persons:
- 20.13.1 Every Member.
- 20.13.2 Every Director.
- 20.13.3 The auditor for the time being of the Company, if any.
- 20.14 No other person is entitled to receive notices of general meetings.

21 DEFINITIONS AND INTERPRETATION

Definitions

- 21.1 In this constitution the following definitions apply:

ACNC means the Australian Charities and Not-for-profits Commission.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and for the avoidance of doubt includes any 'governance standards' prescribed under any related regulations.

Advisory Council has the meaning given in clause 12.23.

AGM means an annual general meeting of the Company.

Application has the meaning given in clause 3.12.

Asset means any asset owned or leased by a Member or for which a Member otherwise has responsibility (whether or not sole responsibility) and includes:

- (a) Underground assets.
- (b) Above-ground assets.
- (c) Significant flora.
- (d) Environmental assets.
- (e) Culturally significant sites.
- (f) Significant areas supporting fauna.

To avoid doubt, it is intended that Members will nominate Assets to be included in the Referral Service.

Asset owner means an Organisation that owns, leases or otherwise has responsibility for something that would be an Asset, if it was owned or leased by a Member or a Member otherwise had responsibility for it, and **non-Asset owner** means any other person.

Associated Party means each of the following:

- (a) The Company.
- (b) Any Related Body Corporate of the Company.
- (c) Any other body corporate, trust or entity promoted by the Company or in which the Company has an interest of any kind.

Board means Directors acting as the board of the Company.

Candidate has the meaning given in clause 9.14.2.

Chair means the Director elected under clause 12.8 to preside as chairperson at Board meetings for the time being.

Charter means a document (by whatever name called) setting out the terms of reference for an Advisory Council.

Chief Executive Officer has the meaning given in clause 14.

Company means Before You Dig Australia Ltd ACN 089 413 650.

Commissioner means the Commissioner of State Revenue (Qld).

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

Councillor has the meaning given in clause 12.29.4.

Deputy Chair means the Director elected under clause 12.9 to preside as chairperson at Board meetings (in the Chair's absence) for the time being.

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

Existing Director means a Director who holds office at the date of adoption of this constitution by the Members.

Fees has the meaning given in clause 4.1.

First AGM means the first annual general meeting of the Company held after the date on which this constitution is adopted, anticipated to be held during the 2022 calendar year.

Fourth AGM means the fourth annual general meeting of the Company held after the date on which this constitution is adopted, anticipated to be held during the 2025 calendar year.

Gift Fund means a fund that is maintained for the Principal Purpose.

Independent means a person who:

- (a) does not occupy, and has not recently occupied, a position in any Member or a State Entity, including a current officer or employee of, or consultant to, a Member or a State Entity; and
- (b) does not occupy, and has not recently occupied, a position in any entity that primarily operates in an Industry Area (other than non-Asset owner), including a current officer or employee of, or consultant to, an entity that primarily operates in an Industry Area (other than non-Asset owner).

Independent Director has the meaning given in clause 9.23.

Industry Area means any of the following, each being an industry area in which one or more Members operates:

- (a) Electricity.
- (b) Gas.
- (c) Local Councils.
- (d) Telecommunications.
- (e) Water.
- (f) non-Asset owner.

Industry Director has the meaning given in clause 9.27.

Initial Member means a person who is conditionally admitted to membership prior to the Transition Date in accordance with clause 3.2.2.

Insolvency Event means, in relation to a Member, and subject to the Corporations Act in respect of a Member that is a company registered under the Corporations Act, anything

that reasonably indicates that there is a significant risk that the Member is or will become unable to pay its debts as they fall due. This includes any of the following (as applicable):

- (a) A meeting of the Member's creditors being called or held.
- (b) A step being taken to wind the Member up.
- (c) A step being taken to have a receiver, receiver and manager, administrator, liquidator or provisional liquidator appointed to the Member or any of its assets or such an appointment taking place.
- (d) The Member entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors.
- (e) The Member ceases or threatens to cease to carry on its main business.

ITAA 97 means *Income Tax Assessment Act 1997* (Cth).

Managing Director means a natural person appointed to that office by the Board under clause 9.34.

Member means a person whose name is entered in the Register as a member of the Company.

Office means the registered office of the Company.

Organisation means a single legal person that is not a natural person. For the avoidance of doubt, this includes a company registered under the Corporations Act and an incorporated association or other body corporate established or registered under another Act of Parliament, but excludes a partnership, trust, unincorporated association, sole trader or other individual human being.

Principal Purpose means the purposes of the Company as reflected in the object of the Company specified in clause 2, or any of those purposes.

Referral means a notification in the form of a request for planning information from the Company to Asset owners regarding proposed works near relevant Assets, triggered by an enquiry submitted to the Referral Service by an end user.

Referral Fees Policy means the policy of that title as may be adopted, amended and replaced by the Board from time to time that specifies:

- (a) The "per Referral" fees that may be payable by Members in addition to their annual subscriptions under clause 4.1. This fee may be based upon the number of Referrals arising from the Referral Service received by that Member in the relevant 12 month period, among any other criteria that the Board may consider relevant, and may be tiered.

- (b) Due dates for payment and billing arrangements for such fees, including whether alternative fee arrangements such as multi-year negotiated arrangements may be permitted for certain Members.
- (c) Such other matters as the Board may consider relevant.

Referral Service means the service offered by the Company to third parties to prevent injury and reduce damage to Assets.

Region means a geographic region in which one or more Members carries on its operations or has its registered office, as may be determined by the Board from time to time (provided that there may never be less than five Regions). As at the date this constitution is adopted, the five Regions are:

- (a) New South Wales and the Australian Capital Territory.
- (b) Queensland.
- (c) South Australia and the Northern Territory.
- (d) Victoria and Tasmania.
- (e) Western Australia.

Region Director has the meaning given in clause 9.7.1.

Register means the register of Members kept by the Company under the Corporations Act.

Registered Entity means an entity that is registered under the ACNC Act.

Related Body Corporate has the meaning given in the Corporations Act.

Remuneration Policy means a policy setting out the permitted remuneration of Independent Directors, as may be approved by the Members in general meeting from time to time, and which may set out:

- (a) The relevant stipend or sitting fees payable, which may include an additional stipend or fee that is payable to an Independent Director if they are also the Chair.
- (b) The frequency of payment.
- (c) Whether any automatic indexation of fees may occur without requiring further approval of the Members in general meeting.

Related Body Corporate has the meaning given in the Corporations Act.

Seal means, if the Company has one, the common seal of the Company.

Second AGM means the second annual general meeting of the Company held after the date on which this constitution is adopted, anticipated to be held during the 2023 calendar year.

Secretary means a person appointed to perform the duties of a secretary of the Company in accordance with clause 13.

Skills Matrix means any matrix of competencies, skills and/or experience or equivalent document (if any) adopted by the Board from time to time that specifies the desired range of competencies, skills and/or experience to be demonstrated by the Directors and the Board for the time being, taking into account the Company's needs and objectives, the Principal Purpose and other relevant matters at the time.

State Entity means any of the following:

- (a) Dial Before You Dig NSW/ACT Incorporated ABN 75 665 818 088.
- (b) Dial Before You Dig (QLD) Ltd ACN 609 754 387.
- (c) Dial Before You Dig SA/NT Incorporated ABN 65 750 941 241.
- (d) Dial Before You Dig VIC/TAS ACN 126 449 714.
- (e) Dial Before You Dig WA Ltd ACN 095 617 066.

Subsequent Board Phase has the meaning given in clause 9.1.

Subsequent Membership Phase has the meaning given in clause 3.1.

Termination Event means any of the following:

- (a) An Insolvency Event occurs in respect of the Member.
- (b) The deregistration or other dissolution of that Member.

Transition Date means 1 July 2022 or a date determined by Board resolution, whichever is the later.

Transitional Board Phase has the meaning given in clause 9.1.

Transitional Membership Phase has the meaning given in clause 3.1.

Third AGM means the third annual general meeting of the Company held after the date on which this constitution is adopted, anticipated to be held during the 2024 calendar year.

Interpretation

21.2 In this constitution, unless the context otherwise requires:

- 21.2.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate

legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this constitution.

- 21.2.2 A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.
- 21.2.3 A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this constitution.
- 21.2.4 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
- 21.2.5 A word which indicates the singular indicates the plural, a word which indicates the plural indicates the singular, and a reference to any gender indicates the other genders.
- 21.2.6 An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority.
- 21.2.7 A reference to 'dollars' or '\$' means Australian dollars.
- 21.2.8 References to the word 'include' or 'including', or to the word 'exclude' or 'excluding', are to be interpreted without limitation.
- 21.2.9 A reference to a time of day means that time of day in the place where the Office is located.
- 21.2.10 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located.
- 21.2.11 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 21.2.12 A term of this constitution which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

References to this constitution

- 21.3 A reference to this constitution, where amended, means this constitution as so amended.

Replaceable rules

- 21.4 Each of the provisions of the Corporations Act which would but for this clause apply to the Company as a replaceable rule within the meaning of the Corporations Act are displaced and do not apply to the Company.

Application of Corporations Act

- 21.5 Unless the context otherwise requires,
- 21.5.1 An expression used but not defined in this constitution has the same meaning given in the Corporations Act.
- 21.5.2 Where an expression referred to in clause 21.5.1 has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as the relevant clause of this constitution, the expression has the same meaning as in that provision.
- 21.6 Subject to clause 21.4, for so long as the Company is a Registered Entity the provisions in Part 2G.2 and Part 2G.3 of the Corporations Act about meetings, resolutions and minutes are incorporated into this constitution by reference as if they are repeated in full (excluding any provisions about offences and penalties). To the extent that the ACNC Act or any law or binding regulation of the ACNC applies to the Company and this conflicts with one or more provisions in Part 2G.2 and Part 2G.3 of the Corporations Act, the Company must comply with (as applicable) the ACNC Act or that law or binding regulation, save that it is expressly intended by the Members that the Company must hold an AGM at least once in each calendar year and within five months after the end of its financial year.
- 21.7 For so long as the Company is a Registered Entity, and to the extent required by law, the Company must meet the ACNC's "Governance Standards".