

**CORPORATIONS ACT, 2001**  
**CONSTITUTION**  
**OF A COMPANY LIMITED BY GUARANTEE**

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**NATIONAL IRRIGATORS COUNCIL LIMITED**  
**ACN 133 308 326**

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## **1 CAPACITY**

Subject to the Corporations Act, the Company has the legal capacity of a natural person including the capacity to exercise the powers set out in section 124 of the Corporations Act. It is the Members' intention that this Constitution will not restrict or prohibit the exercise by the Company of any of these powers except as expressly stated.

## **2 NOT FOR PERSONAL PROFIT**

The income and property of the Company must be applied solely towards the promotion of the objects of the Company as set out in this Constitution and no portion of it is to be paid or transferred directly or indirectly by way of profit to Members. This does not prevent the payment in good faith:

- (a) of remuneration to any officers or servants of the Company in return for any services rendered to the Company, if such payment is approved by the Directors;
- (b) of remuneration to any Member in return for any services rendered to the Company, if such payment is approved by the Directors;
- (c) for goods supplied in the ordinary and usual course of business;
- (d) of interest at a reasonable and proper rate on money borrowed from any Member;
- (e) of reasonable and proper rent for premises leased or licensed by any Member to the Company.

## **3 OBJECTS**

The Company is established with the following Objects:

- (a) To secure the long-term interests of Members and the irrigation industry by developing and advocating a whole of industry view to protect the security of water entitlements as a property right and seeking to maintain the reliability of water allocations for commercial use in agriculture and/or horticultural production;
- (b) promoting the importance and value of irrigated agriculture; and
- (c) doing anything ancillary or incidental to the attainment of the Objects.

## **4 LIMITED LIABILITY**

The liability of the Members is limited.

## **5 MEMBERS GUARANTEE**

Every Member undertakes to contribute an amount not exceeding \$100.00 to the property of the Company in the event of its being wound up while that person is a Member or within one year afterwards for:

- (a) payment of the debts and liabilities of the Company contracted before the time when that Member ceased to be a Member;

- (b) the costs, charges and expenses of winding up; and
- (c) an adjustment of the rights of contributories among themselves.

## 6 ANNUAL FEE AND LEVY

### 6.1 Board may set fees and levies.

- (a) The Board may set membership fees, including the Annual Subscription Fee, and any levies, and may determine different fees or levies:
  - (i) for different categories or sub-categories of Membership,
  - (ii) within categories or sub-categories of Membership, or
  - (iii) for different Members.
- (b) The Board may in its discretion waive or vary the amount of any fee or levy set.
- (c) Any fee or levy charged to Members is payable in such manner and at such times as are determined by the Board.

## 7 MEMBERS

### 7.1 Members and their Rights

- (a) The membership of the Company will be divided into the following categories of Members:
  - (i) “Entitlement Representative” Members;
  - (ii) “Industry” Members;
  - (iii) “Affiliate” Members.
- (b) Entitlement Representative and Industry Members are eligible to vote, via their nominated Delegate, at a general meeting and in the election of Directors in accordance with **clause 13**.
- (c) Entitlement Representative and Industry Members are eligible to nominate a candidate for election as a Director in accordance with **clause 13**.
- (d) Affiliate Members are not eligible to vote at a general meeting or in election of Directors and are not eligible to nominate candidates for election as a Director.

### 7.2 Eligibility to be a Member

- (a) An entity is eligible to be admitted as an “Entitlement Representative” Member if it:
  - (i) is directly representative of owners of irrigation entitlement at a regional or state level in Australia that is used for commercial agricultural

and/or horticultural purposes; or

- (ii) is an irrigation corporation who owns or operates infrastructure to store or deliver water that is primarily used for commercial agricultural and/or horticultural and other purposes and is not Government owned
  - (iii) has paid all the required membership fees including the Annual Subscription Fee as determined by the Board, which may include for the year in which it is seeking membership;
  - (iv) has consented to becoming a Member by written notice to the Secretary in the form prescribed by the Board from time to time; and
  - (v) supports the Company's Objects.
- (b) An entity is eligible to be admitted as a "Industry" Member if it:
- (i) is an Australian business where water entitlement is critical to its operations by being associated with the commercial use of water entitlements for agricultural and/or horticultural production; or
  - (ii) is an Australian organisation or business that indirectly represents or supports businesses that rely on the commercial use of water entitlements for agriculture and/or horticultural production;
  - (iii) has paid the Annual Subscription Fee for the year in which it is seeking Membership;
  - (iv) has consented to becoming a Member by written notice to the Secretary in the form prescribed by the Board from time to time; and
  - (v) supports the Company's Objects.
- (c) An entity is eligible to be admitted as a "Affiliate" Member if it:
- (i) is an Australian business or organisation whose own rules or constitution preclude it from being eligible as either an Entitlement Representative Member in **clause 7.2 (a)** or an Industry Member in **clause 7.2 (b)**;
  - (ii) executes a document which demonstrates that they cannot meet the eligibility criteria in **clauses 7.2 (a) or (b)**;
  - (iii) executes a document stating that it recognises that Affiliate Membership does not entitle it to a vote in any proceedings of the Company or have the ability to nominate a Director to the Company.
  - (iv) has paid the Annual Subscription Fee for the year in which it is seeking Membership;
  - (v) has consented to becoming a Member by written notice to the Secretary in the form prescribed by the Board from time to time; and
  - (vi) supports the Company's Objects.

### 7.3 Becoming a Member

- (a) An entity that is not a Member at the time of incorporation of the Company (or who was a Member at that time but has since ceased to be a Member) must not be admitted to membership unless:
  - (i) the entity is eligible to become a Member in accordance with the Constitution and any sub-category requirements of the Board; and
  - (ii) the entity's admission as a Member is approved by the Board.
- (b) The Board will meet at such times as it deems necessary to consider applications for Membership.
- (c) An entity becomes a Member and is entitled to exercise the rights of membership when its name is entered in the Register.
- (d) If the Board resolves not to admit an entity, which is eligible for membership under this Constitution, as a Member, the Secretary must as soon as possible:
  - (i) notify that entity in writing of the decision; and
  - (ii) refund the Annual Subscription Fee and levy (if any) paid by the entity to the Company.

### 7.4 Register of Members

The Secretary must keep the Register at the Registered Office and must enter in the Register:

- (a) the name and address of each Member;
- (b) the date on which each Member becomes a Member;
- (c) the category and or sub-category of membership for which the Member is qualified;
- (d) the name and address of the Member's Delegate;
- (e) the date on which any Member ceases to be a Member or alters their category of membership.

The Register must not be used for any other purpose and is to be available for inspection free of charge by any Member upon request.

### 7.5 Ceasing to be a Member

A Member ceases to be a Member of the Company if:

- (a) the Member resigns as a Member in accordance with **clause 7.6**;
- (b) the Member becomes insolvent;
- (c) the Member is expelled from the Company in accordance with **clause 7.8**;



- (d) the Member is given a Termination Notice; or
- (e) the Board resolves in its discretion to cancel the Membership of a Member where that Member's Annual Subscription Fee or any other fee or levy remains unpaid.

## **7.6 Resignation**

A Member may resign as a Member of the Company at any time by giving written notice to the Secretary. The Member's resignation will take effect from the date it is received by the Company. The Member will remain liable to the Company for all debts due by that Member to the Company.

## **7.7 Sub-Categories of Members**

Subject to this Constitution and the Corporations Act, and eligibility criteria and rights outlined in **clause 7.1** the Board may:

- (a) establish any new sub-category of Members within a Membership category and prescribe qualifications, rights, restrictions and obligations of Members in that sub-category;
- (b) vary or abrogate the qualifications, extent of rights, restrictions or obligations of Members in any new or existing sub-category;
- (c) transfer a Member, with the Member's written consent, from membership in one sub-category to membership in another sub-category with twenty-one (21) days' notice of the proposed transfer provided to the Member;
- (d) make any of the changes outlined in **clause 7.7 (a) – (c)** by resolution of the Board;
- (e) establish any new category of Member and prescribe qualifications, rights, restrictions, and obligations of Members in that category; and
- (f) vary or cancel the rights of Members in any new or existing category with the consent of three-quarters of those Members, or by a Special Resolution passed at a separate meeting of those Members, and the provisions of the Constitution relating to general meetings apply so far as they are capable of application with the necessary changes to every such separate meeting; or
- (g) transfer a Member, with the Member's written consent, from membership in one category to membership in another category with twenty-one (21) days' notice of the proposed transfer provided to the Member.
- (h) The rights of Members are not to be taken as being varied by the admission of more Members or the addition or deletion of categories or sub-categories of membership.

## **7.8 Disciplining Members**

Subject to this Constitution and the Corporations Act, the Board has the power to censure, suspend or expel a Member from the Company if the Member:

- (a) wilfully refuses or neglects to comply with the provisions of the Constitution;

- (b) is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Member or prejudicial to the interests, reputation, image or welfare of the Company; or
- (c) fails to pay to the Company any moneys due by the Member to the Company after due notice has been given (together “Disciplining Events”).

## 7.9 Disciplinary Hearing

Where the Board is of the opinion that a Member has committed a Disciplining Event, the Board may by resolution require the Member’s Delegate to attend a Disciplinary Hearing and show cause why that Member should not be censured, suspended or expelled.

## 7.10 Notice of Disciplinary Hearing

Where the Board passes a resolution convening a Disciplinary Hearing, the Secretary must as soon as practicable cause a notice in writing to be served on the Member:

- (a) stating the date, time and place of the Disciplinary Hearing;
- (b) setting out the resolution of the Board and the grounds on which it is based;
- (c) informing the Member that the Member’s Delegate may attend and speak at that meeting and submit to the Board at or prior to that meeting written submissions in relation to the resolution.

## 7.11 Proceedings at Disciplinary Hearing

- (a) At a Disciplinary Hearing, the Board will:
  - (i) give the Member’s Delegate an opportunity to make oral representations;
  - (ii) give due consideration to any written submission submitted to the Board by the Member or the Member’s Delegate during or prior to the meeting; and
  - (iii) by resolution determine the action (if any) to be taken under **clause 7.9**.
- (b) The Board may not censure, suspend or expel a Member under **clause 7.9** unless the decision to do so is approved by at least 75% of the Directors present and entitled to vote.
- (c) The Board may elect to vote on a show of hands or by way of secret ballot.
- (d) Where the Board passes a resolution at a Disciplinary Hearing to censure, suspend or expel a Member, the Company must within 7 days after the date of that resolution, give written notice to the Member of that resolution.

# 8 DELEGATES

## 8.1 Role of the Delegates

Members are required to nominate one (1) representative to exercise that Member’s rights of membership as outlined in **clause 7.1** and attend meetings of the Company (“Delegate”).

Whilst the acts and omissions of a Delegate bind the Delegate's nominating Member, nothing shall derogate from the Company's entitlement to rely on anything which is said (written or oral), done or represented in the name of a Member independently of its Delegate.

## **8.2 Nominating Delegates**

- (a) The Member's nomination of their Delegate must be provided in writing to the Secretary in the format prescribed by the Secretary.
- (b) A person becomes a Delegate and is entitled to exercise the rights of membership of the nominating Member when their name is entered in the Register.

## **8.3 Term and Termination**

- (a) A Member may terminate the appointment of its Delegate and nominate another person as its Delegate at any time by giving written notice to the Secretary.
- (b) Upon receipt of a notice under **clause 8.3(a)**, the Secretary will notify the Delegate that their appointment has been terminated and amend the Register.

## **8.4 Disciplining Delegates**

The provisions of **clauses 7.8 to 7.11** also govern the disciplining of Delegates. The references to "Member" are to read as references to "Delegate" where appropriate.

# **9 GENERAL MEETINGS**

## **9.1 Annual general meeting**

An annual general meeting of the Company must be held in accordance with the Corporations Act.

## **9.2 Directors' power to convene general meeting**

The Board may convene a general meeting whenever they think fit.

## **9.3 Members' power to convene general meeting**

The Board must call and arrange to hold a general meeting on the request of Members made in accordance with section 249D of the Corporations Act.

## **9.4 Notice of general meeting**

- (a) Subject to the provisions of the Corporations Act, not less than twenty-one (21) days' notice of a general meeting or a meeting convened to consider a Special Resolution, must be given in writing to each Member.
- (b) A notice convening a general meeting must specify:
  - (i) 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);
  - (ii) the general nature of the general meeting's business;

- (iii) if the general meeting is an annual general meeting, there must appear in it with reasonable prominence a statement that the meeting is an annual general meeting;
- (iv) if a Special Resolution is to be proposed at the general meeting, an intention to propose the Special Resolution and state the resolution; and
- (v) with reasonable prominence that:
  - A. a Delegate is entitled to attend and vote at the meeting, or the Member is entitled to appoint a proxy to attend and vote; and
  - B. a proxy need not be a Member or a Delegate.
- (c) No business other than that specified in the notice convening a general meeting will be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted in accordance with **clause 10.1(b)**.
- (d) A Member desiring to bring any business before a general meeting may give notice in writing of that business to the Secretary who will include that business in the next notice calling a general meeting given after receipt of the notice from the Member.

## **9.5 Omission to give notice**

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any entity entitled to receive notice does not invalidate the proceedings at the meeting.

## **9.6 Auditor's right to attend general meetings**

The Auditor, or an agent authorised by the Auditor in writing for the purpose, is entitled to attend any general meeting, to receive all notices of and other communications relating to any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity, and is entitled to be heard notwithstanding that the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting.

# **10 PROCEEDINGS AT GENERAL MEETINGS**

## **10.1 Special business**

All business will be classified as 'special business' if it is transacted at:

- (a) a general meeting not being an annual general meeting; or
- (b) an annual general meeting with the exception of:
  - (i) the confirmation of the minutes of the preceding meeting;
  - (ii) the receipt and consideration of the balance sheet, the profit and loss statement and the reports of the Directors and the Auditor;
  - (iii) the election of Directors;

- (iv) the transaction of any business which under the Corporations Act or this Constitution is required to be transacted.

## 10.2 Quorum

- (a) A quorum for any general meeting occurs when a minimum of two-thirds of the Members who are entitled to attend and vote are present via their Delegate or by proxy. An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to business.
- (b) To determine whether a quorum is present, the Chair must count the Members in attendance via their Delegates or by proxy.

## 10.3 Lack of quorum

If within 30 minutes after the time appointed for a general meeting a quorum is not present, the meeting:

- (a) if convened upon the request of Members under **clause 9.3**, is dissolved; and
- (b) in any other case stands adjourned to another day, time and place which the Directors appoint by notice to the Members and others entitled to notice of the meeting, and if a quorum is not present within thirty (30) minutes after the time appointed for the adjourned meeting, the adjourned meeting is dissolved.

## 10.4 Use of technology

A meeting of the Members for any purposes, may be held using any technology as determined by the Board. A meeting may be a mix of in-person, online or hybrid (both in-person and online) or wholly online and Members will be marked accordingly on the attendance register for that meeting. Notice must be provided of the platform to be used.

## 10.5 Chair of general meetings

The Chair may preside at every general meeting. If the Chair is not present, able and willing to act within thirty (30) minutes of the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the Deputy Chair will preside. If the Deputy Chair is not present or declines to take the chair, the Directors must choose another Director as chair. If no Director is so chosen or if all the Directors present decline to take the chair, the Members present must choose one of their own numbers to chair the meeting.

## 10.6 Adjournment

The Chair of a general meeting may, with the consent of the majority of those present and entitled to vote at the meeting, adjourn the meeting from time to time and place to place, but the only business that may be transacted at an adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

## 10.7 Notice of adjourned meeting

If a meeting is adjourned for fourteen (14) days or more, notice of the adjournment must be given in accordance with **clause 9.4** so far as applicable.

## **10.8 How questions decided**

Every question submitted to a general meeting is to be decided by a show of hands, unless before or on the declaration of the result of the show of hands a poll is demanded by:

- (a) the Chair of the meeting; or
- (b) not less than three (3) Members present via their Delegate or by proxy and having the right to vote at the meeting.

## **10.9 Matters of Public Policy**

- (a) Matters of Public Policy are to be approved by Special Resolution. The determination of whether a matter is a Matter of Public Policy rests with the Chair, the decision of whom may be overturned by the Members as an ordinary resolution.
- (b) A Matter of Public Policy that is not approved pursuant to **clause 10.9(a)** must be referred to a Committee. The Committee will be appointed by the Board and must report back to the Board with recommendations on how to proceed in relation to the Matter of Public Policy.

## **10.10 Minutes as evidence of result**

Unless a poll is duly demanded, a declaration by the Chair that a resolution on a show of hands has been:

- (a) carried;
- (b) carried unanimously;
- (c) carried by a particular majority; or
- (d) lost or not carried by a particular majority,

and an entry to that effect in the book containing the minutes of the general meeting signed by the Chair, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## **10.11 Taking of poll**

- (a) If a poll is demanded it must be taken:
  - (i) immediately in the case of a poll which relates to the election of a person to preside at the meeting or to the question of adjournment; or
  - (ii) in any other case, in such manner and at such time before the close of the meeting as the Chair direct.
- (b) The demand for a poll may be withdrawn.
- (c) The result of a poll will be deemed to be the resolution of the matter in relation to which the poll was demanded, and an entry to that effect in the minutes of the meeting is conclusive evidence of the resolution. It is not necessary to record the number or proportion of votes cast in favour of or against the motion.

- (d) The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

## 11 VOTING OF DELEGATES

### 11.1 Voting rights

- (a) Subject to **clause 7.1**, at a general meeting each person present as a Delegate or a proxy of an Entitlement Representative Member or Industry Member has one vote on each resolution.
- (b) All votes will be given personally or by proxy, but no person may hold more than three (3) proxies.
- (c) A Delegate is not entitled to vote at a general meeting if the nominating Member's Annual Subscription Fee is more than one (1) month in arrears at the date of that meeting unless a prior approved payment schedule has been accepted by the Board.
- (d) An Affiliate Member is not entitled to vote at a general meeting.

### 11.2 Decisions at a General Meeting

Questions arising at a General Meeting are to be decided by Ordinary Resolution unless otherwise required by this Constitution or the Corporations Act. An Ordinary Resolution is a resolution passed by a simple majority of the votes cast.

In the case of an equality of votes, the Chair of the meeting at which the vote is taken will declare the matter is lost.

## 12 PROXIES

### 12.1 Appointment of proxy

A Delegate is entitled to attend and cast a vote at a general meeting. A Member is entitled to appoint another person (who does not have to be the Delegate of another Member) as proxy to attend the meeting in the place of its Delegate and the proxy has the same rights at the Member's Delegate to speak and vote at the meeting.

### 12.2 Instrument of proxy

An instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing and, if and, to the extent that the Directors permit, may be in respect of more than one meeting.

### 12.3 Form of proxy

An instrument appointing a proxy is valid if it is signed by the Member making the appointment and contains the following information:

- (a) the appointing Member's name and address;

- (b) the Member's Delegate's name;
- (c) the proxy's name or the name of the office held by the proxy; and
- (d) the meeting or meetings at which the appointment may be used.

The appointment of a proxy need not be witnessed, and a later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting. An instrument of proxy in which the name of the appointee is not filled in is taken to be in favour of the Chair of the meeting to which it relates.

#### **12.4 Proxy to be deposited at Registered Office**

- (a) To be effective, an instrument appointing a proxy and the authority (if any) under which it is executed, or a certified copy of the authority must be received by the Company prior to the commencement of the meeting or adjourned meeting or taking of the poll, at which the person named in the instrument proposes to vote. If this **clause 12.4** is not complied with, the instrument of proxy will be treated as invalid.
- (b) An instrument appointing a proxy is received when it is received at or by any of the following:
  - (i) the Registered Office, forty-eight (48) hours prior to the commencement of the meeting;
  - (ii) a place, or electronic address specified for the purpose in the notice of meeting; or
  - (iii) in person by the Secretary or Chair.

#### **12.5 Power to demand poll**

The instrument appointing a proxy is taken to confer authority to demand or join in demanding a poll.

#### **12.6 Identification of proxy**

The Chair of a meeting may require a person acting as a proxy to establish to the satisfaction of the Chair that they are the person nominated as proxy in the form of proxy lodged under this Constitution. If the person does not comply, that person may be excluded from voting.

#### **12.7 Votes of proxies**

A vote cast in accordance with the terms of an instrument of proxy is valid notwithstanding the previous revocation of that person's authority, unless the Company has received notice in writing of the revocation at the Registered Office or by the Chair of the meeting before the vote is cast.

#### **12.8 Declaration of proxy votes**

The Chair must, before a poll is taken, inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.



## 13 DIRECTORS

### 13.1 Board composition

- (a) The Board will have a maximum number of ten (10) Directors comprising State Directors as described in **clauses 13.1(b) and (c)** and General Position Directors as described in **clause 13.1(d)**.
- (b) The Board shall comprise one (1) Director from each State in which there are at least three (3) Members with voting rights from that State, being either Entitlement Representative Members and/or Industry Members (“State Director”). For the purposes of this clause, the reference to a State is the State where the Member’s head office is located in Australia and a State Director does not need to reside in that State.
- (c) If there are fewer than three (3) Members with voting rights in a particular State, and the Board considers that one of the Members, being either an Entitlement Representative Member or Industry Member, is representative of that State as a whole, then that Member may nominate a candidate to be elected as a State Director by Special Resolution of the Members.
- (d) Further Directors shall be elected as General Position Directors by the Members to the maximum of ten (10) Directors.
- (e) The existence of State Director positions does not preclude Directors from those States being elected as a General Position Directors.
- (f) The following Directors will retire each year at the conclusion of the annual general meeting:
  - (i) Those Directors whose three (3) year terms are expiring; and
  - (ii) Those Directors appointed to fill a casual vacancy.
- (g) The Company Secretary will maintain a record of the appointment and terms of Directors to comply with the maximum terms outlined in **clause 14.1**.
- (h) The Members may resolve by Special Resolution to increase or decrease the number of Directors.

### 13.2 Directors’ duty

In accordance with the Corporations Act, each Director shall be bound to act in the interests of the Company as a whole and not in the interests of any one or more of the Members or stakeholders.

### 13.3 Election of Directors

- (a) Subject to **clauses 13.1 (g) and 13.6**, Directors are to be elected at the annual general meeting.

- (b) Subject to **clause 7.1**, any Entitlement Representative Member or Industry Member may nominate a candidate for election to the Board. Conventionally candidates are the Member's Delegate, but that does not preclude non-Delegates from being nominated.
- (c) Unless otherwise stated in the call for nominations, nominations shall be delivered to the Company Secretary twenty-one (21) days prior to the annual general meeting. Nominations must be seconded by a Member or Delegate.
- (d) The Board will appoint a Returning Officer who will be responsible for conducting the ballot and reporting the results to the annual general meeting.

#### **13.4 Process for appointment or election**

- (a) The Company Secretary shall by written notice circulate an alphabetical list of the candidates nominated for election to the Board.
- (b) If the number of nominated candidates is less than the number of vacancies on the Board, any Delegate present in person at the annual general meeting may nominate themselves for appointment to the Board, provided that the nomination is seconded by another Delegate.
- (c) At the annual general meeting, the Members may by Special Resolution veto the nomination of any candidate for election to the Board.
- (d) At the annual general meeting, a ballot shall be conducted to determine the election of Directors from the list of nominated candidates, if necessary.
- (e) The ballot shall be conducted by consensus preferential voting. Nominated candidates will receive a weighting according to Members preferences. The candidate with the highest score will be elected. In the event of multiple vacancies, candidates will fill the available positions in order of score from highest to lowest. In the event of a tied ballot or equal score, the candidate with the highest first preferences will be elected.
- (f) For the election of State Directors as described in **clause 13.1(b)**, only those Delegates representing Members with their head office in that State may cast a ballot in that election.
- (g) The Members may elect a State Director referred to in **clause 13.1(c)** by Special Resolution at the annual general meeting.

#### **13.5 Remuneration for Directors**

- (a) Directors (other than the Chair) may not receive remuneration for their services as a Director. Directors may be reimbursed for expenses incurred in relation to the performance of their duties as a Directors, provided that the amount is reasonable in the circumstances and the amount is approved by the Board.
- (b) The Board may determine that the Chair is to receive an annual honorarium for services rendered to the Company in the execution of their duties as Chair, provided that the amount is reasonable in the circumstances and has been approved by the

Board.

### 13.6 Vacancies

- (a) If any vacancy occurs in the position of a Director for any reason, the Directors may appoint an eligible Delegate to fill the vacancy and the Delegate so appointed will hold office subject to this Constitution. The person filling the vacancy shall vacate the position at the next annual general meeting where a ballot will be held to fill the position for the remainder of that predecessor's term as outlined in the register in **clause 13.1 (h)**. Where practicable, a vacancy of a State Director must be filled by a Delegate from that State. Any time spent filling a casual vacancy does not count in determining the term limit in **clause 14.1(c)**.
- (b) The continuing Directors may act despite any vacancy in the Board. If, however, the number of Directors falls below the minimum number fixed by the Corporations Act, the Directors may only act:
  - (i) for the purpose of increasing the number of Directors to the minimum; or
  - (ii) in emergencies,
 but for no other purpose.

### 13.7 Office of Chief Executive

A Chief Executive may be appointed by the Board and, if so, shall be engaged under contract.

## 14 TERM AND REMOVAL OF DIRECTORS

### 14.1 Term of appointment

- (a) Each Director (other than a Director filling a casual vacancy) holds office for a term of three (3) years commencing from the conclusion of the annual general meeting at which they are elected or appointed and ending at the conclusion of the third following annual general meeting, at which time the Director's office becomes vacant.
- (b) A retiring Director is eligible for reappointment or re-election, subject to **clause 14.1(c)**.
- (c) A Director may serve a maximum of two (2) consecutive terms with the option to extend to three (3) consecutive terms if approved by a Special Resolution of Members. Directors who have previously served on the Board and who have had an absence from the Board of at least one (1) year may be nominated and re-elected to the Board. Re-elected Directors are subject to the same term limits as newly elected Directors.

### 14.2 Removal of Directors

- (a) The Members in general meeting may by ordinary resolution remove any Director from office subject to **clause 14.2(b)**.

- (b) No resolution for the removal of a Director from office is to be put to a general meeting unless notice is given in accordance with the Corporations Act.

## **15 DISQUALIFICATION OF DIRECTORS**

In addition to any other way that a Director ceases to be a Director under this Constitution, the office of a Director is automatically vacated if the Director:

- (a) dies;
- (b) ceases to be a Director by virtue of, or becomes prohibited from being a Director because of, an order made under the Corporations Act;
- (c) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the Director's joint or separate estate generally;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (e) resigns office by providing fourteen (14) days written notice to the Company;
- (f) is not present at a majority of the meetings of Directors in a twelve (12) month period without leave of absence from the Directors;
- (g) is not present at the meetings of the Directors for a continuous period of four (4) months without leave of absence from the Directors;
- (h) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest as required by the Corporations Act;
- (i) is subject to disciplinary process in **clauses 7.8 to 7.11**;
- (j) is removed from office by an ordinary resolution passed at a general meeting of the Company.

## **16 POWERS OF THE BOARD**

Subject to the Corporations Act and this Constitution, the Board will manage the business and affairs of the Company, except that Matters of Public Policy must be approved by Members by Special Resolution. The Board will determine how best to act on Matters of Public Policy. In exceptional circumstances, the Board may need to consider and approve Matters of Public Policy deemed urgent and requiring timely action. The approval of these Matters of Public Policy and the actions of the Board shall be done in consultation with the Members where possible and will be reviewable by the Members at a general meeting.

## **17 DIRECTORS' CONTRACTS**

### **17.1 Director's interests**

Subject to the Corporations Act:

- (a) no Director or proposed Director is disqualified by that office from:
  - (i) entering into a contract, agreement or arrangement with the Company;
  - (ii) becoming or remaining a Director of any company in which the Company is in any way interested or which is in any way interested in the Company;
- (b) no contract, agreement or arrangement in which a Director is in any way interested, entered into by or on behalf of the Company can be avoided merely because of that Director's interest; and
- (c) no Director who:
  - (i) enters into a contract, agreement or arrangement in which the Director has an interest; or
  - (ii) is a Director of the other company with which the Company has entered into the contract, agreement or arrangement,

is liable to account to the Company for any profits or remuneration realised by that Director as a result of them being interested or being a director of the other company.

## **17.2 Declaration of interest**

The nature of a Director's interest in any contract, agreement or arrangement must be declared by that Director at a meeting of the Board in accordance with the Corporations Act as soon as practicable after the relevant facts have come to the Director's knowledge. A general notice that a Director is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation, is a sufficient declaration under this clause as regards the Director and the transactions. After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation. The Secretary must record in the minutes any declaration made or any general notice given by a Director under this clause.

## **17.3 Restrictions on voting**

Subject to the Corporations Act, a Director who has a material personal interest in a matter that is being considered at a Directors meeting must not:

- (a) be present while the matter (or a proposed resolution under **clause 17.3(c)** in relation to that matter, whether in relation to that or a different Director) is being considered; and
- (b) vote on the matter (or a proposed resolution in relation to that matter), unless:
- (c) the matter applies to an interest that the Director has as a Member in common with other Members; or
- (d) the Board passes a resolution that specifies the Director, the interest and the matter,

and states that the Directors voting for the resolution are satisfied that the interest does not disqualify the Director from considering or voting on the matter.

## **18 DIRECTORS' CONFLICTS OF INTEREST**

If a Director holds an office or possesses a property such that they might have duties or interests which directly or indirectly conflict with their duties or interest as a Director, that Director must declare at a Board meeting the fact, nature, character and extent of the conflict.

## **19 PROCEEDINGS OF THE BOARD**

### **19.1 Meetings**

The Board will meet at least once in each calendar year for the dispatch of business, adjourn and otherwise regulate its meetings and proceedings as it thinks fit.

### **19.2 Calling meetings**

A Director may at any time, and the Secretary must on the request of a Director, call a meeting of the Board by giving notice to every other Director.

### **19.3 Notice**

Notice of a meeting of the Board is to be given to all Directors.

### **19.4 Quorum for meetings**

- (a) A majority of the total number of Directors in office at the time are a quorum at a Board meeting.
- (b) An item of business may not be transacted at a Board meeting unless a quorum is present.

### **19.5 Chair of meetings**

The Chair may preside at any Board meeting. If the Chair is not present, able and willing to act within 30 minutes of the time appointed for a meeting or has signified an intention not to be present, able and/or willing to act, the Deputy Chair will preside. If the Deputy Chair is not present or declines to take the chair, the Directors must choose another Director as chair.

### **19.6 How questions decided**

Subject to this Constitution and **clause 19.7**, questions arising at any Board meeting are to be decided by a majority of votes. Each Director has one vote and a determination by a majority of the Directors will for all purposes be deemed a determination of the Directors. If there is equality of votes at a meeting at which a quorum is present the Chair has a second or casting vote in addition to a deliberative vote.

### **19.7 Written resolution**

Subject to the Corporations Act, a resolution in writing signed and or agreed in writing, including by electronic mail, by all the Directors (not being less than a quorum) is as valid and effectual as if it had been passed at a meeting of the Directors duly held. That resolution may consist of several copies of a document each signed by one or more Directors.

### **19.8 Meetings by communications technology**

A meeting of the Board may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.

### **19.9 Validity of acts of Directors**

Any act done by any meeting of the Board or by a Committee or by any person acting as a Director will be valid even if it is later discovered:

- (a) that there was some defect in the appointment or continuance in office of a Director or such other person; or
- (b) that any of them was disqualified or had vacated office or were not entitled to vote.

### **19.10 Committees**

The Board may delegate any of their powers to Committees consisting of such Directors or other persons as the Board thinks fit and the Board may revoke this delegation at any time. Any Committee so formed must comply with the regulations that may be imposed on it by the Board in exercising the Committee's delegated power.

### **19.11 Meetings of Committees**

The meetings of Committees consisting of more than one person are governed by the clauses of this Constitution regulating the meetings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under this Constitution.

## **20 BORROWING POWERS**

The Board may exercise all the powers of the Company to:

- (a) borrow money;
- (b) mortgage or charge all or part of its undertaking and assets; and
- (c) issue debentures, debenture stock and other securities outright or as security for any debt, contract, guarantee, engagement, obligation or liability of the Company or of any third party, on such terms and conditions as the Board thinks fit.

## **21 MINUTES**

### **21.1 Records**

The Board must cause minutes to be kept in accordance with the Corporations Act:

- (a) of the names of the Directors present at each meeting of the Board and of any

Committee; and of all resolutions and proceedings of general meetings and of meetings of the Board and of Committees.

- (b) The minutes must be endorsed by the Chair of the meeting at which the proceedings were held or by the Chair of the next meeting.

## **22 CHAIR, DEPUTY CHAIR AND CHAIR OF FINANCE, AUDIT AND RISK COMMITTEE**

### **22.1 Appointment of Chair, Deputy Chair and Chair of Finance, Audit and Risk Committee**

The Directors must, within fourteen (14) days of the annual general meeting, elect the following office holders from their own number:

- (a) Chair,
- (b) Deputy Chair and
- (c) Chair of Finance, Audit and Risk Committee.

### **22.2 Term**

The Chair, Deputy Chair and Chair of Finance, Audit and Risk Committee will (provided they remain Directors), subject to this Constitution, hold office for a period of one (1) year from the date of their election.

## **23 COMPANY SECRETARY**

### **23.1 Appointment of the Company Secretary**

- (a) The Board must appoint one (1) or more Secretaries in accordance with the Corporations Act for such terms, at such remuneration and upon such conditions as the Board determines.
- (b) Any Secretary so appointed may be removed by resolution of the Board.
- (c) The Chief Executive shall be appointed as Company Secretary upon appointment, unless otherwise determined by the Board.

## **24 FINANCIAL RECORDS**

### **24.1 Financial and other records**

The Board must cause proper financial and other records to be kept and provide annual financial reporting to Members as required by the Corporations Act and as required by reason of the Company's access and use of the Commonwealth Funds and Authorities. The Board must from time to time determine whether and to what extent and at what times and places and under what conditions or regulations any financial or other records of the Company are to be open to the inspection of Members who are not Directors. No Member (who is not a Director) has the right to inspect any records of the Company except as conferred by statute or authorised by the Board or by the Company in a general meeting.



## **24.2 Time for financial reports**

The interval between the end of a Financial Year of the Company and the annual financial reporting to Members must not exceed the period (if any) prescribed by the Corporations Act.

## **25 SEAL**

The Board may decide that the Company will have a Common Seal or a duplicate Common Seal. If they do, they must provide for the safe custody of any Seal. The Seal may only be used with the authority of the Board. The Board need not affix the Common Seal to every deed, but each deed must be signed by a Director and countersigned by the Secretary or by a second Director or by some other person appointed by the Board for that purpose. The Board may determine, from time to time the manner by which other instruments are executed by the Company.

## **26 SERVICE OF DOCUMENTS**

### **26.1 Notices to Members**

The Company may give notice to a Member or its Delegate:

- (a) personally;
- (b) by sending it by post to the Member at its registered address;
- (c) by sending it to the fax number or electronic mail address nominated by the Member; or
- (d) in any other way allowed under the Corporations Act.

### **26.2 Deemed service**

- (a) If a notice is sent by post, service of the notice is deemed to be affected by properly addressing, prepaying and posting a letter containing the notice and to have been effected at the time at which the letter would be delivered in the ordinary course of post;
- (b) A notice sent by fax is deemed to be received on production of a transmission report by the machine from which the fax was sent which indicates that the fax was sent in its entirety to the fax number of the recipient if produced before 5pm on a Business Day, otherwise on the next Business Day.
  - (i) A notice sent by electronic mail is deemed to be received on the day of transmission, if transmitted before 5pm on a Business Day, otherwise on the next Business Day.
  - (ii) A notice sent by electronic mail is deemed not to be served only if the computer system used to send it reports that delivery failed.

### **26.3 Persons entitled to notice of general meeting**

Notice of every general meeting must be given in the manner authorised to:

- (a) every Member; and
- (b) the Auditor for the time being (if any) of the Company.

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

## 27 WINDING UP

If upon the winding up or dissolution of the Company there remains, after the satisfaction of all its debts and liabilities, any property or money whatsoever, the remaining assets shall not be paid or distributed to the Members but shall be transferred to some other fund, authority or institution determined by the Members in general meeting as having objects or purposes similar to the objects and purposes of the Company or (in the event there is no such fund, authority or institution) to some charitable purpose.

## 28 INDEMNITY

### 28.1 Indemnity

The Company indemnifies any person who is or has been an officer (as defined in the Corporation Act), a staff member or auditor of the Company (to the maximum extent permitted by law), out of the assets of the Company against any liability incurred by the person as such an officer or auditor:

- (a) to another person (other than the Company or a related body corporate) unless the liability:
  - (i) is for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H of the Corporations Act; or
  - (ii) arises out of conduct involving a lack of good faith; and
- (b) for legal costs and expenses incurred by the person, unless the costs and expenses are incurred:
  - (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under section 199A(2) of the Corporations Act;
  - (ii) in defending or resisting criminal proceedings in which the person is found guilty;
  - (iii) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
  - (iv) in connection with proceedings for relief to the person under the Corporations Act in which the court denies the relief.

### 28.2 Insurance

If the Board considers it appropriate and the law permits, the Company may pay or agree

to pay a premium in respect of a contract insuring a person who is or has been an officer (as defined in the Corporations Act) or auditor of the Company or of a related body corporate of the Company against any liability:

- (a) incurred by the person as such an officer or auditor which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of sections 182 or 183 of the Corporations Act; or
- (b) for costs and expenses incurred by the person in defending proceedings as such an officer, whether civil or criminal and whatever their outcome.

## 29 INTERPRETATION

### 29.1 The Constitution

This Constitution contains clauses setting out the manner in which the Members of the Company have agreed to conduct the internal administration of the Company.

### 29.2 Replaceable Rules

The Replaceable Rules do not apply to the Company unless repeated in this Constitution or specifically made applicable to the Company by a provision of this Constitution.

### 29.3 Definitions

In this Constitution, unless the context otherwise requires:

“**Annual Subscription Fee**” means the annual fee payable by a Member in accordance with **clause 6**.

“**ASIC**” means the Australian Securities and Investments Commission. “**Board**” means the Board of Directors of the Company.

“**Business Day**” means a day that is not a Saturday, Sunday or a public holiday in the Australian Capital Territory.

“**Chair**” means the person appointed as Chair in accordance with **clause 2**.

“**Chair of Finance, Audit and Risk Committee**” means the person appointed as Chair of the Finance, Audit and Risk Committee in accordance with **clause 22**.

“**Committee**” means a Committee of Directors or other persons appointed by the Board formed pursuant to **clause 20.8**.

“**Constitution**” means this Constitution as altered or added to from time to time. “**Company**” means the National Irrigators Council Limited ACN 133 308 326.

“**Corporations Act**” means the Corporations Act 2001 (Cth).

“**Deputy Chair**” means the person appointed as Deputy Chair in accordance with **clause 22.1**.

“**Director**” includes any person who is elected to that position in accordance with the Constitution and is acting in that capacity.

“**Directors**” means the Directors for the time being or such number of them as have authority to act for the Company.

“**Disciplinary Hearing**” means the disciplinary hearing described in **clause 7.9**.

“**Financial Year**” means the period of 12 months commencing on 1 July in any year and ending on 30 June in the following year.

“**Matters of Public Policy**” means any principles, positions or guidelines that are adopted by the Company to represent the interests of Members and influence decisions and actions related to national water management, irrigation practices, and related issues, which fall within the Company’s Objects.

“**Member**” means a person admitted as a member of the Company pursuant to **clause 7.3**.

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

“**Replaceable Rule**” has the same meaning as ascribed to it in the Corporations Act.

“**Registered Office**” means the registered office for the time being of the Company.

“**Returning Officer**” means the Company Secretary, or any person otherwise appointed by the Board to conduct ballots or polls of the Company.

“**Seal**” means the common seal (if any) of the Company.

“**Secretary**” or “**Company Secretary**” means any person appointed to perform the duties of secretary of the Company pursuant to **clause 23**.

“**Special Resolution**” means a resolution:

- (a) of which notice has been given under **clause 9.4**, and
- (b) that has been passed by at least 75% of the votes cast by Members present (via their Delegate or by proxy) and entitled to vote on the resolution.

“**Termination Notice**” means written notice given to a Member advising that the Members passed a Special Resolution to terminate that Member’s membership of the Company.

## 29.4 Construction

In this Constitution, unless the contrary intention appears:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;

- (c) “includes” means includes without limitation;
- (d) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, successors and assigns;
  - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) a right includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
  - (vi) provisions or terms of this document or another document, agreement understanding, or arrangement include a reference to both express and implied provisions and terms;
  - (vii) “\$” or “dollars” is a reference to the lawful currency of Australia;
  - (viii) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties;
  - (ix) writing or written includes any mode of representing or reproducing words, figures, drawings or symbols in a visible or communicable form; and
  - (x) anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.

### **30 SCHEDULE – TRANSITIONAL ARRANGEMENTS**

This schedule outlines the transitional arrangements to recognise the repealed constitutional arrangements prior to the commencement of clauses in this Constitution on the Relevant Day being, the day on which this Constitution is adopted.

#### **30.1 Members**

- (a) All Members of the Company immediately before the Relevant Day continue to be a Member of the Company, albeit subject to reclassification into the categories described in **clause 7.1** as follows:
  - (i) “A” Class Members and “C” Class Members will be classified as Entitlement Representative Members
  - (ii) “B” Class Members will be classified as Industry Members

- (iii) “D” Class Members that satisfy the criteria in **clause 7.2(c)** will be classified as Affiliate Members.
  - (iv) “D” Class Members that satisfy the criteria in **clause 7.2(a)** will be classified as Entitlement Representative Members.
  - (v) “D” Class Members that satisfy the criteria in **clause 7.2(b)** will be classified as Industry Members.
- (b) The Board may further classify each Member into a sub-category of Membership.
  - (c) Members may request a transfer of category or sub-category of Membership in accordance with **clauses 7.7(c) and 7.7(g)**.

### **30.2 Directors**

- (a) The Directors in office on the Relevant Day will continue as Directors and will serve out the remainder of their terms.
- (b) Any Directors who were due to retire at the upcoming annual general meeting, will hold office until the first annual general meeting of the Company after the Relevant Day and they will be eligible for re-election subject to **clause 14.1**.

### **30.3 Chair, Deputy Chair and Chair of Finance, Audit and Risk Committee**

- (a) The person who is the Chair of the Company immediately before the Relevant Day, will become the Chair on the Relevant Day.
- (b) The person who is the Deputy Chair of the Company immediately before the Relevant Day, will become the Deputy Chair on the Relevant Day.
- (c) The person who is the Chair of the Finance, Audit and Risk Committee immediately before the Relevant Day will become the Chair of the Finance, Audit and Risk Committee on the Relevant Day.

### **30.4 Company Secretary**

The person who is Company Secretary immediately prior to the Relevant Day will become Company Secretary on the Relevant Day.

### **30.5 Resolutions**

Any resolution of the Company in force and effect immediately before the Relevant Day will continue to have effect for the purposes of the Company until such time as it is repealed or replaced.

### **30.6 Outstanding Annual Subscription Fee or other fees and levies**

Any Annual Subscription Fees or other fees and levies that are outstanding immediately before the Relevant Day will remain as outstanding and subject to the usual processes of recuperation on the Relevant Day.