

AUSTRALIAN FLEXIBLE PAVEMENT ASSOCIATION

CONSTITUTION

ACN 000 770 123

A public company limited by guarantee

This constitution adopted on 26 June 2023

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A. GENERAL

1. Name of the Company

- 1.1 The name of the Company is Australian Flexible Pavement Association Limited.

2. Object

- 2.1 The Object of the Company is to promote the development of the resource of flexible pavement, by:
- a) acting as a platform for industry sustainability;
 - b) supporting the flexible pavement industry to be healthy, safe, innovative, and adaptive to change;
 - c) supporting the national harmonisation of best practice and development of national leading knowledge across all disciplines relating to the flexible pavements industry;
 - d) promoting the benefits of the flexible pavements industry; and
 - e) driving a national culture of continuous improvement in the industry.

3. Type of Company

- 3.1 The Company is a not-for-profit public company limited by guarantee.
- 3.2 The Company must not distribute any income or assets directly or indirectly to its Members as Members.
- 3.3 Clause 3.2 does not prevent payment in good faith for:
- a) reasonable and proper remuneration to any employee of the Company;
 - b) reasonable and proper amounts to any Member in return for any goods or services they provide to the Company;
 - c) reasonable and proper rent for premises leased by any Member to the Company;
 - d) interest at a rate not exceeding current bank interest rates for moneys lent to the Company;
 - e) reimbursement of out-of-pocket expenses incurred in good faith on behalf of the Company;
 - f) any other sums lawfully payable under this constitution; and
 - g) for any other bona fide reason for fulfilling its Object.
- 3.4 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 3.5 This constitution comprises a contract between:
- a) the Company and each Member;
 - b) the Company and each Director;
 - c) the Company and the Secretary; and

- d) a Member and each other Member.
- 3.6 Each Member must contribute an amount not more than \$500.00 to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
 - a) debts and liabilities of the Company that exceed the Company's assets incurred before the Member stopped being a Member, and
 - b) costs of winding up.

4. Powers of the Company

- 4.1 The Company has the following powers:
 - a) the powers of an individual, and
 - b) all the powers of a Company limited by guarantee under the Corporations Act.
- 4.2 Even though the Corporations Act provides extensive powers to the Company, it may use its powers only to carry out its Objects.

5. Definitions

- 5.1 In this constitution, capitalised terms have the following meanings:

Binder means any material that binds aggregates in the provision of flexible pavements, including, but not limited to, bitumen, emulsions, polymer modified bitumen and crumb rubber modified bitumen;

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the Company's registered office is located;

Chair means the Director holding the office of Chair in accordance with clause 25;

Corporations Act means the Corporations Act 2001 (Cth);

General Meeting means a duly constituted meeting of the Members and includes an Annual General Meeting;

Member means a member of the Company and includes:

- (i) Producer Members;
- (ii) Binder Supplier Members;
- (iii) Consultant Members;
- (iv) State and Territory Transport and Road Authority Members;
- (v) Tollway and Road-owner Members;
- (vi) Flexible Pavement Surfacing Contractor Members; and
- (vii) Non-Voting Members.

Code of Conduct means the code of conduct applicable to Members, amended as a By-Law by the Board from time to time;

Member Director means a Director appointed or elected by the Members in accordance with clause 21.2;

Production Facility means a facility that undertakes the production bound flexible pavement materials such as asphalt, through the mixing of Binder and aggregates.

Secretary means the person appointed as the Company's secretary under clause 41;

Special Resolution means a resolution of which not less than 21 days written notice specifying the intention to propose the resolution as a special resolution at a General Meeting has been duly given, requiring at least 75% of the votes cast by Members entitled to vote on the resolution to pass;

Vice Chair means the Director holding the office of Vice Chair in accordance with clause 25.

6. Interpretation

- 6.1 Headings are for convenience only and do not affect the interpretation of this constitution.
- 6.2 The following rules of interpretation apply unless any contrary intention appears in this constitution or the context requires otherwise:
 - a) a word or expression that is defined or used in the Corporations Act and covering the same subject has the same meaning as in this constitution;
 - b) reference to an act includes every amendment, re-enactment, or replacement of that act and any subordinate legislation made under that act such as regulations;
 - c) a reference to a clause or sub-clause is to a clause or sub-clause of this constitution;
 - d) where a word or phrase is defined, its other grammatical forms or parts of speech have corresponding meaning;
 - e) reference to a person is a reference to an individual, company, any other body corporate, partnership, joint venture, association or other body whether or not incorporated;
 - f) the words 'writing' and 'written' include any mode of representing or reproducing, including electronically, words, figures, drawings or symbols in a visible or communicable form;
 - g) the words 'including', 'for example', or similar expressions do not limit the inclusions or examples;
 - h) singular includes plural and vice versa.

B. MEMBERSHIP

7. Classes and criteria of Membership

- 7.1 There are seven classes of membership:
- a) Producer Members;
 - b) Binder Supplier Members;
 - c) Consultant Members;
 - d) State and Territory Transport and Road Authority Members;
 - e) Tollway and Other Road-owner Members;
 - f) Flexible Pavement Surfacing Contractor Members; and
 - g) Non-Voting Members.
- 7.2 **Producer Members** are bodies corporate, partnerships, associations or other types of entities that:
- a) produce and construct bound flexible pavement materials;
 - b) satisfy any further criteria that may be prescribed by the Board and set out in the By-Laws; and
 - c) have been admitted to membership in accordance with this constitution.
- 7.3 There will be two categories of Producer Member:
- a) **Category A Producers** - those Producer Members with Production Facilities located in four or more States or Territories; and
 - b) **Category B Producers** - those Producer Members with Production Facilities located in three or less States or Territories.
- 7.4 **Binder Supplier Members** are companies, partnerships, associations or other types of entities that:
- a) supply Binder;
 - b) satisfy any further criteria that may be prescribed by the Board and set out in the By-Laws; and
 - c) have been admitted to membership in accordance with this constitution.
- 7.5 There will be two categories of Binder Supplier Member:
- a) **Category A Binder Suppliers** – those Binder Supplier Members operating in four or more States or Territories;
 - b) **Category B Binder Suppliers** – those Binder Supplier Members operating in three or less States or Territories.
- 7.6 **Consultant Members** are bodies corporate, partnerships, associations or other types of entities that:
- a) provide consultancy services to industry including surveying, engineering, design, planning and project management;

- b) have physical premises in four or more States or Territories;
- c) satisfy any further criteria that may be prescribed by the Board and set out in the By-Laws; and
- d) have been admitted to membership in accordance with this constitution.

7.7 State and Territory Transport and Road Authority Members are State or Territory government departments or agencies that:

- a) have stewardship responsibility and fund flexible pavements;
- b) satisfy any further criteria that may be prescribed by the Board and set out in the By-Laws; and
- c) have been admitted to membership in accordance with this constitution.

7.8 Tollway and Other Road-owner Members are non-government entities that:

- a) own or have stewardship responsibility over one or more transport and road network;
- b) satisfy any further criteria that may be prescribed by the Board and set out in the By-Laws; and
- c) have been admitted to membership in accordance with this constitution.

7.9 Flexible Pavement Surfacing Contracting Members are companies, partnerships, associations or other types of entities that:

- a) construct bound flexible pavement or surfacings but do not produce flexible pavement materials;
- b) have physical premises in three or more States or Territories;
- c) satisfy any further criteria that may be prescribed by the Board and set out in the By-Laws; and
- d) have been admitted to membership in accordance with this constitution.

7.10 Non-Voting Members are individuals, companies, partnerships, associations or other types of entities that:

- a) are interested in the flexible pavement industry and do not otherwise satisfy the criteria for any other class of membership;
- b) satisfy any further criteria that may be prescribed by the Board and set out in the By-Laws; and
- c) have been admitted to membership in accordance with this constitution.

The Board may provide for categories of Non-Voting Members on such terms and conditions as the Board determines.

8. Rights and obligations of Members

- 8.1 Members are entitled to receive notices and attend General Meetings.
- 8.2 Members other than Non-Voting Members have voting rights in accordance with clause 18.1.
- 8.3 Producer Members, Category A Binder Supplier Members and State and Territory Transport and Road Authority Members are entitled to appoint or elect Directors in accordance with clause 21.2.
- 8.4 The Board may extend benefits and privileges of membership that may differ between classes and categories of membership and within categories of membership, but no such benefits or privileges shall affect the rights of Members in clauses 8.1, 8.2 and 8.3.
- 8.5 A Member who has not paid any fees payable under clause 10 by the due date will not be entitled to exercise their rights or enjoy the benefits and privileges of membership while the fee remains unpaid.
- 8.6 The rights of a Member are not transferrable.
- 8.7 The rights of Members of a particular class are not to be taken as being varied by the admission of more Members to that class or the addition or deletion of other classes of membership or categories of membership within a class.
- 8.8 A related entity of a Member is not entitled to exercise or enjoy any of the membership rights, benefits or privileges of that Member, unless the related entity is also a Member in its own right. For the purposes of this clause 8.8, a related entity includes:
 - a) a holding company of a Member;
 - b) a subsidiary of a Member; or
 - c) a subsidiary of a holding company of a Member.
- 8.9 Members shall conduct themselves in accordance with:
 - a) this constitution;
 - b) any By-Laws; and
 - c) the Code of Conduct.

9. Application for Membership

- 9.1 An application for membership must be in a form prescribed by the Board.
- 9.2 The Board may approve or reject an application of membership.
- 9.3 The Board is not required to give a reason for the rejection of any application for membership.
- 9.4 The Board may delegate the consideration and determination of any membership application.
- 9.5 When a decision regarding an applicant for membership has been made, written notice of that decision will be sent to the applicant.

- 9.6 The acceptance of an applicant to be a Member is subject to payment of any applicable fees and is void if payment is not made in accordance with this constitution or the By-Laws.
- 9.7 If the applicant is not admitted to membership, then any moneys paid by them for membership less administration fees must be returned to them in full.
- 9.8 Subject to clause 9.6 an applicant becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the register of Members.

10. Membership Fees

- 10.1 The Board may set any joining fee and membership fees and may determine different fees for different classes or categories, within classes or categories or for different Members.
- 10.2 All Members are subject to payment of membership fees
- 10.3 In the event of a Member company (with voting rights) owning Members (fully owned subsidiaries with voting rights) – the holding company Member is entitled to receive a 2% reduction to its own holding company membership fee per subsidiary acquired up to a maximum 8 subsidiaries. The calculation of subsidiaries owned will occur at the end of each financial year and the discount applied to the following years invoice. The Board retains the right to additionally set an upper limit to a holding companies total fees paid including its subsidiaries.
- 10.4 Written notice will be given to the Member if any membership fee remains unpaid for a period of 1 month after it becomes due a reminder letter will be issued. If the membership fee remains unpaid after 2 months, a letter of warning will be issued to advise of membership cancellation if not paid within a further 30 days. If the fee then remains unpaid after this notice, the Member's membership is terminated unless the Board resolves otherwise.
- 10.5 Each Member shall on appointment or election and on or before the expiration of 30 days from issuing of membership invoice in every succeeding year whilst remaining a Member pay a subscription at such rate and at such periods as the Association from time to time by resolution prescribes. If a Member is elected during the Association's first half year, then payment of a full year's subscription is required; however if elected during the second half year then payment of only 50% of the full year's subscription shall be required.
- 10.6 Any such General Meeting may, upon the Board's recommendation, from time to time set other or additional criteria by which the annual subscription for any class or classes of Member shall be determined.
- 10.7 Not paying membership fees within a given financial year does not constitute cancellation of membership and as such fees for that financial year will remain owed.

11. Register of Members

- 11.1 An applicant becomes a Member when they are entered on the register of Members.
- 11.2 A Member must promptly notify the Board of any change to their details as recorded in the register of Members, including their address and electronic contact address.
- 11.3 A member must promptly notify the Board of any change to their operations that have effects to membership category/register. The changes include but not limited to expansion in operational area, becoming affiliated with another entity, etc.

12. Ceasing to be a Member

- 12.1 A Member ceases to be a Member:
 - a) if they resign;
 - i) A Producer Member or Binder Supplier Member shall be entitled to resign from Membership if such Member shall have first given six months notice in writing of intention so to do and during such six months such Member shall continue liable for payment of all subscriptions and all dues and interest thereon as hereinafter provided.
 - ii) All other members than that mentioned in the above point shall be entitled to resign from Membership at any time by giving notice in writing of intention so to do provided that any subscription then due by such Member shall have been paid.
 - b) if they die or enter or take steps to enter into bankruptcy (for individuals);
 - c) if they are wound up or dissolved, including deregistered, or become or take steps to be wound up or dissolved (for incorporated entities);
 - d) if their membership is terminated under clause 10.4;
 - e) if they are expelled;
 - f) on the date that the Board notifies the Member it no longer satisfies the criteria for their membership class or category; or
 - g) if the Member fails to provide any information required by the Board as part of the renewal process unless the Board resolves otherwise.
- 12.2 The Board may waive any grounds for cessation of membership or any breach of this constitution by a Member and readmit any person as a Member as it thinks fit.
- 12.3 Upon ceasing to be a Member, the Member's name will be removed from the register of Members.
- 12.4 Any Member ceasing to be a Member:
 - a) remains liable for any money owing by that Member to the Company and, if the Company is wound up within one year of

the date the Member ceases to be a Member, the guarantee under clause 3.6;

- b) shall not be entitled to any refund, in full or part, of any membership fees paid; and
- c) shall not be readmitted as a Member until any unpaid moneys outstanding at the time they ceased to be a Member are paid including any interest or other charges levied on any outstanding moneys.

13. Suspension or expulsion of a Member

13.1 Without limiting any other way a Member may cease to be a Member, the Board may suspend or expel (**disciplinary action**) a Member from the Company if the Board considers that the Member:

- a) has failed to comply with this constitution;
- b) has failed to comply with the Code of Conduct; or
- c) has acted in a manner prejudicial to the interests of the Company.

13.2 At least 21 days before the Board takes any disciplinary action, the secretary must notify the Member in writing that:

- a) the Board is considering disciplinary action which shall be specified, and the date place and time that such proposed disciplinary action will be considered by the Board;
- b) the reason for such proposed disciplinary action; and
- c) that the Member may explain or defend themselves by:
 - i) sending the Board a written explanation; and/or
 - ii) speaking at a meeting of the Board convened for that purpose (but the Member may not be present during Board deliberations or voting on the resolution unless the Board allows).
- d) If the Member subject to this clause 13 is a Director, the Director may not be present during any Board deliberations about, or to vote on, the disciplinary actions the Board may take.

13.3 After considering any explanation, the Board may:

- a) take no further action;
- b) warn the Member;
- c) suspend the Member's rights as a Member for a period of no more than 12 months;
- d) expel the Member;
- e) refer the decision to an unbiased, independent person on the condition that the person can only make a decision that the Board could have made; or

- f) require the matter to be determined at a General Meeting.
- 13.4 The Secretary must give written notice to the Member of the decision promptly.
- 13.5 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.
- 13.6 Subject to clause 13.7, a Member may request the Board to reconsider any action it takes under clause 13.3.
- 13.7 A Member to be expelled in accordance with clause 13.3d);
 - a) may appeal against that resolution. Such an appeal must be made in writing and must be received within 10 Business Days after the date of the notice of expulsion or such longer time as the Board may decide (Appeal Notice).
 - b) If an Appeal Notice is received by the Board within the required timeframe:
 - i) the Board must ensure that within two months after receipt of the Appeal Notice a resolution to overturn the expulsion (**Overturn Resolution**) is considered by the Members at a General Meeting called in accordance with this Constitution to consider this Overturn Resolution only;
 - ii) the expulsion is overturned if the Overturn Resolution is approved by:
 - A. at least 75% of Members present in person or by proxy or by their representative and entitled to vote on that resolution; and
 - B. at least 75% of the total number of votes cast;
 - iii) the Member must be given a reasonable opportunity to make representations in relation to the decision of the Board to expel that Member (which may include addressing the General Meeting or making representations in writing prior to the General Meeting, in accordance with the policies and procedures of the Company in relation to such matters); and
 - iv) the Member's membership will be taken to be suspended as at the date of the notice of expulsion, pending the outcome of the General Meeting.
 - c) If the resolution to expel the Member is not overturned by the Members at the General Meeting, the Member's expulsion takes effect from the date of the notice of expulsion. If the Members overturn the expulsion then the Member's membership continues in full effect, with the suspension lifted from the date of the General Meeting.

C. GENERAL MEETINGS

14. Calling a General Meeting

- 14.1 The Board may call a General Meeting.
- 14.2 If Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Board must:
 - a) within 21 days of the Members' request, give all Members notice of a General Meeting, and
 - b) hold the General Meeting within 2 months of the Members' request.
- 14.3 A General Meeting, called the Annual General Meeting, must be held at least once in every calendar year and within 5 months after the end of the Company's financial year.
- 14.4 Subject to compliance with the Corporations Act, the Company may hold a General Meeting at two or more venues, or wholly or partly online or virtually, using any technology that gives the Members a reasonable opportunity to participate, including to hear and be heard.
- 14.5 Anyone using this technology is taken to be present in person at the meeting.
- 14.6 A virtual General Meeting is deemed to have been held at the Company's registered office.
- 14.7 A General Meeting that is partly held using technology, and partly in person, is deemed to have been held at the registered office of the Company.

15. Notice of a General Meeting

- 15.1 Notice of a General Meeting must be given to:
 - a) each Member;
 - b) each Director; and
 - c) the auditor, if any.
- 15.2 Notice of a General Meeting must include:
 - a) the time, date and place of the General Meeting or the technology, or both, that will be used to facilitate the General Meeting;
 - b) the general nature of the General Meeting's business;
 - c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
 - d) a statement that Members have the right to appoint a proxy.
- 15.3 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 15.4 Notice of a General Meeting may be provided less than 21 days before the meeting if:

- a) for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand, or
 - b) for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 15.5 Notice of a General Meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - a) remove a Director
 - b) appoint a Director in order to replace a Director who was removed, or
 - c) remove an auditor.
- 15.6 The accidental failure to give notice of any General Meeting to, or the non-receipt of notice of a General Meeting by, any Member entitled to receive notice will not invalidate the proceedings at or any resolution passed at the General Meeting.
- 15.7 A Member's attendance at a General Meeting waives any objection by that Member as to a failure to give notice, or the giving of a defective notice, of the General Meeting unless the Member at the beginning of the General Meeting objects to the holding of the General Meeting.

16. Quorum at a General Meeting

- 16.1 A quorum for a General Meeting is 5 Members that are entitled to vote and present in person, by proxy or by representative for the whole meeting.
- 16.2 If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
 - a) if convened by or on requisition of, Members is dissolved; and
 - b) in any other case stands adjourned to such other day, time and place as the Board appoints by notice to the Members and others entitled to notice of the meeting.

17. Chair of a General Meeting

- 17.1 Usually, the Chair will chair any General Meeting.
- 17.2 If there is no Chair, or the Chair is absent from a General Meeting, or is unable or not willing to act as chair of the meeting or of part of the meeting, then the Vice Chair (if there is one) will act as chair of that meeting or part of it until such time as the Chair joins the General Meeting or can resume the role of chair (as applicable).
- 17.3 If there is no Chair and no Vice Chair or if the Vice Chair is absent from a General Meeting, or is unable or not willing to act as chair of the meeting or of part of the meeting, then the Directors present may elect one of their number present to be chair of that meeting or part of it until such time as the Chair or Vice Chair joins the General Meeting or can resume the role of chair.

- 17.4 If there are no Directors present at the General Meeting or the Directors or are unable or not willing to act as chair of the meeting or of part of the meeting, then the Members present may elect a person present to be chair of that meeting or part of it until such time as the Chair or Vice Chair joins the General Meeting or can resume the role of chair (as applicable).
- 17.5 The chair of a General Meeting is responsible for the conduct of the meeting. Any question arising at a General Meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair whose decision is final.
- 17.6 The chair of a General Meeting may at any time they consider it necessary or desirable for the proper and orderly conduct of the meeting:
- a) impose a limit on the time that a person may speak on a motion or other item of business, question, motion or resolution being considered by the meeting;
 - b) terminate debate or discussion; and
 - c) adopt any procedures for casting or recording votes at the meeting whether on a show of hands, on the voices or a poll.
- 17.7 The chair may at any time during the course of a General Meeting, 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.
- 17.8 When 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.

18. Decisions at a General Meeting

- 18.1 At a General Meeting:
- a) on a show of hands, each Member (other than a Non-Voting Member) has one vote; and
 - b) on a poll, Members (other than Non-Voting Members) have the number of votes in accordance with their membership class, as follows:
 - i) Each Producer Member has 1 vote for each State and Territory in which the Member has a Production Facility;
 - ii) Each Binder Supplier Member has 1 vote for each State and Territory in which the Member operates;
 - iii) Each Consultant Member has 1 vote;
 - iv) Each State and Territory Transport and Road Authority Member has 1 vote;
 - v) Each Tollway and Other Road-owner Member has 1 vote;

- vi) Each Flexible Pavement Surfacing Contractor Member has 1 vote.
- 18.2 The votes may be exercised in person, by proxy or by the Member's representative.
- 18.3 An ordinary resolution is passed if the number of votes cast in favour of that resolution is greater than one half of the total number of votes cast.
- 18.4 Members are only able to vote if they are financially paid up on all membership dues.

19. Methods of voting at a General Meeting

- 19.1 A resolution put to the vote of a General Meeting shall be decided on a show of hands unless a poll is required under this constitution or the Corporations Act, or demanded by:
 - a) the chair of the meeting;
 - b) at least 5 Members entitled to vote on the resolution; or
 - c) Members with at least 5% of the votes that may be cast on the resolution on a poll.
- 19.2 Proxies shall not be counted on a vote by a show of hands.
- 19.3 A proxy holder does not need to be a Member.
- 19.4 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 19.5 The proxy holder must vote on a proposed resolution in accordance with a direction, if any.
- 19.6 Proxy forms must be received by the Company at the address stated in the notice or at the Company's registered address at least 48 hours before a meeting.
- 19.7 A poll requested on a resolution at a General Meeting must be taken in the manner and at the time and place the chair of the meeting directs.
- 19.8 The result of a poll requested and taken on a resolution of a General Meeting is a resolution of that meeting.
- 19.9 Each Member entitled to vote at a General Meeting may vote by direct vote using electronic and/or postal means as specified by the Board.
- 19.10 The Board may prescribe By-Laws in relation to direct voting, including specifying the form, method and timing of giving a direct vote at or prior to a meeting in order for the vote to be valid.
- 19.11 A direct vote includes a vote delivered to the Company by any means approved by the Board, which may include post or electronic means.
- 19.12 An objection to the qualification of a Member to vote at a General Meeting:
 - a) must be raised before or at the meeting at which the vote objected to is given or tendered; and

- b) must be referred to the chair of the meeting whose decision on the qualification to vote is final.

20. Cancellation or postponement of a General Meeting

- 20.1 The Board may cancel, postpone or change the venue of an upcoming General Meeting, by giving notice of the changes.

D. BOARD OF DIRECTORS

21. Board composition

- 21.1 The Board will comprise the:
 - a) Member Directors;
 - b) 1 optional Consultant Member Director who is recognised by the Board for their consulting perspective, experience and skill and appointed by the Board; and
 - c) up to 1 optional Independent Director who is appointed by the Board.
- 21.2 The Member Directors will comprise:
 - a) one Director for each Category A Producer Member who must be an employee, director or owner of that Category A Producer Member appointed by that Member;
 - b) one Director for each Category A Binder Supplier Member who must be an employee, director or owner of a Category A Binder Supplier Member appointed by that Member;
 - c) one Director who must be an employee, director or owner of a Category B Producer Member, elected by the Category B Producer Members; and
 - d) one Director who must be an employee or director of a State and Territory Transport and Road Authority Member elected by the State and Territory Transport and Road Authority Members.
- 21.3 The procedure for the appointment and election of Directors will be prescribed in the By-Laws.
- 21.4 The Company must have at least 3 Directors. At least 2 Directors must ordinarily reside in Australia.
- 21.5 Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors is reduced to fewer than 3, in which case the continuing Directors may act only:
 - a) to appoint Directors for the purpose of increasing the number of Directors to 3 or higher;
 - b) to convene a General Meeting; or
 - c) in an emergency.

22. Term of Directors

- 22.1 The term of office of a Member Director commences at the conclusion of the Annual General Meeting at which the result of their election or appointment is announced to the Members and ends at the conclusion of the third following Annual General Meeting.
- 22.2 There will be no limit on the number of terms that a person may serve as a Member Director.
- 22.3 The term of office of the Consultant Director or an Independent Director commences at the time of the resolution of the Board appointing the Director and ends at such time as the Board determines at the time of appointment, being no more than 2 years later.
- 22.4 The maximum continuous period for which a person may hold office as a Director (other than as a Member Director) is 6 years. A person who has held office as a Director (other than as a Member Director) for the maximum continuous period is eligible for reappointment after a period of one year from the date that the person last held office as a Director.

23. Eligibility of Directors

- 23.1 A person is eligible for appointment as a Director of the Company if they:
 - a) are over the age of 18 years;
 - b) give the Company their signed consent to act as a Director of the Company;
 - c) are not ineligible to be a Director under law, including the Corporations Act; and
 - d) are not bankrupt and have not made any arrangement or composition with their creditors generally, unless, subject to the Corporations Act, the Board resolves otherwise.

24. No Alternate Directors

- 24.1 Directors are not entitled to appoint alternate directors.

25. Chair and Vice Chair

- 25.1 The Board must appoint a Director as Chair and another Director as Vice Chair.
- 25.2 Subject to clause 25.3, the Board may determine the period for which a Director is Chair or Vice Chair.
- 25.3 The maximum continuous period for which a Director may hold office as Chair is 3 years.
- 25.4 A Director who has held office as Chair for the maximum continuous period is eligible for reappointment after a period of 1 year from the date that the person last held office as Chair.

26. Powers of the Board

- 26.1 The business of the Company is to be managed by or under the direction of the Board who may exercise all the powers of the Company that are not required by the Corporations Act or by this constitution to be exercised by the Company in General Meeting.

27. Duties of Directors under common law and legislation

- 27.1 The Directors must comply with their duties as directors under legislation and common law.
- 27.2 Without limiting clause 27.1 the Directors must comply with the following duties:
- a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
 - b) to act in good faith in the best interests of the Company and to further the Objects of the Company;
 - c) not to misuse their position as a Director;
 - d) not to misuse information they gain in their role as a Director and to maintain the confidentiality of information received in their role as a Director;
 - e) to disclose any perceived or actual material conflicts of interest in the manner set out in this constitution;
 - f) to ensure that the financial affairs of the Company are managed responsibly; and
 - g) not to allow the Company to operate while it is insolvent.

28. Delegation of powers

- 28.1 The Board may delegate any of its powers to:
- a) a committee;
 - b) a Director;
 - c) an employee of the Company; or
 - d) any other person,
- and may revoke that delegation.
- 28.2 The delegate must exercise the powers delegated in accordance with any directions, terms and conditions as set by the Board.

29. By-Laws

- 29.1 The Board may from time to time may make, amend, or repeal such By-Laws as it determines are appropriate for the purposes of giving effect to any provision of this constitution or to govern the procedures and activities of the Company. Any such By-Law:
- a) must not be inconsistent with any provision in this constitution; and

- b) when in force is binding on all Members.

30. Remuneration and payments to Directors

- 30.1 An Independent Director is entitled to such reasonable fees for acting as a Director as the Board determines.
- 30.2 Member Directors and the Consultant Director are not entitled to be paid fees for acting as a Director.
- 30.3 Payments may be made to a Director for:
 - a) out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously agreed by the Board; and
 - b) any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as a Director, where the provision of the service has the prior approval of the Board and is not more than an amount which commercially would be reasonable for the service.

31. Conflict of interest

- 31.1 A Director must disclose the nature and extent of any material conflict of interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution):
 - a) to the other Directors; or
 - b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.
- 31.2 Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is proposed in a circular resolution) must not:
 - a) be present at the meeting while the matter is being discussed; or
 - b) vote on the matter.
- 31.3 Despite the existence of a material personal interest, a Director may still be present and vote if:
 - a) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
 - ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present;
 - b) their interest arises because they are a Member of the Company, and the other Members have the same interest;

- c) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company;
 - d) their interest relates to a payment by the Company in respect of an indemnity provided for in this constitution, or any contract relating to an indemnity that is allowed under the Corporations Act; or
 - e) Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter.
- 31.4 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is voided or rendered voidable merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office.
- 31.5 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

32. Ceasing to be a Director

- 32.1 In addition to any other way a Director ceases to be a Director, a Director ceases to be a Director if they:
- a) resign by giving written notice to the Secretary;
 - b) are subject to any of the circumstances prescribed by the Corporations Act as resulting in the ending or vacating of the office;
 - c) become of unsound mind or who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health unless (in the opinion of a majority of Directors) the Director can fully participate in the governance of the Company, despite their mental incapacity;
 - d) die;
 - e) become bankrupt or make any arrangement or composition with their creditors generally, unless, subject to the Corporations Act, the Board resolves otherwise;
 - f) are convicted on indictment of an offence and the Board does not at the next meeting of the Board after that conviction resolve to confirm the Director's appointment to the office of Director;
 - g) are absent from three consecutive meetings of the Board, with or without the consent of the Board, unless at the next meeting of the Board, the Board resolves otherwise;
 - h) fail to disclose a material personal interest in breach of the law unless at its next meeting the Board resolves otherwise;
 - i) are removed as a Director by ordinary resolution of the Members in General Meeting;
 - j) become a paid employee of the Company;

- k) are found guilty by a tribunal, industrial commission, court of competent jurisdiction or other similar authority of engaging in discriminatory conduct or harassment towards employees of the Company or other Members or their employees;
- l) are a Member Director and cease to be employed by or a director or owner of the Member at which they were employed or a director or owner of at the time of appointment or election, unless the Board resolves otherwise;
- m) are a Member Director and the Member at which they are employed or a director or owner of ceases to be a Member; or
- n) are a Director appointed by a Category A Producer Member or a Category A Binder Supplier Member and the Member revokes their appointment by written notice to the Secretary.

33. Casual vacancies on the Board

33.1 If a casual vacancy in the position of a Director occurs:

- a) in the case of a Director appointed by a Category A Producer Member or a Category A Binder Supplier Member, the relevant Member may appoint an eligible individual to fill the vacancy until the end of the predecessor's term;
- b) in the case of other Member Directors, the Board may appoint an eligible individual to fill the vacancy until the end of the predecessor's term;
- c) in the case of the Consultant Director or the Independent Director, the Board may appoint an eligible individual for a new term in accordance with clause 22.3.

34. Frequency of Board meetings

34.1 The Board may meet together (including by technological means) for the despatch of business and adjourn and otherwise regulate its meetings as frequently and in the manner it sees fit.

35. Calling a Board meeting by Chair or two Directors

- 35.1 The Chair or any two or more Directors may at any time request a Board meeting.
- 35.2 The Secretary, upon the request of the Chair or any two or more Directors, must convene a Board meeting.

36. Notice of a Board meeting

- 36.1 Reasonable notice must be given to every Director of the place, date and time of every Board meeting.
- 36.2 Notice of a Board meeting must be given by such means as have been agreed by the Directors.
- 36.3 Non-receipt of any notice of a Board meeting by a Director does not affect the validity of the convening of the meeting.

37. Chair of a Board meeting

- 37.1 The Chair is entitled to chair all Board meetings.
- 37.2 In the absence of the Chair, the Vice Chair is entitled to chair Board meetings.
- 37.3 In the absence of the Chair and Vice Chair, the Directors at a Board meeting may choose a Director to be the chair.

38. Quorum at a Board Meeting

- 38.1 The quorum for a meeting of the Board shall be the number that is a majority of the Directors currently in office.
- 38.2 No business may be transacted at a Board meeting unless a quorum of Directors is present during the time the business is dealt with.
- 38.3 A Director joining a Board meeting using any technology is deemed to be present at the Board meeting

39. Decisions of the Board

- 39.1 A resolution of the Board must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution..
- 39.2 The Board may pass a resolution without holding a Board meeting if the proposed resolution is sent to the Directors and a majority of Directors assent to the resolution in writing.
- 39.3 A resolution under clause 39.2 is taken to have been passed on the date the resolution was assented to by the last Director who constitutes the majority of Directors in favour.

40. Validity of acts of Directors

- 40.1 All acts done at any meeting of the Board or by any individual acting as a Director shall be valid even if it is later discovered that there was a defect in the appointment of an individual as a Director or the individual not being entitled to vote.

E. ADMINISTRATIVE MATTERS

41. Secretary

- 41.1 The Board must appoint at least one Secretary.
- 41.2 The Secretary holds office on such terms and conditions as to remuneration and otherwise as the Board determines.
- 41.3 The Board may remove any Secretary so appointed, subject to the terms of any contract and the law.
- 41.4 The Secretary has such powers and duties as specified in this constitution, as required by the Corporations Act, and as determined by the Board.
- 41.5 The Secretary is responsible for maintaining, keeping and managing access to the register of Members.
- 41.6 The Secretary must maintain a register of Directors' interests, noting that interests may not necessarily conflict with duties to the Company.

42. Minutes

- 42.1 The Company must keep minute books in which it records:
 - a) proceedings and resolutions of General Meetings;
 - b) proceedings and resolutions of Board meetings;
 - c) proceedings of committee meetings;
 - d) resolutions passed by Members without a meeting; and
 - e) resolutions passed by the Board without a meeting
- 42.2 The Company must ensure that the minutes of a meeting are signed within 1 month by the chair of the meeting at which the proceedings were held, or by the chair of the next succeeding meeting.

43. Inspection of records

- 43.1 The Board must ensure that the minute books for General Meetings of the Company and for resolutions of Members passed without meetings, are open (available) for inspection by Members in accordance with the Corporations Act.
- 43.2 A Member other than a Director does not have the right to inspect any books, records or documents of the Company other than the minutes of General Meetings except as provided by law or authorised by the Board.

44. Time for service of notices

- 44.1 Where a notice is sent by post, service of the notice is taken to be effected three (3) days after it is posted.
- 44.2 Where a notice is sent by email or other electronic means, service of the notice is taken to be effected on the day it is sent or on the day the Member is advised via the electronic contact address that the notice is accessible electronically.

45. Method for service of notices

45.1 A notice may be given by the Company to a Member:

- a) by serving it on the Member personally;
- b) by sending it by post to the Member's address as shown in the register of Members;
- c) by sending it to an electronic contact address (such as an email address) that the Member has supplied to the Company or using which the Member has contacted the Company in the past; or
- d) by making a copy of it accessible electronically (for example on a website of, or related to, the Company, or using a hyperlink or other technology) and advising the Member of its availability via the electronic contact address.

46. Execution of documents

46.1 Without limiting the way in which the Company may execute any approved contract, including as permitted under the Act, the Company may execute any agreement, deed or other document where it is signed by two Directors or one Director and one Secretary

47. Accounts and audit

47.1 The Board must cause:

- a) the Company to keep the accounting records and prepare the financial statements required by the Corporations Act; and
- b) the accounts and any other documents required by the Corporations Act to be sent to Members and laid before General Meetings as required by the Corporations Act.

47.2 The Board must cause:

- a) the accounts of the Company to be audited as required by the Corporations Act; and
- b) the auditor's report to be sent to Members and laid before General Meetings of the Company as required by the Corporations Act.

48. Indemnity and insurance

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

48.2 In this clause 48, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.

48.3 In this clause, 'to the relevant extent' means:

- a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so, and

- b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 48.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.
- 48.5 To the extent permitted by law the Company may:
 - a) purchase and maintain insurance; or
 - b) pay or agree to pay a premium for insurance,against any liability incurred by the officer as an officer including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal.

49. Changes to the constitution

- 49.1 The Company may modify or repeal its constitution, or a provision of its constitution, by special resolution.

50. Access

- 50.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 50.2 If the Board agrees, the Company must give a Director or former Director access to:
 - a) certain documents, including documents provided for or available to the Directors; and
 - b) any other documents referred to in those documents.

51. Winding Up

- 51.1 If the Company is wound up, any surplus assets must not be distributed to a Member or a former Member of the Company.
- 51.2 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the Company is wound up must be distributed to one or more organisations:
 - a) with purposes similar to, or inclusive of, the Object; and
 - b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company.
- 51.3 The decision as to the organisation/s to be given the surplus assets must be made by a special resolution of the Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court to make this decision.

52. Transitional arrangements

Membership

- 52.1 At and from the date of adoption of this constitution, Members will transition to the classes and categories under this constitution as follows:
- a) Producer Members – Category A will become Category A Producer Members;
 - b) Producer Members – Category B will become Category B Producer Members;
 - c) Producer Members - Bitumen Supplier and Producer Members – Emulsion and Modified Binder Supplier or Sprayed Surfacing Operator will become Binder Supplier Members:
 - i) if the Member sells Binder into 4 or more States or Territories, they will be categorised as Category A Binder Supplier Member;
 - ii) if the Member sells Binder into 3 or less State or Territories, they will be categorised as Category B Binder Supplier Member
 - d) Government Members will continue as Government Members;
 - e) Associate, Affiliate, Overseas, Life and Honorary Members - The Board will classify each Associate, Affiliate, Overseas, Life and Honorary Member as either a:
 - i) Producer Member;
 - ii) Binder Supplier Member;
 - iii) Consultant Member;
 - iv) Tollway and Other Road-owner Member;
 - v) Flexible Pavement Surfacing Contractor Member; or
 - vi) Non-Voting Member.

Board

- 52.2 Upon adoption of this constitution, each Director in office continue as Directors under this constitution and subject to clause 32, will retire as outlined in the table below, at which time if eligible they may be re-elected or re-appointed:

Director position under previous constitution	Director position under this constitution	Director retires:
A Director appointed by a Producer Member – Category A	Category A Producer Member Director as per clause 21.2a)	Conclusion of the 2025 AGM
The Director elected by the Producer Members - Category B	Category B Producer Member Director as per clause 21.2c)	Conclusion of the 2024 AGM
A Director appointed by a Producer Member - Bitumen Supplier	Category A Binder Supplier Member Director as per clause 21.2b)	Conclusion of the 2024 AGM
The Director elected by the Government Member	The State and Territory Transport and Road Authority Member Director as per clause 21.2d)	Conclusion of the 2023 AGM

- 52.3 The Board may appoint the Consultant Director at any time after the date of adoption of this constitution.
- 52.4 The Board may appoint an Independent Director at any time after the date of adoption of this constitution.

Office bearers

- 52.5 Upon adoption of this constitution, if there are Directors in the positions of Chairman and Vice Chairman, they will continue as Chair and Vice Chair respectively until the first Board meeting after the adoption of this constitution.
- 52.6 At the first meeting of the Board after the adoption of this constitution, the Board will appoint the Chair and Vice Chair in accordance with clause 25.
- 52.7 Any time served as Chairman immediately prior to the date of adoption of this constitution will count in determining the term limit in clause 25.3.

State Branches

- 52.8 The State Branches set up under the previous constitution will continue until such time as the Board determines otherwise.
- 52.9 The Board will prescribe By-Laws to govern the operations of the State Branches.

END OF CONSTITUTION