

Constitution

Wambo 2 Hold Co Pty Ltd

ACN 661 001 225

MinterEllison

L A W Y E R S

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Constitution of Wambo 2 Hold Co Pty Ltd

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Definitions and interpretation

1. Defined terms

1.1 In this Constitution:

Affiliate means:

- (a) any entity (such as a body corporate, partnership or trust) which a Director or Relative controls (within the meaning of section 50AA of the Corporations Act) and has the capacity to determine the outcome of decisions about the Company's financial or other operating policies; or
- (b) a Relative of the Director or the Director's spouse or a body corporate in which a Director or any Relative own or hold in aggregate more than 20% of the voting shares (as defined in the Corporations Act).

Auditor means the Company's auditor, if any.

Auditor-General Act means the *Auditor-General Act 2009* (Qld) as modified or amended from time to time.

Board means the Directors acting collectively as a board in accordance with this Constitution.

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland, Australia.

Company means Wambo 2 Hold Co Pty Ltd ACN 661 001 225.

Constitution means the constitution of the Company as amended from time to time.

Corporate Plan has the meaning given in the GOC Act.

Corporations Act means the *Corporations Act 2001* (Cth) as modified or amended from time to time .

De facto Spouse has the meaning given by the Corporations Act.

Director includes any person occupying the position of director of the Company.

Financial Year means the financial year of the Company as determined by the Board from time to time.

GOC has the meaning given in the GOC Act.

GOC Act means the *Government Owned Corporations Act 1993* (Qld) and its Regulations as modified or amended from time to time.

GOC Minister has the meaning given in the GOC Act.

GST has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as modified or amended from time to time.

Holding Company means the GOC of which the Company is a subsidiary (as that term is defined in the GOC Act).

Indirect Interest means an interest of a Relative of a Director or an Affiliate of a Director or Affiliate of a Relative of a Director.

Member means a person whose name is entered for the time being on the Register or any branch register as the holder of one or more Shares in accordance with this Constitution.

Officer has the meaning given to that term by the Corporations Act.

Portfolio Minister has the meaning given in the GOC Act.

Premier means the Premier of the State of Queensland.

Public Service Officer has the meaning given by the *Public Service Act 2008* (Qld) as modified or amended from time to time.

Queensland Auditor-General means the Queensland Auditor-General appointed under the Auditor-General Act 2009 (Qld) as modified or amended from time to time.

Relative has the meaning given by the Corporations Act and includes a De Facto Spouse.

Register means the register of Members of the Company kept as required by the Corporations Act.

Secretary means any person appointed by the Board to perform any of the duties of a secretary of the Company.

Shareholding Minister means the GOC Minister and the Portfolio Minister of the Holding Company.

Shares means shares of the Company.

Statement of Corporate Intent has the meaning given by the GOC Act.

- 1.2 In this Constitution, except where the context otherwise requires, an expression in a rule of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a rule of this Constitution, that expression has the same meaning as in that provision.

2. Interpretation

- 2.1 In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a rule is to a rule of this Constitution;
- (d) a reference to any legislation or to any provision of any legislation includes, any amendment, variation, modification, re-enactment or extension of it, or legislative provision substituted for it; and
- (e) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

- 2.2 Headings are for ease of reference only and do not affect interpretation.

Applicable legislation and objects

3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act are excluded and do not apply to the Company.

4. GOC Act prevails

4.1 This Constitution is to be read subject to the GOC Act.

4.2 To the extent of any inconsistency between the GOC Act and the Corporations Act, the GOC Act will prevail to the extent permitted by the Corporations Act.

4.3 To the extent of any inconsistency between the GOC Act and this Constitution, the GOC Act will prevail.

4.4 Subject to rule 4.2, to the extent of any inconsistency between the Corporations Act and this Constitution, the Corporations Act will prevail.

5. Objects

5.1 If there is a Holding Company:

- (a) the Company's objects are to carry on any activity that is incidental or ancillary to or considered necessary or desirable to achieve the Holding Company's objects; and
- (b) the Company must not undertake any activities which do not come within the scope of the objects in rule 5.1(a).

Shares

6. Power to issue shares

6.1 Subject to this Constitution, the Corporations Act and the GOC Act, the Board may issue or dispose of Shares, preference shares, securities that are liable to be redeemed, other securities or options to have Shares or securities issued.

6.2 While the Company is a subsidiary of the Holding Company, the Board must not issue or dispose of any securities or options to have securities issued without the prior written approval of the Shareholding Ministers, unless the issue or disposal is to the Holding Company and the Company has received the prior written approval of the Holding Company for that issue or disposal.

7. Rights

Subject to this Constitution and to the terms of issue of Shares, the holders of Shares have the following rights and privileges:

- (a) the right to receive notice of and to attend and vote at all general meetings of the Company at one vote per Share;
- (b) the right to receive dividends; and

- (c) in a winding up, the right to participate equally in the distribution of the assets of the Company (both capital and surplus), subject only to any amounts unpaid on the Shares.

8. Right to refuse registration

- 8.1 In accordance with the GOC Act, the Premier may execute a transfer of Shares in the Company on behalf of either or both the transferor and transferee.
- 8.2 Despite any contrary rules in this Constitution, the Board:
 - (a) must register a transfer of Shares which is permitted by the GOC Act; and
 - (b) must not register a transfer of Shares unless the provisions of the GOC Act concerning the transfer of shares are fully complied with.

The Board may otherwise in their absolute discretion and without assigning any reason register or decline to register any transfer of Shares or other securities.

9. Certificates

- 9.1 When a person becomes a Member of the Company, the Company must issue a certificate of title for the Shares held by that Member that complies with the Corporations Act and deliver that certificate to the relevant Member in accordance with the Corporations Act.
- 9.2 If a certificate of title to Shares is:
 - (a) lost or destroyed and the Member owning those Shares applies in accordance with the Corporations Act, the Company must issue a new certificate in its place; or
 - (b) defaced or worn out and is produced to the Company, the Company may issue a new certificate in its place.

10. Dividends

- 10.1 The Board may, subject to compliance with the requirements of the Corporations Act, the GOC Act and any other applicable law, determine or declare that a dividend or interim dividend is payable and fix:
 - (a) the amount; and
 - (b) the time of payment; and
 - (c) the method of payment.

The methods of payment may include the payment of cash.

- 10.2 The Company must not pay interest on a dividend.
- 10.3 Subject to the Corporations Act and the GOC Act, the Company incurs a debt for payment of dividends or interim dividend only when the time fixed for payment arises.

11. Transfer

- 11.1 Subject to rules 8.2 and 11.3, and the GOC Act, a Member may transfer a Share by a document the form of which is permitted by law and which is signed by or on behalf of both the transferor and the transferee.

- 11.2 Shares may be transferred by:
- (a) a written transfer instrument in any usual or common form;
 - (b) while the Company is a subsidiary of the Holding Company, a written transfer instrument executed by the Premier for the purposes of giving effect to the GOC Act; or
 - (c) any other form approved by the Board.
- 11.3 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.
- 11.4 A transfer of Shares does not pass the right to any unpaid dividends or dividends declared on the Shares until the transfer is recorded in the Register.

12. Alteration of share capital

- 12.1 The Company may reduce its share capital by any means permitted under the Corporations Act.
- 12.2 If permitted by the Corporations Act, where the Company reduces its share capital, it may do so by way of payment of cash, distribution of specific assets (including shares or other securities in another corporation), or in any other manner permitted by law. If the reduction is by distribution of specific assets, the Board may:
- (a) fix the value of any assets distributed;
 - (b) make cash payments to Members on the basis of the value fixed so as to adjust the rights of Members between themselves; and
 - (c) vest an asset in trustees.

Meetings of Members

13. Calling meetings of Members

- 13.1 A meeting of Members:
- (a) may be convened at any time by the Board; and
 - (b) must be convened by the Board when required by the Corporations Act or an order made under the Corporations Act.
- 13.2 Subject to rule 13.3, at least 21 days' written notice of a meeting of Members must be given individually to:
- (a) each Member (whether or not the Member is entitled to vote at the meeting);
 - (b) each Director; and
 - (c) to the Auditor.
- The notice of meeting must comply with all the requirements of the Corporations Act.
- 13.3 Subject to the Corporations Act:
- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree; or

- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

14. Quorum

- 14.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 14.2 A quorum of Members is two Members unless there is only one Member, when a quorum is that Member.
- 14.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
 - (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
 - (b) in any other case:
 - (i) it will stand adjourned to the same time and place seven days after the general meeting, or to another day, time and place determined by the Board; and
 - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, it is automatically dissolved.
- 14.4 The chairperson of Board meetings will be the chairperson at every general meeting of Members.

15. Resolutions of Members

- 15.1 The Company may pass a resolution without a general meeting being called or held if the resolution set out in a document is signed and dated by the Members containing a statement that they are in favour of the resolution set out in the document.
- 15.2 The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a Member in a manner satisfactory to the Board as being signed by that Member.
- 15.3 For the purposes of rule 15.1, separate copies of a document may be used for signing by the Members if the wording of the resolution and statement is identical in each copy.

Appointment, removal and remuneration of Directors

16. Number of Directors

- 16.1 Subject to the Corporations Act, the Company may by resolution passed at a general meeting increase the number of Directors.
- 16.2 Until the Company resolves otherwise there will be:
 - (a) a minimum of one Director; and
 - (b) a maximum of ten Directors.

- 16.3 While the Company is a subsidiary of the Holding Company, a person may only be appointed as a Director if they are a director of the Holding Company, or if prior approval has been given in writing by the Shareholding Ministers.

17. Appointment of Directors

Subject to rule 16.3 the Company may by resolution passed at a general meeting:

- (a) appoint any person as a Director to fill a vacancy or as an addition to the existing Directors;
- (b) remove any Director; and
- (c) appoint another person in the Director's place.

18. Period of office

A Director will continue to hold office until he or she dies or until his or her office is vacated under rule 19.

19. Vacation of office

The office of a Director immediately becomes vacant if the Director's appointment expires, or the Director:

- (a) being a director of the Holding Company, ceases to be a director of the Holding Company;
- (b) is prohibited by the Corporations Act or order made under the Corporations Act from holding office or continuing as a Director;
- (c) cannot manage the Company because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 17(b).

20. Remuneration of Directors

The Directors will not be entitled to such remuneration for their service as a Director of the Company except as approved by the Shareholding Ministers or (if the Company has ceased to be a subsidiary of the Holding Company) the Company in general meeting.

21. Other payments to Directors

- 21.1 Subject to the prior approval of the Shareholding Ministers, a Director who is called upon by the Board to perform extra services or to make special exertions for the purposes of the Company may be paid a fixed sum by the Company, as set by the Board, with the approval of the Holding Company, for doing so.
- 21.2 The Directors may be paid all reasonable travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Board or any committee of the Board or general meetings of the Company or otherwise in connection with business of the Company.

Powers of the Board

22. The Board to manage Company

- 22.1 Subject to this Constitution, the Corporations Act and the GOC Act, the business of the Company is managed by the Board who may exercise all powers of the Company that this Constitution or the Corporations Act do not require to be exercised by the Company in general meeting.
- 22.2 Rule 22.1 is subject to:
- (a) any prior undertaking the Holding Company has given to the Shareholding Ministers in its Statement of Corporate Intent and the Holding Company's Corporate Plan;
 - (b) while the Company is a subsidiary of the Holding Company, any limitations notified from time to time by the Holding Company to the Company in writing; and
 - (c) Rule 22.4.
- 22.3 So long as the Company is wholly owned by the Holding Company, each Director is authorised to act in the best interests of the Holding Company.
- 22.4 So long as the Company is wholly owned by the Holding Company:
- (a) the State of Queensland does not underwrite any liability of the Company except under a guarantee approved by the Shareholding Ministers; and
 - (b) no liability of the Company passes to the Holding Company or the State of Queensland without the prior written approval of the Shareholding Ministers.

23. Delegation

- 23.1 The Board may delegate any of their Directors' powers as permitted by the Corporations Act and the GOC Act, including delegation to a committee or committees of Directors, on the terms and subject to any restrictions that the Board may decide.
- 23.2 Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of that committee are (to the greatest extent practical) governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.
- 23.3 The Board may revoke any delegation of their powers at any time.

Duties and interests of Directors

24. Responsibilities under the Corporations Act and the GOC Act

The roles, responsibilities and duties of the Board include those required of them under the Corporations Act and the GOC Act.

25. Director can hold other offices

A Director may:

- (a) hold any office or place of profit or employment other than that of Auditor or a Public Service Officer; or

- (b) be a member of any corporation (other than the Company) or partnership.

26. Disclosure of interests

Subject to the Corporations Act, a Director who has a material personal interest in a matter that relates to the affairs of the Company must give the Board notice of that interest. A Director may give standing notice of an interest in accordance with the Corporations Act.

27. Director interested in a matter

- 27.1 A Director must not be present, and is not entitled to vote, at a meeting of the Board that considers a matter in which that Director has a material direct personal interest or Indirect Interest.
- 27.2 Even if the interest has been disclosed by the Director, the Company may proceed with any transaction that relates to the Director's interest.
- 27.3 A Director may retain benefits under the transaction even though the Director has the interest. If the interest is required to be disclosed under rule 26, this rule applies only if the interest has been disclosed before the transaction is entered into.
- 27.4 The Company cannot avoid the transaction merely because of the existence of the interest.

28. Register of Interests

- 28.1 In addition to recording every declaration of interest in the minutes of the meeting at which it is made, the Company must maintain a register of interests disclosed under rule 26.
- 28.2 The Shareholding Ministers may request the Company to provide them with a copy of the register maintained under rule 28.1 and the Company must provide the register as requested by the Shareholding Ministers.

29. Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; and
- (b) is present at, or counted in the quorum for, a meeting of Directors that considers or votes on that agreement.

30. Obligation of secrecy

- 30.1 Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
 - (a) in the course of duties as an officer of the Company;
 - (b) by the Board or the Company in general meeting; or
 - (c) by law.
- 30.2 The Company may require a Director, Secretary, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

Proceedings of the Board

31. Board meetings

- 31.1 A Director may at any time, and the Secretary must on the request of a Director, call a Board meeting on reasonable notice.
- 31.2 Subject to the Corporations Act, a Board meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. A Director who participates in a meeting held in accordance with this rule 31.2 is taken to be present and entitled to vote at the meeting.
- 31.3 Rule 31.2 applies to meetings of Directors' committees as if all committee members were Directors.
- 31.4 The Board may meet together, adjourn and regulate their meetings as they think fit.
- 31.5 At a meeting of the Board, a quorum is half the number of Directors or, if that number is not a whole number, the next highest whole number.
- 31.6 Notice of a meeting of the Board may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

32. Decision on questions

- 32.1 Subject to this Constitution, questions arising at a meeting of the Board are to be decided by a majority of votes of the Directors present and voting and, subject to rule 27.1, each Director has one vote.
- 32.2 The chairperson of a meeting has a casting vote in addition to his or her deliberative vote if there is an equality of votes.

33. Chairperson

- 33.1 The Board may elect a Director as chairperson of Board meetings and may determine the period for which the chairperson will hold office.
- 33.2 If no chairperson is elected or if the chairperson elected in accordance with rule 33.1 is not present at any Board meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairperson of that meeting.

34. Written resolutions

- 34.1 The Board may pass a resolution without a Board meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when more than half of the Directors entitled to vote on the resolution have signed.
- 34.2 For the purposes of rule 34.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 34.3 Any document referred to in this rule may be in the form of a facsimile transmission or other electronic copying and transmission of a signed document.

Chief executive officer

35. Appointment

The chief executive officer, if any, must be appointed by the Board with the prior written approval of the Shareholding Ministers.

36. Terms and conditions

The terms and conditions of employment (including remuneration) of the chief executive officer of the Company shall be determined by the Board.

Secretary

37. Appointment

37.1 While the Company is a subsidiary of the Holding Company, the Secretary of the Company (if any) must be the Secretary of the Holding Company, appointed in accordance with the GOC Act.

37.2 If the Company ceases to be a subsidiary of the Holding Company then the Board may appoint one or more persons as a Secretary.

38. Removal

38.1 A person automatically ceases to be a Secretary if the person is:

- (a) not permitted by the Corporations Act (or by an order made under the Corporations Act) to be a secretary of a company;
- (b) disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given leave or permission to manage the Company under section 206F or section 206G of the Corporations Act;
- (c) of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) removed from office under rule 38.2.

38.2 The Board may remove a person appointed as Secretary at any time if:

- (a) while the Company is a subsidiary of the Holding Company, the Secretary ceases to be the Secretary of the Holding Company; or
- (b) if the Company ceases to be a subsidiary of the Holding Company, a majority of Directors entitled to vote on the matter pass a resolution to that effect.

Minutes

39. Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings;
- (d) resolutions passed by Directors without a meeting; and
- (e) any notice provided by a Director in accordance with Rule 26.

to be kept in accordance with the requirements of the Corporations Act.

40. Minutes as evidence

A minute recorded and signed in accordance with the Corporations Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

41. Inspection of minute books

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with the Corporations Act.

Notices

42. Service of notices

42.1 Notice may be given by the Company or a Member to any person who is entitled to notice under this Constitution by:

- (a) serving it on the person;
- (b) sending it by post, fax transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person; or
- (c) if it is a notice of meeting, giving it in accordance with section 249J(3) of the Corporations Act.

42.2 A notice sent by post is taken to be received:

- (a) if sent within Australia, one Business Day after posting; and
- (b) if sent outside Australia, 3 Business Days after posting.

42.3 Subject to the Corporations Act, a notice sent by fax transmission or electronic notification is taken to be served:

- (a) by properly addressing the fax transmission or electronic notification and transmitting it; and

- (b) if it arrives during business hours on a particular day, on that day or, if it arrives after business hours on a particular day, on the next day.

Financial reports and audit

43. Financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance (including transactions undertaken as a trustee); and
 - (b) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director and the Auditor to inspect those records at all reasonable times.

44. Reports

- 44.1 The Board must cause the Company to provide the Holding Company with all necessary information for the Holding Company to make a quarterly report to the Shareholding Ministers on the operations of the Company in accordance with the GOC Act.
- 44.2 The Board must provide information (including information on the operations, financial performance and financial position) of the Company and its subsidiaries in accordance with the GOC Act.

45. Audit obligation

If required by the GOC Act or the Corporations Act, the Board must cause the Company's financial report for each Financial Year to be audited and obtain an auditor's report.

46. Auditor

The Queensland Auditor General will be the Auditor to the extent required under the Auditor-General Act. The remuneration of the Auditor will be in accordance with the Auditor-General Act.

Amendment of Constitution

47. Amendment of Constitution

Subject to the Shareholding Ministers giving their prior approval in writing, the Constitution may be amended in any way permitted by the Corporations Act.

Indemnity and insurance

48. Indemnity

48.1 Subject to the Corporations Act and any other applicable law, the Company indemnifies every person who is or has been an Officer of the Company against:

- (a) any liability (other than a liability for legal costs or conduct that involves a lack of good faith or a pecuniary penalty); and
- (b) reasonable legal costs incurred in defending an action for a liability described in rule 48.1(a),

incurred by that person as an Officer of the Company.

48.2 The amount of any indemnity payable under rule 48.1 will include an additional amount (**GST Amount**) equal to any GST payable by the Officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

49. Insurance

49.1 Subject to the Corporations Act and any other applicable law, 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 of the Company against any liability incurred by the person as an Officer of the Company except a liability (other than one for legal costs) arising out of:

- (a) a wilful breach of duty in relation to the Company; or
- (b) contravention of section 182 or section 183 of the Corporations Act.

Execution of documents

50. Execution of documents

The Company may execute a document in any way approved by the Board and permitted by law. The Company is not required to have a common seal.

Winding-up

51. Winding-up

If the Company is wound up, the property of the Company (subject to the satisfaction of any outstanding liabilities of the Company) is passed to and vested in its Members.