

**THE
CONSTITUTION
OF
COMMON EQUITY HOUSING LTD.
ABN 97 006 546 658**



NOVEMBER 2007

THE CONSTITUTION

CONTENTS

Clause Title	Clause No	Commencing Page
Definitions	1	1
Objects	2	2
Powers	3A	2
Not act as Trustee	3B	3
Distribution of Assets	4	3
Limited Liability	5	4
Share Capital	6	4
Share Certificates	7	6
Transfer of Shares	8	6
Alterations in Capital	9	7
General Meetings	10	7
Proceedings at General Meetings	11	8
Votes of Shareholders	12	9
Alteration of Constitution	13	10
Directors	14	10
Managing Director	15	14
Proceedings of Directors	16	15
Powers of Directors	17	17
Secretary	18	17
Minutes	19	17
The Seal	20	18
Cheques, Bills etc.	21	18
Reserves	22	18
Dividends	23	18
Accounts	24	18
Inspection of Records	25	19
Auditors	26	19
Serving of Notices	27	19
Indemnity	28	20
Arbitration	29	21
Interpretation of this Constitution	30	21

**THE
CONSTITUTION
OF
COMMON EQUITY HOUSING LIMITED**



**A Public (Unlisted) Company having a Share
Capital and subject to Corporations Law**

The name of the Company is COMMON EQUITY HOUSING LIMITED.

1. DEFINITIONS

"Act" means the Corporation Act 2001 in form from time to time and any equivalent companies legislation applicable to the Company from time to time.

"Association" means any Association incorporated pursuant to the Association Incorporation Act 1981.

In this Constitution, unless there is something in the subject matter or context inconsistent with: -

"Company" means Common Equity Housing Ltd.

"Common Equity Rental Co-operative" or "CERC" means any Co-operative approved by the Office of Housing (OoH) or its Officers or Minister to be incorporated as a Common Equity Rental Co-operative pursuant to the Co-operatives Act 1996.

"Corporation" means any Company incorporated pursuant to Corporation Act 2001.

"Director of Housing" means the holder of such office appointed pursuant to the Housing Act 1983 of the State of Victoria.

"Investment Policy" shall mean the investment policy determined by the Board of Directors from time to time.

"In writing" means written, printed or typed or partly written, or partly typed, and includes lithography or any other substitutes for writing.

"Month" means calendar month.

"Objects" means those objects as referred to in Clause 2(a) of the Constitution of the Company.

"Special Resolution" shall have the meaning assigned thereto by Section 248 of the Act.

Words importing the singular number only, include the plural number and vice versa.

Words importing the masculine gender only, include the feminine gender.

Words importing persons include corporations.

2. OBJECTS

- (a) The principal object of the Company shall comprise the ownership or leasing of residential properties for leasing to Common Equity Rental Housing Co-operatives, incorporated pursuant to the Co-operatives Act of Victoria in order that housing assistance and Co-operative education may be provided to low income households.
- (b) Another object is the ownership or leasing of residential properties for leasing to Corporations, Associations or individuals in order that housing may be provided to low income persons and persons considered eligible by the Director of Housing.

3A. POWERS

For the purpose of achieving the objects the Company shall have the following powers:

- (a) To take and acquire by way of purchase, transfer, conveyance, option, mortgage, licence, assignment, exchange, lease, partition or otherwise, any real property of any tenure and any interest therein including all improvements thereon, fixtures, fittings, plant, machinery, equipment, materials, goods, chattels, and effects and any rights, easements, appurtenances, advantages, conveniences and concessions in connection therewith and to sell, grant options, mortgages, charge or otherwise encumber, licence, exchange, lease out or otherwise deal in the same, subject to the consent of the Director of Housing and subordinate persons or bodies nominated by the Director of Housing under Section 109 of the Housing Act 1983.
- (b) To pay all the associated costs of acquiring, owning, leasing, transferring, mortgaging, or otherwise dealing with real property.

- (c) To borrow or raise and secure the payment of money in such manner as the Company may think fit but subject to the consent of the Director of Housing under Section 109 of the Housing Act 1983.
- (d) To apply for and accept grants and loans of money from any Government or Authority whether Federal, State, or local, and enter into any arrangement or agreement with the same or with any public or governmental body that may seem conducive to the carrying out of the Company's objects and to obtain from any such government authority or body any rights, privileges or concessions which may be deemed advisable or of benefit.
- (e) To Provide training and support programs for Common Equity Rental Housing Co-operatives.
- (f) To intervene in the activities of Co-operatives in the interest of the Company, the Co-operative and individual shareholders, and the CERC program as a whole.
- (g) To accept, demand, and enforce payment of monies owed to the Company.
- (h) To take any gift of property or any other gift for the furtherance of the objects of the Company and establish a Gift Fund for this purpose.
- (i) To enter into joint ventures and contracts with any public or private entity and grant leases to and take leases from other entities.
- (j) To do all acts and things, and the execution of all documents and contracts as may be reasonably incidental to the achievement or furtherance of the objects aforesaid.

3B. NOT ACT AS TRUSTEE

The Company must not act as trustee for any other person or entity other than a Registered Agency under the Housing Act 1983 without the written approval of the Registrar under Sections 82 and 103 of that Act.

4. DISTRIBUTION OF ASSETS

- (a) The income and property of the Company whencesoever derived shall be applied solely towards the promotion of the objects of the Company as set forth in the Constitution, and no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the shareholders of the Company PROVIDED THAT nothing herein shall prevent the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company or to any shareholder of the Company in return for any services actually rendered to the Company.

- (b) If upon the winding up or dissolution of the Company there remains, after satisfaction of all debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the shareholders of the Company but shall be given or transferred to another organisation in Australia which is a public benevolent institution for the purposes of an Commonwealth taxation Act AND which is a registered Agency under the Housing Act 1983 approved by the Registrar under that Act with similar purposes AND which is not carried on for the purposes of profit or gain to its members, AND which shall prohibit the distribution of its or their income and property among its or their shareholders to an extent at least as great as is imposed on the Company under this Clause, such institution or institutions to be determined by the shareholders of the Company at or before the time of dissolution and in default thereof by a Justice of the Supreme Court of the State of Victoria or such other Judge of that Court as may have or acquire jurisdiction in the matter, and if and so far as effect cannot be given to the aforesaid provision, then to some charitable object.
- (c) If the Gift Fund is wound up or if the endorsement of the Company a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made.

5. LIMITED LIABILITY

The liability of the shareholders is limited.

6. SHARE CAPITAL

- (a) The nominal share capital of the Company is \$200 divided into 200 shares of \$1.00 each with power to increase such capital and to divide the shares in the capital for the time being, whether original or increased and whether before or after the issue thereof, into several classes, and to attach thereto respectively any preferential, deferred, qualified or special rights, privileges or conditions and with a special or without right of voting.
- (b) Until otherwise resolved by the shareholders, the capital of the Company shall be divided into classes as follows:
 - 15 of such shares shall be classified as “Directors’ Shares”, and the following provisions shall apply thereto:
 - (i) Directors’ Shares shall only be applied for, allotted, transferred or assigned to a person holding office as a Director at the time such application, allotment, transfer, or assignment is effected.

- (ii) The holder of a Director Share shall be entitled to receive notice of and attend at any general meeting of shareholders but shall not have any right to vote thereat subject always to the provisions of Clause 11.
 - (iii) The holder of a Director Share shall not be entitled to receive any distribution out of the income or capital whether surplus or otherwise of the Company and any resolution of the Company or the Directors determining that any distribution of income or capital whether divided or otherwise in favour of any Directors' Shares shall be absolutely void and of no effect.
- (c) 185 of such shares shall be classified as "Ordinary Redeemable Shares" and the following provision shall apply thereto:
 - (i) Such shares shall only be allotted to or held by a Co-operative, Association or Corporation subject to Clause 6 (e).
 - (ii) The holder of such shares shall have one vote for each of such shares as may be held.
 - (iii) No Co-operative, Association, or Corporation shall hold more than one such share.
 - (iv) The Directors may require such shares to be redeemed by the Company for any such Co-operative, Association or Company by notice in writing giving effect to such redemption at any time after the allotment thereof on the happening of any one or more of the following events:
 - 1. Insolvency or Receivership or Dissolution of the shareholder.
 - 2. The shareholder no longer holds a valid and current lease of land and buildings from the Company.
 - (v) The holder of Ordinary Redeemable Shares shall not be entitled to receive any distribution out of the income or capital whether surplus or otherwise of the Company and any resolution of the Company or the Directors determining that any distribution of income or otherwise in favour of the holder of any Director Share shall be absolutely void and of no effect.
- (d) All Directors' Shares shall be under the control of the Directors who may issue, allot, place under option or otherwise dispose of the same in such manner as shall ensure that the provisions of Clause (2) in the Constitution are complied with.
- (e) One (1) Ordinary Redeemable Share shall be allotted by the Directors to any Co-operative, Association or Corporation, from the time that any Co-

operative Association or Corporation occupies any land or building of the Company.

- (f) The Directors may in their discretion accept a surrender of shares by way of compromise of any question as to whether or not the same have been validly issued, or in any other case where a surrender is within the powers of the Company. Any shares so surrendered may be sold, or re-issued, or transferred to other shareholders in the same manner as forfeited shares.
- (g) Except as provided by Section 231 of the Act or as otherwise provided in the Clauses of the Company, the Company shall be entitled to treat the registered holder of any share as the absolute owner thereof, and accordingly shall not, except as ordered by a Court of Competent Jurisdiction or as by statute required, be bound to recognise any equitable or other claim to or interest in such share on the part of any other person.

7. SHARE CERTIFICATES

- (a) The Certificates of Title to shares shall be under the Seal of the Company and shall be in such form as the Directors may from time to time determine.
- (b) Every shareholder shall be entitled to one Certificate for the share registered in its name.
- (c) If any certificates be worn out or defaced then upon production and delivery thereof to the Company the Directors may order the same to be cancelled, and may issue a new certificate in lieu thereof, and if any certificate be lost or destroyed then upon application to the Company by the owner thereof in accordance with the provisions of Section 182 of the Act the Directors shall issue a duplicate certificate in lieu thereof.

8. TRANSFER OF SHARES

Shares in the Company may be transferred as follows:

- (a) A Director Share may be transferred by any person holding office as a Director to any other person who has been appointed as a Director of the Company, but not otherwise, and
- (b) In the case of Ordinary Redeemable Shares, the transfer may only be made to another Co-operative, Association or Corporation.
- (c) The instrument of transfer of any share shall be signed both by the Transferor and the Transferee, and the Transferor shall be deemed to remain the holder of such share until the name of the Transferee is entered in the shareholders' Register in respect thereof.

- (d) The instrument of transfer of any share shall be in writing, and shall be in such form as the Directors may from time to time prescribe or accept.

Subject to the provisions of Clause 8 (a) & 8 (b) the Directors may refuse to register any transfer of shares without assigning any reason therefore, and their decision shall be absolute.

- (e) Every instrument of transfer shall be left at the registered office for registration accompanied by the certificate of the shares to be transferred and such other evidence (if any) as the Directors may require to prove the title of the Transferor or his right to transfer the shares. The Directors may waive the production of any certificate upon evidence satisfactory to them of its loss or destruction.
- (f) No share shall be transferred to any person who is not a person qualified as a shareholder pursuant to Clause 6 hereof.

9. ALTERATIONS IN CAPITAL

- (a) The Company in general meeting may cancel shares which have not been taken or agreed to be taken by any person, or which have been forfeited, or redeemed, and diminish the amount of its share capital as may be deemed expedient.
- (b) The Company may from time to time increase the capital by the creation of new shares of such amount as may be deemed expedient.
- (c) All provisions of these Clauses shall apply to the shares in the new capital in the same manner in all respects as to the shares in the original capital of the Company.
- (d) The Company may from time to time by Special Resolution reduce its capital in any way permitted or authorised by the Act.

10. GENERAL MEETINGS

- (a) An Annual General Meeting of the Company shall be held in accordance with the provisions of the Act.
- (b) All General Meetings other than the Annual General Meeting shall be called 'Extraordinary General Meetings'.
- (c) The Directors may whenever they think fit, and shall when required under Section 249 (f) of the Act, convene an Extraordinary General Meeting of the Company.
- (d) Not less than twenty-one days notice of every General Meeting specifying the place day and hour of the meeting and the general nature of the business to be dealt with shall be given to the shareholders in the manner hereinafter provided.
- (e) Not less than twenty-one days notice of every General Meeting at which it is proposed by the Company to pass a special resolution as defined by the Law specifying the place day and hour of the meeting and the

intention to propose the resolution as a special resolution shall be given to the shareholders in the manner hereinafter provided or in such manner (if any) as may be prescribed by the Company in General Meeting.

- (f) With the consent of a majority in number of the shareholders entitled to attend and vote at a meeting, being a majority holding not less than ninety five per cent, in nominal value of the shares giving that right, a meeting may be convened by shorter notice than provided above.
- (g) The accidental omission to give such notice to any shareholders shall not invalidate any resolution passed at any such meeting.

11. PROCEEDINGS AT GENERAL MEETINGS

- (a) The business of any Annual General Meeting shall be to receive and consider the Balance Sheet and the Profit and Loss Account, the Reports of the Directors and of the Auditors, to elect Directors and any other officers in place of those retiring, (if any), and to transact any other business which under these Clauses may be transacted at any Annual General Meeting. All other business transacted at an Annual General Meeting and all business transacted at an Extraordinary General Meeting shall be deemed special.
- (b) The quorum for a general meeting shall be three shareholders or 25% of the shareholders (whichever is the greater number of shareholders) holding share to which are attached the right to vote, being entitled to vote and being present in person or by proxy, attorney or representative.
- (c) The Chairperson of Directors shall be entitled to take the chair at every General Meeting or if there be no Chairperson or if at any meeting he/she shall not be present at the time appointed for holding the meeting, the shareholders present and entitled to vote shall choose one of their number to be Chairperson.
- (d) If within thirty minutes after the time appointed for the meeting a quorum is not present, the meeting if convened upon a requisition shall be dissolved, but in any other case it shall stand adjourned to the same day in the next week at the same time and place, and if at such adjourned meeting a quorum is not present it shall stand adjourned to the same day in the next week at the same time and place, and if at such further adjourned meeting a quorum is not present the Directors shall be shareholders for the purposes of Clause 11 (b) and shall be deemed to have one vote for each share held by them.
- (e) Every question submitted to a meeting shall be decided in the first instance by a show of hands by shareholders entitled to vote and in the case of an equality of votes the Chairperson shall not have a second or casting vote either on a show of hands or upon a poll.

- (f) At any meeting, unless a poll is demanded by a shareholder entitled to vote or his proxy or attorney, an entry in the book to be kept of the proceedings of the Company signed by the Chairperson to the effect that any resolution has been carried or carried by a particular majority, shall be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution. The demand for a poll may be withdrawn.
- (g) If a poll be demanded it shall be taken in such manner and at such time and place as the Chairperson of the meeting directs, and either at once or after an interval or adjournment or otherwise, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.
- (h) No poll shall be demanded on the election of a Chairperson of a meeting, and a poll demanded on any question of adjournment shall be taken at the meeting and without adjournment.
- (i) The demand for a poll shall not prevent the continuation of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- (j) The Chairperson of a general meeting may, with the consent of the meeting, adjourn the same from time to time and place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

12. VOTES OF SHAREHOLDERS

- (a) Subject to any special terms as to voting upon which any shares be issued or may for the time being be held, on a show of hands every shareholder present shall have one vote, and upon a poll every shareholder present in person or by proxy or attorney shall have one vote for every share held by him.
- (b) Votes may be given either personally or by proxy or attorney or by a representative appointed.
- (c) A proxy may be appointed in writing under the hand of the appointer or his attorney or, if such appointer is a corporation, under its common seal or the hand of its attorney.
- (d) The instrument or writing appointing a proxy or representative and the power of attorney (if any) under which it is signed, or proof thereof to the satisfaction of the Directors, shall be deposited at the office at least twenty-four hours before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote.

- (e) A vote given in accordance with the terms of any writing appointing a proxy or power of attorney shall be valid notwithstanding the previous death of the principal, revocation of the proxy or power of attorney, or transfer of the shares in respect of which the vote is given if no intimation in writing of the death, revocation, or transfer shall have been received at the office before the meeting.
- (f) Any shareholder may by power of attorney duly executed in the presence of one witness at least, appoint an attorney to act on his behalf at all meetings of the Company, and such power of attorney, or proof thereof to the satisfaction of the Directors, shall before the attorney shall be entitled to act thereunder be produced for inspection at the office together with such evidence of the due execution thereof as the Directors may require, and such attorney may be authorised to appoint a proxy for the shareholder granting the power of attorney.
- (g) Any Co-operative or Association being a shareholder of the Company may by resolution of its Directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the Company or by any class of shareholders of the Company and the person so authorised shall be entitled to exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual shareholder of the Company.

13. ALTERATION OF CONSTITUTION

Any alteration to this Constitution may only be effected by a Special Resolution and only after giving notice to the Registrar in accordance with section 102 of the Housing Act 1983.

14. DIRECTORS

- (a) The number of Directors shall *be eleven (11)*.
- (b) The Directors shall comprise:
 - (i) Five (5) persons nominated by the Board and selected for the benefit of their technical expertise at law, accounting, social housing, real estate, finance, and other similar areas ('the Technical Directors').
 - (ii) Five (5) existing CERC members nominated by their shareholder CERC at least 28 days before the General Meeting elected by the shareholders at a General Meeting (the CERC Directors).
 - (iii) The person appointed by the Board to act as the Managing Director of the Company.

- (c) Each Director of the Company shall hold office until he or she dies, resigns, becomes disqualified under Clause 14 (m), is removed from the office under Clause 14 (n), or in the case of Directors appointed pursuant to Clause 14 (b) (ii) fails to be re-elected.
- (d) The nominations for the position of the Technical Directors to be made pursuant to Clause 14 (b) (i) shall be held at a meeting of the Board. The Board shall review the appointment of each of the Technical Directors as Directors every two (2) years after their appointment.
- (e) Elections for the position of the CERC Directors to be appointed pursuant to Clause 14 (b) (ii) shall be held at each Annual General Meeting. The term of the CERC Directors shall be two (2) years and at the end of the two (2) year term the CERC Directors shall retire from office (PROVIDED THAT such CERC Directors shall be eligible for re-election). The appointment of the CERC Directors shall be made as follows:
 - (f) At the Annual General Meeting in every *subsequent* year at least two (2) of the CERC Directors shall retire from office (PROVIDED THAT such CERC Directors shall be eligible for re-election) the two (2) CERC Directors to retire at such Annual General Meetings shall be those who have been longest in office since their last election but, as between persons who became CERC Directors on the same day, those to retire shall (unless they determine otherwise to agree amongst themselves) be determined by lot.
- (g) A Director shall hold one Director Share for so long as he holds office as a Director of the Company. Such share shall be allotted by the Directors within thirty days of the appointment of any person as a Director of the Company, save for a person appointed a Director by reason of a casual vacancy pursuant to Clause 14 (k) hereof, in which case the shareholding qualification aforesaid shall not be required to be observed until his appointment has been confirmed by the Annual General Meeting next succeeding the date of appointment to the casual vacancy.
- (h) A Director may serve the Company in any other capacity or hold any other office or place of profit under the Company except the office of auditor.
- (i) A Director may at any time resign his office by delivering written notice thereof to the Chairman of Directors, or the Managing Director, or Secretary, or leaving it at the office of the Company, or by tendering his written resignation at a meeting of the Directors.
- (j) The Director shall be paid out of funds of the Company by way of remuneration for their services such sum as the Company in general meeting may from time to time decide and such remuneration shall unless otherwise decided by the Company in general meeting be divided amongst the Directors at such time and in such proportion and manner

as they may decide. A Director may also be reimbursed for such travelling, out-of-pocket and other expenses incurred in connection with the affairs of the Company as the Directors consider reasonable.

- (k) Casual vacancies shall be filled in the following manner:
 - (i) Technical Directors nominated by the Board must be replaced by an alternative Board Nominee.
 - (ii) CERC Directors must be replaced by a nominee of the Board, and the nominee shall be determined by a majority vote of the Directors remaining on the Board.
- (l) Any CERC Directors appointed pursuant to Clause 14 (k) shall hold office only until the next following Annual General Meeting of the Company and shall then be eligible for re-election.
- (m) The continuing Directors may act notwithstanding any vacancy in their body but so that if the number falls below seven (7) the Directors shall not act except for the purpose of filling vacancies or convening general meetings.
- (n) The office of a Director shall be vacated if that person:
 - (i) Ceases to be a Director by virtue of the Act.
 - (ii) Becomes bankrupt or makes any arrangement or composition with his creditors generally.
 - (iii) Becomes prohibited from being a Director by reason of any order made under the Act.
 - (iv) 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.
 - (v) Resigns his office by notice in writing to the Company.
 - (vi) Is removed from office pursuant to Clause 14 (n).
 - (vii) Is removed by the person or body appointing him or her to such office.
 - (viii) Fails to attend three consecutive meetings of Directors without an acceptable explanation to the Board.
 - (ix) Fails to be holder of any share qualification for a period of 60 days after being appointed.
- (o) The Company may by ordinary resolution remove any elected Director before the expiration of his period of Office, and if thought fit by resolution appoint another Director in his place.

- (p) No Director shall be disqualified by his Office from holding any office or place of profit under the Company or under any Company in which this Company shall be a shareholder or otherwise interested, nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way directly or indirectly interested be avoided, nor shall any Director be liable to account to the Company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relations thereby established.
- (q) It shall be the duty of a Director who is in any way directly or indirectly interested in any contract or arrangement, or proposed contract or arrangement with the Company (and in particular any interest concerning the region of any proposal concerning the Company) to declare the nature of his interest at the meeting of the Directors at which the contract or arrangement is first taken into consideration if his interest then exists, or in any other case at the first meeting of the Directors held after the acquisition of his interest.
- (r) A general notice by a Director to the effect that he is a shareholder of any specified Company or Firm, and is to be regarded as interested in any contract which may after the date of such notice be made with the Company or Firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made.
 - (i) A Director shall not be deemed to be interested or to have been at any time interested in any contract or arrangement or proposed contract or arrangement relating to any loan to the Company merely by reason of the fact that he has guaranteed or joined in guaranteeing the repayment of such loan.
 - (ii) A Director shall not be entitled to vote upon any contract or transaction in which he may be directly or indirectly interested or upon any question arising in connection therewith and he may not attest the affixing of the Seal of the Company to any such contract or arrangement.
 - (iii) It shall also be the duty of a Director who holds any office or possesses any property the holding of which office or the possession of which property might whether directly or indirectly create duties or interests in conflict with his duties or interests as a Director of the Company, to declare at the first meeting of the Directors held after he becomes a Director (if he is already a Director) at the first meeting of the Directors held after he commenced to hold office or possess any such property as aforesaid the fact of his holding such office or his possession of such property and the nature, character, and extent of the conflict.
 - (iv) It shall be the duty of the Secretary to record in the Minutes of the meeting any declarations made or notices given by a Director as aforesaid.

15. MANAGING DIRECTOR

- (a) The Directors shall appoint such person as they see fit other than a member of a CERC to be the Managing Director of the Company either for a fixed period or without limitation as to the period for which such Managing Director is to hold office, and may from time to time (subject to provisions of any contract between such Managing Director and the Company) remove or dismiss that person from office, and if thought fit appoint another in that person's place. Subject to the production of a signed Consent, that person shall be entitled to be appointed a Director of the Company.
- (b) The Managing Director shall (subject to the provisions of any contract between him and the Company) be subject to the same provisions as to resignation and removal as the other Directors of the Company, and if he ceases to hold the office of the Director from any cause whatever, he shall ipso facto and immediately cease to be a Managing Director and vice versa. The position of the Managing Director shall not be subject to election as provided for in Clause 14 (b) (iii).
- (c) The remuneration of a Managing Director shall be fixed by the Directors, and may be by way of salary or allowance.
- (d) The Directors may from time to time:
 - (i) Entrust to and confer upon any Managing Director such of the powers exercisable under the Clauses of Association by the Directors as they may think fit.
 - (ii) Confer such powers for such time and to be exercised for such terms and objects and purposes and upon such terms and conditions and with such restrictions as they think expedient.
 - (iii) Confer such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf; and
 - (iv) From time to time revoke, withdraw, alter or vary all or any of such powers.

16. PROCEEDINGS OF DIRECTORS

- (a) The Directors may meet together for the dispatch of business adjourn and otherwise regulate their meetings as they think fit and decide the quorum necessary for the transaction of business and unless otherwise decided six (6) Directors, three of whom must be CERC Directors and three of whom must be Technical Directors shall be a quorum.
- (b) The Directors must elect a Chairperson who is a CERC Director to preside over their meeting and who is to hold this position for a period of one year. If at any meeting the Chairperson is not present at the time appointed for holding a meeting, the Directors present shall choose one of their number to be Chairperson of that meeting.
- (c) Questions arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes the Chairperson shall not have a second or casting vote.
- (d) A Director may at any time, and the Secretary upon request of a Director shall, summon a meeting of the Directors.
- (e) A meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities, powers and discretions by or under the Constitution of the Company for the time being vested in or exercisable by the Directors generally.
- (f) A resolution of the Directors in writing signed by all the Directors for the time being shall have the same force and effect as a resolution passed at a meeting of Directors, notwithstanding that such resolution shall not have been passed at a meeting of Directors.
- (g) The Directors may by resolution, power of attorney, or writing, delegate any of their powers to Committees consisting of such Director or Directors or to any person or persons as they think fit.
 - (i) Any Committee so formed or person or persons so appointed shall in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed on it or him by the Directors.
 - (ii) The meetings and proceedings of any Committee shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors so far as the same are applicable thereto.
- (h) All acts done at any meeting of the Directors, or by a Committee of Directors, or by any person acting as a Director, shall notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such Directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Director.

- (i) For the purposes of this Constitution, the contemporaneous linking together by instantaneous communication device of a number of consenting directors not less than the quorum together with the Secretary, whether or not any one or more of the Directors is out of Australia, shall be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to the meetings of the Directors shall apply to such meetings held by instantaneous communication device so long as the following conditions are met:
 - (i) All Directors for the time being entitled to receive notice of the Meeting of Directors (including any alternate for any Director) shall be entitled to notice determined by Directors from time to time of a meeting by instantaneous communication device and to be linked by instantaneous communication device for the purpose of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by the Constitution.
 - (ii) Each of the Directors taking part in the meeting by instantaneous communication device and the Secretary must be able to hear each of the other Directors taking part at the commencement of the meeting.
 - (iii) At the commencement of the meeting each Director must acknowledge his presence for the purpose of a meeting of the Directors to all the other Directors taking part.
- (j) A Director may not leave the meeting by disconnecting his instantaneous communication device unless he has previously obtained the express consent of the Chairman of the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by instantaneous communication device unless he has previously obtained the express consent of the Chairperson of the meeting to leave the meeting.
- (k) A minute of the proceedings at such meeting by instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting and by the Secretary.
- (l) For the purposes of this clause 'instantaneous communication device' shall include telephone, television or any other audio and/or visual device which permits instantaneous (or near as practicable thereto) communication.

17. POWERS OF DIRECTORS

All the powers of the Company, and the management and control of its business and affairs, shall be vested in the Directors who, in addition to the powers and authorities by these Clauses expressly conferred upon them, may pay all costs and expenses of the formation and registration of the Company, and may carry into effect all or any of the objects of the Company mentioned in the Constitution, and may exercise all such powers, and do all acts and things, as may be exercised or done by the said Company, and are not hereby or by statute expressly directed or required to be exercised or done by the Company in general meeting, but subject nevertheless to any regulations from time to time made by the Company in general meetings, but no regulation so made shall invalidate any prior act of the Directors which would have been valid if such regulation had not been made.

18. SECRETARY

The Directors shall appoint a Secretary who shall be present at the office of the Company by himself or his agent or his clerk on the days and at the hours during which the office is required to be accessible to the public.

19. MINUTES

- (a) The Directors shall cause proper minutes to be kept of all resolutions and proceedings of the Directors and of all general meetings.

- (b)
 - (i) If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have passed at a meeting of the Directors held on the day which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.

 - (ii) For the purposes of subregulation (i), 2 or more documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

 - (iii) A reference in subregulation (i) to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

20. THE SEAL

The Directors shall provide for the safe custody of the Seal, which shall only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors to act on their behalf, and every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some person appointed by the Directors.

21. CHEQUES, BILLS, ETC.

All cheques, bills of exchange, and promissory notes shall be signed, drawn, accepted, made, or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time decide.

22. RESERVES

- (a) The Directors shall before adopting the Annual Accounts:
- (i) Write off from the earnings of the Company such amount for loss or depreciation of any of the Company's property as they think fit.
 - (ii) Set aside out of the profits of the Company such sums as they think proper as a reserve fund to meet contingencies, or for repairing, improving, and maintaining any of the property of the Company, and for such purposes as the Directors in their discretion think conducive to the interests of the Company.
 - (iii) Invest, lend, or dispose of the sums so set aside in any way they think fit and from time to time deal with and vary such investments and dispose of all or any part thereof for the benefit of the Company subject to the Investment Policy.
 - (iv) Divide the reserve fund into such special funds as they think fit with full power to employ the assets constituting the reserve fund in the business of the Company, and without being bound to keep the same separate from other assets.

23. DIVIDENDS

The Company is prohibited from paying a Dividend.

24. ACCOUNTS

- (a) The Directors shall cause Accounts to be kept of the sums of money received and expended by the Company, and the matters in respect of which such receipt and expenditure take place and of the transactions, assets, credits and liabilities of the Company, and shall cause a balance sheet and Income and Expenditure to be made out in accordance with generally accepted accounting principles and standards as required by the law.

- (b) The books of account shall be kept at the office or at such other place or places as the Directors think fit and shall at all times be open to inspection by the Directors.
- (c) Subject to the provisions of Section 267 of the Act the Directors may from time to time decide at what times and under what conditions or regulations the books of account of the Company or any of them shall be open to the inspection of the shareholders, and no shareholder shall have any right of inspecting any books of account or document of the Company unless and except as conferred by statute or authorised by the Directors, or by a resolution of the Company in general meeting.

25. INSPECTION OF RECORDS

The Company shall afford Directors, Auditors and other officers access – from when they are appointed until seven years after their retirement or resignation – to all relevant Company records which came into existence during their term of office.

26. AUDITORS

- (a) Not less than once in every 12 month period, the Accounts of the Company shall be examined by one or more properly qualified Auditor/s and the correctness of the profit and loss account and the Balance sheet be ascertained by the auditor.
- (b) At each Annual General Meeting the Company shall appoint an auditor who shall hold office until the happening of one of the events specified in the Act.
- (c) Any casual vacancy in the office of auditor shall be filled in accordance with the provisions of the Act.

27. SERVING OF NOTICES

- (a) All notices may be served upon any shareholder either personally or by sending the same through the post addressed to such shareholder at the shareholder's address as entered in the Register, or may be given electronically if a shareholder nominates an electronic address or in exceptional circumstance may be served by advertisement in a least one daily national newspaper if such notice be intended for all shareholders of the Company. Notices of meeting served by advertisement in newspapers shall contain details of the nature and purpose of the meeting.
- (b) The accidental omission to give notice of a meeting to, or the non-receipt of such notice by a shareholder shall not invalidate the proceedings of a meeting held in pursuance of such notice.

- (c) Notwithstanding anything contained in Clause 11 notice of a General Meeting of the Company specifying an intention to propose a resolution as a special resolution shall be served by sending the same through the post. Notice in the Annual report of the Company forwarded to each shareholder shall constitute sufficient notice within the meaning of this Clause.
- (d) Any notice sent by post shall be deemed to have been served on the third working day following posting.
- (e) Notice of every general meeting shall be given in any manner hereinbefore authorised to: -
 - (i) every shareholder except those shareholders who (having no registered address within the State) have not supplied to the Company an address within the State for giving of notices to them;
 - (ii) the auditor for the time being of the Company.
- (f) No other person shall be entitled to receive notices of General Meetings.

28. INDEMNITY

- (a) Every Director and Secretary, Auditor and other Officer for the time being of the Company or other person duly authorised by the Board of Directors shall be indemnified out of the assets of the Company against any liability arising out of the execution of the duties of their office which is incurred by that person in defending any proceedings, whether civil or criminal, in which judgement is given in that person's favour or in which that person is acquitted or in connection with any application under the Law in which relief is granted to that person by the court in respect of any negligence default breach of duty or breach of trust.
- (b) No Director or Secretary, Auditor or other Officer for the time being of the Company or other person duly authorised by the Board of Directors shall be answerable or responsible for any act, receipt, omission, neglect or default of any other person notwithstanding any receipt or other document signed or act done for the sake of conformity or for any loss or damage whatsoever suffered by the Company unless the loss or damage shall happen through that person's own dishonesty.
- (c) Nothing contained or implied in Clauses 28 (a) 28 (b) hereof shall operate to exempt any person from or to indemnify any person against any liability which by virtue of any rule of law would otherwise attach to that person in respect of any negligence default breach of duty or breach of trust of which that person may be guilty in relation to the Company.

29. ARBITRATION

- (a) In the event of an equality of votes for of the Company, then such resolution may be determined by a meeting of shareholders whose decision shall be final. In the event that a simple majority of Board shareholders determines that the matter be inappropriate to put to shareholders, or if a quorum of shareholders is unable to be assembled to determine the matter, the Law Institute of Victoria may be requested to appoint an independent arbitrator to determine the matter. If the matter is not resolved by one of these procedures the resolution shall be deemed not to have been passed.
- (b) Such submission shall be submitted for arbitration to the President of the Law Institute of Victoria for the time being or to such shareholder of the Council of such Institute as may be nominated by such President for such purpose.
- (c) In the event of any of the persons aforesaid being unable or unwilling to act as such arbitrator then an arbitrator shall be appointed in accordance with the provisions of the Commercial Arbitration Act 1984 (Victoria).
- (d) Upon any such arbitrator making his determination in pursuance of such arbitration then each of the shareholders and/or Directors of the Company as the case may be shall (so far as he may legally do so) convene or cause to be convened a meeting of the Company and/or of the Directors for the purpose of passing any resolution necessary to give effect to the determination of the arbitrator, and each such shareholder and/or Director shall (so far as he may legally do so) vote in favour of each and every such resolution, and do or concur in doing all acts and things necessary to give effect to such determination.

30. INTERPRETATION OF THIS CONSTITUTION

- (a) If a Clause or part thereof is, or may become, unenforceable at law for any reason whatsoever, this Constitution is severable in respect of such Clause or part thereof and the remainder of this Constitution is to be read and construed for all intents and purposes as if the same did not form part of this Constitution.
- (b) Subject to the overriding powers of shareholders in General Meeting, contained in Clause 11 hereof, and to the jurisdiction of the Courts, if any doubt shall arise as to the proper construction or meaning of any of this Constitution made hereunder or any of them or of any expression therein, the decision of the Board of Directors thereon shall be final and conclusive provided such decision be reduced to writing and recorded in the Minute Book of the proceedings of the Board of Directors.