

CONSTITUTION

FOR

DIAL BEFORE YOU DIG NSW/ACT INCORPORATED

Adopted by special resolution of members on [7 October, 2015]

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PART 1 - PRELIMINARY

1 DEFINITIONS AND INTERPRETATION

1.1 In this Constitution, except in so far as the context or subject matter otherwise indicates or requires:

“Annual General Meeting” means a meeting held annually in accordance with Clause 26 and Clause 27.

“Associate Class Member” means a Member as defined in Clause 3.2(d);

“Association” means Dial Before You Dig NSW/ACT Incorporated;

“Authorised Representative” means the authorised representative of a Member as appointed from time to time under Clause 36;

“Act” means the *Associations Incorporation Act 2009* (NSW);

“Area” means New South Wales and the Australian Capital Territory and may include such other places adjacent thereto as are incidental to or operationally indivisible from the operations of any Member therein;

“Chair” is an Office Bearer as defined by Clause 21. The powers and duties of the Chair are defined in Clauses 18, 21, 22, 30, 31, 32 and 33.

“Code of Conduct” means a Code adopted by the Committee to regulate the activities of its Members, Member’s Authorised Representatives and/or Committee Persons in their representation of the Association;

“Committee” means the committee of management of the Association as set out in Part III;

“Class A Member” means a Member as defined in Clause 3.2(a);

“Class B Member” means a Member as defined in Clause 3.2(b);

“Class C Member” means a Member as defined in Clause 3.2(c);

“Committee Person” means a representative of a Member or class of Members appointed or elected to the Committee or a sub-committee;

“Deemed Activity” means any activity which may damage the underground installations of a Member or which may affect land for which a Member is responsible. It does not matter that no relevant installations are ultimately determined to be at or near the proposed activity or land;

“Director General” means the Director-General under the Act and his or her successors;

“Financial Year” means the 12 month period commencing on 1 July and ending on 30 June in any year or such other period as the Committee may determine;

“General Meeting” means a meeting held in accordance with Part IV at which all Members are entitled to attend. A General Meeting can be an Annual General Meeting of the Members of the Association;

“Inquiry Fee” means an amount for each Underground Location Inquiry received by a Member from the Service Centre;

“Insolvency Event” means:

- (a) in the case of an individual, his or her bankruptcy;
- (b) in the case of a company or other body corporate:
 - (i) its administration, liquidation or deed of company arrangement; or
 - (ii) the appointment of a receiver and/or manager or of any controller as defined in the Corporations Act 2001 Cth to it,

and in the case of any kind of entity includes:

- (c) cessation of trading;
- (d) inability to pay debts as and when they fall due;
- (e) any composition or arrangement with creditors generally; and
- (f) any procedure or proceeding analogous to any of the above.

“Majority Resolution” means an ‘ordinary resolution’ as defined in section 38 of the Act;

“Member” means a Member of any class, or if the context requires, their Authorised Representative;

“Regulation” means the regulation made under the Act;

“Secretary” means the person holding office under this Constitution as Secretary of the Association or where no such person holds that office, the Public Officer of the Association;

“Service Centre” means an entity or facility that provides an interface between Members and persons making Underground Location Inquiries;

“Special Resolution” has the meaning given to it in the Act;

“Treasurer” is an Office Bearer as defined by Clause 23.

“Underground Location Inquiry” means an inquiry, in respect of particular works, received by a Member from the Service Centre with respect to Deemed Activity by a contractor, excavator, utility, public agency, the general public or anyone else;

“Vice Chair” is an Office Bearer as defined by Clause 21.

“Voting Rights” means the number of votes exercisable by a Member at a General Meeting in accordance with Clause 33.

1.2 In this Constitution:

- (a) a reference to a function includes a reference to a power, authority or duty;
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty;
- (c) a reference to a person includes a reference to a natural person, a company incorporated by statute, a company as defined in the Corporations Act 2001 (Cth) or any other legal entity not being a natural person.

1.3 The definition of the Area shall only be amended, altered, extended or redefined by Special Resolution.

2 OBJECTS OF THE ASSOCIATION

2.1 The objects of the Association are:

To reduce the incidence of damage to underground installations in the Area by providing an inquiry service to the public for the dissemination of information about those things;

- (a) to facilitate the receipt of inquiries by Members about the location of their underground installations;
- (b) to widely promote and publicise the necessity to locate and identify underground services in respect of land prior to the commencement of Deemed Activity;
- (c) to facilitate co-operation among Members with the objective of reducing damage to underground facilities.

2.2 The Association is entitled to take such action as it sees as being necessary to achieve these objects. Such actions can include but are not confined to:

- (a) creating or joining other State or national associations with complementary aims and objectives;
- (b) co-operating with sister organisations in other States or nationally;
- (c) developing systems and procedures to expedite the collection of inquiries and their distribution to Members.

PART II - MEMBERSHIP

3 MEMBERSHIP QUALIFICATIONS

3.1 Subject to the application of Clause 4, a person is qualified to be a Member of the Association if and only if:

- (a) the person has underground installations in the Area; or
 - (b) the person is interested an interest in the provision, construction, maintenance or management of underground installations in the Area,
- and the person agrees to be bound by the Code of Conduct.

3.2 Membership of the Association is divided into Classes A, B, C, and Associate.

- (a) Class A Members in respect of a Financial Year are those ten Members who received the ten highest numbers of Underground Location Inquiries in the previous Financial Year.
- (b) Class B Members in respect of a Financial Year are those 25 Members who received the 25 next highest numbers of Underground Location Inquiries in the previous Financial Year.
- (c) Class C Members are all other Members who received Underground Location Inquiries in the previous Financial Year.
- (d) An Associate Class Member is a Member with an interest in the provision, construction, maintenance or management of underground installations in the Area and who receives no Underground Location Inquiries.

3.3 Underground Location Inquiries that were not charged in the previous Financial Year, either because of a filtering agreement conducted with the agreement of the Member, or else because of an introductory membership program, or for some other reason, are not included for the purposes of determining a Member's Class.

3.4 A Member that has not been a Member for a full Financial Year can have its likely number of annual Underground Location Inquiries calculated either with reference to the months that the Member has been receiving Underground Location Inquiries, or else by reference to statistics of referrals provided to other Members.

3.5 In determining at any time the class of Membership to which an applicant is admitted, the Committee may also have regard to such other factors as the Committee considers appropriate. In the case of a Member being an association which represents the interests of persons with underground installations, the Committee may give consideration to the extent of the interests of the association on behalf of its members.

3.6 In addition to the qualifications and provisions that relate to all Classes of Members, the following provisions apply only to Associate Class Members;

- (a) Clauses 13.2, 13.3, 13.4, 13.5, 13.6 and 14 do not apply to Associate Class Members;
- (b) Associate Class Membership is by invitation only, this invitation being able to be withdrawn at any time of the Committee's choosing;
- (c) A person ceases to be an Associate Class Member if that person receives an Underground Location Inquiry in any year;
- (d) Associate Class Members can attend Committee meetings but cannot exercise a vote.

4 MEMBERSHIP - APPLICATION FOR

- 4.1 An application for Membership of the Association:
- (a) shall be made in writing in the form as set out in Appendix 1 to this Constitution; and
 - (b) shall be lodged with the Secretary or Public Officer of the Association.
- 4.2 As soon as practicable after receiving an application for Membership, the Secretary or Public Officer shall refer it to the Committee which shall determine whether to approve or reject the application, and if approved, determine the classification of the Member.
- 4.3 Where the Committee determines and approves an application for Membership, the Secretary or Public Officer shall, with as little delay as possible, notify the applicant in writing that it has been approved for Membership of the Association and advise the applicant of its attendant responsibilities.
- 4.4 Prior to a person making a formal application for Membership of the Association the person may request the Committee to indicate the classification likely to be allocated to the applicant if formal application is made for Membership.

5 MEMBERSHIP - CESSATION OF

- 5.1 With the exception of an Associate Class Member, a person ceases to be a Member of the Association if the person:
- (a) resigns that Membership in accordance with Clause 7 or
 - (b) has its Membership terminated pursuant to Clause 13 or Clause 14.
- 5.2 An Associate Class Member ceases to be a Member of the Association when their invitation to membership is withdrawn or not renewed or otherwise terminated.

6 MEMBERSHIP ENTITLEMENT NOT TRANSFERABLE

- 6.1 A right, privilege or obligation which a person has by reason of being a Member of the Association:
- (a) is not capable of being transferred or transmitted to another person; and
 - (b) terminates upon cessation of the person's Membership.

7 RESIGNATION OF MEMBERSHIP

- 7.1 A Member of the Association is not entitled to resign that Membership except in accordance with this Constitution.

- 7.2 A Member of the Association who has paid all amounts payable by the Member to the Association in respect of the Member's Membership may resign from Membership of the Association by first giving notice being not less than one month (or such shorter period as the Committee may determine) in writing to the Secretary or Public Officer of the Member's intention to resign. Upon the expiration of the period of notice, the Member ceases to be a Member.

8 REGISTER OF MEMBERS

- 8.1 The Public Officer of the Association shall establish and maintain a register of Members of the Association specifying the name and address of each person who is a Member of the Association together with the date on which the person became a Member.
- 8.2 The register of Members shall be kept at the principal place of administration of the Association and shall be open for inspection, free of charge, by any Member of the Association at any reasonable hour.
- 8.3 Where a Member of the Association ceases to be a Member, the Secretary or Public Officer shall make an appropriate entry in the register of Members recording the date on which the Member ceased to be a Member.

9 FEES, SUBSCRIPTIONS ETC.

- 9.1 A Member of the Association shall, upon admission to Membership, pay to the Association an application fee in an amount the Committee may determine.
- 9.2 Any Member may with the written approval of the Committee pay the application fee in such manner as the Committee may determine. However, the whole of the application fee (including any part which has been deferred and is not yet due) must be paid before a Member may resign.
- 9.3 In addition to any application fee payable by the Member under Clause 9.1, a Member of the Association shall for each Financial Year pay to the Association a membership fee equal to its aggregate Inquiry Fees in that Financial Year.
- 9.4 The amount of the Inquiry Fee shall be determined by the Committee prior to the commencement of each Financial Year or at any other time. Except with the approval of a Special Resolution, the Committee must levy the same Inquiry Fee to each class of Member. In the absence of any fresh determination, the Inquiry Fee shall be that applicable in the previous Financial Year.
- 9.5 The Committee may at any time impose a special levy on Members where the Committee considers it appropriate to do so.
- 9.6 A Member's contribution by way of special levy shall be determined by dividing the total sum to be levied on Members in proportion to their respective Voting Rights at the time the levy is imposed.
- 9.7 The membership fee imposed under clause 9.3 is payable in arrears at such intervals during each Financial Year that the Committee may determine. The Committee may

charge different Members and classes of Members at different intervals, provided that the same Inquiry Fee is levied to each class of Member in accordance with Clause 9.4.

- 9.8 A Member may in lieu of the membership fee imposed under clause 9.3 for any Financial Year elect to pay an annual lump sum membership fee determined under this Clause. Notice of such election must be received by the Committee and the fee paid in full within one month of the commencement of the relevant Financial Year, or such longer period as the Committee allows in its discretion. The annual lump sum membership fee under this Clause will be calculated as 120% of the product of Underground Location Inquiries received by that Member in the previous Financial Year, annualised if necessary, multiplied by the Inquiry Fee that applies in the current Financial Year. However, the Committee may refuse to allow a Member to make an election under this Clause if in the opinion of the Committee the Member is likely to experience an increase of more than 20 per cent in the number of Underground Location Inquiries in the current Financial Year.
- 9.9 The minimum amount of membership fee payable in any one Financial Year by any Member is \$100. This Clause does not apply to Associate Class Members.
- 9.10 Members that have not remitted the full amount of application fee, membership fee, special levy or other fee as determined by the Committee within 60 days of the date on the original invoice, are liable to be charged interest. Interest shall be payable on demand and be calculated daily by applying to the overdue money the rate charged generally by the Commonwealth Bank on unsecured corporate overdrafts up to \$100,000 (or any substitute, equivalent or successor rate reasonably selected by the Committee) plus a margin of 2% per annum.
- 9.11 Associate Class Members shall contribute a minimum amount each year in cash or in kind, such amount to be determined annually by the Committee. The value to be placed on any in-kind contributions shall be determined solely by the Committee.

10 REVIEW OF MEMBER CLASSIFICATION

- 10.1 The Committee may review the classification of each Member of the Association at the first Committee meeting after this Constitution is adopted and thereafter in the month of July every year.
- 10.2 In reviewing each Member's classification, the Committee may give consideration to the number of Underground Location Inquiries received by the Member in the preceding Financial Year subject to Clause 3.3 and such other factors as the Committee considers relevant.

11 MEMBERS' LIABILITIES

The liability of a Member of the Association to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the Member in respect of Membership of the Association as required by Clause 9.

12 DISPUTES - RESOLUTION OF

- 12.1 The Association and each Member shall endeavour to settle any dispute arising out of or relating to this Constitution by mediation administered by the Australian Disputes Centre (ADC) before having recourse to arbitration or litigation.
- 12.2 The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation operating at the time the matter is referred to ADC.
- 12.3 This does not prevent an application to a Court for urgent interlocutory relief such as an urgent injunction. Nor does it prevent suspension or termination of membership if the Committee considers that appropriate even though any dispute remains unresolved.

13 DISCIPLINING OF MEMBERS

- 13.1 Where a Member of the Association;
- (a) fails to pay any of the application fee, membership or Inquiry Fees, special levy(s), interest or other levy raised in accordance with Clause 9 or Clause 40 within 10 business days of a notice in writing from the Association stating the amount due and requiring payment;
 - (b) becomes subject to an Insolvency Event;
 - (c) acts in a manner liable in the opinion of the Committee to bring the Association into disrepute;
 - (d) fails to adhere to the Code of Conduct or this Constitution; or
 - (e) acts in any other way that the Committee determines is prejudicial to the interests of the Association;

the Committee in its discretion may by resolution determine to terminate that Member's Membership of the Association, or suspend the Member from Membership of the Association for a specified period, subject to compliance with Clauses 13.2 to 13.6 inclusive. However Clauses 13.2 to 13.6 inclusive do not apply in respect of conduct or circumstances described in clause 13.1(a) or clause 13.1(b) and the Committee may notify the Member of its decision accordingly.

- 13.2 Where the Committee passes a resolution under Clause 13.1, the Secretary or Public Officer shall, as soon as practicable, cause a notice in writing to be served on the Member:
- (a) setting out the resolution of the Committee and the grounds on which it is based;
 - (b) stating that the Member may address the Committee at a meeting to be held not earlier than 14 days and not later than 28 days after service of the notice;
 - (c) stating the date, place and time of that meeting; and
 - (d) informing the Member that the Member may do either or both of the following:

- (i) attend and speak at that meeting;
 - (ii) submit to the Committee at or prior to the date of that meeting written representations relating to the resolution.
- 13.3 A meeting of the Committee shall be convened at the time and place specified in the notice under clause 13.2 or such other place as the Member and the Committee shall agree.
- 13.4 At the meeting of the Committee held as referred to in Clause 13.3, the Committee shall:
 - (a) give to the Member an opportunity to make written or oral representations;
 - (b) give due consideration to any oral or written representations submitted to the Committee by the Member at or prior to the meeting; and
 - (c) by resolution determine whether to confirm or to revoke the resolution.
- 13.5 Where a Committee confirms a resolution under clause 13.4, the Secretary or Public Officer shall, within seven days after that confirmation, by notice in writing inform the Member of the fact and of the Member's right of appeal under Clause 14.
- 13.6 A resolution confirmed by the Committee under Clause 13.4 does not take effect:
 - (a) until the expiration of the period within which the Member is entitled to appeal against the resolution where the Member does not exercise the right of appeal within that period; or
 - (b) where within that period the Member exercises the right of appeal, unless and until the Association confirms the resolution pursuant to clause 14.4.

14 RIGHT OF APPEAL OF DISCIPLINED MEMBER

- 14.1 Within seven days after notice of the resolution is served on the Member, that Member may appeal to the Association in General Meeting against a resolution of the Committee which is confirmed under Clause 13.4, by lodging with the Secretary or Public Officer a notice to that effect. No notice of appeal may be lodged and no appeal is available in respect of termination of Membership on the grounds of an Insolvency Event affecting a Member.
- 14.2 Upon receipt of a notice from a Member under Clause 14.1, the Secretary or Public Officer shall notify the Committee which shall convene a General Meeting of the Association to be held within 21 days after the date on which the Secretary or Public Officer received the notice.
- 14.3 At a General Meeting of the Association convened under Clause 14.2:
 - (a) no business other than the question of the appeal shall be transacted;
 - (b) the Committee and the Member shall be given the opportunity to state their respective cases orally or in writing, or both; and

- (c) the Members present shall vote by secret ballot on the question of whether the resolution should be confirmed or revoked.
- 14.4 If at the General Meeting the Association passes a Special Resolution in favour of the confirmation of the resolution, the resolution is confirmed.

PART III - THE COMMITTEE

15 POWERS, ETC.

- 15.1 Subject to the Act, the Regulation and this Constitution and to any resolution passed by the Association in General Meeting, the Committee:
- (a) shall control and manage the affairs of the Association;
 - (b) may exercise all such functions as may be exercised by the Association other than those functions that are required by this Constitution to be exercised by a General Meeting of Members of the Association; and
 - (c) has power to perform all such acts and do all such things as appear to the Committee to be necessary or desirable for the proper management of the affairs of the Association.

16 CONSTITUTION AND MEMBERSHIP

- 16.1 The Committee shall consist of:
- (a) up to ten persons appointed by each of the Class A Members. If not all ten positions are filled by appointees of Class A Members the remaining positions are to be offered to Class B Members. Positions are to be allocated in order of the number of Underground Location Inquiries in the previous Financial Year with the Class B Member with the highest number of Underground Location Inquiries being first entitled;
 - (b) up to four persons elected by the Class B Members jointly. For clarity a Class B Member may not vote in the election by Class B Members if it has appointed a person under clause 16.1(a). If not all four positions are filled the remaining positions are to be offered to Class C Members. Positions are to be offered in order of the number of Underground Location Inquiries in the previous Financial Year with the Class C Member with the highest number of Underground Location Inquiries being first entitled;
 - (c) up to two persons elected by the Class C Members jointly provided that, if the number of Class C Members is two or fewer, then up to the number of Class C Members. For clarity a Class C Member may not vote in the election of Class C Members if it has appointed a person under clause 16.1(b).

- 16.2 Only a Member (if a natural person) or the Authorised Representative of a Member (in any other case) shall be eligible for appointment or election as a Committee Person.
- 16.3 Each Committee Person shall be entitled to appoint another Committee Person as proxy by notice given to the Secretary or Public Officer no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- 16.4 In the event of a casual vacancy occurring in the Membership of the Committee, if the person vacating the position is:
- (a) a Committee Person appointed by a Member, the Member who appointed the person vacating shall appoint a person to fill the vacancy; or
 - (b) a Committee Person elected by a class of Members jointly, then the Members jointly of the relevant class shall elect a person to fill the vacancy.

17 COMMITTEE - PROCEDURE FOR APPOINTMENT AND ELECTION

- 17.1 A Member wishing to appoint a Committee Person must do so in writing within one month of the commencement of each Financial Year. In the case of Committee positions offered to Class B Members under clause 16.1(a) the offer must be accepted within five business days or receipt, after which it shall be deemed withdrawn.
- 17.2 A Committee Person appointed by a Member under clause 16.1(a) shall hold office until his or her appointment is terminated by the Member that appointed him or her or until the appointing Member ceases to be entitled to appoint any Committee Person.
- 17.3 For the purpose of this Constitution, a Committee Person vacates his or her position on the Committee when:
- (a) where the Committee Person was appointed by any Member, that Member ceases to be a Member of the Association;
 - (b) the Committee Person resigns the office by notice in writing given to the Secretary or Public Officer;
 - (c) the Committee Person dies;
 - (d) the Committee Person becomes 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;
 - (e) the Committee Person is absent without the consent of the Committee from all meetings of the Committee held during a period of 6 months;
 - (f) the Committee Person ceases to be the Authorised Representative of a Member of the Association;
 - (g) the Committee Person ceases to be the elected representative of a class of Members.

- 17.4 Nominations of candidates for election to the Committee as representatives of a class of Members:
- (a) shall be made in writing;
 - (b) shall be signed by at least one Member of the class which such person is seeking to represent;
 - (c) shall be accompanied by the written consent of the candidate (which may be endorsed on the form of nomination); and
 - (d) shall be delivered to the Secretary or Public Officer of the Association not fewer than seven days before the date fixed for the holding of the election.
- 17.5 If the number of nominations received is equal to the vacancies to be filled, the persons nominated shall be deemed to be elected.
- 17.6 If the number of nominations received exceeds the number of vacancies to be filled, a ballot of the relevant class of Members shall be held. Any tie shall be broken by lot.
- 17.7 Other than for casual vacancies, ballots for the election of Members of the Committee shall be conducted between the commencement of the Financial Year and before the Annual General Meeting in such usual and proper manner as the Committee may direct.

18 MEETINGS AND QUORUM

- 18.1 The Committee shall meet at least three times in each period of 12 months at such place and time as the Committee may determine.
- 18.2 Additional meetings of the Committee may be convened by the Chair or by any Committee Person.
- 18.3 Oral or written notice of a meeting of the Committee shall be given by the Secretary or Public Officer to each Committee Person at least 48 hours (or such other period as may be unanimously agreed upon by the Members of the Committee) before the time appointed for the holding of the meeting.
- 18.4 Notice of a meeting given under Clause 18.3 shall specify the general nature of the business to be transacted at the meeting.
- 18.5 Any number of Committee Persons being present either in person or by proxy and representing half or more of the number eligible to attend and vote on that day shall constitute a quorum for the transaction of the business of a meeting of the Committee.
- 18.6 No business shall be transacted by the Committee unless a quorum is present and if within half an hour of the time appointed for the meeting a quorum is not present the meeting stands adjourned to the same place and at the same hour of the same day in the following week.
- 18.7 If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting shall be dissolved.

18.8 At a meeting of the Committee:

- (a) the Chair or, in the Chair's absence, the Vice-Chair, shall preside; or
- (b) if the Chair and the Vice-Chair are absent or unwilling to act, such one of the remaining Members of the Committee as may be chosen by the Committee Persons present at the meeting shall preside.

19 VOTING AND DECISIONS

19.1 Questions arising at a meeting of the Committee or of any sub-Committee appointed by the Committee shall be determined by a majority of the votes of the Committee Persons or sub-Committee Persons present at the meeting, with every vote being equal.

19.2 In the event of an equality of votes on any question, the person presiding may exercise a casting vote.

19.3 Subject to a quorum being achieved in accordance with Clause 18.5 above, the Committee may act notwithstanding any vacancy on the Committee.

19.4 Any act or thing done or suffered, or purporting to have been done or suffered, by the Committee or by a sub-Committee appointed by the Committee, is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any Committee person or sub-Committee.

20 COMMITTEE PERSON – REMOVAL OF

20.1 In the case of a Committee Person appointed by a Member, the relevant Member may by notice in writing to the Committee remove the Committee Person appointed by that Member at any time and appoint another person to replace that Committee Person.

20.2 In the case of a Committee Person elected by a class of Members, the relevant class of Members may resolve to remove a Committee Person elected by them at any time and elect another person to replace that Committee Person. The relevant class of Members shall give notice in writing to the Committee and annex a copy of the resolution of the meeting signed by two Members.

20.3 None of the provisions of Clause 20 apply to Associate Class Members.

21 OFFICE BEARERS – ELECTION OF

21.1 The office bearers of the Association shall be:

- (a) the Chair;
- (b) the Vice Chair;
- (c) the Treasurer;

- (d) the Secretary; and
 - (e) Public Officer.
- 21.2 The office bearers of the Committee shall be elected annually by the Committee in such manner as the Committee may determine. Such elections shall be held immediately following each Annual General Meeting.
- 21.3 An appointment of a person as an office bearer of the Committee is an appointment of the person in their capacity as a Committee Person and not as a representative of any particular class of Member. If that person ceases to be a Committee Person, then that office is vacant.
- 21.4 In the event of a casual vacancy in a position of office bearer, the Committee shall elect a person to fill the vacancy.
- 21.5 A person shall cease to be an office bearer if:
- (a) that person ceases to be a Committee Person; or
 - (b) the Committee so determines.

22 SECRETARY AND PUBLIC OFFICER

- 22.1 The Secretary may be the Public Officer for the purposes of the Act if the Committee so determines.
- 22.2 The Public Officer of the Association shall, as soon as practicable after being appointed, lodge notice with the Association of his or her address.
- 22.3 It is the duty of the Secretary and Public Officer to keep minutes of:
- (a) all appointments of office bearers and Committee Persons;
 - (b) the names of the Committee Persons present at all Committee meetings and General Meetings; and
 - (c) all proceedings at Committee meetings and General Meetings.
- 22.4 Minutes of proceedings at a meeting shall be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

23 TREASURER

- 23.1 It is the duty of the Treasurer of the Association to ensure that:
- (a) all money due to the Association is collected and received and that all payments authorised by the Association are made; and
 - (b) correct books and accounts are kept showing the financial affairs of the Association including full details of all receipts and expenditure connected with the activities of the Association.

24 DELEGATION

- 24.1 The Committee may, by instrument in writing, delegate to:
- (a) any Member, Authorised Representative of a Member, or elected representative of a class of Members; or
 - (b) any Committee Person; or
 - (c) to one or more sub-Committees (consisting of such Member or Members of the Association as the Committee thinks fit)
- (jointly referred to as “a Delegate”) the exercise of such of the functions of the Committee as are specified in the instrument, other than:
- (a) this power of delegation; and
 - (b) a function which is a duty imposed on the Committee by the Act or by any other law.
- 24.2 A function, the exercise of which has been delegated to a Delegate under this Clause, may, while the delegation remains unrevoked, be exercised from time to time by a Delegate in accordance with the terms of the delegation.
- 24.3 A delegation under this Clause may be made subject to such conditions or limitations as to the exercise of any function the subject thereof, or as to time or circumstances as may be specified in the instrument of delegation.
- 24.4 Notwithstanding any delegation under this Clause, the Committee may continue to exercise any function delegated.
- 24.5 Any act or thing done or suffered by a Delegate acting in the exercise of a delegation under this Clause has the same force and effect as it would have if it had been done or suffered by the Committee.
- 24.6 The Committee may, by instrument in writing, revoke wholly or in part any delegation under this Clause.
- 24.7 A sub-Committee may meet and adjourn as it thinks proper.

25 INDEMNITY OF OFFICE BEARERS

Every office bearer and/or agent of the Association shall be indemnified out of the property of the Association against any liability incurred by him or her in his or her capacity as office bearer or agent in defending any proceedings, whether civil or criminal, in which judgment is given in his or her favour or in which he or she is acquitted in connection with any application in relation to any such proceedings in which relief is under the Law granted to him or her by the Court subject to the provisions of the Act.

PART IV - GENERAL MEETINGS

26 ANNUAL GENERAL MEETINGS - HOLDING OF

- 26.1 The Association shall, at least once in each calendar year and within the period of six months after the expiration of each Financial Year of the Association, convene an Annual General Meeting of its Members.
- 26.2 Clause 26.1 has effect subject to any extension or permission granted by the Director General under the Act.

27 ANNUAL GENERAL MEETINGS - CALLING OF AND BUSINESS AT

- 27.1 The Annual General Meeting of the Association shall, subject to the Act and to Clause 26, be convened on such date and at such place and time as the Committee thinks fit.
- 27.2 In addition to any other business which may be transacted at an Annual General Meeting, the business of an Annual General Meeting shall be:
- (a) to confirm the minutes of the last preceding Annual General Meeting and of any special General Meetings held since that meeting;
 - (b) to receive from the Committee reports upon the activities of the Association during the last preceding Financial Year;
 - (c) to elect Committee Persons; and
 - (d) to receive and consider any documents or matters required to be submitted to Members and to do any other business required by the Act.
- 27.3 An Annual General Meeting shall be specified as such in the notice convening it.
- 27.4 The procedure for an Annual General Meeting shall be as set out in Clause 29.

28 GENERAL MEETINGS - CALLING OF

- 28.1 The Committee may, whenever it thinks fit, convene a General Meeting of the Association.
- 28.2 Except in the case of a Member exercising their rights under Clause 14, the Committee shall convene a General Meeting of the Association on the requisition in writing of one or more Members together entitled to not less than five per cent of the total of the Voting Rights of the Association.
- 28.3 A requisition of Members for a General Meeting:
- (a) shall state the purpose or purposes of the meeting;
 - (b) shall be signed by each of the Members making the requisition;

- (c) shall be lodged with the Secretary or Public Officer; and
 - (d) may consist of several documents in a similar form, each signed by one or more of the Members making the requisition.
- 28.4 If the Committee fails to convene a General Meeting within one month after the date on which a requisition of Members for the meeting was lodged with the Secretary or Public Officer, any one or more of the Members who made the requisition may convene a General Meeting to be held not later than three months after the date on which the requisition was lodged.
- 28.5 A General Meeting convened by a Member or Members as referred to in Clause 28.4 shall be convened as nearly as is practicable in the same manner that General Meetings are convened by the Committee and any Member who thereby incurs expense is entitled to be reimbursed by the Association for any expense so incurred.
- 28.6 The procedure for a General Meeting shall be as set out in Clause 29.

29 GENERAL MEETINGS - PROCEDURE AT

- 29.1 No item of business shall be transacted at a General Meeting unless a quorum of Members entitled under this Constitution to vote is present during the time the meeting is considering that item.
- 29.2 Members entitled to cast more than 50% of the votes that could be cast at a General Meeting under this Constitution being present in person or by proxy shall constitute a quorum for the transaction of the business of a General Meeting.
- 29.3 If within half an hour after the appointed time for the commencement of a General Meeting a quorum is not present, the meeting if convened upon the requisition of Members shall be dissolved and in any other case shall stand adjourned to the same day in the following week at the time and at the same place (unless another place is specified at the time of the adjournment by the person presiding at the meeting or communicated by written notice to Members given before the day to which the meeting is adjourned).
- 29.4 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the commencement of the meeting, the Members present (being not fewer than five) shall constitute a quorum.

30 PRESIDING MEMBER

- 30.1 The Chair or, in the Chair's absence, the Vice-Chair, shall preside as chairperson at each General Meeting of the Association.
- 30.2 If the Chair and the Vice-Chair are absent from a General Meeting or unwilling to act, the Members present shall elect one of their number to preside as chairperson at the meeting.

31 ADJOURNMENT

- 31.1 The chairperson of a General Meeting at which a quorum is present may, with the consent of the majority of Members present at the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 31.2 Where a General Meeting is adjourned for 14 days or more, the Secretary or Public Officer shall give written or oral notice of the adjourned meeting to each Member of the Association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 31.3 Except as provided in Clauses 31.1 and 31.2 herein, notice of an adjournment of a General Meeting or of the business to be transacted at an adjourned meeting is not required to be given.

32 MAKING OF DECISIONS

- 32.1 A question arising at a General Meeting of the Association shall be determined by a poll. The poll shall be taken:
- (a) immediately in the case of a poll which relates to the election of the chairperson of the meeting or to the question of an adjournment; or
 - (b) in any other case, in such manner and at such time before the close of the meeting as the chairperson directs, and the resolution of the poll on the matter shall be deemed to be the resolution of the meeting on that matter.

33 VOTING

- 33.1 Upon any question arising at a General Meeting of the Association, a Member has the number of Voting Rights designated to that Member in accordance with the following formula:
- (a) Each Class A Member present in person or by proxy shall have one vote for every whole \$1,000 of membership fee (annualised if necessary) incurred by that Member in the Financial Year immediately preceding the voting. If the Member was not a Member during the preceding Financial Year, the membership fee applying for the current Financial Year (annualised or estimated by the Committee if necessary) shall be used to determine the Member's Voting Rights in accordance with the foregoing.
 - (b) Each Class B Member and Class C Member present in person or by proxy shall have one vote for every whole \$1,000 of membership fee (annualised if necessary) incurred by that Member in the Financial Year immediately preceding the voting. If any Class B Member or Class C Member was not a Member in the preceding Financial Year, the membership fee applying for the current Financial Year (annualised or estimated by the Committee if necessary) shall be used to determine the Member's Voting Rights in accordance with the foregoing.

- 33.2 In the case of an equality of votes on a question at a General Meeting, the chairperson of the meeting shall be entitled to exercise a casting vote.
- 33.3 Member or the Member's proxy shall not be entitled to vote at any General Meeting of the Association if they are liable to pay interest on outstanding debts under Clause 9.10.

34 NOTICES

- 34.1 Except where the nature of the business proposed to be dealt with at a General Meeting requires a Special Resolution of the Association, the Secretary or Public Officer shall, at least 14 days before the date fixed for the holding of the General Meeting, cause to be sent to each Member at the Member's address appearing in the register of Members, a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- 34.2 Where the nature of the business proposed to be dealt with at a General Meeting requires a Special Resolution of the Association, the Secretary or Public Officer shall, at least 21 days before the date fixed for the holding of the General Meeting, cause notice to be sent to each Member in the manner provided in Clause 34.1 specifying in addition to the matter specified in Clause 34.1, the intention to propose the resolution as a Special Resolution.
- 34.3 No business other than that specified in the notice convening a General Meeting shall be transacted at the meeting except, in the case of an Annual General Meeting, business which may be transacted pursuant to Clause 27.2.
- 34.4 A Member desiring to bring any business before a General Meeting may give notice in writing of that business to the Secretary or Public Officer, who shall include that business in the next notice calling a General Meeting given after receipt of the notice from the Member.

35 SPECIAL RESOLUTIONS

- 35.1 A resolution of the Association is a Special Resolution if:
- (a) it is passed at a General Meeting convened as required under Clause 28 by a three fourths majority. A three fourths majority means not less than three quarters of the total Voting Rights of such Members of the Association voting in person and/or by proxy; or
 - (b) where it is made to appear to the Director General that it is not possible or practicable for the resolution to be passed in the manner specified in paragraph 35.1(a), the resolution is passed in a manner specified by the Director General.

36 AUTHORIZED REPRESENTATIVES

- 36.1 Each Member (other than a Member who is a natural person) may authorise a specified person from time to time to act as the Member's representative for the purposes of this Constitution.
- 36.2 A Member who appoints an Authorised Representative may at any time terminate the appointment of that person as an Authorised Representative.
- 36.3 The Committee and the Members shall be entitled to assume that any person appearing to be the duly authorised representative of a Member is so authorised. However, upon the request of the Committee, any such person may be required to produce to the Committee a certificate signed by a director, secretary or manager of the appointing body corporate as evidence of his or her appointment pursuant to Clause 36.1.

37 PROXIES - APPOINTMENT OF

- 37.1 Each Member shall be entitled to appoint another Member as proxy by notice given to the Secretary or Public Officer or deposited at the Association's office no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- 37.2 The notice appointing the proxy shall be in the form set out in Appendix 2 to this Constitution.

PART V – MISCELLANEOUS

38 POSTAL BALLOTS

- 38.1 The association may hold a postal ballot to determine any issue or proposal (other than an appeal under clause 14). A postal ballot is to be conducted in accordance with Schedule 3 to the Regulation and in any case subject to such further directions of the Committee as are reasonably required in its opinion to ensure that the effect is given to the system of Voting Rights provided for in this Constitution.

39 INSURANCE

- 39.1 The Association shall effect and maintain any insurance to the extent required by the Act.
- 39.2 In addition to the insurance required under Clause 39.1, the Association may effect and maintain other insurance.

40 FUNDS - SOURCE

- 40.1 The funds of the Association shall be derived from membership and Inquiry Fees of Members, other fees, special levies, grants, donations and, subject to any resolution passed by the Association in General Meeting, such other sources as the Committee determines.

41 FUNDS - MANAGEMENT AND ACCOUNTABILITY

- 41.1 All money received by the Association shall be deposited as soon as practicable and without deduction to the credit of the Association's bank account.
- 41.2 The Association shall, as soon as practicable after receiving any money, issue an appropriate receipt.
- 41.3 Subject to any resolution passed by the Association in General Meeting, the funds and assets of the Association shall be used in pursuance of the objectives of the Association in such manner as the Committee determines, provided such manner is in accordance with both Clause 2 and Clause 52.
- 41.4 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments and all transfers of funds by electronic means shall be signed or authorised by any two members of the Committee or employees of the Association, being members or employees authorised to do so by the Committee.
- 41.5 The Auditor-General by consent (or any other consenting person in his stead by majority resolution of Members) is appointed the auditor of the Association and shall audit the books and records of the Association annually.

42 REPORTS

- 42.1 At the end of each Financial Year an annual report shall be produced to show, at the minimum:
- (a) A statement of accounts; and
 - (b) Usage data covering:
 - (i) Inquiries;
 - (ii) Referrals;
 - (iii) Where available, accident and incident data with a cost of restitution to Members' plant and equipment, including if possible trends relative to activities.
 - (c) A balance sheet including asset and liability data;
 - (d) A register of assets.

43 *ALTERATION OF OBJECTS AND CONSTITUTION*

- 43.1 This Constitution, including the statement of objects in Clause 2, may be amended or replaced only by a Special Resolution of the Association.
- 43.2 The Association may by a separate Special Resolution make provision for any transitional aspects arising from the adoption of this Constitution or any amendment or replacement of it.

44 *EXECUTION OF DOCUMENTS INCLUDING DEEDS*

- 44.1 The Association may execute documents including deeds in the manner permitted by the Act.
- 44.2 The Association may appoint authorised signatories in accordance with the Act.

45 *CUSTODY OF BOOKS ETC.*

Except as otherwise provided by this Constitution, the Public Officer shall keep in his or her custody or under his or her control all records, books and other documents relating to the Association.

46 *INSPECTION OF BOOKS ETC.*

The records, books and other documents of the Association shall be open to inspection, free of charge, by a Member of the Association at any reasonable hour.

47 *OPERATIONAL GUIDELINES*

- 47.1 The Committee may set operational guidelines and policies that are intended to achieve any of the objects of the Association or to regulate the business of the Association. The Committee may at any time rescind or vary any of the operational guidelines and make others to replace them but the operational guidelines must not be contrary to this Constitution.
- 47.2 The Members of the Association shall comply with the operational guidelines in force from time to time.

48 *NOTICES - SERVICE OF*

- 48.1 For the purpose of this Constitution, a notice may be served by or on behalf of the Association upon any Member either personally or by sending it by post to the Member at the Member's address shown in the register of Members or by any other means permitted by this Constitution.
- 48.2 Where a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document, the document shall, unless the

contrary is proved, be deemed for the purposes of this Constitution to have been served to the person at the time at which the letter would have been delivered in the ordinary course of post.

49 INDEMNITY BY MEMBERS

Each Member hereby indemnifies the Association, its officers and its Members in respect of incorrect information about underground installations provided to the Association or its agents and contractors. Upon request by the Committee at any time each Member shall also by way of further assurance execute an indemnity containing provisions in the form of clause 50 and such other or ancillary provisions as the Committee may require including but not limited to provisions to the effect of those in clause 50.

50 INDEMNITY - FORM OF

- 50.1 Subject to clause 50.2 and in consideration of the Association agreeing to admit the Member and/or providing a one call service, the Member shall be responsible for and indemnify the Association against:
- (a) all losses, claims, actions, damages, proceedings, liabilities, costs and expenses of any nature whatsoever arising from or caused by the Association (including its agents or contractors) relying upon any information provided by the Member, including but not limited to:
 - (i) the Member providing incorrect information in respect of the location of its underground installations;
 - (ii) the Association, in reliance upon information supplied by the Member, providing incorrect information to a person who has made an inquiry through the one call service; and
 - (iii) the Member failing to update any information in a timely manner;
 - (b) all losses, claims, actions, damages, proceedings, liabilities, costs and expenses of any nature whatsoever arising from or caused by the Member providing incorrect information to a person whose inquiry has been passed on to the Member for response.
- 50.2 Some legislation in Australia, including the Australian Consumer Law, provides guarantees and rights which cannot be excluded, restricted or modified or which may in certain cases only be modified or restricted to a limited extent. Nothing in this Constitution excludes, restricts or modifies, or is intended to exclude, restrict or modify, any guarantee, condition, warranty, right or liability implied by law (including any guarantee, condition, right or liability imposed under the Australian Consumer Law) which cannot lawfully be excluded, restricted or modified.
- 50.3 Subject to clause 50.2 and to the full extent permitted by law, the Association's liability in respect of a breach of a guarantee, condition or warranty implied by legislation, including liability for any consequential loss which a Member or any other entity or person may sustain or incur, will be limited, at the Association's option, to:

- (a) if the breach relates to supply of goods:
 - the provision of a refund; or
 - replacement of the goods; or
 - repair of the goods; or
 - the payment of the reasonable cost of having the goods repaired or replaced.
- (b) if the breach relates to services:
 - the provision of a refund; or
 - re-supply of the service; or
 - the payment of the reasonable cost of having the service re supplied.

51 GST

All amounts of fees payable under or pursuant to this Constitution are exclusive of goods and services tax (GST). If GST is payable by the Association in respect of any supply by the Association to a Member, the Member shall promptly compensate the Association for and put it in funds to pay the GST. For all other purposes under this Constitution including the determination of voting rights, all fees shall be calculated as exclusive of GST.

52 ASSOCIATION TO BE NON-PROFIT

The assets and income of the Association shall be applied solely in furtherance of the above-mentioned objects and no portion shall be distributed directly or indirectly to the Members of the Association except as bona fide compensation for services rendered or expenses incurred on behalf of the Association.

53 USE OF TECHNOLOGY

Without limiting any other provision in this Constitution or the Act allowing use of any particular technology for any purpose, where under this Constitution, the Act or any other law:

- (a) a notice may or must be given;
- (b) an appointment may or must be made;
- (c) a document or action must be signed or authorised;
- (d) a document or file must be accessed, retained or inspected;

- (e) a resolution may or must be made or voted on; and/or
- (f) a meeting may or must be held,

the notice, resolution, authorisation, signature, access or inspection, appointment or meeting may be given, made or held, as the case may be, by use of such electronic or other technology (including the internet) as may be available and permitted by the Committee, provided that:

- (g) the use of such electronic or other technology must not be contrary to law; and
- (h) the use of such technology must not, in the case of:
 - (i) a notice, cause any person who was entitled to receive the notice to be unable to receive it;
 - (ii) a signature or authorisation, create any doubt as to its validity or veracity;
 - (iii) an access or inspection, cause a person to be unable to access or inspect the document or file without commonly available technology;
 - (iv) a resolution, cause any person who was entitled to vote on the resolution, to be unable to do so; or
 - (v) a meeting, cause any person who was entitled to be present at the meeting, not to have a reasonable opportunity to participate.

54 DISSOLUTION

- 54.1 In the event of the Association being dissolved, the amount that remains after such dissolution and the satisfaction of all debts and liabilities shall, subject to the Act, be transferred to an association with similar purposes which is not carried on for the profit or gain of its individual members.

APPENDIX 1

APPLICATION FOR MEMBERSHIP OF ASSOCIATION

Dial Before You Dig NSW/ACT Incorporated (an incorporated association under the Associations Incorporation Act, 2009).

I,
(full name of applicant)

of.....
(address or registered office if a corporate or other body)

.....
(occupation if applicable)

hereby apply to become a Member of the abovenamed incorporated Association. In the event of my admission as a Member, I agree to be bound by the Constitution of the Association any by any Code of Conduct for the time being in force including but not limited to the indemnities and releases contained in those documents.

Where a natural person:

.....
Signature of applicant

Date

Where a corporate or other body:

The Applicant hereby appoints.....to be its Authorised Representative at all meetings of the Association.

Signed for and on behalf of the Applicant:

by:

.....
(Signature of [Specify office held: e.g. Managing Director, Secretary or Public Officer etc])

Date:.....

APPENDIX 2

FORM OF APPOINTMENT OF PROXY

I,
(full name)

of
(address)

being a Member of Dial Before You Dig NSW/ACT Incorporated hereby appoint

.....
(full name of proxy)

of
(address)

being a Member of that incorporated Association, as my proxy to vote for me on my behalf at the General Meeting of the Association (Annual General Meeting or Special General Meeting, as the case may be) to be

held on the day of 20 and at any adjournment of that meeting.

* My proxy is authorised to vote in favour of/against (delete as appropriate) the resolution(s) (*insert details*).

.....
Signature of Member appointing proxy

Date

NOTE: A proxy vote may not be given to a person who is not a Member of the Association. Any proxy given to a Member of the Association who is not a natural person shall be deemed to be given to that Member's Authorised Representative.