

**Innovation and Business Industry Skills
Council Ltd**

ABN 74 109 600 302

Constitution

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1. PRELIMINARY

1.1 Company limited by guarantee

Innovation & Business Industry Skills Council Ltd is a Company limited by guarantee and the liability of Members is limited as provided in this document.

1.2 Objects of the Company

The Company is formed with the object to:

- (a) advance education and training and to identify generic and emerging skills to support the employability of individuals and provide for local community development and to give strategic advice to government on these issues;
- (b) support the development, implementation and continuous improvement of high quality, nationally recognised training products and services, including enhancing innovation, rationalising materials where there are cross-industry synergies, and improving efficiency;
- (c) assist industries, enterprises, organisations and their workforces to integrate skill development with business goals;
- (d) support accurate industry intelligence on future directions, including provision of strategic advice on industry skills and training needs;
- (e) research, collect, plan, coordinate and provide input to national research and develop strategies relating to education and training within the industries;
- (f) act as the principal voice of the Industries on issues related to education and training;
- (g) market the advantages of recognised training to all users and stakeholders relevant to the Company; and
- (h) do all such other things as are incidental or conducive to the objects contained in this clause.

1.3 Application of income and property

Subject to rules 1.4 and 9.1, the Company must apply its income solely towards promoting the objects of the Company as stated in rule 1.2. No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members.

1.4 Certain payments allowed

Rule 1.3 does not prevent the payment of reasonable remuneration to any officer or employee of the Company or to any member of the Company or other person in return for service rendered to the Company. In addition rule 1.3 does not prevent the Company paying to a member:

- (a) interest on money lent by the member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;

- (b) reasonable remuneration for goods supplied by the member to the Company in the ordinary course of business; and
- (c) reasonable rent for premises lent by the member to the Company.

1.5 Replaceable rules

The replaceable rules referred to in section 141 of the Act do not apply to the Company and are replaced by the rules set out in this document.

1.6 Definitions

The following definitions apply in this document.

"**Act**" means the Corporations Act 2001 (Commonwealth).

"**Board**" means the Directors acting collectively under this document.

"**Chair**" means the person elected as chair of the Board under rule 3.3(i).

"**Company**" means the company named at the beginning of this document whatever its name is for the time being.

"**Constitution**" means the constitution of the Company as amended from time to time.

"**Deputy Chair**" means the person elected as deputy chair of the Board under rule 3.3(i).

"**Department of Education, Science and Training**" or "**DEST**" means the authorised Australian Government Department of that name.

"**Director**" means a natural person who is, for the time being, a director of the Company.

"**Industry**" means any industry sector for which IBSA has coverage.

"**Member**" means a person whose name is entered in the Register as a member of the Company.

"**Ordinary Member**" means a Member that is not a Peak Industry Organisation.

"**Peak Industry Organisation**" means each of: (a) the Australian Council of Trade Unions; (b) the Australian Chamber of Commerce and Industry; and (c) the Australian Industry Group.

"**PIO Member**" means a Member that is a Peak Industry Organisation.

"**Register**" means the register of Members kept as required by sections 168 and 169.

"**Sector Advisory Committee**" means a committee appointed pursuant to rule 7 to carry out some or all of the functions listed in rule 7.5.

"**Special Resolution**" has the meaning given by rule 13.2.

"**Secretary**" means, during the term of that appointment, a natural person appointed as a secretary of the Company in accordance with the Constitution.

1.7 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that one of the following rules is not intended to apply.

- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes a body corporate or any other type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word that suggests 1 gender includes the other gender.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word "agreement" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.6) that is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

2. MEMBERSHIP

2.1 Membership

Subject to rules 2.5 and 2.6 the Members are:

- (a) the initial Members named in the application for the Company's registration; and
- (b) any other person which the Board resolves to admit to Membership.

2.2 Membership classes

- (a) There will be two classes of Member:
 - (i) the PIO Members; and
 - (ii) Ordinary Members.
- (b) Except as set out in rule 3.3, all Members have the same rights.

2.3 Fees

There shall be no entrance or subscription fee levied or required of a Member of the Company.

2.4 Limited liability of members

If the Company is wound up each Member undertakes to contribute to the assets of the Company up to an amount not exceeding \$2.00 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for 1 year after a person ceases to be a Member.

2.5 Ceasing to be a Member

A Member ceases to be a Member:

- (a) if the Member resigns, by giving written notice to the Board, care of the Secretary, and the resignation takes effect from the date on which the notice is received by the Secretary;
- (b) if the Member is a natural person and the Member:
 - (i) dies;
 - (ii) becomes mentally incapacitated or the Member's person or estate is liable to be dealt with in any way under the laws relating to mental health; or
 - (iii) is convicted of an indictable offence or its equivalent in any jurisdiction;
- (c) if the Member is not a natural person and:
 - (i) a liquidator is appointed in connection with the winding-up of the Member; or

- (ii) an order is made by a Court for the winding-up or deregistration of the Member; or
- (d) if the Member is expelled under Rule 2.6.

2.6 Expelling a Member

- (a) The Board may, by resolution, expel from the Company any Member:
 - (i) who does not comply with the Constitution or any by-laws, rules or regulations of the Company; or
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Companyand remove that Member's name from the Register.
- (b) At least 21 days before the Board holds a meeting to expel a Member, the Board must give a written notice to the Member which states:
 - (i) the allegations against the Member;
 - (ii) the proposed resolution for the Member's expulsion;
 - (iii) that the member has an opportunity at the meeting to address the allegations either orally or in writing; and
 - (iv) that if the Member notifies the Secretary in writing at least 48 hours before the meeting, the member may elect to have the question of that Member's expulsion dealt with by the Company in general meeting.
- (c) The Company must expel a Member and remove the Member's name from the Register where:
 - (i) a general meeting is held to expel a Member; and
 - (ii) a resolution is passed at the meeting by two-thirds of those present and entitled to vote. The vote must be taken by ballot.
- (d) A Member expelled from the Company does not have any claim on the Company, its funds or property.

3. DIRECTORS

3.1 Number of Directors

The Company must have at least six Directors and the total number of Directors must not exceed eleven.

3.2 Governance and Nominations Committee

- (a) There will be a Governance and Nominations Committee with a membership of at least two Directors and at least two other suitably qualified natural persons (from within or outside the Board) appointed by the Board from time to time.

- (b) The responsibilities of the Governance and Nominations Committee will include:
 - (i) establishing processes for the identification of suitable candidates for election and appointment to the Board under rules 3.3(b) and 3.3(c), including through consultation with the Sector Advisory Committees and by advertising and other recruitment methods;
 - (ii) recommending suitable candidates to stand for election as Directors by the Ordinary Members at the annual general meeting of the Company;
 - (iii) having regard to the skills and perspectives of the Member-elected Directors, recommending candidates for election as Directors by the other Directors under Rule 3.3(c); and
 - (iv) overseeing, monitoring and, from time to time, evaluating the Company's governance framework and the performance of the Board.
- (c) The Governance and Nominations Committee will use the following criteria when assessing suitable candidates to be nominated for election to the Board by the Members and by the other Directors:
 - (i) appropriate experience as an employee or employer, or in a senior role within an organisation representing employers or employees, within one or more of the Industries;
 - (ii) recognition as a leader occupying a senior position within one or more of the Industries;
 - (iii) knowledge and experience in one or more of the Industries.
 - (iv) an understanding and capacity that enables a contribution to be made across multiple industry sectors and facilitates engagement with a breadth of industry stakeholders;
 - (v) specific expertise in one of the following:
 1. management;
 2. governance;
 3. accounting;
 4. finance;
 5. legal;
 6. information technology;
 7. business development;
 8. marketing.

3.3 Appointment of Directors

- (a) Each PIO Member may appoint one Director in its sole discretion.
- (b) Up to six Directors may be elected by the Ordinary Members, each by a resolution of the Members at an annual general meeting of the Company, from candidates nominated by the Governance and Nominations Committee and approved by the Board. The Board must make sure that a sufficient number of suitably qualified candidates is nominated at any annual general meeting at which there will be a vacancy for one or more Ordinary Member-elected Directors so that the Ordinary Members have the opportunity to maintain a full quota of 6 Directors if they so choose.
- (c) Up to two Directors may be elected by the other Directors. Candidates for appointment as Directors under this rule 3.3(c) will be nominated by the Governance and Nominations Committee.
- (d) If there is a casual vacancy for the position of a Director elected by the Ordinary Members (either because the Ordinary Members do not elect their full quota of Directors or because a Director elected by the Ordinary Members ceases to be a Director), the Board may request the Governance and Nominations Committee to nominate a natural person who will be appointed by the Board to fill the vacant position. A Director appointed under this rule 3.3(d) will hold office until the next annual general meeting of the Company and, if elected at that meeting by an ordinary resolution of the Ordinary Members, will remain in office for the remainder of the original term of the casual vacancy. If another person is elected by the Members in place of the casual Director, that person will hold office as a Director for the remainder of the original term of the casual vacancy.
- (e) If there is a casual vacancy for the position of a Board-appointed Director (other than a Director appointed by the Board under Rule 3.3(d)), the Board may request the Governance and Nominations Committee to nominate a person who will be appointed by the Board to fill the vacancy. A Director appointed under this rule 3.3(e) will hold office for the remainder of the term of the casual vacancy.
- (f) If there is a casual vacancy for the position of a Director appointed by a PIO Member, that PIO Member may appoint a replacement Director who will hold office for the remainder of the term of the casual vacancy.
- (g) If a PIO Member elects not to exercise its right to appoint a replacement Director to fill a casual vacancy under rule 3.3(f), the Board may request the Governance and Nominations Committee to nominate a person who will be appointed by the Board to fill the vacancy. A director appointed under this rule 3.3(g) will hold office for the remainder of the term of the casual vacancy or until the PIO Member exercises its right to appoint a Director to fill the vacancy, whichever is earlier.
- (h) The intention of the Company is that the Board should have, at all times, balanced gender and bipartite representation and that Directors should meet the criteria set out in Rule 3.2(c).
- (i) The Directors shall appoint a Chair and Deputy Chair from within their number.

3.4 Directors' terms of office

- (a) The Directors in office immediately following the 2007 annual general meeting of the Company will hold office as follows:
 - (i) each Director appointed by a PIO Member will hold office for an initial term of two years and then in accordance with rule 3.4(b);
 - (ii) each Director appointed by the other Directors under rule 3.3(c) will hold office for an initial term of 3 years and then in accordance with rule 3.4(b);
 - (iii) three of the Directors elected by the Ordinary Members will hold office for an initial term of three years and then in accordance with rule 3.4(b) and the remaining Directors elected by the Ordinary Members will hold office for an initial term of two years and then in accordance with rule 3.4(b);
 - (iv) the allocation of the initial terms of the Directors elected by the Ordinary Members will be determined by a ballot at the first Board meeting after the 2007 annual general meeting of the Company;
- (b) Subject to rule 3.4(a) and the rules applying to the filling of casual vacancies on the Board, all Directors will hold office for a term of three years;
- (c) Effective from the 2007 annual general meeting of the Company, no Director may hold office for more than six consecutive years provided that a Director holding the office of Chair at the end of his or her second consecutive term may be re-appointed or re-elected (as the case may be) for a third consecutive term. In this rule 3.3(c), 'term' includes an initial term of a Director under rule 3.3(a).

3.5 Amending Rules 3.3 and 3.4

- (a) Rules 3.3 and 3.4 of this Constitution may only be modified or repealed by:
 - (i) a resolution of the Board; and
 - (ii) a Special Resolution of the Company in a general meeting.

3.6 An Auditor of the Company cannot be a Director

Neither the auditor of the Company nor any partner or employee of the auditor is eligible to act as a Director.

3.7 Cessation of Director's appointment

A person automatically ceases to be a Director:

- (a) at the end of the then current term for which the Director has been elected or appointed, as the case may be;

or if the person:

- (b) is not permitted by the Act (or an order made under the Act) to be a Director;
or

- (c) becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under section 206F(5) or 206G of the Act; or
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of that office; or
- (e) fails to attend Board meetings for three (3) consecutive board meetings without leave of absence from the Board; or
- (f) resigns by notice in writing to the Company, care of the Secretary, from the date of receipt of the notice by the Secretary..

3.8 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, the Company by ordinary resolution may remove a Director from office. The power to remove a Director under this rule is in addition to section 203D of the Act.

3.9 Too few Directors

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number in accordance with the Constitution;
- (b) to convene a meeting of Members; and
- (c) in emergencies.

4. VARIATION OR CANCELLATION OF RIGHTS

- (a) Except as otherwise provided in this Constitution, rights attached to a Member's entitlement may be varied or cancelled only:
 - (i) by Special Resolution of the Company; and
 - (ii) either:
 1. by a resolution that has been passed by at least 75% of the votes cast at a meeting of Members holding rights in the affected class or category of Membership; or
 2. with the written consent of Members with at least 75% of the votes in the affected class or category of Membership.
- (b) Rule 4(a) applies whether or not the Company is being wound up.
- (c) The Company must give a notice in writing of the variation or cancellation of entitlements to Members of the class or category of Membership affected within 7 days after variation or cancellation of the entitlement.

- (d) The provisions of this Constitution relating to general meetings apply so far as they are capable of application, and with the necessary changes, to every meeting of Members holding rights in a class or category of Membership.

5. POWERS OF THE BOARD

5.1 Powers generally

Except as otherwise required by the Act, any other applicable law or this document, the Board:

- (a) has power to manage the business of the Company;
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members; and
- (c) shall meet at least 4 times per year, commencing on 1 July in each year.

5.3 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board, or
- (b) in accordance with a delegation of the power under rule 7.

6. EXECUTING NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

7. DELEGATION OF BOARD POWERS

7.1 Power to delegate

The Board may delegate any of its powers as permitted by section 198D of the Act.

7.2 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

7.3 Terms of delegation

A delegation of powers under rule 7.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

7.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this Constitution that regulate the meetings and proceedings of the Board.

7.5 Sector Advisory Committees

- (a) There will be one Sector Advisory Committee for each Industry.
- (b) From time to time the Board will consider and make appropriate delegations to the Sector Advisory Committees.
- (c) Each Sector Advisory Committee will:
 - (i) reflect the bi-partite nature of the Company by having as members relevant employer and employee representatives;
 - (ii) have a set of rules endorsed by the Company;
 - (iii) act within the agreed Business Plan for the Company;
 - (iv) report to and be responsible to the Board of the Company; and
 - (v) provide sector advice on all areas pertaining to specialist areas for that sector.

8. DIRECTORS' DUTIES AND INTERESTS

8.1 Compliance with duties under the Act

Without limiting his or her duties at law or under the Act, each Director must comply with sections 180 to 183 of the Act.

8.2 Disqualification

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Company's auditor;
- (b) being a Member or creditor of any corporation (including the Company) or partnership other than the auditor; or
- (c) entering into any agreement with the Company.

8.3 Disclosure of interests

Each Director must comply with section 191 of the Act.

8.4 Director interested in a matter

Each Director must comply with section 195 of the Act in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195 of the Act:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
- (b) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191 of the Act, paragraph (c) applies only if it is disclosed before the transaction is entered into.

The Company will maintain a conflict of interest policy to define Directors' compliance requirements related to Industry Skills Council matters.

8.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

8.6 Obligation of confidentiality

- (a) Subject to rule 8.6(b), every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
 - (i) in the course of duties as an officer of the Company;
 - (ii) by the Board or the Company in general meeting; or
 - (iii) by law.
- (b) A Director appointed by a PIO Member may disclose any information (confidential or otherwise) about the affairs, finances and accounts of the Company that comes into the Director's possession from time to time, to the PIO Member that nominated the Director provided that the PIO Member complies with the requirements of rule 8.6(a).
- (c) The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it, or a PIO Member, to sign a confidentiality undertaking consistent with rule 8.6(a). A Director or Secretary must do so if required by the Company.

9. DIRECTORS' REMUNERATION

9.1 Payments to Directors with Board approval

With the approval of the Board the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered by the Director to the Company;
- (c) a sitting fee as determined by the Board of the Company.

10. OFFICERS' INDEMNITY AND INSURANCE

10.1 Indemnity

Subject to and so far as permitted by the Act:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries, and may indemnify its auditor, against any liability incurred by that person as such an officer or auditor to a person (other than the Company or a related body corporate) including a liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the liability arises out of conduct involving a lack of good faith;
- (b) the amount of any indemnity paid under rule 10.1(a) will include an additional amount ('**GST Amount**') equal to any GST payable by the person being indemnified ('**Indemnified Person**') in connection with the indemnity (less the amount of any input tax credit claimable by the Indemnified Person in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional on the Indemnified Person providing the Company with a GST tax invoice for the GST Amount; and
- (c) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, "liability" means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

10.2 Insurance

Subject to the Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of any officer of the Company or any of its wholly owned subsidiaries.

10.3 Former officers

The indemnity in favour of officers under rule 10.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

10.4 Deeds

- (a) Subject to the Act, without limiting a person's rights under this rule 10 the Company may enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 10 on any terms and conditions that the Board thinks fit.
- (b) Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance merely because the contract insures or would insure the Director against a liability incurred by the Director as an officer of the Company or any of the Company's subsidiaries.

10.5 Meaning of 'officer'

For the purposes of this rule 10, '**officer**' means:

- (a) a Director;
 - (b) a Secretary; or
 - (c) an executive officer,
- of the Company or of any of its subsidiaries.

11. BOARD MEETINGS

11.1 Convening Board meetings

No less than three Directors may at any time, and a Secretary must on request from no less than three Directors, convene a Board meeting.

11.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but non-receipt of notice by a Director does not result in a Board meeting being invalid.

11.3 Board decisions

A resolution of the Board must be passed by 75% of the Directors present and entitled to vote.

11.4 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D of the Act. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the Chair of the meeting is located.

11.5 Chairing Board meetings

The Chair of the Board shall preside as chair of every Board meeting of the Company or if there is no Chair or if he/she is not present within 15 minutes after the time appointed for the holding of the meeting or if unwilling to act the Deputy Chair of the Board shall be the Chair. If the Deputy Chair then is not present or is unwilling to act, then the Directors shall elect one of their number to be the Chair of the meeting.

11.6 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is at least 50% of the Directors and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D of the Act, the Board must resolve the basis on which Directors are treated as present.

11.7 Written resolution outside of a formal Board meeting

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

11.8 Additional provisions concerning written resolutions

For the purpose of rule 11.7:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document; and
- (b) a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

11.9 Valid proceedings

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

12. MEETINGS OF MEMBERS

12.1 Annual general meeting

The Company must hold an annual general meeting as required by section 250N of the Act.

12.2 Calling meetings of members

A meeting of Members:

- (a) may be convened at any time by the Board or no less than three Directors; and
- (b) must be convened by the Board when required by section 249D or 250N of the Act or by order made under section 249G of the Act.

12.3 Notice of meeting

Subject to rule 12.4 at least 21 days' written notice of a meeting of Members must be given individually to:

- (a) each member (whether or not the Member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

The notice of meeting must comply with section 249L of the Act and may be given in any manner permitted by section 249J(3) of the Act.

12.4 Short notice

Subject to sections 249H(3) and (4) of the Act:

- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree; or
- (b) if Members who together have power to cast at least 85% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

12.5 Postponement or cancellation

Subject to sections 249D(5) and 250N of the Act, the Board of the Company may:

- (a) postpone a meeting of Members;
- (b) cancel a meeting of Members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

12.6 Fresh notice

If a meeting of Members is postponed or adjourned for 30 days or more, the Company must give new notice of the resumed meeting.

12.7 Technology

The Company may hold a meeting of Members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

12.8 Accidental omission

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Members.

13. PROCEEDINGS AT MEETINGS OF MEMBERS

13.1 Member present at meeting

If a member has appointed a proxy or attorney that Member is taken to be present at a meeting at which the proxy or attorney is present.

13.2 Special Resolution

Special Resolution means a resolution passed at a meeting of Members by 75% of the votes cast by Members entitled to vote on the resolution.

13.3 Quorum

The quorum for a meeting is not less than 20% of all Members entitled to attend the meeting. Each individual present may only be counted once toward a quorum. If a Member has appointed more than 1 proxy or representative only 1 of them may be counted towards a quorum.

13.4 Quorum not present

If a quorum is not present within 15 minutes after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members under section 249D of the Act, the meeting is dissolved; and
- (b) in any other case:

- (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
- (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

13.5 Chairing meetings of Members

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of Members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of Members is called or is not willing to chair the meeting,
- (c) the Members present must elect a member or Director present to chair the meeting.

13.6 Attendance at general meetings

- (a) Every Member has the right to attend all meetings of Members.
- (b) Every Director has the right to attend and speak at all meetings of Members.
- (c) The auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

13.7 Adjournment

Subject to rule 12.6, the Chair of a meeting of Members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

13.8 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

14. PROXIES, ATTORNEYS AND REPRESENTATIVES

14.1 Appointment of proxies

A Member may appoint a proxy to attend and act for the Member at a meeting of members. An appointment of proxy must be made by written notice to the Company:

- (a) that complies with section 250A(1) of the Act; or

- (b) in any other form and mode that is, and is signed or acknowledged by the Member in a manner, satisfactory to the Board.

14.2 Member's attorney

A Member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of Members.

14.3 Deposit of proxy forms and powers of attorney

An appointment of a proxy or an attorney is not effective for a particular meeting of Members unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

14.4 Corporate representatives

A member that is a body corporate may appoint an individual to act as its representative at meetings of Members as permitted by section 250D of the Act.

14.5 Standing appointments

A member may appoint a proxy, attorney or representative to act at a particular meeting of Members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a Member.

14.6 Suspension of proxy or attorney's powers if member present

A proxy or attorney has no power to act for a Member at a meeting at which the Member is present.

14.7 Priority of conflicting appointments of attorney or representative

If more than 1 attorney or representative appointed by a Member is present at a meeting of Members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule (a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

14.8 More than 1 current proxy appointments

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than 1 proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

14.9 Continuing authority

An act done at a meeting of Members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

15. ENTITLEMENT TO VOTE

15.1 Number of votes

Subject to section 250A(4) of the Act:

- (a) each Member has 1 vote on a show of hands or a poll; and
- (b) a Member who is present and entitled to vote and is also a proxy, attorney or representative of another Member, has 1 vote on a show of hands.

15.2 Casting vote of Chair

The Chair of a meeting of Members does not have a casting vote. If an equal number of votes are cast for and against a resolution, the matter is decided in the negative.

15.3 Voting restrictions

If:

- (a) the Act requires that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those Members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those Members. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4) of the Act, on a show of hands the vote is invalid and the Company must not count it and on a poll rule (c) applies.

15.4 Decision on right to vote

A member or Director may challenge a person's right to vote at a meeting of Members. A challenge may only be made at the meeting. The Chair, whose decision is final, must decide a challenge, or any other doubt as to the validity of a vote.

16. HOW VOTING IS CARRIED OUT

16.1 Method of voting

A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded under rule 16.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the Chair's declaration of a decision on a show of hands is final. A resolution must be passed by a majority of the Members voting at the meeting.

16.2 Demand for a poll

A poll may be demanded on any resolution (except a resolution concerning the election of the Chair of a meeting) by:

- (a) at least 50% of Members entitled to vote on the resolution; or
- (b) the Chair.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

16.3 When and how polls must be taken

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule (c), in the manner that the Chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule (c), in the manner that the Chair of the meeting directs;
- (c) votes which section 250A(4) of the Act requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

17. SECRETARY

17.1 Appointment of Secretary

The Board shall appoint at least 1 individual to be Secretary.

17.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

17.3 Cessation of Secretary's appointment

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Act and is not given permission or leave to manage the Company under section 206F(5) or 206G of the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 17.4.

17.4 Removal from office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

18. MINUTES

18.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the name of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 7 of the Constitution);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

to be kept in accordance with section 251A of the Act. Nothing in this rule 18.1 limits any other section of the Act that relates to the keeping of minutes.

18.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A of the Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

18.3 Inspection of minute books

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B of the Act.

19. COMPANY SEALS

19.1 Common seal

The Board may decide whether or not the Company has a common seal; and is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2) of the Act.

19.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123 of the Act.

19.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

20. FINANCIAL REPORTS AND AUDIT

20.1 Company must keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

20.2 Financial reporting

The Board must cause the Company to prepare a financial report and a Directors' Report that comply with Part 2M.3 of the Act and must report to members in accordance with section 314 of the Act no later than the deadline set by section 315 of the Act.

20.3 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. Sections 324 to 331 and 1280 and 1288 of the Act regulate the eligibility, appointment, removal, remuneration, rights and duties of the auditor.

20.4 Conclusive reports

Audited financial reports laid before the Company in general meetings are conclusive except as regards errors notified to the Company within 3 months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

20.5 Inspection of financial records and books

Subject to this Constitution and section 247A of the Act, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

21. REGISTER OF MEMBERS

The Company must set up and maintain a register of members.

In accordance with section 169 of the Act, the Register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the Register is made;
- (c) the name and details of each person or organisation who stopped being a member within the last 7 years;
- (d) the date on which the person or organisation stopped being a member; and
- (e) an index of members' names if the Company has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

22. WINDING UP

If the Company is wound up any surplus property must not be paid to members but must be paid or transferred to another corporation that has a constitution that complies with section 150(1) of the Act.

23. NOTICES

23.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and

- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

23.2 Overseas members

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

23.3 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5.00 PM (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5.00 PM (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and
- (b) if it is sent by mail:
 - (iii) within Australia - 1 business day after posting; or
 - (iv) to a place outside Australia - 3 business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

23.4 Business days

For the purposes of rule 23.3 a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

23.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

23.6 Notices to "lost" Members

If:

- (a) on 2 or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or

- (b) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 23.2

the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.

This rule ceases to apply if the Member gives the Company notice of a new address.