CONSTITUTION
OF
INSTITUTE OF PUBLIC WORKS
ENGINEERING AUSTRALASIA (NSW
DIVISION) LIMITED

Australian Company Number (ACN) 093 562 602
Australian Business Number (ABN) 35 093 562 602

A company limited by guarantee

Constitution amended by Resolution at a Company Special General Meeting 23rd July 2015

Adopted at the Annual General Meeting 8th November 2018
# Constitution of Institute of Public Works Engineering Australasia (NSW Division) Limited

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Preliminary

1. Name of the company
   The name of the company is Institute of Public Works Engineering Australasia (NSW Division) Limited (the company).

2. Type of company
   The company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

3. Limited liability of members
   The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee
   Each member must contribute an amount not more than $10 (the guarantee) to the property of the company if the company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:
   (a) debts and liabilities of the company incurred before the member stopped being a member, or
   (b) costs of winding up.

5. Definitions
   In this constitution, words and phrases have the meaning set out in clauses 71 and 73.

Charitable purposes and powers

6. Object
   The company's object is to pursue the following charitable purposes:

6.1 Purpose – the company is established to be a charity with the purpose of advancing the public works excellence in Australia, particularly in NSW by:
   • conducting and publishing research into improvements to the processes used in public works and services to enhance NSW Communities
   • working with government at all levels to ensure that the interests of the community are represented in regard to the public decision-making process relating to public works and services, and
   • providing a forum to inspire, educate and encourage people engaged in public works to discuss best practice and enhancing the future of NSW and ACT Communities

6.2 Mission: To enhance the quality of life of NSW and ACT communities through excellence in public works and services

6.3 Vision: The company is recognised as the leading professional association that effectively informs, connects, represents and leads public works for NSW and ACT.

7. Powers
   Subject to clause 8, the company has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:
   (a) the powers of an individual, and
(b) all the powers of a company limited by guarantee under the Corporations Act.

8. Not-for-profit

8.1 The company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 70.

8.2 Clause 8.1 does not stop the company from doing the following things, provided they are done in good faith:
   (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the company, or
   (b) making a payment to a member in carrying out the company’s charitable purpose(s).

9. Amending the constitution

9.1 Subject to clause 9.2, the members may amend this constitution by passing a special resolution.

9.2 The members must not pass a special resolution that amends this constitution if passing it causes the company to no longer be a charity.

Members

10. Membership and register of members

10.1 The members of the company are:
   (a) current members, and
   (b) any other person that the directors allow to be a member, in accordance with this constitution.

10.2 The company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
   (a) for each current member:
      i. name
      ii. address
      iii. any alternative address nominated by the member for the service of notices, and
      iv. date the member was entered on to the register.
   (b) for each person who stopped being a member in the last 7 years:
      i. name
      ii. address
      iii. any alternative address nominated by the member for the service of notices, and
      iv. dates the membership started and ended.

10.3 The company must give current members access to the register of members.

10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

11. Who can be a member

11.1 A person who supports the purposes of the company is eligible to apply to be a member of the company under clause 12.

11.2 In this clause, ‘person’ means an individual or incorporated body.
11.3 Members of the company must reside or be employed in either New South Wales or the ACT. On becoming a member of the company, a member will automatically be entitled to become a member of IPWEA Australasia Ltd also, unless the member elects otherwise.

11.4 The grades or classes of membership of the company and the qualifications or criteria for membership of each grade or class shall be such as the company from time to time prescribes.

12. How to apply to become a member

A person (as defined in clause 11.2) may apply to become a member of the company by writing to the secretary stating that they:

(a) want to become a member
(b) meet the criteria outlined at clause 11
(c) support the purpose(s) of the company
(d) agree to pay the membership fee (as determined by the company from time to time), and
(e) agree to comply with the company’s constitution, including paying the guarantee under clause 4 if required.

13. Directors decide whether to approve membership

13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.

13.2 If the directors approve an application, the secretary must as soon as possible:

(a) enter the new member on the register of members, and
(b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).

13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected and return any membership fee that has been paid in accordance with 12, but does not have to give reasons.

13.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clause 12. In that case, by applying to be a member, the applicant agrees to those matters.

14. When a person becomes a member

An applicant will become a member when they are entered on the register of members.

15. When a person stops being a member

A person immediately stops being a member if they:

(a) die
(b) are wound up or otherwise dissolved or deregistered (for an incorporated member)
(c) resign, by writing to the secretary
(d) are expelled under clause 17
(e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member, or
(f) have not paid their subscription fees for at least three months.
Dispute resolution and disciplinary procedures

16. Dispute resolution

16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:
   (a) one or more members
   (b) one or more directors, or
   (c) the company.

16.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.

16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

16.4 If those involved in the dispute do not resolve it under clause 16.3, they must within 10 days:
   (a) tell the directors about the dispute in writing
   (b) agree or request that a mediator be appointed, and
   (c) attempt in good faith to settle the dispute by mediation.

16.5 The mediator must:
   (a) be chosen by agreement of those involved, or
   (b) where those involved do not agree:
      16.5 (b)(i) for disputes between members, a person chosen by the directors, or
      16.5 (b)(ii) for other disputes, a person chosen by either the Commissioner of
                   the Australian Charities and Not-for-profits Commission or the
                   president of the law institute or society in the state or territory in
                   which the company has its registered office.

16.6 A mediator chosen by the directors under clause 16.5(b)16.5 (b)(i):
   (a) may be a member or former member of the company
   (b) must not have a personal interest in the dispute, and
   (c) must not be biased towards or against anyone involved in the dispute.

16.7 When conducting the mediation, the mediator must:
   (a) allow those involved a reasonable chance to be heard
   (b) allow those involved a reasonable chance to review any written statements
   (c) ensure that those involved are given natural justice, and
   (d) not make a decision on the dispute.

17. Disciplining members

17.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the company if the directors consider that:
   (a) the member has breached this constitution, or
   (b) the member’s behaviour is causing, has caused, or is likely to cause harm to the company.

17.2 At least 14 days before the directors’ meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the member in writing:
   (a) that the directors are considering a resolution to warn, suspend or expel the member
   (b) that this resolution will be considered at a directors’ meeting and the date of that meeting
17.3 Before the directors pass any resolution under clause 17.1, the member must be given a chance to explain or defend themselves by:
(a) sending the directors a written explanation before that directors’ meeting, and/or
(b) speaking at the meeting.

17.4 After considering any explanation under clause 17.3, the directors may:
(a) take no further action
(b) warn the member
(c) suspend the member’s rights as a member for a period of no more than 12 months
(d) expel the member
(e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
(f) require the matter to be determined at a general meeting.

17.5 The directors cannot fine a member.
17.6 The secretary must give written notice to the member of the decision under clause 17.4 as soon as possible.
17.7 Disciplinary procedures must be completed as soon as reasonably practical.
17.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

General meetings of members

18. General meetings called by directors
18.1 The directors by resolution or executive committee may call a general meeting.
18.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the directors must:
(a) within 21 days of the members’ request, give all members notice of a general meeting, and
(b) hold the general meeting within 2 months of the members’ request.

18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.
18.4 The members who make the request for a general meeting must:
(a) state in the request any resolution to be proposed at the meeting
(b) sign the request, and
(c) give the request to the company.
18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.
19. General meetings called by members

19.1 If the directors do not call the meeting within 21 days of being requested under clause 18.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.

19.2 To call and hold a meeting under clause 19.1 the members must:
(a) as far as possible, follow the procedures for general meetings set out in this constitution
(b) call the meeting using the list of members on the company’s member register, which the company must provide to the members making the request at no cost, and
(c) hold the general meeting within three months after the request was given to the company.

19.3 The company must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

20. Annual general meeting

20.1 A general meeting, called the annual general meeting, must be held:
(a) after the first annual general meeting, at least once in every calendar year.

20.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
(a) a review of the company’s activities
(b) a review of the company’s finances
(c) any auditor’s report
(d) the election of directors, and
(e) the appointment and payment of auditors, if any.

20.3 Before or at the annual general meeting, the directors must give information to the members on the company’s activities and finances during the period since the last annual general meeting.

20.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.

21. Notice of general meetings

21.1 Notice of a general meeting must be given to:
(a) each member entitled to vote at the meeting
(b) each director, and
(c) the auditor (if any).

21.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

21.3 Subject to clause 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
(a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
(b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
21.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
   (a) remove a director
   (b) appoint a director in order to replace a director who was removed, or
   (c) remove an auditor.

21.5 Notice of a general meeting must include:
   (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
   (b) the general nature of the meeting’s business
   (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution
   (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
      i. the proxy is not required to be a member of the company
      ii. the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
      iii. the proxy form must be delivered to the company at least 48 hours before the meeting.

21.6 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

22. Quorum at general meetings

22.1 For a general meeting to be held, at least 25 members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).

22.2 No business may be conducted at a general meeting if a quorum is not present.

22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
   (a) if the date is not specified – the same day in the next week
   (b) if the time is not specified – the same time, and
   (c) if the place is not specified – the same place.

22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

23. Auditor’s right to attend meetings

23.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

23.2 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.
24. Representatives of members

24.1 An incorporated member may appoint as a representative:
   (a) one individual to represent the member at meetings and to sign circular
       resolutions under clause 31, and
   (b) the same individual or another individual for the purpose of being appointed
       or elected as a director.

24.2 The appointment of a representative by a member must:
   (a) be in writing
   (b) include the name of the representative
   (c) be signed on behalf of the member, and
   (d) be given to the company or, for representation at a meeting, be given to the
       chairperson before the meeting starts.

24.3 A representative has all the rights of a member relevant to the purposes of the
      appointment as a representative.

24.4 The appointment may be standing (ongoing).

25. Using technology to hold meetings

25.1 The company may hold a general meeting at two or more venues using any
      technology that gives the members as a whole a reasonable opportunity to
      participate, including to hear and be heard.

25.2 Anyone using this technology is taken to be present in person at the meeting.

26. Chairperson for general meetings

26.1 The elected chairperson will chair general meetings.

26.2 The members present and entitled to vote at a general meeting may choose a
      director or member to be the chairperson for that meeting if:
      (a) there is no elected chairperson, or
      (b) the elected chairperson is not present within 30 minutes after the starting
          time set for the meeting, or
      (c) the elected chairperson is present but says they do not wish to act as
          chairperson of the meeting.

27. Role of the chairperson

27.1 The chairperson is responsible for the conduct of the general meeting, and for this
      purpose must give members a reasonable opportunity to make comments and ask
      questions (including to the auditor (if any)).

27.2 The chairperson does not have a casting vote.

28. Adjournment of meetings

28.1 If a quorum is present, a general meeting must be adjourned if a majority of
      members present direct the chairperson to adjourn it.

28.2 Only unfinished business may be dealt with at a meeting resumed after an
      adjournment.

Members’ resolutions and statements

29. Members’ resolutions and statements

29.1 Members with at least 5% of the votes that may be cast on a resolution may give:
(a) written notice to the company of a resolution they propose to move at a general meeting (members’ resolution), and/or
(b) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members’ statement).

29.2 A notice of a members’ resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.

29.3 A request to distribute a members’ statement must set out the statement to be distributed and be signed by the members making the request.

29.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

29.5 The percentage of votes that members have (as described in clause 29.1) is to be worked out as at midnight before the request or notice is given to the company.

29.6 If the company has been given notice of a members’ resolution under clause 29.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.

29.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

30. Company must give notice of proposed resolution or distribute statement

30.1 If the company has been given a notice or request under clause 29:
(a) in time to send the notice of proposed members’ resolution or a copy of the members’ statement to members with a notice of meeting, it must do so at the company’s cost, or
(b) too late to send the notice of proposed members’ resolution or a copy of the members’ statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members’ resolution or a copy of the members’ statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.

30.2 The company does not need to send the notice of proposed members’ resolution or a copy of the members’ statement to members if:
(a) it is more than 1 000 words long
(b) the directors consider it may be defamatory
(c) clause 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of sending the notice of the proposed members’ resolution or a copy of the members’ statement to members, or
(d) in the case of a proposed members’ resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

31. Circular resolutions of members

31.1 Subject to clause 31.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).

31.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
31.3 Circular resolutions cannot be used:
   (a) for a resolution to remove an auditor, appoint a director or remove a director
   (b) for passing a special resolution, or
   (c) where the Corporations Act or this constitution requires a meeting to be held.

31.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31.5 or clause 31.6.

31.5 Members may sign:
   (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
   (b) separate copies of that document, as long as the wording is the same in each copy.

31.6 The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

**Voting at general meetings**

32. How many votes a member has

   Each member that pays a membership fee as prescribed in Clause 11.4 is entitled to one vote.

   Members belonging to the Life or Emeritus classes of membership are entitled to one vote each.

   Save for as outlined in this clause 32, any member who is not required to pay a membership fee will not be entitled to vote.

33. Challenge to member’s right to vote

33.1 A member or the chairperson may only challenge a person’s right to vote at a general meeting at that meeting.

33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson’s decision is final.

34. How voting is carried out

34.1 Voting must be conducted and decided by:
   (a) a show of hands
   (b) a vote in writing, or
   (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.

34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

34.3 On a show of hands, the chairperson’s decision is conclusive evidence of the result of the vote.

34.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
35. When and how a vote in writing must be held

35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
   (a) at least five members present
   (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
   (c) the chairperson.

35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.

35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
   (a) for the election of a chairperson under clause 26.2, or
   (b) to decide whether to adjourn the meeting.

35.4 A demand for a vote in writing may be withdrawn.

36. Appointment of proxy

36.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.

36.2 The proxy shall be a member of the company.

36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
   (a) speak at the meeting
   (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
   (c) join in to demand a vote in writing under clause 35.1.

36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
   (a) the member’s name and address
   (b) the company’s name
   (c) the proxy’s name or the name of the office held by the proxy, and
   (d) the meeting(s) at which the appointment may be used.

36.5 A proxy appointment may be standing (ongoing).

36.6 Proxy forms must be received by the company at the address stated in the notice under clause 21.5(d) or at the company’s registered address at least 48 hours before a meeting.

36.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

36.8 Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
   (a) dies
   (b) is mentally incapacitated
   (c) revokes the proxy’s appointment, or
   (d) revokes the authority of a representative or agent who appointed the proxy.

36.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.
37. Voting by proxy

37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).

37.2 When a vote in writing is held, a proxy:
   (a) does not need to vote, unless the proxy appointment specifies the way they must vote
   (b) - If the proxy is not exercised, then it is to be transferred to the chair person to vote
   (c) if the way they must vote is specified on the proxy form, must vote that way, and
   (d) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

Directors

38. Office bearers

38.1 The office bearers of the company shall consist of a President and a Vice-President.

38.2 The directors and office bearers of the company from time to time shall comprise the board of directors of the company.

39. Number of directors

The company must have at least six and no more than eleven directors.

40. Election and appointment of directors

40.1 Apart from directors appointed under clause 40.5, the members may elect a director by ballot.

40.2 The ballot shall be conducted by the Returning Officer prior to and announced at the Annual General Meeting of the Company every three (3) years. The Directors and Officers so appointed shall hold office for three (3) years after their appointment when they shall retire but they shall be eligible for re-election PROVIDED THAT the President shall not be eligible for re-election for a period exceeding six (6) consecutive years.

40.3 A person is eligible for election as a director of the company if they:
   (a) are a member of the company, or a representative of a member of the company (appointed under clause 24)
   (b) are nominated by two members or representatives of members entitled to vote,
   (c) give the company their signed consent to act as a director of the company, and
   (d) are not ineligible to be a director under the Corporations Act or the ACNC Act.

40.4 The ballot shall be conducted in the following manner:
   (a) All nominations shall be in writing signed by the Nominee and 2 financial members of the Company and lodged with the Returning Officer not later than the time fixed by the Returning Officer being not less than three (3) months before the Annual General Meeting.
   (b) Should there be more candidates than the number of positions to be filled, a ballot of the members of the Company shall be conducted on the First Past the Post Using crosses method.
(c) In the event that no nominations or insufficient nominations are received the members of the Company present at the Annual General Meeting in person or by proxy shall be entitled to vote for any number of such candidates not exceeding the number of vacancies. In case there shall not be sufficient number of candidates nominated the new Directors shall fill the remaining vacancy or vacancies.

(d) The Chief Executive Officer shall be the Returning Officer unless the Directors appoint an alternative Returning Officer.

(e) A voting paper and such particulars of the candidates as the Returning Officer prescribes shall be forwarded to each member entitled to vote not less than 2 months before the Annual General Meeting.

(f) The closing date of the vote shall be not less than one (1) month before the date of the Annual General Meeting.

(g) The Returning Officer shall appoint two (2) independent scrutineers.

(h) The result of the Ballot shall be placed before the Annual General Meeting following the closing of the vote by the Returning Officer.

40.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:

(a) is a member of the company, or a representative of a member of the company (appointed under clause 24)

(b) gives the company their signed consent to act as a director of the company, and

(c) is not ineligible to be a director under the Corporations Act or the ACNC Act.

40.6 The Company may from time to time by ordinary resolution passed at a General Meeting increase or reduce the number of Officers or Directors of the Company and determine how those increased or reduced numbers are to be filled in accordance with Clause 39.

40.7 The Company may by Ordinary Resolution remove any Director or Officer of the Company as defined in Clause 38.1 and may also determine how any such vacancies are to be filled .

40.8 In the event that a person ceases to be a director or officer bearer of the company (for whatever reason) the directors may appoint another member to fill the vacancy for the balance of the term of the person who has ceased to be a director or office bearer.

40.9 If the number of directors is reduced to fewer than six or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to six (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

41. Election of chairperson

The directors must elect a director as the company’s elected chairperson.

42. Term of office

42.1 At each Board ballot cycle any director appointed by the directors to fill a casual vacancy or as an additional director must retire.

42.2 Other than a director appointed under clause 40.5, a director’s term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
42.3 Each director must retire at least once every three years.

42.4 A director who retires under clause 42.1 may nominate for election or re-election.

43. When a director stops being a director

A director (and, if the director is also an office bearer,) stops being a director (and office bearer) if they:

(a) give written notice of resignation as a director to the company
(b) die
(c) are removed as a director by a resolution of the members noting clause 31.3
(d) stop being a member of the company
(e) are a representative of a member, and that member stops being a member
(f) are a representative of a member, and the member notifies the company that the representative is no longer a representative
(g) are absent for 3 consecutive directors’ meetings without prior approval being obtained from the directors, or
(h) become ineligible to be a director of the company under the Corporations Act or the ACNC Act.

Powers of directors

44. Powers of directors

44.1 The directors are responsible for managing and directing the activities of the company to achieve the purpose set out in clause 6.

44.2 The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.

44.3 The directors must decide on the responsible financial management of the company including:

(a) any suitable written delegations of power under clause 45, and
(b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

44.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members’ resolution at a general meeting.

45. Delegation of directors’ powers

45.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.

45.2 The delegation must be recorded in the company’s minute book.

46. Payments to directors

46.1 The company must not pay fees to a director for acting as a director.

46.2 The company may:

(a) pay a director for work they do for the company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
(b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the company.
46.3 Any payment made under clause 46.2 must be approved by the directors.

46.4 The company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

47. Execution of documents

47.1 The company may execute a document without using a common seal if the document is signed by:
(a) two directors of the company, or
(b) a director and the secretary.

Duties of directors

48. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law) including but not limited to Corporations Law, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:
(a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company
(b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 6
(c) not to misuse their position as a director
(d) not to misuse information they gain in their role as a director
(e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 49
(f) to ensure that the financial affairs of the company are managed responsibly, and
(g) not to allow the company to operate while it is insolvent.

49. Conflicts of interest

49.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
(a) to the other directors, or
(b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.

49.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

49.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 49.4:
(a) be present at the meeting while the matter is being discussed, or
(b) vote on the matter.

49.4 A director may still be present and vote if:
(a) their interest arises because they are a member of the company, and the other members have the same interest
(b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 67)
(c) their interest relates to a payment by the company under clause 66 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
(d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
(e) the directors who do not have a material personal interest in the matter pass a resolution that:
   (i) identifies the director, the nature and extent of the director’s interest in the matter and how it relates to the affairs of the company, and
   (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors’ meetings
50. When the directors meet
The directors may decide how often, where and when they meet.

51. Calling directors’ meetings
51.1 A director may call a directors’ meeting by giving reasonable notice to all of the other directors.
51.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

52. Chairperson for directors’ meetings
52.1 The elected chairperson is entitled to chair directors’ meetings.
52.2 The directors at a directors’ meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:
   (a) not present within 30 minutes after the starting time set for the meeting, or
   (b) present but does not want to act as chairperson of the meeting.

53. Quorum at directors’ meetings
53.1 Unless the directors determine otherwise, the quorum for a directors’ meeting is a majority (more than 50%) of directors.
53.2 A quorum must be present for the whole directors’ meeting.

54. Using technology to hold directors’ meetings
54.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
54.2 The directors’ agreement may be a standing (ongoing) one.
54.3 A director may only withdraw their consent within a reasonable period before the meeting.
55. Passing directors’ resolutions

A directors’ resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

56. Circular resolutions of directors

56.1 The directors may pass a circular resolution without a directors’ meeting being held.

56.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 56.3 or clause 56.4.

56.3 Each director may sign:
(a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
(b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

56.4 The company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

56.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 56.3 or clause 56.4.

Secretary

57. Appointment and role of secretary

57.1 The company must have at least one secretary, who may also be a director.

57.2 A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.

57.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

57.4 The role of the secretary includes:
(a) maintaining a register of the company’s members, and
(b) maintaining the minutes and other records of general meetings (including notices of meetings), directors’ meetings and circular resolutions.

Minutes and records

58. Minutes and records

58.1 The company must, within one month, make and keep the following records:
(a) minutes of proceedings and resolutions of general meetings
(b) minutes of circular resolutions of members
(c) a copy of a notice of each general meeting, and
(d) a copy of a members’ statement distributed to members under clause 30.

58.2 The company must, within one month, make and keep the following records:
(a) minutes of proceedings and resolutions of directors’ meetings (including meetings of any committees), and
(b) minutes of circular resolutions of directors.

58.3 To allow members to inspect the company’s records:
(a) the company must give a member access to the records set out in clause 58.1, and
(b) the directors may authorise a member to inspect other records of the company, including records referred to in clause 58.2 and clause 59.1.

58.4 The directors must ensure that minutes of a general meeting or a directors’ meeting are signed within a reasonable time after the meeting by:
(a) the chairperson of the meeting, or
(b) the chairperson of the next meeting.

58.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

59. Financial and related records

59.1 The company must make and keep written financial records that:
(a) correctly record and explain its transactions and financial position and performance, and
(b) enable true and fair financial statements to be prepared and to be audited.

59.2 The company must also keep written records that correctly record its operations.

59.3 The company must retain its records for at least 7 years.

59.4 The directors must take reasonable steps to ensure that the company’s records are kept safe.

By-laws

60. By-laws

60.1 The directors may pass a resolution to make by-laws to give effect to this constitution.

60.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

61. What is notice

61.1 Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 62 to 64, unless specified otherwise.

61.2 Clauses 62 to 64 do not apply to a notice of proxy under clause 36.6.

62. Notice to the company

Written notice or any communication under this constitution may be given to the company, the directors or the secretary by:
(a) delivering it to the company’s registered office
(b) posting it to the company’s registered office or to another address chosen by the company for notice to be provided
(c) sending it to an email address or other electronic address notified by the company to the members as the company’s email address or other electronic address, or
(d) sending it to the fax number notified by the company to the members as the company’s fax number.
63. Notice to members

63.1 Written notice or any communication under this constitution may be given to a member:
(a) in person
(b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
(c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
(d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
(e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

63.2 If the company does not have an address for the member, the company is not required to give notice in person.

64. When notice is taken to be given

A notice:
(a) delivered in person, or left at a the recipient’s address, is taken to be given on the day it is delivered
(b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
(c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
(d) given under clause 63.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

65. Company's financial year

The company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

66. Indemnity

66.1 The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.

66.2 In this clause and clause 67, ‘officer’ means a director or secretary and includes a director or secretary after they have ceased to hold that office.

66.3 In this clause, ‘to the relevant extent’ means:
(a) to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and
(b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

66.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

67. Insurance

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

68. Directors’ access to documents

68.1 A director has a right of access to the financial records of the company at all reasonable times.

68.2 If the directors agree, the company must give a director or former director for legal proceedings, access to:
(a) certain documents, including documents provided for or available to the directors, and
(b) any other documents referred to in those documents.

Winding up

69. Surplus assets not to be distributed to members

If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company, unless that member or former member is a charity described in clause 70.1.

70. Distribution of surplus assets

70.1 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the company is wound up must be distributed to one or more charities:
(a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6, and
(b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company.

70.2 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

Definitions and interpretation

71. Definitions

In this constitution:
ACNC Act means the Australian Charities and Not-for-profits Commission Act 2012 (Cth)
company means the company referred to in clause 1 (that is the Institute of Public Works Engineering Australasia (NSW Division) Limited)
Corporations Act means the Corporations Act 2001 (Cth)
elected chairperson means a person elected by the members to be the company’s chairperson under clause 41
general meeting means a meeting of members and includes the annual general meeting, under clause 20.1
initial member means a person who is named in the application for registration of the company, with their consent, as a proposed member of the company
IPWEA means the Institute of Public Works Engineering Australasia Limited
member present means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting
registered charity means a charity that is registered under the ACNC Act
special resolution means a resolution:
  i. of which notice has been given under clause 21.5(c), and
  ii. that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and
surplus assets means any assets of the company that remain after paying all debts and other liabilities of the company, including the costs of winding up.

72. Reading this constitution with the Corporations Act

72.1 The replaceable rules set out in the Corporations Act do not apply to the company.
72.2 While the company is a registered charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
72.3 If the company is not a registered charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
72.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

73. Interpretation

In this constitution:
(a) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
(b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).