



COOPER GRACE WARD
LAWYERS

**CONSTITUTION
OF
AUSTRALASIAN CEMETERIES &
CREMATORIA ASSOCIATION
LIMITED
ACN 009 555 426**

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Corporations Act 2001

A Company limited by guarantee and not having a share capital

CONSTITUTION

OF

AUSTRALASIAN CEMETERIES & CREMATORIA ASSOCIATION LIMITED

ACN 009 555 426

1. INTERPRETATION

Definitions

1.1 The meanings of the terms used in this constitution are set out below.

Term	Meaning
ACNC Act	<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth)</i>
ACNC Commissioner	the Commissioner of the Australian Charities and Not-for-profits Commission, which is established under the ACNC Act
ACNC Entity	a body corporate registered under the ACNC Act
Affiliates	a Member admitted as an affiliate pursuant to this constitution that meets the Membership Criteria
Annual General Meeting	the general meeting held each year as required by the Applicable Laws and this constitution
Applicable Laws	the laws relevant to the governance of the Company as the context requires, including the Corporations Act and the ACNC Act
Area	(a) within the Commonwealth of Australia; any one State or Territory; (b) outside the Commonwealth of Australia; any one country.
Associate Fellows	a Member admitted as an associate fellow pursuant to this constitution that meets the Membership Criteria
Associate Members	a Member admitted as an associate member pursuant to this constitution that meets the Membership Criteria
Australasia	includes Australia and New Zealand or any country, the inclusion of which is in the opinion of the Board, consistent with the objects of the Company

Term	Meaning
By-Laws	any by-laws of the Company for the time being in force
Code of Ethics	any codes of ethics of the Company for the time being in force
Company	Australasian Cemeteries & Crematoria Association Limited ACN 009 555 426
Corporate Members	a Member admitted as a corporate member pursuant to this constitution that meets the Membership Criteria
Corporations Act	the <i>Corporations Act 2001</i> (Cth)
Directors or Board of Directors or the Board	the directors of the Company
Emeritus Fellow	a Member admitted as an emeritus fellow pursuant to this constitution that meets the Membership Criteria
Excluded Provision	has the meaning determined in accordance with clause 1.5
Financial Year	the period from the date of establishment of the Company to the following 30 June, and after that, the period 1 July in a year through to 30 June in the next year or any other period of 12 consecutive months determined by the Board
Full Member	a Member admitted as a full member pursuant to this constitution that meets the Membership Criteria
Honorary Member	a Member admitted as a honorary member pursuant to this constitution that meets the Membership Criteria
Income Tax Assessment Act	<i>Income Tax Assessment Act 1997</i> (Cth)
International Members	a Member admitted as an international member pursuant to this constitution that meets the Membership Criteria
Life Members	a Member admitted as a life member pursuant to this constitution that meets the Membership Criteria
Member	a member of the Company or, where the context requires, the Authorised Representative of a Full Member
Membership Criteria	the relevant criteria for each class of Member as set out in clause 5.1
Register of Members	has the meaning determined in accordance with clause 11
Request Notice	has the meaning determined in accordance with clause 29.8(b)

Term	Meaning
Tax Exempt Entities	entities that are exempt from tax pursuant to Division 50 of the <i>Income Tax Assessment Act 1997</i>

Construction

1.2 In this constitution:

- (a) an expression that is given a special meaning for the purposes of any part of the Applicable Laws has that same meaning when used in this constitution;
- (b) words in the singular include the plural and vice versa;
- (c) words indicating any gender indicate the appropriate gender;
- (d) headings are included for convenience only and do not affect interpretation of this constitution; and
- (e) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations.

Replaceable Rules and ACNC Entity provisions

- 1.3 The provisions of the Corporations Act that apply to certain companies as replaceable rules are displaced by this constitution in their entirety and do not apply to the Company.
- 1.4 If the provisions of the Applicable Laws conflict with the terms of this constitution on the same matter, the provisions of the relevant Applicable Laws prevail to the extent of the conflict.
- 1.5 If the Company is an ACNC Entity and the Corporations Act operates such that a provision of the Corporations Act specifically included or referred to in this constitution does not apply to the Company because the Company is an ACNC Entity:
 - (a) a provision in the same terms (together with relevant definitions in the Corporations Act) as the Excluded Provision is deemed to be included in this constitution; and
 - (b) the Excluded Provision (together with relevant definitions in the Corporations Act) apply to the Company to the extent that the Excluded Provision would apply to the Company if it was not an ACNC Entity.

2. LIMITED COMPANY

- 2.1 The liability of the Members is limited by guarantee.
- 2.2 The name of the Company is **Australasian Cemeteries & Crematoria Association Limited**.
- 2.3 The registered office of the Company will be as the Board of Directors determines.

3. OBJECTS

- 3.1 The objects for which the Company is established are to:
 - (a) promote the maintenance, improvement and development of cemeteries and crematoria;

- (b) promote to the community the services offered by cemeteries and crematoria;
- (c) provide a forum for the free exchange of information on all matters relating to cemeteries and crematoria;
- (d) provide a recommended standard code of practice for burial and cremation to be adopted by all Members;
- (e) recognise the historical aspect of cemeteries and crematoria to encourage the formulation of responsible policies for their redevelopment;
- (f) promote the development of administrative and technical proficiency and to provide training in any matter related to cemeteries and crematoria;
- (g) take such action as seems necessary or feasible to protect or promote the interests of members and controlling authorities in matters of common concern relating to the control and maintenance of cemeteries and crematoria;
- (h) promote to Members the policy of conservation of the environment;
- (i) provide a channel for communication on any matter concerning cemeteries and crematoria with any person, organisation or government department;
- (j) encourage research and development on any matter concerning cemeteries and crematoria;
- (k) to carry out any other objects as are incidental to the attainment of any of the foregoing objects;
- (l) provide money, property, services or benefits to other organisations or funds having objects similar to those of the Company, provided that they:
 - (i) are Tax Exempt Entities; and
 - (i) prohibit the distribution of their income and property amongst members to an extent at least as great as that imposed on this Company.

3.2 The income and property of the Company must be applied solely towards the promotion of its objects as set out in this constitution and cannot be distributed, paid or transferred, directly or indirectly, as a dividend, bonus or other similar payment or distribution to the Members or officers of the Company.

3.3 Nothing in clause 3.2 prevents:

- (a) the payment in good faith of reasonable and proper:
 - (i) remuneration to any officer or employee the Company or to any Member or other person in return for any services rendered to the Company; or
 - (ii) consideration for goods provided to the Company by an officer or Member of the Company;
- (b) the payment of interest on money borrowed from an officer or Member for any of the purposes of the Company;

provided such payments are approved by the Board.

4. MEMBERSHIP AND AUTHORISED REPRESENTATIVES

4.1 The Members of the Company are:

- (a) those persons who have become Members upon incorporation of the Company; and
- (b) other parties the Board admits to membership pursuant to this constitution.

4.2 Each Full Member:

- (a) must appoint at least one Authorised Representative;
- (b) may appoint a second Authorised Representative; and
- (c) must notify the Secretary in writing of the contact details for the Authorised Representative from time to time and on the request of the Secretary.

4.3 The Authorised Representative of a Full Member must be appointed by completing, signing and delivering the Nomination Form annexed to this constitution to the Secretary.

5. MEMBERS

5.1 The classes of membership of the Company are as follows:

(a) Full Members:

- (i) being organisations which administer the affairs of a cemetery and/or a crematorium in Australasia.

(b) Life Members:

- (i) being an individual considered worthy of such classification who by reason of having made significant contributions to the burial and/or cremation industry in Australasia whether retired or still in active service, having been so appointed by the Board.

(c) Emeritus Fellow:

- (i) being an individual considered worthy of such classification who by reason of having made significant contributions to the burial and/or cremation industry in Australasia and has retired from active service, having been so appointed by the Board.

(d) Honorary Members:

- (i) being an individual considered worthy of such classification who by reason of having provided valuable service to the burial and/or cremation industry in Australasia, having been so appointed by the Board.

(e) Associate Members:

- (i) being an individual considered worthy of such classification by the Board that:
 - (A) has held a senior or executive position in cemeteries or crematoria for at least five years; or

- (B) possess a professional qualification (as approved by the Board) and has a minimum of two years' experience in an executive or supervisory position in cemeteries or crematoria; or
 - (C) in the opinion of the Board, has given significant service to cemeteries or crematoria.
- (f) Associate Fellows:
- (i) being an individual considered worthy of such classification by the Board that:
 - (A) has been an Associate Member for a period of at least five years; or
 - (B) has held a senior or executive position in cemeteries or crematoria for at least ten years; or
 - (C) possess a professional qualification (as approved by the Board) and has a minimum of five years' experience in a senior or executive position in cemeteries or crematoria; or
 - (D) has, in the opinion of the Board, given exceptional service to cemeteries or crematoria.
- (g) International Members:
- (i) being organisations, which administer the affairs of a cemetery and/or crematorium outside of Australia (if within Australasia, the organisation will have chosen not to become a full member).
- (h) Corporate Members:
- (i) being an organisation or trading enterprise considered worthy of membership by the Board that is associated with the burial or cremation industry and who satisfy the Board that one or all of their activities assist and complement the work of the Company or its Members that is not owned, controlled or affiliated, in the discretion of the Board, with a cemetery or crematorium in Australasia that is a Full Member.
- (i) Affiliates:
- (i) being an individual considered worthy of such classification by the Board associated with the burial, cremation or allied industry who are not otherwise qualified to become an Associate Fellow, Associate Member or Corporate Member.

6. RIGHTS OF MEMBERS

- 6.1 Full Members have the right to, via their Authorised Representative:
- (a) hold office; and
 - (b) or proxy appointed in accordance with this constitution, vote at any general meeting of the Company.
- 6.2 All other Members have the right to receive notice of and attend any general meeting of the Company but do not have the right to vote at any general meeting of the Company or hold office.
- 6.3 The status of a person as an Honorary Member will be reviewed annually, on a date determined by the Board and after such a review, the Board may, in its discretion:

- (a) admit the person as an Honorary Member for a further 12 months;
 - (b) cease the person as an Honorary Member; or
 - (c) cease the person as an Honorary Member and invite the person to apply for a different Member class.
- 6.4 The Board must give written notice of its decision pursuant to clause 6.3 to the Honorary Member.
- 6.5 Current Associate Fellow and Associate Members may use the following letters after his or her name:
- (a) in the case of an Associate Fellow, the letters AFACCA; and
 - (b) in the case of an Associate Member, AMACCA.
- 6.6 The rights attached to any class of membership (unless otherwise provided by the terms this constitution) may only be varied with the sanction of a special resolution passed by the Members of the relevant class.
- 6.7 When requested by the Board, Full Members must provide evidence, to the satisfaction of the Board, of the number of burial and cremation services performed by the Full Member in the previous Financial Year.

7. APPLICATION AND ELIGIBILITY FOR MEMBERSHIP

- 7.1 Applications for membership must be in a form approved by the Board and directed to the Secretary.
- 7.2 All applications for membership must be proposed by one and seconded by another Full Member, both of whom are known to the applicant. The applicant, proposer and seconder must all sign the application for membership.
- 7.3 The applicant must state the Member class it is applying for in its application form and how it meets the relevant Membership Criteria.

8. APPOINTMENT OF NEW MEMBERS

- 8.1 The Secretary must submit membership applications to the next meeting of the Board.
- 8.2 The Board has an unfettered discretion to determine whether an applicant will be accepted or rejected for membership.
- 8.3 If a membership application is refused, the secretary must notify the applicant in writing, and that applicant may re-apply to the Board for admission as a Member, but not within six months from the date of the Board meeting at which the prior membership application was refused.
- 8.4 If a membership application is accepted, the secretary must notify the applicant in writing and request payment of the applicable membership fee.
- 8.5 The applicant will become a Member with effect from the date the applicant pays the applicable membership fee but, if no membership fee is payable, from the date of the Board meeting approving the applicant's entry to membership.
- 8.6 If the applicable membership fee is not paid by an applicant within two months of the notified payment date, the Board may, in its discretion, cancel its acceptance of the applicant for membership.

9. MEMBERSHIP FEES

- 9.1 Life Members and Honorary Members are not required to pay any membership fees.
- 9.2 The Board may determine what membership fees are payable from time to time for each class of Members. Membership fees will be determined for each Financial Year and will be notified to Members prior to the commencement of each Financial Year.
- Membership fees may contain one or more fees, including an entrance fee and annual subscription fee.
- 9.3 Membership fees must be paid within 30 days of receiving notification of payment from the Board.
- 9.4 The Board may reduce the membership fees on a pro-rate basis for the first Financial Year of membership.
- 9.5 No portion of membership fees are refundable upon termination of membership and upon termination of membership, any outstanding fees and other amounts owing to the Company are immediately due and payable to the Company.
- 9.6 Membership fees are quoted exclusive of any applicable GST and:
- (a) if GST is or becomes payable on a taxable supply (as defined by the *A New Tax System (Goods and Services Act) 1999* (Cth)) made under or in connection with this document, the party providing consideration for that taxable supply must pay an additional amount equal to the GST payable on the taxable supply; and
 - (b) the additional amount payable under clause 9.6(a) must be paid at the same time as the consideration for the taxable supply or on the date on which the party making the supply delivers a tax invoice (whichever is later).

10. CESSATION OF MEMBERSHIP

- 10.1 A person ceases to be a Member if the Member:
- (a) gives notice in writing to the Secretary resigning as a Member;
 - (b) in the case of an individual Member:
 - (i) is declared bankrupt; or
 - (ii) dies;
 - (c) in case of a corporate Member:
 - (i) is de-registered; or
 - (ii) placed into liquidation;
 - (d) is expelled in accordance with clause 10.3.
- 10.2 The date of resignation of a Member resigning in accordance with the provisions of clause 10.1 is the date on which the notice of resignation is received by the Secretary.
- 10.3 Subject to the rest of this clause 10, the Board has power to expel a Member or suspend their membership if the Member:

- (a) in the opinion of the Board, no longer meets the Membership Criteria;
- (b) fails to pay the applicable membership fees or other amounts owing to the Company when required by the Company;
- (c) is found guilty of a criminal offence;
- (d) in the opinion of the Board, acts in their own interests while performing any official duties for the Company;
- (e) refuses or neglects to comply with the provisions of the constitution or of any By-Law or Code of Ethics of the Company; or
- (f) is involved in any conduct that, in the opinion of the Board, is or is likely to be prejudicial to the interests of the Company.

10.4 At least seven clear days' notice in writing must be given to a Member of the meeting of the Board at which a resolution to expel or suspend the Member is to be proposed. The notice must include particulars of the issues of concern to the Board.

10.5 The Member must have a reasonable opportunity to respond to the allegation and produce any material they consider relevant at the Board meeting.

10.6 The Secretary must immediately notify the Member in writing once a resolution for expulsion or suspension is passed.

10.7 Any Member who is expelled or suspended may lodge a written appeal with the Secretary within 30 days of receipt of notice of expulsion or suspension.

10.8 If a Member lodges an appeal against their expulsion or suspension, the Board must promptly call a general meeting of the Company at which the resolution with respect to the Member's expulsion or suspension will be voted upon by Members.

10.9 At the general meeting called pursuant to clause 10.8, the Member must be given the opportunity to respond to the allegation and produce any material they consider relevant.

10.10 The decision of the Company in general meeting is binding and no further appeal lies from that decision.

11. REGISTER OF MEMBERS

11.1 Members must inform the Secretary in writing of their address for correspondence and of any subsequent change in their address.

11.2 The Company must establish and maintain a Register of Members. The Register of Members must be kept by the Secretary and must contain:

- (a) for each current Member:
 - (i) their name;
 - (ii) their address;
 - (iii) any alternative address nominated by the Member for the service of notices;
 - (iv) the date the Member was entered on to the register;
 - (v) their Member class;

- (vi) their current membership fees and whether they have been paid;
- (vii) that is a Full Member:
 - (A) their Authorised Representative/s; and
 - (B) the number of burial and cremation services performed by the Full Member in the previous Financial Year as advised to and approved by the Board.
- (b) for each person who ceased to be a Member in the last 7 years:
 - (i) their name;
 - (ii) their address;
 - (iii) any alternative address nominated by the Member for the service of notices; and
 - (iv) the dates the membership started and ended.

11.3 The Company must give current Members access to the Register of Members.

11.4 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members and in accordance with Applicable Laws.

12. ANNUAL GENERAL MEETING

12.1 The Annual General Meeting will be held each year, preferably, no later than five months after the end of the previous Financial Year.

12.2 In addition to any other business which may be transacted at an Annual General Meeting, the business of an Annual General Meeting should:

- (a) provide a reasonable opportunity for Members to ask questions;
- (b) include a report on the activities of the Company during the preceding Financial Year; and
- (c) include a consideration of any financial statement or report required to be submitted to Members under Applicable Laws.

13. GENERAL MEETINGS

13.1 A general meeting may be convened by the Board at any time and must be convened within two calendar months of receiving a requisition in writing from Members entitled to exercise at least 10% of the votes that may be cast at a general meeting.

If a general meeting is requisitioned by Members, the Members and the Company must comply with Part 2G.2 of the Corporations Act. If a provision of Part 2G.2 of the Corporations Act is contrary to a provision of this constitution, to the extent permitted by Applicable Laws, this constitution prevails to the extent of any inconsistency.

13.2 Subject to the provisions of the Corporations Act relating to special resolutions, at least 14 days written notice of a general meeting must be given to all Members who are entitled to receive the notice.

13.3 A notice of a general meeting must contain all information required by the Corporations Act, including:

- (a) the place, the day and the hour of the meeting; and
- (b) the general nature of the business to be transacted at the meeting.

14. PROCEEDINGS AT GENERAL MEETINGS

- 14.1 No business can be transacted at any Annual General Meeting or general meeting unless a quorum of Members is present in person or by proxy, attorney or representative at the time when the meeting is due to commence.
- 14.2 Unless otherwise determined by the Company in general meeting, a quorum is fifty percent of all Members or ten percent of Full Members.
- 14.3 If a quorum is not present within half an hour from the time appointed for the meeting, the meeting:
 - (a) if convened upon the requisition of Members, is dissolved; or
 - (b) in any other case, the meeting is adjourned to the same day in the next week at the same time and place, or to such other day, time and place as the chairperson may determine.
- 14.4 If a quorum is not present at the adjourned meeting within half an hour from the time appointed for the meeting, the Members present constitute a quorum.
- 14.5 The chairperson may, with the consent of the Members present at any meeting at which a quorum is present, adjourn the meeting but no business can be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 14.6 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 but it is not otherwise necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.
- 14.7 At any general meeting of Members a resolution put to the vote of the meeting is decided on a show of hands unless a poll is demanded:
 - (a) by the chairperson; or
 - (b) by at least three Full Members.
- 14.8 The demand for a poll may be withdrawn.
- 14.9 Before a vote is taken, the chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are cast.
- 14.10 Unless a poll is demanded, a declaration by the chairperson is conclusive evidence of the result, provided the declaration reflects a show of hands and the proxies received. Neither the chairperson nor the minutes need to state the number or proportion of votes recorded in favour or against.
- 14.11 If a poll is demanded the chairperson will determine how the poll will be taken, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- 14.12 If a poll is demanded on the election of a chairperson or on a question of adjournment, it must be taken immediately.
- 14.13 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson is entitled to a second or casting vote.

14.14 If a poll is demanded, the number of votes of a Full Member will be determined by the total number of burials and cremations recorded in the Register of Members for the Full Member in the previous Financial Year (**services**) and every Full Member represented at the meeting will have the number of votes in accordance with the following scale:

Number of services	Number of votes
1 to 100	1 vote
101 to 500	2 votes
501 to 2000	3 votes
2001 to 4500	4 votes
4501 to 8000	5 votes
8001 to 12500	6 votes
12501 to 18000	7 votes
18001 to 24500	8 votes
24501 or more	9 votes

14.15 At the commencement of any general meeting or adjourned meeting a written list detailing:

- (a) all Full Members entitled to vote;
- (b) the number of votes which may be cast by or on behalf of each Full Member, in the case of a poll being taken; and
- (c) the name of the Authorised Representative or proxy entitled to vote on behalf of each Full Member,

will be available to each person in attendance who is entitled to vote, which will be prima facie evidence of the entitlement of those Full Members to vote.

14.16 A Full Member will not be entitled to vote at any general meeting if their membership fees are in arrears at the date of the meeting.

14.17 A Full Member may vote in person or by proxy, attorney or Authorised Representative.

14.18 A Full Member who is of unsound mind or whose person or estate is liable to be dealt with in any way under any legislation relating to mental health may vote, by the Full Member's committee or trustee or by such other person who has the management of their estate, and the committee, trustee or other person may vote by proxy or attorney.

14.19 A Full Member may only appoint one proxy for a particular meeting.

14.20 A document appointing a proxy:

- (a) must be in writing and:

- (i) signed by the appointor or their attorney; or
 - (ii) if the appointer is a corporation, either under seal or signed by an officer or attorney; and
- (b) contain:
- (i) the Member's name;
 - (ii) the proxy's name or the name of the office held by the proxy; and
 - (iii) the meetings at which the proxy may be used;
- (c) may direct the manner in which the proxy is to vote in respect of a particular resolution in which case the proxy must vote accordance with that direction;
- (d) is taken to confer authority to demand or join in demanding a poll; and
- (e) must be in the following form or in a form that is as similar to the following form as the circumstances allow:

Australasian Cemeteries & Crematoria Association Limited

I/we, _____, of _____, being a member/members of the Company, appoint _____ of _____ or, in their absence, _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the *annual general meeting/*general meeting of the Company to be held on the _____ day of 2019 and at any adjournment of that meeting.

+This form to be used *in favour of/*against the resolution.

Signed this _____ day of _____ 2019 .

*Strike out whichever is not desired
+To be inserted if desired.

14.21 An instrument appointing a proxy is not valid unless the instrument, and the original or certified copy of the power of attorney or other authority under which the instrument is signed, is deposited, not less than 24 hours before the relevant meeting.

14.22 The power of attorney or copies must be deposited at the registered office of the Company or any other place specified for that purpose in the notice convening the meeting.

14.23 A notice of appointment of proxy may be given by any means permitted in clause 24.

14.24 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid despite:

- (a) the previous death or unsoundness of mind of the principal;
- (b) the revocation of the instrument (or of the authority under which the instrument was signed) or of the power; or
- (c) the transfer of the share in respect of which the instrument or power is given,

if no intimation in writing of any of those events has been received by the Company before the meeting at which the instrument is used or the power is exercised.

14.25 The President, in the first instance and Vice President, in the second instance, of the Company will preside as chairperson at every general meeting.

14.26 Where a general meeting is held and:

- (a) a President has not been elected or is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act; and
- (b) a Vice-President has not been elected or is not present within 15 minutes after the time appointed for the holding of a meeting or is unwilling to act,

then the Members present must elect one of their number to be chairperson of the meeting.

15. DIRECTORS

15.1 The Board will consist of a maximum of seven Directors, including the chairperson.

15.2 Subject to clause 15.4 all of the Directors must be elected in accordance with clause 16.

15.3 The appointment of a Director will be effective from the conclusion of the Annual General Meeting at which the election is announced.

15.4 The Board may appoint any person to fill a casual vacancy in the Directors or in addition to their number, but the total number of office bearers and Directors must not exceed the number fixed in accordance with this constitution.

Any Director appointed to fill a casual vacancy holds office until the conclusion of the next Annual General Meeting.

15.5 The office of a Director becomes vacant if the Director:

- (a) becomes bankrupt or makes any arrangement or composition with their creditors generally;
- (b) is prohibited from being a director of a company by reason of any order made under the Applicable Laws;
- (c) ceases to be a Director by operation of any provision of the Applicable Laws;
- (d) becomes disqualified from being a Director by the ACNC Commissioner;
- (e) ceases to be a Member of the Company, or if the Director is an Authorised Representative, is removed as the representative of its respective Member;
- (f) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way laws relating to mental health;
- (g) resigns as a Director by notice in writing to the Company;
- (h) is absent from three consecutive meetings of the Board without having previously obtained leave of the Board; or
- (i) is removed by an ordinary resolution of Members.

- 15.6 In the event that the position of President becomes vacant, the Vice President will become President until the next Annual General Meeting.

Being appointed President as a result of the operation of this clause does not prohibit a person for seeking election as President and does not count towards the persons total term as President (if elected as President by the Members).

- 15.7 In the event that the position of Vice President becomes vacant or, if the Vice President is unwilling to act as President pursuant to clause 15.6, the Board may elect one of its members to the position of President and Vice President (as the case may be) until the next Annual General Meeting.

Being appointed President or Vice President as a result of the operation of this clause does not prohibit a person for seeking election as President or Vice President and does not count towards the persons total term as President or Vice President (if elected as President or Vice President by the Members).

- 15.8 The Directors are not entitled to be remunerated for their services as Directors.

- 15.9 The Directors' reasonable travel, accommodation and other expenses incurred in consequence of their attendance at Directors meetings and otherwise in the execution of their duties as Directors will be met by the Company.

16. ROTATION AND ELECTION OF DIRECTORS

Rotation of Directors

- 16.1 Each Director is elected for a term of three years.

- 16.2 If one or more Directors are required to retire at or before an Annual General Meeting, or if there are otherwise any vacancies on the Board at the time that notice of the Annual General Meeting is provided, the Board must give a notice to Members calling for nominations for the vacant position.

- 16.3 Subject to the requirements of this clause 16, a Director who retires under this clause will be eligible for re-election.

- 16.4 The retirement of a Director who retires under this clause will be effective from the close of the relevant Annual General Meeting.

Nomination process

- 16.5 Nominations must be received at the Company's registered office by the date specified in the notice given to Members.

- 16.6 The nomination must be in writing, in a form approved by the Board and:

- (a) contain the full name, address and signature of the nominee;
- (b) contain the full name, address and signature of the proposer and seconder of the nominee;
- (c) indicate if the nominee is nominating for the position of President or Vice President and state that the nominee meets the requirements of clause 16.13(a) or (b) in this regard.

- 16.7 Nominees for the position of Director must:

- (a) be appointed as Authorised Representatives of a Full Member;

- (b) be proposed and seconded by Authorised Representatives of two different Full Members.

Election process

- 16.8 If the number of candidates for election is equal to or less than the number of vacancies, subject to clause 16.13, the chairperson may declare those candidates to be duly elected.
- 16.9 If the number of candidates exceeds the number of vacancies, a ballot must be held to elect the replacement Directors.
- 16.10 If a ballot is necessary, the Board will cause a candidate list to be displayed at the Annual General Meeting and each Full Member will be entitled to vote for a number of candidates not exceeding the number of vacancies.
- 16.11 All other issues in relation to the election of Directors and the conduct of the ballot will be determined by the chairperson whose decision will be final and binding.
- 16.12 The chairperson may appoint returning officers to assist in the running of the election of Directors and the conduct of the ballot.

Election of Directors

- 16.13 The results of the ballot will be collated by the chairperson and the Board will work with the chairperson to determine the elected Directors by applying the following requirements:
- (a) a Director elected as President must have previously been a Director;
 - (b) a Director elected as President or Vice President cannot hold such a position for consecutive terms;
 - (c) the Board must not be comprised of:
 - (i) more than three Directors who are Authorised Representatives of Full Members from the same Area;
 - (ii) more than one Director who is an Authorised Representative of a Full Member.
- 16.14 Where different cemeteries and crematoria are in the reasonable opinion of the Board under the same management or ownership but are each Full Members, they will be treated as one Full Member for the purposes clause 16.13(c)(ii).
- 16.15 If the results of the ballot do not contravene the requirements of clause 16.13, the results of the ballot (as declared by the Directors), will determine the election of the Directors. If any of the results of the ballot (as declared by the Directors) would contravene the requirements of clause 16.13, then the results in contravention will be ignored so that the ballot results will be deemed to only consist of the results which are not in contravention.
- 16.16 If after applying clause 16.14 there are more nominees than vacancies, the nominees with the highest number of votes will be declared Directors by the Board.

17. POWERS AND DUTIES OF THE DIRECTORS

- 17.1 The management of the Company is the responsibility of the Board and the Board may exercise all powers of the Company as are not, by the Applicable Laws or by this constitution, required to be exercised by the Company in general meeting.
- 17.2 The Directors of the Company must comply with the duties of directors prescribed by any Applicable Laws.

- 17.3 The Board must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power to a committee, a director, an employee of the Company or any other person as may be appropriate; and
 - (b) how money will otherwise be managed such as:
 - (i) appropriate financial controls;
 - (ii) record keeping;
 - (iii) how funds can be raised; and
 - (iv) keeping finances secure.
- 17.4 The Directors may create By-Laws and Codes of Ethics regarding the operation of the Company and if in force, By-Laws and Codes of Ethics are binding on the Company, the Directors and Members.

18. PROCEEDINGS OF THE BOARD AND APPOINTMENT OF CHAIRMAN

- 18.1 The Board may meet as it thinks fit. A Director may at any time, and the Secretary must, on the requisition of a Director, summon a meeting of the Board.
- 18.2 The Board must appoint one of its members to chair its meetings and may determine the period for which they will hold office. At the date of this constitution, the President has been appointed to chair meetings of the Directors in the first instance and the Vice President in the second instance.
- 18.3 Where a meeting of Directors is held and:
- (a) a chairperson has not been elected; or
 - (b) a chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,
- the Directors present must elect an alternative chairperson of the meeting.
- 18.4 Subject to this constitution, questions arising at any meeting of the Board will be decided by a majority of votes.
- In the case of an equality of votes, the chairperson is entitled to a second or casting vote.
- 18.5 The quorum necessary for the transaction of the business of the Board is a majority of the Board at the relevant date.
- 18.6 The continuing members of the Board may act notwithstanding any vacancy in the Board, but if their number is reduced below the number fixed by or pursuant to this constitution as the quorum of the Board, the continuing Directors may only act for the purpose of filling a casual vacancy or calling a general meeting.
- 18.7 A resolution in writing signed by all Directors in Australia for the time being is as valid as if it had been passed at a meeting of the Board. The resolution may consist of several documents in like form, each signed by one or more Directors.
- 18.8 Subject to the Corporations Act, the Board may delegate any of its powers to one or more subcommittees (including advisory committees) as the Board thinks fit and the Board may also appoint the chairperson of any subcommittee.

- 18.9 Each subcommittee must keep proper minutes of its meetings and the provisions regulating proceedings of the Board apply to the proceedings of subcommittees also.
- 18.10 Questions arising at any meeting of subcommittees are determined by a majority of votes of the Members present.
- 18.11 No decision of a subcommittee is binding on the Company unless it is ratified by the Board.
- 18.12 If it is discovered after the event that there was some defect in the appointment of any Director or subcommittee member, or that they were disqualified, anything done by the Board or of the subcommittee or the person acting as a Director or subcommittee member is as valid as if every such person had been duly appointed and was qualified to be a Director or member of the subcommittee.
- 18.13 The Board may invite one or more Members to be present for, but not vote at, part or all of a meeting of the Board. Upon the invitation of the chairperson, a Member present may address a meeting of the Board.

19. MEETINGS USING TECHNOLOGY

- 19.1 A board meeting may be called or held using any technology allowed under the Corporations Act and consented to by all the Directors.
- 19.2 The consent referred to in clause 19.1 may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

20. ALTERNATE DIRECTORS

- 20.1 Each Director may nominate any Member to act as alternate director in their place with the approval of the Board during any temporary period for which they are unable to act or attend as a Director, and may remove that alternate director at any time.
- 20.2 The alternate director is subject to the conditions existing with reference to other Directors and must discharge all the duties and may exercise all the authorities, and powers of the Director he or she represents. An instrument appointing an alternate director must be delivered to the Company. If the Director making the appointment ceases to be a Director, the alternate ceases to be an alternate director.

21. DIRECTORS CONTRACTING WITH THE COMPANY AND MATERIAL INTERESTS

- 21.1 No Director is disqualified by their office from contracting with the Company.
- 21.2 No contract or arrangement entered into by the Company in which any Director is in any way interested can be avoided because the person has the interest.
- 21.3 A Director who has an interest in any contractual arrangements with the Company is not liable to account to the Company for any profit realised in relation to the contract or arrangement provided the Director has disclosed the nature of their interest at a meeting of the Board.
- 21.4 The declaration must be made at a meeting of the Directors at which the contract or arrangement is determined if the Director's interest then exists, or in any other case at the first meeting of the Directors after the acquisition of the Director's interest.
- 21.5 A general notice that a Director is a member of a specified company or firm and is to be regarded as interested in any subsequent transaction with the company or firm is sufficient disclosure if:

- (a) the notice states the nature and extent of the interest of the Director in the company or firm; and
 - (b) there has been no material change in the Director's interest in the company or firm when a later transaction is considered by the Board.
- 21.6 A Director who has a material interest in a matter that is being considered at a Directors meeting must not:
- (a) be present at the meeting while the matter is being considered; and
 - (b) must not vote on the matter,
- unless the preceding provisions of this clause 21 have been complied with and the other Directors have passed a resolution in accordance with section 195 of the Corporations Act.
- 21.7 The giving of a general notice under clause 21.3 does not entitle a Director to be present or to vote at a meeting in relation to a particular contract unless a resolution of the Board under clause 21.6 has first been passed.
- 21.8 Notwithstanding any other provision of this clause 21, section 191 of the Corporations Act governs a Directors duty to disclose a material personal interest.
- 21.9 A Director who has an interest in a matter may give the other Directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- 21.10 A notice under clause 21.9 may be given:
- (a) at a Directors' meeting (either orally or in writing); or
 - (b) to the other Directors individually in writing.
- 21.11 If the standing notice is given to the other Directors individually in writing:
- (a) the notice is effective when it has been given to every Director; and
 - (b) the notice must be tabled at the next Directors' meeting after it is given.
- 21.12 The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.
- 21.13 Subject to a Director having complied with the relevant provisions of this clause 21, the Director may sign or countersign any contract in which they are interested.

22. COMPANY SECRETARY

- 22.1 The secretary of the Company holds office on the terms decided by the Directors and in accordance with the Corporations Act.
- 22.2 Nothing in this constitution prevents the Board from appointing a Member of the Company as Company Secretary.
- 22.3 The Secretary must cause minutes to be made and entered of:
- (a) the names of Directors and other persons present at all meetings of the Company and of the Board; and

(b) all proceedings at all meetings of the Company and of the Board.

22.4 The minutes must be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting.

23. ACCOUNTS AND SEAL

23.1 The auditor of the Company is appointed by the Company in general meeting and holds office in accordance with the Applicable Laws.

23.2 The Board must cause:

- (a) proper accounting and other records to be kept;
- (b) copies of yearly financial statements (including every document required by law to be attached to them) accompanied by a copy of any auditor's report to be distributed to Members as required by the Applicable Laws; and
- (c) a statement of financial position, a statement of financial performance and a statement of cash flow for the preceding Financial Year of the Company to be prepared to a date not more than twelve months before the date of the meeting and sent to every Member with the notice for each Annual General Meeting.

24. NOTICES

24.1 A Company may give notice (including notice of a meeting) to a Member either by:

- (a) serving it on the Member personally; or
- (b) by sending it by post to the Member at the address shown in the Register of Members or the address supplied by the Member for the giving of notices; or
- (c) forwarding it by electronic mail to the electronic mail address shown in the Register of Members (if any) or the electronic mail address supplied by the Members for the giving of notices; or
- (d) in any other way allowed by the Corporations Act.

24.2 A notice sent by post will be deemed:

- (a) given on the day it is posted; and
- (b) received six days after posting.

24.3 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.

24.4 For the purposes of clause 24.3, 'delivery' of an email means the time that an email reaches the recipient's server.

24.5 Notice of every general meeting must be given in any manner authorised by this constitution to:

- (a) every Member except those Members who have not supplied to the Company an address for the giving of notices to them; and
- (b) the auditor or auditors for the time being of the Company.

24.6 No other person is entitled to receive notices of general meetings.

25. WINDING UP

25.1 If the Company is dissolved, any property that remains after such dissolution and the satisfaction of all its liabilities must:

- (a) not be paid to or distributed among the Members; but
- (b) be given or transferred to other institutions with similar objects to the Company that are charitable at law and which have rules prohibiting the distribution of assets and income to their members (**Default Fund**).

25.2 The Default Fund will be determined:

- (a) by the Members at or before the time of dissolution; but
- (b) if no determination is made by the Members, the Default Fund will be determined by a Judge of the Supreme Court of the state in which the registered office of the Company is located.

25.3 Every Member undertakes to contribute to the assets of the Company to a maximum of \$100 if the Company is wound up while they are a Member or within one year after they cease to be a Member, for payment of the liabilities of the Company contracted before they cease to be a Member.

26. INDEMNITY

26.1 Every Director, Secretary and other officer of the Company is indemnified out of the assets of the Company against any liability incurred by the person as officer except where the Company is prohibited from indemnifying the person under the provisions of the Corporations Act.

26.2 The indemnity may extend to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, irrespective of their outcome.

26.3 The Company may pay premiums in respect of contracts insuring current and past officers of the Company against liabilities incurred by them as officers and liability for costs and expenses incurred in defending proceedings whatever their outcome except in circumstances where the Company is prohibited from doing so under the Corporations Act.

26.4 A Director, manager, secretary or other officer of the Company is not liable for:

- (a) the act, neglect or default of any other Director or officer;
- (b) any loss or expenses incurred by the Company through the insufficiency or deficiency of title to any property acquired by order of the Directors for or on behalf of the Company;
- (c) the insufficiency or deficiency of any security in or upon which any money of the Company is invested;
- (d) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any money, securities or effects are deposited or left; or
- (e) for any other loss or damage that happens in the execution of the duties of his office,

unless the same happens through their own negligence, wilful default, breach of duty or breach of trust.

27. INSURANCE

- 27.1 To the extent permitted by law (including the Applicable Laws), and if the Directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been a Director or Secretary of the Company against any liability incurred by the person as a Director or Secretary of the Company except a liability (other than one for legal costs) arising out of wilful breach of duty in relation to the Company.

28. REGISTRATION AS AN ACNC ENTITY

- 28.1 If the Company is an ACNC Entity and a provision in this constitution is inconsistent with a law applicable to the Company due to its registration as ACNC Entity, the relevant law overrides the provision of this constitution to the extent of any inconsistency.

29. DISPUTE RESOLUTION

- 29.1 This provision applies to any dispute arising in connection with this constitution between a member or a director (each a **disputing party**) and:
- (a) one or more members;
 - (b) one or more directors; or
 - (c) the company.
- 29.2 Unless a disputing party has complied with this clause 29 that party may not commence any court proceedings or arbitration relating to the dispute (except where that party seeks urgent interlocutory relief).
- 29.3 Where a disputing party fails to comply with this clause 29, any other party need not comply with the clause before referring the dispute to arbitration or commencing court proceedings in relation to that dispute.
- 29.4 Any disputing party claiming a dispute has arisen in connection with this constitution must give written notice to the other parties specifying the issues in dispute and nominating that party's representative (if any) with authority to settle the dispute.
- 29.5 The party receiving the notice must promptly give notice in writing to the notifying party designating their representative (if any) with similar authority to settle the dispute.
- 29.6 The parties (and their representatives) involved any dispute must attempt in good faith to resolve the dispute within 21 days of the giving of the notice referred to in clause 29.5.
- 29.7 If the dispute is not resolved within 21 days of the giving of the notice referred to in clause 29.5 (or a further agreed period) the parties must within a further 21 days (or other agreed period):
- (a) notify the Board of the dispute;
 - (b) agree on the appointment of a mediator to assist to resolve the dispute.
- 29.8 If the relevant parties cannot agree on the appointment of a particular mediator within the required time frame determined in accordance with clause 29.7:
- (a) in respect of a dispute between Members, the Board may determine which mediator should be appointed; and

- (b) in respect of other disputes, any party can give notice in writing (**Request Notice**) to the President of the Law Council of Australia (**President**) requesting that they nominate an appropriate mediator to facilitate mediation of the dispute.
- 29.9 The party who gives the Request Notice must serve a copy of it on all other parties to the dispute at the same time the notice is given to the President.
- 29.10 The party who gives the Request Notice may nominate a mediator they would like to be appointed and the other parties may also nominate one mediator who they want to be appointed, provided that:
- (a) if the other parties wish to nominate a preferred mediator they must do so within 14 days of the date the Request Notice is given; and
- (b) when nominating a preferred mediator, each party must provide details of the proposed terms of engagement of the nominee.
- 29.11 The President will have complete discretion as to the mediator they appoint and is not required to appoint a mediator nominated by any party.
- 29.12 If the President indicates they will only make the appointment subject to certain conditions, the parties will be deemed to have agreed to those conditions.
- 29.13 If the President nominates more than one person who could be appointed as the mediator, the first person named will be deemed to be the nominee.
- 29.14 The parties will:
- (a) be deemed to have consented to the appointment of the mediator nominated by the President and to their terms of engagement; and
- (b) have no claim of any nature against the President or the Queensland Law Society in respect of the appointment.
- 29.15 During the course of the mediation, the mediator must:
- (a) allow all parties involved a reasonable chance to be heard;
- (b) allow all parties involved a reasonable chance to review any written statements;
- (c) ensure that all parties involved are given natural justice; and
- (d) not make a decision on the dispute.
- 29.16 The purpose of any exchange of information or documents (materials) or the making of any offer of settlement pursuant to this clause is to attempt to settle the dispute and no party may use any materials obtained through the dispute resolution process established by this clause for any purpose other than an attempt to settle the dispute between the parties.
- 29.17 In particular, the materials may not be used in any court proceedings or arbitration without the consent in writing of the party who supplied the materials except where the materials could have been discovered or obtained by the other party and used in Court proceedings if the procedures under this clause 29 had not been implemented.
- 29.18 At the end of the second period specified in or agreed under clause 29.7, any party to the dispute who has complied with the provisions of clause 29 may terminate the dispute resolution process by notice in writing to the other parties and then may take action to enforce its rights under this agreement or in relation to the Company.

NOMINATION FORM

AUSTRALASIAN CEMETERIES AND CREMATORIA ASSOCIATION LIMITED

I,.....
of
hereby advise that

.....
[insert name of member organisation]
hereby appoints until it provides written notice to the contrary

.....and.....
[insert name of appointee(s)]
to be its authorised representative(s) who in the case ofmay
only stand for, be elected to and carry out the role of Board member. For the purpose of
doing on its behalf all things that a full member may do as permitted by the Constitution of
the Australasian Cemeteries & Crematoria Association Limited the appointee is

.....

Signature.....

Title.....

Signed this..... day of
.....

HEW10212895 3445-8487-4252v7