

# **CONSTITUTION**

## **ASSOCIATION OF MINING & ENERGY RELATED COUNCILS (NSW) INCORPORATED**

### **1 Name**

The name of the Association is the New South Wales Association of Mining & Energy Related Councils (NSW) Incorporated.

### **2 Objects**

The objects of the Association are:

- to identify emerging issues in mining and energy related developments as they affect member councils and their communities and acquaint member councils of those issues and alternative strategies;
- to advocate on behalf of member councils and their communities on mining and energy related issues;
- to ensure Commonwealth and State Governments are aware of emerging issues in mining and energy related developments and to represent the interests of member councils and their communities to those governments and their departments;
- to pursue sources of financial assistance and resources for member councils to assist in dealing with the impacts of mining and energy related developments in their areas and upon their communities;
- to strengthen the impact of Local Government in relation to the mining and energy related industries and the relevant agencies of the New South Wales and Commonwealth Governments;
- to ensure member councils work together on problems and projects of joint interest and concern, and harness the expertise and resources of member councils and their staff on mining and energy related development issues, to the benefit of all member councils.

### **3 Membership of the Association**

3.1 Membership of the Association is available to any local authority and any other body, association or similar entity affected by mining or energy related development and approved by the Executive Committee.

3.2 The Public Officer of the Association will maintain a register of members of the Association and this will be available on the Association's website, along with current delegates.

## **4 Representation**

- 4.1 Each member shall be entitled to two delegates, who shall be nominated in writing by the member.
- 4.2 Each member may nominate one or more alternative delegates who may attend meetings as delegates, in the absence of the nominated delegates.
- 4.3 Only two delegates of each member shall be entitled to vote at any General Meeting of the Association, but the number of persons attending the meeting from any member is unlimited.
- 4.4 Tele-conferencing facilities will be available (upon request), to assist delegates with the participation of delegates at General Meetings.
- 4.5 Life Membership
- The Association may grant life membership to a retiring delegate who has a minimum of two terms representing their council and has made an outstanding, recognised contribution to the organisation;
  - The decision will be made by the Association at a meeting following the delegate's retirement;
  - Life membership grants the retiring delegate an eminent role with the right to attend meetings and functions within the Association and the right to discuss issues before the Association but does not confer voting rights to move or second any motion on any matter including nomination or appointment of office bearers or staff members.
- 4.6 All delegates appointed will be bound by the model Code of Conduct for Local Government in NSW.

## **5 Vacancy in Representation**

- 5.1 The office of delegate shall become vacant if:
- a person resigns by letter, addressed to the member; or
  - the member withdraws the nomination of the delegate; or
  - the delegate dies or is declared bankrupt; or
  - the delegate is absent from three consecutive meetings of the Association without having first obtained leave of absence from the Association.
- 5.2 Where the office of a delegate becomes vacant, the member concerned may appoint another delegate to fulfil the vacancy.

## **6 Dispute Resolution**

- 6.1 A complaint may be made by any person who is a member of the Association. The complaint should be made to the Executive Officer, who will advise the Executive Committee of the nature or reason for such complaint.

- 6.2 In processing any complaint about alleged ethical misconduct, the Executive Committee will compile an objective and factual account of the dispute in question and make the best possible recommendation for the resolution of the case. The Committee, in taking any action, shall do so only for cause, shall only take the degree of disciplinary action that is reasonable, shall utilise these procedures with objectivity and fairness, and in general, shall act only to further the interests and objectives of the Association and its membership.
- 6.3 Should the Executive Committee require resignation by a delegate, it must advise the delegate and his/her member council of its intention to do so as well as a reason for the resignation. It is up to the member council to nominate a replacement delegate and take any disciplinary action.
- 6.4 A delegate may appeal such decision to his/her member council, or to a general meeting of the Association. Any appeal to the Association is to be determined by a simple majority of votes cast by members.

## **7 Executive of the Association**

- 7.1 The Executive of the Association shall comprise the Chairperson, two Deputy Chairpersons, if such delegate is willing to accept nomination; and three (3) other delegates as the Association shall from time to time determine necessary. The three other delegates appointed to the Executive must come from three separate member council areas.
- 7.2 The Executive shall be elected annually by the delegates at the Annual General Meeting of the Association.
- 7.3 The Chairperson, or in his or her absence, a Deputy Chairperson, following consultation with all other members of the Executive, shall have the power to co-opt any delegate to the Executive to fill a casual vacancy for the balance of the term of the election for that position.
- 7.4 The Executive shall meet at least four times each year, at a time and place as determined by the Executive.
- 7.5 The Executive Officer shall give at least seven days' notice to each Executive member, of business to be transacted at the meeting.
- 7.6 Each member of the Executive shall have one vote, but the Chairperson shall also have one casting vote in the event of equality of voting.
- 7.7 Voting shall be by show of hands.
- 7.8 A quorum for a meeting of the Executive shall be three (3) members.
- 7.9 The Executive Officer shall attend all meetings of the Executive Committee and shall record the minutes of each meeting but does not have a vote.

## **8 Delegation**

- 8.1 The Executive shall have authority to act on behalf of the Association to carry out the activities of the Association, in accordance with this Constitution and adopted policies.
- 8.2 The Executive may, by resolution, delegate any of its functions, activities and responsibilities to any member of its Executive or the Executive Officer, upon such terms as the Executive considers appropriate, with the exception of determining membership fees or other matters specifically reserved in this Constitution, to ensure the orderly day-to-day operation of the Association.

## **9 Staff**

- 9.1 The Association shall have an Executive Officer, who shall be appointed by the Executive, and such other staff as the Association decides.
- 9.2 The Executive Officer shall also operate as the Public Officer and will be responsible for custody of the Association's records and documents.
- 9.3 Upon request, the Association's records and documents will be available for inspection by members without any charge and during normal business hours.
- 9.4 For the purpose of performing any of its powers, duties or functions, the Association may make use of the services of an employee of a member, if the prior approval of the member is obtained.

## **10 Advisory Subcommittees**

- 10.1 The Association may, from time to time, appoint any number of subcommittees to achieve any responsibility, activity or object of the Association and may delegate to that subcommittee responsibility or activity.
- 10.2 Each subcommittee so formed may regulate its own affairs.

## **11 Meetings**

- 11.1 A General Meeting of all delegates shall be held at least once each year, between October 1 and December 24 in each year and at such other times as the Executive determines.
- 11.2 Upon the written request of not less than three members of the Association and within thirty days of receiving such request, the Chairperson shall convene a special General Meeting of the Association.
- 11.3 The place and time for general meetings shall be as determined by the Executive from time to time.
- 11.4 The Executive Officer shall notify each member and each delegate of a meeting and of the nature of the business to be transacted at the meeting, not less than seven days beforehand.

11.5 The Executive Officer shall send copies of minutes of the previous meeting to each delegate in accordance with Clause 11.4.

## **12 Quorum**

12.1 At a General Meeting, a quorum shall exist when the majority of member councils are represented.

12.2 If a quorum is not present, within one hour of the commencement time of the meeting, the meeting shall stand adjourned to another time and if necessary, another place, as determined by the Chairperson, or in the Chairperson's absence, a Deputy Chairperson.

12.3 If a quorum is not present at the adjourned meeting, the matters listed for consideration at the general meeting, shall be determined by the Executive.

## **13 Business at meetings**

The business to be considered at a general meeting of the Association shall consist of:

- declarations of interest;
- matters of which due notice has been given by a member or a delegate;
- matters which the Chairperson submits to the meeting;
- reports by any staff of the Association;
- any report or recommendation by any sub-committee;
- such other matters as the meeting may determine are urgent and should be considered at that meeting.

## **14 Voting**

14.1 Each delegate shall have one vote.

14.2 Proxy votes are permitted only in accordance with Clause 4.3.

14.3 There is no provision for postal voting under this Constitution.

14.4 The Chairperson of the meeting shall have one deliberative vote and in the event of equality of voting, have one casting vote.

14.5 Voting shall be determined upon a simple majority of those delegates voting, upon a show of hands.

14.6 Elections for a position on the Executive and Executive Committee shall be conducted in accordance with the provisions outlined in the sub clauses 14.6.1, 14.6.2, 14.6.3 and 14.6.4, following.

### **14.6.1 Contested Elections – Chairperson & Deputy Chairperson**

- (1) If the number of candidates nominated for the positions of Chairperson and Deputy Chairperson is greater than one, the election is to be a contested election;
- (2) In the event of there being only two nominations for the election of one candidate for the indicated positions in (1) the voting system in such contested election will be by Ordinary Ballot (secret ballot) or by Open Voting (show of hands)
- (3) In the event of more than two nominations for a position in (1), the voting system used for the election shall be the preferential system;
- (4) If a contested election is required for either Chairperson or Deputy Chairpersons, the decision on the voting method for (2) is to be made at the Annual General Meeting immediately prior to the election.

#### **14.6.2 Contested Election - Three positions for the Executive Committee**

- (1) If the number of candidates nominated for the three (3) remaining Executive Committee positions is greater than that number, the election is to be a contested election.
- (2) The voting system in a contested election for the three (3) positions will be preferential.

#### **14.6.3 Candidates' Nominations and Resumes**

- (1) Nominations for office bearer positions are to be called for by the Executive Officer no later than two (2) weeks prior to the Annual General meeting date;
- (2) The Candidates for the positions in clause 14.6.1 and clause 14.6.2 should forward their nominations on the form provided (seconded by a current Association delegate or by sending an email indicating that the nomination will be seconded by an eligible person by the date of the election) to reach the Executive Officer not later than 4 30pm on the day, one (1) week prior to the Annual General meeting;
- (3) The nomination can be accompanied by a brief resume setting out details of the candidate's background in local government

and the Association (if applicable) for distribution to delegates by the Executive Officer;

- (4) The nomination seconder has until the day of the election to submit the advice that they are seconding the nomination of a candidate in (2), to the Executive Officer.

#### **14.6.4 Voting Methods Policy for Annual Election of Executive**

The voting methods policy, as tabled on 13<sup>th</sup> August 2015 and amended on 17<sup>th</sup> November 2017, is an annexure to the constitution.

**Refer Annexure A.**

- 14.7 The decision of the Chairperson as to a count of votes shall be binding upon the meeting.

### **15 Powers of the Association**

The Association shall have power in accordance with this Constitution:

- to carry out the objects of the Association; and
- to receive funds to carry out the objects and responsibilities of the Association.

### **16 Finance**

The funds of the Association are derived from annual subscriptions of members and subject to any resolution passed by the Association at a general meeting. The Association will manage its fund internally with an accredited accounting package to current audit standards.

- 16.1 The Association's financial year shall be from July 1 to June 30.
- 16.2 The Executive shall present to the Annual General Meeting a budget setting out the projected income and expenditure of the Association for the ensuing financial year, together with an estimate of fees required of members to achieve the budget.
- 16.3 The Annual General Meeting shall determine member fees for the ensuing financial year.
- 16.4 Membership fees shall be for the period July 1 to June 30 of each year and be reviewed as per Clause 16.3 to allow increases in accordance with the permissible rate increase each year.
- 16.5 The Association shall promptly pay all monies received by it into a bank account which shall be operated in such a manner and by such persons as the Executive shall from time to time determine.

## **17 Office**

The office of the Association shall be at such place as the Executive may from time to time determine.

## **18 Year**

The Association's year shall be as follows:

- The financial operating year shall be from July 1 to June 30.
- The functional year shall be the calendar year and the Annual General Meeting and the election of officers will be held at the end of the calendar year.

## **19 Members' Liability**

Members of the Association are not liable 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, except to the extent of the amount, if any, unpaid by a member in respect of fees determined by the Association pursuant to Rule (Clause) 22.

## **20 Insurance**

20.1 The Association shall effect and maintain insurance as required.

20.2 In addition to the insurance required under Clause 19.1, the Association may effect and maintain other insurance.

## **21 Annual Report**

The Association shall submit an Annual Report to each of the members.

## **22 Termination of Membership**

A member may resign from membership of the Association by giving three months' notice in writing of its intention to do so, to the Executive Officer, but shall be required to pay any fees due for membership up to the end of the current financial year.

## **23 Alterations to Constitution**

No alterations or amendments shall be made to this Constitution unless at a general meeting and at least two-thirds of the delegates present at that meeting agree to such alterations or amendments.

## **24 Winding up of the Association**

Upon the winding up of the Association, the debts and liabilities of the Association shall be discharged out of the assets of the Association. The

balance of any assets held after payment of all debts and liabilities shall be transferred to the members equally.

**25 Document Control**

This constitution will be document controlled as changes are made to it as per Clause 23. **Refer Annexure B**

## ANNEXURE A

### VOTING METHODS POLICY FOR ANNUAL ELECTION OF EXECUTIVE

(ADOPTED BY ASSOCIATION 13/8/2015 AND AMENDED 17/11/2017)

#### **Preamble**

The following voting systems which are in use by local government councils across NSW and set down in related legislation are the basis for annual elections conducted by the Association of Mining & Energy Related Councils (NSW) Incorporated for the positions of Chairperson, Deputy Chairperson and Executive Committee.

#### **Objective**

The objective of the policy is to give the Association and its delegates guidelines to follow on the conduct of elections which can be clearly understood by all concerned and which can be used by the appointed Returning Officer to provide election results in a reasonable time frame at the Annual General Meeting.

This document supports clause 14-6 in the Association's constitution which lists the *requirements for annual elections in general terms*. The *method of voting and related matters* have been prepared in the following policy document to ensure that if in the future changes occur in NSW voting systems, amendments can be made to this document preventing unnecessary, continuing costly legislative changes to the Association's Constitution.

#### **Election Methods**

- A. For the election of one person, ie the Chairperson or any Deputy Chairperson.** The election shall be conducted using either the ordinary ballot (secret ballot) or open voting (show of hands) systems as determined by the delegates at the Annual General Meeting prior, if more than one nomination for either of these positions is received.

(Note: The election is to be conducted in accordance with Part 2 of the Local Government (General) Regulation 2005 – Schedule 7 outlined as follows:

#### **“Part 2 - Ordinary Ballot or Open Voting**

4. Application of Part 2 - This Part applies if an election proceeds by ordinary ballot or by open voting.
5. Marking of ballot-papers:
  - (1) If the election proceeds by ordinary ballot, the Returning Officer is to decide the manner in which votes are to be marked on the ballot-papers.

(2) The formality of a ballot-paper under this Part must be determined in accordance with clause 345 (1) (b) and (c) and (6) of this Regulation as if it were a ballot-paper referred to in that clause.

(3) All informal ballot-papers must be rejected at the count.

6. Count – 2 candidates:

(1) If there are only 2 candidates, the candidate with the higher number of votes is elected.

(2) If there are only 2 candidates and they are tied, the one elected is to be chosen by lot.

7. Count – 3 or more candidates:

(1) If there are 3 or more candidates, the one with the lowest number of votes is to be excluded.

(2) If 3 or more candidates then remain, a further vote is to be taken of those candidates and the one with the lowest number of votes from that further vote is to be excluded.

(3) If, after that, 3 or more candidates still remain, the procedure set out in subclause (2) is to be repeated until only 2 candidates remain.

(4) A further vote is to be taken of the 2 remaining candidates.

(5) Clause 6 of this Schedule then applies to the determination of the election as if the 2 remaining candidates had been the only candidates.

(6) If at any stage during a count under subclause (1) or (2), 2 or more candidates are tied on the lowest number of votes, the one excluded is to be chosen by lot.

**B. For the Election of the other Executive Committee Positions**

**Part 3 - Preferential ballot**

(1) Application of Part 3 - This part applies if an election proceeds for the other Executive Committee positions and is to be by preferential ballot.

(2) Ballot-papers and voting:

(1) The ballot-papers are to contain the names of all the candidates. The delegates are to mark their votes by placing the numbers “1”, “2” and so on against the various names so as to indicate the order of their preferences for all the candidates.

(2) The formality of a ballot-paper under this Part is to be determined in accordance with clause 345 (1) (b) and (c) and (5) of this Regulation as if it were a ballot-paper referred to in that clause.

- (3) An informal ballot-paper must be rejected at the count.
- (3) Count
- (1) If a candidate has an absolute majority of first preference votes, that candidate is elected.
  - (2) If not, the candidate with the lowest number of first preference votes is excluded and the votes on the exhausted ballot-papers counted to him or her are transferred to the candidates with second preferences on those ballot-papers.
  - (3) A candidate who then has an absolute majority of votes is elected, but, if no candidate then has an absolute majority of votes, the process of excluding the candidate who has the lowest number of votes and counting each of his or her unexhausted ballot-papers to the candidates remaining in the election next in order of the voter's preference is repeated until one candidate has received an absolute majority of votes. The latter is elected.
  - (4) In this clause, "**absolute majority**", in relation to votes, means a number that is more than one-half of the number of unexhausted formal ballot-papers.
- (4) Tied candidates
- (1) If, on any count of votes, there are 2 candidates in, or remaining in, the election and the numbers of votes cast for the 2 candidates are equal, the candidate whose name is first chosen by lot is taken to have received an absolute majority of votes and is therefore taken to be elected.
  - (2) If, on any count of votes, there are 3 or more candidates in, or remaining in, the election and the number of votes cast for 2 or more candidates are equal and those candidates are the ones with the lowest number of votes on the count of the votes – the candidate whose name is first chosen by lot is taken to have the lowest number of votes and is therefore excluded.

#### **Part 4 - General**

##### **(1) Choosing by lot**

To choose a candidate by lot, the names of the candidates who have equal numbers of votes are written on similar slips of paper by the Returning Officer, the slips are folded by the Returning Officer so as to prevent the names being seen, the slips are mixed and one is drawn at random by the Returning Officer and the candidate whose name is on the drawn slip is chosen.) “

## ANNEXURE B

### DOCUMENT CONTROL - CHANGES TO THE ASSOCIATION'S CONSTITUTION

<b>Special Meeting</b>	<b>Clause No</b>	<b>Detail of Change</b>	<b>Min No</b>	<b>Comment</b>
Special General Meeting held on 13/8/15	14.Voting, Sub Clause 14.6 Deleted 14.6 replaced with 14.6.1 to 14.6.4	Inclusion of a Voting Methods Policy in the constitution for clarity and transparency on the conduct of Annual Elections for Executive Positions.	SMM 1/2015 & SMM 2/2015	Addition of Sub Clauses 14.6.1 to 14.6.4 to clarify & expand detail in 14.6
Special General Meeting held on 13/5/16.	12. Quorum, Sub Clause 12.1	Revised membership from half of members to majority members present at the meeting.	SMM 1/2016	Needed to adjust to the membership changes.
Special General Meeting held on 17/11/17	4. Representation, Sub Clause 4.5 & 4.6 and typographical in Sub Clause 4.4 the word "assists" should be "assist".	Remove restriction on delegates/life members having any association with mining and energy related companies and replace with delegates appointed bound to follow Model Code of Conduct for Local Government NSW and delete for life members.	SMM 6/2017 & 10/2017	Needed to update the constitution to allow councils to broaden nomination of delegates to the Assoc and embrace Code of Conduct for NSW Councils.
Special General Meeting held on 17/11/17	1. Name; 2 Objects & 3 Membership – do changes throughout the constitution to the name in these Clauses.	Change name from Assoc. Mining Related Councils to Assoc. Mining and Energy Related Councils (NSW) Incorporated.	SMM 5/2017	Change name to align with Strategic Plan strategies for 2017–2020 to reflect new renewable energy opportunities.
Special General Meeting 17/11/17	14. Voting, do changes to 14.6.1/2	Remove proportional representation from Voting Methods Policy and re word clauses for clarity.	SMM 7/2017 & 8/2017	To adjust voting systems to suit modern day voting methods.
Special General Meeting 17/11/17	14. Voting, do changes to nomination and seconders	Clarify nominations can attach a resume and seconders have until election day to submit seconder note.	SMM 7/2017 & 8/2017	To improve nomination and seconding process for candidates.
Special General Meeting 17/11/17	25. Document Control.	Add new clause to record changes to constitution & Annex B.	SMM 6/2017	For clarity & transparency.
Special General Meeting 23/2/18	7 & 7.1 Executive of Association – to take references out.	Delete reference to Coal and Metalliferous for two Deputy Chair positions	SMM 9/2018	To adjust for adoption new Strategic Plan
Special General Meeting 23/2/18	14.6.1 & 14.6.1.1 Voting & Contested Elections	Delete reference to Coal and Metalliferous for two Deputy Chair positions	SMM 9/2018	To adjust for adoption new Strategic Plan
Special General Meeting 23/2/18	14.6.3.2 & 14.6.3.4 Candidates Noms & Resumes	Rewording Clause 14.6.3.2 and the deletion of Clause 14.6.3.4	SMM 9/2018	For clarity and transparency
Special General Meeting 23/2/18	25. Document Control	Add changes to constitution & Annex B	SMM 9/2018	For clarity & transparency