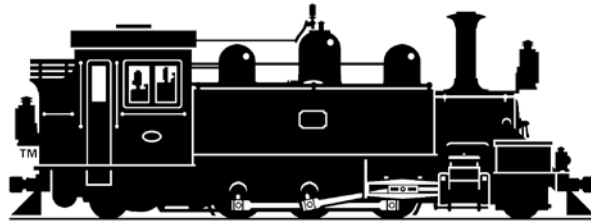


*CORPORATIONS ACT 2001*

**PUFFING BILLY  
PRESERVATION SOCIETY**

**(ACN 004 621 505)**



**Constitution 2012**

**(as amended June 19, 2018)**

Constitution 2012 was approved by special resolution by the membership of the Puffing Billy Preservation Society at a General Meeting called for the purpose on Thursday November 29<sup>th</sup>, 2012.

**Constitution 2012 has been modified by special resolution by the membership of the Puffing Billy Preservation Society at a General Meeting called for the purpose on Tuesday June 19<sup>th</sup>, 2018.**

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*CORPORATIONS ACT 2001*

**COMPANY LIMITED BY GUARANTEE**

**CONSTITUTION**

**OF**

**PUFFING BILLY PRESERVATION SOCIETY**

(ACN 004 621 505)

**INTRODUCTION**

**1. NAME**

The name of the Company is “Puffing Billy Preservation Society”.

**2. DEFINITION AND INTERPRETATION**

In this Constitution, unless the contrary intention appears:

“Auditor” means the Company’s auditor;

“Board” means and includes the Emerald Tourist Railway Board;

“Business day” has the same meaning as in the *Corporations Act 2001*;

“Company” means Puffing Billy Preservation Society;

“Company Year” means year from 1 July to 30 June;

“Constitution” means the constitution of the Company as amended from time to time;

“Executive Committee” means a group of Members duly constitutionally elected to form the controlling body of the Company;

“Nominee” means the nominee by the Executive Committee to the Board;

“Office” means the Company’s registered office;

“Register” means the register of Members of the Company;

“Registered address” means the last known address of a Member as noted in the Register;

“Representative” means a person appointed by a Member to act as its representative under Clause 47.1 or under section 250D of the *Corporations Act 2001*;

“Seal” means the Company’s common seal;

“Secretary” means any person elected to that position on the Executive Committee to perform any of the duties of a Secretary of the Company.

- 2.1 In this Constitution, unless the contrary intention appears:
- (a) the singular includes the plural and vice versa and words imputing a gender include the other gender;
  - (b) words imputing natural persons include corporations;
  - (c) words and expressions defined in the *Corporations Act 2001* have the same meaning in this Constitution;
  - (d) headings are for ease of reference only and do not affect the construction of this Constitution; and
  - (e) a reference to the *Corporations Act 2001* is a reference to the *Corporations Act 2001* as modified or amended from time to time.
- 2.2 An expression in a provision of this Constitution has the same meaning as in a provision of the *Corporations Act 2001* that deals with the same matter as the provision, unless the contrary intention appears in this Constitution.
- 2.3 To the extent permitted by law, the replaceable rules in the *Corporations Act 2001* do not apply to the Company.

## **OBJECTS AND PURPOSE**

### **3. PRIME OBJECTS**

The prime objects of the Company are to preserve and continue to develop the narrow gauge railway line between Belgrave and Gembrook as a world class heritage railway known as Puffing Billy Railway and to maintain a museum of related artefacts. The Company will also support the Emerald Tourist Railway Board to keep the railway in operation as a major tourist attraction.

These prime objects should be read in conjunction with the aims and objectives of the Company.

### **4. CHARITABLE PURPOSE**

- (a) The Company is required to pursue the charitable purpose contained in Clause 3 and must apply its income to promoting that purpose.
- (b) The Company is prohibited from making distributions to its Members and paying fees to its Executive Committee.
- (c) The Executive Committee must approve all other payments the Company makes to the Members of the Executive Committee.

## MEMBERSHIP & SUBSCRIPTIONS

### 5. MEMBERSHIP

5.1 A Member is defined as a natural person, family or organisation that supports the objects of the Company and has met all requirements for Membership including application, acceptance and payment of a prescribed fee.

5.2 The categories of Membership are as follows:

- (a) Full Member—a person not in another category.
- (b) Family Member—up to two parents/guardians and their children up to 18 years.
- (c) Concession Member—a person of 18 years and over entitled to concession as defined by the Executive Committee from time to time.
- (d) Junior Member—a person under 18 years at the start of the Company Year.
- (e) Life Member—a person who has been accepted for Life Membership.
- (f) Honorary Life Member—a person appointed by the Executive Committee to Honorary Life Membership.
- (g) Corporate Member—includes organisations which must be represented by a nominated natural person.
- (h) Such other category as determined by the Executive Committee from time to time.

5.3 A person eligible to become a Member of the Company may be admitted as a Member when:

- (a) that person has completed an Application Form prescribed by the Executive Committee;
- (b) that person has paid to the Company any admission fee and subscription fee payable; and
- (c) a majority of the Executive Committee has approved the Application.

For applications to become a Family or Corporate Member, a natural person must be nominated as the Member representative.

A person who has previously been a Member, may re-apply to become a Member of the Company with fees payable and re-instatement at the discretion of the Executive Committee.

The Secretary will give the applicant written notice of whether the application has been accepted or not.

5.4 All Members shall have the right to receive notice of, and attend all meetings of the Company.

5.5 All Members (except Junior Members) shall have the right to one vote at general meetings of the Company.



- 5.6 All Members (except Junior Members) who have at least one year's Membership shall be eligible to stand for election to, or to be appointed to the Executive Committee.
- 5.7 The rights, privileges and obligations of Membership shall be determined by the Executive Committee from time to time. Family Members and Corporate Members have the same rights, privileges and obligations as Full Members.
- 5.8 A Member may nominate another Member for conferral of Honorary Life Membership for the consideration of the Executive Committee.

The Executive Committee may confer Honorary Life Membership upon a Member who has demonstrated exemplary service to the Company.

The appointment of an Honorary Life Member will be announced at the Annual General Meeting.

The Honorary Life Member will be exempt from subscriptions after appointment.

## **6. CESSATION/TERMINATION OF MEMBERSHIP**

- 6.1 A Member will automatically cease to be a Member if they:
- (a) have died, unless the Member is a representative of a Family or Corporate Member where a substitute nomination may be made as their representative in writing to the Executive Committee;
  - (b) resign by notice in writing to the Company; or
  - (c) fail to comply within 30 days with a notice requiring them to pay a subscription which has been outstanding for a period of not less than 30 days.

A Member whose Membership has ceased due to 6.1 (b) or 6.1 (c) may re-apply to be re-instated as a Member following the requirements of Clause 5.3.

- 6.2 Subject to this Constitution, if the Executive Committee is of the opinion that a Member has refused or neglected to comply with this Constitution, or is assessed as undesirable, the Executive Committee may by resolution terminate the Membership of the Member.
- (a) In case of termination of Membership, the Secretary must notify the Member in writing of the decision of the Executive Committee.
  - (b) The Member may appeal the termination of their Membership to the Executive Committee in writing to the Secretary within 30 days of the letter of termination.
  - (c) The Executive Committee shall within 30 days of the receipt of the appeal, set up an Appeal Committee consisting of three independent Members, chosen by the appellant, from a panel of six provided by the Executive Committee.
  - (d) The Appeal Committee shall consider the appeal and advise all parties of a binding outcome within 30 days. No further appeal will be made.

## **7. ADMISSION FEES AND SUBSCRIPTIONS**

Every person admitted as a Member shall upon admission pay such Admission Fee (if any) as the Executive Committee may determine.

The Executive Committee will recommend subscriptions for each Membership Category to the Annual General Meeting for approval. The Annual Subscriptions, where payable by Members, will be such sums as fixed by the Annual General Meeting.

A Member may apply to become a Life Member by full payment of the Life Membership fee and shall not be liable to pay any further subscription fees from that time.

In cases of hardship, the Executive Committee may reduce or waive Annual Subscription fees altogether.

## **8. REGISTER OF MEMBERS**

The Secretary shall keep and maintain a list of Members in which shall be entered the full name, Membership category, postal address and other contact details and the date of Membership commencement. In the case of re-instatement, the date of re-instatement as determined by the Executive Committee shall be entered. Once the Member has been added to the Register, their record cannot be removed. In the case of cessation or termination, the reason and date will be recorded and retained.

The list shall be available for inspection by the Executive Committee at the business address of the Company. A Member may apply to the Secretary for information on the register. Having regard to the *Information Privacy Act 1988*, the Secretary may provide or decline to provide such information.

## **9. CONFIDENTIAL INFORMATION**

Except as provided by the Law, no Member (not being a Member of the Executive Committee) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

## **THE EXECUTIVE COMMITTEE**

## **10. THE EXECUTIVE COMMITTEE**

The Executive Committee shall consist of four Office Bearers and eight Committee Members.

- (a) President.
- (b) Vice President.
- (c) Secretary.
- (d) Treasurer.
- (e) Eight Committee Members.

Any Member who meets the criteria of Clause 5.6 is eligible to stand as an Office Bearer or Member of the Executive Committee save and except that the President may not be a paid employee or contractor within the meaning of that term as defined in this Clause.

The Executive Committee (including Office Bearers) shall have no more than four Members who are paid employees of, or Contractors to, the Board or Company, and receive a substantial proportion of their income from the Board or Company. For the purposes of this Constitution the term substantial proportion means a proportion of 40 per cent or greater.

## **11. NOMINATION AND ELECTION OF THE EXECUTIVE COMMITTEE**

11.1 The Company may by resolution passed in general meeting:

- (a) Appoint a person as an Office Bearer and a Member of the Executive Committee.
- (b) Increase or reduce the number of Office Bearers and Members of the Executive Committee.

Each of the Office Bearers and Committee Members shall be elected for a term of two years at the Annual General Meeting so that four Members and two Office Bearers shall retire at each successive Annual General Meeting. The President and Secretary shall retire one year and the Vice President and Treasurer the next year.

All retiring Office Bearers and Executive Committee Members shall be eligible for re-election. In the case where it has been necessary to elect more than four Members of the Executive Committee, the four elected Members with the highest number of votes shall be elected for a period of two years and the remainder for one year.

11.2 If the number of Candidates nominated for election to the Executive Committee (whether as an Office Bearer or Ordinary Committee Member) is equal to, or less than the number of and category of each vacancy so that any or all of the positions of Office Bearer and Committee Member were filled, then the chairman of the Annual General Meeting must declare those candidates to be duly elected to the Executive Committee.

11.3 In all circumstances not covered by Clause 11.2, where there is more than one candidate for any given Office Bearer or there is a surplus of candidates for the Ordinary Committeeman positions, a secret postal ballot must be held for the election of candidates for each position. The ballot shall be conducted under the preferential system.

11.4 The Executive Committee must, at least seven clear days before the closing date for nominations, appoint one Returning Officer. The Returning Officer shall be responsible for overall conduct of the election.

- 11.5 A nomination of a candidate for election to the Executive Committee must be:
- (a) in writing and contain the following information;
    - (i) the candidate's full given name and address;
    - (ii) a statement indicating what Office the candidate is nominated for; and
    - (iii) the names and addresses of the proposer and seconder.
  - (b) signed by the Candidate;
  - (c) signed by the proposer and the seconder who are both eligible financial Members; and
  - (d) lodged with the Company at the registered office of the Company no later than 5.00 p.m. on a day being no later than 38 clear days before the date of the Annual General Meeting.
- 11.6 To be able to vote for, be nominated as, propose or second a candidate, a Member must be a financial Member at 5.00 p.m. on a date being 38 clear days prior to the Annual General Meeting.
- 11.7 The Returning Officer, or failing him the chairman, must report the result of the postal ballot to the Annual General Meeting and declare the names of the candidates who have been elected.
- 11.8 In the event that there is an equality of votes for any position, the successful candidate must be determined by a vote of those present at the Annual General Meeting.
- 11.9 In the event that there is no nomination for any position of Office Bearer or Member of the Executive Committee, then the chairman of the Annual General Meeting shall call for nominations for each such position from eligible Members present at the meeting. A vote for each position shall be conducted by a show of hands. Any successful nominee shall hold the position until the next Annual General Meeting.
- If no such nominations are forthcoming, then the retiring Office Bearer or ordinary Member of the Executive Committee, if willing, shall continue in Office until the next Annual General Meeting.
- 11.10 The Executive Committee may appoint any person who meets the criteria of Clause 5.6 to fill a casual vacancy occurring in any Office or as an ordinary Member of the Executive Committee and any person so elected shall retire at the Annual General Meeting following his appointment and be eligible for re-election.

## **12. REMOVAL OF MEMBERS OF THE EXECUTIVE COMMITTEE**

12.1 The Company may by resolution in general meeting:

- (a) remove any Member of the Executive Committee; and
- (b) appoint another person in the outgoing Member's place.

12.2 If the conduct or position of any Member of the Executive Committee is such that continuance in Office appears to the majority of the Members of the Executive Committee to be prejudicial to the interests of the Company, a majority of Members of the Executive Committee at a meeting specifically convened for that purpose may suspend that Member from the Executive Committee.

The secretary must notify the suspended Member of the Executive Committee in writing of the suspension.

An appeal to the suspension may be made within 30 days of the date of suspension by petition for a general meeting being called by a proposer and seconder who are financial Members of the Company.

12.3 The Office of a Member of the Executive Committee immediately becomes vacant if the person concerned:

- (a) is prohibited by the *Corporations Act 2001* from holding Office or continuing as a Director within the meaning of that term under the *Corporations Act 2001*;
- (b) cannot carry out their duties for the Company because of their mental incapacity and/or is a person whose estate or property has had a personal representative or trustee appointed to administer it;
- (c) resigns by notice in writing to the Company; or
- (d) ceases to be a Member of the Company or has their Membership terminated as per the conditions of Clause 6.

## **13. POWERS AND DUTIES OF THE EXECUTIVE COMMITTEE**

13.1 The operations of the Company are managed by the Members of the Executive Committee who may exercise all powers of the Company that this Constitution and the *Corporations Act 2001* do not require to be exercised by the Company in general meeting.

13.2 Without limiting the generality of this Clause, the Executive Committee may exercise all the powers of the Company to borrow money.

13.3 Every Member of the Executive Committee and other agent or officer of the Company must keep confidential aspects of the Company business deemed by the Executive Committee as sensitive material or "Commercial in Confidence".

#### **14. EMERALD TOURIST RAILWAY BOARD**

- 14.1 The Executive Committee shall nominate to the relevant Minister at least half of the number of the members on the Emerald Tourist Railway Board, in accordance with the provisions of the relevant Act.
- 14.2 Nominees to the relevant Minister shall be
- (a) Members who meet the requirements of clause 5.6.
  - (b) At least half of the Nominees shall be current members of the Executive Committee. The Executive Committee may nominate the balance from the Company's membership.
  - (c) Determined through election by the Executive Committee.
- 14.3 A Company Nominee shall resign from the Board within one month of the occurrence of any of the following events:
- (a) On ceasing to be a member of the Executive Committee.
  - (b) After an annual review, the Executive Committee withdraw the nomination of a non-Executive Committee member.
- 14.4 The candidates for the nomination to the Board shall be determined as follows
- (a) The Secretary shall advise office bearers and members of the Executive Committee.
    - (i) That a vacancy has been created through resignation, retirement, death or completion of term, and,
    - (ii) When the position becomes vacant, and,
    - (iii) Whether the vacancy can be filled by a non-Executive Committee member consistent with clause 14.2 (b) above.
  - (b) In the case of a vacancy to be filled from the Executive Committee, the Secretary shall request Executive Committee members to notify the Secretary that they are willing to act as a Company Nominee.
  - (c) In the case of a vacancy that the Executive Committee has determined may be filled by a non-Executive Committee member, the Secretary shall:
    - (i) Advise the members of requirements of the position, and,
    - (ii) Call for candidates who are willing to act as a Company Nominee,
    - (iii) Request candidates to be nominated and seconded by eligible financial members and to supply a short statement supporting the application,
    - (iv) Forward applications to the Executive Committee.
- 14.5 Elections of Nominees to the Board shall follow this procedure
- (a) The Secretary shall call an election for nominations and shall appoint an independent Returning Officer.
  - (b) The Returning Officer shall circulate to all members of the Executive Committee:
    - (i) Advice on how and when the secret ballot shall be conducted.
    - (ii) Statements about each candidate standing for nomination.
    - (iii) The ballot paper to be used.
  - (c) The Returning Officer shall distribute votes according to the preferential system and the candidates with the most votes after distribution of preferences shall be advised to the Secretary.
- 14.6 Nominations to the relevant Minister for the vacant positions on the Board shall be submitted by the Secretary.

## MEETINGS OF THE EXECUTIVE COMMITTEE

### **15. CALLING MEETINGS OF THE EXECUTIVE COMMITTEE**

An Executive Committee meeting may be called by a Member of the Executive Committee, giving reasonable notice individually to every other Member of the Executive Committee at any time.

### **16. USE OF TECHNOLOGY**

An Executive Committee meeting may be called or held using any technology consented to and accessible by all of the Members of the Executive Committee. The consent may be a standing one. Any meetings held in this way must follow correct meeting procedures and any decisions made in this way must be ratified at the following Executive Committee meeting.

### **17. CHAIRMAN**

The President shall be ex-officio the chairman of the Executive Committee, and in the event of an equality of votes, the chairman shall have a casting vote.

### **18. CIRCULATING RESOLUTIONS**

- (a) Any circulating resolutions will be distributed to all Executive Members by the Secretary. The resolution and supporting documents may be sent by electronic means to Members of the Executive Committee.
- (b) The Members of the Executive Committee of the Company may pass a resolution without a meeting being held, if all the Members of the Executive Committee entitled to vote on the resolution state they are in favour of the resolution.
- (c) The Secretary must be satisfied that, in receiving an electronic vote, that the Executive Committee Member has cast the vote.
- (d) Confirmation of a Circulating Resolution will be included in the Minutes of the next Ordinary Meeting of the Executive Committee.

### **19. QUORUM AT EXECUTIVE COMMITTEE MEETINGS**

The quorum for Executive Meetings is a simple majority of elected Office Bearers and Members of the Executive Committee and that quorum must be present at all times during the meeting.

### **20. RESTRICTIONS ON VOTING**

A Member of the Executive Committee who has a material personal interest in a matter that is being considered at an Executive Committee meeting must not be present while the matter is being considered at the meeting and must not vote on the matter.

## MEETINGS OF MEMBERS

### **21. CALLING OF A GENERAL MEETING**

- (a) The Executive Committee may call a meeting of the Company's Members.
- (b) The Executive Committee must call and arrange to hold a special general meeting on the request in writing of 30 Members. A minimum of 30 business days notice is required.
- (c) The request for a special general meeting must:
  - (i) state the reason for the request, including proposed resolutions;
  - (ii) be signed by the Members requesting the meeting; and
  - (iii) be lodged at the registered office of the Company.
- (d) Except as permitted by law, a general meeting, to be called the "Annual General Meeting", must be held at least once in every calendar year.

### **22. AMOUNT OF NOTICE OF MEETING**

Subject to the provisions of the Law as to short notice, at least 21 days notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

### **23. PERSONS ENTITLED TO NOTICE OF GENERAL MEETING**

Written notice of a meeting of the Company's Members must be given individually to:

- (a) each Member entitled to vote at the meeting;
- (b) each Member of the Executive Committee; and
- (c) the Company's Auditor.

### **24. HOW NOTICE IS GIVEN**

The Company may give the notice of meeting to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the register of Members or the alternative address (if any) nominated by the Member; or
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the Member.



## **25. WHEN NOTICE IS GIVEN**

A notice of meeting sent by post is taken to be given one business day after it is posted. A notice of meeting sent by facsimile or other electronic means, is taken to be given on the business day it is sent.

Service by facsimile or electronic mail is not effective if:

- (a) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
- (b) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
- (c) in either case the addressee notifies the Company promptly that the notice was not fully received in a legible form.

## **26. CONTENTS OF NOTICE**

A notice of a general meeting must:

- (a) set out 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); and
- (b) state the general nature of the meeting's business, and if a resolution related to special business is to be proposed at the meeting:
  - (i) set out an intention to propose the resolution and state the resolution; and
  - (ii) contain a statement stating that the Member has a right to appoint a proxy and that the proxy need not be a Member of the Company.

## **27. NOTICE OF ADJOURNED MEETING**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

## **28. ACCIDENTAL OMISSION TO GIVE NOTICE**

The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this Constitution, does not automatically invalidate the proceedings at or any resolution passed at the meeting.

## **29. POSTPONEMENT OF GENERAL MEETING**

The Members of the Executive Committee may postpone the holding of any general meeting whenever they see fit for not more than 42 days after the date for which it was originally called.

Whenever any meeting is postponed, the same period of notice of meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

### **30. TECHNOLOGY**

The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **31. QUORUM**

The quorum for a meeting of the Company's Members is 30 Members and the quorum must be present at all times during the meeting.

In determining whether a quorum is present, individuals attending as proxies are counted. If an individual is attending both as a Member and as a proxy, the individual is counted only once.

If the quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:

- (a) where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or
- (b) in any other case, the meeting is adjourned to the date, time and place the Members of the Executive Committee specify. If the Members of the Executive Committee do not specify one or more of those things, the meeting is adjourned to:
  - (i) if the date is not specified—the same day in the next week;
  - (ii) if the time is not specified—the same time; and
  - (iii) if the place is not specified—the same place.

If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

### **32. CHAIRMAN AT GENERAL MEETINGS**

The President presides as chairman at every general meeting, if present and willing.

Where a general meeting is held, and:

- (a) a chairman has not been appointed; or
- (b) the chairman is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act:

the Members present must appoint the Vice President, if present and willing, or failing him, another Member of the Executive Committee willing to act, elected by the Members of the Executive Committee present to be the chairman of the meeting.

The chairman must adjourn a meeting of the Company's Members if the Members present with a majority of votes at the meeting agree or direct that the chairman must do so.

### **33. BUSINESS AT ADJOURNED MEETINGS**

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

## PROXIES

### **34. WHO CAN APPOINT A PROXY**

A Member who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting. The proxy need not be a Member.

### **35. APPOINTING A PROXY**

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

- (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 meetings at which the appointment may be used.

An undated appointment is taken to have been dated on the day it is given to the Company.

An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy must vote as instructed by the Member, on a show of hands;
- (b) if the proxy has two or more appointments that specify how to vote on a resolution, the proxy should show the appointment sheets that will be counted as votes for the motion and against the motion on a show of hands; and
- (c) if a proxy is also a Member, this rule does not affect the way that the person can cast any votes the person holds as a Member.

A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

### **36. RIGHTS OF PROXIES**

A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (a) to speak at the meeting;
- (b) to vote (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

### **37. WHEN PROXY FORM MUST BE SENT TO ALL MEMBERS**

If the Company sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list—the Company must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise—the Company must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

### **38. FORM OF PROXY SENT OUT BY COMPANY**

A form of proxy sent out by the Company may be in a form determined by the Executive Committee but must:

- (a) enable the Member to specify the manner in which the proxy must vote in respect of a particular transaction; and
- (b) leave a blank for the Member to fill in the name of the person primarily appointed as proxy.

The form may provide that if the Member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy failed or fail to attend, the chairman of the meeting is appointed proxy.

Despite this rule an instrument appointing a proxy shall be in form similar to the form in Appendix 1.

### **39. RECEIPT OF PROXY DOCUMENTS**

For an appointment of a proxy for a meeting of the Company's Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

- (a) the proxy's appointment; and
- (b) if the appointment is signed by the appointer's attorney, the authority under which the appointment was signed or a certified copy of the authority.

If a meeting of the Company's Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

The Company receives an appointment or authority when it is received at any of the following:

- (a) the Company's registered office;
- (b) a facsimile number at the Company's registered office; or
- (c) a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

An appointment of a proxy is ineffective if:

- (a) the Company does not receive either or both the appointment or authority as specified in the notice of meeting; and
- (b) a requirement (if any) in the notice of meeting is not complied with that:

- (i) the transmission be verified in a way specified in the notice; or
- (ii) the proxy produce the appointment and authority (if any) at the meeting.

#### **40. VALIDITY OF PROXY VOTE**

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

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the Member revokes the proxy's appointment; or
- (b) the Member revokes the authority under which the proxy was appointed by a third party.

### **VOTING AT MEETINGS OF MEMBERS**

#### **41. HOW MANY VOTES A MEMBER HAS**

At a meeting of Members, each Member who is financial at the date of the Meeting is entitled to one vote.

A vote may be exercised in person or by proxy.

#### **42. OBJECTIONS TO RIGHT TO VOTE**

A challenge to a right to vote at a meeting of Members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chairman, whose decision is final.

A vote not disallowed following the challenge is valid for all purposes.

#### **43. HOW VOTING IS CARRIED OUT**

A resolution put to the vote at a meeting of the Company's Members must be decided on a show of hands unless a poll is demanded.

On a show of hands, a declaration by the chairman is conclusive evidence of the result. Neither the chairman nor the minutes need to state the number or proportion of the votes recorded in favour or against.

#### **44. MATTERS ON WHICH A POLL MAY BE DEMANDED**

A poll may be demanded on any resolution.

A demand for a poll may be withdrawn.

#### **45. WHEN A POLL IS EFFECTIVELY DEMANDED**

At a meeting of the Company's Members, a poll may be demanded by:

- (a) any two Members entitled to vote on the resolution; or
- (b) the chairman.

The poll may be demanded:

- (a) before or after a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

#### **46. WHEN AND HOW POLLS MUST BE TAKEN**

A poll must be taken when and in the manner the chairman directs.

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

The result of the poll is the resolution of the meeting at which the poll was demanded.

#### **47. CHAIRMAN HAS A CASTING VOTE**

In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting may exercise a casting vote in addition to his normal vote.

### **ANNUAL GENERAL MEETING**

#### **48. BUSINESS OF AN ANNUAL GENERAL MEETING**

The business of an Annual General Meeting must include any of the following, even if not referred to in the notice of meeting:

- (a) the consideration of the annual financial report, the Executive Committee's report and Auditor's report;
- (b) the election of Members of the Executive Committee and Office Bearers (if applicable); and
- (c) the appointment of the Auditor.

All other business transacted at an Annual General Meeting and all other business transacted at any other general meeting is special business.

The business of the Annual General Meeting also includes any other business which under this Constitution or the Law ought to be transacted at an Annual General Meeting.

The chairman of the Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the administration of the Company.

If the Company's Auditor or the Auditor's representative is at the meeting, the chairman of any Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor, or that representative, questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

#### **49. RESOLUTIONS PROPOSED BY MEMBERS**

No Member may at any meeting move any resolution unless:

- (a) the Member has given not less than 30 days' previous notice in writing of the Member's intention to move a resolution leaving the notice of the resolution, signed by the Member and a seconder at the registered office of the Company; or
- (b) the Member has submitted the resolution to the Executive Committee and it has been approved by the Members of the Executive Committee.

For meetings other than the Annual General Meeting, the Member must call a meeting as per Clause 21.

Upon receiving a notice referred to above the Secretary must:

- (a) if the notice convening the meeting has already been despatched, immediately notify the Members of the proposed resolution; or
- (b) otherwise, include notice of the proposed resolution in the notice convening the meeting.

### **MINUTES**

#### **50. MINUTES TO BE KEPT**

50.1 The Executive Committee must keep minute books in which they record within 15 business days:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) proceedings and resolutions of the Executive Committee meetings;
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by the Executive Committee without a meeting.

50.2 The Executive Committee must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:

- (a) one Member of the Executive Committee appointed by all Members present at the meeting at which the proceedings took place; or
- (b) one Member of the Executive Committee appointed by all Members present at the next meeting.

50.3 The Executive Committee must ensure that minutes of the passing of a resolution without a meeting are signed by one Member of the Executive Committee appointed by all Members within a reasonable time after the resolution is passed.

- 50.4 The Executive Committee must record in the minute books:
- (a) all appointments of officers and executive employees;
  - (b) the names of the Executive Committee Members present at all meetings of Executive Committee and the Company; and
  - (c) the method by which a meeting of the Executive Committee was held.

## **BANKING**

### **51. BANK ACCOUNT LOCATION**

The principal bank account of the Company will be kept in the name of the Company at a branch or bank as determined by the Executive Committee.

### **52. BANK ACCOUNT OPERATION**

The Company's principal bank account must be used for making payments by the Company and may only be operated by two Members of the Executive Committee jointly or by other persons (whether or not Members of the Executive Committee) as the Executive Committee determine and authorise.

## **EXECUTION OF DOCUMENTS**

### **53. COMMON SEAL**

The Company may, but need not, have a common seal.

### **54. USE OF COMMON SEAL**

If the Company has a common seal the Executive Committee must provide for its safe custody.

The common seal may not be fixed to any document except by the authority of a resolution of the Executive Committee or of a committee of the Executive Committees duly authorised by the Executive Committee.

The Company executes a document with its common seal if the fixing of the seal is witnessed by any two Members of the Executive Committee.

### **55. EXECUTION OF DOCUMENTS WITHOUT COMMON SEAL**

The Company may execute a document without using a common seal if the document is signed by any two Members of the Executive Committee.



## **INADVERTENT OMISSIONS**

### **56. FORMALITIES OMITTED**

If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Executive Committee that the omission has directly prejudiced any Member financially. The decision of the Executive Committee is final and binding on all Members.

## **INDEMNITY AND INSURANCE**

### **57. INDEMNITY**

To the extent permitted by the Law, the Company may indemnify:

- (a) every person, who is or has been an officer of the Company; and
  - (b) where the Executive Committee consider it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;
- against any liability incurred by that person related to company business in their capacity as an officer of the Company:
- (a) to any other person (other than the Company) unless the liability arises out of conduct involved a lack of good faith; and
  - (b) for costs and expenses:
    - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; and
    - (ii) in connection with an application in relation to those proceedings, in which the Court grants relief to the person under the Law.

### **58. INSURANCE**

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 or a related body corporate of the Company against:

- (a) any liability other than a liability incurred by the person as an officer of the Company or a related body corporate arising out of conduct involved:
  - (i) a wilful breach of duty in relation to the Company; or
  - (ii) a contravention of subsection 232 (5) or (6) of the Law; and
- (b) any costs and expenses incurred by the person in defending proceedings, whether civil or criminal, whatever their outcome.

**59. MEMBER OF THE EXECUTIVE COMMITTEE VOTING ON CONTRACT OF INDEMNITY OR INSURANCE**

Despite anything in this Constitution, a Member of the Executive Committee is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance merely because the contract indemnifies or insures or would indemnify or insure the Member against a liability incurred by him or her as an officer of the Company.

**60. MEANING OF OFFICER**

For the purposes of Clauses 58 and 59, “officer” means an Office Bearer, a Member of the Executive Committee or Executive Officer appointed by the Executive Committee.

**INSPECTION OF RECORDS**

**61. PROVISION OF ACCOUNTS TO MEMBERS**

61.1 The Executive Committee must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the *Corporations Act 2001* and a financial report and a report from the Executive Committee must be prepared for each financial year and the Company must have the financial report for a financial year audited in accordance with the provisions of the *Corporations Act 2001* and obtain an auditor’s report.

61.2 The Company must provide to each Member:

- (a) such financial and other information concerning the Company as any Member from time to time reasonably requires; and
- (b) within three months after the end of each Financial Year, the audited accounts for the Company for that Financial Year.

**62. LOCATION OF RECORDS**

- (a) Company Documents must be kept at the offices of the Company in Belgrave or at such other place as the Executive Committee determines.
- (b) A Member may request access to the Company Documents in writing to the Secretary. The request may be denied under provisions of the *Information Privacy Act 1988*.

## **LIABILITY OF MEMBERS AND WINDING UP**

### **63. LIABILITY OF MEMBERS AND WINDING UP**

The liability of the Members is limited.

A present or past Member who was a Member within one year of the date of winding up must contribute an amount not exceeding TWENTY DOLLARS (\$20.00) to the Company's property for the purpose of paying the Company's debts and liabilities and the costs charges and expenses of the winding up and to adjust the rights of the contributors amongst themselves.

Any surplus on a winding up must be transferred to an institution in Victoria which has similar objects in whole or in part to the objects of this Company and whose constitution prohibits the making of distributions to its Members and paying fees to its Members or if no such institution exists then to such public hospital as the Executive Committee may in its absolute discretion determine.

## **CHANGES TO THIS CONSTITUTION**

### **64. CHANGES TO THIS CONSTITUTION**

In accordance with the Act, changes to this Constitution can be made only by Special Resolution.

**APPENDIX 1—FORM OF PROXY**

**PUFFING BILLY PRESERVATION SOCIETY  
ACN 004 621 505**

To Secretary  
Puffing Billy Preservation Society  
PO Box 451  
BELGRAVE VIC 3160

Dear Sir,

**Appointment of Proxy**

I, ..... of ..... being a Member of the above named company, appoint ..... of ..... or failing the person so named or, if no person is named, the chairman of the meeting, to vote in accordance with the following directions or, if no directions have been given, as the proxy sees fit at the [*insert year*] Annual General Meeting/General Meeting to be held on [*insert time and date of meeting*] at [*insert address*] and at any adjournment thereof.

**\*\*Voting on special business of the Annual General Meeting**

	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
<b>Resolution(s)</b> [ <i>insert</i> ]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

If you mark the abstain box for a particular item, you are directing your proxy not to vote on that item on a show of hands or on a poll and that your vote is not to be counted in computing the required majority on a poll.

**Sign here:**

This section must be signed by the member.

.....**Date**.....

\* Only insert section on voting if a resolution is being proposed for the meeting