

**CONSTITUTION
OF
TOLLING CUSTOMER
OMBUDSMAN LIMITED**

Australian Company Number (ACN) 619 539 427
Australian Business Number (ABN) 36 619 539 427

A company limited by guarantee

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Preliminary

1. Name of the company

- 1.1 The name of the **company** is Tolling Customer Ombudsman Limited (the **company**).

2. Type of company

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

3. Limited liability of members

- 3.1 The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

- 4.1 Each member must contribute an amount not more than \$100 (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) debts and liabilities of the company incurred before the member stopped being a member, or
 - (b) costs of winding up.

5. Definitions

- 5.1 In this constitution, words and phrases have the meaning set out in clauses 65 and 67.

Purposes and powers

6. Object

- 6.1 The **company's** objects are:
- (a) to maintain an independent Tolling Customer Ombudsman scheme in Australia and appoint an **Ombudsman** with the power to receive, investigate and facilitate the resolution of complaints directly relating to the applicable terms and conditions for, or customer service relating to, use of a toll road by a customer that have been unresolved by the relevant **member**;
 - (b) to provide information to members to assist them in the development and maintenance of good complaint-handling practices; and
 - (c) to set measures for, and monitor, the quality and consistency of the services provided by the Ombudsman.

7. Powers

- 7.1 The company has the following powers, which may only be used to carry out its object(s) set out in clause 6:
- (a) the powers of an individual, and
 - (b) all the powers of a **company** limited by guarantee under the **Corporations Act**.

8. Income and property of the company

- 8.1 The whole of the income and property of the **company** must be applied solely towards the promotion of the objects of the company and the company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 65.
- 8.2 Clause 8.1 does not stop the **company** from doing the following things:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
 - (b) indemnifying an officer of the **company** for liabilities incurred to another person (other than the **company** or a Related Body Corporate (as that term is defined in the *Corporations Act 2001* (Cth)) or such an officer.

9. Amending the constitution

- 9.1 The members may amend this constitution by special resolution only. The amendments approved by special resolution must be consistent with the object set out clause 6.

Members

10. Membership and register of members

- 10.1 The members of the **company** shall consist of such persons who agree in writing to become members of the **company** and who are admitted to membership pursuant to this constitution from time to time.
- 10.2 There is no limit on the number of members. Membership is not transferable.

11. Who can be a member

- 11.1 With the exception of the Inaugural Member, subject to clause 11.2, any incorporated body which is a **Toll Road Operator** is eligible to apply to be a member of the **company** under clause 12.
- 11.2 If a corporate **Group** includes more than one **Toll Road Operator**, a body within the **Group** (instead of each **Toll Road Operator** in the **Group**) is eligible to apply to be a member of the **company** under clause 12 on behalf of other members of the **Group** (in which case only one entity within the Group can become a member of the **company**).

12. How to apply to become a member

- 12.1 An incorporated body that meets the requirements set out in clause 11 may apply to become a member of the **company** by writing to the secretary stating that they:
- (a) want to become a member
 - (b) support the object(s) of the **company**, and
 - (c) agree to comply with:
 - i. the **company's** constitution including paying the guarantee under clause 4 (if required);
 - ii. the **Terms of Reference**; and
 - iii. the **Communication Protocols** (if any),and, if relevant, agree to procure that other members of its **Group** complies with the **company's** constitution, the **Terms of Reference** and the **Communication Protocols** (if any).

13. Directors decide whether to approve membership

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- 13.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
 - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected but does not have to give reasons.

14. When a person becomes a member

- 14.1 An applicant will become a member when they are entered on the register of members.

15. When a person stops being a member

- 15.1 A member may resign their membership of the **company** by giving the secretary not less than 12 months' written notice. A member's membership shall cease on expiry of the notice period. The requirement to provide 12 months' notice may be waived in whole or in part in the absolute discretion of the directors.
- 15.2 If any member refuses or neglects to comply with the provisions of this constitution, the **Terms of Reference** or with any binding decision made by the ombudsman pursuant to the **Terms of Reference**, or the **Communication Protocols** (if any), the directors may resolve to expel that member. Any decision to expel a member in accordance with this clause must be made by a resolution of the board (not including any director appointed by the defaulting member).
- 15.3 A member immediately stops being a member if they (or all relevant members of their **Group**) cease to be a **Toll Road Operator**.
- 15.4 Cessation of membership:
- (a) does not entitle the member to repayment of the whole or any part of any levy raised under clause 42 or of any other fee which has been previously paid by the member;
 - (b) is without prejudice to the member's liability to pay any levy or other fee which has become due and payable before such cessation; and
 - (c) is without prejudice to the member's rights and obligations under clause 12.1 in respect of any dispute commenced to be processed under the Scheme before such cessation (including any determination or any fees payable to the Company in respect of such a dispute).

General meetings of members

16. Annual general meetings

16.1 Annual general meetings are to be held in accordance with the **Corporations Act**.

17. General meetings

17.1 The directors may call a general meeting whenever they think fit and must do so if required under the **Corporations Act**.

18. Notice of general meetings

18.1 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).

18.2 Subject to the provisions of the **Corporations Act** relating to special resolutions and consent to short notice, at least 21 days' notice must be given of a general meeting to all persons entitled to receive such notices.

18.3 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
- (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - i. the proxy does not need to be a member of the **company**
 - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
 - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.

18.4 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

18.5 The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

19. Quorum at general meetings

19.1 For a general meeting to be held, all members (a quorum) must be present (in person, by proxy or by representative) at the time stipulated as the commencement of the meeting in the relevant notice. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the **Chair** of the meeting (on the **Chair's** own motion or at the request of a member, proxy, attorney or Representative who is present) declares otherwise.

- 19.2 No business may be conducted at a general meeting if a quorum is not present.
- 19.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the **Chair** specifies. If the **Chair** does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
 - (b) if the time is not specified – the same time, and
 - (c) if the place is not specified – the same place.
- 19.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, two members shall constitute a quorum.

20. Auditor's right to attend meetings

- 20.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 20.2 The **company** must give the auditor (if any) any communications relating to the general meeting that a member of the **company** is entitled to receive.

21. Using technology to hold meetings

- 21.1 The **company** may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 21.2 Anyone using this technology is taken to be present in person at the meeting.

22. Chair for general meetings

- 22.1 The **Chair** is entitled to chair general meetings.
- 22.2 The members present and entitled to vote at a general meeting may choose a director or member to be the **Chair** for that meeting if:
- (a) there is no **Chair**, or
 - (b) the elected **Chair** is not present within 30 minutes after the starting time set for the meeting, or
 - (c) the elected **Chair** is present but says they do not wish to act as **Chair** of the meeting.

23. Role of the Chair

- 23.1 The **Chair** is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 23.2 The **Chair** of a general meeting:
- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - (b) may require the adoption of any procedure which is in the **Chair's** opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
 - (c) may, having regard where necessary to the **Corporations Act**, terminate discussion or debate on any matter whenever the **Chair** considers it necessary or desirable for the proper conduct of the meeting,
- and a decision by the **Chair** under this clause is final.
- 23.3 The **Chair** does not have a casting vote.

24. Adjournment of meetings

- 24.1 If a quorum is present, a general meeting must be adjourned if a majority of **members present** direct the **Chair** to adjourn it.
- 24.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Voting at general meetings

25. How voting is carried out

- 25.1 At any general meeting, a resolution put to the meeting shall be decided on a show of hands unless a poll is demanded before or on the declaration of the result of the show of hands by any member present in person, by proxy, by attorney or by Corporate Representative and entitled to vote. Unless a poll is so demanded, a declaration by the Chair that a resolution has been carried or lost on a show of hands shall be conclusive evidence of the result of the vote. The demand for a poll may be withdrawn.
- 25.2 If a poll is duly demanded, it shall be taken either at once or after an interval or adjournment and in such manner as the Chair directs.

26. How many votes a member has

- 26.1 On a show of hands, each member entitled to vote has one vote.
- 26.2 On a poll, each member entitled to vote has one vote per dollar paid to the **company** in the preceding **financial year**, provided that every member entitled to vote will have a minimum of one vote.
- 26.3 A member is not entitled to vote if there is outstanding by the member, or any member in that member's **Group**, a levy due and payable, **Case Fees** due and payable, or any other applicable fees.

27. Proxies and other authorities

- 27.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 27.2 A proxy does not need to be a member.
- 27.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
 - (b) vote and
 - (c) demand or join in demanding a poll.
- 27.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
 - (b) the **company's** name
 - (c) the proxy's name or the name of the office held by the proxy, and
 - (d) the meeting(s) at which the appointment may be used.
- 27.5 A proxy appointment may be standing (ongoing).
- 27.6 Proxy forms must be received by the **company** at the address stated in the notice under clause 18.3(d) or at the **company's** registered address at least 48 hours before a meeting.
- 27.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.

- 27.8 Unless the **company** receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) revokes the proxy's appointment, or
 - (b) revokes the authority of a representative or agent who appointed the proxy.
- 27.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 27.10 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.
- 27.11 An incorporated body which is a member may appoint such person as it thinks fit to act as its **corporate representative** at any general meeting of the company. The person so authorised shall be entitled to exercise the same powers on behalf of the member as the member could exercise and in accordance with his or her authority until his or her authority is revoked by the member.

28. Circular resolutions of members

- 28.1 The members of the **company** may pass a resolution without a general meeting being held if all of the members 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. Any such resolution may consist of several identical documents each signed by one or more members. The resolution is passed when the last member entitled to vote on the resolution signs the document.

Directors

29. The Board

- 29.1 With the exception of the Inaugural Directors, the board of the **company** shall consist of an equal number of **Industry Directors** and **Consumer Directors** plus an independent **Chair**.
- 29.2 The Consumer Director(s) shall be appointed in accordance with clause 30.
- 29.3 The Industry Director(s) shall be appointed in accordance with clause 31.
- 29.4 The Chair of the board must be independent and shall be appointed in accordance with clause 33.

30. Consumer Directors

- 30.1 The directors shall appoint one or more Consumer Directors to the board from the following recognised community and consumer groups:
- (a) registered charities;
 - (a) legal aid and equivalent community legal services organisations; or
 - (b) those consumer advocacy groups to which State or Territory based consumer protection agencies refer consumers for advice and assistance.

- 30.2 A person is only eligible to be appointed to the board to act as a Consumer Director under clauses and 30.1 if they are appropriately qualified and:
- (a) are independent of the industry;
 - (b) are considered to be of good character; and
 - (c) have expertise in corporate governance.
- 30.3 In assessing the qualifications of candidates for the appointment of a Consumer Director, the board shall have regard to each candidate's:
- (a) ability to uphold the independence of the Ombudsman;
 - (b) expertise in consumer affairs;
 - (c) links to relevant community and consumer groups;
 - (d) capacity and willingness to consult with relevant community and consumer groups; and
 - (e) knowledge of, or the ability to acquire knowledge of, tolling issues.

31. Industry Directors

- 31.1 Each member of the company has the right to appoint, remove and replace one director to the board of the company. The member appointed directors shall comprise the Industry Directors.
- 31.2 If additional Industry Directors are required in order to satisfy clause 29.1 above, the members of the **company** shall appoint the requisite number of additional Industry Directors by vote amongst themselves, which shall be determined as if those members were voting on a resolution to put to a general meeting under clauses 25 and 26.
- 31.3 A person is only eligible to be appointed to the board to act as an Industry Director under clauses 31.1 if they:
- (a) are considered to be of good character; and
 - (b) have knowledge in corporate governance.
- 31.4 The appointment of an Industry Director under clauses 31.1 will take effect when a written notice of appointment is received from the appointing member and the written consent to act as a director is received from that nominated individual at the registered office of the company and every removal of such a director will take effect when the written notice of removal is received from the appointing member.
- 31.5 An **Industry Director** may take into account the interests of his or her appointing member in performing any of his or her duties or exercising any power, right or discretion as a director in relation to the company, except in any particular case where no honest and reasonable director could have formed the view that, in so doing, the director was complying with his or her fiduciary duties including the duty to act in good faith in the best interests of the company as a whole.

32. Observers

- 32.1 Each Authority may, from time to time if they so request, nominate a person as an observer and revoke the nomination of such person.
- 32.2 An observer appointed under this clause:
- (a) is entitled to receive all documents, notices and information which a director would be entitled to receive and to attend all meetings that a director would be entitled to attend; and
 - (b) if invited to by the **Chair** (at the Chair's absolute discretion), may participate in board discussions and make recommendations to the board; but

- (c) does not act in the position of a director and is not entitled to vote at any such meeting of directors.

33. Election of Chair

- 33.1 The directors must elect an individual to the board to act as the **company's Chair**.
- 33.2 Prior to a new **Chair's** appointment, the directors must:
 - (a) consult relevant industry and consumer bodies about the appointment; and
 - (b) use their best endeavours to ensure that no person is appointed as the Chair who has a material interest which might conflict with their duties as independent Chair.
- 33.3 The Chair must be independent of **Industry** and consumer interests.

34. Alternate directors

- 34.1 Each director may appoint an alternate to represent him or her at meetings of the board. That person may be appointed by notice in writing to the company signed by the appointor. An alternate director will be entitled to attend and vote at meetings of the board and to be counted in determining whether a quorum is present.

35. Term of office

- 35.1 A director appointed under clause 30.1, 31.1 or 33 must retire at least once every three years.
- 35.2 A director who retires under clause 35.1, may be reappointed to the board in accordance with clause 30.1, 31.1 or 33, subject to clause 35.3.
- 35.3 No person may hold office as a director for more than 9 consecutive years.

36. When a director stops being a director

- 36.1 A director stops being a director if they:
 - (a) give written notice of resignation as a director to the **company**;
 - (b) die;
 - (c) are absent for 3 consecutive directors' meetings without approval from the directors
 - (d) become ineligible to be a director of the **company** under the **Corporations Act**
 - (e) become bankrupt or make any arrangement or composition with their creditors generally
 - (f) become of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
 - (g) in the case of an **Industry Director**, are removed by their appointing member.

Powers of directors

37. Powers of directors

- 37.1 The directors are responsible for managing and directing the activities of the **company** to achieve the object(s) set out in clause 6.
- 37.2 The directors may exercise all the powers of the **company** except for powers that, under the **Corporations Act**, may only be exercised by members.

- 37.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 40
 - (b) borrowing or raising money, charging any property or business of the **company** or issuing debentures or giving any other security for a debt, liability or obligation of the **company** or of any other person
 - (c) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

38. Ombudsman

- 38.1 The directors must appoint one or more **Ombudsmen** for such term and upon such terms and conditions as the Board thinks fit, and whose terms of appointment shall include:
- (a) an undertaking by each **Ombudsman** to be bound by the **Terms of Reference**; and
 - (b) that each **Ombudsman** is required to establish indicators to evaluate and measure its performance and to report on these.
- 38.2 A person who is associated with any **member** is ineligible to be appointed as an **Ombudsman** and during the term of appointment an **Ombudsman** must not be associated with any member.
- 38.3 An **Ombudsman** will have offices available in each of Queensland, Victoria and New South Wales, Australia.
- 38.4 An **Ombudsman** may be removed (and must then be replaced) by a resolution of the directors.
- 38.5 The board acknowledges that certain Toll Road Operators have entered into concession agreements with DTMR and BCC under which the consent of DTMR or BCC is required to the appointment of a third party to conduct the tolling ombudsman services in Queensland. Before appointing an Ombudsman under clause 38.1 for tolling ombudsman services in Queensland, the Board must inform, consult with and obtain the approval of both DTMR and BCC as to the appointment of that Ombudsman.
- 38.6 An **Ombudsman** appointed under this clause 38 must apply to become a member of the Australian and New Zealand Ombudsman Association (ANZOA) and must take all reasonable steps to obtain and maintain that membership for the term of their appointment.

39. Terms of reference

- 39.1 Subject to clause 39.2, the directors may, amend or revoke the Terms of Reference from time to time after consulting with appropriate individuals and organisations (including key consumer, community and industry organisations) about the proposed changes that are not minor in nature.
- 39.2 The directors may not amend or revoke the Terms of Reference without first consulting all members.

40. Delegation of directors' powers

- 40.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as the **Ombudsman** or secretary) or any other person, as they consider appropriate.

41. Payments to directors

- 41.1 The **company** may:
- (a) pay fees to a director for acting as a director at a rate to be determined by the directors, having regard to the rates of remuneration of comparable not-for-profit organisations
 - (b) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done
 - (c) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company** or
 - (d) if a director, at the request of the directors, performs additional or special duties for the **company**, the **company** may remunerate that director as determined by the directors
- 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 **Corporations Act**) and this constitution.

42. Levies

- 42.1 The directors may at any time and from time to time obtain money for the purposes of the **company** by raising a levy from the members. The form, amount and terms of any levy shall be determined by the directors and, without limitation, may include any or all of:
- (a) an annual levy;
 - (b) an extraordinary levy; or
 - (c) a levy which varies between members on any basis thought fit by the directors (including a levy raised on a Group basis); and
 - (d) a fee for considering an application to be approved as a member.
- 42.2 The directors may serve upon each member a notice requesting payment of any levy to be raised from that member, giving particulars of the total amount of the levy to be raised and the amounts payable by each member.
- 42.3 Each member shall, within one month after being requested to do so by the **company**, provide a statement in the form approved by the directors specifying the information required by the directors to assess the amount of any levy payable by that member;
- 42.4 Each levy will be due and payable by each member as at the date specified by the directors.
- 42.5 The directors may from time to time fix the scale of **Case Fees**.
- 42.6 A member must pay **Case Fees** to the **company** by the date for payment specified in an invoice issued by the **company** to the member.
- 42.7 The **company** may charge interest on any moneys payable by a member to the **company**, if not paid by the due date, bear interest (at such rate per annum as determined by the directors from time to time) for the period commencing (and including) the due date for payment to (but excluding) the date those moneys are paid in full. If interest is charged by the **company** on any unpaid moneys, any accrued interest will be compounded and added to the moneys payable at such intervals as the directors may determine from time to time and is payable on demand.

Directors' meetings

43. When the directors meet

43.1 The directors may decide how often, where and when they meet.

44. Calling directors' meetings

44.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

44.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

45. Chair for directors' meetings

45.1 The Chair is entitled to chair directors' meetings.

45.2 The directors at a directors' meeting may choose a director to be the Chair for that meeting if the Chair is:

- (a) not present within 30 minutes after the starting time set for the meeting,
or
- (b) present but does not want to act as Chair of the meeting.

46. Quorum at directors' meetings

46.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of all directors.

46.2 A quorum must be present for the whole directors' meeting.

46.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of meeting, the meeting is adjourned to the same time and place on the next business day. Each director must be notified of the adjourned meeting. If a quorum is not present at the rescheduled board meeting within 30 minutes after the starting time set for that meeting, the directors present will constitute a quorum.

47. Using technology to hold directors' meetings

47.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

47.2 The directors' agreement may be a standing (ongoing) one.

47.3 A director may only withdraw their consent within a reasonable period before the meeting.

48. Passing directors' resolutions

48.1 Where this constitution requires a resolution to be passed, it must be passed by a majority of the directors present and entitled to vote on the resolution and, in the event an equal number of votes are cast for and against, the Chair of the meeting shall have a second casting vote. Any such decision is for all purposes deemed a decision of the directors.

49. Circular resolutions of directors

49.1 The directors may pass a resolution without a directors' meeting being held if all of the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Any such resolution may consist of several identical documents each signed by one or more directors. The resolution is passed when the last director entitled to vote on the resolution signs the document.

50. Validity of acts of directors

- 50.1 All acts done by any meeting of directors or of a committee of the directors or by any person acting as a director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or member of a committee, or to act as a director, or that a person so appointed was disqualified, valid as if a person had been duly appointed and was qualified to be a director or to be a member of the committee.

Secretary

51. Appointment and role of secretary

- 51.1 The **company** must have at least one secretary, who may also be a director or ombudsman.
- 51.2 A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be suspended or removed by the directors.
- 51.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration. The directors may vest in the secretary such powers, duties and authorities as they may from time to time determine. The exercise of those powers and authorities and the performance of those duties by a secretary is subject at all times to the control of the directors.
- 51.4 The role of the secretary includes:
- (a) maintaining a register of the **company's** members, and
 - (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

52. Minutes and records

- 52.1 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings
 - (b) minutes of circular resolutions of members, and
 - (c) a copy of a notice of each general meeting.
- 52.2 The **company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 52.3 To allow members to inspect the **company's** records:
- (a) the **company** must give a member access to the records set out in clause 52.1, and
 - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 52.2 and clause 53.1.
- 52.4 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 **Chair** of the meeting, or

- (b) the **Chair** of the next meeting.
- 52.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

53. Financial and related records

- 53.1 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.
- 53.2 The **company** must also keep written records that correctly record its operations.
- 53.3 The **company** must retain its records for at least 7 years.
The directors must take reasonable steps to ensure that the **company's** records are kept safe.

54. Communication Protocol

- 54.1 All meetings must be conducted in accordance with the requirements of the Communication Protocols (if any).

By-laws

55. By-laws

- 55.1 The directors may pass a resolution to make by-laws to give effect to this constitution.
- 55.2 Members and directors must comply with by-laws as if they were part of this constitution.

Notice

56. What is notice

- 56.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 56 to 59, unless specified otherwise.
- 56.2 Clauses 57 to 59 do not apply to a notice of proxy under clause 27.6.

57. Notice to the company

- 57.1 Written notice or any communication under this constitution may be given to the **company**, the directors or the secretary by:
 - (a) delivering it to the **company's** registered office
 - (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
 - (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address, or
 - (d) sending it to the fax number notified by the **company** to the members as the **company's** fax number.

58. Notice to members

- 58.1 Written notice or any communication under this constitution may be given to a member:
- (a) in person
 - (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices; or
 - (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any).
- 58.2 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

59. When notice is taken to be given

- 59.1 A notice:
- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
 - (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs; and
 - (c) sent by email, is taken to be given on the business day after it is sent.

Financial year

60. Company's financial year

- 60.1 The **company's** financial year is from 1 July until 30 June, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

61. Indemnity

- 61.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 61.2 In this clause, 'officer' means a director, secretary or ombudsman and includes a director, secretary or ombudsman after they have ceased to hold that office.
- 61.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the **company** is not precluded by law (including the **Corporations Act**) from doing so, and
 - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 61.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **company**.
- 61.5 Where the board considers it appropriate, the **company** may execute a documentary indemnity in any form in favour of any director of the company, provided that such terms are not inconsistent with this clause 61.

62. Insurance

- 62.1 To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

63. Directors' access to documents

- 63.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 63.2 Where the board considers it appropriate the **company** may:
- (a) give a director or former director access to certain papers, including documents provided or available to the director or other documents referred to in those documents; and
 - (b) bind itself in any contract with a director or former director to give them access.

Winding up

64. Surplus assets not to be distributed to members

- 64.1 If the **company** is wound up, any surplus assets must not be distributed to a member or a former member of the **company**, unless that member or former member is an organisation described in clause 65.1.

65. Distribution of surplus assets

- 65.1 Subject to the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more organisations:
- (a) with not-for-profit object(s) similar to, or inclusive of, the object(s) in clause 6, and
 - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company**.
- 65.2 The decision as to the organisation or organisations to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make this decision.

Definitions and interpretation

66. Definitions

- 66.1 In this constitution, unless the context requires otherwise:
- ASIC** means the Australian Securities & Investments Commission or any successor body
- Authority** means:
- (a) DTMR
 - (b) VicRoads;
 - (c) NSW Roads and Maritime Services; and
 - (d) BCC

BCC means the Brisbane City Council

Case Fees means fees payable by members for dealing with disputes charged in accordance with a scale fixed from time to time by the directors under clause 42.5

Chair means a person elected by the directors to be the **company's Chair** under clause 33

Consumer Directors means the directors appointed pursuant to clause 30.

company means the **company** referred to in clause 1

Communication Protocols mean any communication protocols established by the directors for the conduct of meetings.

Corporations Act means the *Corporations Act 2001* (Cth)

directors means all or some of the directors acting as a board

DTMR means Queensland Department of Transport and Main Roads

Financial year means any 12-month period determined by the directors as the financial year of the Company

Group means:

- (a) in relation to an incorporated body that is not a member of the Transurban Group, that incorporated body and its **Holding Company** and all **Subsidiaries** of that **Holding Company**; and
- (b) in relation to an incorporated body that is a member of the **Transurban Group**, that incorporated body and the other members of the **Transurban Group**

Holding Company has the meaning given in the **Corporations Act**

Inaugural Directors mean the directors appointed for the purposes of establishing and registering the company

Inaugural Member means the member appointed for the purposes of establishing and registering the company

Industry means the toll road industry in Australia

Industry Directors means the directors appointed pursuant to clause 29.2

Levies means the Levies paid or payable by a Member pursuant to clause 42

Member present means, in connection with a general meeting, a member present in person, via technology, by representative or by proxy at the venue or venues for the meeting

Ombudsman means the person appointed by the directors to manage the day-to-day operations of the **company**, and to perform other duties and responsibilities in accordance with the **Terms of Reference**

Special resolution means a resolution:

- (a) of which notice has been given under clause 18, and
- (b) that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution

Subsidiary has the meaning given in the **Corporations Act**, amended as necessary such that:

- (a) a body corporate or a trust will also be taken to be a **Subsidiary** of an entity if it is controlled by that entity (as defined in section 50AA of the **Corporations Act**)
- (b) a trust may be a **Subsidiary**, for the purpose of which a unit or other beneficial interest in the trust will be regarded as a share (ignoring the operation of section 48(2) of the **Corporations Act**); and
- (c) an entity may be a **Subsidiary** of a trust if it would have been a **Subsidiary** if that trust were a body corporate

Surplus assets means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up

Terms of Reference means the Terms of Reference that apply in respect of a dispute arising between a customer and a member (or a member of its Group)

Toll Road Operator means a body entitled to operate a toll road in Australia under an agreement, concession or licence granted by a federal, state or city government, or a body that provides tolling services in respect of such toll roads

Transurban Group means:

- (a) Transurban International Limited (ACN 121 746 825), Transurban Holdings Limited (ABN 86 098 143 429) and Transurban Holding Trust (ARSN 098 807 419) by its responsible entity Transurban Infrastructure Management Limited (ACN 098 147 678), but only while the securities of those entities remain stapled securities (the **Stapled Entities**)
- (b) each company in which the **Stapled Entities**, whether individually or collectively, own (directly or indirectly) 50% or more of the voting shares; and/or
- (c) each company which is controlled (as defined in section 50AA of the **Corporations Act**) by the **Stapled Entities**, whether individually or collectively,

but excludes Interlink Roads Pty Ltd and any **Subsidiary** of Interlink Roads Pty Ltd,

67. Reading this constitution with the Corporations Act

- 67.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 67.2 The **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.

68. Interpretation

- 68.1 In this constitution, unless the contrary intention appears:
 - (a) in a provision of this Constitution that deals with a matter which is also deal with in the **Corporations Act**, an expression has the same meaning as the definition contained in the **Corporations Act**.
 - (b) Headings to these clauses do not affect their construction.
 - (c) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
 - (d) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).
 - (e) (**gender**) words importing any gender include all other genders;
 - (f) (**person**) the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
 - (g) (**singular includes plural**) the singular includes the plural and vice versa;
 - (h) (**regulations**) a reference to a law includes regulations and instruments made under that law;

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- (i) **(amendments to statutes)** a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
- (j) **(from time to time)** a power, an authority or a discretion reposed in a director, the directors, the **company** in general meeting or a member may be exercised at any time and from time to time;
- (k) **(signed)** where, by a provision of this constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the directors; and
- (l) **(writing)** “**writing**” and “**written**” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.