

# South Australian Employers' Chamber of Commerce and Industry Inc

Constitution

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(as at January 2017)

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## 1. Name

The name of the association is “South Australian Employers’ Chamber of Commerce and Industry Incorporated”

## 2. Definitions and Interpretation

### 2.1 Definitions

In this constitution:

**Accounts** means the statement of accounts and the reports that are required to be submitted to Members under section 35 of the Act.

**Act** means the Associations Incorporation Act 1985.

**Affiliate Member** means a Member admitted to membership under clause 4.5 and **Affiliate Membership** has the corresponding meaning.

**Annual General Meeting** means the meeting required by clause 10.1.

**Appointed Director** means a person appointed to the Board under clause 11.5.

**Associate Member** means a Member admitted to membership under clause 4.6 and **Associate Membership** has the corresponding meaning.

**Auditor** means the qualified auditor appointed as required by clause 18.

**Board** means all the Directors acting together as the committee to which section 29 of the Act relates.

**Chief Executive Officer** means the person appointed to that office under clause 17.1(a).

**Director** means a person who holds office either as an Elected Director or as an Appointed Director.

**Elected Director** means a person elected to the Board under clause 11.3.

**Financial Year** means the period starting on the 1st July in one year and ending on the 30th June in the next year.

**General Meeting** means a meeting of Members and includes an Annual General Meeting.

**Honorary Member** means a Member admitted to membership under clause 4.4(a) and **Honorary Membership** has the corresponding meaning.

**Life Member** means a Member admitted to membership under clause 4.4(b).

**Member** means a person or corporation admitted to one or more of the categories of membership prescribed by clause 4.

**NFP Entity** means a 'not-for-profit entity' as defined in the Tax Laws Amendment (Special Conditions for Not-For-Profit Concessions) Bill 2012 or, once that Bill is passed, by section 995-1(1) of the Tax Act.

**Non-member Stakeholder** means a person or entity recognised by the Board in the categories described in, and for the purposes of, clause 4.8.

**Ordinary Member** means a Member admitted to membership under clause 4.2 and **Ordinary Membership** has the corresponding meaning.

**Ordinary Resolution** means, in respect of a resolution either of the Board or of a General Meeting, a resolution passed by a majority of those present, entitled to vote and voting.

**Period** means, in relation to membership and membership subscriptions, the length or term of a membership fixed by the Board depending on the various types and categories of memberships and subscriptions as determined or authorised by the Board.

**Public Sector Member** means a Member admitted to membership under clause 4.1 and **Public Sector Membership** has the corresponding meaning.

**Qualified Auditor** means a duly registered company auditor who is not an officer or employee of SAEC.

**SAEC** means the association named and described in clause 1.

**Special Resolution** means, in respect of a resolution either of the Board or of a General Meeting, a resolution passed by a majority of not less than three-quarters of those present, entitled to vote and voting.

**Tax Act** means the *Income Tax Assessment Act 1997*.

**Unanimous Resolution** means a resolution of a General Meeting passed by the unanimous vote of the Ordinary Members present and voting.

## 2.2 General Interpretation

In this constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of or appendix to, this constitution;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) a reference to a particular provision of a statute, ordinance, code or other law is that provision as it is amended or replaced;
- (g) a notice given by electronic means will be taken to have been duly signed if it contains an electronic copy of the sender's signature;
- (h) a word or expression defined in the Act has the meaning given to it in the Act

## 2.3 Resolutions

Where this constitution requires or permits a decision to be made or a resolution to be passed by a General Meeting, the Board or a sub-committee of the Board, the decision may be made or the resolution may be passed by Ordinary Resolution unless either this constitution or the Act requires otherwise.

# 3. Objects and Powers

## 3.1 Objects

- (a) The primary objects of SAEC are:

- (i) to promote economic development in Australia through the promotion of industry, trade and commerce in Australia and, in particular, in South Australia; and
  - (ii) for that purpose, to promote the development of the manufacturing, industrial, intellectual, natural and agricultural resources of Australia generally and of South Australia, in particular.
- (b) In the pursuit its primary objects, SAEC may:
- (i) undertake or fund research;
  - (ii) lobby and negotiate (both publicly and privately) with governments and other decision makers and opinion leaders;
  - (iii) undertake or fund training or other education for the business sector;
  - (iv) take an interest industrial matters, and participate in and take action generally or on behalf of an employer;
  - (v) offer prizes, rewards, or premiums for the encouragement of invention, skill, and greater technical knowledge in connection with work appertaining to the objects; and
  - (vi) form, affiliate with or otherwise collaborate with or support associations or institutions which, in the opinion of the Board, have objects consistent with the objects of SAEC.

### **3.2 Powers**

In addition to the powers invested in SAEC by section 25 of the Act and without limiting those powers, it may, for the purpose of carrying out its objects:

- (a) prosecute or defend any suits, applications and proceedings before any Court or Tribunal and in particular (but without limitation), on its own account or on account of a Member or Members, bring or participate in industrial proceedings before any Court, Commission, Committee or other Tribunal constituted under either Commonwealth or State legislation.
- (b) undertake commercial arbitration in the settlement of disputes;
- (c) take action for the protection of Members in connection with taxes and levies of all kinds;
- (d) accept the office of trustee in relation to any trust established for:
  - (i) educational purposes;
  - (ii) the provision of scholarships, prizes or trophies in education, work achievement or sport; or
  - (iii) any other charitable purposes which the Board considers to be relevant to the objects of SAEC or to be of benefit to the people of South Australia.
- (e) provide legal, accounting or other professional services to Members and others whose interests accord with the interests of Members;
- (f) in order to assist in the funding of SAEC's activities, charge employers and others for services it renders to them or on their behalf; and
- (g) do all other things for the purposes of achieving and maintaining any of SAEC's objects as the Board considers advisable and as funds will permit.

## **4. Members and Non-member Stakeholders**

### **4.1 Categories of Membership**

Membership of SAEC is divided into the following categories:

- (a) Ordinary Members admitted to membership under clause 4.2;
- (b) Public Sector Members admitted to membership under clause 4.3.
- (c) Honorary Members admitted to membership under clause 4.4;
- (d) Life Members admitted to membership under clause 4.4;
- (e) Affiliate Members admitted to membership under clause 4.5; and
- (f) Associate Members admitted to membership under clause 4.6.

### **4.2 Ordinary Members**

- (a) Subject to clause 4.2(b):
  - (i) any person or body corporate who conducts a business; and
  - (ii) any not-for-profit incorporated society (other than a trade union or association of employees) that is an employeris eligible and may apply for Ordinary Membership of SAEC.
- (b) The Board may, in its discretion, admit an applicant to Ordinary Membership. The Board is not required to explain its decision to an unsuccessful applicant.

### **4.3 Public Sector Members**

- (a) Subject to clause 4.3(b):
  - (i) any department or agency of commonwealth, state or local government in South Australia; and
  - (ii) any statutory authoritythat is an employer is eligible and may apply for Public Sector Membership of SAEC.
- (b) The Board may, in its discretion, admit an applicant to Public Sector Membership. The Board is not required to explain its decision to an unsuccessful applicant.

### **4.4 Honorary Members and Life Members**

- (a) Subject to clause 4.4(c) a General Meeting may, by Unanimous Resolution, elect to Honorary Membership of SAEC any natural person whose election would, in the opinion of the meeting, confer distinction or benefit upon SAEC.
- (b) Subject to clause 4.4(c) a General Meeting may, by Unanimous Resolution, elect as a Life Member of SAEC any natural person who, as a Member of SAEC or as an officer or employee of a Member of SAEC or either of its predecessor bodies, has rendered service of outstanding merit or distinction to SAEC or either of its predecessor bodies. In addition to the membership privileges conferred by this constitution, a Life Member will have the privilege of attending gratis all official functions of SAEC.
- (c) No person may be elected as either an Honorary Member or a Life Member unless he or she has first been nominated in writing to the Board and notice of the nomination is given in the notice convening the General Meeting.
- (d) Any person who is a Life Governor of SAEC at the time at which this constitution was adopted automatically becomes a Life Member at that time.

#### **4.5 Affiliate Members**

- (a) An organisation having identical or similar objectives to SAEC may apply for Affiliate Membership of SAEC.
- (b) The Board may, in its discretion admit the applicant to Affiliate Membership. The Board is not required to explain its decision to an unsuccessful applicant.

#### **4.6 Associate Members**

- (a) An Affiliate Member may apply for its members to be admitted to Associate Membership of SAEC.
- (b) The Board may, in its discretion, admit the members of the applicant Affiliate Member to Associate Membership. The Board is not required to explain its decision to an unsuccessful applicant.
- (c) Once the Board resolves to admit the members of an Affiliate Member to Associate Membership, new members thereafter admitted to membership of the Affiliate Member will automatically become Associate Members on the Affiliate Member providing SAEC written particulars of their names and addresses.

#### **4.7 Commencement of Membership**

The membership of an applicant admitted to a category of Members required to pay subscriptions under clause 8 or a levy under clause 9 begins on payment of those subscriptions or that levy (or both).

#### **4.8 Non-member Stakeholders**

- (a) Notwithstanding anything in this clause 4, the Board, in its discretion, may recognise individuals, classes or groups of stakeholders, customers, followers, adherents, interested parties and supporters which are not members, or which may not be eligible for any category of membership, but which are, in the Board's opinion, important participants to engage with, and to influence, in order to more effectively achieve the primary objectives of SAEC.
- (b) To facilitate clause 4.8 (a), the Board, in its discretion, may approve the creation and funding of strategies, programs, branding, communications and benefits that will build cohesion, collaboration and connection with, as well as influence over, these non-member stakeholders.
- (c) The Board may, in its discretion, from time to time, raise revenue from, or otherwise charge, the non-member stakeholders (or any or some of them) for the benefits and services provided from time to time, including communication and connection.
- (d) For the avoidance of doubt, non-member stakeholders will not have any of the privileges of Membership that are set out in clause 7.

### **5. Cessation of Membership**

#### **5.1 General**

A Member ceases to be a Member of SAEC if:

- (a) the Member is dissolved, wound up or bankrupted;

- (b) the Member resigns from Membership of SAEC by written notice to SAEC to that effect at least 14 days prior to renewal of the current term of the Member's subscription, whether payment is by instalment or not. Failure to provide written notice within the required timeframe means that membership for the same subscription period will be automatically renewed and will be payable as a due debt; or
- (c) in the case of an Associate Member, either:
  - (i) the Member ceases to be a member of an Affiliate Member (**Sponsor Affiliate**) whose members have been admitted to Associate Membership under clause 4.6(b); or
  - (ii) the Sponsor Affiliate ceases to be a Member;
- (d) the Member is expelled from SAEC under clause 5.2 or by operation of clause 5.3; or
- (e) the Member ceases to hold the qualifications prescribed by this constitution for the category of membership of that Member.

## 5.2 Expulsion for misconduct

- (a) If the Board is of the opinion that a Member has acted in a way that renders the Member unsuitable to be a Member, the Board may, by resolution, (**Expulsion Resolution**), either:
  - (i) expel the Member from SAEC; or
  - (ii) suspend the Member from those of the rights and privileges of membership of SAEC that the Board may decide for a specified period.
- (b) An Expulsion Resolution of the Board is of no effect unless the Board has observed the rules of natural justice.

## 5.3 Expulsion for failure to pay fees

- (a) Unless the Board otherwise determines, a Member ceases to be a Member if any amount payable by the Member under this constitution remains unpaid for:
  - (i) a period of one month after it becomes due; and
  - (ii) then for a further period of one month after a notice requiring payment and drawing the Member's attention to this sub-rule has been served on the Member.
- (b) A notice may not be given under clause 5.3(a)(ii) until after the end of the one month period referred to in clause 5.3(a)(i).
- (c) Nothing in this Clause 5.3 affects the right of SAEC to recover monies owed for unpaid membership subscriptions irrespective of whether a Member has ceased to be a Member because of expulsion for failure to pay fees.
- (d) The Board may at any time after a Member ceases to be a Member pursuant to this sub-rule reinstate the Member to membership on such terms as the Board thinks fit.

## 6. Nominated representatives and Proxies

- (a) A Member is entitled to be represented at a General Meeting by:
  - (i) a proxy appointed by notice in a form approved by the Board and given to the Chief Executive Officer no later than 24 hours before the time of the meeting for which the proxy is appointed; or
  - (ii) a representative appointed under clause 6(b) (**Representative**).

- (b) A corporate Member may, by notice to SAEC, appoint a natural person to act as its Representative in some or all matters connected with the Member as if SAEC were a body corporate to which section 253B of the Corporations Act 2001 applies and the appointed Representative will have the powers in relation to the Member as if section 253B applied to SAEC.
- (c) A Member may, by notice to SAEC, revoke an appointment made under clause 6(b).
- (d) For all the purposes of this constitution, a Member represented at a General Meeting by either a proxy or a Representative is to be taken to be present at the meeting.

## **7. Privileges of members**

### **7.1 Ordinary Members**

Ordinary Members are entitled:

- (a) to attend and vote at General Meetings; and
- (b) to such other privileges as the Board may from time to time determine.

### **7.2 Public Sector Members**

- (a) Subject to clause 7.4(b), Public Sector Members are entitled to receive such services and benefits as the Board determines.
- (b) Public Sector Members are not entitled to attend or vote at General Meetings

### **7.3 Honorary Members and Life Members:**

- (a) Honorary Members and Life Members are entitled:
  - (i) to attend at General Meetings; and
  - (ii) to such other privileges as the Board may from time to time determine.
- (b) Subject to clause 7.3(d), Honorary Members and Life Members are not entitled to vote at General Meetings.
- (c) No Honorary Member or Life Member may be called upon to pay any subscription or levy or to make any contribution under clause 25(a).
- (d) Clause 7.3(b) does not apply to an Honorary Member or a Life Member who is also an Ordinary Member.
- (e) Clause 7.3(c) does not relieve an Honorary Member or a Life Member who is also an Ordinary Member from liability to pay the subscriptions and levies of an Ordinary Member.

### **7.4 Affiliate Members and Associate Members**

- (a) Subject to clause 7.4(b), Affiliate Members and Associate Members are entitled to receive such services and benefits as the Board determines.
- (b) Neither Affiliate Members or Associate Members are entitled to attend or vote at General Meetings.

## **8. Members' subscriptions**

- (a) All Members (other than Honorary Members and Life Members) must pay to SAEC a subscription determined by the Board.

- (b) The Board may fix different periods of membership and fix subscriptions at different rates for different categories and for Members within the same category, and for different periods of Membership and may determine that no subscriptions are payable by one or more of the categories, or for certain Members within categories for any year.
- (c) The Board may also authorise payment of subscriptions by instalments for some or all of the categories of Membership and it may prescribe different terms of instalments for different categories or periods of Membership or for certain Members within those categories.
- (d) Upon appointment to membership a new Member must pay the current prescribed subscription due for the relevant period and type of membership or agree to pay it in instalments.
- (e) The Board may waive all or part of a Member's subscriptions and may agree terms of payment for a Member different from those applicable to other Members of the same category if the Board is satisfied that there are special reasons to do so.

## 9. Levies

- (a) If, at any time, the Board is of the opinion that the current income of SAEC is or is likely to be insufficient to meet its expenses in the then current or any future Financial Year, the Board may convene General Meeting for the purpose of recommending a levy on Ordinary Members. The notice convening the General Meeting must contain particulars of the recommendation that the Board will put to the General meeting.
- (b) If the General Meeting resolves to make a levy (whether as recommended by the Board or otherwise), each Ordinary Member must pay the levy within 30 days after the Member receives an invoice for the levy.

## 10. General meetings

### 10.1 Annual General Meetings

- (a) Subject to any exemption granted to SAEC under section 39 of the Act, the Board must call an annual general meeting of its Members within 5 months after the end of each Financial Year.
- (b) The business of the Annual General Meeting is:
  - (i) to confirm the minutes of the last Annual General Meeting and of any other General Meeting of which the minutes remain unconfirmed;
  - (ii) to receive from the Board reports on the activities of SAEC during the last financial year;
  - (iii) to receive and consider the Accounts;
  - (iv) to conduct elections for Directors as required by this constitution;
  - (v) to appoint the Auditor as required by this constitution; and
  - (vi) to conduct any other business which this constitution or the Act requires to be conducted at an Annual General meeting or of which proper notice has been given.

### 10.2 Calling of General Meetings

- (a) The Board may call a General Meeting whenever the Board considers it appropriate.

- (b) The Board must call a General Meeting of SAEC on the requisition in writing of not less than 20 Ordinary Members or on being required to do so under clause 23(b) .
- (c) A requisition of Members for a General Meeting:
  - (i) must state the purpose or purposes of the meeting; and
  - (ii) must be signed by the Members making the requisition; and
  - (iii) must be lodged with the Chief Executive Officer; and
  - (iv) may consist of several documents in a similar form, each signed by one or more of the Members making the requisition.

### **10.3 Notice**

- (a) Subject to this constitution, at least 21 days' notice of the day time and place fixed for a General Meeting must be given by advertisement in "The Advertiser" and by such electronic means as the Board considers appropriate to maximise the likelihood that all Members entitled to attend the meeting will have notice of it. The notice must state the business for which the meeting is called. (In the case of an Annual General Meeting the notice does not need to state the business described in clauses 10.1(b)(i) to 10.1(b)(v) (both included) but it must state any business of the kind described in clause 10.1(b)(vi)).
- (b) Subject to the requirements of this constitution and the Act, no business may be conducted at a General Meeting other than that specified in the notice calling the meeting.
- (c) A Member who wishes to bring any business before a General Meeting may give notice of that business to the Chief Executive Officer who must include that business in the next notice calling a General Meeting.

### **10.4 General Meetings—procedure and quorum**

- (a) No item of business may be transacted at a General Meeting unless a quorum of Members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (b) Fifteen Members present and entitled under to vote at a General Meeting constitute a quorum for the transaction of the business of a General Meeting.
- (c) If within 30 minutes after the appointed time for the start of a General Meeting a quorum is not present, a meeting called on the requisition of Members is dissolved and any other meeting stands adjourned to the same day in the following week at the same time and (unless another place is specified at the time of adjournment by the person presiding at the meeting or communicated by notice to Members given before the day to which the meeting is adjourned) at the same place.
- (d) If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the start of the meeting, the Members present constitute a quorum.

### **10.5 Presiding member**

- (a) The chair of the Board, or in the absence of the chair, the deputy chair of the Board, presides at each General Meeting of SAEC.
- (b) If the chair and the deputy chair are absent from a General Meeting, the Ordinary Members present must elect someone present and entitled to vote to preside at the meeting.

## **10.6 Adjournment**

- (a) The person presiding at a General Meeting at which a quorum is present may, with the consent of the majority of Members present at the meeting, adjourn the meeting from time to time and place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (b) Subject to clause 10.6(c), notice of an adjournment of a General Meeting or of the business to be transacted at an adjourned meeting is not required to be given.
- (c) If a General Meeting is adjourned for 14 days or more, fresh notice must be given of the meeting stating the place, date and time for which the meeting is reconvened and the nature of the business to be transacted at the reconvened meeting.

## **10.7 Making of decisions**

- (a) A question arising at a General Meeting of SAEC is to be decided on a show of hands of Ordinary Members, unless before or on the declaration of the show of hands a poll is demanded.
- (b) At a General Meeting of SAEC, a poll may be demanded by the person presiding or by not less than 3 Ordinary Members present at the meeting.
- (c) If the poll is demanded at a General Meeting, the poll must be taken:
  - (i) immediately if the poll relates to the election of the person to preside at the meeting or to the question of an adjournment; or
  - (ii) in any other case, in the way and at the time before the close of the meeting that the person presiding directs, and the resolution of the poll on the matter is taken to be the resolution of the meeting on that matter.
- (d) Elections conducted at a General Meeting must be by ballot. The method by which a ballot is conducted is at the direction of the person presiding.

## **10.8 Voting**

- (a) Subject to clauses 10.8(b) and 10.8(c), on any question arising at a General Meeting of SAEC an Ordinary Member has one vote.
- (b) The person presiding is entitled only to those deliberative votes (if any) to which he or she is entitled as a Member or a Member's Representative or proxy but, if the votes on any question are equal, the person presiding may exercise a casting vote.
- (c) A Member is not entitled to vote at any General Meeting of SAEC unless all money then due and payable by the Member has been paid.

# **11. The Board**

## **11.1 Powers**

- (a) The Board constitutes the committee for the purposes of the Act.
- (b) Subject to the Act and this constitution, the Board:
  - (i) controls and manages the affairs and property of SAEC (including its funds and the investment of them);
  - (ii) may exercise all functions that may be exercised by SAEC other than those functions that are required by this constitution to be exercised by SAEC in General Meeting; and

- (iii) has power to perform all acts and do all things that appear to the Board to be necessary or desirable for the proper management of the affairs of SAEC , including, without limitation;
  - (A) to acquire and dispose of property;
  - (B) to receive and collect funds and to expend them;
  - (C) to borrow funds and give security for the borrowing; and
  - (D) to make loans on whatever terms it thinks fit, either with or without security.

## **11.2 Constitution and Membership**

- (a) The Board consists of not more than ten Directors, of whom:
  - (i) up to six will be Elected Directors; and
  - (ii) the remainder (if any) will be Appointed Directors.
- (b) A person does not have to be a Member or the Representative of a Member to be a Director.

## **11.3 Term of Office**

- (a) Subject to clause 11.8(b), each Elected Director holds office until the second Annual General Meeting after his or her election.
- (b) Subject to clauses 11.5(d) and 11.8(b) each Appointed Director holds office for two years from the date of his or her appointment.
- (c) A retiring Director is eligible for election or appointment for a new term.

## **11.4 Nomination and Election of Elected Directors**

- (a) An Ordinary Member may nominate a person for election as an Elected Director. The nomination must be made in writing to the Chief Executive Officer not less than 7 days before the next Annual General Meeting.
- (b) Where the number of candidates nominated for election exceeds the number of the vacancies there must be an election.

## **11.5 Appointment and Removal of Appointed Directors**

- (a) Subject to clause 11.5(b), the Elected Directors may, at any time, appoint one or more additional Directors (**Appointed Directors**).
- (b) The maximum number of Appointed Directors in office at any time is 10 less the number of Elected Directors in office at that time.
- (c) The Elected Directors may remove an Appointed Director from office at any time.
- (d) If at any time the number of Directors in office exceeds ten, the number of Appointed Directors then in office must be reduced until the total number of Directors is ten. If the Appointed Directors are unable to agree between themselves who is to resign, the Elected Directors may select the retirees by ballot.

## **11.6 Officers**

- (a) The Board must elect from its number:
  - (i) a chair; and
  - (ii) a deputy chair

- (b) Each member elected to an office under clause 11.6(a) will have the duties allocated to that office by the Act and this constitution and any other duties for the time being allocated to that office by the Board.

### **11.7 Vacancies**

For this constitution, a vacancy in the office of a Director happens if his or her term expires or if the Director:

- (a) dies; or
- (b) in the case of an Appointed Director, is removed from office by the Elected Directors; or
- (c) resigns the office; or
- (d) becomes bankrupt or personally insolvent; or
- (e) suffers from mental or physical incapacity; or
- (f) is disqualified from office under section 30 of the Act; or
- (g) is absent without the consent of the Board from all meetings of the Board held during a period of 6 months.

### **11.8 Filling Casual Vacancies**

- (a) If the office of an Elected Director becomes vacant otherwise than by the effluxion of time, the Elected Directors may appoint a replacement Director.
- (b) A Director appointed under clause 11.8(a) to fill a casual vacancy holds office as an Appointed Director only until the next Annual General Meeting at which he or she must retire.

### **11.9 Board meetings and quorum**

- (a) The Board must meet as often as necessary, at the place and time that the Board decides.
- (b) A Director may attend a meeting by telephone or other electronic means by which he or she can hear and be heard.
- (c) Notice of a meeting of the Board must be given by the Chief Executive Officer to each member of the Board at least 10 days' (or any other period that may be unanimously agreed on by the members of the Board) before the time appointed for the holding of the meeting.
- (d) Five Directors present in person or by telephone or other electronic means constitute a quorum for the transaction of the business of a meeting of the Board.
- (e) No business may be transacted by the Board unless a quorum is present and, if within half an hour after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to a time which is appointed by those present but which is not less than 7 days hence.
- (f) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, those present constitute a quorum.
- (g) At meetings of the Board:
  - (i) the chair or, in the absence of the chair, the deputy-chair presides; or
  - (ii) if the chair and the deputy-chair are absent, one of the remaining members of the Board may be chosen by the members present to preside.

- (h) The Board must cause proper minutes to be kept of Board meetings and General Meetings.
- (i) Minutes of proceedings at a meeting must be signed by the person presiding at the meeting or by the person presiding at the next succeeding meeting

#### **11.10 Subcommittees**

- (a) The Board may, in writing, delegate to one or more subcommittees (each of which must contain at least one Director) the exercise of the functions of the Board that are specified in the instrument of delegation, other than:
  - (i) this power of delegation; and
  - (ii) a function that is a function imposed on the Board by the Act, by any other law, or by resolution of SAEC in General Meeting.
- (b) A function, the exercise of which has been delegated to a subcommittee under this section may, while the delegation remains unrevoked, be exercised from time to time by the subcommittee in accordance with the terms of the delegation.
- (c) A delegation under this section may be made subject to any conditions or limitations about the exercise of any function, or about time or circumstances, that may be specified in the instrument of delegation.
- (d) Despite any delegation under this section, the Board may continue to exercise any function delegated.
- (e) Any act or thing done or suffered by a subcommittee acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the Board.
- (f) The Board may, in writing, revoke wholly or in part any delegation under this section.
- (g) A subcommittee may meet and adjourn as it considers appropriate.

#### **11.11 Voting and decisions**

- (a) Each Director present at a meeting of the Board is entitled to one vote but, if the votes on any question are equal, the person presiding may exercise a second or casting vote.
- (b) Likewise, each member of any subcommittee appointed by the Board present at a meeting of the sub-committee is entitled to one vote but, if the votes on any question are equal, the person presiding may exercise a second or casting vote.

#### **11.12 Access to Board Papers**

- (a) Each Director must notify SAEC of any claims made against him or her in his or her capacity as a Director.
- (b) On reasonable request SAEC will provide each Director with copies of all Board papers which relate to the period during which he or she was a Director.

#### **11.13 Insurance**

SAEC will take out and maintain directors and officers liability insurance cover on a claims made basis for each Director and for the Chief Executive Officer and other SAEC officers with such “run off” cover as the Board may be advised.

## 12. Circular Resolutions

- (a) Subject to clause 12(f), the Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- (b) Likewise, the Members may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Member signs.
- (c) For the purposes of clauses 12(a) and 12(b), separate copies of a document may be used for signing by those entitled to vote if the wording of the resolution and statement is identical in each copy.
- (d) Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- (e) A resolution that is put to the Board or to the Members under this clause 12 is to be taken to have been put to a meeting of the Board or of the Members and must be minuted accordingly.
- (f) A resolution may not be passed under clause 12(a) if, before it is circulated for voting under clause 12(a), the Board resolves that it can only be put at a meeting of the Board or at a General Meeting, as the case may be.

## 13. Accounts

The Board must:

- (a) cause to be kept all of the accounts and accounting records required either by the Act or by the standards of good prudential management applicable to an organisation like SAEC;
- (b) ensure that:
  - (i) all moneys owing by SAEC are duly and regularly paid,
  - (ii) all moneys owing to SAEC are duly received;
  - (iii) all moneys received by SAEC are regularly deposited in a bank account; and
  - (iv) in every case receipts are taken for any moneys paid on account of SAEC; and
- (c) have the Accounts prepared at the end of each Financial Year and have them audited by the Auditor and presented to the next Annual General Meeting after the end of that Financial Year.

## 14. Registers

The Board must cause to be kept and maintained:

- (a) an up to date register of Members showing the name, address of each Member and (if applicable) the name of the Member's Representative; and
- (b) an up to date register of officers showing the name, address and position held by each officer of SAEC.

## 15. The Seal

- (a) SAEC must have a common seal which must be kept in the custody of the Chief Executive Officer.
- (b) The common seal must not be attached to any instrument except by the authority of the Board and the attaching of the common seal must be attested by the signatures either of two Directors or one Director and the Chief Executive Officer.

## 16. Execution of Instruments

- (a) Any instrument not required by law to be under Seal (except an Industrial Agreement) may be executed by the Chief Executive Officer or any other person authorised by the Board for the purpose.
- (b) An Industrial Agreement may be executed by the Chief Executive Officer or some other person or persons whom he or she nominates for the purpose.

## 17. Chief Executive Officer and other administrative staff

### 17.1 Chief Executive Officer

- (a) The Board may appoint a person who is not a member of the Board to be the Chief Executive Officer of SAEC.
- (b) The Board may fix the terms and conditions of the Chief Executive Officer's appointment, including, but not limited to, terms as to tenure and remuneration.
- (c) The Chief Executive Officer is also the public officer of SAEC.
- (d) The Board may delegate to the Chief Executive Officer those of its powers that it considers necessary or expedient for the efficient and effective conduct of SAEC's affairs.
- (e) Subject to any constraint imposed by the Board, the Chief Executive Officer may sub-delegate any of the powers delegated to him or her by the Board.
- (f) Subject to any constraint imposed by the Board, the Chief Executive Officer may appoint such employees and contractors as he or she thinks necessary for the satisfactory discharge of the business of SAEC, on such rates of remuneration and such conditions as the Chief Executive Officer thinks appropriate and may terminate any such appointments for reasons which he or she thinks proper.

## 18. Audit

- (a) A qualified auditor must be appointed at each Annual General Meeting as SAEC's auditor for the then current Financial Year.
- (b) Any vacancy occurring during the year in the office of Auditor must be filled by the Board.
- (c) The Auditor has power at any time to call for the production of all books, accounts and other documents relating to the affairs of SAEC.

## 19. Registered Office

- (a) The Board must provide and maintain a registered office of SAEC at 136 Greenhill Road, Unley, or at such other place as the Board may determine.

- (b) The registered office must be open to members and the public between the hours of 9.00 am and 5.00 pm on Monday to Friday inclusive (excluding Public Holidays).

## 20. Indemnification

- (a) Each Director, committee member or other officer of SAEC and each employee of SAEC (each, for the purpose of this clause 20, an **Indemnified Person**) is entitled to be indemnified out of the assets of SAEC against any liability incurred in defending any proceedings whether civil or criminal taken against that person by reason of his or her actions in relation to or connected with SAEC and in which judgment is given in his or her favour or in which he or she is acquitted or, subject to clause 20(b), in which relief is granted by the Court against him or her.
- (b) An Indemnified Person is not entitled to be indemnified in respect of his or her negligence, default, breach of duty or breach of trust unless the negligence, default, breach of duty or breach of trust is committed in good faith and in the course of the Indemnified Person's duties to SAEC.

## 21. Notices

- (a) Any notice required or authorised by this constitution to be given to a Member may be served on the Member personally or by sending it through the post in a prepaid envelope addressed to the Member at the Member's last known place of business or by facsimile, email or other electronic means or by its insertion on SAEC's website or in any journal or publication which is published by or on behalf of SAEC and which is circulated by SAEC to its members.
- (b) Any notice required or authorised by this constitution to be given to SAEC may be served by delivering it personally to SAEC at its registered office or by sending it through the post in a prepaid envelope addressed to the Chief Executive Officer, SAEC at the registered office.
- (c) A notice served by post will be taken to have been received by the recipient on the second working day after it was posted.
- (d) A notice served by facsimile, email or other electronic means will be taken to have been received by the Member two hours after it was sent.
- (e) A certificate in writing signed by the Chief Executive Officer that a notice was posted or sent by facsimile, email or other electronic means to the applicable address of a Member will be prima facie evidence of that fact.

## 22. Alterations and additions to rules

- (a) Subject to clause 23(b), this constitution may be repealed or altered or any new provision may be added by Special Resolution passed at a duly convened General Meeting.
- (b) If, in the opinion of the Board, it is necessary to amend this constitution either:
  - (i) to achieve or maintain registration of SAEC as a body entitled to appear in an industrial court or tribunal (however named) in any jurisdiction in Australia; or
  - (ii) to achieve or maintain an exemption wholly or partially from any form of state or commonwealth tax to which SAEC would otherwise be liable;

the Board may, by Special Resolution, make the amendments that it considers necessary for the purpose.

## 23. Disputes

- (a) Subject to any express provision of this constitution to the contrary, disputes between SAEC and a Member or Members or any dispute concerning SAEC between Members in respect of rights or obligations of SAEC or Members under this constitution must be settled in the first instance by the Board.
- (b) A Member who is not satisfied with the decision of the Board may require the Board to convene a General Meeting to which the Member may appeal.
- (c) The General Meeting may, by Special Resolution, overturn and replace the decision of the Board but if it does not, the decision of the Board stands and it binds the parties to the dispute.

## 24. Income

- (a) The income and property of SAEC must be applied solely for the purposes of the promoting and carrying out of the objects of SAEC and no part of it may be paid directly or indirectly by way of dividends bonus or otherwise to any of the Members.
- (b) Nothing in this clause 24 prevents:
  - (i) payment of remuneration to the Directors if the remuneration is first approved by the Members in General Meeting;
  - (ii) payments made to a Member in accordance with the purposes described in clause 24(a) if that Member is a NFP entity with a similar purpose to SAEC; or
  - (iii) payments made to a Member as genuine compensation for services provided to, or reasonable expenses incurred on behalf of, SAEC.

## 25. Winding up

- (a) Every Member undertakes to contribute to the assets of SAEC in the event of the SAEC being wound up during the time that he, she or it is a Member or within one year afterwards for payment of debts and liabilities of SAEC contracted before he, she or it ceased to be a Member and for the cost charges and expenses of winding up SAEC and for the adjustment of the rights of the contributories amongst themselves an amount not exceeding the annual subscription which the Member paid or was liable to pay for the Financial Year preceding the date of the resolution to wind up.
- (b) If upon the winding up or deregistration of SAEC there remain any 'surplus assets' as defined in the Act, the surplus assets must not be distributed amongst the Members, but will be distributed to one or more charitable funds, authorities or institutions which are NFP Entities with a similar purpose to SAEC and which are selected by the Board at or prior to winding up or deregistration (or in default of selection by the Board, by the Supreme Court of South Australia).

## 26. Interpretation

Subject to any right of appeal that arises under clause 23, the Board is empowered to decide any question arising as to the interpretation or application of this constitution.

## 27. Transitional Arrangements

- (a) Time served by a Director in a term of office that is current at the time of the adoption of this constitution counts as time served under this constitution.
- (b) If, as a consequence of the operation of clause 27(a), there are more than six Elected Directors remaining in office after the adoption of this constitution, then, until the number of them still serving terms of office that were current at the time of the adoption of this constitution is reduced to six, the maximum number of Elected Directors prescribed by clause 11.2(a)(i) will be taken from time to time to be the number of those Directors then still serving those terms.