

**CONSTITUTION OF HOLDFAST
QUAYS MARINA ASSOCIATION
INCORPORATED**

ASSOCIATIONS INCORPORATION ACT 1985

CONSTITUTION OF

HOLDFAST QUAYS MARINA ASSOCIATION INCORPORATED

1. NAME

The name of the incorporated Association is **HOLDFAST QUAYS MARINA ASSOCIATION INCORPORATED** referred to herein as "the Association".

2. DEFINED TERMS AND INTERPRETATION

In this Constitution, unless contrary intention appears:

- 2.1 **Act** means the Associations Incorporation Act 1985 as amended from time to time.
- 2.2 **Authorised Representative** means a natural person appointed to represent a corporate member or a multiple member by notice in writing signed for or on behalf of the member, and given to the public officer of the Association (or as otherwise required under this Constitution).
- 2.3 **Berth Lease** means an underlease of a Marina Berth granted by the Association as underlessor as described in clause 3.2, but does not include a Short Term Licence.
- 2.4 **Chairperson** means the chairperson of the Committee elected or appointed pursuant to this Constitution.
- 2.5 **Committee** means the committee of management of the Association.
- 2.6 **Corporate member** means a member who is not a natural person.
- 2.7 **Financial year** means each period of twelve (12) months or less as described in clause 11.
- 2.8 **Headlease** means the lease of the Marina entered into, or to be entered into by the Association as headlessee.
- 2.9 **Lessee** means the underlessee under a Berth Lease.
- 2.10 **Marina** means the marina described in clause 3.1
- 2.11 **Marina Berth** means a separate berth in the Marina.
- 2.12 **Meeting** means a general meeting of members of the Association convened in accordance with this Constitution.
- 2.13 **Member** means a member of the Association.
- 2.14 **Multiple Member** means a member comprised of more than one natural person.
- 2.15 **Person** includes a corporation and any other body and can include more than one person.

- 2.16 **Regulations** means the Associations Incorporation Regulations 2008 as amended from time to time.
- 2.17 **Short Term Licence** means any licence, hiring agreement or other right of use or occupation of a Marina Berth, which does not exceed twelve (12) months (including any rights of renewal or extension).
-

3. **BACKGROUND**

- 3.1 The Association has entered into a headlease (**Headlease**) of a portion of the area known as the Patawalonga Basin (being a portion of the area included in Certificate of Title Volume 5798 Folio 64) in which a marina (**Marina**) has been developed.
- 3.2 Each individual Marina Berth will be leased by the Association, by means of a registered underlease (**Berth Lease**) and each lessee under a Berth Lease will be a member of the Association.
- 3.3 The Association will maintain and administer the Marina for the benefit of the members.
-

4. **OBJECTS AND PURPOSES**

The Association is established for the purpose of providing for the sport, recreation and amusement of its members through the maintenance and administration of the Marina and associated facilities for the benefit of its members. The Association does not and may not have the objective of:

- 4.1 securing a pecuniary profit for any of its members;
- 4.2 engaging in trade or commerce;

and may not do so otherwise than in a manner which is consistent with Section 18(6) of the Act.

5. **POWERS**

The Association shall have all the powers conferred by Section 25 of the Act.

6. **MEMBERSHIP**

- 6.1 The members of the Association will be each and every Lessee of a Marina Berth for so long as they remain a Lessee of a Marina Berth.
- 6.2 Each member's membership shall be subject to the member complying with terms of that members' Berth Lease.
- 6.3 A member cannot resign from membership of the Association but a member's membership of the Association will cease when they cease to be the Lessee of the relevant Marina Berth. For this purpose, a member will be taken to cease to be a Lessee of a Marina Berth if and when:
- 6.3.1 the Berth Lease expires;
- 6.3.2 the Berth Lease is terminated for any reason; or

- 6.3.3 the member assigns the Berth Lease to another person.
- 6.4 A person who takes an assignment of a Berth Lease will be a member of the Association from the date that assignment takes effect until that person ceases to be a Lessee of the Marina Berth (as described in clause 6.3).
-

7. MEMBERSHIP FEES

- 7.1 The membership fees (**Membership Fees**) shall be such sum (if any) as the members determine from time to time in general meeting and will be payable to the Association annually on 1 July or at such other time as the Committee determines from time to time.
- 7.2 Any member:
- 7.2.1 whose Membership Fees are outstanding for more than forty-five (45) days after the due date for payment; or
- 7.2.2 who fails to provide copies of certificates of currency for such insurance as is required from time to time under that member's Berth Lease,
- shall have their access to the Marina and lock suspended until such time as the Membership Fees are paid and/or the certificates of currency are provided (as applicable).
- 7.3 Any member whose Membership Fees are outstanding for more than two (2) years after the due date for payment shall cease to be a member of the Association (**Ex-member**). The Ex-member's Berth Lease shall be forfeited, and the Committee may appoint an agent to sell the Berth Lease. The net sum after the deduction of all outstanding subscriptions and fees shall be remitted to the Ex-member. The removal and storing of any vessel on the Berth Lease shall be at the cost of the Ex-member and may be deducted from the proceeds of the resale of the Berth Lease.
-

8. THE COMMITTEE

- 8.1 The affairs of the Association shall be managed and controlled exclusively by a Committee which, in addition to any powers and authorities conferred by this Constitution, may exercise all such powers and do all such things as are within the objects of the Association, and are not by the Act or by this Constitution required to be done by the Association in general meeting.
- 8.2 The Committee shall have the power to appoint such officers and employees as are required to carry out the objects of the Association, including a public officer required by the Act, and may delegate some or all of its powers to such officers and employees.

8.3 **Appointment to the Committee**

- 8.3.1 The Committee shall consist of the following positions (**Committee Positions**):
- (a) a Chairperson;
 - (b) a Secretary;
 - (c) a Treasurer; and
 - (d) at least one other Committee member but not more than four (4) other Committee members.
- 8.3.2 The Secretary and Treasurer may be the same person.
- 8.3.3 Appointment to the Committee shall happen in two stages:
- (a) firstly, the members shall vote to appoint at least four (4) but no greater than seven (7) members to the Committee as described in clause 8.4 (**Member Election**); and
 - (b) secondly, the Committee members appointed under the Member Election shall vote to appoint one another to Committee Positions as described in clause 8.5 (**Committee Appointment**).

8.4 **Member Election**

- 8.4.1 At each annual general meeting the two (2) longest serving members of the Committee shall retire and shall be eligible for reappointment.
- 8.4.2 With the exception of the Secretary and Treasurer, all members of the Committee must (subject to clause 8.4.3) be members of the Association.
- 8.4.3 Any corporate member or multiple member may appoint an Authorised Representative, by written notice to the Chairperson of the Committee, to represent that corporate member or multiple member for the purposes of appointments to the Committee.
- 8.4.4 A retiring Committee member shall be eligible to stand for re-election without nomination but no other member or Authorised Representative, except a retiring Committee member, shall be eligible to stand for Member Election unless a member of the Association has nominated them at least fourteen (14) days before the annual general meeting by delivering the nomination of that person to the Secretary of the Association. The nomination shall be signed by the proposer and by the nominee to signify a willingness to stand for election.
- 8.4.5 Notice of all members or Authorised Representatives seeking election to the Committee shall be given to all members of the Association at least seven (7) days prior to the meeting at which the election is to take place.
- 8.4.6 If only the required number of members or Authorised Representatives are nominated to fill existing vacancies, the Secretary shall report accordingly to the annual general meeting, and the Chairperson shall

declare such members or Authorised Representatives duly elected as Committee members.

- 8.4.7 Upon the finalisation of the Member Election, the Chairperson shall declare such members or Authorised Representatives duly elected as Committee members.

8.5 **Committee Appointment**

- 8.5.1 Following the Member Election, the Committee shall convene a meeting within ten (10) to fourteen (14) days for the purposes of appointing Committee members to Committee Positions.

- 8.5.2 The previous Chairperson, Secretary and Treasurer shall be eligible to stand for re-election without nomination.

- 8.5.3 Other Committee members seeking election to the position of Chairperson, Secretary and Treasurer must provide written notice detailing the Committee Position they wish to contest at least seven (7) days prior to the meeting at which the election is to take place. Notice is to be provided to the previous Chairperson, or if the previous Chairperson has not been appointed to the Committee under the Member Election, then the previous Secretary, or if the previous Secretary has not been appointed to the Committee under the Member Election, then the Public Officer.

- 8.5.4 The Committee member who was provided notice under the above clause 8.5.3 shall provide notice of Committee Members seeking election to the Committee to all Committee Members at least two (2) days prior to the meeting at which the election is to take place.

- 8.5.5 At the meeting at which the election is to take place, each Committee Member shall be entitled to one (1) vote and the Committee members shall vote to appoint the Chairperson first, Secretary second, and Treasurer third.

- 8.5.6 Upon the finalisation of the Committee Appointment, the Chairperson shall declare such Committee members as duly elected to the Committee Positions. The Chairperson shall provide notice to all members of the Association advising the composition of the Committee.

- 8.5.7 Following the Committee appointment, the Committee shall also vote to appoint one (1) Committee member as the Association's Public Officer until the next annual general meeting.

8.6 **Vacancy**

In the event of a vacancy of a Committee Position, the Committee may appoint a member or Authorised Representative to fill a vacancy, and such a Committee member shall hold office until the next annual general meeting of the Association and shall be eligible for reappointment at the Member Election.

9. **DISQUALIFICATION OF COMMITTEE MEMBERS**

The office of Committee member shall become vacant if:

- 9.1 the Committee member is disqualified by the Act;

- 9.2 the Committee member is expelled under this Constitution;
- 9.3 the Committee member is permanently incapacitated by ill health;
- 9.4 the Committee member is absent without apology from more than two consecutive Committee meetings, or more than two Committee meetings in a financial year without receiving prior leave of absence from the Chairperson;
- 9.5 the Committee member is no longer the duly appointed representative of a corporate member or multiple member;
- 9.6 subject to clause 8.4.2, the Committee member ceases to be a member of the Association or the member of the Association who has appointed the Committee member to be its representative under clause 8.4.3 ceases to be a member of the Association.
- 9.7 **Removal of Committee member**
 - 9.7.1 The Association in general meeting may, by resolution, remove any member of the Committee before the expiration of the Committee member's term of office. The removal of the Committee member shall cause a vacancy for the purposes of clause 8.6.
 - 9.7.2 A member of the Committee who is the subject of a proposed resolution referred to in clause 9.7.1 may make representations in writing to the Chairperson of the Association (not exceeding a reasonable length) and may request that the representations be provided to the members of the Association.
 - 9.7.3 The Chairperson may give a copy of the representations to each member of the Association or, if they are not so given, the Committee member may require that they be read out at the meeting.
 - 9.7.4 Notwithstanding the above clauses 9.7.1 to 9.7.3, if the conduct or position of any Committee member is such that their continuance in office would be prejudicial to the interests of the Association (including, but not limited to, the Committee member materially acting in bad faith, dangerously, or offensively with the Association), a unanimous resolution by the other Committee members at a meeting of the Committee specifically called for that purpose may remove the first mentioned Committee member.

10. PROCEEDINGS OF COMMITTEE

- 10.1 The Committee shall meet together for the despatch of business at such intervals as may be determined by the Committee from time to time but no less than once every three (3) months with a minimum of four meetings per annum.
- 10.2 Motions arising at any meeting shall be decided by a majority of votes, and in the event of equality of votes the Chairperson shall have a casting vote in addition to a deliberative vote.
- 10.3 A quorum for a meeting of the Committee shall be three members.
- 10.4 A member of the Committee having a direct or indirect pecuniary interest in a contract with the Association must disclose that interest to the Committee as required by the Act, and shall not vote with respect to that contract.

10.5 **Meetings using technology**

- 10.5.1 A Committee meeting may be held with one or more of the Committee members taking part by telephone or video conference. Such Committee members are regarded as present at the Committee meeting if such Committee members are able to hear the proceedings of the entire Committee meeting and to be heard by all others attending the Committee meeting.
- 10.5.2 Without limiting clause 10.5.1, a Committee meeting may be called or held using any technology consented to by all Committee members. The consent may be a standing one and can only be withdrawn by a Committee member on seven days' notice.
- 10.5.3 A Committee meeting conducted in accordance with clause 10.5.1 or 10.5.2 is deemed to be held at a place determined by the Committee members, provided that at least one of the Committee members present at the Committee meeting was at such place for the duration of that Committee meeting.

10.6 **Circular resolutions**

- 10.6.1 The Chairperson may put a resolution to the Committee members to pass a resolution without a Committee meeting being held (**a circular resolution**).
- 10.6.2 A circular resolution is passed if all Committee members entitled to vote on the resolution agree to the circular resolution in the manner set out in clause 10.6.3.
- 10.6.3 The Chairperson may send a circular resolution by electronic mail to Committee members and members may agree by sending a responding electronic mail to that effect, including the text of the resolution in their reply.

10.7 **Subcommittees**

- 10.7.1 The Committee may, by resolution, appoint a subcommittee to carry out special projects as required. The subcommittee may include non-members, however at no time may the number of non-members exceed the number of members or Authorised Representatives on the subcommittee.
- 10.7.2 A subcommittee may only report to Committee with recommendations of a course of action, but will have no authority to take any actions, without specific authorisation from the Committee.
- 10.7.3 The Chairperson will be, ex-officio, a member of any subcommittee.

11. **FINANCIAL YEAR**

The financial year of the Association shall be a period of twelve (12) months ending on 30 June in each year.

12. BORROWING POWERS

- 12.1 The Association may borrow money from banks or other financial institutions upon such terms and conditions as are normal and commercially acceptable and may secure the repayment thereof by charging the property of the Association. Such borrowings may only be made after approval by the members at a general meeting called for that purpose.
- 12.2 Subject to section 53 of the Act, the Association may invite and accept deposits of money from any person on such terms and conditions as may be determined by the Committee from time to time. Such deposits may only be received after approval by the members at a general meeting called for that purpose

13. CONSTITUTION

- 13.1 Subject to approval by a resolution of the members of the Association, this Constitution may be altered (including an alteration to name), or be rescinded and replaced by a substituted Constitution. Such an alteration shall be registered with the Commission as required by the Act.
- 13.2 The registered Constitution shall bind the Association and every member to the same extent as if they had respectively signed and sealed them, and agreed to be bound by all of the provisions thereof.

14. THE SEAL

- 14.1 The Association shall have a common seal.
- 14.2 Every use of the seal shall be recorded in the minute book of the Association.
- 14.3 The affixing of the seal shall be witnessed by two (2) members of the Committee.
- 14.4 The seal shall be kept in the custody of the Chairperson of the Committee or such other person as the Committee may from time to time decide.

15. MEETINGS

- 15.1 The Committee may call a special general meeting of the Association at any time, and shall call an annual general meeting in accordance with the Act.
- 15.2 The annual general meeting shall be held within five (5) months after the end of each financial year.
- 15.3 Upon a requisition in writing of not less than twenty percent (20%) of the total number of members of the Association, the Committee shall within one month of the receipt of the requisition, convene a special general meeting for the purpose specified in the requisition.
- 15.4 Every requisition for a special general meeting shall be signed by the members making the same and shall state the purpose of the meeting.

- 15.5 If a special general meeting is not convened within one month as required by clause 15.4, the requisitionists may convene a special general meeting. Such a meeting shall be convened in the same manner as a meeting convened by the Committee, and for this purpose the Committee shall ensure that the requisitionists are supplied free of charge with particulars of the members entitled to receive a notice of meeting. The reasonable expenses of convening and conducting such a meeting shall be borne by the Association.
- 15.6 Subject to clause 15.7, at least twenty-one (21) days' notice of any general meeting shall be given to members. The notice shall set out where and when the meeting will be held and particulars of the nature and order of the business to be transacted at the meeting. In the case of an annual general meeting, the order of the business at the meeting shall be the consideration of the accounts and reports of the Committee and the auditors, the appointment of auditors and Committee members (if required), and any other business requiring consideration by the Association in general meeting.
- 15.7 Notice of a meeting at which a special resolution is to be proposed shall be given at least thirty (30) days prior to the date of the meeting.
- 15.8 A notice may be given by the Association to any member by serving the member with the notice personally, or by sending it by post to the physical address or electronically to the email address appearing in the register of members.
- 15.9 Where a notice is sent in accordance with clause 15.8, service of the notice shall be deemed to be effected if it is properly addressed and sent to the member by ordinary means.

16. PROCEEDINGS AT MEETINGS

- 16.1 Twenty percent (20%) or more of the members present personally, by authorised representative or by proxy shall constitute a quorum at any general meeting.
- 16.2 If within thirty minutes after the time appointed for the meeting a quorum of members is not present, a meeting convened upon the requisition of members shall lapse. In any other case, the meeting shall stand adjourned to the same day in the next week, at the same time and place and if at such adjourned meeting a quorum is not present within thirty (30) minutes of the time appointed for the meeting the members present shall form a quorum.
- 16.3 The Chairperson of the Committee or if there shall be no Chairperson, then the vice-Chairperson of the Committee or in their absence, or on their declining to take, or retiring from the chair, one of the Committee members chosen by meeting shall preside as Chairperson at every general meeting of the Association.
- 16.4 If there is no such Chairperson or vice-chairperson present within five minutes after the time appointed for holding the meeting, the members present may choose one of their number to be the Chairperson.
- 16.5 The Chairperson may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

- 16.6 When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as if that meeting were an original meeting of members.
- 16.7 Motions arising at any general meeting shall be decided by a majority of votes, and in the event of equality of votes the Chairperson shall have a casting vote in addition to a deliberate vote.
- 16.8 At any general meeting, a declaration by the Chairperson of the meeting that a resolution has been carried or lost, shall unless a poll is demanded, be conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, the resolution.
- 16.9 If a poll is demanded by the Chairperson of the meeting or by five (5) or more members present personally, by their authorised representative or by proxy, it shall be taken in such manner as the Chairperson directs. The result of such poll shall be the resolution of the meeting, except that in the case of a special resolution a majority of not less than three quarters of the members who being entitled to do so vote personally, by their authorised representative or by proxy at the meeting is required.
- 16.10 A poll demanded on the election of a Chairperson of a meeting or on any question of an adjournment, shall be taken at the meeting and without adjournment.

16.11 Conduct at general meetings

The Chairperson may, following a majority vote of all members present, require a person to leave a general meeting and not return, if:

- 16.11.1 the person refuses to permit examination of an article in the person's possession;
- 16.11.2 the person is in possession of an article (including an electronic or recording device, placard or banner) which the Chairperson considers to be dangerous, offensive or liable to cause disruption; or
- 16.11.3 the Chairperson otherwise considers the person is causing or may cause undue disruption or interference with the efficient and proper conduct of the meeting.

17. MINUTES

- 17.1 Proper minutes of all proceedings of meetings of the Association and of meetings of the Committee, shall be entered within one month after the relevant meeting in minute books kept for the purpose.
- 17.2 The minutes kept pursuant to this clause shall be signed by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting.
- 17.3 Where minutes are entered and signed they shall until the contrary is proved be evidence that the meeting was convened and duly held, that all proceedings held at the meeting shall be deemed to have been duly held, and that all appointments made at a meeting shall be deemed to be valid.

18. **VOTING RIGHTS**

Each member will have one vote in respect of each Marina Berth leased by that member.

19. **NOTICES**

Multiple Members will be grouped for the purposes of sending notices as required under this Constitution. Only one (1) notice will be sent per Multiple Member.

20. **PROXIES**

A Member shall be entitled to appoint in writing a natural person who is also a Member of the Association to be his or her proxy and attend and vote at any meeting of the Association.

21. **ACCOUNTS**

The Association shall keep such accounting records as are necessary to correctly record and explain the financial transactions and financial position of the Association.

22. **WINDING UP**

The Association may be wound up in the manner provided for in the Act.

23. **APPLICATION OF SURPLUS ASSETS**

If after the winding up of the Association there remains "surplus assets" as defined in the Act, such surplus assets shall be distributed to such institution or institutions as approved by the Members, prior to winding up provided that in no circumstances will the surplus assets be distributed to the Members or any of them.

24. **SINKING FUND**

24.1 The Association operates a Sinking Fund. The Committee shall be responsible for opening and maintaining the Sinking Fund account (s) at reputable banking institution (s).

24.2 The purpose of the Sinking Fund is to enable the Association to:

24.2.1 complete major repairs to existing infrastructure which fall beyond the parameters of normal maintenance;

24.2.2 complete capital upgrades as approved by a general meeting of the Association; and

24.2.3 pay costs involved in extending the Headlease term or purchasing the freehold of the Marina as approved by a general meeting of the Association.

24.3 The Association must only use the Sinking Fund for the purposes in clause 24.2, and must keep proper records of its use, and otherwise comply with its obligation under the Act in respect of its operation.

- 24.4 Annually an amount equal to at least ten percent (10%) of the previous year's total Membership Fees shall be added to the Sinking Fund. Other funds that may accumulate from time to time which are superfluous to the ongoing operating of the Association may be added to the fund.
-

25. DISPUTE RESOLUTION

- 25.1 The grievance procedure set out in this clause applies to disputes between:
- 25.1.1 a member and another member; or
 - 25.1.2 a member and the Association.
- 25.2 The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within fourteen (14) days after the dispute comes to the attention of all of the parties.
- 25.3 If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within fourteen (14) days, hold a meeting in the presence of a mediator.
- 25.4 The mediator must be:
- 25.4.1 a person chosen by agreement between the parties; or
 - 25.4.2 in the absence of agreement:
 - (a) in the case of a dispute between a member and another member, a suitably qualified expert appointed by the Committee of the Association; or
 - (b) in the case of a dispute between a member and the Association, a suitably qualified expert who is a mediator appointed or employed by the Institute of Arbitrators and Mediators Australia.
- 25.5 A member of the Association can be a mediator.
- 25.6 The mediator cannot be a Member who is a party to the dispute.
- 25.7 The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- 25.8 The mediator, in conducting the mediation, must:
- 25.8.1 give the parties to the mediation process every opportunity to be heard;
 - 25.8.2 allow due consideration by all parties of any written statement submitted by any party; and
 - 25.8.3 ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- 25.9 The mediator must not determine the dispute.
- 25.10 If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.