

Constitution of Gladstone Ports Corporation Limited

CONTENTS

1.	PRELIMINARY	1
	1.1 Replaceable rules	1
	1.2 Definitions	1
	1.3 Interpretation of this Constitution	2
	1.4 GOC Act prevails	3
2.	OBJECTS OF COMPANY	4
	2.1 Objects	4
	2.2 Interpretation	5
3.	DIRECTORS	5
	3.1 Number of Directors	5
	3.2 Public Service Officers not eligible	5
	3.3 Appointment of Directors	5
	3.4 Retirement by rotation	5
	3.5 Cessation of Director's appointment	5
	3.6 Removal from office	6
4.	POWERS OF THE BOARD	6
	4.1 Powers generally	6
	4.2 Statement of Corporate Intent	6
	4.3 Exercise of powers	6
	4.4 Responsibilities under the GOC Act and the Act	6
5.	DELEGATION OF BOARD POWERS	6
	5.1 Power to delegate	6
	5.2 Power to revoke delegation	7
	5.3 Terms of delegation	7
	5.4 Proceedings of committees	7
6.	DIRECTORS' DUTIES AND INTERESTS	7
	6.1 Compliance with duties under the Act	7
	6.2 Degree of care and diligence required	7
	6.3 Director can hold other offices etc	7
	6.4 Disclosure of interests	7
	6.5 Director interested in a matter	8
	6.6 Register of Interests	8
	6.7 Agreements with third parties	8
	6.8 Obligation of secrecy	8
7.	DIRECTORS' REMUNERATION	9
	7.1 Remuneration of Directors	9
	7.2 Additional remuneration for extra services	9

7.3	Expenses of Directors	9
8.	OFFICERS' INDEMNITY AND INSURANCE	9
8.1	Indemnity	9
8.2	Insurance	10
8.3	Former officers	10
8.4	Deeds	10
9.	CHIEF EXECUTIVE OFFICER AND SENIOR EXECUTIVES	10
9.1	Appointment	10
9.2	Terms and conditions	11
10.	BOARD MEETINGS	11
10.1	Convening Board meetings	11
10.2	Notice of Board meeting	11
10.3	Use of technology	11
10.4	Chairing Board meetings	11
10.5	Quorum	11
10.6	Majority decisions	12
10.7	Procedural rules	12
10.8	Written resolution	12
10.9	Additional provisions concerning written resolutions	12
10.10	Valid proceedings	12
11.	MEETINGS OF MEMBERS	12
11.1	Annual general meeting	12
11.2	Calling meetings of Members	13
11.3	Notice of meeting	13
11.4	Short notice	13
12.	PROCEEDINGS AT MEETINGS OF MEMBERS	13
12.1	Resolutions without a meeting	13
12.2	Signature of resolutions	13
13.	SECRETARY	14
13.1	Appointment of Secretary	14
13.2	Terms and conditions of office	14
13.3	Cessation of Secretary's appointment	14
13.4	Removal from office	14
14.	MINUTES	14
14.1	Minutes must be kept	14
14.2	Minutes as evidence	15
14.3	Inspection of minute books	15
15.	COMPANY SEALS	15

15.1	Common seal	15
15.2	Use of seals	15
15.3	Fixing seals to documents	15
16.	FINANCIAL REPORTS AND AUDIT	15
16.1	Company must keep financial records	15
16.2	Annual report	16
16.3	Reports	16
16.4	Information	16
16.5	Audit	16
17.	SHARES	16
17.1	Power to issue shares	16
17.2	Permitted Members	16
17.3	Members rights	16
18.	CERTIFICATES	17
18.1	Issue of share certificate	17
18.2	Lost and worn out certificates	17
19.	DIVIDENDS	17
19.1	Dividends able to be paid	17
19.2	Time when debt arises	17
19.3	Applicable law	17
19.4	Payment of dividends	17
19.5	Method of payment	18
19.6	No interest on dividends	18
20.	TRANSFER OF SHARES	18
20.1	Transfer to Shareholding Minister	18
20.2	Transfer on Member ceasing to be Shareholding Minister	18
20.3	Mode of transfer	18
20.4	Premier may execute transfer	18
20.5	Provisions of the GOC Act	18
20.6	Delivery of transfer and certificate	19
20.7	Refusal to register transfer	19
20.8	Transfers directed by Shareholding Ministers	19
20.9	Transferor remains holder until transfer registered	19
21.	TRANSMISSION OF SHARES	19
22.	ALTERATION OF SHARE CAPITAL	20
22.1	Reduction of capital	20
22.2	Payments in kind	20
23.	WINDING UP	20

23.1	Entitlement of Members	20
23.2	Distribution of assets generally	20
23.3	No distribution of liabilities	21
23.4	Distribution not in accordance with legal rights	21
24.	NOTICES	21
24.1	Notices by Company	21
24.2	When notice is given	21
24.3	Business days	22
24.4	Counting days	22
25.	AMENDMENT OF THIS CONSTITUTION	22
25.1	Amendment by Shareholding Ministers	22
25.2	Consent of Shareholding Ministers required	22

CONSTITUTION OF GLADSTONE PORTS CORPORATION LIMITED

1. PRELIMINARY

1.1 Replaceable rules

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the articles set out in this Constitution.

1.2 Definitions

The following definitions apply in this Constitution.

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

Affiliate means:

- (a) any entity (such as body corporate, partnership or trust) which a Director or Relative controls (within the meaning of section 50AA of the Act); or
- (b) a Relative of the Director or the Director's spouse, or a body corporate in which the Director, or any Relative own or hold in the aggregate more than 20% of the Voting Shares (as defined in the Act.)

Ancillary Services has the meaning set out in article 2.1(h).

Auditor-General means the Queensland Auditor-General, appointed under the *Financial Administration and Audit Act 1977 (Qld)*.

Board means the Directors acting collectively under this Constitution.

Business Day has the meaning set out in article 24.3.

Company means the company named at the beginning of this Constitution, whatever its name is for the time being.

Constitution means this constitution and all supplementary, substituted or amending constitutions for the time being in force.

Corporate Plan means the corporate plan of the Company for the relevant financial year prepared in accordance with Chapter 3, Part 7 of the GOC Act.

Defacto Spouse has the meaning given by section 9 of the Act.

Director means a person who is, for the time being, holding office as a director of the Company including, where appropriate, an alternate director.

GOC Act means the *Government Owned Corporations Act 1993 (Qld)* and its regulations.

GOC Minister has the meaning given to that term under the GOC Act.

Governor in Council has the meaning given to that term under the Acts Interpretation Act 1954 (Qld).

Indirect Interest includes an interest of a Relative of a Director or an Affiliate of a Director or Relative.

Liability has the meaning set out in article 8.1.

Member means a person whose name is entered in the Register as the holder of a share and means a Shareholding Minister.

Port Facilities has the meaning set out in article 2.1(h).

Port Services has the meaning set out in article 2.1(h).

Portfolio Minister has the meaning given to that term under the GOC Act.

Premier means the Premier of the State of Queensland.

Public Service Officer has the meaning given by the *Public Service Act 1996 (Qld)*.

Register means the register of Members kept as required by the Act.

Relative has the meaning given by section 9 of the Act and also means a Defacto spouse.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution.

Shareholding Ministers means the GOC Minister and the Portfolio Minister.

Special Resolution has the meaning given by section 9 of the Act.

Statement of Corporate Intent has the meaning given by the GOC Act.

Voting Member in relation to a general meeting, or meeting of a class of Members, means a Member who has the right to be present and to vote on at least 1 item of business to be considered at the meeting.

1.3 Interpretation of this Constitution

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

- (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests 1 gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A power, an authority or discretion reposed in a Director, the Company in general meeting or a Member may be exercised at any time and from time to time.
- (j) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (k) A word (other than a word defined in article 1.2) which is defined by the Act or the GOC Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Act or the GOC Act.
- (l) A reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Act or the GOC Act (as applicable).
- (m) When a provision of this Constitution, a document, including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the applicable document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors.

1.4 **GOC Act prevails**

- (a) This Constitution is to be read subject to the GOC Act.
- (b) To the extent of any inconsistency between the GOC Act and the Act regarding this Constitution, to the maximum extent permitted by law, the GOC Act will prevail.
- (c) To the extent of any inconsistency between the GOC Act and this Constitution, the GOC Act will prevail.

- (d) To the extent of any inconsistency between the Act and this Constitution, subject to article 1.4(b), the Act will prevail.

2. OBJECTS OF COMPANY

2.1 Objects

The Company's objects are:

- (a) to establish, manage and operate effective and efficient port facilities and services in its ports (including establishing, managing or operating any expansions thereof); and
- (b) to make land available for –
 - (i) the establishment, management and operation of effective and efficient port facilities and services in its ports by other persons; or
 - (ii) other purposes consistent with the operation of its ports; and
- (c) to provide or arrange for the provision of Ancillary Services or works necessary or convenient for the effective and efficient operation of its ports; and
- (d) to keep appropriate levels of safety and security in the provision and operation of the port facilities, Port Services and Ancillary Services; and
- (e) to provide other services incidental to the performance of its other functions or likely to enhance the usage of the ports; and
- (f) to perform any other functions or exercise any other powers conferred on it under the *Transport Infrastructure Act 1994* (Qld), or any other act or its regulations, or under the Company's Statement of Corporate Intent or Corporate Plan; and
- (g) to provide Port Services and Ancillary Services -
 - (i) whether inside or outside its ports; and
 - (ii) whether in or outside Australia; and
 - (iii) whether for another port authority or for someone else.
- (h) In this section -

Ancillary Services means services ancillary to the provision of Port Services, including services appropriate for complementing or enhancing the provision of Port Services.

Port Facilities means the facilities or land that are –

- (i) Owned or controlled by the company; and
- (ii) Used in the operation or strategic management of the company's ports.

Port Services means any of the following -

- (i) services relating to the establishment, maintenance, operation or administration of ports;
- (ii) dredging services;
- (iii) services relating to the reclamation of land;
- (iv) consultancy services with respect to any of the services mentioned in paragraphs (i) to (iii) above;

Carrying out any activity that is incidental to the objects set out in this article 2.1.

The Company must not undertake any activities which do not come within the scope of the objects contained in this article 2.1.

2.2 **Interpretation**

The Company's objects are to be interpreted independently and not as limiting any other object.

3. **DIRECTORS**

3.1 **Number of Directors**

The number of Directors of the Company is the number of Directors that are appointed from time to time by the Governor in Council in accordance with the GOC Act. At all times the Company must have no less than three Directors.

3.2 **Public Service Officers not eligible**

In accordance with the GOC Act, a Public Service Officer is not eligible for appointment as a Director of the Company.

3.3 **Appointment of Directors**

All Directors of the Company must be appointed by the Governor in Council in accordance with the GOC Act.

3.4 **Retirement by rotation**

No Director is subject to retirement by rotation.

3.5 **Cessation of Director's appointment**

A person automatically ceases to be a Director if the term of the Director's appointment expires, or if the person:

- (a) is not permitted by the Act (or an order made under the Act) or the GOC Act to be a Director;

- (b) becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under section 206F or 206G of the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under article 3.6.

3.6 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, the Governor in Council may remove a Director from office at any time.

4. POWERS OF THE BOARD

4.1 Powers generally

Except as otherwise required by the Act, the GOC Act, and any other applicable law or this Constitution, the Board:

- (a) has power to manage the business of the Company and the attainment and performance of the Company's objects; and
- (b) may exercise every right, power or capacity of the Company which are not by the law or this Constitution or the GOC Act, required to be exercised by the Company in general meeting or the Shareholding Ministers.

4.2 Statement of Corporate Intent

Article 4.1 is subject to any prior undertaking the Company has given to the Shareholding Ministers in its Statement of Corporate Intent.

4.3 Exercise of powers

A power of the Board can be exercised only by resolution passed at a meeting of the Board or otherwise in accordance with article 10.

4.4 Responsibilities under the GOC Act and the Act

The roles, responsibilities and duties of the Directors include those required of them under the GOC Act and the Act.

5. DELEGATION OF BOARD POWERS

5.1 Power to delegate

The Board may delegate any of its powers as permitted by section 198D.

5.2 **Power to revoke delegation**

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

5.3 **Terms of delegation**

A delegation of powers under article 5.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

5.4 **Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the articles of this Constitution which regulate the meetings and proceedings of the Board.

6. **DIRECTORS' DUTIES AND INTERESTS**

6.1 **Compliance with duties under the Act**

Each Director must comply with sections 180 to 183 of the Act.

6.2 **Degree of care and diligence required**

In determining, for the purposes of the Act the degree of care and diligence that a reasonable person in a like position in a Company would exercise in the circumstances of the Company, regard must be had to

- (a) the application of the GOC Act to the Company; and
- (b) relevant matters required or permitted to be done under the GOC Act in relation to the Company.

6.3 **Director can hold other offices etc**

Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or a Public Service Officer; or
- (b) be a member of any corporation (other than the Company) or partnership.

6.4 **Disclosure of interests**

Each Director must comply with section 191 and section 192 of the Act.

6.5 **Director interested in a matter**

- (a) A Director must not be present, and is not entitled to vote, at a Board meeting that considers a matter in which that Director has a material personal interest (whether that interest is a direct interest or an Indirect Interest).
- (b) If the interest has been disclosed by the Director, the Company may proceed with any transaction that relates to the Director's interest.
- (c) A Director may retain benefits under the transaction even though the Director has the interest. If the interest is required to be disclosed under section 191, this rule 6.5(c) applies only if the interest has been disclosed before the transaction is entered into.
- (d) The Company cannot avoid the transaction merely because of the existence of the interest.

6.6 **Register of Interests**

- (a) In addition to recording every declaration of interest in the minutes of the meeting at which it is made, the Company must maintain a register of interests disclosed under section 191 and section 192 of the Act.
- (b) The Shareholding Ministers may request the Company to provide them with a copy of the register maintained under article 6.6(a) and the Company must provide the register as requested by the Shareholding Ministers.

6.7 **Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

6.8 **Obligation of secrecy**

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law, including under the requirements of the Act or the GOC Act.

The Company may require a Director, Secretary, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this article. A Director or Secretary must do so if required by the Company.

7. DIRECTORS' REMUNERATION

7.1 Remuneration of Directors

The Directors of the Company are to be paid by way of fees for their services the amounts, if any, approved by the Company in general meeting by resolution. The remuneration is taken to accrue from day to day.

7.2 Additional remuneration for extra services

If a Director, at the request of the Board and for the purposes of the Company, performs extra services or makes special exertions (including going or living away from the Director's usual residential address), the Company may pay that Director a fixed sum set by the Board, with the prior approval of the Shareholding Ministers, for doing so. Remuneration under this article may be either in addition to or in substitution for any remuneration to which that Director is entitled under article 7.1.

7.3 Expenses of Directors

The Company must pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) properly incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) in connection with the business of the Company; or
- (c) in carrying out duties as a Director.

8. OFFICERS' INDEMNITY AND INSURANCE

8.1 Indemnity

Subject to and to the maximum extent permitted by the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company out of the property of the Company against any Liability incurred by that person in that capacity to any other person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith and or involves a pecuniary penalty;
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee in defending an action for a Liability incurred as such an officer or employee or in resisting or responding to actions taken against such person,

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the Liability or legal costs; or
- (d) the Liability arises out of conduct involving a lack of good faith or involves a pecuniary penalty or compensation order; or
- (e) an indemnity by the Company of the person against the Liability or legal costs would, if given, be made void by law.

In this article, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

8.2 Insurance

Subject to the Act and any other applicable law, the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against any Liability incurred by the person in that capacity (other than one for legal costs) except: :

- (a) for a liability arising out of conduct involving a wilful breach of duty; or
- (b) for liability arising out of a contravention of section 182 or 183; or
- (c) if the Company is forbidden by law to pay or agree to pay the premium; or
- (d) if the contract would, if the Company paid the premium, be made void by law.

8.3 Former officers

The indemnity in favour of officers under article 8.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer (as applicable) at the time the claim is made.

8.4 Deeds

Subject to the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this article 8, enter into an agreement with a person who is or has been an officer of the Company, to give effect to the rights of the person under this article 8 on any terms and conditions that the Board thinks fit. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Act or otherwise by law.

9. CHIEF EXECUTIVE OFFICER AND SENIOR EXECUTIVES

9.1 Appointment

The chief executive officer and senior executives of the Company must be appointed by the Board with the prior written approval of the Shareholding Ministers.

9.2 **Terms and conditions**

The terms and conditions of appointment (including remuneration) of the chief executive officer and other senior executives of the Company shall be determined by the Board (and is subject to the approval of the Shareholding Ministers), as may be required.

10. **BOARD MEETINGS**

10.1 **Convening Board meetings**

The chairman may at any time, and a Secretary must on request from the chairman, convene a Board meeting. In the absence of the chairman, the acting chair may at any time, and a Secretary must on request from the acting chairman, convene a Board meeting.

10.2 **Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing;

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

10.3 **Use of technology**

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D of the Act. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the chairman of the meeting is located.

10.4 **Chairing Board meetings**

The Governor in Council may nominate a Director to chair meetings of the Board and decide the period for which that Director holds that office. If there is no chairman of Directors elected or the chairman is not present within 15 minutes after the time for which a Board meeting is called or is unable or unwilling to act, the Directors present must elect one of their number to be the chairman of the meeting.

10.5 **Quorum**

Unless the Board decides otherwise, the quorum for a Board meeting is half the number of Directors appointed to the Board and if that number is not a whole number, the next highest whole number. A quorum must be present for the whole meeting and an item of business may not be transacted at such a meeting unless a quorum is present when the meeting proceeds to consider it. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others

attending. If a meeting is held in another way permitted by section 248D of the Act, the Board must resolve the basis on which Directors are treated as present.

10.6 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution. The chairman of a Board meeting does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

10.7 Procedural rules

The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides.

10.8 Written resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs. The Board resolution is passed without a Directors' meeting being held.

10.9 Additional provisions concerning written resolutions

For the purpose of article 10.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

10.10 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment or continuation in office of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

11. MEETINGS OF MEMBERS

11.1 Annual general meeting

The Company must hold an annual general meeting as required by and in accordance with the Act.

11.2 **Calling meetings of Members**

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N of the Act or by order made under section 249G of the Act.

11.3 **Notice of meeting**

Subject to article 11.4, at least 21 days' written notice of a meeting of Members must be given individually to:

- (a) each Member (whether or not the Member is entitled to vote at the meeting);
- (b) each Director; and
- (c) the auditor.

Subject to any regulation made under section 249LA of the Act, the notice of meeting must comply with section 249L of the Act and may be given in any manner permitted by section 249J(3) of the Act.

11.4 **Short notice**

Subject to sections 249H(3) and (4) of the Act:

- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

12. **PROCEEDINGS AT MEETINGS OF MEMBERS**

12.1 **Resolutions without a meeting**

In accordance with and subject to the GOC Act, the Company may pass a resolution without a general meeting being called or held if the resolution set out in a document is signed and dated by the Shareholding Ministers containing a statement that they are in favour of the resolution set out in the document.

12.2 **Signature of resolutions**

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a Member in a manner satisfactory to the Board as being signed by that Member.

13. **SECRETARY**

13.1 **Appointment of Secretary**

The Board:

- (a) must appoint at least 1 individual; and
- (b) may appoint more than 1 individual,

to be a Secretary, either for a specified term or without specifying a term.

13.2 **Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

13.3 **Cessation of Secretary's appointment**

A person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under section 206F or 206G of the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under article 13.4.

13.4 **Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

14. **MINUTES**

14.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings;
- (d) resolutions passed by Directors or Members without a meeting; and

(e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A of the Act.

14.2 **Minutes as evidence**

A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

14.3 **Inspection of minute books**

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B of the Act, and otherwise to any authorised person in accordance with the GOC Act.

15. **COMPANY SEALS**

15.1 **Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Act.

15.2 **Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board or a committee authorised by the Board to authorise its use. The Board must not authorise the use of a seal that does not comply with section 123 of the Act.

15.3 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

16. **FINANCIAL REPORTS AND AUDIT**

16.1 **Company must keep financial records**

Unless otherwise required by the Act, the Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and

(b) would enable true and fair financial statements to be prepared and audited, and must allow a Director and the auditor to inspect those records at all reasonable times.

16.2 **Annual report**

The Board must cause the Company to prepare and give to the Shareholding Ministers an annual report that complies with the GOC Act, the Act or another applicable law.

16.3 **Reports**

The Board must cause the Company to prepare and give the Shareholding Ministers a report on the operations of the Company in accordance with the GOC Act.

16.4 **Information**

The Board must provide information (including report and information of the operations, financial performance and financial position of the Company and its subsidiaries) to appropriate parties in accordance with the Act and the GOC Act.

16.5 **Audit**

Unless otherwise required by the Act, the Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The Auditor-General will be appointed by the Shareholding Ministers as auditor of the Company. The remuneration of the auditor will be determined in accordance with the GOC Act.

17. **SHARES**

17.1 **Power to issue shares**

The Board may, on behalf of the Company, issue or otherwise dispose of shares only to those persons permitted by the GOC Act.

17.2 **Permitted Members**

Unless otherwise provided by the GOC Act, only a Shareholding Minister may hold shares in the Company and be entered in the Register as a Member of the Company. Unless otherwise provided by the GOC Act, the shares held by the Shareholding Minister are held on behalf of the State of Queensland.

17.3 **Members rights**

Unless otherwise provided by the GOC Act:

- (a) each Shareholding Minister must at all times have an equal number of voting shares in the Company;
- (b) each Shareholding Minister must at all times be entitled to voting rights equal to those to which the other Shareholding Minister is entitled; and
- (c) each Shareholding Minister may hold non-voting shares and need not hold an equal number of non-voting shares.

18. **CERTIFICATES**

18.1 **Issue of share certificate**

The Company must issue a certificate of title to shares that complies with section 1070C of the Act and deliver it to the holder of those shares in accordance with section 1071H of the Act.

18.2 **Lost and worn out certificates**

If a certificate:

- (a) is lost or destroyed and the owner of the relevant shares applies in accordance with section 1070D(5) of the Act, the Company must; or
- (b) is defaced or worn out and is produced to the Company, the Company may, issue a new certificate in its place.

19. **DIVIDENDS**

19.1 **Dividends able to be paid**

- 1) The Board may, subject to compliance with the requirements of the Act, the GOC Act and any other applicable law, determine or declare that a dividend or interim dividend is payable and fix:
 - a) The amount; and
 - b) The time for payment; and
 - c) The method of payment.
- 2) Interest is not payable on a dividend.

19.2 **Time when debt arises**

Subject to the Act and the GOC Act, the Company incurs a debt for payment of a dividend or interim dividend only when the time fixed for payment arrives.

19.3 **Applicable law**

The Directors must fully comply with the procedures and consider the matters set out in the GOC Act, the Act or any other applicable law before resolving to pay any dividend (including any interim dividend).

19.4 **Payment of dividends**

Subject to the Act, the GOC Act, article 19.1 and the terms of issue of shares, the Board may resolve to pay any dividend (including interim dividend) it thinks appropriate, fix the time for payment and authorise the payment or crediting by the Company to, or at the direction of, each Member entitled to that dividend.

19.5 **Method of payment**

The Company may pay any dividend or other money payable in respect of shares by cheque sent, and may distribute assets by sending the certificates or other evidence of title to them, through the post directed to:

- (a) the address of the Member; or
- (b) to any other address the Member directs in writing,

or by any other method of payment or distribution as advised by the Shareholding Ministers.

19.6 **No interest on dividends**

No Member may claim, and the Company must not pay, interest on a dividend (either in money or kind).

20. **TRANSFER OF SHARES**

20.1 **Transfer to Shareholding Minister**

A Member may not transfer shares otherwise than to a Shareholding Minister.

20.2 **Transfer on Member ceasing to be Shareholding Minister**

- (a) A Member shall cease to be eligible to hold shares in the Company if the Member ceases to be a Shareholding Minister.
- (b) The shares held by a Member ceasing to be a Shareholding Minister must be transferred by the Member in accordance with the GOC Act.
- (c) If a Member ceases to be a Shareholding Minister, that Member must not exercise any rights as a Member under this Constitution (except to transfer shares in accordance with the GOC Act).

20.3 **Mode of transfer**

Subject to articles 20.1, 20.5, 20.6 and 20.8, and the GOC Act, a Member may transfer a share by a document the form of which is permitted or required by law and which is signed by or on behalf of both the transferor and the transferee. The Company must not register a transfer that does not comply with this article.

20.4 **Premier may execute transfer**

In accordance with the GOC Act, the Premier may execute a transfer on behalf of either or both the transferor and transferee.

20.5 **Provisions of the GOC Act**

Notwithstanding any contrary articles in this Constitution or the Act, the Directors:

- (a) must register a transfer of shares and take any other action necessary to give effect to a transfer which is permitted by the GOC Act; and
- (b) must not register a transfer of shares unless the provisions of the GOC Act and the Act concerning the transfer of shares are fully complied with.

20.6 Delivery of transfer and certificate

A document of transfer under article 20.3 must be:

- (a) delivered to the registered office of the Company or the address of the Register last notified to Members by the Company; and
- (b) accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer including the certificate (if any) for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction.
- (c) marked with payment of any stamp duty payable (if any).

Property in and title to a document of transfer that is delivered to the Company (but not the shares to which it relates) passes to the Company on delivery.

20.7 Refusal to register transfer

Subject to article 20.8, the Board, without giving any reason, may refuse to register a transfer of shares other than a transfer of shares required or permitted under the GOC Act or the Act. Subject to section 259C of the Act and insofar the GOC Act permits such refusal, the Board must not register a transfer to a subsidiary of the Company. If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within 2 months after the date on which the transfer was delivered to it.

20.8 Transfers directed by Shareholding Ministers

The Directors must register any share transfer notified in writing to them by the Shareholding Ministers or the Premier.

20.9 Transferor remains holder until transfer registered

The transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Register in respect of it.

21. TRANSMISSION OF SHARES

In the event of the death, bankruptcy or mental incapacity of a Member, the shares of the Member must be transferred to another Shareholding Minister and the transfer is subject to the same rules contained in article 20 as apply to transfers generally.

22. **ALTERATION OF SHARE CAPITAL**

22.1 **Reduction of capital**

The Company may reduce its share capital:

- (a) by reduction of capital in accordance with Division 1 of Part 2J.1 of the Act;
- (b) by buying back shares in accordance with Division 2 of Part 2J.1 of the Act;
- (c) in the ways permitted by sections 258E and 258F of the Act; or
- (d) in any other way for the time being permitted by the Act.

22.2 **Payments in kind**

Where the Company reduces its share capital in accordance with Division 1 of Part 2J.1 of the Act, it may do so by way of payment of cash, distribution of specific assets (including shares or other securities in another corporation), or in any other manner permitted by law. If the reduction is by distribution of specific assets, the Board may subject to the restrictions contained in the GOC Act:

- (a) fix the value of any assets distributed;
- (b) make cash payments to Members on the basis of the value fixed so as to adjust the rights of Members between themselves; and
- (c) vest an asset in trustees.

23. **WINDING UP**

23.1 **Entitlement of Members**

Subject to the terms of issue of shares, the surplus assets of the Company remaining after payment of its debts are divisible among the Members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

23.2 **Distribution of assets generally**

If the Company is wound up, the liquidator may, with the sanction of a Special Resolution:

- (a) divide the assets of the Company among the Members in kind; and
- (b) for that purpose, fix the value of assets and decide how the division is to be carried out as between the Members and different classes of Members; and
- (c) vest assets of the Company in trustees on any trusts for the benefit of the Members as the liquidator thinks appropriate, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability.

23.3 **No distribution of liabilities**

The liquidator cannot compel a Member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

23.4 **Distribution not in accordance with legal rights**

If the liquidator decides on a division or vesting of assets of the Company under rule 23.2 which does not accord with the legal rights of the contributories, any contributory that would be prejudiced by it may dissent and has ancillary rights as if that decision were a special resolution passed under section 507.

24. **NOTICES**

24.1 **Notices by Company**

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address or an address nominated by that person;
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

24.2 **When notice is given**

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally:
 - (i) by 5 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (ii) after 5 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;
- (b) if it is sent by fax or electronic message:
 - (i) by 5 pm (local time in the place from which it is sent or given) on a Business Day – on that day; or

- (ii) after 5 pm (local time in the place from which it is sent or given) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (c) if it is sent by mail:
 - (i) within Australia - 1 Business Day after posting; or
 - (ii) to a place outside Australia - 3 Business Days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

24.3 **Business days**

For the purposes of article 24.2, a **Business Day** is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

24.4 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

25. **AMENDMENT OF THIS CONSTITUTION**

25.1 **Amendment by Shareholding Ministers**

Notwithstanding any contrary articles in this Constitution or in the Act, the Shareholding Ministers may at any time amend this Constitution or may by written notice direct the Board to amend this Constitution, in accordance with the provisions of the GOC Act.

25.2 **Consent of Shareholding Ministers required**

Notwithstanding any contrary articles in this Constitution or the Act, this Constitution must not be amended without the prior written consent of the Shareholding Ministers.