



Constitution of The South Australian Chamber of Mines and Energy Incorporated

Adopted 20 April 2016
Amended 15 November 2018

The attached document comprising 33 pages (exclusive of this coversheet and the table of contents) is the constitution of The South Australian Chamber of Mines & Energy Incorporated amended at a General Meeting held on 15 November 2018.

(Name) Chair of meeting

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Signed

Date:2018

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Part 1 – Introduction

1. Name

- 1.1 The name of the incorporated association constituted pursuant to this constitution is THE SOUTH AUSTRALIAN CHAMBER OF MINES AND ENERGY INCORPORATED.

2. Definitions and interpretation

- 2.1 In this Constitution:

Act means the *Associations Incorporation Act 1985 (SA)*;

Associate Member means a natural person interested in the Objects, not being an employee of a person admitted, or eligible for admission, as an Industry Member or as a Service Industry Member, admitted as a Member in accordance with this Constitution;

Body Corporate includes any corporation, firm, authority, unincorporated association and instrumentality;

CEO means the chief executive officer of SACOME from time to time appointed under **clause 25** and in the absence of a CEO means the public officer appointed pursuant to section 56 of the Act;

Constitution means this constitution as amended or supplemented from time to time;

Council means the governing body of SACOME constituted under **clause 17.1**;

Councillor means a member from time to time of the Council;

Electronic Voting System means a system approved by the Council from time to time which enables a Member to submit a vote by electronic means pursuant to any provision of the Constitution subject to constraints within section 3(1) of the Act relating to special resolutions.

Energy Generation means the generation or production of electricity;

Energy Transportation means the midstream transportation in pipelines, or similar infrastructure, and sale of petroleum and natural gas; and the transmission and distribution and/or sale of electricity;

Exploration Sector means exploration for any metalliferous or extractive mineral or petroleum, but excludes exploration for Renewable Energy;

Extractive Minerals Sector means mining operations for extractive minerals, but excludes the Exploration Sector;

Financial Year means each period of 12 months commencing 1 July;

Honorary Member means a natural person upon whom the Council has decided the distinction of honorary membership of SACOME should be conferred, admitted as a Member subject to **clause 6.1(m)**;

Industry Councillor means a Councillor who is a Representative from an Industry Member, referred to in **clause 17.1(a)(ii)**;

Industry Member means a Body Corporate interested in the Objects and engaged in the Industry Sector, admitted as a Member in accordance with this Constitution;

Industry Sector means the collected sectors (within the Resources Industry) as determined by the Council from time to time and within which operations are conducted by a Member being, at the time of adoption of this Constitution, the Extractive Minerals Sector, Minerals Sector, Petroleum Sector and Exploration Sector;

Industry Sector Councillor means a Councillor who is a Representative from an Industry Sector Member, referred to in **clause 17.1(a)(i)**;

Member means a person who is a member of SACOME in accordance with this Constitution;

Minerals Sector means mining operations for minerals, but excludes the Exploration Sector;

Objects means the objects of SACOME set out in **clause 3.1**;

Petroleum Sector means production operations for petroleum and/or natural gas but excludes the Exploration Sector;

President means the president of SACOME from time to time, elected pursuant to **clause 24.1**;

Register means the register of Members of SACOME pursuant to **clause 10;10**.

Representative means the natural person, as advised by the Member to the CEO from time to time, who is appointed by a Body Corporate that is a Member to exercise all or any of the powers that the Body Corporate may exercise as a Member;

Resources Industry means:

- (a) exploration, mining, production, processing and sale of any metalliferous or extractive mineral or petroleum, natural gas or associated petroleum products; and
- (b) associated Service Industry companies;

SACOME means *The South Australian Chamber of Mines and Energy Incorporated* registration number A6734 constituted pursuant to this Constitution;

Service Industry Councillor means a Councillor who is a Representative from a Service Industry Member, referred to in **clause 17.1(a)(i)**;

Service Industry Member means a Body Corporate interested in the Objects that provides services to the Resources Industry, admitted as a Member in accordance with this Constitution;

Service Industry Sector means the collected sectors who provide services to the Resources Industry, inclusive of Energy Transportation and Energy Generation as determined by the Council from time to time and within which operations are conducted by a Member;

Special Resolution means a resolution of the Members passed by the required majority in the required manner and for which the required notice has been given in accordance with section 3(1) of the Act;

Vice President means a vice president of SACOME from time to time, elected pursuant to **clause 24.1**; and

Year means the period from the close of one annual general meeting to the close of the next annual general meeting.

2.2 In this Constitution: unless the context otherwise requires

- (a) words importing the singular include the plural and vice versa, a word importing a gender includes each other gender and words denoting individuals include bodies corporate;
- (b) where a word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (c) a reference to a Member includes a representative of a Member;
- (d) headings are for convenience only and do not affect the interpretation of this Constitution;

- (e) a reference to any legislation or to any provision of any legislation includes all legislation, regulations and instruments issued under such legislation or provision and any modification, consolidation, amendment, re-enactment or replacement of such legislation or provision;
- (f) references to clauses are references to clauses of this Constitution; and
- (g) terms defined in the *Mining Act 1971 (SA)*, *Petroleum and Geothermal Energy Act 2000 (SA)* or the Act bear their defined meanings when used in this Constitution.

3. Objects and powers

3.1 The Objects of SACOME are to promote and foster the Resources Industry in South Australia and to encourage and facilitate its development and enhancement.

3.2 SACOME pursues these Objects through a range of activities and services that may include but not be limited to the following:

- (a) to protect, promote and consider all issues relating to the South Australian Resources Industry;
- (b) to consider and consult with, and make representation to, government or other regulatory bodies on legislative or other measures affecting the South Australian Resources Industry;
- (c) to promote and facilitate continuous improvement and innovation in the South Australian Resources Industry, including by way of promoting or facilitating the provision of scholarships, prizes or trophies in education, safety, environmental management and other work achievements or activities contributing to the image and wellbeing of the South Australian Resources Industry;
- (d) to monitor developments in legal and commercial matters relevant to the South Australian Resources Industry and assist Members in respect of those matters;
- (e) to collect and publish statistics and other information relating to the South Australian Resources Industry;
- (f) to establish and maintain data, information and articles of interest in connection with the South Australian Resources Industry for the use of Member, and where appropriate, the public;
- (g) to print, publish and distribute communications for public information on the South Australian Resources Industry;

- (h) to undertake research and to sponsor research at approved institutions, either alone or in association with other bodies, into matters of interest or significance to the South Australian Resources Industry;
 - (i) to enter into any agreements or cooperative arrangements, including commercial arrangements, that improve the efficiency and/or effectiveness of SACOME's operations with any association having similar objects;
 - (j) generally, to do any such things as may contribute to the attainment of the above Objects.
- 3.3 As SACOME's Members operate in competition, in pursuing the Objects, SACOME must take care to avoid actions with Members that could be considered to be contrary to the requirements of relevant competition and fair trading laws.
- 3.4 The Association has the powers set out in section 25 of the Act.

Part 2 – Membership/Associateship

4. Membership qualifications

- 4.1 The Council may admit a Body Corporate that has been nominated for membership and qualifies as such as:
- (a) an Industry Member; or
 - (b) a Service Industry Member.
- 4.2 The Council, at its discretion, may admit any natural person:
- (a) connected with the Resources Industry generally; and
 - (b) upon whom, in the opinion of the Council, such distinction should be conferred,
- the recognition of Honorary Member at an annual general meeting.
- 4.3 The Council may admit any natural person who has been nominated for membership and qualifies as such as an Associate Member.

5. Nomination/Application

- 5.1 A nomination of a person as a Member, other than as an Honorary Member, must:
- (a) be made by the person in writing in the form approved from time to time by the Council; and

- (b) be lodged with the CEO.
- 5.2 As soon as practicable after receiving a nomination for membership, the Council or its delegate will determine whether to approve or reject the nomination or application.
- 5.3 Where the Council or its delegate determines to approve or reject a nomination for membership, the CEO must, as soon as practicable after that determination, give the nominee or applicant notice:
- (a) of that approval or rejection; and
 - (b) if the Council or its delegate has determined to approve the nomination or application, requesting the nominee or applicant to pay within the period of 28 days after the date of that notice any sum payable under this Constitution by the Member as annual subscription.
- 5.4 The CEO must, on payment by the nominee or applicant of the amounts referred to in **clause 5.4(b)** within the period referred to in that clause, enter the person's details in the Register of Members and, upon the details being so entered, the person becomes a Member.
- 5.5 In no case shall the Councillors be required to give a reason for the rejection of any application for membership but if the applicant has not previously been a Member and is not admitted to membership in due course then any moneys paid by them for membership must be returned to them in full.

6. Cessation of membership

- 6.1 A person ceases to be a Member if:
- (a) the person resigns that membership;
 - (b) the person fails to pay the person's annual subscription or other amount payable by the person to SACOME within 30 days after it has become due and payable and does not remedy that failure within 30 days of written notice from SACOME requiring the person to do so;
 - (c) the person is unable to pay its debts as and when they fall due;
 - (d) an administrator of the person is appointed under section 436A, 436B or 436C of the Corporations Act;
 - (e) the person commences to be wound up or ceases to carry on business on the date that is 180 days after the date on which the Council becomes aware of the action unless they are wound up earlier;

- (f) a receiver, or a receiver and manager, of property of the person is appointed, whether by a court or otherwise;
- (g) the person enters into a compromise or arrangement with their creditors or a class of them;
- (h) the person is an insolvent under administration;
- (i) the person is precluded from being a Member pursuant to the provisions of the Act;
- (j) the person is convicted of an indictable offence or any offence involving fraud or dishonesty punishable on conviction by imprisonment of not less than 3 months;
- (k) the person is expelled as a Member;
- (l) the person ceases to be eligible for the category of Member they hold under **clause 4** unless the Council resolves that they are eligible for another category of membership and changes their category of membership; or
- (m) if the person is an Honorary Member, at the conclusion of the specified term set at the time of their appointment as an Honorary Member or, if no specified time was set or the specified time set concluded later than the annual general meeting in 2019, at the conclusion of the annual general meeting in 2019 provided that until they cease to be an Honorary Member they will be entitled to the same rights and privileges as an Honorary Member. Following the conclusion of the annual general meeting in 2019 this clause shall have no further purpose so shall be deleted and replaced with the words (Deleted ('date')).

6.2 Cessation of membership does not relieve a Member of its liabilities to SACOME.

6.3 Without detracting from the provisions of **clause 6.1(b)** if a person fails to pay the person's annual subscriptions or other amount payable by the person to SACOME within 30 days after they have become due and payable, then, whilst that failure subsists and pending SACOME giving the person any written notice pursuant to that clause, all of the benefits of membership of that person are suspended unless, on the written application of that person to the CEO, the CEO determines otherwise as to either all or only some specific benefits of membership by notice given to that person.

7. Rights of Members

7.1 A Member does not acquire any right, title or interest in any real or personal property of SACOME.

- 7.2 An Industry Member is entitled via a Representative to attend, take part in all discussions and vote at any general meeting of SACOME.
- 7.3 A Service Industry Member is entitled via a Representative to attend, take part in all discussions and vote at any general meeting of SACOME.
- 7.4 An Honorary Member is entitled to attend and take part in all discussions at any general meeting of SACOME but is not entitled to vote at any general meeting.
- 7.5 An Associate Member is entitled to attend and take part in any or all discussions at a general meeting of SACOME but is not entitled to vote at any general meeting.
- 7.6 Each Member is entitled to:
- (a) make use of information, materials and facilities of SACOME, subject to any applicable law which limits or precludes such use;
 - (b) receive copies of any publication of SACOME; and
 - (c) attend functions of SACOME.
- 7.7 The Council may from time to time determine that a Member must pay a charge for the provision by SACOME of any of these or any other services to the Member.
- 7.8 A Member being a Body Corporate may appoint, remove and replace a Representative to exercise all the rights, powers and privileges of the Member under this Constitution and the Act. Written notice of any appointment, removal or replacement must be given to the CEO before it comes into effect.

8. Entitlements not transferable

- 8.1 A right, privilege or obligation which a Member has by reason of being a Member:
- (a) is not capable of being transferred or transmitted to another person; and
 - (b) subject to **clause 6.2**, terminates upon cessation of the Member's membership.

9. Resignation

- 9.1 A Member is not entitled to resign as a Member except in accordance with this **clause 9**.
- 9.2 A Member who has paid all amounts payable by the Member to SACOME in respect of the Member's membership may resign as a Member by giving a written notice (being not less than 1 month or such other period as the Council may determine) in

writing to the CEO and, upon the expiration of the period of notice, the Member ceases to be a Member.

- 9.3 Where a Member ceases to be a Member, the CEO must make an appropriate entry in the Register recording the date on which the Member ceased to be a Member.

10. Register

- 10.1 The CEO must establish and maintain the Register specifying for each Member the name, address, type of Member in accordance with **clause 4** and, for Industry Members and Service Industry Members the Industry Sector in which they predominantly operate, of each Member, the name of any Representative and the date on which the Member became a Member and when applicable ceased to be a Member.

- 10.2 The Register must be kept at the principal place of administration of SACOME.

11. Subscriptions

- 11.1 Members (other than Honorary Members) must pay annual subscriptions:

- (a) in such amounts;
- (b) by reference to such categories and, if so determined by the Council from time to time, sub-categories; and
- (c) based on such other factors, if any,

as the Council determines from time to time.

- 11.2 An Honorary Member is not liable to pay any annual subscription.

- 11.3 The Council may raise other funds including specific purpose levies and charges from Members and non-members for any purposes of SACOME on such basis as is determined by the Council from time to time.

- 11.4 Subject to **clause 11.5**, all renewal annual subscriptions are due and payable on the first day of the Financial Year and may be paid in instalments as determined by the Council from time to time.

- 11.5 Every Member admitted during any Financial Year is liable to pay only a pro rata share of the annual subscriptions or such lesser amount as determined by the CEO.

- 11.6 All subscriptions are payable in advance and no part of any fee or charge paid shall be refunded to a Member that ceases to be a Member in accordance with **clause 6**.

11.7 Members with a right to vote in accordance with **clause 10** have proportional votes based on annual subscriptions payable by the Member. Such proportional votes remain fixed until the next annual subscription becomes payable. Proportional votes are determined in increments of 1 vote for each doubling of the previous level of annual subscription up to a limit as follows:

- (a) the lowest annual subscription for a Financial Year set for an Industry Member with a right to vote shall be called the base subscription and each Industry or Service Member paying that base subscription or below shall have 1 vote;
- (b) Members with annual subscriptions payable in excess of the base subscription and up to twice the base subscription shall each have 2 votes;
- (c) Members with annual subscriptions payable in excess of twice the base subscription and up to 4 times the base subscription shall each have 3 votes;
- (d) Members with annual subscriptions payable in excess of 4 times the base subscription and up to 8 times the base subscription shall each have 4 votes; with
- (e) proportional votes increasing in the same manner up to 8 votes for Members with annual subscriptions payable that are greater than 64 times the base subscription.

12. Members' liabilities

12.1 The liability of a Member to contribute towards the payment of the debts and liabilities of SACOME or the cost, charges and expenses of the winding up of SACOME is limited to the amount, if any, unpaid by the Member in respect of the Member's membership.

13. Resolution of internal disputes

13.1 Except for cases where **clauses 14 & 15** apply, disputes between Members (in their capacity as Members), and disputes between Members and SACOME, are to be referred to an independent expert nominated by the president for the time being of *The Law Society of South Australia* or that person's nominee.

13.2 The expert acts as an expert and not as an arbitrator, any resolution of process is final and binding on the Member and SACOME and the expert's costs are to be borne as the expert directs.

14. Disciplining of Member

14.1 Where the Council is of the opinion that a Member:

- (a) has refused or neglected to comply with any provision of this Constitution; or
- (b) has wilfully acted in a manner prejudicial to the interests of SACOME.

The Council may, by resolution passed by at least 75% of the members of Council in office and eligible to vote, but subject to compliance with the provisions of **clauses 14.2 to 14.5**:

- (c) expel the Member from SACOME; or
- (d) suspend the Member from membership for a specified period.

14.2 Where the Council passes a resolution under **clause 14.1**, the CEO must, as soon as practicable, cause a notice in writing to be served on the Member:

- (a) setting out the resolution of the Council and the grounds on which it is based;
- (b) stating that the Member may address the Council at a meeting to be held at a date, place and time mutually agreed by the Member and the Council or if such a date, place and time cannot be mutually agreed after reasonable efforts to do so then at a date, place and time set by the Council that is at least 1 month after the date that the Council advises the Member of its intention to set the date, place and time;
- (c) stating the process for setting the date, place and time of that meeting; and
- (d) informing the Member that the Member may do either or both of the following:
 - (i) attend and speak at that meeting; and/or
 - (ii) submit to the Council at or prior to the date of that meeting reasonable written representations relating to the resolution.

14.3 At a meeting of the Council held as referred to in **clause 14.2** the Council must:

- (a) give to the Member an opportunity to make oral representations;
- (b) give due consideration to any oral presentations or written representations submitted to the Council by the Member at or prior to the meeting; and
- (c) by resolution passed by at least 75% of the members of Council in office and eligible to vote determine whether to confirm or to revoke the resolution to expel or suspend the Member.

14.4 Where the Council confirms a resolution under **clause 14.3**, the CEO must, within 7 days after that confirmation, by notice in writing inform the Member of the fact and of the Member's right of appeal under **clause 15**.

14.5 A resolution confirmed by the Council under **clause 14.3** does not take effect:

- (a) until the expiration of the period within which the Member is entitled to appeal against the resolution, where the Member does not exercise the right of appeal within that period; or
- (b) where within that period the Member exercises the right of appeal, unless and until the resolution is confirmed by a Special Resolution passed in a general meeting of SACOME, pursuant to **clause 15.4**.

15. Right of appeal of disciplined Member

- 15.1 A Member may exercise a right of appeal to SACOME in general meeting against a resolution of the Council which is confirmed under **clause 14.3**, within 21 days after notice of the resolution is served on the Member by lodging with the CEO a notice to that effect.
- 15.2 Upon receipt of a notice from a Member under **clause 15.1**, the CEO must notify the Council which must convene a general meeting of SACOME to be held at a date, place and time mutually agreed by the Member and the Council or if such a date, place and time cannot be mutually agreed after reasonable efforts to do so then at a date, place and time set by the Council that is at least 1 month after the date that the Council advises the Member of its intention to set the date, place and time.
- 15.3 At a general meeting of SACOME convened under **clause 15.2**:
 - (a) no business other than the question of the appeal may be transacted;
 - (b) the Council and the Member must be given the opportunity to state their respective cases orally or in writing, or both; and
 - (c) the Members present will vote by secret ballot on the question of whether the resolution to expel or suspend the Member should be confirmed or revoked.
- 15.4 If at the general meeting a Special Resolution is passed in favour of the confirmation of the resolution to expel or suspend the Member, the resolution is confirmed and applies from the conclusion of the general meeting.

Part 3 - Council

16. Powers of Council

- 16.1 Subject to the Act, any other applicable laws, this Constitution and to any valid resolution passed by Members in general meeting, the Council:
 - (a) controls and manages the affairs of SACOME;

- (b) may exercise all such functions as may be exercised by SACOME other than those functions that are required by this Constitution or the law to be exercised by a general meeting of Members;
- (c) has power to perform all acts and do all things as appear to the Council to be necessary or desirable for the proper management of the affairs of SACOME; and
- (d) may adopt from time to time bylaws for the proper administration of SACOME provided that any bylaws that directly affect how Members act as Members must be endorsed by ordinary resolution in general meeting before they become operative.

17. Constitution and membership

17.1 The Council consists of a minimum of 4 and up to 12 members comprised of:

- (a) up to 9 Industry Councillors or Service Industry Councillors provided that:
 - (i) not more than 2 of these Councillors at any one time may be Representatives from Members in the same sector within the Industry Sector or the same sector within the Service Industry Sector; and
 - (ii) not less than 45 days before the annual general meeting as part of the calling for nominations of candidates to stand for election or appointment as Councillors the Council shall determine the sectors within the Industry Sector and/or sectors within the Service Industry Sector from which Councillors may be elected; and
- (b) up to 3 Councillors who may be appointed by the Council and if appointed shall be designated Appointed Councillors who must be Members or Representatives and who must have skills, experience, perspectives or capabilities that the Council determines from time to time are important for the Council but which are not available to the Council from the Councillors at that time,

17.2 If when this constitution is adopted there are more than 12 Councillors or more than 2 Councillors on the Council from the same sector within the Industry Sector or the same sector within the Service Industry Sector they may remain on the Council despite **clause 17.1(a)(i)17.1(a)(i)** subject to rotation in the normal electoral cycle. When the number of such Councillors does not exceed 2 this clause shall have no further purpose so shall be deleted and be replaced with the words (Deleted ('date')).

17.3 Industry Councillors and Service Industry Councillors shall be appointed for a two (2) Year term and Appointed Councillors may be appointed for a term determined by the Council up to 24 months and may be reappointed for a further term of up to 24 months.

- 17.4 All retiring Councillors shall be eligible for re-election provided that Industry Councillors and Service Industry Councillors who have been elected for 5 consecutive terms are not eligible to be elected or appointed for another term.
- 17.5 A Councillor may not appoint an alternate Councillor. Any alternate in place when this Constitution is adopted shall cease to be an alternate Councillor.
- 17.6 Councillors may be paid such remuneration, if any, as is determined from time to time by an annual general meeting and may be reimbursed for out-of-pocket expenses incurred by the Councillor in the performance of any duty as a Councillor where the amount payable does not exceed an amount previously agreed by the Council.

18. Election of Councillors

- 18.1 One half of the Councillors other than the Appointed Councillors shall retire at the conclusion of the annual general meeting each year and, if eligible and they wish to, and they are nominated, each may stand for re-appointment or re-election.
- 18.2 If the number of Councillors to retire is not a whole number, then the number that is one half then rounded down to the next whole number must retire from office.
- 18.3 When the number of Councillors about to reach their term in accordance with **clause 17.3** exceeds the number determined in **clauses 18.1** then the Councillors to retire are all the Councillors who reach their term at the conclusion of that next annual general meeting.
- 18.4 In determining the number to retire, Councillors appointed to fill casual vacancies who retire under **clause 19.2** are to be counted for the purposes of **clause 18.1**.
- 18.5 The Councillors to retire at an annual general meeting are those who have been longest in office since their appointment or election, but, as between individuals who became Councillors on the same day, the Councillors to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 18.6 Not less than 35 days before the date for the holding of the annual general meeting the CEO must notify Members in writing:
- (a) of the number of vacancies on the Council and the sectors of the Industry Sector and the sectors of the Service Industry Sector from which they may be elected or appointed in accordance with **clause 17.1(a)(ii);17.1(a)(ii)** and
 - (b) calling for nominations from appropriate Representatives.
- 18.7 Nominations of candidates for election as Councillors must:

- (a) be made in writing, on the form as determined by the Council from time to time and be signed by both the Member and Representative;
 - (b) state that the candidate for election as a Councillor:
 - (i) is from which particular sector in the Industry Sector or sector in the Service Industry Sector;
 - (ii) consents to be appointed if elected or appointed;
 - (c) be delivered to the CEO not less than 28 days before the date for the holding of the annual general meeting at which the election is to take place; and
 - (d) the candidate may submit with their nomination form a resume of not more than 200 words which:
 - (i) may only include details in relation to the candidate's qualifications and relevant experience, their contribution to SACOME and the industry to date and key issues the candidate sees as facing SACOME;
 - (ii) must not endorse, disparage or otherwise refer to any other candidate or any other Councillor; and
 - (iii) provided that the CEO may in good faith edit any resume in such manner as they see fit in order to ensure compliance with this clause.
- 18.8 If insufficient nominations are received to fill all vacancies for Councillors having regard to the limits in **clause 17.1(a)(i)** the candidates nominated are deemed to be elected subject to endorsement at the annual general meeting.
- 18.9 If the number of nominations received is equal to the vacancy or vacancies in Councillors to be filled having regard to the limits in **clause 17.1(a)(i)** the persons nominated are deemed to be elected subject to endorsement at the annual general meeting.
- 18.10 If the number of nominations received for Councillors, having regard to the limits in **clause 17.1(a)(i)** exceeds the number of vacancies to be filled, a ballot for the relevant sectors of Councillors must be held.
- 18.11 The ballot must be held in the following manner:
- (a) not less than 21 days before the date for the holding of the annual general meeting the CEO must post or send electronically to each Member entitled to vote a ballot paper containing:
 - (i) separate sections for candidates nominated as Councillors in different sectors having regard to the limits in **clause 17.1(a)(i)**; and
 - (ii) within each section in alphabetical order the names of the candidates nominated as Councillors in each relevant sector;

- (b) each ballot paper posted or sent electronically to a Member must indicate the category or sub-category referred to in **clause 17.1(a)(i)** of that candidate;
- (c) each ballot paper which is:
 - (i) posted must be initialled on the back by the returning officer; or
 - (ii) sent electronically does not require any identification mark;
- (d) each Member voting must vote only for as many candidates within each sector as there are vacancies within that sector in the manner specified on the ballot paper; and
- (e) the CEO must ensure that the Electronic Voting System if used:
 - (i) is secure;
 - (ii) only permits each Member entitled to vote to vote once in any election;
 - (iii) ensures that the votes exercised by each Member entitled to vote reflects the proportional votes the Member has in accordance with **clause 11.7**; and
 - (iv) incorporates all information reasonably necessary to facilitate electronic voting by Members; and
- (f) a Member voting must return the duly completed ballot paper to the returning officer either:
 - (i) in an enclosed envelope marked "voting paper" in a suitably identified return envelope; or
 - (ii) by voting electronically when this option is offered;

so as to reach the returning officer at SACOME's offices on or before the closing day specified on the ballot paper, being a day not more than 21 days before the day fixed for the holding of the annual general meeting.

18.12 On or before the day specified for the closing of the ballot Council must appoint an independent and suitably experienced individual who may be a Member to act as returning officer.

18.13 Not less than 7 days before the date fixed for the holding the annual general meeting the returning officer must take charge of all postal and electronic ballots

received and open, weight proportional votes as appropriate and count the votes and determine the results on the basis of the relevant candidate that receives the highest number of votes is elected.

- 18.14 The returning officer not less than 5 days before the date fixed for the holding of the annual general meeting must prepare a report that details the result of the election to the CEO.
- 18.15 Not less than 3 days before the date fixed for the holding of the annual general meeting the CEO must inform each candidate in writing whether or not they were elected, subject to endorsement at the annual general meeting
- 18.16 At the annual general meeting the chair of the meeting must present any returning officers' report to the meeting and/or list the candidates deemed to be elected and each elected candidate shall then be subject to endorsement separately by ordinary resolution at the annual general meeting and candidates that are endorsed shall become Councillors at the conclusion of the annual general meeting.
- 18.17 Any relevant Councillor position not filled in accordance with **clause 18** shall be a casual vacancy.

19. Casual vacancies

- 19.1 The office of Councillor becomes vacant and a casual vacancy in the office of a Councillor occurs if:
- (a) the Councillor, other than an Appointed Councillor, ceases to be a Representative;
 - (b) the Councillor if an Appointed Councillor ceases to be a Member or a Representative;
 - (c) the Councillor becomes an insolvent under administration or is otherwise precluded from being a member of the committee of an incorporated association pursuant to the provisions of the Act;
 - (d) the Councillor resigns office by notice in writing given to the CEO;
 - (e) the Councillor is removed from office under **clause 20**;
 - (f) the Councillor is absent without the consent of the Council from 3 consecutive meetings of the Council;
 - (g) the Councillor becomes an individual who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;

- (h) the Councillor is convicted on indictment of an offence and the Council does not within 2 months after that conviction resolve to confirm the Councillor's appointment to the office of Councillor;
- (i) the Councillor has failed to disclose a material personal interest/conflict that would be required to be disclosed under the Act unless at the next meeting of the Board, the Board resolves otherwise;
- (j) the Councillor dies; or
- (k) a casual vacancy occurs pursuant to **clause 18.17**.

19.2 In the event of a casual vacancy occurring in the office of a Councillor, the Council may appoint an appropriate Representative to fill the vacancy and the Representative so appointed holds office, subject to this Constitution, until the conclusion of the next annual general meeting.

20. Removal of Councillor

20.1 SACOME in general meeting by resolution:

- (a) May remove any Councillor from office before the expiration of the Councillor's term of office; and
- (b) unless the Councillor removed is an Appointed Councillor may appoint another Representative to hold office until the expiration of the term of office of the Councillor so removed subject to **clause 17.1(a)(i)**.

20.2 A Councillor to whom a proposed resolution referred to in **clause 20.1(a)** relates may make representations in writing to the CEO or President (not exceeding a reasonable length) and request that the representations be notified to the Members.

20.3 If a Councillor makes representations in accordance with **clause 20.2**, the CEO or the President may send a copy of the representations to each Member or, if the representations are not so sent, the Councillor is entitled to require that the representations be read out at the general meeting at which the resolution for removal of the Councillor from office is considered.

21. Meetings and quorum

21.1 The Council may meet together for the dispatch of its business, adjourn and otherwise regulate its meetings as it thinks fit.

21.2 Additional meetings of the Council may be convened by the President or any 2 Councillors.

- 21.3 Written or electronic notice of a meeting of the Council must be given by the CEO to each member of the Council at least 24 hours (or such other period as may be unanimously agreed upon by the members of the Council) before the time appointed for the holding of the meeting except in cases of emergency, when no particular length of notice is required.
- 21.4 A quorum for the transaction of business of a meeting of the Council shall be half the number of Councillors in office and in Australia at the time rounded up if it is not a whole number plus 1. In determining the number of Councillors present, Councillors present but excluded due to **clause 23.5(c)** are to be counted as present.
- 21.5 No business is to be transacted by the Council unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting stands adjourned to the same place and at the same hour of the same day in the following week or alternative time and place as determined by the President.
- 21.6 If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is dissolved.
- 21.7 At a meeting of the Council:
- (a) the President or, in the President's absence or unwillingness to act, one of the Vice-Presidents, presides; or
 - (b) if the President and the Vice-Presidents are absent or are unwilling to act such one of the remaining Councillors as may be chosen by the Councillors present at the meeting presides.
- 21.8 Subject to **clause 14**, a decision in which a majority of Councillors concurs is a resolution of the Council.
- 21.9 Councillors may pass a resolution without a Council meeting if the Councillors entitled to vote on the resolution sign a document containing the resolution. The signatures can be contained in more than 1 document and can include electronically transmitted signatures. The resolution shall be deemed to have been passed if the Councillors have signed a document containing a statement that they are in favour of the resolution provided that the number of Directors in favour is sufficient for a quorum at a Council meeting. The resolution is taken to have been passed on the date that the resolution was assented to by the final Councillor whose support resulted in the number of Councillors in favour of the resolution equalling the number that is a quorum.
- 21.10 The planned contemporaneous linking together of Councillors by technologies, such as telephone or other electronic means, that are consented to by all

Councillors at least annually and that allow reasonable interaction between all participating Councillors, constitutes a Council meeting provided the number of Councillors participating is sufficient to constitute a quorum.

22. Delegation by Council to committee

- 22.1 The Council may, by instrument in writing, delegate to one or more committees (consisting of at least 1 Councillor and such Members or Representative as the Council thinks fit) the exercise of such of the functions of the Council as are specified in the instrument other than:
- (a) this power of delegation; and
 - (b) a function which is a duty imposed on the Council by the Act or by any other law.
- 22.2 A function the exercise of which has been delegated to a committee under this **clause 22** may, while the delegation remains unrevoked, be exercised from time to time by the committee in accordance with the terms of the delegation.
- 22.3 A delegation under this **clause 22** may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances, as may be specified in the instrument of delegation.
- 22.4 Notwithstanding any delegation under this **clause 22**, the Council may continue to exercise any function delegated.
- 22.5 Any act or thing done or suffered by a committee acting in the exercise of a delegation under this **clause 22** has the same force and effect as it would have if it had been done or suffered by the Council.
- 22.6 The Council may, by instrument in writing, revoke wholly or in part any delegation under this **clause 22**.
- 22.7 A committee may meet and adjourn as it thinks proper but to the extent possible and with such modifications as are needed should conform with the requirements applicable to the Council.
- 22.8 If the Council establishes a finance and audit type committee of the Council it will consist of at least 3 individuals including at least 1 Councillor. The President shall not be eligible to be a member of such a finance and audit type committee.

23. Voting and decisions

- 23.1 Subject to **clause 14**, questions arising at a meeting of the Council or of any committee appointed by the Council are to be determined by a majority of the

votes of Councillors or members of the committee present at the meeting and entitled to vote.

- 23.2 Each Councillor present at a meeting of the Council and entitled to vote or member present at a meeting of any committee appointed by the Council (including the person presiding at the meeting) and entitled to vote is entitled to one vote.
- 23.3 The Council may act notwithstanding any vacancy on the Council provided that if the number of Councillors in office at any time is less than the minimum number required by **clause 17.11**, the remaining Councillors must act as soon as possible:
- (a) to increase the number of Councillors to a number sufficient to satisfy the minimum number of Councillors required by **clause 17.1**; or
 - (b) to convene a general meeting of the SACOME for that purpose; and
 - (c) until the actions required by this clause have happened, the Councillors must only act if and to the extent that there is an emergency requiring them to act.
- 23.4 Any act or thing done or suffered, or purporting to have been done or suffered, by the Council or by a committee appointed by the Council, is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any Councillor or member of the committee.
- 23.5 A Councillor who has any direct or indirect pecuniary interest in a contract or proposed contract with SACOME or a material personal interest in a matter before Council:
- (a) must as soon as he or she becomes aware of his or her interest disclose the nature and extent of his or her interest to the Council;
 - (b) must disclose the nature and extent of his or her interest in the contract at the next annual general meeting of SACOME;
 - (c) must not take part in any decision of the Council with respect to that contract; and
 - (d) may subject to complying with **clauses 23.5(a), 23.5(b) & 23.5(c)** take part in any deliberations with respect to that contract to the extent determined by the other Councillors.

24. President and Vice Presidents

- 24.1 At least at the first meeting of the Council held after:
- (a) each annual general meeting of SACOME, the Council must elect from the Councillors a President and may elect two Vice Presidents; and

- (b) at any meeting of Council at which there is any casual vacancy in the office of the President the Councillors must fill the office of President or if there is a casual vacancy in the office of a Vice President, the Council may fill the vacancy from the Councillors.

24.2 Subject to **clause 24.1**, any Councillor elected as President or Vice President holds office generally for a period of approximately a year until successors are elected unless sooner ceasing to be a Councillor or they resign that position while remaining a Councillor or they are removed from that position by the Council while remaining a Councillor. A Councillor who is elected as President or Vice President at the first meeting of Council after an annual general meeting and who remains in office cannot be re-elected to that same office at the first meeting of the Council after the next annual general meeting.

25. CEO

- 25.1 The Council will appoint the CEO who may, but need not, be a Member.
- 25.2 The CEO will have such functions and powers as may be delegated to that natural person by the Council.
- 25.3 The CEO will be paid such remuneration and be appointed for such period as the Council may from time to time decide.
- 25.4 The CEO must, as soon as practicable after being appointed as CEO, lodge notice with SACOME of his or her address.
- 25.5 The CEO is responsible for keeping minutes or a record kept for these purposes of:
 - (a) all appointments of office-bearers of SACOME and Councillors;
 - (b) the names of Councillors present at a Council meeting and of Members present at a general meeting;
 - (c) all proceedings at Council meetings and general meetings; and
 - (d) all resolutions passed by Council or at a general meeting.
- 25.6 Minutes of proceedings at a Council or general meeting must be signed by the chair of the meeting or by the chair of the next succeeding meeting.

26. Public officer and auditor

- 26.1 The Council must ensure that a natural person who may, but need not be, a Member, is appointed to the office public officer of SACOME in accordance with the Act.

- 26.2 If at any time SACOME is a prescribed association, the Council must ensure that an auditor of SACOME is appointed.
- 26.3 The Council must ensure that as required by the Act correct books and accounting records are kept, audited and reported to Members.
- 26.4 The public officer of SACOME must meet the requirements of and perform the duties of a public officer under the Act.
- 26.5 The public officer must be a natural person of or over 18 years who is resident in South Australia.

Part 4 – General Meetings

27. Annual general meetings – holding of

- 27.1 SACOME must, at least once in each calendar year and within the period of 5 months after the expiration of each Financial Year, convene an annual general meeting of Members.

28. Annual general meetings – calling of and business at

- 28.1 The annual general meeting of SACOME must, subject to the Act and **clause 27**, be convened on such date and at such place and time as the Council thinks fit.
- 28.2 In addition to any other valid business which may be transacted at an annual general meeting, the business of an annual general meeting is:
 - (a) to confirm the minutes of the last preceding annual general meeting and of any general meeting held since that meeting;
 - (b) to receive from the Council reports upon the activities of SACOME during that last preceding Financial Year;
 - (c) to elect/appoint Councillors;
 - (d) if SACOME is a prescribed association (as defined in the Act), to receive and consider the document referred to in section 35(6) of the Act; and
 - (e) to determine the remuneration, if any, to be paid to all or any of the Councillors.
- 28.3 An annual general meeting must be specified as such in the notice convening it.

29. General meetings – calling of

- 29.1 The Council may, whenever it thinks fit, convene a general meeting of Members.
- 29.2 The Council must, on the requisition in writing of Members entitled to vote that represent not less than 5% of the total votes of Members entitled to vote, convene a general meeting of Members.
- 29.3 A requisition of Members for a general meeting:
- (a) must state the purpose or purposes of the meeting which must be for a valid purpose;
 - (b) must be signed by the Members making the requisitions;
 - (c) must be lodged with the CEO; and
 - (d) may consist of several documents in a similar form, each signed by one or more of the Members making the requisition.
- 29.4 If the Council fails to convene a general meeting to be held within 1 month after the date on which a requisition of Members for the meeting is lodged with the CEO, any one or more of the Members who made the requisition may convene a general meeting to be held not later than 3 months after that date.
- 29.5 A general meeting convened by a Member or Members as referred to in **clause 29.4** must be convened as nearly as is practicable in the same manner as general meetings are convened by the Council and any Member who thereby incurs reasonable expense is entitled to be reimbursed by SACOME for that reasonable expense.

30. Notice

- 30.1 The CEO must, at least 21 clear days before the date fixed for the holding of a general meeting, cause to be sent by pre-paid post or electronically to each Member at the Member's relevant address appearing in the Register, a notice specifying the place, date and time of the general meeting and the nature of the business proposed to be transacted at the general meeting.
- 30.2 Where the nature of the business proposed to be dealt with at a general meeting requires a Special Resolution the notice to be sent to each Member must include the intention to propose the resolution as a Special Resolution and state the Special Resolution.
- 30.3 No business other than that specified in the notice convening a general meeting may be transacted at the general meeting except, in the case of an annual general meeting, business which may be transacted pursuant to **clause 28.2**.

- 30.4 A Member desiring to bring any business before a general meeting may give to the CEO written notice of a request for that business to be brought before a general meeting of Members. The CEO must include that business in the next notice calling a general meeting given after receipt of the notice from the Member provided that the business may validly be brought before the general meeting. The Member may withdraw any such request.

31. Procedure

- 31.1 No item of business may be transacted at a general meeting unless a quorum of Members entitled under this Constitution to vote is present during the time the meeting is considering that item.
- 31.2 The quorum is the number that is half the number of Councillors in office at the time rounded up if not a whole number plus 1. Members present in person, by Representative or proxy may be counted in determining the quorum.
- 31.3 If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting if convened upon the requisition of Members is dissolved and in any other case stands adjourned to the same day in the following week at the time and (unless another place is specified at the time of the adjournment by the relevant person presiding at the meeting or communicated by written notice to Members given before the day to which the meeting is adjourned) at the same place. A general meeting that has commenced and then lacks a quorum is adjourned until a quorum is restored or if a quorum is not restored within half an hour then it is adjourned in accordance with this clause.
- 31.4 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the Members present (being not less than 3) constitute a quorum, otherwise the meeting is dissolved.
- 31.5 A general meeting of the SACOME may be convened to occur at 2 or more venues using any technology that the Council determines gives the Members in attendance a reasonable opportunity to participate in the meeting. A general meeting so convened is not invalidated due to a failure of the technology unless the failure arose out of conduct of an officer which was not in good faith, or which involved wilful misconduct, gross negligence, reckless behaviour or fraud.

32. Presiding Member

- 32.1 The President or, in the President's absence or unwillingness to act, one of the Vice-Presidents must preside as chair at each general meeting of SACOME.
- 32.2 If the President and Vice-Presidents are absent from a general meeting or are unwilling to act, the Councillors present must determine which of them is to act as chair and if no Councillors are present or no Councillors are willing to act the

Representatives present who are entitled under this Constitution to vote at the general meeting must elect one of their number to preside as chair at the meeting.

33. Adjournment

- 33.1 In addition to the rights, at law, of a chair to adjourn a general meeting, the chair of a general meeting at which a quorum is present may, with the consent of a majority of Members present at the meeting and entitled under this Constitution to vote, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 33.2 Where a general meeting is adjourned for 14 days or more, the CEO must give written or electronic notice of the adjourned general meeting to each Member stating the place, date and time of the general meeting and the nature of the business remaining to be transacted at the general meeting.
- 33.3 Except as provided in **clauses 33.1 & 33.2**, notice of an adjournment of a general meeting or of the business to be transacted at an adjourned general meeting is not required to be given.

34. Making of decision

- 34.1 A question arising at a general meeting of Members is determined on a show of hands of Members entitled to vote in accordance with this Constitution and present in person or by Representative and, unless before or on the declaration of the show of hands a poll is demanded, a declaration by the chair 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 minute book, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution. Members entitled to vote and present by proxy do not vote on a show of hands but do have a right to vote if a poll is called. Representatives voting on a show of hands get 1 vote only but if a poll is called they will be able to exercise their proportional votes in accordance with **clause 11.7**.
- 34.2 At a general meeting of Members, a poll may be demanded by the chair or by not less than 3 Members entitled under this Constitution to vote present in person or by Representative or by proxy at the meeting.
- 34.3 Where a poll is demanded at a general meeting, the poll must be taken:
- (a) immediately in the case of a poll which relates to the election of the chair of the meeting or to the question of an adjournment; or
 - (b) in any other case in such manner and at such time before the close of the meeting as the chair directs, and the resolution of the poll on the matter is deemed to be the resolution of the meeting on that matter.

35. Special Resolution

35.1 A resolution of the Members is a Special Resolution if it is passed by a majority which comprises not less than three quarters of the total votes cast by such Members as, being entitled under this Constitution to do so, vote in person or by Representative or proxy at a general meeting of which not less than 21 days' written notice specifying the intention to propose the resolution as a Special Resolution was given to all Members in accordance with this Constitution.

36. Voting

36.1 Upon a poll or ballot a Member or the Representative or proxy of a Member is entitled to exercise votes as determined under **clause 11.7**.

36.2 In the case of an equality of votes on a question at a general meeting, the chair of the meeting is not entitled to exercise a second or casting vote.

36.3 A Member or Representative or proxy of a Member is not entitled to vote at any general meeting unless all money due and payable by the Member to SACOME has been paid.

37. Appointment of proxies and representatives

37.1 Each Member is entitled to appoint another Member as proxy by notice given to the CEO no later than 48 hours before the time set for a general meeting in respect of which the proxy is appointed.

37.2 Each Member entitled to vote that is a Body Corporate is entitled to appoint, remove and replace a natural person as its Representative to attend, take part in discussions and vote at general meetings.

37.3 A notice of:

(a) appointment of a Representative must be given not less than 48 hours before the time set for a general meeting; and

(b) removal of a Representative must be given not less than 48 hours before a general meeting;

in respect of which the appointment or removal is to apply.

37.4 The notice appointing a proxy or Representative must be in the form approved by the CEO from time to time.

Part 5 - General

38. Funds - source

- 38.1 The funds of SACOME must be derived from Members' subscriptions, donations, other charges in accordance with **clause 11** and such other sources as the Council determines from time to time.
- 38.2 All money received by SACOME must be deposited as soon as practicable and without deduction to the credit of SACOME's bank account.
- 38.3 SACOME must, as soon as practicable after receiving any money, issue an appropriate receipt.

39. Funds - management

- 39.1 Subject to any valid resolution passed by Members in general meeting, the income and property of SACOME must be used in pursuance of the Objects in such manner as the Council determines from time to time.
- 39.2 All cheques, drafts, bills of exchange, promissory notes, electronic transfers and other negotiable instruments must be signed or authorised in such manner and by such person(s) as the Council determines from time to time.
- 39.3 Subject to **clause 39.4**, no portion of the income or property of SACOME must be paid or transferred directly or indirectly to Members or related parties of Members.
- 39.4 Nothing in **clause 39.3** prevents the payment in good faith of reasonable remuneration to any officer or employee of SACOME or reasonable payments to any Member for any services actually rendered to SACOME or reasonable and proper rental for premises let or price for goods or property sold, by any Member to SACOME.

40. Contracts

- 40.1 SACOME must have a seal.
- 40.2 The seal may only be used with the authority of the Council.
- 40.3 Any document to which the seal is affixed must be countersigned by 2 Councillors or a Councillor and the public officer.
- 40.4 All contracts entered into on behalf of SACOME and not requiring the seal be affixed must be signed by the CEO and/or the President and/or any other Councillors or any other person duly authorised by the Council.

41. Alteration of Objects and rules

41.1 This Constitution may be altered, rescinded or added to only by a Special Resolution subject to registration in accordance with the Act.

42. Custody of books etc

42.1 Except as otherwise provided by this Constitution, or as determined from time to time by the Council, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to SACOME.

43. Inspection of books etc

43.1 To the extent allowed by the Act, the records, books and other documents of SACOME must be open to inspection, free of charge, by a Member at any reasonable hour. Any other access to the records, books and other documents of SACOME is as authorised by the Council.

44. Service of notices

44.1 For the purpose of this Constitution, a notice may be served by or on behalf of SACOME upon any Member either personally or by sending it by post or electronically to the Member at the Member's address shown in the Register.

44.2 Where a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document is, unless the contrary is proved, deemed for the purposes of this Constitution to have been served on the person 3 days after the date of posting.

44.3 Where a document is sent to a person electronically, the document is, unless the contrary is proved deemed for the purposes of this Constitution to have been served on the person within 1 full business day of having been sent.

45. Indemnity

45.1 To the extent permitted by law, SACOME indemnifies each officer of SACOME against any liability incurred by him or her in defending any proceedings:

- (a) whether civil or criminal;
- (b) in respect of any negligence, default, breach of duty or breach of trust of which he or she may be accused in relation to SACOME; and
- (c) in which judgment is given in his or her favour or in which he or she is acquitted.

46. Winding up

46.1 SACOME may be dissolved or wound up in accordance with the Act.

46.2 If in the dissolution or winding up of SACOME there remains after the satisfaction of all its debts and liabilities any income or property whatever they must by Special Resolution be determined to be transferred to:

- (a) an association, corporation or institution having objects wholly or in part similar to the Objects; or
- (b) a charitable organisation registered under the *Australian Charities and Not-for-profit Commission Act 2012* (Cth),

which in either case prohibits the distribution of income and property amongst Members to an extent at least as great as is imposed on SACOME under **clause 39**, provided that no funds or property shall be distributed to Members or their related parties.

47. Saving

47.1 Any appointment made or resolution passed under any prior Constitution, if in force at the commencement of this Constitution, continues in force as far as practicable as if made or passed under this Constitution, subject to changes under this Constitution.