

Corporations Act 2001
A Company Limited by Guarantee

RAIL INDUSTRY SAFETY AND STANDARDS BOARD LIMITED
CONSTITUTION
2017

Deborah Spring
Chair
Rail Industry Safety and Standards Board
20 November 2017



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Changes to Constitution

Approval Date of Change	Details	Clause No.	Member Approval
03 May 2010	New Constitution for reformed Board approved by the Member and the RISSB Board	N.A.	Yes
24 August 2011	Increase in Number of Directors from 11 to 13.	5.3	Yes
29 November 2011	Appointment of the Company secretary	12.1	Yes
26 November 2012	Director's nomination and appointment process	5.3	Yes
26 November 2012	Chairman's contract renewal process	11.1	Yes
26 November 2012	Change from "GM RISSB" to "CEO RISSB"		Yes
26 November 2012	Add "or" to the list of conditions for vacation of office	8.1	Yes
11 September 2014	Increase in number of directors from 13 to 15.	5.3	Yes
11 September 2014	Amendment to vacation of office terms	8.1(a) (i)	Yes
18 March 2015	New Constitution approved by the Member and the RISSB Board	N.A.	Yes
23 November 2015	Addition of "Associate" class of Members and related amendments; amendment to clause 3.2(g) & change of quorum in clause 7.1	Various	Yes
20 November 2017	Amendments to expand eligibility for membership; to allow certain Directors and the Independent Chairperson to serve additional terms; to allow use of email technology for certain nominations and resolutions; to remove the transitional provisions, and various changes to definitions.	Various	

TABLE OF CONTENTS

1.	PRELIMINARY	1
2.	OBJECTS & POWERS	4
3.	MEMBERSHIP	4
4.	MEMBERSHIP SUBSCRIPTIONS	7
5.	ANNUAL GENERAL MEETINGS	8
6.	GENERAL MEETINGS	9
7.	PROCEEDINGS AT GENERAL MEETINGS	10
8.	VOTING	11
9.	COMPANY BOARD	13
10.	INDEPENDENT CHAIRPERSON	15
11.	ELECTION	16
12.	VACATION OF OFFICE	17
13.	PROCEEDINGS OF THE BOARD	18
14.	ALTERNATE DIRECTORS	19
15.	INTERESTS OF DIRECTORS	20
16.	SECRETARY	21
17.	CHIEF EXECUTIVE OFFICER	21
18.	REMUNERATION	21
19.	EXECUTION OF DOCUMENTS	22
20.	OTHER COMMITTEES	22
21.	ADMINISTRATION	23
22.	WINDING UP AND LIABILITY	24
23.	BY-LAWS	25
24.	VARIATION OF CONSTITUTION	26
25.	SEVERING INVALID PROVISIONS	26
26.	TECHNOLOGY	26

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CONSTITUTION
of
Rail Industry Safety & Standards Board (RISSB) Limited

DATE: 20 November 2017

OPERATIVE CLAUSES:

1. PRELIMINARY

1.1 Interpretation

In this document, unless the context otherwise requires:

- (a) **“Alternate Director”** means a person for the time being holding office as an alternate director of the Company under clause 14;
- (b) **“Annual General Meeting”** means the annual general meeting of the Company held in accordance with clause 5;
- (c) **“Annual Rail Turnover”** means turnover or revenue from rail related activities expressed in \$AUD.
- (d) **“Associate Member”** means a person or entity who has been granted membership by the Board as an “Associate Member” pursuant to clause 3.3, however an Associate is not a member for the purposes of ss.9 or 231 of the Corporations Act;
- (e) **“Auditor”** means the person or persons appointed as auditor or auditors of the Company pursuant to clause 21.5;
- (f) **“Australian Code of Practice (ACOP)”** means the term used to describe RISSB Products, namely standards, codes of practice, rules and guidelines;
- (g) **“Australian Network Rules & Procedures (ANRP)”** means the master set of rules and procedures that define how Rail Transport Operators operate safely on the Australian rail network;
- (h) **“Board”** means the board of Directors of the Company, for the time being;
- (i) **“Business Day”** means a day other than a Saturday, Sunday, or public holiday in the Australian Capital Territory;
- (j) **“business hours”** means between 9.00am and 5.00pm on a Business Day;
- (k) **“Chief Executive Officer”** means the person appointed by Board as the Chief Executive Officer of the Company per clause 9.1(c)(iv) and having the day-to-day functions provided in clause 17.2;
- (l) **“Company”** means Rail Industry Safety and Standards Board (RISSB) Limited;

- (m) **“Corporations Act”** means the *Corporations Act 2001* (Commonwealth), except to the extent of any exemption, modification, declaration or order made in respect of that legislation which applies to the Company;
- (n) **“Directors”** means the directors of the Company for the time being, and if the Company has only one director, that director;
- (o) **“Financial Year”** means a year commencing on 1 July in any year and ending on 30 June in the following year;
- (p) **“Full Member”** means a person or entity who has been granted membership by the Board as a “Full Member” pursuant to clause 3.2;
- (q) **“Freight Operations”** means organisations that primarily operate rolling stock for the purpose of the carriage of bulk or containerised freight;
- (r) **“General Meeting”** means a general meeting of the Company covered by the Board or the Members (including an Annual General Meeting);
- (s) **“Government Agency”** means an agency, statutory body, or department of the Commonwealth of Australia, or of the Government of each of the States and Territories of Australia (as applicable);
- (t) **“Independent Chairperson”** means the person appointed in accordance with clauses 10 and 11 to preside over Board meetings, General Meetings and Annual General Meetings of the Company;
- (u) **“Independent Director”** means a Director who fulfils the eligibility criteria in clause 9.2 and is elected pursuant to clause 11.2;
- (v) **“Industry”** means the Rail Industry in Australia including infrastructure owners and managers, rail operators and rail product and service suppliers;
- (w) **“Industry Director”** means a Director who fulfils the eligibility criteria in clause 9.3 and is elected pursuant to clause 11.3;
- (x) **“Member”** means a person or entity for the time being registered under the provisions of this Constitution as a member of the Company, including but not limited to, Full Members and Associate Members;
- (y) **“Network Managers/Owners”** means organisations that own and manage rail network infrastructure and provide access to freight and passenger operators for the running of trains;
- (z) **“Passenger Operations”** means organisations that primarily operate passenger train services and may include that organisation controlling and maintaining the rail network on which the passenger services are operated;
- (aa) **“Register”** means the register of Members of the Company as per clause 3.5;
- (bb) **“Related Body Corporate”** means any body corporate which is a related body corporate of the Company under the Corporations Act;
- (cc) **“RISSB Products”** mean the output of the Company’s activities carried out to fulfil the object in clause 2.1(a) of this Constitution.
- (dd) **“Secretary”** means a company secretary of the Company for the time being;
- (ee) **“Subscription”** means the annual fee paid by Members of such an amount as the Board may determine from time to time in accordance with clause 4.1, for Members to obtain membership and to renew their membership of the Company;

- (ff) **“Subsidiary”** means any company or corporation which is a subsidiary of the Company in accordance with the Corporations Act;
- (gg) **“Suppliers and Contractors”** means organisations that supply or maintain equipment or maintain and construct equipment and facilities for the rail industry; or are not for profit organisations established to facilitate the provision of services or equipment to the rail industry;
- (hh) **“Technology”** includes all information and communications devices for audio, visual, audio-visual or electronic communication including, but not limited to, radio, telephone, facsimile, closed circuit television, data storage devices, internet communication via an automated or user operated system, electronic mail, automated election processes, direct recording electronic voting systems, or any other electronic means available; and
- (ii) **“Year”** means the calendar year unless designated as the Financial Year.

1.2 Words or expressions contained in this Constitution will be interpreted in accordance with the provisions of the Corporations Act as in force at the date when such interpretation is required.

1.3 In this Constitution, unless a contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include all other genders;
- (c) any headings inserted in this Constitution are included for convenience and shall not affect its construction;
- (d) terms not otherwise defined in this Constitution have the meanings given to them by the Rail Safety National Law administered by Office of the National Rail Safety Regulator;
- (e) the word "includes" in any form is not a word of limitation;
- (f) the word "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust; and
- (g) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

1.4 **Name of Company**

The name of the Company is the “Rail Industry Safety and Standards Board (RISSB) Limited”.

1.5 **Nature of the Company**

- (a) The Company is limited by guarantee and does not have share capital.
- (b) The income and property of the Company, however derived or obtained, shall be applied solely towards the promotion of the objects of the Company as set forth in this Constitution, and, except as otherwise provided in this Constitution, no portion thereof shall be paid or transferred, directly or indirectly by way of dividend, bonus, or otherwise to any Members.

1.6 **Replaceable Rules**

The Replaceable Rules in the Corporations Act do not apply to the Company.

2. OBJECTS & POWERS

2.1 Objects of the Company

The objects for which the Company is established are to:

- (a) develop, manage and promote a suite of standards, rules, guidance materials and other documents, including the ACOP and ANRP, to assist the rail industry to manage rail safety, improve efficiency and achieve safety outcomes through standardisation, interoperability and harmonisation;
- (b) develop a risk model for the Australian rail operating environment that is based on data and other inputs that will help drive safety improvements by guiding prioritisation of standards development and regulatory activity; and for use by the rail industry participants in directing their approach to safety management;
- (c) provide independent technical advice; and
- (d) undertake initiatives to support the rail industry's role in the co-regulatory model for rail safety in Australia.

2.2 Powers of the Company

The Company has the powers set out in the Corporations Act but only to do all things that are necessary, convenient or incidental to carry out the objects set out in clause 2.1.

2.3 Amendment

The objects of the Company may be altered or amended by a special resolution passed in accordance with the Corporations Act.

3. MEMBERSHIP

3.1 Member Base

- (a) The Company will consist of the following classes of Members:
 - (i) Full Members who may be divided into sub-categories or sub-classes as determined by the Board according to the Member's Annual Rail Turnover per annum.
 - (ii) Associate Members who are not eligible to:
 - A. vote at any General Meeting of the Company (including the Annual General Meeting); or
 - B. elect or appoint a Director to the Board or be elected or appointed to the Board,but who otherwise has the rights and obligations of Full Members, and who are entitled to hold themselves out to the public as being associated with the Company (subject to any restrictions or directions of the Board); and
 - (iii) such other classes of Member as the Board may determine from time to time, with such eligibility criteria as the Board may determine from time to time.
- (b) The rights and privileges of every Member will be personal to each Member and are not transferable except in the case of proxy votes as provided for in this Constitution and at law. Without limiting the application of this clause 3.1(b), every Member may have access to a copy of RISSB Products but must not distribute, copy or allow any

third party (including any members of the Member) to have access to those RISSB Products, unless the Company provides its express written permission.

- (c) The Board may determine, amend or vary the rights and obligations attaching to any of the separate classes of membership of the Company.

3.2 **Member Eligibility (Full Members)**

Any entity or organisation (incorporated or otherwise) will be eligible to be a Full Member of the Company if it is an entity that is:

- (a) an accredited Rail Transport Operator (either as a Rail Infrastructure Manager or a Rolling Stock Operator or both), whether within Australia or overseas;
- (b) a Government Agency or organisation that controls the management of rail networks by a Rail Transport Operator;
- (c) a contractor or supplier supplying services or equipment to the Industry; or
- (d) an association with a key focus on the Industry;

and who:

- (e) agrees with the objects of the Company set out in clause 2.1;
- (f) pays the Subscription determined by the Board;
- (g) agrees in writing to provide a guarantee (of the kind referred to in clause 22.2) of an amount not exceeding ten dollars (\$10.00) to defray such debts and liabilities of the Company, and the costs, charges and expenses of winding up, upon its winding up or dissolution; and
- (h) (if the Full Member is an association) further agrees that it will only use the RISSB Products for the purpose of its organisation's work and agrees that it must not distribute, copy or grant access to the RISSB Products to any of its members or any other person.

3.3 **Member Eligibility (Associate Members)**

Any entity or organisation (incorporated or otherwise) or any individual will be eligible to be an Associate Member of the Company if they are:

- (a) an individual, small contractor or supplier with three or less staff and a turnover of less than \$1 million per annum supplying services or equipment to the Industry;
- (b) distinguished individuals who have given long and meritorious service to the Industry and whose activities promote or have promoted the objects of the Company;
- (c) individuals who are engaged in studies associated with the Industry;
- (d) an employee union, higher education institution, or a registered training organisation, who has an interest in the Industry generally; or
- (e) a tourism and/or heritage organisation that is a registered charitable organisation and has operations turnover of less than \$1 million per annum;

and who:

- (f) agrees with the objects of the Company set out in clause 2.1;
- (g) pays the Subscription determined by the Board;

- (h) agrees in writing to provide a guarantee (of the kind referred to in clause 22.2) of an amount not exceeding ten dollars (\$10.00) to defray such debts and liabilities of the Company, and the costs, charges and expenses of winding up, upon its winding up or dissolution;
- (i) (if a student, higher education institution, or a registered training organisation) further agrees that he/she or it will only use the RISSB Products for the purpose of their studies or training activity and agrees that they must not distribute, copy or grant access to the RISSB Products to anyone other than their students provided that the access granted to students is temporary and is limited to the purpose of the training course or research work.

3.4 Applications for Membership

- (a) All applications for membership to become a Member must be submitted to the Secretary in such form as the Board may determine. With each application form, the Secretary must supply a copy of (or give electronic access to) the Constitution.
- (b) The Board may, in its absolute discretion:
 - (i) approve or reject an application to become a Member submitted pursuant to clause 3.4(a); and
 - (ii) determine the class of membership for which an applicant or existing Member qualifies.
- (c) Where the Board approves an application for membership, the Secretary must, as soon as practicable after that determination, notify the applicant of that approval. Membership of the Company is deemed to commence upon the Secretary giving such notice.
- (d) If the Board rejects any application for membership, the Secretary must, as soon as practicable after that determination, notify the applicant of the rejection. The Board is not required to give reasons for such a rejection.

3.5 Register of Members

- (a) The Secretary must maintain a "Register of Members" of the Company at the registered office.
- (b) The register must contain the following particulars:
 - (i) the name and address of each Member (which will be the address of the Member for the purpose of service of any notices to that Member);
 - (ii) the class of membership;
 - (iii) the date on which the Member becomes a Member; and
 - (iv) the date on which the Member ceases to be a Member (if applicable).

3.6 Resignation

Any Member who wishes to resign from the Company:

- (a) must give written notice to that effect to the Secretary; and
- (b) will remain liable for any monies that are due and payable or that have accrued under the Member's Subscription up until the date the notice is given in accordance with clause 3.6(a),

provided all monies owing to the Company by the Member are paid by the expiration of the notice, it is on the date of the expiration of the notice that the membership of the resigning Member will cease.

3.7 Cessation

- (a) A Member will cease to be a Member if:
 - (i) the Member resigns in accordance with clause 3.6; or
 - (ii) the Member, that is a body corporate, has a liquidator, provisional liquidator or administrator appointed or otherwise takes steps to obtain protection, or is granted protection, from its creditors under any applicable legislation;
 - (iii) the Member, that is an individual, dies or becomes mentally incapacitated, or becomes bankrupt or otherwise takes steps to obtain protection, or is granted protection, from its creditors under any applicable legislation;
 - (iv) the Member fails to renew its membership;
 - (v) the Member is unfinancial and the Board resolves to terminate the Member's membership; or
 - (vi) the Member ceases to meet the eligibility requirements for membership set out in clause 3 of this Constitution.
- (b) Any Member whose membership of the Company ceases or is terminated will be liable for all moneys due by that Member to the Company in addition to any sum not exceeding ten dollars (\$10.00) for which the Member is liable under this Constitution.
- (c) Any Member whose membership ceases or is terminated must not make any claim, monetary or otherwise, on the Company, its funds or property, except as a creditor of the Company.
- (d) Members acknowledge that all Subscriptions paid are non-refundable and that they are not entitled to a refund of any part of a Subscription paid prior to their membership ceasing.
- (e) Any person or corporation who for any reason ceases to be a Member must no longer represent itself in any manner as being a Member or otherwise associated with the Company.

3.8 Liability of Members

The liability of the Members is limited.

4. MEMBERSHIP SUBSCRIPTIONS

4.1 Subscriptions

- (a) All Members must pay such Subscriptions to the Company as may be determined by the Board from time to time, which may be pro-rataed for the first year if a Member joins after the commencement of the Financial Year in which they become a Member.
- (b) Each Member will whenever requested in writing by the Secretary to do so, provide such information as is reasonably required by the Company in order to calculate the Member's annual Subscription.

4.2 Timing of Payment

- (a) Each Member must pay their first Subscription pursuant to clause 3.2(f) or 3.3(g).

- (b) After the first Subscription, all Subscriptions are then payable in advance on 1st of July in each Year in accordance with clause 4.1 unless otherwise agreed by the Board.

4.3 **Unfinancial Members**

- (a) A Member will be deemed unfinancial if their Subscription is unpaid three (3) months after the due date and will remain unfinancial for as long as the Subscriptions are outstanding.
- (b) Whilst a Member is unfinancial, they will not be entitled to exercise any voting rights at any General Meeting and will not be eligible to nominate a person to be elected to the Board.
- (c) Whilst a Member is unfinancial, that Member may have its membership terminated by ordinary resolution of the Board.

5. **ANNUAL GENERAL MEETINGS**

5.1 **Holding of Annual General Meeting**

The Company must, at least once in each year and within a period of five (5) months after the expiration of each Financial Year, convene an Annual General Meeting.

5.2 **Procedures at Annual General Meeting**

The procedures at General Meetings set out in clauses 6, 7, 8 and 11 of this Constitution apply equally to Annual General Meetings.

5.3 **Notice**

- (a) The Secretary must cause a notice to be given to all Members setting out the date, time and place of the Annual General Meeting and such notice must be given not less than twenty one (21) days prior to the date scheduled for the Annual General Meeting.
- (b) The accidental omission to give notice to any Member in accordance with clause 5.3(a) does not invalidate the proceedings at the Annual General Meeting.

5.4 **Business of Annual General Meeting**

In addition to any business included in an agenda published by the Company, the business at an Annual General Meeting must be:

- (a) to confirm the minutes of the preceding Annual General Meeting and of any General Meeting held since that preceding Annual General Meeting;
- (b) to consider the annual financial report, the Board's report and auditor's report and the audited financial statements of the Company;
- (c) to elect the Directors pursuant to clause 11 (if it is an election year);
- (d) to endorse the appointment of the Independent Chairperson and any Independent Directors;
- (e) to appoint a qualified auditor for the upcoming year and determine their remuneration (if any);
- (f) to consider and discuss the strategic plan; and
- (g) to consider such other business as may be required by law to be transacted at the Annual General Meeting.

6. GENERAL MEETINGS

6.1 Written resolutions of Members

The Company may pass a resolution without a meeting of the Members in accordance with Section 249A of the Corporations Act as if the Company were a proprietary company. For clarity, only Full Members are entitled to vote on the resolution and therefore pass the resolution in this manner.

6.2 Calling of General Meetings

- (a) The Board may, whenever it thinks fit, convene a General Meeting of the Company.
- (b) The Board must, upon the requisition of Full Members holding at least five percent (5%) of the votes that may be cast at a General Meeting, call a General Meeting of the Company within twenty one (21) days of the request being received. Such General Meeting must be held within two (2) months of the requisition.

6.3 Requisition for General Meeting

Any requisition for a General Meeting made by the Full Members in accordance with clause 6.2(b) must:

- (a) be in writing;
- (b) state any business or resolutions to be proposed at that General Meeting;
- (c) be signed by all the Full Members making the request (“**the requisitionists**”); and
- (d) otherwise comply with the requirements of section 249D of the Corporations Act.

6.4 Action where Board does not call a General Meeting

If the Board does not call a General Meeting within twenty one (21) days after the requisition is given to the Company in accordance with clause 6.2(b), the requisitionists may themselves:

- (a) issue a notice of a General Meeting in accordance with clause 6.5; and
- (b) after twenty one (21) days of that notice being given, convene a meeting in the same manner or as near as possible to the manner in which General Meetings are convened by the Board,

provided that such a meeting is not held after the expiration of three (3) months from the date of the requisition.

6.5 Notice of Meetings

- (a) The Company must give not less than twenty one (21) days notice of a meeting of the Members.
- (b) A notice of a meeting of the Members is taken to be given:
 - (i) if sent by pre-paid post, three (3) days after it is posted;
 - (ii) if sent by facsimile, when the sender’s facsimile system generates a message confirming successful transmission of the entire notice unless, within eight (8) business hours after the transmission, the recipient informs the sender that it has not received the entire notice; or
 - (iii) if sent by electronic mail, when the sender’s electronic mail system generates a message confirming successful transmission of the entire

notice, unless, within eight (8) business hours after the transmission, the recipient informs the sender that it has not received the entire notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

- (c) Notice of a meeting of Members must be given to each Member, each Director, each Alternate Director and any Auditor of the Company.
- (d) A notice of a meeting must:
 - (i) set out the place, date and time for the meeting;
 - (ii) state the general nature of the business of the meeting; and
 - (iii) set out or include any other information or documents specified by the Corporations Act.
- (e) The accidental omission to give notice to, or the non-receipt of notice by, a Member or another entitled person, will not invalidate the proceedings or any resolution at any Company meeting.

7. PROCEEDINGS AT GENERAL MEETINGS

7.1 Quorum

- (a) No business will be transacted at any General Meeting (including an Annual General Meeting) unless a quorum of Members is present at the time when the meeting proceeds to business.
- (b) A quorum for a General Meeting is 50% of financial Full Members (whether in person or by proxy).
- (c) In determining whether a quorum for a General Meeting is present:
 - (i) where more than one proxy, attorney or representative of a Full Member is present, only one of those persons is counted; and
 - (ii) subject to clause 7.1(c)(i), where a person is present as a Full Member and as a proxy, attorney or representative of another Full Member, that person is counted once as the Member and is counted again for each proxy that it holds for the purposes of the quorum.
- (d) A quorum must be present at all times during the meeting.
- (e) If a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting:
 - (i) the meeting is dissolved; and
 - (ii) another meeting is adjourned to the date, time and place as the Directors may by notice to the Members appoint, or failing any appointment, to the same day in the next week at the same time and place as the adjourned meeting.

7.2 Chairperson for General Meetings

- (a) The Independent Chairperson will preside as the chair at every meeting of the Company.

- (b) If the Independent Chairperson is not present within fifteen (15) minutes after the time appointed for the meeting or is unwilling to act, then the Directors present shall elect one of their number to preside as chair of the meeting.
- (c) If there are no Directors present or willing to act then the Members present shall elect one of their number to preside as chair of the meeting.
- (d) The chair of a meeting of Members does not hold a vote.

7.3 Adjourned Meetings

- (a) The chair of any meeting of Members may, with the consent of any meeting in which a quorum is present (and shall as directed by that meeting), adjourn the meeting to another time and/or another place, but no further business may be transacted at the meeting from which the adjournment took place until the meeting is resumed.
- (b) Where a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one (1) month or more.

7.4 General Conduct of Meetings

- (a) Subject to the Corporations Act, the chair of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chair of a meeting of Members may delegate any power conferred by this Constitution in respect of the conduct of the meeting to any person.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
- (d) Only items of business described in the notice of a General Meeting or Annual General Meeting may be transacted at that meeting. Members are not entitled to propose any new items to be considered by the Company at a General Meeting or Annual General Meeting.

8. VOTING

8.1 Voting Rights

- (a) Each Full Member present, in person or by proxy, at a General Meeting is entitled to vote on any resolution put at any General Meeting and have one (1) vote.
- (b) For the sake of clarity, Associate Members are entitled to be present but are not entitled to a vote at any General Meeting (or Annual General Meeting) of the Company, unless they hold a proxy for a Full Member and are exercising that proxy.

8.2 Resolutions of Members

- (a) Subject to the Corporations Act, a resolution is passed if more votes are cast in favour of the resolution by Members entitled to vote on the resolution than against the resolution.
- (b) A challenge to a right to vote at a meeting of Members may only be made at the meeting and must be determined by the chair, whose decision is final.
- (c) Unless a poll is demanded in accordance with clause 8.3, a resolution put to the vote at a meeting of Members must be decided on a show of hands. Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy vote must be cast.

- (d) On a show of hands, a declaration by the chair of a meeting of Members is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

8.3 Polls

- (a) A poll may be demanded on any resolution at a meeting of Members, by any Full Member or by the chair:
 - (i) before a vote on that resolution is taken; or
 - (ii) before or immediately after the results of the vote on that resolution on a show of hands are declared.
- (b) A demand for a poll may be withdrawn.
- (c) A poll demanded on a resolution at a meeting of Members must be taken in the manner and at the time and place the chair of the meeting directs.
- (d) The result of the poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (e) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

8.4 Subscriptions Must be Paid

No Member is entitled to vote at any meeting if they are deemed to be unfinancial in accordance with clause 4.3 or if they owe any other sum to the Company.

8.5 Proxies

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- (b) Such appointment must be in writing (in a form approved by the Board from time to time) and include the name of the Member, the name of the proxy and be signed by the Member. Scanned copies of originals are acceptable.
- (c) The instrument appointing a proxy must be deposited with the Secretary not less than forty eight (48) hours before the time for holding the meeting, or the adjourned meeting at which the person named in the instrument proposes to vote.
- (d) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing Member dies; or
 - (ii) the Member is mentally incapacitated; or
 - (iii) the Member revokes the proxy's appointment; or
 - (iv) the Member revokes the authority under which the proxy was appointed by a third party.
- (e) A proxy's authority to vote is suspended while the Member is present at the meeting.

8.6 **Electronic Meetings of Members**

A meeting of Members may be called or held using any Technology that provides contemporaneous linking together by an instantaneous communication device.

9. **COMPANY BOARD**

9.1 **The Board**

- (a) The affairs of the Company shall be controlled and managed by or under the direction of the Board.
- (b) The Board will consist of:
 - (i) the Independent Chairperson;
 - (ii) a minimum of one (1) and a maximum of two (2) Independent Directors;
 - (iii) four (4) Industry Directors;(together referred to as **'the Directors'**).
- (c) The Board shall control and manage the affairs of the Company and may:
 - (i) subject to these clauses and the Corporations Act, exercise all such powers of the Company other than those powers and functions that are required by these clauses to be exercised by General Meetings of Members;
 - (ii) subject to these clauses and the Corporations Act, has power to perform all such acts and things as appear to the Board to be desirable or essential for the proper management of the business affairs of the Board including the arrangement of all compulsory insurances;
 - (iii) appoint such other working groups as it deems necessary. Such working groups may include persons who are not Members;
 - (iv) appoint from time to time the Chief Executive Officer to fulfil the duties of that office; and
 - (v) do all things appropriate to fulfil the objects of the Company.

9.2 **Eligibility for Independent Directors**

- (a) When the office of an Independent Director is vacant or expected to become vacant, the Board must promptly nominate a person to be appointed as the Independent Director.
- (b) Subject to clause 9.2(c) a person is only eligible for nomination as an Independent Director if he or she meets the following criteria:
 - (i) the person consents to being appointed a director of the Company;
 - (ii) an Independent Director must be a natural person;
 - (iii) the person does not hold any office of profit, nor has any direct pecuniary interest in, an institution or body that performs, or may perform during the person's tenure as Independent Director, services for the Company;
 - (iv) the person must not be a person who (in the opinion of the Board) holds any office of profit or has any direct and substantial pecuniary interest with a railway industry participant that could materially interfere with (or could

reasonably be perceived to materially interfere with) the exercise of their independent judgment; and

- (v) the person must have experience and expertise in either:
 - A. standards development; or
 - B. safety policy and management; or
 - C. rail industry experience generally; or
 - D. corporate governance and/or as a non-executive director; or
- (c) Notwithstanding clause 9.2(b), a person is eligible for nomination as an Independent Director if they provide casual or part-time consultancy or contract work for more than one Member. A person is not eligible if they work for only one regardless of whether they are employed or contracted on a full-time, part-time or casual basis.

9.3 Eligibility for Industry Directors

- (a) A person is only eligible for nomination as an Industry Director if he or she meets the following criteria:
 - (i) the person consents to being appointed a director of the Company;
 - (ii) an Industry Director must be a natural person;
 - (iii) the person must be nominated by their employer or sponsoring organisation who is a Full Member; and
 - (iv) the person's employer or sponsoring organisation must be a Full Member representing one of the four categories:
 - A. Passenger Operations;
 - B. Freight Operations;
 - C. Network Managers/Owners; or
 - D. Suppliers and Contractors and/or other Industry participants.
- (b) No person shall be qualified to be elected or appointed to the Board as an Industry Director unless their employer or sponsoring organisation who is a Full Member has paid their Subscription in accordance with clause 4.

9.4 Term of Office

- (a) A Director holds office from the conclusion of the Annual General Meeting at which they were elected until the conclusion of the third Annual General Meeting following their election, unless the Director resigns sooner, vacates the office or is disqualified from holding the office.
- (b) Newly elected Directors take office with effect from the conclusion of the Annual General Meeting at which they are elected.
- (c) Independent Directors and Industry Directors can be reappointed for a maximum of two (2) terms of three (3) years each subject to clause 9.4(d).
- (d) If an Independent Director or Industry Director serves two (2) terms pursuant to clause 9.4(c), then the Board may approve an Independent Director or Industry Director (as applicable) to be eligible to serve one additional term on the Board of three (3) years

but that Director must still be appointed in accordance with the procedures in clause 11 by the Members at the Annual General Meeting.

9.5 **Removal of Directors**

- (a) The Company may remove, before the expiration of their period of office any Director by ordinary resolution and may, by ordinary resolution, appoint another person in their stead.
- (b) The person so appointed shall only be appointed for the remainder of the term held by the previous Director.

10. **INDEPENDENT CHAIRPERSON**

10.1 **Role**

- (a) The Company must have an Independent Chairperson at all times.
- (b) The Independent Chairperson must maintain oversight of the Company and the performance of the Chief Executive Officer and keep the Board informed of any issues relevant to the Company.

10.2 **Eligibility**

- (a) When the office of Independent Chairperson is vacant or expected to become vacant, the Board must promptly nominate a person to be appointed as the Independent Chairperson
- (b) Subject to clause 10.2(c) a person is only eligible for nomination as Independent Chairperson if he or she meets the following criteria:
 - (i) the person consents to being appointed the Independent Chairperson of the Company;
 - (ii) the person does not hold any office of profit, nor has any direct pecuniary interest in, an institution or body that performs, or may perform during the person's tenure as Independent Chairperson, services for the Company;
 - (iii) the person must not be a person who holds any office of profit or has any direct pecuniary interest with a railway industry participant; and
 - (iv) the person is a person who would promote public confidence in the integrity, legitimacy, impartiality, rigor of work being undertaken, and fairness of the Company.
- (c) Notwithstanding clause 10.2(b), a person is eligible for nomination as Independent Chairperson if they provide casual or part-time consultancy or contract work for more than one Member. A person is not eligible if they work for only one Member regardless of whether they are employed or contracted on a full-time, part-time or casual basis.

10.3 **Term of Office**

- (a) The Independent Chairperson holds office from the conclusion of the Annual General Meeting at which they are appointed until the conclusion of the third Annual General Meeting following their election, unless the Independent Chairperson sooner resigns, vacates the office or is disqualified from holding the office.
- (b) The Independent Chairperson can be reappointed for a maximum of two (2) terms of three (3) years each subject to clause 10.3(c).

- (c) If the Independent Chairperson serves two (2) terms pursuant to clause 10.3(b), then the Board may approve the Independent Chairperson to be eligible to serve one additional term of three (3) years but that Independent Chairperson must still be appointed in accordance with the procedures in clause 11 by the Members at the Annual General Meeting.

11. ELECTION

11.1 At Annual General Meeting

Election of the Board must take place at the Annual General Meeting of the Company.

11.2 Nomination Process for Independent Chairperson and Independent Directors

- (a) Candidates for the offices of:
 - (i) Independent Chairperson; and
 - (ii) the two Independent Directors,will be nominated in writing by the then current Board.
- (b) The Board may nominate:
 - (i) no more than two (2) people to be Independent Chairperson; and
 - (ii) no more than four (4) people to fill the offices of the two (2) Independent Directors.
- (c) The people nominated must be present at the relevant Annual General Meeting and must accept such nomination.

11.3 Nomination Process for Industry Directors

- (a) Candidates for the office of Industry Director will be proposed in writing by any Full Member and seconded by any Full Member of the Company.
- (b) The nomination form for Industry Directors will be invalid unless it bears the written consent of the candidate to their nomination and states whether the candidate is being nominated as an Industry Director and which category of Members the candidate will be representing, namely:
 - (i) Passenger Operations;
 - (ii) Freight Operations;
 - (iii) Network Managers/Owners; or
 - (iv) Suppliers and Contractors and/or other Industry participants.
- (c) Such nomination must be delivered:
 - (i) in person to the Secretary; or
 - (ii) by post to be in the hands of the Secretary; or
 - (iii) by an email attaching the nomination to the Secretary,no later than seven (7) days prior to the date by which the Secretary must issue the notices of the relevant Annual General Meeting. The Secretary will confirm this relevant closing date at the time the Secretary calls for nominations.

- (d) If no valid written nominations are received for a particular office or offices then the Secretary will call for nominations from the meeting itself.
- (e) The people nominated must be present at the relevant Annual General Meeting and must accept such nomination.

11.4 Election Process

- (a) In respect of the Independent Chairperson and Independent Directors, even if there are no more nominations for an office than the number of vacancies to be filled the Company must still endorse their appointment by ordinary resolution. If no such resolution is passed, then the existing Independent Chairperson or Independent Director (as applicable) will continue in office for a further three (3) months and the Board will re-nominate persons to serve as the Independent Chairperson and Independent Directors (whichever is appropriate). The Board will call an Extraordinary General Meeting for the Members to endorse the new appointments.
- (b) If the nominated person for Independent Chairperson is not already a director of the Company, the person automatically becomes a director upon being appointed as the Independent Chairperson.
- (c) In respect of Industry Directors, if there are no more nominations for an office than the number of vacancies to be filled, the Secretary will declare the nominee or nominees elected to the office for which they were nominated.
- (d) Where candidates exceed the number of vacancies for an individual position an election will be held by secret ballot amongst the Full Members present and entitled to vote. The Board may determine the manner in which the election is conducted from time to time.
- (e) The Secretary will prepare the ballot papers and determine the manner in which votes are marked thereon.
- (f) Each Full Member present at the Annual General Meeting must vote for candidates using a voting paper provided by the Company for that purpose. A preference ranking must be given to each candidate and any voting paper which does not include a preference ranking is invalid.
- (g) Before the return of voting papers, the Board must appoint two (2) scrutineers.
- (h) The scrutineers must total the votes allocated to each candidate on the voting papers and then report to the Secretary with the result of the vote.
- (i) The candidate(s) with the highest number of first preference votes is elected to the office which they were nominated for.
- (j) In the event of the process in clause 11.4(i) producing a tied result the successful candidates will be elected on the basis of second preferences and so on until a result has been determined.
- (k) The Secretary will announce the result of the election at the Annual General Meeting.

12. VACATION OF OFFICE

12.1 Vacancies Generally

A Director (including the Independent Chairperson) vacates office if he or she:

- (a) dies;
- (b) becomes bankrupt or insolvent; or

- (c) resigns their office by notice in writing given to the Secretary;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (e) fails to attend three (3) consecutive meetings without prior notice of absence having been approved by the Board; or
- (f) (in respect of Industry Director's only) ceases to be nominated by their employer or sponsoring organisation who is a Full Member.

12.2 **Filling Casual Vacancies**

The Board has the power, at any time and from time to time, to appoint a person to hold office on the Board to fill a casual vacancy provided they meet the relevant eligibility criteria. Any person so appointed will hold office until the next Annual General Meeting during which the Company must:

- (a) confirm the appointment of that person as a Director for the remainder of the term held by the previous Director; or
- (b) appoint a new person to the Board for the remainder of the term held by the previous Director.

13. **PROCEEDINGS OF THE BOARD**

13.1 **Frequency**

The Board shall meet at least four (4) times each year at such places and such times as the Board may determine.

13.2 **Calling Board Meetings**

Meetings of the Board may be convened by the Independent Chairperson or by any Director.

13.3 **Notice**

Written notice of each meeting of the Board shall be served on each Director at least seven (7) Business Days before the meeting by:

- (a) delivering it to them personally; or
- (b) sending it by facsimile or electronic transmission to a number or email address nominated by the Director.

13.4 **Quorum**

- (a) 50% of Directors (personally present or participating by telephonic or electronic media) constitute a quorum for the business of a meeting of the Board. For certainty, Directors include Alternate Directors where Directors are not available.
- (b) No business shall be transacted at a Board meeting unless a quorum is present and if, within thirty (30) minutes of the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.

13.5 **Chair**

- (a) The Chairperson must (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each meeting of Directors.

- (b) The Directors present must elect one of themselves to chair all or part of the meeting of Directors if:
 - (i) there is no Chairperson; or
 - (ii) the Chairperson is not present within fifteen (15) minutes after the time appointed for the holding of a meeting of Directors; or
 - (iii) the Chairperson is present within that time but is not willing to chair all or part of that meeting.

13.6 **Voting at Board Meetings**

- (a) Questions arising at a meeting of the Board or of any working group appointed by the Board shall be determined on a show of hands or, if demanded by a Director, by a poll taken in such a manner as the person presiding at the meeting may determine.
- (b) Each Director present at a meeting of the Board (including the person presiding at the meeting) is entitled to one (1) vote and, in the event of an equality of votes on any question, the Chairperson shall have a second or casting vote.

13.7 **Circulating Resolutions**

- (a) Where a Board meeting is not physically held, either:
 - (i) a resolution in writing signed by all Directors for the time being entitled to receive notice of a meeting thereof; or
 - (ii) a resolution approved by all Directors for the time being entitled to receive notice of a meeting thereof circulated by email (and approved by email without the need for signatures),will be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.
- (b) Any such resolution may consist of several documents in like form each signed by one or more Directors.
- (c) Electronic copies of scanned originals of signed copies will be sufficient evidence of a signed assent by Directors.

13.8 **Validity of acts of Directors**

If it is afterwards discovered that there was some defect in the election or appointment of a person to be an officer or a Director by the Board, or to act in that capacity, or that a person so elected or appointed was disqualified, all acts done by that person are valid as if the person had been duly elected or appointed and was qualified to act in that capacity.

13.9 **Use of Technology**

A Meeting of Directors may be called or held using any Technology that provides contemporaneous linking together by an instantaneous communication device.

14. **ALTERNATE DIRECTORS**

14.1 **Appointment & Termination**

- (a) If approved by the Board (without the vote of the appointor), a Director may appoint a person as an Alternate Director to exercise some or all of that Director's powers for a specified period of time if they anticipate needing an extended period of leave or for personal circumstances such as illness.

- (b) The appointing Director may terminate the appointment of his or her Alternate Director at any time. The Alternate Director's appointment otherwise ceases if:
 - (i) the appointor ceases to be a Director; or
 - (ii) the Alternate Director resigns.

14.2 **Notice of Board Meetings**

If the appointor requests the Company to give the Alternate Director notice of Board meetings, the Company must do so. Unless the appointor has requested it, the Company need not give notice of Board meetings to an Alternate Director.

14.3 **Obligations and entitlements**

- (a) An Alternate Director is an officer of the Company and not an agent of his or her appointing Director. An Alternate Director is subject to all the duties, and entitled to exercise all the powers and rights of the appointor as Director.
- (b) An Alternate Director may attend and vote in place of the appointor at a Board meeting at which the appointor is not present.
- (c) If the Alternate Director is a Director in their own right, they have a separate right to vote as Alternate Director.
- (d) If the Alternate Director is acting for more than one appointor, they have a separate right to vote in place of each appointor.

15. **INTERESTS OF DIRECTORS**

15.1 **Directors Duties**

All Directors must act in the best interests of the Company as a whole and must not represent or advocate for any of their sponsors' positions in discussions on issues considered by the Board.

15.2 **Disclosure of Interests**

If a Director has a material personal interest in a matter that relates to the affairs of the Company and

- (a) the Director discloses the nature and extent of the interests and its relation to the affairs of the Company at a meeting of the Directors in accordance with the Corporations Act; or
- (b) the interest is one that does not need to be disclosed; then
 - (i) the Director may vote on matters that relate to the interest; and
 - (ii) any transaction that relates to the interest may proceed; and
 - (iii) the Director may retain benefits under the transaction even though the Director has the interest; and
 - (iv) the Company cannot avoid the transaction merely because of the existence of the interest.

15.3 **Prior Disclosure**

If disclosure is required in accordance with the Corporations Act, clauses 15.2(b)(iii) and 15.2(b)(iv) apply only if the disclosure is made before the transaction is entered into.

16. SECRETARY

16.1 Appointment

- (a) The Secretary will be appointed by the Board on the recommendation of the Chief Executive Officer.
- (b) The Secretary will hold as minimum qualifications a Certificate in Governance for Non Profits.
- (c) In the event of the resignation of the Secretary from the Company and pending the appointment of a new Secretary the Chief Executive Officer is to perform the duties of Secretary.

16.2 Obligations of Secretary

The Secretary shall:

- (a) arrange to keep minutes of the resolutions and proceedings of each General Meeting and each Board meeting in books provided for that purpose, together with a record of the names of persons present at meetings;
- (b) arrange to retain copies of all board papers and if in electronic form to be kept and backed up on separate medium on separate systems;
- (c) shall collect and receive all moneys due to the Board and make all payments on behalf of the Board;
- (d) shall keep correct accounts and books showing the financial affairs of the Board with full details of all receipts and expenditure connected with the activities of the Board; and
- (e) prepare and file on behalf of the Board all Company returns required by the Corporations Act.

17. CHIEF EXECUTIVE OFFICER

17.1 The Board shall determine and approve the remuneration of the Chief Executive Officer.

17.2 The Chief Executive Officer shall be responsible for the day to day running of the Company including:

- (a) financial management including the preparation and lodgement of tax and other returns required by law;
- (b) human resource management;
- (c) marketing and public relations;
- (d) project management;
- (e) assisting the Board in its development of its strategic plan; and
- (f) developing operational plans to give effect to the Company's strategic plan.

18. REMUNERATION

18.1 The Independent Chairperson and the Independent Directors are to be paid, in the aggregate, the remuneration determined by resolution at a meeting of the Members divided between them in such proportions as the Directors may determine under the Directors' Remuneration Policy which is determined by the Board from time to time.

- 18.2 The Company may also pay the expenses incurred by the Independent Chairperson and the Independent Directors provided that those expenses are properly and reasonably incurred:
- (a) in attending Board meetings or any meetings of committees of the Board;
 - (b) in attending any meeting of Members; and
 - (c) in connection with the Company's business.

19. EXECUTION OF DOCUMENTS

19.1 Common Seal

If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by:

- (a) two (2) Directors;
- (b) a Director and a Secretary;
- (c) a Director and another person appointed by the Directors for that purpose.

19.2 Without Common Seal

The Company may execute a document without a common seal if the document is signed by:

- (a) two (2) Directors;
- (b) a Director and a Secretary;
- (c) a Director and another person appointed by the Directors for that purpose.

19.3 Other Execution & Resolutions

- (a) The Company may execute a document as a deed if the document is expressed to be executed as a Deed and is executed in accordance with clause 19.1 or clause 19.2 or is executed by a person duly appointed as an attorney of the Company under a valid Power of Attorney.
- (b) The Directors may resolve, generally or in a particular case, that any signature on certificates for securities of the Company may be affixed by mechanical or other means.
- (c) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Company in the manner and by the persons as the Directors resolve.
- (d) Notwithstanding clauses 19.1 and 19.2, the Directors may resolve, generally or in a particular case, to delegate authority to the Chief Executive Officer to execute documents on behalf of the Company.

20. OTHER COMMITTEES

The Board may appoint such committees as it deems appropriate and which may include persons who are not Members of the Company.

21. ADMINISTRATION

21.1 Minutes and Board Papers

- (a) The Board must cause minutes to be made in books in accordance with the Corporations Act and to be provided for the purpose of:
 - (i) all appointments of officers made by the Board;
 - (ii) the names of the Directors present at each Board meeting and at any committee meetings; and
 - (iii) all resolutions and proceedings at all meetings of the Company and the Members of the Company and of the Directors and of committees.
- (b) The minutes book must be held at the registered office of the Company.
- (c) The minutes and Board papers must be made available on request to any current and former Director and may be used by a Director or former Director in any legal proceeding except a proceeding instituted by the Director against the Company.

21.2 Accounts

- (a) A separate bank account shall be established in which all of the Company's income and expenditure is recorded.
- (b) The Board will cause proper books of account to be kept which including full, true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain the transactions.
- (c) Subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Constitution, the books of account must be kept at the registered office and any other place the Board requires and will be open to the inspection of the Board at any time.
- (d) The Board will provide financial reports, which comprise a balance sheet and an income statement in respect of the last completed Financial Year of the Company and as required by the Corporations Act.

21.3 Income

The income and property of the Company will only be applied towards the promotion of the objects of the Company as set out in clause 2.1.

21.4 Payments

All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments for payment shall be signed by at least two (2) accredited officers authorised to do so by the Board or if electronic via two independent electronic signoffs by separate accredited officers.

21.5 Audit

- (a) The books of account, and financial reports and records shall be audited each year by an Auditor or Auditors appointed by the Members at the Annual General Meeting in accordance with the Corporations Act.
- (b) The remuneration of the Auditor must be fixed and the Auditor's duties regulated in accordance with the Corporations Act.

- (c) If any casual vacancy occurs in the office of the Auditor the Board shall appoint the Auditor and fix the Auditor's fee within one (1) month of the vacancy. The Auditor so chosen will hold office as Auditor of the Company until the next Annual General Meeting following their appointment.
- (d) The Auditor or the Auditor's agent so authorised in writing is entitled:
 - (i) to attend any General Meeting;
 - (ii) for that purpose to receive all notices of and other communications in relation to any General Meeting which the Members are entitled to receive; and
 - (iii) to be heard at any General Meeting which he or she attends on any part of the business of the meeting which concerns the Auditor as Auditor, and is entitled to be heard.

21.6 Custody of Records

- (a) Except as otherwise provided in the Constitution, the Secretary shall keep in their custody or under their control all books, documents and securities of the Company, which shall be available for inspection at all reasonable times by the Members.
- (b) Upon the request of a Member and the payment of the fee prescribed by the Board, the Secretary will arrange to provide the Member with copies of:
 - (i) the current Constitution of the Company; and
 - (ii) the deeds of any trust of the Company.

21.7 Inspection of Records

Subject to the Corporations Act, the Directors must determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of the Members, and the Members do not have any right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in meeting of the Company's Members.

22. WINDING UP AND LIABILITY

22.1 Dissolution

The Company may be dissolved by a special resolution of the Full Members at a General Meeting.

22.2 Contribution of the Member on Winding Up

Every person who is or has been a Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one (1) year of ceasing to be a Member, such amount as may be required not exceeding ten dollars (\$10.00), for the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member of the Company, and the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

22.3 Distribution of Property on Winding Up

Where on the winding up of the Company or dissolution of the Company there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus will not be paid or distributed to any Member but will be given or transferred to another institution or company

having similar objects to those described in clause 2 hereof, being an institution or body that prohibits the distribution of income, profit or assets to its members, or to the Commonwealth of Australia.

22.4 Officers Indemnities and Insurance

- (a) To the extent permitted by the Corporations Act:
 - (i) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability for costs and expenses incurred by that person in defending any proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the law; and
 - (ii) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability incurred by that person, as an Officer of the Company or of a wholly-owned subsidiary of the Company, to another person (other than the Company or a Related Body Corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.
- (b) The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:
 - (i) incurred by the person in their capacity as an Officer of the Company or of a subsidiary of the Company or in the course of acting in connection with the affairs of the Company of a subsidiary of the Company or otherwise arising out of the Officer holding such office provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Sections 182 and 183 of the Corporations Act; or
 - (ii) for costs and expenses incurred by that person in defending proceedings, whatever their outcome.
- (c) In this clause 22.4:
 - (i) the term "proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in their capacity as Officer, or in the course of acting in connection with the affairs of the Company or a wholly-owned subsidiary or subsidiary of the Company, or otherwise out of the Officer holding such office, including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly-owned subsidiary or subsidiary of the Company, and
 - (ii) The term "Officer" has the meaning given to that term in section 9 of the Corporations Act.

23. BY-LAWS

23.1 The Board may make By-Laws as it may deem appropriate for the proper conduct, control and management of the Company and, in particular:

- (a) the management and good governance of the affairs of the Company;
- (b) the conduct of the Company's employees;

- (c) the setting apart of any part or parts of the Company's premises or properties for particular purposes;
- (d) the procedure at meetings of the Company and its committees;
- (e) the formation of any committee including the composition, terms of reference and other relevant matters of such committees;
- (f) generally, all such matters as are commonly the subject matter of regulations for the proper conduct of companies similar to the Company and are not expressly dealt with in this Constitution; and
- (g) capacity to establish and administer the Rail Industry and Safety Standards Board Foundation.

24. VARIATION OF CONSTITUTION

The Constitution may not be varied except by a special resolution passed at a General Meeting of the Company.

25. SEVERING INVALID PROVISIONS

25.1 Invalidity

If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that does not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Constitution.

26. TECHNOLOGY

26.1 General Meetings by Using Technology

Without limiting the discretion of the Board to regulate their meetings and General Meetings, the Board may, if it sees fit, give notice of meetings, confer or meet or hold elections using any Technology.

26.2 Resolutions

Notwithstanding that the Board or the Members (as applicable) are not present together in one place at the time of the meeting, a resolution passed will be deemed to have been passed at a meeting of the Board or the Company held on the day and time at which the meeting was held.

26.3 Quorum

A Director or Member (as applicable) present at the commencement of the meeting will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the meeting.

26.4 Procedures

The provisions relating to the procedure of Board meetings and General Meetings apply to the meeting to the extent they are capable of applying, and with the necessary changes.