



Constitution

Parties AWA-AGGA LIMITED (ACN 629 335 208)
A Company Limited by Guarantee

Date 8 February 2021

Makinson d'Apice Lawyers
Level 10
135 King Street
Sydney NSW 2000

DX: DX 296 Sydney
Tel: 02 9233 7788
Fax: 02 9233 1550
Email: mail@makdap.com.au
Ref: 204991:Wd'A:JXP

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Constitution of AWA-AGGA Limited

PREAMBLE

The Company was established from a rich history of National and State based window, glass and glazing associations to be the peak membership organisation of the Industry in Australia promoting the objects as set out in this Constitution.

1. Name of Company

The name of the Company is AWA-AGGA Limited ACN 629 335 208.

2. Type of Company

The Company is a not-for-profit public company limited by guarantee.

3. Limited Liability of Members

Each Member must contribute an amount not more than \$10.00 (the guarantee) 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) payment of debts and liabilities of the Company;
- (b) payment of the costs, charges and expenses of winding up; and
- (c) any adjustment of the rights of the contributories among Members.

4. Definitions

4.1 In this Constitution, unless there is something in the subject or context which is inconsistent:

Act means the *Corporations Act* 2001.

Board means the Board of Directors.

Business Day means a day on which banks are open for business in Sydney.

Chairperson means the person holding that office under this Constitution and includes any assistant or acting chairperson.

Code of Conduct means the Membership Code of Conduct adopted by the Board from time to time.

Committee means a committee established in accordance with **clause 47**.

Company means AWA-AGGA Limited.

Constitution means this Constitution as amended or supplemented from time to time by a Special Resolution of the Members in a general meeting.

Director means any person holding the position of a director of the Company and **Directors** means the directors for the time being of the Company or as the context permits such number of them as have authority to act for the Company.

Eastern Australia means New South Wales and the Australian Capital Territory.

Executive Director means the Director appointed by the Board to perform certain duties and exercise certain powers in accordance with **clause 46**.

Financial Year means the financial year of the Company ending on 31 December.

Industry means the window, glass and glazing industries and any other allied industry associated with fenestration.

Industry Member means any Member which is determined by the Board from time to time to be actively involved in the Industry.

Life Member means a person whose meritorious services to the Company and the Industry have been recognised by the Board in its absolute discretion.

Member means a Member of the Company and **Membership** has the corresponding meaning.

Member Representative means a person authorised in accordance with section 250D of the Act to act as a representative of a body corporate that is a Member of the Company.

Northern Australia means Queensland and the Northern Territory;

Office means the registered office for the time being of the Company which must always be located in Australia.

Officer has the same meaning as given to that term in section 9 of the Act.

Professional Members means Members who fall within any of the following categories:

- (a) a person who is engaged in a profession involving windows, sliding glass doors, curtain walls, shopfronts, glass, glass processing, skylights, space enclosures, and related products for residential, commercial, institutional or industrial new construction or remodelling or providing education to the Industry; or
- (b) a student.

Register means the register of Members to be kept pursuant to the Act.

Related Body Corporate has the same meaning given to it in the Act.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Secretary means the person appointed as the secretary of the Company and includes any assistant or acting secretary.

Special Resolution means a resolution:

- (a) of which notice has been given in accordance with the Act; and
- (b) that has been passed by at least 75% of the votes cast by Members present and entitled to vote on the resolution;

Southern Australia means Victoria and Tasmania;

Supplier Member means an Industry Member who is:

- (a) engaged in the production of materials or components used by other Industry Members; or
- (b) a supplier of services to Industry Members, persons trading in that manner, or building owners whether such supply is direct or indirect; and

Western Australia means Western Australia and South Australia.

4.2 In this Constitution, unless there is something in the subject or context which is inconsistent:

- (a) the singular includes the plural and vice versa;
- (b) each gender includes the other gender;
- (c) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
- (d) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- (e) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- (f) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and a reference to any clause or schedule is to a clause or schedule of this Constitution;
- (g) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.

4.3 An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.

4.4 The provisions of this Constitution displace the Replaceable Rules (but not Replaceable Rules which mandatorily apply to a public company) contained in the Act.

- 4.5 Headings do not form part of or affect the construction or interpretation of this Constitution.

5. Objects and Powers

- 5.1 The objects for which the Company is established are:
- (a) to be the peak membership organisation of the Industry in Australia; and
 - (b) to provide services for the benefit of its Members that will enhance their business opportunities and support their efforts to operate successfully while endorsing compliant, sustainable and fit for purpose products in the Industry by:
 - (i) providing advice and support to Members;
 - (ii) promoting product conformity and compliance;
 - (iii) facilitating the development of Members' technical capability and knowledge;
 - (iv) assisting Members to develop relevant skill sets through training;
 - (v) influencing Industry and product sustainability;
 - (vi) advocating to governments and regulators on behalf of Members;
 - (vii) promoting the Company, its Members and objects to stakeholders, the business community and consumers; and
 - (viii) financing the achievement of the above objects; and
 - (ix) undertaking any other activities in furtherance of the above.
- 5.2 The Company can only exercise the powers in section 124(1) of the Act to:
- (a) carry out the objects of the Company set out in **clause 5.1**; and
 - (b) do all things incidental or convenient in relation to the attainment of an object under **clause 5.1**.

6. Not-For-Profit

- 6.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in **clause 5.1**.
- 6.2 No income or assets of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company unless it is paid, transferred or distributed in carrying out the Company's objects. However nothing in this Constitution will prevent payment in good faith to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company;

- (b) of interest at a rate not exceeding current bank overdraft rates of interest for money lent to the Company; and
- (c) of reasonable and proper rent for premises leased by any Member to the Company,

for carrying out the Company's objects.

7. Amending the Constitution

The Members may amend this Constitution by passing a Special Resolution.

8. Membership

- 8.1 The number of Members of the Company is unlimited but may be altered by the Board from time to time.
- 8.2 The Members of the Company are any person that is admitted as a Member in accordance with this Constitution.

9. Categories of Membership

- 9.1 There shall be 3 categories of Membership, namely:
 - (a) Industry Members;
 - (b) Professional Members; and
 - (c) Life Members.
- 9.2 The Board may from time to time pass by-laws which set out the eligibility standards for different categories of Membership. The Board's decision regarding a person's category of Membership shall be final.
- 9.3 The Members may, by special resolution, create further or other categories of membership as they see fit from time to time.

10. Rights of Members

- 10.1 Industry Members are entitled to:
 - (a) receive notice of, and attend and vote at general meetings of the Company; and
 - (b) receive annual reports of the Company including financial reports in relation to each Financial Year.
- 10.2 Professional Members are entitled to:
 - (a) receive notice of, and attend but not vote at general meetings of the Company; and

- (b) receive annual reports of the Company including financial reports in relation to each Financial Year.

10.3 Life Members are entitled to:

- (a) receive notice of, and attend and vote at general meetings of the Company;
- (b) receive annual reports of the Company including financial reports in relation to each Financial Year; and
- (c) any other rights, powers and privileges determined by the Board from time to time.

11. Application for Membership

11.1 Every application for Membership of the Company must:

- (a) be lodged (including by email or other electronic means, if the Board so determines) with the Secretary and must set forth the name and address of the applicant;
- (b) specify the category of Membership the applicant wishes to apply for;
- (c) specify the relevant credentials of the applicant to qualify as a Member;
- (d) state that the applicant agrees to comply with the terms of the Company's Constitution and the Code of Conduct; and
- (e) state that the applicant agrees to pay the entrance fee and/or annual subscription set out in **clause 15**.

11.2 Applications for Membership of the Company must be made in writing (including by email or other electronic means, if the Board so determines) in a form approved by the Board for that purpose.

11.3 At the first Board meeting after an application for Membership has been received, the Board will in its absolute discretion:

- (a) determine the admission or rejection of the applicant; or
- (b) determine the applicant's categories of Membership;
- (c) decide to call on the applicant to supply any evidence of eligibility that they consider reasonably necessary.

11.4 An applicant will be admitted to Membership of the Company if 75% of Directors present and entitled to vote at a Board meeting resolve to admit the applicant.

11.5 If the Board approves an application for Membership, the Secretary must, as soon as practicable:

- (a) notify the applicant in writing of their approval for Membership and their category of Membership; and

- (b) request the applicant to pay (within the period of 30 days after receipt by the applicant of the notification) the sum payable by a Member under **clause 15**.

11.6 If the Board rejects an application for Membership, the Secretary must, as soon as practicable, notify the applicant in writing that their application has been rejected.

12. Register of Members

12.1 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) name;
 - (ii) address (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email);
 - (iv) date the Member was entered on to the Register; and
 - (v) the Member's category of Membership.
- (b) for each person who stopped being a Member in the last 7 years:
 - (i) name;
 - (ii) address (which may also include an electronic address such as email);
 - (iii) any alternative address nominated by the Member for the service of notices (which may also include an electronic address such as email);
 - (iv) dates the Membership started and ended; and
 - (v) the Member's category of Membership.

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

12.3 Information that is accessed from the Register of Members must only be used in a manner relevant to the interests or rights of Members.

13. When a Person Stops Being a Member

A person immediately stops being a Member if:

- (a) they die;
- (b) they are wound up or otherwise dissolved or deregistered (for an incorporated Member);
- (c) they resign, by writing to the Secretary;

- (d) they have not responded within 3 months to a written request from the Secretary that they confirm in writing that they want to remain a Member;
- (e) they fail to pay any entrance fee and/or annual subscription payable pursuant to **clause 15** and do not rectify such failure or enter into a payment arrangement with the Company within 30 days of being given notice to do so; or
- (f) they are expelled as a Member pursuant to **clause 17**.

14. Membership Entitlements Not Transferable

A right, privilege or obligation which a person has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) terminates on cessation of the person's Membership.

15. Entrance Fee and Subscriptions

Members must pay to the Company an entrance fee and/or an annual subscription in the amount determined by the Board from time to time.

16. Dispute Resolution

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Director and:
- (a) one or more Members;
 - (b) one or more Directors; or
 - (c) the Company.
- 16.2 A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under **clause 17** until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 16.4 If those involved in the dispute do not resolve it under **clause 16.3**, they must within 10 days:
- (a) tell the Directors about the dispute in writing;
 - (b) agree or request that a mediator be appointed; and
 - (c) attempt in good faith to settle the dispute by mediation.

- 16.5 The mediator must:
- (a) be chosen by agreement of those involved; or
 - (b) where those involved do not agree:
 - (i) for disputes between Members, a person chosen by the Chairperson; or
 - (ii) for other disputes, a person chosen by the president of the law institute or society in the state or territory in which the Company has its registered office.
- 16.6 A mediator chosen by the Chairperson under **clause 16.5**:
- (a) may be a Member or former Member of the Company;
 - (b) must not have a personal interest in the dispute; and
 - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
 - (b) allow those involved a reasonable chance to review any written statements;
 - (c) ensure that those involved are given natural justice; and
 - (d) not make a decision on the dispute.

17. Disciplinary Procedures

- 17.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member (or the Member Representative, as appropriate) from the Company if the Directors consider that:
- (a) the Member or Member Representative has failed to comply with this Constitution; or
 - (b) the behaviour of the Member or Member Representative is unbecoming and/or is causing, has caused, or is likely to cause harm to the Company.
- 17.2 For the avoidance of doubt, conduct will be considered to be unbecoming if it:
- (a) causes a majority of the Board to think less of the Member's integrity;
 - (b) brings the Company into disrepute; or
 - (c) breaches any of the Company's codes of conduct.

- 17.3 At least 14 days before the Board meeting at which a resolution under **clause 17.1** will be considered, the Secretary must notify the Member in writing:
- (a) that the Directors are considering a resolution to warn, suspend or expel the Member or Member Representative;
 - (b) that this resolution will be considered at a Board meeting and the date of that meeting;
 - (c) what the Member or Member Representative is said to have done or not done;
 - (d) the nature of the resolution that has been proposed; and
 - (e) that the Member or Member Representative may provide an explanation to the Directors, and details of how to do so.
- 17.4 Before the Directors pass any resolution under **clause 17.1**, the Member or Member Representative must be given a chance to explain or defend themselves by:
- (a) sending the Directors a written explanation before that Board meeting; and/or
 - (b) speaking at the meeting.
- 17.5 After considering any explanation under **clause 17.4**, the Directors may:
- (a) take no further action;
 - (b) warn the Member or Member Representative;
 - (c) suspend the Member's rights as a Member for a period of no more than 12 months;
 - (d) expel the Member or Member Representative;
 - (e) refer the decision to an unbiased, independent person on conditions that the Directors consider appropriate (however, the person can only make a decision that the Directors could have made under this clause); or
 - (f) require the matter to be determined at a general meeting.
- 17.6 The Directors cannot fine a Member.
- 17.7 The Secretary must give written notice to the Member of the decision under **clauses 17.5** as soon as possible.
- 17.8 If the Board expels or suspend a Member or Member Representative in accordance with **clauses 17.5(c) and (d)**, the Secretary must, within 7 days after the action is taken, cause written notice to be given to the Member of:
- (a) the action taken;
 - (b) reasons given by the Board for having taken that action; and
 - (c) the Member's right of appeal under **clause 18**.

- 17.9 The decision of the Board to expel or suspend a Member or a Member Representative does not take effect:
- (a) until the expiration of the period within which the Member is entitled to appeal against the resolution concerned; or
 - (b) if the Member exercises their right of appeal in accordance with **clause 18**, until the appeal is determined in accordance with **clause 18**.
- 17.10 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.

18. Appeal Against Discipline or Suspension

A Member will only have a right to appeal against their suspension and expulsion under this **clause 18** in accordance with any by-laws passed by the Board from time to time pursuant to **clause 64**. For the avoidance of doubt, if no such by-laws have been passed, the Member will not have a right of appeal.

19. Convening of General Meetings

- 19.1 Any 3 Directors may whenever those Directors think fit convene a general meeting of the Company in accordance with the provisions of the Act.
- 19.2 5% of Members eligible to vote shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.
- 19.3 A general meeting of the Company may be convened at multiple venues as determined by the Board using any technology approved by the Board that gives the Members a reasonable opportunity to participate in the meeting, including to hear and be heard.
- 19.4 A Member who participates in a general meeting using technology is taken to be present at the meeting and, if the Member votes at the general meeting, is taken to have voted in person.

20. Annual General Meeting

- 20.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year and within 5 months of the end of the Company's Financial Year.
- 20.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the Company's activities;
 - (b) a review of the Company's finances;
 - (c) any auditor's report;
 - (d) the election of Directors; and

- (e) the appointment of auditors, if any.
- 20.3 Before or at the annual general meeting, the Directors must give information to the Members on the Company's activities and finances during the period since the last annual general meeting.
- 20.4 The Chairperson of the annual general meeting must give Members a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

21. Notice of General Meetings

- 21.1 Notice of a general meeting must be given to:
- (a) each Member entitled to vote at the meeting;
 - (b) each Director; and
 - (c) the auditor (if any).
- 21.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to **clause 21.4**, notice of a 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.
- 21.4 Notice of a 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.
- 21.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in multiple places as determined by the Board, the technology that will be used to facilitate this);
 - (b) the general nature of the meeting's business;
 - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
 - (d) any other information required under the Act.

- 21.6 The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.
- 21.7 Where any general meeting is cancelled or postponed or the venue for the same is changed:
- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
 - (b) any accidental failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

22. Right of Non-Members to Attend General Meeting

The Chairperson of a general meeting may invite any person who is not a Member to attend and/or address a meeting.

23. Quorum

- 23.1 No business may be transacted at any general meeting unless a quorum of Members is present (in person, using technology, by proxy or by Member Representative) at all times during the meeting.
- 23.2 When determining whether a quorum is present, a person may only be counted once (even if that person is a Member Representative or proxy of more than one Member).
- 23.3 A minimum of 15 Members entitled to vote constitute a quorum for all general meetings.
- 23.4 If within 1 hour after the time appointed for holding a general meeting a quorum is not present:
- (a) the meeting if convened upon the requisition of Members shall be dissolved; and
 - (b) in any other case:
 - (i) the meeting will stand 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 Board may by notice to the Members appoint; and
 - (ii) if at such adjourned meeting a quorum is not present within 30 minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

- 23.5 If no quorum is present at the resumed meeting within 1 hour after the starting time set for that meeting, the Members present (being not less than 5 Members with voting rights) shall constitute a quorum.

24. Chairperson

- 24.1 The Chairperson shall be elected annually by majority vote of the Board at the first Board meeting after each annual general meeting of the Company.
- 24.2 The Chairperson shall be entitled to preside as Chairperson at every general meeting.
- 24.3 Where a general meeting is held and:
- (a) there is no Chairperson; or
 - (b) the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chairperson of the meeting,

the other Directors present may choose another Director as Chairperson of the meeting by two-thirds majority, or if their number is not 3 or a multiple of 3, then the nearest number to two-thirds. If no Director is so chosen or if all the Directors present decline to take the chair, the Members present may choose one of their number to be Chairperson of the meeting.

- 24.4 The rulings of the Chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

25. No Chairperson's Casting Vote

In the case of an equality of votes whether on a show of hands or on a poll, the Chairperson of the meeting at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

26. Adjournment of Meetings

- 26.1 The Chairperson of a general meeting at which a quorum is present:
- (a) may adjourn a meeting with the consent of the majority of members present at the meeting; and
 - (b) must adjourn the meeting if the meeting so directs, to a time and place as determined by the Chairperson.
- 26.2 No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 26.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

- 26.4 It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting, except if the meeting is adjourned for 30 days or more in which case notice of the adjourned meeting must be given as in the case of an original meeting.

27. How Voting Is Carried Out

- 27.1 At any general meeting a resolution to be considered at the meeting shall be decided on:
- (a) a show of hands
 - (b) a poll; or
 - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 27.2 A poll or another method may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) the Chairperson of the meeting; or
 - (b) at least 2 Members entitled to vote on the resolution.
- 27.3 Before a vote is taken, the Chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 27.4 On a show of hands, the Chairperson's decision is conclusive evidence of the result of the vote.
- 27.5 The Chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

28. Polls

- 28.1 If a poll is demanded it must be taken in such manner and at such time and place as the Chairperson of the meeting directs subject to **clause 28.4**.
- 28.2 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 28.3 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 28.4 A poll demanded on the election of a Chairperson or any question of adjournment of the meeting must be taken immediately.
- 28.5 The demand for a poll may be withdrawn.

29. Voting Rights

- 29.1 A Member entitled to vote has one vote.
- 29.2 No person other than a Member shall be entitled to vote at a general meeting.

30. Challenge to a Member's Right to Vote

- 30.1 A Member or the Chairperson may only challenge a person's right to vote at a general meeting at that meeting.
- 30.2 If a challenge is made under **clause 30.1**, the Chairperson must decide whether or not the person may vote. The Chairperson's decision is final.

31. Right to Appoint Proxies

A Member who is entitled to attend and vote at a general meeting of the Company may appoint a person as the Member's proxy to attend and vote for the Member at the meeting and such person needs to be a Member.

32. Appointing a Proxy

- 32.1 The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing or if the appointor is a corporation signed by an authorised Officer or attorney of the corporation.
- 32.2 The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
- (a) the name and address of the Member;
 - (b) the name of the Company;
 - (c) the proxy's name or the name of the office of the proxy; and
 - (d) the meetings at which the instrument of proxy may be used.
- 32.3 An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- 32.4 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by this **clause 32**.
- 32.5 An instrument of proxy may be revoked at any time by notice in writing to the Company.

33. Lodgement of Proxies

33.1 An instrument appointing:

- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
- (b) an attorney to exercise a Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than 48 hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be, at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

33.2 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile was received at that place.

33.3 For the purposes of this clause, it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Company.

34. Validity of Proxies

34.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (a) the death or unsoundness of mind of the Member;
- (b) the bankruptcy or liquidation of the Member; or
- (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

unless the Company has received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least 48 hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

34.2 A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

35. Voting by Proxy

- 35.1 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote;
 - (b) if the way they must vote is specified on the proxy form, must vote that way; and
 - (c) if the proxy is also a Member or holds more than one proxy, may cast the votes held in different ways.
- 35.2 A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.

36. Number of Directors

The Company must have at least 3 and no more than 13 Directors.

37. Composition of the Board

- 37.1 The Board shall be comprised as follows:
- (a) one Director from the glass sector and one Director from the window sector who are Member Representatives of a Member entitled to vote who operates in Northern Australia;
 - (b) one Director from the glass sector and one Director from the window sector who are Member Representatives of a Member entitled to vote who operates in Southern Australia;
 - (c) one Director from the glass sector and one Director from the window sector who are Member Representatives of a Member entitled to vote who operates in Eastern Australia;
 - (d) one Director from the glass sector and one Director from the window sector who are Member Representatives of a Member entitled to vote who operates in Western Australia;
 - (e) 2 Directors who are Member Representatives of a Supplier Member;
 - (f) up to 2 Directors appointed by the Board in accordance with **clause 41**; and
 - (g) the Executive Director.
- 37.2 No 2 Directors (other than Directors appointed by the Board in accordance with **clause 41**) can be Member Representatives of the same Member.

38. Election of Directors

- 38.1 Apart from the Executive Director and Directors appointed under **clauses 41 and 43**, the Members may elect a Director by a resolution passed in a general meeting.
- 38.2 A person is eligible for election as a Director of the Company if they:
- (a) are nominated in writing by 2 Members entitled to vote or Member Representatives of 2 Members entitled to vote (other than the person being nominated);
 - (b) are selected by the Nominations Committee as a suitable candidate for Director;
 - (c) give the Company their signed consent to act as a Director of the Company;
 - (d) deliver the written nomination and signed consent to the Secretary not less than 7 days before the date of the general meeting at which the election is to take place; and
 - (e) are not ineligible to be a Director under the Act.
- 38.3 If the number of nominations received is equal to or less than the number of vacancies to be filled, the persons nominated shall be deemed to be elected.

39. Nominations

39.1 Nominations Committee

- (a) At least 6 months before each annual general meeting at which there will be an election of Directors, the Board must

form a Nomination Committee to call for and review nominations for Director in accordance with **clause 44.1**.
- (b) The Board may from time to time pass By-laws pursuant to **clause 64 (Nomination Committee By-Laws)** which sets out the Nomination Committee's rights and responsibilities, including:
 - (i) calling for nomination of candidates for election as Director:
 - (A) as required under clause 38.2(a);
 - (B) for such positions within the categories specified at **clauses 37.1(a) to (e)** as are available in that election;
 - (ii) reviewing nominations;
 - (iii) reporting to the Board regarding the eligibility, qualities and diversity of nominated candidates (having regard to the positions available);
 - (iv) preparing candidate information for distribution to Members prior to a general meeting at which Directors will be elected; and

(v) such other powers as the Board deems fit.

- 39.2 The Nominations Committee must comply with the Nomination Committee By-Laws in relation to each Director election.
- 39.3 The Nominations Committee must, when calling for nominations, have regard to the requirements of **clauses 37.1(a) to (e)** in relation to the available positions at the relevant election.
- 39.4 To give effect to **clause 37.2**, the Nomination Committee shall reject a nomination of a person who is a Member Representative of the same Member as an existing Director whose term will continue beyond the relevant general meeting.

40. Term of Office

- 40.1 In this **clause 40, Election AGM** means an annual general meeting held in an odd numbered year.
- 40.2 Subject to **clause 40**, a Director will hold office for a term of 4 years.
- 40.3 At every Election AGM, any Director appointed to fill a casual vacancy of an elected Director position shall resign.
- 40.4 At every Election AGM commencing in 2023:
- (a) 2 Directors representing the glass sector and 2 Directors representing the window sector must retire in the order specified at **clause 40.5**; and
 - (b) one Director who is a Member Representative of a Supplier Member must retire.
- 40.5 To give effect to the remaining provisions of this **clause 40**, at the 2021 Election AGM:
- (a) the Director elected to represent the glass sector in Northern Australia will have a term of 4 years;
 - (b) the Director elected to represent the window sector in Northern Australia will have a term of 2 years;
 - (c) the Director elected to represent the glass sector in Southern Australia will have a term of 4 years;
 - (d) the Director elected to represent the window sector in Southern Australia will have a term of 2 years;
 - (e) the Director elected to represent the glass sector in Eastern Australia will have a term of 2 years;
 - (f) the Director elected to represent the window sector in Eastern Australia will have a term of 4 years;
 - (g) the Director elected to represent the glass sector in Western Australia will have a term of 2 years;

- (h) the Director elected to represent the window sector in Western Australia will have a term of 4 years;
 - (i) one Director who is a Member Representative of a Supplier Member will be elected for a term of 2 years; and
 - (j) one Director who is a Member Representative of a Supplier Member will be elected for a term of 4 years; and
- 40.6 A Director's term of office starts at the end of the Election AGM at which they are elected and ends at the end of the Election AGM at which they retire.
- 40.7 Subject to **clause 40.8**, a Director who retires under **clause 40.3** may be nominated for re-election for another term of 4 years.
- 40.8 A Director who has held office for 12 consecutive years or more may only be re-elected by a Special Resolution of Members.

41. Appointed Directors

- 41.1 The Board may from time to time appoint up to 2 additional Directors where it considers that a particular cohort of the Membership may not be represented or to ensure a spread of skill and expertise amongst the Board.
- 41.2 The term of any Director appointed by the Board pursuant to **clause 41.1** shall be for up to 4 years, as determined by the Board.

42. When a Director Stops being a Director

A Director stops being a Director if they:

- (a) cease to be a Member entitled to vote;
- (b) if the Director is a Member Representative, the Member they represent ceases to be a Member entitled to vote or they cease to be the Member Representative of that Member;
- (c) give written notice of resignation as a Director to the Office of the Company and the vacancy shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company);
- (d) die;
- (e) are adjudicated bankrupt;
- (f) are removed as a Director by a resolution of the Members;
- (g) are absent for 3 consecutive Board meetings without approval from the Directors and the Directors resolve that his or her office be vacated;
- (h) become ineligible to be a Director of the Company under the Act;

- (i) become of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health; or
- (j) in the case of the Executive Director, he or she is removed from office under **clause 46.3(d)**.

43. Vacancies

- 43.1 Subject to the Corporations Act and this **clause 43**, the Board may at any time appoint any person to be a Director to fill a casual vacancy.
- 43.2 Any person appointed to fill a casual vacancy of an elected Director position will hold office and must retire at the next Election AGM (as defined at **clause 40.1**) after their appointment.
- 43.3 Any person appointed to fill a casual vacancy of a Director appointed by the Board pursuant to **clause 41** will hold office for the term specified by the Board in its notice of appointment.

44. Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by at least 2 Directors. The Directors may determine that a negotiable instrument may be signed, accepted, drawn, endorsed or otherwise executed in a different way.

45. Power of Directors

All day-to-day control, management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not required by the Act or by this Constitution to be exercised in any other manner.

46. Executive Director

- 46.1 The Board will appoint an Executive Director.
- 46.2 The Executive Director is, by virtue of his or her appointment, a Director.
- 46.3 If an Executive Director is appointed by the Board pursuant to **clause 46.1**, the Board may by resolution:
 - (a) delegate to, or confer on, the Executive Director, any of the powers and duties of the Board;
 - (b) specify any terms and restrictions that the Executive Director's power and duties are subject to;
 - (c) determine the term of office of the Executive Director; and/or
 - (d) remove the Executive Director from office.

- 46.4 Powers conferred under this clause may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.
- 46.5 The delegation must be recorded in the Company's minute book.

47. Committee of Directors

- 47.1 The Board may form and delegate any of its powers to a Committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation. All such Committees must be chaired by a Director.
- 47.2 A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- 47.3 The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- 47.4 A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these minutes shall be tabled at the next Board meeting.

48. Payments to Directors

- 48.1 Subject to compliance with the terms of any applicable laws, the Directors may, if the Members resolve by ordinary resolution, be paid reasonable remuneration for their services the aggregate annual sum that is fixed by the Members from time to time. If a sum is voted by the Members, it will be divided amongst the Directors as the Members decide.
- 48.2 This clause does not limit any payment for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity of Director, where the provision of the service has the prior approval of the Directors of the Company and where the amount payable is approved by the Directors of the Company and is not more than an amount which commercially would be reasonable payment for the service.
- 48.3 The Directors shall be entitled to be paid or reimbursed for all travelling and other expenses reasonably incurred by them in connection with any meeting of the Directors, any meeting of a committee, general meetings of the Company and otherwise in connection with fulfilment of their duties as a Director.
- 48.4 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Act) and this Constitution.

49. Conflicts of Interest

- 49.1 A Director must disclose the nature and extent of any actual or perceived 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.
- 49.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 49.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of the Board (or that is proposed in a circular resolution) must not, except as provided under **clause 49.4**:
- (a) be present at the meeting while the matter is being discussed, or
 - (b) vote on the matter.
- 49.4 A Director may still be present and vote if:
- (a) their interest arises because they are a Member and the other Members have the same interest;
 - (b) 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;
 - (c) their interest relates to an indemnity payment by the Company, or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (d) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the Director to vote on the matter; or
 - (e) 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.

50. Duties of Directors

The Directors must comply with their duties as Directors under the Act and common law (judge-made law), which are:

- (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 set out in **clause 5.1**;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in **clause 49**;
- (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.

51. When the Directors Meet

The Directors may decide how often, where and when they meet, provided that they shall meet together at least quarterly in each period of 12 months.

52. Calling Board Meetings

- 52.1 A Director may at any time and the Secretary upon the request of a Director shall convene a Board meeting by giving notice of the meeting to all Directors at least 7 days or such period as unanimously agreed upon by the Board.
- 52.2 Notice of a Board meeting need not be in writing, but must specify the nature of the business to be transacted at the meeting. No business other than the specified business can be transacted at the meeting, except where the Directors present at the Board meeting unanimously agree to treat that business as urgent.

53. Using Technology to Hold Board Meetings

- 53.1 The Directors may hold Board meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- 53.2 The Directors' agreement may be a standing one.
- 53.3 A Director may only withdraw their consent within a reasonable period before the meeting.
- 53.4 A Director who participates in a Board meeting using technology is taken to be present at the meeting, and if the Director votes at the meeting, is taken to have voted in person.

54. Quorum at Board Meetings

- 54.1 Unless the Directors determine otherwise, the quorum for a Board meeting is a minimum of half the total number of Directors plus one.

- 54.2 Directors who are personally present (or in conference in accordance with **clause 53**) form a quorum. A Director who is disqualified from voting on a matter pursuant to **clause 49** shall be counted in the quorum despite that disqualification.
- 54.3 No business may be transacted at any Board meeting unless a quorum of Directors is present at all times during the meeting.
- 54.4 If within an hour of the scheduled time for the meeting a quorum is not present, the meeting stands adjourned to the same place and at the same hour of the same day in the following week. If at the adjourned meeting a quorum is not present within an hour of the scheduled time for the meeting, the meeting will be dissolved.
- 54.5 All resolutions of the Directors passed at a Board meeting where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be valid as if notice of the meeting had been duly given to all Directors.

55. Chairperson

- 55.1 The Chairperson shall, if present, preside as chairperson of every Board meeting.
- 55.2 If a Board meeting is held and the Chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or, if present, does not wish to chair the meeting, then the other Directors present must elect one of their number to be Chairperson of the meeting.

56. Voting

- 56.1 A resolution of the Board must be passed by a majority of votes of the Directors present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.
- 56.2 Each Director shall have one vote.
- 56.3 In case of an equality of votes at a Board meeting, the Chairperson does not have a casting vote in addition to a deliberative vote.

57. Resolutions by Directors

- 57.1 The Board may pass a resolution by way of a circular resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- 57.2 The resolution is passed when the last Director signs.

- 57.3 A transmission, via whatever technological means, which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause be taken to be in writing and signed by that Director at the time of the receipt of the transmission by the Company in legible form.
- 57.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

58. Validation of Acts of Directors

All acts done:

- (a) at any Board meeting; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

59. Minutes and Records

- 59.1 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings;
 - (b) circular resolutions of Members; and
 - (c) a copy of a notice of each general meeting.
- 59.2 The Company must make and keep the following records:
- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any Committees); and
 - (b) circular resolutions of Directors.
- 59.3 To allow Members to inspect the Company's records:
- (a) the Company must give a Member reasonable access to the records set out in **clause 59.1**; and
 - (b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in **clause 59.2** and **clause 62.1**.
- 59.4 The Directors must ensure that minutes of a general meeting or a Board meeting are signed within a reasonable time after the meeting by:
- (a) the Chairperson of the meeting; or

(b) the Chairperson of the next meeting.

59.5 The Directors must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by the Chairperson within a reasonable time after the resolution is passed.

60. Appointment and Role of Secretary

60.1 The Company must have at least one Secretary.

60.2 The Executive Director shall by virtue of their position act as Secretary subject to the Executive Director first giving the Company their written consent to act as Secretary.

60.3 The role of the Secretary includes:

- (a) maintaining a Register of the Company's Members; and
- (b) maintaining the minutes and other records of general meetings (including notices of meetings), Board meetings and circular resolutions.

61. Execution of Documents

61.1 Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act, the Company may execute a document without using a common seal if the document is signed by:

- (a) two Directors of the Company, or
- (b) a Director and the Secretary.

61.2 Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

62. Financial and Related Records

62.1 The Company must make and keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) enable true and fair financial statements to be prepared and to be audited.

62.2 The Company must also keep written records that correctly record its operations.

62.3 The Company must retain its records for at least 7 years.

62.4 The Directors must take reasonable steps to ensure that the Company's records are kept safe.

63. Directors' Access to Documents

- 63.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 63.2 If the Directors agree, 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.

64. By-Laws

- 64.1 The Directors may pass a resolution to make by-laws to give effect to this Constitution. By-laws may not be inconsistent with this Constitution and, in the event of any inconsistency, the provisions of the Constitution will prevail.
- 64.2 Members and Directors must comply with by-laws as if they were part of this Constitution.

65. When Notice is Taken to be Given

Written notice under this Constitution may be:

- (a) delivered in person, or left at the recipient's address, and is taken to be given on the day it is delivered;
- (b) sent by post, and is taken to be given on the third day after it is posted with the correct payment of postage costs; or
- (c) sent by email, fax or other electronic method as agreed to by the recipient and is taken to be given on the Business Day after it is sent.

66. Winding Up

- 66.1 The Company may be dissolved by a Special Resolution of Members at a meeting of Members. If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members unless the Members satisfies the criteria in (a) to (c), but will be given or transferred to one or more corporations or institutions which have:
- (a) objects which are similar to the objects of the Company as set out in **clause 5.1**;
 - (b) a governing document which requires its income and property to be applied in promoting its objects; and
 - (c) a governing document which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on the Company by **clause 6**.

- 66.2 The identity of the corporation(s) or institution(s) is to be determined by a Special Resolution of the Members at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

67. Indemnity

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee).

However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

68. Payment of Indemnity Policy Premium

- 68.1 To the extent permitted by law, the Company may at the discretion of the Board enter into and pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (b) a contravention of sections 182 or 183 of the Act.
- 68.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- 68.3 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions then the Company shall not be required to indemnify the Officer under **clause 67** except to the extent that the indemnity affected by the insurance policy does not fully cover the persons liability.

69. Indemnity to Continue

The indemnity granted by the Company, contained in **clause 67**, shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.