

Water NSW - Constitution

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Water NSW - Constitution

Constitution

1 Preliminary

1.1 Name of Corporation

The name of the Corporation is Water NSW.

1.2 Capital

The share capital of the Corporation is divided into two equal shares.

1.3 Entrenchment

The Constitution of the Corporation must not be altered or added to in a way that is inconsistent with the provisions in Schedule 6 to the SOC Act, unless and until resolutions approving the alteration or addition have been passed by both Houses of Parliament.

1.4 Definitions and Interpretation

(a) In this Constitution:

board means the board of directors of the Corporation;

Chief Executive Officer means a person appointed as Chief Executive Officer under article 6.1;

deputy means a person for the time being appointed as a deputy of a director under article 5.11;

directors means the directors for the time being of the Corporation or the directors assembled as a board;

Corporation means Water NSW;

Eligible Ministers means the “eligible Ministers” referred to in paragraph (b) of that definition in section 3(1) of the SOC Act;

general meeting means a meeting of the Voting Shareholders convened under article 4.1;

Governor means the Governor from time to time of the State;

member means a voting shareholder for time being of the Corporation;

portfolio Minister means the portfolio Minister as defined in section 20I of the SOC Act;

Premier means the Premier from time to time of the State;

seal means any common seal, official seal, share seal or certificate seal of the Corporation;

shares means shares in the Corporation;

SOC Act means the State Owned Corporations Act 1989 or any other statutory modification, amendment or re-enactment of that Act for the time being in force and applicable to the Corporation and any reference to any provision of that Act is to that provision so modified or amended as re-enacted;

State means the State of New South Wales and includes, as the context permits, the Crown in right of New South Wales and the Government of New South Wales;

Statement of Corporate Intent means the statement of corporate intent applicable to the Corporation under Part 4 of the SOC Act;

subsidiary has the meaning given in section 3(1) of the SOC Act;

transmission event means a Voting Shareholder ceasing to be an Eligible Minister including, without limitation, by way of:

- (i) the death of the Voting Shareholder;
- (ii) the bankruptcy of the Voting Shareholder; or
- (iii) the Voting Shareholder becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;

Treasurer means the Treasurer for the time being of the State;

Voting Shareholder means any Eligible Minister for the time being entered in the register as a Voting Shareholder of the Corporation.

- (b) A reference in an article in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (c) In this Constitution, headings and underlined words are for convenience only and do not affect the interpretation of this Constitution and, unless the contrary intention appears:
 - (i) words importing the singular includes the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations,

ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and

- (v) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

Water NSW Act means the Water NSW Act 2014 or any statutory modification, amendment or re-enactment thereof for the time being in force and applicable to the Corporation and any reference to any provision thereof is to that provision so modified or amended as re-enacted.

1.5 Legislation to prevail

- (a) The provisions of the SOC Act and the Water NSW Act prevail over any inconsistent provisions of this Constitution.
- (b) Any power or discretion given by this Constitution cannot be exercised in any way inconsistent with the SOC Act or the Water NSW Act.
- (c) All the terms used in this Constitution which are defined in the SOC Act or the Water NSW Act shall have the meaning ascribed to them in the SOC Act or the Water NSW Act.

1.6 Exercise of powers

- (a) The Corporation is expressly prohibited from exercising any power of the Corporation in contravention of any requirement of or under section 20X or 20Y of the SOC Act.
- (b) Subject to article 1.6(a) where this Constitution:
 - (i) provides that a person or body may do a particular act or thing and the word “may” is used, the act or thing may be done at the discretion of the person or body;
 - (ii) confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing;
 - (iii) confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters;

- (iv) confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
 - (A) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (B) subject to any contract between the Corporation and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (C) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position;
- (v) confers a power or impose a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires;
- (vi) confers a power or impose a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office;
- (vii) confers power on a person or body to delegate a function or power:
 - (A) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (B) the delegation may be either general or limited in any manner provided in the terms of delegation;
 - (C) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
 - (D) the delegation may include the power to delegate;
 - (E) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegation upon the opinion, belief or state of mind of the delegate in relation to that matter; and
 - (F) the function or power so delegated, when performed or exercised by the delegate, is to be taken

to have been performed or exercised by the person or body.

2 Share Capital & Alteration of Constitution

2.1 Shareholders

- (a) Only Eligible Ministers may hold shares and be entered in the register as a member of the Corporation.
- (b) The Voting Shareholders hold their shares for and on behalf of the State.
- (c) A person ceases to be eligible to hold shares on ceasing to be an Eligible Minister, and may thereafter exercise no rights as a Voting Shareholder (except to transfer his or her shares as directed by the Premier).
- (d) The Corporation must have two shareholders and no more at any time.

2.2 Shares

- (a) Subject to article 2.1(a) and this article 2.2, the directors may with the prior written approval of the Voting Shareholders issue, allot or otherwise dispose of, shares to Eligible Ministers, for such price, on such conditions, at such times and with such preferred, deferred or other special rights or special restrictions and at such premium or discount (if any) as the directors think fit.
- (b) A Voting Shareholder is not obliged to acquire any further shares the Corporation offers to issue or allot.
- (c) The directors must not issue, allot or otherwise dispose of shares if as a result the Voting Shareholders would hold an unequal number of shares or enjoy unequal voting rights.

2.3 Share Certificates

- (a) Share certificates in respect of the shares will be issued under the seal in such manner as the directors may determine.
- (b) Unless the conditions of allotment of the shares provide otherwise, each Voting Shareholder will be entitled to one certificate, without payment, in respect of the shares registered in the Voting Shareholder's name, or to several certificates in reasonable denominations.
- (c) If any share certificate, letter of allotment, transfer, receipt or any other document of title to shares is damaged, defaced, lost or destroyed, then on production of it to the directors, or, where it has been lost or destroyed, upon making a request for a replacement, the directors may order it to be cancelled and may issue a duplicate in its place.

2.4 Power to alter Constitution

- (a) Subject to article 2.4(b), the Voting Shareholders in general meeting may alter or add to the provisions of the Constitution in such manner as they think fit.
- (b) The Constitution may not be altered or added to in a way that is inconsistent with those provisions of the SOC Act or the Water NSW Act as are applicable to the Corporation.

2.5 Alteration of capital

- (a) Without limiting the generality of article 2.4, the provisions of the Constitution of the Corporation may be altered or added to (in the manner set out in article 2.4) in any one or more of the following:
 - (i) by increasing its share capital by the creation of new shares of such amount as is specified in the resolution;
 - (ii) by consolidating and dividing all or any of its share capital into shares of a larger amount than its existing shares;
 - (iii) by subdividing all or any of its shares into shares of a smaller amount than is fixed by the Constitution; and
 - (iv) by cancelling shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or have been forfeited and reduce its authorised share capital by the amount of the shares so cancelled.

2.6 Register of Members

- (a) The Corporation will maintain a register of members of the Corporation;
- (b) Only Eligible Ministers may be entered in the register as members of the Corporation.

3 Transfer and transmission of shares

3.1 Transfer of shares

- (a) A Voting Shareholder may not sell or otherwise dispose of shares except to another Eligible Minister.
- (b) The Premier may execute a transfer of any shares to an Eligible Minister (on behalf of the transferor or transferee), whether or not the Voting Shareholder (to whom the shares were issued or previously transferred) still holds office as an Eligible Minister or consents to the transfer.
- (c) Subject to this Constitution, a transfer of shares shall be by an instrument in writing in any usual form or in any other form that the directors approve.

- (d) Subject to article 3.1(b) an instrument of transfer referred to in article 3.1(c) must:
 - (i) be signed by or on behalf of both the transferor and the transferee unless signature by the transferee has been dispensed with by the directors;
 - (ii) if required by law to be stamped, be duly stamped; and
 - (iii) be left for registration at the principal place of business of the Corporation, or at such other place as the directors determine, accompanied by the certificate for the shares to which it relates and such other evidence as the directors require to prove the title of the transferor or the transferor's right to the shares and to prove the right of the transferee to be registered as the owner of the shares.
- (e) The directors may, to the extent permitted by law, waive all or any of the requirements of article 3.1(c) and (d).

3.2 Registration of transfers

- (a) The Corporation must decline to register any transfer which would, on registration, result in the Voting Shareholders having an unequal number of shares or enjoying unequal voting rights.
- (b) Upon any refusal to register an instrument of transfer of shares, the directors shall give written notice of the refusal to the transferee and the reasons therefore within 5 days after the date on which the instrument was lodged with the Corporation.
- (c) Subject to article 3.2(a), the Corporation must register any transfer signed by the Premier.
- (d) Subject to this article 3.2, where the Corporation receives an instrument of transfer in accordance with article 3.1, the Corporation must register the transferee named in the instrument as the holder of the shares to which it relates.
- (e) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of Voting Shareholders in respect of the shares.
- (f) The Corporation must not charge a fee for the registration of a transfer of shares.
- (g) The Corporation may retain any registered instrument of transfer for such period as the directors think fit.
- (h) Except in the case of fraud, the Corporation must return any instrument of transfer which the directors decline to register to the person who deposited it with the Corporation.

3.3 Powers of attorney

Any power of attorney granted by a Voting Shareholder empowering the donee to transfer shares which may be lodged, produced or exhibited to the Corporation will be deemed to continue and remain in full force and effect, as between the Corporation and the grantor of that power, and the power of attorney may be acted on until express notice in writing that it has been revoked or notice of the death of the grantor has been given and lodged at the office of the Corporation.

3.4 Transmission of shares

- (a) Subject to article 3.4(d), if a transmission event occurs in relation to a Voting Shareholder, the only person the Corporation will recognise as having any title to the Voting Shareholder's shares or any benefits accruing in respect of those shares is the Premier.
- (b) Subject to article 3.4(c), the Premier, on becoming entitled to a share as a result of a transmission event, may elect:
 - (i) to be registered as the holder of the share by signing and serving on the Corporation a notice in writing stating that election; or
 - (ii) to have some other person (being an Eligible Minister) registered as the transferee of the share by executing a transfer of the share to that other person.
- (c) The directors must act on any election by the Premier under article 3.4(b) unless it would result in the Voting Shareholders having an unequal number of shares or enjoying unequal voting rights.
- (d) Notwithstanding article 3.4(a), the directors may register a transfer of shares signed by the Premier (under article 3.1(b)) or a Voting Shareholder prior to a transmission event even though the Corporation has notice of the transmission event.

4 General Meetings

4.1 Convening of general meetings

- (a) The directors may convene a general meeting whenever they think fit.
- (b) The directors must convene a general meeting on a requisition of one or both Voting Shareholders.
- (c) The directors may, whenever they think fit, postpone or cancel any general meeting except that a meeting convened as a result of a requisition under article 4.1(b) can only be postponed or cancelled by the Voting Shareholder or Voting Shareholders that requisitioned the meeting.

4.2 Notice of general meetings

- (a) Subject to agreement by the Voting Shareholders to a lesser period, at least 14 days' notice of general meeting (exclusive of the day on which the notice is served or deemed to be served and exclusive of the day appointed for the meeting) must be given in the manner authorised by article 12.1 to the persons referred to in article 4.2(b).
- (b) Notice of a general meeting must be given to each person who is at the date of the notice:
 - (i) a Voting Shareholder;
 - (ii) a director; or
 - (iii) an auditor of the Corporation.
- (c) A notice of a general meeting must specify the time and place of the meeting and state the general nature of the business to be transacted at the meeting and there must appear in it with reasonable prominence a statement that:
 - (i) a Voting Shareholder entitled to attend or attend and vote is entitled to appoint a proxy or attorney;
 - (ii) a proxy or attorney may, but need not be a Voting Shareholder of the Corporation; and
 - (iii) a proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instruments appointing the proxy or attorney and the original or attested copy of the power of attorney or other authority (if any) under which the instrument is signed are:
 - (A) deposited at the principal place of business of the Corporation or at such place specified for that purpose in the notice convening the meeting before the time for holding the meeting or adjourned meeting or taking the poll (as the case may be);
 - (B) in the case of a meeting or any adjourned meeting, tabled at the meeting at which the person named in the instrument proposes to vote; or
 - (C) in the case of a poll, produced when the poll is taken.

4.3 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of Voting Shareholders is present when the meeting proceeds to business.

- (b) If a quorum is present at the beginning of the general meeting, it is deemed to be present throughout the meeting unless the chairperson otherwise declares on the chairperson's own motion or at the instance of a Voting Shareholder or the attorney or proxy of a Voting Shareholder.
- (c) A quorum for a general meeting is 2 persons, each being a Voting Shareholder, or a proxy, or attorney of a Voting Shareholder entitled to vote at that meeting.
- (d) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (i) where the meeting was convened upon the requisition of Voting Shareholders, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
 - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

4.4 Chairperson of general meetings

- (a) The Treasurer shall (if present (in person) and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting the Treasurer is not present (in person) or is not willing to act as chairperson of the meeting, then the other Voting Shareholder may preside as chairperson.
- (c) If the Treasurer and the other Voting Shareholder are not present or are not able and willing to act as chairperson, the proxies or attorneys of the Voting Shareholders shall appoint one of themselves as chairperson.

4.5 Conduct of general meetings

- (a) Any question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except as provided by article 4.5(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

4.6 Decisions at general meetings

- (a) The chairperson must not put any matter to a vote at a general meeting unless each Voting Shareholder is present, the number of shares held by each Voting Shareholder is equal and each Voting Shareholder can cast an equal number of votes.
- (b) A resolution will be taken to be carried if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution exceeds one-half.
- (c) In the case of an equality of votes upon any proposed resolution:
 - (i) the chairperson of the meeting will not have a second or casting vote; and
 - (ii) the proposed resolution is to be taken as having been lost.
- (d) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before or immediately after the declaration of the result of the show of hands:
 - (i) by the chairperson of the meeting; or
 - (ii) by any Voting Shareholder present.
- (e) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (f) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Corporation, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (g) If a poll is duly demanded at a general meeting, it will be taken in such manner and (subject to article 4.6(h)) either at once or after an interval or adjournment or otherwise as the chairperson of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (h) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.

- (i) The demand for a poll may be withdrawn.

4.7 Voting rights

- (a) Only Voting Shareholders can vote at general meetings of the Corporation.
- (b) Subject to article 4.6(a), at a general meeting:
 - (i) on a show of hands, every Voting Shareholder present or by proxy has one vote; and
 - (ii) on a poll, every Voting Shareholder present or by proxy has one vote for each share held by the Voting Shareholder.
- (c) Where a person present at a general meeting represents, by proxy or attorney, a Voting Shareholder then the person must not exercise the power to vote in a way which would contravene any directions given to the person, in accordance with article 4.8(f), in any instrument appointing the person as a proxy or attorney.
- (d) If a transmission event occurs in relation to a Voting Shareholder, the Premier, or any person entitled to be registered as the holder of a share as a result of an election by the Premier under article 3.4(b)(ii), may vote at any general meeting in respect of that share in the same manner as if that person were the Voting Shareholder and any vote so tendered by such a person must be accepted to the exclusion of the vote of the registered holder of the share.
- (e) An objection to the qualification of a person to vote at a general meeting:
 - (i) must be raised before or at a meeting at which the vote objected to is given or tendered; and
 - (ii) must be referred to the chairperson of the meeting, whose decision is final.
- (f) A vote not disallowed by the chairperson of a meeting under article 4.7(e) is valid for all purposes.

4.8 Representation at general meetings

- (a) Subject to this Constitution, each Voting Shareholder entitled to attend or attend and vote at a meeting of Voting Shareholders may attend or attend and vote:
 - (i) in person;
 - (ii) by proxy; or
 - (iii) by an attorney.
- (b) A proxy or attorney may, but need not, be a Voting Shareholder of the Corporation.

- (c) A proxy or attorney may be appointed for all general meetings, or for any number of general meetings or for a particular general meeting.
- (d) A proxy or attorney may only represent one Voting Shareholder.
- (e) Unless otherwise provided in the instrument, an instrument appointing a proxy or attorney will be taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by this Constitution;
 - (ii) to agree to any resolution being proposed and passed as a special resolution at a meeting;
 - (iii) to speak to any proposed resolution on which the proxy or attorney may vote;
 - (iv) to demand or join in demanding a poll on any resolution on which the proxy or attorney may vote;
 - (v) even though the instrument may refer to specific resolutions and may direct the proxy or attorney how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and
 - (vi) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the rescheduled or adjourned meeting or at the new venue.
- (f) An instrument appointing a proxy or attorney to represent a Voting Shareholder may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (g) Subject to article 4.8(i), an instrument appointing a proxy or attorney need not be in any particular form provided it is in writing, legally valid and signed by the appointer.
- (h) Subject to article 4.8(i), a proxy or attorney may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, and the original or an attested copy

of the power of attorney or other authority (if any) under which the instrument is signed, are:

- (i) deposited at the principal place of business of the Corporation or at such other place specified for that purpose in the notice convening the meeting before the time for holding the meeting or adjourned meeting or taking the poll (as the case may be);
 - (ii) in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - (iii) in the case of a poll, produced when the poll is taken.
- (i) The directors may waive all or any of the requirements of articles 4.8(g) and (h) and in particular may, upon the production of such other evidence as the directors require to prove the validity of the appointment of a proxy or attorney, accept:
- (i) an appointment of a proxy or attorney which is not signed or executed in the manner required by article 4.8(g); and
 - (ii) the deposit, tabling or production of a copy (including a copy sent by facsimile) of an instrument appointing a proxy or attorney or of the power of attorney or other authority under which the instrument is signed.
- (j) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite:
- (i) a transmission event occurring in relation to the appointer; or
 - (ii) the revocation of the instrument or of the authority under which the instrument was executed,
- if no notice in writing of the transmission event or revocation has been received by the Corporation by the time and at one of the places at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under article 4.8(h).
- (k) A vote given in accordance with the terms of an instrument appointing a proxy or attorney is valid despite the transfer of the share in respect of which the instrument was given if the transfer is not registered by the time at which the instrument appointing the proxy or attorney is required to be deposited, tabled or produced under article 4.8(h).
- (l) The appointment of a proxy or attorney is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy or attorney is not entitled to vote, and must not vote, as the appointer's proxy or attorney on the resolution.

4.9 Matters to be decided at general meetings

A general meeting of the Corporation may transact any business that may properly be transacted at a general meeting under the SOC Act, this Constitution or generally.

4.10 Resolution in writing

A resolution in writing signed by all the Voting Shareholders is as valid and effectual as if it had been passed at a general meeting of the Corporation duly convened and held at the time at which the written resolution was last signed by a Voting Shareholder. Any such resolution may consist of several documents in like form, each signed by one or more Voting Shareholders.

5 Directors

5.1 Appointment and removal of directors

- (a) The board of directors is to consist of no fewer than 3, and not more than 8, directors appointed by the Voting Shareholders in the manner set out in Division 3 of the Water NSW Act. The Voting Shareholders are to consult with the portfolio Minister on the persons recommended for appointment as directors.
- (b) The Chief Executive Officer of the Corporation is to be a director. However, the provisions of clause 6 of Schedule 8 to the SOC Act and article 5.3(a) do not apply to the Chief Executive Officer and the Chief Executive Officer is not entitled to remuneration under those provisions, in his or her capacity as a director.
- (c) Subject to this Constitution, a director holds office for such period (not exceeding 5 years) as may be specified in the director's instrument of appointment.
- (d) A director may be removed from office at any time and for any or no reason and without notice by the Governor, on the recommendation of the Voting Shareholders.

5.2 Vacation of office

- (a) The office of a director becomes vacant if the director:
 - (i) dies;
 - (ii) completes a term of office and is not re-appointed;
 - (iii) resigns the office by letter addressed to the Voting Shareholders;
 - (iv) is removed from office by the Voting Shareholders under this Constitution;
 - (v) is removed from office by the Governor under Schedule 8 Clause 7(2) of the SOC Act or under Part 6 of the *Government Sector Employment Act 2013*;

- (vi) is absent from 4 consecutive meetings of the board of which reasonable notice has been given to the director personally or in the ordinary course of post, except on leave granted by the board or unless, before the end of 4 weeks after the last of those meetings, the director is excused by the board for having been absent from those meetings;
 - (vii) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
 - (viii) becomes a mentally incapacitated person; or
 - (ix) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.
 - (x) in the case of the director who holds the office of Chief Executive Officer, that person ceases to hold that office.
- (b) The board may act, notwithstanding any vacancy in their number, but for so long as the number of directors is below 3, the board will not act except in emergencies or for the purposes of convening a general meeting of the Corporation.

5.3 Remuneration of directors

- (a) Each director, other than a director who is also the Chief Executive Officer, shall be paid out of the funds of the Corporation such remuneration (including travelling and subsistence allowances) as the Voting Shareholders may from time to time determine.
- (b) If any director is called upon to perform extra services or to make any special exertion for any purposes of the Corporation (including, without limitation, membership of a committee or acceptance of a delegation of powers by the directors), the Corporation may pay additional remuneration or provide benefits to that director as the Voting Shareholders determine.

5.4 Interested directors

- (a) A director may hold any other office or place of profit in the Corporation (except that of auditor) in conjunction with the office of director, on such terms as the Voting Shareholders may approve.
- (b) If a director has a direct or indirect interest in a matter being considered, or about to be considered by the board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge. Any disclosure made pursuant to this article must be recorded in the board's minutes for that meeting.

- (c) No director:
- (i) will be disqualified by virtue of holding the office of director from holding any office or place of profit under any corporation in which the Corporation is a shareholder or otherwise interested;
 - (ii) will be disqualified by virtue of holding the office of director from contracting with the Corporation or any corporation in which the Corporation is a shareholder or is otherwise interested, either as vendor, purchaser or otherwise and nor will any contract or arrangement entered into by or on behalf of the Corporation in which any director is in any way interested be avoided;
 - (iii) will be liable to account to the Corporation for any profit arising from that office or place of profit or realised by the contract or arrangement by reason only of the director holding that office or of the fiduciary relations thereby established,

provided that the nature of the director's interest is disclosed by the director to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

- (d) A director who has a material personal interest in a matter that is being considered by the board must not:
- (i) vote on the matter;
 - (ii) vote on a proposed resolution (a "related resolution") under article 5.4(e) in relation to the matter (whether in relation to the director or another director);
 - (iii) be present while the matter, or a related resolution, is being considered by the board; or
 - (iv) otherwise take part in any decision of the board in relation to the matter or a related resolution.
- (e) Article 5.4(d) does not apply to the matter if the board has at any time passed a resolution that:
- (i) specifies the director, the interest and the matter, and
 - (ii) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.
- (f) In determining whether a quorum is present at a meeting of the board during a consideration of such a matter by the board, only those directors are regarded as present who are entitled to vote on any motion that may be moved in relation to the matter.

- (g) The Voting Shareholders may, by each signing a consent to a proposed resolution, deal with a matter if the board cannot deal with it because of article 5.4(f).
- (h) If a director is interested in a contract or arrangement, that director may not be appointed as the director:
 - (i) to sign on behalf of the Corporation any instrument to which the interest relates; or
 - (ii) in whose presence the seal of the Corporation is to be affixed to any instrument to which the interest relates.
- (i) No act of the Corporation is invalid or void by reason only of a failure of a director to comply with article 5.4(d) or (h).

5.5 Powers and duties of directors

- (a) Subject to articles 5.5(c), (d) and (e) the directors:
 - (i) are responsible for managing the business, affairs and operations of the Corporation and may exercise to the exclusion of the Corporation in general meeting all the powers of the Corporation which are not required by the SOC Act or by this Constitution, to be exercised by the Corporation in general meeting;
 - (ii) may (but without limiting the generality of article 5.5(a)(i)) exercise all the powers of the Corporation to borrow or otherwise raise money, to charge any property or business of the Corporation or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Corporation or of any other person;
 - (iii) may determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the Corporation;
 - (iv) may pay out of the Corporation's funds all expenses of the promotion and formation of the Corporation and the vesting in it of the assets acquired by it.
 - (v) may:
 - (A) appoint any person to be an officer, agent or attorney of the Corporation for such purposes with such powers, authorities and discretions being powers, authorities and discretions vested in or exercisable by the directors for such period and upon such conditions as they think fit; and
 - (B) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney.

- (b) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors think fit.
- (c) All decisions relating to the operation of the Corporation are to be made by or under the authority of the board.
- (d) The directors are:
 - (i) accountable to the Voting Shareholders in the manner set out in Part 4 of the SOC Act and the Constitution of the Corporation; and
 - (ii) subject to the direction of the portfolio Minister in the manner and to the extent prescribed in the SOC Act.
- (e) The Chief Executive Officer of the Corporation is, subject to article 5.5(c), responsible for the day to day management of the operation of the Corporation in accordance with the general policies and specific directions of the board.
- (f) The Chief Executive Officer may:
 - (i) appoint any person to be an officer, agent or attorney of the Corporation for such purposes with such powers, authorities and discretions vested in or exercisable by the Chief Executive Officer for such period and upon such conditions as they think fit; and
 - (ii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney.
- (g) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the Chief Executive Officer thinks fit.
- (h) The Chief Executive Officer may delegate any functions of the Chief Executive Officer of the Corporation but this power is subject to any directions of the board.

5.6 Convening of meetings of directors

- (a) The Voting Shareholders may call the first meeting of the board in such manner as they think fit.
- (b) The directors may, subject to the SOC Act and this Constitution, meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (c) A director may at any time, and the secretary at the requisition of a director may, convene a meeting of the directors.

5.7 Notice of meetings of directors

- (a) At least 2 days notice (or such shorter period as is agreed by the directors) of every directors' meeting will be given to each director (and deputy director) who is within Australia but it is not necessary to give notice to any director or deputy director who is outside Australia.
- (b) Notice of a meeting of directors may be given in writing or by telephone, closed circuit television or other electronic means of audio or audio visual communication.

5.8 Quorum at meetings of directors

- (a) No business may be transacted at a meeting of the board unless a quorum of directors is present at the time the business is dealt with.
- (b) The quorum for a meeting of the board is a majority of directors for the time being.

5.9 Proceedings of directors

- (a) The chairperson of the board or, in the absence of the chairperson, another director elected to chair the meeting by the directors present is to preside at a meeting of the board.
- (b) The person presiding at any meeting of the board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.
- (c) A decision supported by a majority of the votes cast at a meeting of the board at which a quorum is present is the decision of the board.
- (d) The board may, if it thinks fit, transact any of its business by the circulation of papers among all the directors of the board for the time being. A resolution approved in writing by a majority of those directors (being at least a quorum) is taken to be a decision of the board passed at a meeting of directors held on the day on which the resolution was signed and at the time at which the resolution was last signed by a director or, if the directors signed the resolution on different days, on the day on which, and at the time at which the resolution was last signed by a director.
- (e) For the purposes of the approval of a resolution under article 5.9(d), the chairperson and directors have the same voting rights as they have at an ordinary meeting of the board.
- (f) For the purposes of article 5.9(d), two or more separate documents containing a resolution in identical terms each of which is signed by one or more directors are deemed together to constitute one resolution signed by those directors on the respective days on which they signed the separate documents.
- (g) A reference in article 5.9(d) to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.

- (h) A resolution approved under article 5.9(d) is, subject to this Constitution, to be recorded in the minutes of the board.
- (i) Papers may be circulated among the directors for the purposes of article 5.9(d) by facsimile or other transmission of the information and a facsimile or similar means of communication addressed to or received by the Corporation and purporting to be signed by a director for the purpose of this Constitution is deemed to be a document in writing signed by that director.

5.10 Meetings by Technology

- (a) Each director, on becoming a director (or on the adoption of this Constitution), consents to the use of the following technology for calling or holding a directors' meeting:
 - (i) video;
 - (ii) telephone;
 - (iii) electronic mail;
 - (iv) any other technology which permits each director to communicate with every other director;
 - (v) any combination of the technologies described in the above paragraphs.

A director may withdraw the consent given under this article by notice in writing to the secretary at least 3 days prior to such meeting (exclusive of the day of the meeting)

- (b) Where the directors are not all in attendance at one place and are holding a meeting using technology and each director can communicate with the other directors:
 - (i) the participating directors shall for the purpose of every provision of this Constitution concerning meetings of the directors, be taken to be assembled together and to be present at that meeting; and
 - (ii) all proceedings of those directors conducted in that manner shall be effective as if conducted at a meeting at which all of the participating directors were present.

5.11 Chairperson and Deputies

- (a) Of the directors, one is (in and by the director's instrument of appointment as director or in and by another instrument executed by the Voting Shareholders) to be appointed as chairperson of the board.
- (b) The Voting Shareholders may remove a director from the office of chairperson at any time for any or no reason and without notice.

- (c) A person who is a director and chairperson vacates office as chairperson if the person:
 - (i) is removed from that office by the Voting Shareholders;
 - (ii) resigns from that office by letter addressed to the Voting Shareholders; or
 - (iii) ceases to be a director.
- (d) The Voting Shareholders may, from time to time, appoint a person to be the deputy of a director, and the Voting Shareholders may revoke any such appointment.
- (e) In the absence of a director, the director's deputy:
 - (i) is, if available, to act in the place of a director; and
 - (ii) while so acting, has all the functions of the director and is taken to be a director of the Corporation.
- (f) The deputy of a director who is chairperson of the board does not have the director's functions as chairperson.
- (g) A person while acting in the place of a director is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Voting Shareholders may from time to time determine in respect of the person.

5.12 Committees of directors

- (a) The directors may delegate any of their powers to a committee or committees consisting of such number of directors as they think fit and the directors may from time to time revoke that delegation.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this Constitution applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Where a committee consists of two or more members, a quorum will be any two members or such larger number as the committee itself determines.

5.13 Delegation of individual directors

- (a) The directors may delegate in writing any of their powers to one director.

- (b) Subject to article 5.13 (c), a director to whom any powers have been so delegated must exercise the powers delegated in accordance with any written directions of the directors.
- (c) Where conflicting delegations are received from two or more directors, a director will not exercise any such powers so delegated.
- (d) The secretary must maintain a register of all delegations.

5.14 Validity of acts

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office;
or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as the case may be) when the act was done.

6 Executive Officers

6.1 Chief Executive Officer

- (a) The board is to appoint a Chief Executive Officer after consultation with the Voting Shareholders and the portfolio Minister.
- (b) Subject to this article 6.1, the Chief Executive Officer holds office for such period (not exceeding 5 years) as may be specified in the Chief Executive Officer's instrument of appointment.
- (c) The board may, following consultation with the Voting Shareholders and the Portfolio Minister, fix the conditions of employment of the Chief Executive Officer in so far as they are not fixed by or under any other Act or law.
- (d) The Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may from time to time determine following consultation with the Voting Shareholders.
- (e) The board may require the Chief Executive Officer to enter into performance agreements.
- (f) The board may entrust and confer on the Chief Executive Officer such of the powers exercisable under this Constitution by the directors as they think fit.

- (g) The board may, after consultation with the Voting Shareholders and the portfolio Minister, remove or dismiss the Chief Executive Officer from that office at any time for any or no reason and without notice.

6.2 Acting Chief Executive Officer

- (a) Subject to article 6.2(b), the board may, from time to time, appoint a person to act in the office of Chief Executive Officer during the illness or absence of the Chief Executive Officer or if there is a vacancy in the office of Chief Executive Officer.
- (b) The board may not appoint a person to act in the office of Chief Executive Officer during any vacancy in that office without the concurrence of the Voting Shareholders and the portfolio Minister.
- (c) The board may remove a person from office as acting Chief Executive Officer, at any time, for any or no reason and without notice.
- (d) A person while acting in the office of Chief Executive Officer has all the functions of the Chief Executive Officer and is taken to be the Chief Executive Officer and is entitled to be paid such remuneration (including travelling and subsistence allowances) as the board may determine.

6.3 Secretaries

- (a) The board must appoint at least one secretary and may appoint additional secretaries.
- (b) The board may appoint one or more assistant secretaries.
- (c) The appointment of secretary or assistant secretary may be for such period, at such remuneration and upon such conditions as the board thinks fit.

7 Seals

7.1 Seal and safe custody of seal

- (a) The Corporation is to have a seal.
- (b) The directors must provide for the safe custody of the seal.

7.2 Use of seal

- (a) The seal must be used only by the authority of the directors or of a committee of the directors authorised by the directors to authorise the use of the seal.
- (b) The authority to use the seal may be given before or after the seal is used.

- (c) Subject to article 7.6, until the directors otherwise determine, every document to which the seal is affixed must be signed by a director and countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

7.3 Seal register

- (a) The Corporation must keep a seal register and, upon the affixing of the seal to any document (other than a certificate for securities of the Corporation), must enter in the register particulars of the document, giving in each case the date of the document, the names of the parties to the document, a short description of the document and the names of the persons signing and countersigning the document under article 7.2(c).
- (b) The register must be produced at meetings of directors for confirmation of the use of the seal since confirmation was last given under this article 7.3.
- (c) Failure to comply with article 7.3(a) or (b) does not invalidate any document to which the seal is properly affixed.

7.4 Official seal

- (a) The Corporation may have for use in place of its common seal outside the state or territory where its common seal is kept one or more official seals, each of which must be a facsimile of the common seal of the Corporation with the addition on its face of the name of the place where it is to be used.
- (b) A document sealed with an official seal is to be taken as having been sealed with the common seal of the Corporation.

7.5 Share seal or certificate seal

- (a) The Corporation may have for use on certificates for securities of the Corporation in place of its common seal one or more share seals or certificate seals, each of which must be a facsimile of the common seal of the Corporation with the addition on its face of the words “share seal” or “certificate seal”.
- (b) A certificate for securities of the Corporation sealed with a share seal or certificate seal is to be taken as having been sealed with the common seal of the Corporation.

7.6 Sealing and signing of certificates

The directors may determine either generally or in a particular case that the seal and the signature of any director, secretary or other person is to be printed on or affixed to any certificates for securities in the Corporation by some mechanical or other means.

8 Dividends

8.1 Share dividend scheme

- (a) Dividends are to be paid by the Corporation in accordance with the SOC Act and the Corporation's Statement of Corporate Intent and the NSW Government's financial distribution policy as adopted from time to time.
- (b) Subject to article 8.1(a) every dividend is to be of such amount, and paid at such times and in such instalments, as may be agreed between the Voting Shareholders and the directors. In an event of failure to agree on any of these matters, the Voting Shareholders may, by written notice to the directors, determine the matter not agreed, and the directors must act in conformity with the determination. Before giving such a notice, the Voting Shareholders are required to consult the directors as to the matters to be referred to in the notice.
- (c) The directors and the Voting Shareholders may agree that dividend payments required to be made by the Corporation will be applied in the purchase of shares by the Voting Shareholders.
- (d) If any payments are applied in the purchase of shares, the payments may be appropriated for that purpose without being paid into the Consolidated Fund.
- (e) Dividends declared by the Corporation and payable to the Voting Shareholders are to be paid to the Treasurer on behalf of the State for payment to the Consolidated Fund.

9 Subsidiaries

9.1 Subsidiaries

- (a) The Corporation may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the Voting Shareholders.
- (b) The Corporation may not acquire or dispose of shares of a company, or participate in any other transaction, resulting in the company becoming or ceasing to become a subsidiary, without the prior written approval of the Voting Shareholders.
- (c) In seeking the approval of the Voting Shareholders, the Corporation is required to provide the Voting Shareholders with such information as they may require, including such kinds of information (if any) as are prescribed by the regulations under the SOC Act.
- (d) The Corporation must ensure that the Constitution of its subsidiaries at all times contain provisions to the effect of those required by schedule 7 to the SOC Act.
- (e) The Corporation must, to the maximum extent practicable, ensure that every subsidiary complies with its Constitution and with the requirements of the SOC Act.

10 Minutes and Records

10.1 Minutes and records

The directors must cause minutes of all proceedings of general meetings and of meetings of directors and of committees of the directors to be entered, within one month after the relevant meeting is held, in folders kept for that purpose.

10.2 Signing of minutes

Those minutes must be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

10.3 Minutes as evidence

Any minutes of a meeting purporting to be signed by the chairperson of the meeting or of the next succeeding meeting are (in the absence of proof to the contrary) sufficient evidence of:

- (a) the matters stated in the minutes of the meeting;
- (b) the meeting having been duly convened and held; and
- (c) the validity of all proceedings at the meeting.

10.4 Inspection of records

- (a) Without limiting the generality of article 5.5(e), the directors must supply to the Voting Shareholders or the portfolio Minister such information relating to the affairs of the Corporation or any of its subsidiaries as the Voting Shareholders or the portfolio Minister may from time to time request (whether or not the information is of a kind referred to in the Statement of Corporate Intent).
- (b) The directors must use their best endeavours to comply with any request given under article 10.4(a) within any timeframe specified in the request.

10.5 Accounts

The Corporation will keep such accounting and other records of the business of the Corporation as:

- (a) it is required to keep under law; and
- (b) as prescribed in the Statement of Corporate Intent.

11 Protection of Certain Officers

11.1 Indemnity

- (a) The Corporation may, with the prior approval of the Voting Shareholders and to the extent permitted by the SOC Act, indemnify a person who is or has been an officer of the Corporation against any

liability incurred by that person in his or her capacity as an officer of the Corporation:

- (i) to any other person (other than the Corporation) unless the liability arises out of conduct involving a lack of good faith; and
 - (ii) for costs and expenses incurred by that person in defending a proceeding, whether civil or criminal in which judgment is given in favour of the person or in which the person is acquitted, or in connection with an application in relation to any proceedings in which relief is granted to the person by a court.
- (b) For the purposes of this article 11.1, “officer” of the Corporation means a director of the Corporation, the Chief Executive Officer or another person who is concerned, or takes part in the Corporation’s management.

11.2 Insurance

- (a) To the extent permitted by law, the Corporation may, where the directors consider it appropriate to do so, pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Corporation against any of the following liabilities incurred by that person as such an officer, namely:
- (i) any liability which does not arise out of conduct involving:
 - (A) a wilful breach of duty in relation to the Corporation; or
 - (B) without limiting subparagraph (A), a contravention of clauses 3(4) or (5) of schedule 10 to the SOC Act; and
 - (ii) any liability for costs and expenses incurred by the person in defending proceedings whatever their outcome.
- (b) In the case of a director, any premium paid pursuant to this article is paid in addition to remuneration paid to that director by the Corporation pursuant to this Constitution.
- (c) Despite anything in this Constitution, a director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the director against a liability incurred by the director as an officer of the Corporation or of a subsidiary corporation.
- (d) For the purposes of this article 11.2, the term “officer” has the meaning given to that term in clause 6(4) of Schedule 10 of the SOC Act and, for the avoidance of doubt, includes a deputy director.

12 Notices

12.1 Notices by the Corporation to Voting Shareholders

- (a) A notice may be given by the Corporation to a Voting Shareholder by:
- (i) serving it personally on the Voting Shareholder;
 - (ii) sending it by post in a prepaid envelope to the Voting Shareholder's address as shown in the register of Voting Shareholders or such other address as the Voting Shareholder has supplied to the Corporation for the giving of notices;
 - (iii) by facsimile transmission to such facsimile number as the Voting Shareholder has supplied to the Corporation for the giving of notices; or
 - (iv) transmitting it electronically to the electronic mail address as the Voting Shareholder has supplied to the Corporation for the giving of notices.
- (b) A notice may be given by the Corporation to a person entitled to a share as a result of a transmission event by serving it or sending it in a manner authorised by article 12.1(a) addressed to the name or title of the person, at or to such address or facsimile number or electronic mail address supplied to the Corporation for the giving of notices to that person, or if no address or facsimile number or electronic mail address has been supplied, at or to the address or facsimile number or electronic mail address to which the notice might have been sent if the relevant transmission event had not occurred.
- (c) The fact that a person has supplied a facsimile number or electronic mail address for the giving of notices does not require the Corporation to give any notice to that person by facsimile or electronic mail.
- (d) A notice given to a Voting Shareholder in accordance with article 12.1(a) is, despite the occurrence of a transmission event and whether or not the corporation has notice of that occurrence:
- (i) duly given in respect of any shares registered in that person's name, whether solely or jointly with another person; and
 - (ii) sufficient service on any person entitled to the shares as a result of the transmission event.
- (e) A notice given to a person who is entitled to a share as a result of a transmission event is sufficient service on the Voting Shareholder in whose name the share is registered.
- (f) Any person who, because of a transfer of shares, becomes entitled to any shares registered in the name of a Voting Shareholder is bound by every notice which, before that person's name and address is entered

in the register of Voting Shareholders in respect of those shares, is given to the Voting Shareholder in accordance with this article 12.1.

- (g) A signature to any notice given by the Corporation to a Voting Shareholder under this article 12.1 may be in writing or a facsimile printed or affixed by some mechanical, electronic or other means.
- (h) A certificate signed by a director or secretary of the Corporation to the effect that a notice has been given in accordance with this Constitution is conclusive evidence of that fact.

12.2 Notices by the Corporation to directors

Subject to this Constitution, a notice may be given by the Corporation to any director by:

- (a) serving it personally on the director;
- (b) sending it by post in a prepaid envelope to the director's usual residential or business address, or such other address as the director has supplied to the Corporation for the giving of notices;
- (c) facsimile transmission to such facsimile number as the director has supplied to the Corporation for the giving of notices; or
- (d) transmitting it electronically to the electronic mail address given by the director to the Corporation for the giving of notices. .

12.3 Notices by Voting Shareholders or directors to the Corporation

Subject to this Constitution, a notice may be given by a Voting Shareholder or director to the Corporation by:

- (a) serving it on the Corporation at the principal place of business of the Corporation;
- (b) sending it by post in a prepaid envelope to the principal place of business of the Corporation;
- (c) facsimile transmission to the principal facsimile number at the principal place of business of the Corporation; or
- (d) transmitting it electronically to the principal office electronic mail address of the secretary for the time being of the Corporation or such other electronic mail address as the secretary may specify in writing to the Voting Shareholders and the directors from time to time.

12.4 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (i) in the case of a notice of a general meeting, 3 days after the date of its posting; or

- (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by facsimile transmission, service of the notice is to be taken to be effected if the correct facsimile number appears on the facsimile transmission report generated by the sender's facsimile machine and to have been effected at the time the facsimile transmission is sent.
- (c) Where a notice is sent by electronic transmission, service of the notice is taken to be effected by properly addressing and transmitting the notice or other document and to have been effected at the time the electronic transmission is sent.

12.5 Other communications and documents

Articles 12.1 to 12.4 (inclusive) apply, so far as they can and with such changes as are necessary, to the service of any communication or document, including, for the avoidance of doubt, board papers.

12.6 Notice in writing

A reference in this Constitution to a notice in writing includes a notice given by facsimile or electronic transmission or any other form of written communication.

13 General

13.1 Submission to jurisdiction

Each Voting Shareholder submits to the non-exclusive jurisdiction of the Supreme Court of New South Wales and the Courts which may hear appeals from that Court.

13.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

We, the several persons whose signatures are set out below, being the Voting Shareholders of the Corporation, hereby agree to the following Constitution with effect from 1 January 2015 being the date of commencement of Part 2, Division 1 of the Water NSW Act.

**Full names and addresses of Voting
Shareholders**

Signatures:

The Hon. Dominic Francis Perrottet, MP
52 Martin Place
SYDNEY NSW 2000

The Hon. Gladys Berejiklian, MP
Treasurer
52 Martin Place
SYDNEY NSW 2000

DATED:

Water NSW

CONSTITUTION

Explanatory Note:

Under section 4 of the *Water NSW Act 2014* (the Act), Water NSW is a continuation of, and the same legal entity as, State Water Corporation (State Water). Specifically, on and from 1 January 2015, State Water continued, but with the new corporate name of Water NSW.

This Constitution of Water NSW is a changed version of the Constitution of State Water – it incorporates changes to reflect the new corporate name of Water NSW; and other changes to align with the Act. None of the changes incorporated in this Constitution of Water NSW materially alter the effect of the Constitution of State Water.