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# CONSTITUTION

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**BONG BONG PICNIC RACE CLUB LIMITED**



**ACN 002 275 658**

MARCH 31, 2016

Kangaloon Road, East Bowral NSW 2576

**Table of Contents**

1. NAME OF COMPANY .....	3
2. TYPE OF COMPANY .....	3
3. LIMITED LIABILITY OF MEMBERS .....	3
4. DEFINITIONS .....	3
5. POWERS.....	5
6. NOT-FOR-PROFIT.....	5
7. AMENDING THE CONSTITUTION .....	6
8. MEMBERSHIP .....	6
9. HONORARY LIFE MEMBERSHIP.....	6
10. APPLICATION FOR MEMBERSHIP .....	6
11. REGISTER OF MEMBERS.....	7
12. WHEN A PERSON STOPS BEING A MEMBER .....	8
13. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE .....	8
14. APPLICATION FEE AND ANNUAL SUBSCRIPTION .....	8
15. MEMBERS' RIGHTS .....	8
16. DISPUTE RESOLUTION .....	9
17. DISCIPLINARY PROCEDURES.....	10
18. CONVENING OF GENERAL MEETINGS .....	11
19. ANNUAL GENERAL MEETING .....	12
20. NOTICE OF GENERAL MEETINGS.....	12
21. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETINGS .....	14
22. QUORUM .....	14
23. CHAIRMAN .....	14
24. CHAIRMAN'S CASTING VOTE .....	15
25. ADJOURNMENT OF MEETINGS .....	15
26. HOW VOTING IS CONDUCTED.....	15
27. POLLS .....	16
28. VOTING RIGHTS.....	16
29. CHALLENGE TO A MEMBER'S RIGHT TO VOTE.....	16
30. RIGHT TO APPOINT PROXIES.....	17
31. APPOINTING A PROXY .....	17
32. LODGEMENT OF PROXIES .....	17

Constitution of Bong Bong Picnic Race Club Limited (ACN 002 275 658)

33.	VALIDITY OF PROXIES.....	18
34.	VOTING BY PROXY .....	18
35.	NUMBER OF DIRECTORS .....	19
36.	ELECTION AND APPOINTMENT OF DIRECTORS .....	19
37.	TERM OF OFFICE OF DIRECTORS .....	20
38.	WHEN A DIRECTOR STOPS BEING A DIRECTOR.....	20
39.	POWERS OF DIRECTORS .....	21
40.	DELEGATION OF DIRECTOR POWERS .....	21
41.	PAYMENTS TO DIRECTORS.....	21
42.	CONFLICTS OF INTEREST .....	22
43.	DUTIES OF DIRECTORS.....	23
44.	WHEN DIRECTORS MEET .....	23
45.	CALLING MEETINGS OF DIRECTORS .....	23
46.	USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS .....	23
47.	QUORUM AT DIRECTORS' MEETINGS.....	24
48.	CHAIRMAN .....	24
49.	VOTING .....	24
50.	RESOLUTIONS BY DIRECTORS.....	24
51.	COMMITTEES .....	25
52.	VALIDATION OF ACTS OF DIRECTORS.....	25
53.	MINUTES AND RECORDS.....	26
54.	APPOINTMENT AND ROLE OF COMPANY SECRETARY .....	26
55.	TREASURER.....	27
56.	EXECUTION OF DOCUMENTS .....	27
57.	NEGOTIABLE INSTRUMENTS .....	28
58.	FINANCIAL AND RELATED RECORDS.....	28
59.	ACCOUNTS .....	28
60.	AUDIT OR REVIEW OF ACCOUNTS.....	28
61.	DIRECTOR ACCESS .....	29
62.	WHEN NOTICE IS TAKEN TO BE GIVEN .....	29
63.	WINDING UP .....	30
64.	INDEMNITY AND INSURANCE .....	30

Constitution of Bong Bong Picnic Race Club Limited (ACN 002 275 658)

**1. NAME OF COMPANY**

The name of the Company is Bong Bong Picnic Race Club Limited ACN 002 275 658 (**the Company**).

**2. TYPE OF COMPANY**

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

**3. LIMITED LIABILITY OF MEMBERS**

3.1 Each Member must contribute an amount that is the greater of \$20.00 or one year's annual membership (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 (Cth).

**Board** means the Board of Directors.

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

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

**Committee** means a committee established in accordance with clause 53.

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

**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.

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

**Honorary Life Member** means a person who qualifies as an honorary life member pursuant to clause 9.

**Member** means a Member of the Company who has paid their application fee and their annual subscription on time.

**Negotiable instrument** means:

- (a) a bill of exchange, promissory note, cheque or other negotiable instrument; or
- (b) an indorsement on, or order in, a bill of exchange, promissory note, cheque or other negotiable instrument.

**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.

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

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

**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.

**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 of the Company entitled to vote on the resolution in person or by proxy.

**Treasurer** means the person appointed as the treasurer of the Company and includes any assistant or acting treasurer.

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. POWERS

The Company has the following powers:

- (a) the powers of an individual; and
- (b) all of the powers of a company limited by guarantee.

## 6. NOT-FOR-PROFIT

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. However, nothing in this Constitution will prevent payment in good faith to a Member:

- (a) In return for services rendered or goods supplied in the ordinary course of business to the Company;
- (b) Of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company; or
- (c) Of reasonable and proper rent for premises leased by any Member to the Company.

**7. AMENDING THE CONSTITUTION**

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

**8. MEMBERSHIP**

8.1 The maximum number of Members of the Company is 20,000, but may be altered by the Board from time to time.

8.2 The Members of the Company are persons that are admitted as Members in accordance with this Constitution, subject to clause 12.

8.3 In this clause, 'person' means an individual or incorporated body.

**9. HONORARY LIFE MEMBERSHIP**

9.1 Honorary Life Membership may be granted by a majority vote of the Board to any person or persons who has or have made an outstanding contribution to the Company.

9.2 Honorary Life Members will not be required to pay any annual membership fees.

9.3 Honorary Life Members will otherwise have the same benefits and responsibilities as Members.

9.4 Any person who at the date of this constitution had been granted Honorary Life Membership of the Company shall retain such membership.

**10. APPLICATION FOR MEMBERSHIP**

10.1 No application for Membership will be considered unless a vacancy exists at the date the application is received.

10.2 Every application for Membership of the Company must:

(a) be fully completed in the format required by the Company;

(b) be signed by the applicant;

(c) be endorsed by 2 Members;

(d) be accompanied by payment of the applicant's application fee and annual subscription.

(e) state that the applicant agrees to comply with the terms of the Company's Constitution; and

(f) be lodged with the Company Secretary.

10.3 Unless otherwise decided by the Board, applications for Membership will be considered by the Company Secretary or, in the absence of the Company Secretary, by a Director, who will have the absolute discretion:

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

10.4 The Company Secretary must, as soon as is practicable notify the applicant in writing of their approval for Membership.

10.5 If the Board rejects an application for Membership, the Company Secretary must as soon as is practicable notify the applicant in writing that their application has been rejected. In no case shall the Company be required to give any reason for the rejection of an applicant.

## **11. REGISTER OF MEMBERS**

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

- (a) the Member's name and address;
- (b) the date on which the entry of the Member's name in the Register is made; and
- (c) such other information as is deemed to be necessary for the good governance of the Company.

11.2 The register of members must also show:

- (a) the name and details of each person who stopped being a member of the Company within the last 7 years; and
- (b) the date on which the person stopped being a member.

Members have the right to inspect the Register without charge.

11.3 The Company shall provide a copy of the Register or a part of the Register to either a member or another person provided that the person makes an application in a prescribed manner and pays the prescribed fee. An application for a copy of the Register must:

- (a) state each purpose for which the person is accessing a copy (none of which must be an 'improper purpose'); and
- (b) include the name and address of the applicant.

The Company can refuse to provide a copy where the stated purpose is an improper purpose as provided in the Corporations Regulations 2001.



**12. 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 Company Secretary;
- (d) the Company in general meeting resolves by a resolution with a 75% majority of Members, to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least 21 days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed;
- (e) they fail to pay their application fee and/or their annual subscription within 60 days of the due date for payment or such period of time allowed for payment.
- (f) they have not responded within three months to a written request from the Company Secretary that they confirm in writing that they want to remain a Member.

**13. 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.

**14. APPLICATION FEE AND ANNUAL SUBSCRIPTION**

14.1 The application fee and annual subscription payable by Members of the Company shall be as determined by the Board.

14.2 Annual subscriptions are payable in advance by 31 May of every year for a year of membership commencing on 1 June and ending on 31 May (or as otherwise resolved by the Board).

**15. MEMBERS' RIGHTS**

15.1 Members of the Company will be entitled:

- (a) to receive notice of and attend and vote at general meetings of the Company;

(b) the member may elect to receive, free of charge, a copy of the annual report for each financial year; or

(c) if the member does not so elect, the member may access the reports, on a specified website; and

(d) a Member may elect to not receive the annual report.

15.2 All other rights, privileges and obligations of Members that are in accordance with the Act.

## **16. DISPUTE RESOLUTION**

16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or a 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 Chairman; 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 Chairman 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.
- (e) if not resolved then proceed under clause 17.

## **17. DISCIPLINARY PROCEDURES**

17.1 In accordance with this clause, the Directors may resolve to warn, suspend or expel a Member (or the Member's Representative, as appropriate) from the Company if the Directors consider that:

- (a) the Member has failed to comply with this Constitution; or
- (b) the Member's behaviour 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; or
- (b) brings the Company into disrepute; or
- (c) breaches any of the Company's codes of conduct.

17.3 At least 7 days before the Directors' meeting at which a resolution under clause 17.1 will be considered, the Company Secretary must notify the Member in writing:

- (a) that the Directors are considering a resolution to warn, suspend or expel the Member;
- (b) that this resolution will be considered at a Directors' meeting and the date of that meeting;
- (c) what the Member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the Member may provide an explanation to the Directors, and details of how to do so.

Constitution of Bong Bong Picnic Race Club Limited (ACN 002 275 658)

17.4 Before the Directors pass any resolution under clause 17.1 the Member must be given a chance to explain or to defend themselves by:

- (a) sending the Directors a written explanation before that Directors' 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;
- (c) suspend the Member's rights as a Member for a period of no more than 12 months;
- (d) expel the Member;
- (e) refer the decision to an unbiased, independent person on 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 Company Secretary must give written notice to the Member of the decision under clause 17.5 as soon as possible.

17.8 Disciplinary procedures must be completed as soon as reasonably practical.

17.9 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.

17.10 Notwithstanding the remainder of this clause 17, the Directors may reinstate the Member and restore his or her name to the Register of Members if they think fit to do so.

**18. CONVENING OF GENERAL MEETINGS**

18.1 A Director may convene a meeting of the Company's Members.

18.2 The Directors must call and arrange to hold a general meeting on the request of:

- (a) Members with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 members who are entitled to vote at the general meeting.

18.3 The request must:

- (a) be in writing; and
- (b) state any resolution to be proposed at the meeting; and
- (c) be signed by the Members making the request; and
- (d) be given to the Company.

18.4 The Members calling the meeting must pay the expenses of calling and holding the meeting.

**19. ANNUAL GENERAL MEETING**

19.1 A general meeting, called the annual general meeting, must be held at least once in every calendar year and within 5 months after the end of the Financial Year.

19.2 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) an auditor's report, if any;
- (d) the election of Directors; and
- (e) the appointment and payment of auditors, if any.

19.3 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.

19.4 The Chairman of the annual general meeting must give Members a reasonable opportunity at the meeting to ask questions or to make comments about the management of the Company.

**20. NOTICE OF GENERAL MEETINGS**

20.1 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).

20.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.

Constitution of Bong Bong Picnic Race Club Limited (ACN 002 275 658)

20.3 Subject to clause 20.4, 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.

20.4 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 (if any).

20.5 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 two or more places, 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.

20.6 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.

20.7 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 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.

**21. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETINGS**

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

**22. QUORUM**

22.1 No business may be transacted at any general meeting unless a quorum of Members is present at all times during the meeting.

22.2 When determining whether a quorum is present, a person may only be counted once (even if that person is a Representative or proxy of more than one Member).

22.3 Twenty (20) Members attending in person or by proxy and entitled to vote constitute a quorum for all general meetings.

22.4 If within 30 minutes 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;  
(b) in any other case:

(i) it 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:

(A) then if at least 10 Members are present in person or by proxy, those Members and proxies will be a quorum; and

(B) if less than 10 Members are present in person or by proxy, the meeting shall be dissolved.

**23. CHAIRMAN**

23.1 The Chairman shall be elected annually by majority vote of the Board at the first Board meeting held after the annual general meeting of the Company.

23.2 The Chairman shall be entitled to preside as Chairman at every general meeting.

23.3 Where a general meeting is held and:

(a) there is no Chairman; or

(b) the Chairman is not present within 30 minutes after the time appointed for the holding of the meeting or if present is unwilling to act as Chairman of the meeting, the other Directors present may choose another Director as Chairman of the meeting by two-thirds majority, or if their number is not three or a multiple of three, then the nearest number to one-third. 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 Chairman of the meeting.

23.4 The rulings of the Chairman 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.

**24. CHAIRMAN'S CASTING VOTE**

In the case of an equality of votes whether on a show of hands or on a poll the Chairman of the meeting at which the show of hands is taken or at which the poll is demanded is entitled to a second or casting vote.

**25. ADJOURNMENT OF MEETINGS**

25.1 The Chairman of a general meeting at which a quorum is present:

(a) may adjourn a meeting with the consent of the meeting; and

(b) must adjourn the meeting if the meeting so directs, to a time and place as determined by the Chairman.

25.2 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.

25.3 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

25.4 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.

**26. HOW VOTING IS CONDUCTED**

26.1 At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:

(a) the Chairman of the meeting; or



(b) at least 5 Members entitled to vote who are present in person.

26.2 Before a vote is taken, the Chairman must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

26.3 On a show of hands, the Chairman's decision is conclusive evidence of the result of the vote.

26.4 The Chairman 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.

## **27. POLLS**

27.1 A poll may be demanded:

(a) before a vote on a resolution is taken;

(b) before the voting results on a show of hands are declared; or

(c) immediately after the voting results on a show of hands are declared.

27.2 If a poll is demanded it must be taken in such manner and at such time and place as the Chairman of the meeting directs subject to clause 27.5.

27.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.

27.4 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.

27.5 A poll demanded on the election of a Chairman or any question of adjournment of the meeting must be taken immediately.

27.6 The demand for a poll may be withdrawn.

## **28. VOTING RIGHTS**

A Member entitled to vote has one vote.

## **29. CHALLENGE TO A MEMBER'S RIGHT TO VOTE**

29.1 A Member or the Chairman may only challenge a person's right to vote at a general meeting at that meeting.

29.2 If a challenge is made under clause 29.1, the Chairman must decide whether or not the person may vote. The Chairman's decision is final.

**30. 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 need not be a Member.

**31. APPOINTING A PROXY**

31.1 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.

31.2 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.

31.3 The Board may from time to time prescribe a form for an instrument of proxy.

31.4 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.

31.5 An instrument of proxy may be revoked at any time by notice in writing to the Company.

**32. LODGEMENT OF PROXIES**

32.1 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.

32.2 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.

32.3 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.

### **33. VALIDITY OF PROXIES**

33.1 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;
- (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;

if the Company has not 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.

33.2 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.

### **34. VOTING BY PROXY**

34.1 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.

34.2 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.

**35. NUMBER OF DIRECTORS**

35.1 The Company must have at least 3 but not more than 12 Directors, consisting of:

- (a) the Chairman;
- (b) the Treasurer;
- (c) and up to 10 other Directors.

35.2 The Company may from time to time by ordinary resolution passed at a general meeting increase or reduce the number of Directors.

**36. ELECTION AND APPOINTMENT OF DIRECTORS**

36.1 The initial Directors are the Directors of the Company as at the date of this Constitution.

36.2 Apart from the initial Directors and Directors appointed under clause 36.6, the Members may elect a Director by a resolution passed in a general meeting.

36.3 At least 75% of Directors must reside within the boundaries of Wingecarribee Shire Council area.

36.4 A person is eligible for election as a Director of the Company if they:

- (a) have been a Member of the Company for at least 3 years;
- (b) are nominated by two Members or Representatives of Members entitled to vote;
- (c) give the Company their signed consent to act as a Director of the Company; and
- (d) are not ineligible to be a Director under the Act.

36.5 If the number of Directors is reduced to fewer than three or is less than the number required for a quorum, the continuing Directors may act for the purpose of increasing the number of Directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

36.6 A Director may, with the approval of the Board, appoint an alternate to exercise some or all of the Director's powers for a specified period. If the

appointing Director requests the Company to give the alternate notice of Directors' meetings, the Company must do so. When an alternate exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director. The appointing Director may terminate the alternate's appointment at any time. An appointment and its terms or a termination must be in writing and given to ASIC and the Company.

36.7 The Directors may from time to time appoint any person to fill a casual vacancy of a Director. That person shall hold office until the end of the next annual general meeting in accordance with clause 37 below.

36.8 If a Director is removed from office by a resolution of the Members pursuant to clause 38(c) below, the Members may elect to appoint another Director to replace him or her. That person will hold office until the end of the next annual general meeting.

**37. TERM OF OFFICE OF DIRECTORS**

37.1 At each annual general meeting:

- (a) any Director appointed to fill a casual vacancy must retire, and
- (b) at least one-third of the remaining Directors must retire.

37.2 The Directors who must retire at each annual general meeting under clause 37.1 will be the Directors who have been longest in office since last being elected. Where Directors were elected on the same day, the Director(s) to retire will be decided by lot unless they agree otherwise.

37.3 A Director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.

37.4 Each Director must retire at least once every three years

37.5 A Director who retires under clause 37.1 may be nominated for re-election.

**38. WHEN A DIRECTOR STOPS BEING A DIRECTOR**

38.1 A Director stops being a Director if they:

- (a) 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);
- (b) die;
- (c) are removed as a Director by a resolution of the Members;

(d) is absent for more than 2 Board Meetings without the approval of the Directors;

(e) cease to be a Member of the Company; or

(f) becomes 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.

**39. POWERS OF DIRECTORS**

40.1 The business of a company is to be managed by or under the direction of the Directors.

40.2 The Directors may exercise all the powers of the Company except any powers that the Act or the Company's Constitution (if any) requires the Company to exercise in general meeting.

**40. DELEGATION OF DIRECTOR POWERS**

40.1 The Directors may delegate any of their powers to:

(a) a committee of Directors; or

(b) a Director; or

(c) an employee of the Company; or

(d) any other person.

The delegation must be recorded in the Company's minute book.

40.2 The delegate must exercise the powers delegated in accordance with any directions of the Directors.

40.3 The exercise of the power by the delegate is as effective as if the Directors had exercised it.

**41. PAYMENTS TO DIRECTORS**

41.1 The Company may:

(a) pay a Director for any services rendered to the Company in a professional or technical capacity, other than as a Director, if the amount is no more than a reasonable fee for the work done; or

(b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.

41.2 Any payment made under clause 41.1 must be approved by the Directors.

41.3 The Company may pay premiums for insurance indemnifying Directors, as allowed for by law (including the Act) and this Constitution.

## **42. CONFLICTS OF INTEREST**

42.1 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 Directors (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.

42.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

42.3 A general notice given to the Board by a Director that the Director is an Officer, a member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

42.4 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a Circular Resolution) must not, except as provided under clauses 43.5:

(a) be present at the meeting while the matter is being discussed; or

(b) vote on the matter.

42.5 A Director may still be present and vote if:

(a) their interest arises because they are a Member of the Company, and the other Directors 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 (see clause 66);

(c) their interest relates to a payment by the Company under clause 64 (indemnity), or any contract relating to an indemnity that is allowed under the 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.

**43. DUTIES OF DIRECTORS**

The Directors must comply with their duties as Directors which include:

(a) to act in good faith;

(b) to act in the best interests of the Company;

(c) to avoid conflicts between the interests of the Company and the Director's interests;

(d) to act honestly;

(e) to exercise due care and diligence; and

(f) to prevent the Company trading while it is unable to pay its debts as and when they fall due.

**44. WHEN DIRECTORS MEET**

The Directors may decide how often, where and when they meet, provided that they shall meet together not less than 6 times each calendar year.

**45. CALLING MEETINGS OF DIRECTORS**

45.1 A Director may at any time and the Company Secretary upon the request of a Director shall convene a meeting of Board by giving at least 48 hours' notice of the meeting to all Directors.

45.2 Notice of a meeting of the Board need not be in writing.

**46. USING TECHNOLOGY TO HOLD DIRECTORS' MEETINGS**

46.1 The Directors may hold their meetings by using any technology that is agreed to by all of the Directors.

46.2 The Directors' agreement may be a standing one.

46.3 A Director may only withdraw their consent within a reasonable period before the meeting.



**47. QUORUM AT DIRECTORS' MEETINGS**

47.1 Unless the Directors determine otherwise, the quorum for a Board meeting is a majority (50%) of Directors plus one.

47.2 No business may be transacted at any Board meeting unless a quorum of Directors is present at all times during the meeting.

47.3 Directors who are personally present (or in conference in accordance with clause 46) form a quorum. A Director who is disqualified from voting on a matter pursuant to clause 42 shall be counted in the quorum despite that disqualification.

47.4 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, are valid as if notice of the meeting had been duly given to all Directors.

**48. CHAIRMAN**

48.1 The Chairman shall, if present, preside as Chairman of every meeting of the Board.

48.2 If a meeting of the Board is held and the Chairman is not present within 30 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 Chairman of the meeting.

**49. VOTING**

49.1 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.

49.2 Each Director shall have one vote.

49.3 In case of an equality of votes at a meeting of the Board, the Chairman will have a casting vote in addition to a deliberative vote.

**50. RESOLUTIONS BY DIRECTORS**

50.1 The Directors of the Company may pass a resolution without a Directors' meeting being held if all 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.

50.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

50.3 The resolution is passed when the last Director signs.

50.4 The Company may send a Circular Resolution by electronic means to the Directors and the Directors may agree to the resolution by sending a reply by electronic means to that effect, including the text of the resolution in their reply.

## **51. COMMITTEES**

51.1 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.

51.2 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.

51.3 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.

51.4 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.

## **52. VALIDATION OF ACTS OF DIRECTORS**

All acts done:

(a) at any meeting of the Board; 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.

**53. MINUTES AND RECORDS**

53.1 The Company must make and keep the following records:

- (a) minutes of proceedings and resolutions of general meetings;
- (b) circular resolutions of Members;
- (c) a copy of a notice of each general meeting.

53.2 The Company must make and keep the following records:

- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any Committees); and
- (b) circular resolutions of Directors.

53.3 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 53.1; and
- (b) the Directors may authorise a Member to inspect other records of the Company, including records referred to in clause 53.2 and clause 58.1.

53.4 The Directors must ensure that minutes of a general meeting or a Directors' meeting are signed within a reasonable time after the meeting by:

- (a) the Chairman of the meeting; or
- (b) the Chairman of the next meeting.

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

53.6 Without limitation to the remainder of this clause 53, the Directors must also cause Minutes to be made of all:

- (a) appointments of officers;
- (b) names of Directors present at all meetings of the Company and of the Board; and
- (c) proceedings at all meetings of the Company and of the Board.

Such Minutes must be signed by the Chairman of the meeting at which the proceedings were held or by the Chairman of the next succeeding meeting.

**54. APPOINTMENT AND ROLE OF COMPANY SECRETARY**

54.1 The Company must have at least one Company Secretary, who may also be a Director or Member.

Constitution of Bong Bong Picnic Race Club Limited (ACN 002 275 658)

54.2 A Company Secretary must be appointed by the Directors (after giving the Company their signed consent to act as Secretary of the Company) and may be removed from that role by the Directors.

54.3 The Directors must decide the terms and conditions under which the Company Secretary is appointed, including any remuneration.

54.4 The role of the Company Secretary includes:

- (a) maintaining a Register of the Company's Members;
- (b) maintaining the minutes and other records of general meetings (including notices of meetings), Directors' meetings and circular resolutions; and
- (c) receiving correspondence to the Company and dealing with it under the direction of the Chairman.

**55. TREASURER**

55.1 The Company must appoint a Treasurer, who must also be a Director.

55.2 A Treasurer must be appointed by the Directors and may be removed from that role by the Directors.

55.3 The Treasurer must:

- (a) supervise the keeping of all books of account and shall ensure that all receipts are properly recorded and accounted for and all payments are properly vouched and authorised; and
- (b) prepare the relevant financial statements required for presentation at annual general meetings and, when requested, make available to the Company's auditor (if any) or to the Company Secretary all relevant books, accounts, documents and records.

**56. EXECUTION OF DOCUMENTS**

The Company may execute a document by having it signed by:

- (a) 2 Directors of the Company; or
- (b) a Director and the Company Secretary

If the document is to have effect as a deed, it should be expressed to be a deed.

**57. NEGOTIABLE INSTRUMENTS**

57.1 Any 2 Directors of the Company or 1 Director and the Company Secretary, may draw, accept, endorse or otherwise execute a negotiable instrument.

57.2 The Directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

**58. FINANCIAL AND RELATED RECORDS**

58.1 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 or, if permitted under the Act, be reviewed.

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

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

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

**59. ACCOUNTS**

59.1 The Company shall maintain a bank account or accounts in its name with such bank or banks as it deems appropriate from time to time.

59.2 All money received by or owing to the Company and all expenditures by or on behalf of the Company must be promptly recorded in the Company's books of account.

59.3 All payments on behalf of the Company shall be made by any method of payment authorised by any 2 Directors or as otherwise resolved by the Board from time to time.

**60. AUDIT OR REVIEW OF ACCOUNTS**

60.1 Subject to clause 60.2 below, a properly qualified auditor must be appointed to carry out an annual audit of the Company's financial records and his or her remuneration must be fixed in accordance with the Act.

60.2 If the Company is permitted under the Act to have its financial records reviewed rather than audited, the Board may resolve in respect of the Company's financial records for a particular Financial Year, to:

- (a) have the financial records reviewed instead of audited; and
- (b) appoint to undertake the review a person permitted under the Act to do so; and
- (c) fix the remuneration for the person carrying out the review in accordance with the Act.

**61. DIRECTOR ACCESS**

61.1 A Director of the Company may inspect the books of the Company (other than its financial records) at all reasonable times for the purposes of a legal proceeding:

- (a) to which the person is a party; or
- (b) that the person proposes in good faith to bring; or
- (c) that the person has reason to believe will be brought against them.

61.2 A person who has ceased to be a Director of a Company may inspect the books of the Company (including its financial records) at all reasonable times for the purposes of a legal proceeding:

- (a) to which the person is a party; or
- (b) that the person proposes in good faith to bring; or
- (c) that the person has reason to believe will be brought against them.

This right continues for 7 years after the person ceased to be a Director of the Company.

61.3 A person authorised to inspect books under this section for the purposes of a legal proceeding may make copies of the books for the purposes of those proceedings.

61.4 The Company must allow a person to exercise their rights to inspect or take copies of the books under this clause.

61.5 A Director of the Company has a right of access to the financial records at all reasonable times.

**62. 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 it is taken to be given on the third day after it is posted with the correct payment of postage costs;

(c) sent by email, fax or other electronic method as agreed to by the recipient, and it is taken to be given on the business day after it is sent.

**63. WINDING UP**

If, on the winding up or dissolution of the Company by any means and for any reason, there remains any surplus after the satisfaction of all the Company's debts and liabilities, the surplus must not be paid to or distributed among the Members of the Company, but must be given or transferred:

(a) to one or more institutions, associations or bodies selected by the Members at or before the dissolution of the Company, established for the encouragement of equine competition and whose rules prohibit the distribution of its or their income and property among its or their Members; or

(b) if the Members do not make a selection pursuant to paragraph(a) for any reason, to one or more institutions, associations or bodies meeting the requirements of paragraph (a) selected by the Board.

**64. INDEMNITY AND INSURANCE**

64.1 The Company is to indemnify each officer of the Company out of the assets of the Company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer.

64.2 Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of any officer of the Company.

64.3 Where the Board considers it appropriate, the Company may:

(a) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the Company against any liability incurred by the officer in or arising out of the conduct of the business of the Company or in or arising out of the discharge of the duties of the officer; and

(b) bind itself in any contract or deed with any officer of the Company to make the payments.

64.4 Where the Board considers it appropriate, the Company may:

Constitution of Bong Bong Picnic Race Club Limited (ACN 002 275 658)

(a) give a former Director access to certain papers, including documents provided or available to the Board and other papers referred to in those documents; and

(b) bind itself in any contract with a Director or former Director to give the access.

64.5 In this clause:

(a) **officer** means:

(1) a Director or Company Secretary, Chief Executive or employee; or

(2) a person appointed as a trustee by, or acting as a trustee at the request of, the Company, and includes a former officer.

(b) **duties of the officer** includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Company or where applicable any other corporation.

(c) **to the relevant extent** means:

(1) to the extent the Company is not precluded by law from doing so;

(2) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, an insurer under any insurance policy); and

(3) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

(d) **liability** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.