

# NSW Commercial Fishing Industry Association Constitution (Draft)

## Part 1 – Preliminary

### 1. Definitions

#### 1) In this constitution:

**Auditor** means an auditor or auditors for the time being appointed by the Association.

**Board of Directors (the Board)** means persons elected by the ordinary members to control and manage the affairs of the Association subject to the Act, the Regulations and this constitution and to any resolution passed by the Association in general meeting.

**Commissioner** means the Commissioner of the Office of Fair Trading

**Association** means the NSW Commercial Fishing Industry Association

**Director** means

- i) a person who occupies or acts in the position of a director or member of the Board of Directors of the Association whether or not the person is called a director and whether or not a person is validly appointed or duly authorised to act in the position; and
- ii) a person in accordance with whose direction or instructions the directors or members of the Board are accustomed to act.

**Financial year** means the financial year of the association as specified in Clause 43

**Fishing Business** means a fishing business registered with the NSW DPI (Fisheries).

**Online** means by text, video call or email.

**Ordinary member** means a member of the Association who is not an office-bearer of the association under section 14 nor an associate member as referred to in Clause 2B.

**NSWCFIA** means NSW Commercial Fishing Industry Association

**Regions** mean the geographical areas in accordance with the NSW Department of Primary Industries fisheries region boundaries (amended as per Clause 14(1A)(d) and 14(1A)(e) of this Constitution).

**Rules** means the registered rules of the Association as amended from time to time and reference to particular rules has a corresponding meaning.

**Secretary** means:

- i) the person holding office under this constitution as secretary of the association, or
- ii) if no such person holds that office – the public officer of the Association.

**Special general meeting** means a general meeting of the association other than an annual general meeting.

**the Act** means Association Incorporations Act 2009

**the Regulation** means the Associations Incorporation Regulation 2022. In this constitution:

reference to a function includes a reference to a power, authority and duty, and

- i) reference to the exercise of a function includes, if the function is a duty, a reference to the performance of the duty.
- ii) The provisions of the Interpretation Act 1987 apply to and in respect of this constitution in the same manner as those provisions would so apply if this

constitution were an instrument made under the Act.

**The Objectives** of the Association shall be:

- i) Objective 1: A strong representative voice for the NSW commercial wild harvest fishing industry.
- ii) Objective 2: Strong fishing rights that will provide long term access, and a viable future for the NSW commercial wild-harvest fishing industry.
- iii) Objective 3: The NSW commercial wild harvest fishing industry is recognised by the community and governments as sustainable and as a valued food source.
- iv) Objective 4: To apply industry driven research used to support good management and decision making.
- v) Objective 5: Relationships established with government & non-government agencies in pursuit of long-term outcomes.

The Rules of the Association have the effect of a contract under seal:

- i) between the Association and each member,
- ii) between the Association and each director; and
- iii) between a member and each other member

under the contract, each of these persons agree to observe and perform the provisions of the rules as in force for the time being so far as those provisions are applicable to that person.

## **Part 2 – Membership**

### **2. Membership**

Membership shall consist of, and be divided into, the following classes:

- (a) (i) Ordinary Member
- (ii) Associate Member

Every Member shall be deemed to agree to be bound by this Constitution and the payment of the membership fee.

#### **2.A Ordinary Member**

An Ordinary Member of the Association:

- (a) is a person nominated to represent a fishing business in a NSW commercial fishery, and
- (b) who has been nominated for membership of the Association as provided by clause 3, and
- (c) who has been approved for membership of the Association by the Board of the Association.

An Ordinary Member shall pay to the Association an amount determined by the Board or members at a general meeting.

An Ordinary Member shall be entitled to one vote and counted as part of the members for the purpose of constituting a quorum or accept any elected office within the Association.

## **2.B: Associate Member**

An Associate Member of the Association:

- (a) is not an Ordinary member but is affiliated with the commercial fishing industry, and,
- (b) who has been nominated for membership of the Association as provided by clause 3, and,
- (c) who has been approved for membership of the Association by the Board of the Association.

An Associate Member may have access to limited services provided to an ordinary member.

An Associate Member shall pay to the Association an amount determined by the Board or members at a general meeting.

An Associate Member shall not be entitled to vote and is not counted as part of the members for the purpose of constituting a quorum or accept any elected office within the Association.

## **3. Nomination for membership**

- (1) The nomination of a person representing a fishing business for Ordinary Membership of the Association:
  - (a) can be made by an ordinary member of the Association in writing in the nomination form set out in Appendix 1 to this constitution, and
  - (b) must include on the nomination form the Region (set out in Clause 14(1)) in which the nominee resides and will vote for the Board of Directors, and,
  - (c) must be lodged at the registered office of the Association together with the required membership fee as set by the Board.
- (2) The nomination of a person or corporate body for Associate Membership of the Association:
  - (a) can be made in writing in the nomination form set out in Appendix 2 to this constitution, and
  - (b) must be lodged at the registered office of the Association together with the required membership fee as set by the Board.
- (3) Applications will be considered by the Board who will accept or reject the application.
- (4) The nominee will be notified of the Board determination within 28 days.
- (5) If approved, the nominee's name(s) will be entered in the register of members.

## **4. Cessation of membership**

A person ceases to be a member of the Association if the person:

- (a) dies, or
- (b) resigns membership, or
- (c) is expelled from the Association.

## **5. Membership entitlements not transferable**

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 on cessation of the person's membership.

## **6. Resignation of membership**

- (1) A member of the Association is not entitled to resign that membership except in accordance with this clause.
- (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 to the secretary written notice of at least 1 month (or such other period as the Board may determine) of the member's intention to resign and, on the expiration of the period of notice, the member ceases to be a member.
- (3) If a member of the Association ceases to be a member under clause (2) and in every other case where a member ceases to hold membership, the secretary must make an appropriate entry in the register of members recording the date on which the member ceased to be a member.

## **7. Register of members**

- (1) The public officer of the Association must 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.
- (2) The register of members must be kept at the principal place of administration of the Association and must be open for inspection, free of charge, by any member of the Association at any reasonable hour. A member of the Association may obtain a copy of any part of the register on payment of a fee of \$2 for each page copied, or, if some other amount is determined by the Board, that other amount.

## **8. Fees and subscriptions**

- 1) A member of the Association must, on admission to membership, pay to the Association a fee of \$1 or, if some other amount is determined by the Association, that other amount.
- 2) In addition to any amount payable by the member under clause (1), a member of the Association must pay to the Association an annual membership fee of \$2 or, if some other amount is determined by the Association, that other amount:
  - a) except as provided by paragraph (b), before 1 July in each calendar year, or
  - b) if the member becomes a member on or after 1 July in any calendar year – on becoming a member and before 1 July in each succeeding calendar year.

## **9. 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 8

## **10. Resolution of internal disputes**

- (1) Disputes between members (in their capacity as members) of the Association, and disputes between members and the Association, are to be referred to a community justice centre for mediation in accordance with the Community Justice Centres Act 1983.
- (2) At least 7 days before a mediation session is to commence, the parties are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

## **11. Disciplining of members**

- (1) A complaint may be made to the Board by any person that a member of the association:
  - (a) has persistently refused or neglected to comply with a provision or provisions of this constitution, or
  - (b) has persistently and wilfully acted in a manner prejudicial to the interests of the association.
- (2) The Board may refuse to deal with a complaint if it considers the complaint to be trivial or vexatious in nature.
- (3) If the Board decides to deal with the complaint, the Board:
  - (a) must cause notice of the complaint to be served on the member concerned, and
  - (b) must give the member at least 14 days from the time the notice is served within which to make submissions to the Board in connection with the complaint, and
  - (c) must take into consideration any submissions made by the member in connection with the complaint.

The Board may, by resolution, expel the member from the Association or suspend the member from membership of the Association if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the facts alleged in the complaint have been proved.

- (4) If the Board expels or suspends a member, the secretary must, within 7 days after the action is taken, cause written notice to be given to the member of the action taken, of the reasons given by the committee for having taken that action and of the member's right of appeal under clause 12.
- (5) The expulsion or suspension does not take effect:
  - (a) until the expiration of the period within which the member is entitled to appeal against the resolution concerned, or
  - (b) if within that period the member exercises the right of appeal, unless and until the Association confirms the resolution under clause 12 (5), whichever is the latter.

## **12. Right of appeal of disciplined member**

- (1) A member may appeal to the Association in general meeting against a resolution of the Board under clause 11, within 7 days after notice of the resolution is served on the member, by lodging with the secretary a notice to that effect.
- (2) The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- (3) On receipt of a notice from a member under clause (1), the secretary must notify the Board which is to convene a general meeting of the Association to be held within 28 days after the date on which the secretary received the notice.
- (4) At a general meeting of the Association convened under clause (3):
  - (a) no business other than the question of the appeal is to be transacted, and
  - (b) the Board and the member must be given the opportunity to state their respective cases orally or in writing, or both, and
  - (c) the members present are to vote by secret ballot on the question of whether the resolution should be confirmed or revoked.

- (5) If at the general meeting the Association passes a special resolution in favour of the confirmation of the resolution, the resolution is confirmed.

## **Part 3 – The Board of Directors**

### **13. Powers of the Board of Directors**

The Board of Directors of the Association is subject to the Act, the Regulations and this constitution and to any resolution passed by the Association in general meeting.

The Board:

- (a) is to control and manage the affairs of the Association, and
- (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 Board to be necessary or desirable for the proper management of the affairs of the Association.
- (d) To make by-laws not inconsistent with the Act, the Regulations and the rules governing the conduct of any operation of the Association; and a breach of a bylaw by a member shall be deemed to be an infringement of the rules of the Association.

### **14. Composition and membership of the Board**

- (1) The Board is to consist of a minimum of 8 and a maximum of 18 Directors (section 28 of the Act).

- (1A) A minimum of 8 directors and a maximum 16 directors will be elected from the Regions set in accordance with NSW Fisheries Region Boundaries (amended as per 14 (1A)(d) and 14(1A)(e)) as follows:

- (a) Region 1 1-2 board member/s
- (b) Region 2 1-2 board member/s
- (c) Region 3 1-2 board member/s
- (d) Region 4 North (Diamond Head south to Seal Rocks Road, Bungwahl) 1-2 board member/s
- (e) Region 4 South (Seal Rocks Rd, Bungwahl to the Entrance) 1- 2 board member/s
- (f) Region 5 1-2 board member/s
- (g) Region 6 1-2 board member/s
- (h) Region 7 1-2 board member/s

- (1B) Where a Region has less than 10 ordinary members that Region may have a maximum of 1 Board member and where a Region has greater than 10 ordinary members that Region may have a maximum of 2 Board members.

- (1C) An election will be held in each Region to elect a member/s to the Board position/s allocated to that Region based on clause 14(1A).

Eligible ordinary members can nominate for election using the appropriate form set out at Appendix 3. A nomination for a position as a Board member for a Region requires written support of a minimum of 3 eligible ordinary members.

A member nominating for election for a region must reside in that region for which they nominate.

(1D) At least one (1) Board position for each Region will become vacant on an annual basis.

(1E) Independent Board Member – Nominated by Board

1. A person may be appointed as an independent Board member, subject to the nomination by the Board and have the same voting rights as a member of the Board.
2. Such a person must have the ability to significantly contribute to the outcomes of the Association and its members.
3. The maximum term of appointment for such a position is 1 year.

(1F) Independent Chair – Appointed by the Board

1. A person may be appointed by the Board as an Independent Chair of the Board of Directors and have the same voting rights as a member of the Board.
2. Such a person must have the ability to significantly contribute to the outcomes of the Association and its members.
3. The person:
  - (a) Shall have no financial interest in the NSW commercial fishing industry, including family related interests.
  - (b) Cannot have any other material contractual relationships with the Association.
  - (c) Cannot have been an executive or professional adviser or a supplier to the Association within the last few years.
  - (d) Must be free from potentially conflicting relationships with the Association.
4. The maximum term of appointment for such a position is 3 years.

(2) The office-bearers of the Association are to be elected from the Board:

- (a) the chairman (unless an Independent Chair is appointed)
- (b) the vice-chairman
- (c) the treasurer, and
- (d) the secretary

(3) Each member of the Board is, subject to this constitution, to hold office until the conclusion of the annual general meeting following the date of the member's election but is eligible for re-election.

(4) In the event of a casual vacancy occurring in the membership of the Board, the Board may appoint a member to fill the vacancy and the member so appointed is to hold office, subject to this constitution, until the conclusion of the annual general meeting next, following the date of the appointment.

(5) The directors shall not receive remuneration except in circumstances approved in writing by the Ordinary members at an AGM.

## **15. Secretary**

(1) The secretary of the Association must, as soon as practicable after being appointed

as secretary, lodge notice with the Association of his or her address.

- (2) It is the duty of the secretary to keep minutes of:
  - (a) all appointments of office-bearers and members of the Board
  - (b) the names of members of the Board present at a board meeting or a general meeting, and
  - (c) all proceedings at Board meetings and general meetings.
- (3) Minutes of proceedings at a meeting must be signed by the chairperson of the meeting or by the chairperson of the next succeeding meeting.

## **16. Treasurer**

It is the duty of the treasurer of the Association to ensure:

- (a) that all money due to the Association is collected and received and that all payments authorised by the Association are paid, and
- (b) that 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.

## **17. Casual vacancies**

For the purposes of this constitution, a casual vacancy in the office of a member of the Board occurs if the member:

- (a) dies, or
- (b) ceases to be a member of the Association, or
- (c) is convicted of an offence involving fraud or dishonesty for which the maximum penalty is imprisonment for at least 3 months; or
- (d) is disqualified a person from being a director under the Corporations Act 2001 of the Commonwealth part 2D.6; or
- (e) becomes an insolvent under administration within the meaning of the *Corporations Act 2001* of the Commonwealth, or
- (f) resigns office by notice in writing given to the secretary, or
- (g) is removed from office under clause 18, or
- (h) becomes a mentally incapacitated person, or
- (i) is absent without the consent of the Board from all meetings of the Board held during a period of 6 months.

## **18. Removal of member**

- (1) The Association in general meeting may by resolution remove any member of the Board from the office of member before the expiration of the member's term of office and may by resolution appoint another person to hold office until the expiration of the term of office of the member so removed.
- (2) If a member of the Board to whom a proposed resolution referred to in clause (1) relates makes representations in writing to the secretary or chairman (not exceeding a reasonable length) and requests that the representation be notified to the members of the Association, the secretary or the chairman may send a copy of the representations to each member of the Association or, if the representations are not so sent, the member is entitled to require that the representations be read out at the meeting at which the resolution is considered.



## **19. Meetings and quorum**

- (1) The Board must meet at least three times in each period of 12 months at such place and time as the Board may determine. A member of the Board must have access to electronic transmission (email) and internet to send and receive Board correspondence.
- (2) Additional meetings of the Board may be convened by the chairman or by any member of the Board.
- (3) Written notice of a meeting of the Board must be given ~~by the secretary~~ to each member of the board at least 48 hours (or such period as may be unanimously agreed on by the members of the Board) before the time appointed for the holding of the meeting.
- (4) Notice of a meeting given under clause (3) must specify the general nature of the business to be transacted at the meeting and no business other than that business is to be transacted at the meeting, except business which the Board members present at the meeting unanimously agree to treat as urgent business.
- (5) A minimum of at least more than half the total number of Board membership constitute a quorum for the transaction of the business of a meeting of the Board.
- (6) No business is to be transacted by the Board 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 is to stand adjourned to the same place and at the same hour of the same day in the following week.
- (7) If at the adjourned meeting a quorum is not present within half an hour of the time appointed for the meeting, the meeting is to be dissolved.
- (8) At a meeting of the Board:
  - (a) the chairman, or in the chairman's absence, the vice-chair, is to preside, or
  - (b) if the chairman and the vice-chair are absent or unwilling to act, such one of the remaining members of the board as may be chosen by the members present at the meeting is to preside.

## **20. Delegation by Board to sub-committee**

- (1) The Board may, by instrument in writing, delegate to one or more sub-committees (consisting of such member or members of the association as the board thinks fit) the exercise of such of the functions of the Board as are specified in the instrument, other than:
  - (a) the power of delegation, and
  - (b) a function which is a duty imposed on the board by the Act or by any other law.
- (2) A function, the exercise of which has been delegated to a sub-committee under this clause may, while the delegation remains unrevoked, be exercised from time to time by the sub-committee in accordance with the terms of the delegation.
- (3) A delegation under this section may be made subject to such conditions or limitations as to the exercise of any such function, or as to time or circumstances, as may be specified in the instrument of delegation.
- (4) Despite any delegation under this clause, the Board may continue to exercise any function delegated.
- (5) Any act or thing done or suffered by a sub-committee acting in the exercise of a delegation under this clause has the same force or effect as it would have if it had been done or suffered by the Board.
- (6) The Board may, by instrument in writing, revoke wholly or in part any delegation

under this clause.

- (7) A sub-committee may meet and adjourn, as it thinks proper.

## **21. Voting and decisions**

- (1) Questions arising at a meeting of the Board or of any sub-committee appointed by the Board are to be determined by members of the Board or sub-committee present at the meeting by:
  - (a) a majority of the votes, or,
  - (b) consensus, or,
  - (c) all views are recorded.
- (2) If using a vote, each member present at a meeting of the Board or of any sub-committee appointed by the Board (including the person presiding at the meeting) is entitled to one vote but, in the event of an equality of votes on any question, the person presiding may exercise a second or casting vote.
- (3) Subject to clause 20(5), the Board may act despite any vacancy on the Board.
- (4) Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or of any sub-committee appointed by the Board, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any member of the Board or sub-committee.

## **21A. Postal ballots**

- (1) The Association may hold a postal ballot to determine any issue or proposal (other than an appeal under clause 12).
- (2) A postal ballot is to be conducted in accordance with Schedule 3 to the Regulation.

## **Part 4 – General meeting**

### **22. Annual general meetings – holding of**

- (1) With the exception of the first annual general meeting of the Association, the Association must, at least once in each calendar year and within the period of 6 months after the expiration of each financial year of the Association, convene an annual general meeting of its members.
- (2) The Association must hold its first annual general meeting:
  - (a) within the period of 18 months after its incorporation under the Act, and
  - (b) within the period of 6 months after the expiration of the first financial year of the association.
- (3) Clauses (1) and (2) have effect subject to any extension or permission granted by the Commissioner under the Act.

### **23. Annual general meetings – calling of and business at**

- (1) The annual general meeting of the Association is, subject to the Act and to clause 23, to be convened on such date and at such place and time as the board thinks fit.
- (2) In addition to any other business which may be transacted at an annual general meeting, the business of an annual general meeting is to include the following:
  - (a) to confirm the minutes of the last preceding annual general meeting and of any special general meeting held since that meeting,
  - (b) to receive from the Board reports on the activities of the association during the last preceding financial year,

- (c) to declare members of the Association board elected,
  - (d) to receive and consider any financial statement or report required to be submitted to members under the Act.
- (3) An annual general meeting must be specified as such in the notice convening it.

## **24. Special general meetings – calling of**

- (1) The Board may, whenever it thinks fit, convene a special general meeting of the Association.
- (2) The Board must, on the requisition in writing of at least 5 percent of the total number of eligible ordinary members, convene a special general meeting of the Association.
- (3) A requisition of eligible ordinary members for a special general meeting:
  - (a) must state the purpose or purposes of the meeting, and
  - (b) must be signed by the members making the requisition, and
  - (c) must be lodged with the secretary, and
  - (d) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.
- (4) If the Board fails to convene a special general meeting to be held within 1 month after that date on which a requisition of eligible ordinary members for the meeting is lodged with the secretary, any one or more of the eligible ordinary members who made the requisition may convene a special general meeting to be held not later than 3 months after that date.
- (5) A special general meeting convened by an eligible ordinary member/s as referred to in clause (4) must be convened, as nearly as is practicable, in the same manner as general meetings are convened by the Board and any member who consequently incurs expenses is entitled to be reimbursed by the Association for any expense so incurred.

## **25. Notice**

- (1) Except if the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 14 days before the date fixed for the holding of the general meeting, give a notice to each member specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- (2) If the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the association, the secretary must, at least 21 days before the date fixed for the holding of the general meeting, cause notice to be given to each member specifying, in addition to the matter required under clause (1), the intention to propose the resolution as a special resolution.
- (3) No business other than that specified in the notice convening a general meeting is to be transacted at the meeting except, in the case of an annual general meeting, business which may be transacted under clause 23(2).
- (4) An eligible ordinary member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary who must include that business in the next notice calling a general meeting after receipt of the notice from the member.

## **26. Procedure and Quorum**

- (1) No item of business is to be transacted at a general meeting unless a quorum of eligible ordinary members entitled under this constitution to vote is present during the time the meeting is considering that item.
- (2) Five eligible ordinary members present in person (being members entitled under this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- (3) If within half an hour after the appointed time for the commencement of a general meeting a quorum is not present, the meeting:
  - (a) if convened on the requisition of members, is to be dissolved, and
  - (b) in any other case, is to stand adjourned to the same day in the following week at the same time and (unless another place is specified at the time of 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) at the same place.
- (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 at least three) is to constitute a quorum.

## **27. Presiding member**

- (1) The chairman or, in the chairman's absence, the vice-chair, is to preside as chairperson at each general meeting of the Association.
- (2) If the chairman and the vice-chair are absent, or unwilling to act, the members present must elect one of their number to preside as chairperson at the meeting.

## **28. Adjournment**

- (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 is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- (2) If a general meeting is adjourned for 14 days or more, the secretary must 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.
- (3) Except as provided in clauses (1) and (2), 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.

## **29. Making of decisions**

- (1) A question arising at a general meeting of the association is to be determined on:
  - (a) a show of hands, or,
  - (b) secret ballot of eligible ordinary members present,unless before, or on the declaration of the show of hands, a poll is demanded, a declaration by the chairperson that a resolution has, on a show of hands or the results of the secret ballot, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution. Results are to be determined under a fully open and transparent process.
- (2) At a general meeting of the association, a poll may be demanded by the chairperson or by at least three eligible ordinary members present in person or by proxy at the

meeting.

- (3) If a poll is demanded at a general meeting, the poll must 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 is taken to be the resolution of the meeting on that matter.

### **30. Special resolution**

A resolution of the Association is a special resolution:

- (a) if it is passed by a majority which comprises at least three-quarters of such eligible ordinary members of the Association as, being entitled under this constitution so to do, vote in person or by proxy at a general meeting of which at least 21 days' written notice specifying the intention to propose the resolution as a special resolution was given in accordance with this constitution, or
- (b) where it is made to appear to the Commissioner that it is not practicable for the resolution to be passed in the manner specified in paragraph (a), if the resolution is passed in a manner specified by the Commissioner.

### **31. Voting**

- (1) On any question arising at a general meeting of the Association an eligible ordinary member has one vote only.
- (2) All votes must be given at the meeting (in-person, by proxy or online),
- (3) In the case of an equality of votes on a question at a general meeting, the chairperson of the meeting is entitled to exercise a second or casting vote.
- (4) An ordinary member or proxy is not entitled to vote at any general meeting of the Association unless all money due and payable by the member or proxy to the Association has been paid, other than the amount of the annual subscription payable in respect of the then current year.

### **32. Appointment of proxies**

- (1) Each eligible ordinary member is to be entitled to appoint another eligible ordinary member as proxy by notice given to the secretary no later than 24 hours before the time of the meeting in respect of which the proxy is appointed.
- (2) The notice appointing the proxy is to be in the form set out in Appendix 4 to this constitution.
- (3) No eligible ordinary member may hold more than two proxies.

### **33. Postal or electronic ballots**

- (1) The Association may hold a postal or electronic ballot (as the board determines) to determine any issue or proposal (other than an appeal under clause 12).
- (2) A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

### **34. Use of technology at general meetings**

- (1) A general meeting may be held at 2 or more venues using any technology approved by the Board that gives each of the Association's members a reasonable opportunity to participate.
- (2) A member of an Association who participates in a general meeting using that technology

is taken to be present at the meeting and, if the member votes at the meeting, is taken to have voted in person.

## **Part 5 – Miscellaneous**

### **35. Insurance**

The Association may affect and maintain insurance.

### **36. Funds - source**

- (1) The funds of the Association are to be derived from entrance fees and annual subscriptions of members, donations and, subject to any resolution passed by the association in general meeting, such other sources as the Board determines.
- (2) All money received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank account.
- (3) The Association must, as soon as practicable after receiving any money, issue an appropriate receipt.

### **37. Funds - management**

- (1) Subject to any resolution passed by the Association in general meeting, the funds of the Association are to be used in pursuance of the objects of the Association in such manner as the Board determines.
- (2) All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments must be signed by any two members of the Board or employees of the Association, being members or employees authorised to do so by the Board.

### **38. Alteration of objects and constitution**

The statement of objects and this constitution may be altered, rescinded or added to only by a special resolution of the Association.

### **39. Common seal**

- (1) The common seal of the Association must be kept in the custody of the public officer.
- (2) The common seal must not be affixed to any instrument except by the authority of the Board and the affixing of the common seal must be attested by the signatures either of two members of the Board or of one member of the Board and of the public officer or secretary.

### **40. Custody of books**

Except as otherwise provided by this constitution, the public officer must keep in his or her custody or under his or her control all records, books and other documents relating to the Association.

### **41. Inspection of books**

- (1) The following documents must be open to inspection, free of charge, by an eligible ordinary member of the Association during office hours:
  - (a) financial records of the Association,
  - (b) this constitution,
  - (c) minutes of all board meetings and general meetings of the Association.
- (2) The inspection of the above documents is subject to confidentiality and may be inspected

on the physical premises of the Association only, upon appointment.

(3) Despite subclauses (1) and (2), the Board may refuse to permit a member of the Association to inspect or obtain a copy of records of the Association that relate to confidential, personal, employment, commercial or legal matters or where to do so may be prejudicial to the interests of the Association.

#### **42. Service of notices**

- (1) For the purposes of this constitution, a notice may be served on or given to a person:
  - (a) by delivering it to the person personally, or
  - (b) by sending it by pre-paid post to the address of the person, or
  - (c) by sending it by facsimile transmission or some other form of electronic transmission to an address specified by the person for giving or serving the notice.
- (2) For the purpose of this constitution, a notice is taken, unless the contrary is proved, to have been given or served:
  - (a) in the case of a notice given or served personally, on the date on which it is received by the addressee, and
  - (b) in the case of a notice sent by pre-paid post, on the date when it would have been delivered in the ordinary course of post, and
  - (c) in the case of a notice sent by facsimile transmission or some other form of electronic transmission, on the date it was sent, or if the machine from which the transmission was sent produces a report indicating that the notice was sent on a later date, on that date.

#### **43. Financial year**

The financial year of the Association is:

- (1) The period of time commencing on the date of incorporation of the Association and ending on the following 30 June, and
- (2) each period of 12 months after the expiration of the previous financial year of the Association, commencing on 1 July and ending on the following 30 June.

#### **44. Registered office**

- (1) the Association must cause a notice to conspicuously and publicly displayed at the premises of the registered office which states the name of the Association and identifies the premises as the registered office.
- (2) The Board shall notify the Department of Fair Trading of any change of address of the registered office of the Association within 28 days after the change in the form approved by the Department of Fair Trading.

#### **45. Winding Up**

The winding up of the Association shall be in accordance with Part 6, Division 3 of the Act.

#### **46. Auditor**

The Board may, as required by the Regulation and Act, appoint and or remove a qualified auditor.

## Appendix 1

(Clause 3 (1))

### NOMINATION FOR ORDINARY MEMBERSHIP

NSW Commercial Fishing Industry Association (incorporated under the *Associations Incorporation Act 2009*)

I, .....

(full name of applicant)

of .....

(address)

hereby apply to become a member of the above-named incorporated association. In the event of my admission as a member, I agree to be bound by the constitution of the association for the time being in force.

I am a shareholder in following fishery listed on the NSW DPI Register as

(eg Name / Business name) .....

(Fishing Business Number) .....

I reside in Region No ..... (Clause 14(1A))

.....  
Signature of applicant

Date: ...../...../.....

### Nominating Eligible Ordinary Member

I, .....

(full name)

An eligible ordinary member of the Association hereby nominate the applicant, who is personally known to me, for membership of the Association.

.....Date .....

Signature of Nominator



## Appendix 2

(Clause 3(12))

### APPLICATION FOR ASSOCIATE MEMBERSHIP

NSW Commercial Fishing Industry Association (incorporated under the *Associations Incorporation Act 2009*)

I, .....  
of .....  
.....  
(address)

hereby make application to become an Associate member of the above-named incorporated association. In the event of admission as a member, I agree to be bound by the constitution of the association for the time being in force.

..... Date / /  
Signature of authorised person

#### Nominating Eligible Ordinary Member

I, ..... (full name) an eligible ordinary member of the association, nominate the following applicant for Associate membership of the association.

.....  
Signature of Nominator Date .....

## Appendix 3

(Clause 14(6))

### NOMINATION FOR BOARD OF DIRECTORS

NSW COMMERCIAL FISHING INDUSTRY ASSOCIATION (incorporated under the  
*Associations Incorporation Act 2009*)

I, .....

(full name of eligible ordinary member)

of .....

(address)

hereby nominate for election as a Board member of the above-named incorporated  
association representing Region ..... (as per clause 14(1)).

.....

Signature of member ..... Date .....

#### Nominators

I, .....,

an eligible ordinary member of the association, (full name) nominate the applicant, who is  
personally known to me, for membership of the association.

.....

Signature of member nominator ..... Date .....

I, .....,

an eligible ordinary member of the association, (full name) nominate the applicant, who is  
personally known to me, for membership of the association.

.....

Signature of member nominator ..... Date .....

I, .....,

an eligible ordinary member of the association, (full name) nominate the applicant, who is  
personally known to me, for membership of the association.

.....

Signature of member nominator ..... Date .....

## Appendix 4

[Clause 32(2)]

### APPLICATION FOR APPOINTMENT OF PROXY

I, .....

(full name of applicant)

of .....

(address)

being an eligible ordinary member of Region ..... hereby appoint

.....

(full name of proxy)

of.....

(address)

being an eligible ordinary member of that incorporated association, as my proxy to vote at the general meeting of the Association (annual general meeting or special general meeting, as the case may be) to be held on the ...../ ...../..... and at any adjournment of that meeting.

Voting Instructions: My appointed proxy is authorised to vote *in favour of* / *against* (delete as appropriate) the resolution.

..... Date .....

Signature of member appointing proxy

#### NOTE:

1. A proxy vote may not be given to a person who is not an eligible ordinary voting member of the association. Clause 32(1) of Association constitution.
2. No eligible ordinary member may hold more than five proxies. Clause 32(4) of association constitution
3. Where no formal voting instructions are provided the proxy is free to vote as they like.