
Constitution

Mediator Standards Board Limited

(A public company limited by guarantee)

ABN 11 145 829 812

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1 Defined terms and interpretation

1.1 Defined terms

The Dictionary in Schedule 1:

- (a) defines some of the terms used in this constitution;
- (b) sets out the rules of interpretation which apply to this constitution; and
- (c) clarifies the effect of the Corporations Act on this constitution.

1.2 Interpretation

The interpretation rule in Schedule 1 (**Dictionary**) sets out rules of interpretation for this constitution.

2 Nature of company and liability

2.1 Nature of company

The company is a public company limited by guarantee.

2.2 Liability of each member is limited

The liability of each member is limited. Each member guarantees to contribute up to a maximum of ten dollars to the assets of the company if it is wound up while the member is a member, or within one year afterwards, and at the time of winding up the debts and liabilities of the company exceed its assets. The liability of each member is limited to making such contribution and no more.

3 Objects of the company

Without limiting or derogating from the inherent powers of the company in any way, the objects of the company are:

- (a) to develop, maintain and amend the National Mediator Accreditation System (NMAS), which includes the Australian National Mediator Standards (the Standards). The documents that comprise the Standards as at the date of this constitution are the Practice Standards and the Approval Standards and are attached to this constitution as Attachment A;
- (b) to oversee the application of the Standards with a view to achieving consistency, quality and public protection regarding mediation services and mediation training;
- (c) to support, complement and encourage members in their efforts to meet their objectives in relation to the Standards;
- (d) to ensure the training and accreditation of mediators continues to develop;
- (e) to require records to be maintained of mediators who are accredited under the Standards and to facilitate access to accredited mediators; and
- (f) to carry out such other functions and purposes which are necessary or incidental to the objects listed above.

4 Legal capacity and powers of the company

The company has all of the powers of a natural person and of a body corporate, including those set out in the Corporations Act.

5 Membership

5.1 Classes of membership

- (a) Unless otherwise resolved by the company in a general meeting, the membership of the company will consist of the following membership classes:
- (i) RMAB Organisation Member – being an organisation that is a Recognised Mediator Accreditation Body under the National Mediators Accreditation Standards;
 - (ii) Professional Organisation Member – being a professional or service organisation that has at least 30 mediator members accredited under the NMAS and that is not a RMAB;
 - (iii) Representative Organisation Member – being a national or state based representative organisation that has 3 or more RMAB members;
 - (iv) Training Organisation Member – being an organisation that provides education and training as set out in the Approval Standards to at least 25 participants per year;
 - (v) Government Member – being:
 - (A) a Commonwealth government agency nominated by the Commonwealth Attorney-General's Department and that is not an RMAB; or
 - (B) a government agency from each State and Territory nominated by the Attorney-General or equivalent in each State or Territory and that is not an RMAB with ADR policy expertise;
 - (vi) Community Organisation Member – being a community or state based mediation organisation that is not a RMAB; and
 - (vii) Consumer Organisation Member – being an organisation that uses, but does not provide, mediation services.
- (b) Organisations that fulfil the requirements of one or more membership class may only become members under one membership class.

5.2 Membership qualifications

- (a) The board of directors has absolute discretion to approve or refuse an Applicant for membership under paragraph (b). In exercising its discretion, the board of directors should have regard to whether the Applicant, in the board of directors' view, is committed to the objects of the company.
- (b) Subject to paragraph (a), an Applicant is qualified to be a member of the company if the Applicant has:

- (i) made an application for membership in accordance with rule 5.4 in the form approved by the board of directors from time to time;
- (ii) satisfied any eligibility criteria adopted by the board of directors from time to time for the class of membership to which the Applicant is applying;
- (iii) paid the sum payable under this constitution by a member of the particular class for which the Applicant has applied as an entrance fee and annual subscription; and
- (iv) been approved for membership of the company by the board of directors.

5.3 Member's rights

- (a) Subject to rule 5.3(b), each member is entitled to:
 - (i) receive notice of and attend a meeting of members;
 - (ii) exercise one vote on a show of hands and in a poll; and
 - (iii) nominate a person for election as a director of the company.
- (b) A RMAB Member that has more than 100 Accredited Mediator members may exercise two votes in a poll.

5.4 Form of application

- (a) Subject to paragraph (b), an application for membership must be:
 - (i) in the form at Appendix 1 or any other form as determined by the board of directors from time to time;
 - (ii) signed on behalf of, or by the applicant; and
 - (iii) accompanied by such documents or evidence as to eligibility as the board of directors may require in accordance with rule 5.2.
- (b) The board of directors may consider an application for membership and accept or reject it even if some or all of the criteria required by paragraph (a) have:
 - (i) not been met; or
 - (ii) been met in some other way.

5.5 Membership not transferable

No membership interest, benefit or right of any member is capable of being sold or transferred in any manner whatsoever and a membership interest shall automatically lapse if there is any such purported sale or transfer or agreement to affect same.

6 Admission to membership

6.1 Consideration of application by the board of directors

If an applicant makes an application for membership that complies with rule 5.4 the board of directors must consider that application for membership as soon as practicable after its receipt and determine the acceptance or rejection of that application for membership.

6.2 Acceptance or rejection of membership application

- (a) If an application for membership is accepted the secretary must ensure that:
 - (i) the applicant is given notice of acceptance; and
 - (ii) the name and details of the applicant (including a record of the class of membership for which that applicant was approved) are entered in the register as membership details of the applicant in accordance with rule 6.3.
- (b) If an application for membership is rejected, the secretary must ensure that the applicant is given notice that the application has been rejected.
- (c) The board of directors does not have to give reasons for rejecting or accepting an application for membership.

6.3 Register of members

- (a) A register of the members of the company must be kept in accordance with the Corporations Act.
- (b) Without limiting the requirements under paragraph (a), the following must be entered in the register in respect of each member:
 - (i) the name of the member;
 - (ii) the class of membership to which the member belongs;
 - (iii) the address, telephone and facsimile number, and electronic mail address, if any, of the member;
 - (iv) the full name and contact details (including telephone number and email address) of the contact person for that member;
 - (v) the date of admission to and cessation of membership; and
 - (vi) such other information as the board of directors may require from time to time.

6.4 Change of member details

Each member must, within 21 days after the change has occurred, notify the secretary in writing of any change to its member details, including name, address, telephone, facsimile number, or electronic mail address and the name and contact details of that member's Representative or nominated contact person.

7 Resignation and expulsion of members

7.1 Resignation

- (a) A member may resign from membership of the company by giving written notice to that effect to the secretary.
- (b) Unless the notice provides otherwise, the resignation of a member is deemed to take effect from the date such notice is received by the secretary.

- (c) A member that has resigned from membership of the company is not entitled to a reimbursement of membership fees (either in whole or in part).

7.2 Expulsion of member

- (a) Subject to rule 7.2(b), the board of directors may resolve to expel a member if:
 - (i) an Expulsion Event occurs in respect of the member; and
 - (ii) the company gives that member at least 15 Business Days' notice in writing stating why the member is being expelled and that the member is liable to be expelled, and informing the member of its rights under rule 7.2(b).
- (b) Before the passing of any resolution under rule 7.2(a), a member is entitled to give the board of directors, either orally or in writing, any explanation or defence of the behaviour that has led to the expulsion
- (c) Where a resolution is passed under rule 7.2(a), the company must give that member notice in writing of the expulsion within 15 Business Days of the resolution.
- (d) A member may by notice in writing to the company within 15 Business Days of receipt of the notice referred to in rule 7.2(c), request that a resolution under rule 7.2(a) be reviewed by the company at the next general meeting. If such a request is made, the board of directors must propose at the next general meeting of the company that a resolution be moved to confirm the expulsion of the member concerned.
- (e) A resolution under rule 7.2(a) takes effect:
 - (i) if the member gives notice under rule 7.2(d), the date (if any) the resolution is confirmed by a general meeting of the company; or
 - (ii) if the member does not give a notice under rule 7.2(d), the date of the resolution.
- (f) The board of directors may reinstate an expelled member on any terms and at any time as the directors resolve.
- (g) A member expelled in accordance with this rule 7.2 is not entitled to a reimbursement of membership fees (either in whole or in part).

7.3 Cessation Events

- (a) A member will cease to be a member of the company if:
 - (i) the member ceases at any time to satisfy any eligibility criteria specified by the board of directors and fails to remedy the situation in accordance with the terms and timeline notified to the member by the board of directors or otherwise fails to comply with any policies or procedures relating to continuous compliance as adopted by the board of directors from time to time;
 - (ii) the member fails to pay any required membership fee within two months after the date on which that membership fee becomes due;
 - (iii) the member fails to comply with rule 9.2 by, for example, providing insufficient documents or other materials or failing to provide such

documents or materials at all and fails to remedy the situation in accordance with the terms and timeline notified to the member by the board of directors;
or

- (iv) the succession by another body corporate to the assets and liabilities of the member.
- (b) A member who ceases to be a member is not entitled to a reimbursement of membership fees (either in whole or in part).

8 No profits for members

8.1 Transfer of income or property

Subject to the operation of rule 8.2, the assets and income of the company must be applied solely in furtherance of the objects of the company and no portion of the income or assets of the company may be paid or transferred, directly or indirectly to any member, except as bona fide compensation for services rendered or expenses incurred on behalf of the company.

8.2 Payments, services and information

Nothing in rule 8.1 prevents the payment in good faith of:

- (a) remuneration to any officers or employees of the company for services actually rendered to the company;
- (b) an amount to any member in return for any services actually rendered to the company (whether by the member or any corporation or partnership in which the member has an interest or is a member) or for goods supplied in the ordinary and usual course of business;
- (c) reasonable and proper interest on money borrowed from any member; or
- (d) reasonable and proper rent for premises let by any member to the company.

9 Fees and membership renewal

9.1 Fees

- (a) The board of directors may require the payment of fees by members in the amounts and at the times as the board of directors resolves. The board of directors may make fees payable for one or more class of membership for different amounts and at different times. The board of directors may revoke or postpone payment of fees or extend the time for payment of fees.
- (b) The company must give members at least five Business Days' notice of fees payable by members. A notice of fees must be in writing and specify the amount of the fee, and the time and place of payment of the fee. A fee is not invalid if a member does not receive notice of the fee. For the avoidance of doubt a notice sent in accordance with this paragraph may be sent by fax or email or other electronic means.
- (c) A member must pay to the company the amount of each fee levied on the member at the time and place specified in the notice of the fee.

- (d) The company may accept from any member all or any part of the fees payable before that amount is due and payable.
- (e) For the avoidance of doubt a member that has not paid the required membership fee but has not yet ceased to be a member in accordance with rule 7 may not exercise any of the rights associated with the class of membership to which that member belongs including the right to exercise any vote the member may have at a meeting of members.

9.2 Membership renewal

In addition to paying any fees in accordance with rule 9.1, each member must:

- (a) complete any membership renewal documentation that may be required by the board from time to time by the date notified; and
- (b) provide such other information or material as may be required by the board to assess whether the member continues to meet the eligibility criteria for the class of membership to which that member belongs.

10 General meetings

10.1 Convening of general meetings

- (a) A general meeting may be convened by:
 - (i) A resolution of the board of directors; or
 - (ii) Members or the court in accordance with the Corporations Act.
- (b) A general meeting must be convened by the directors in accordance with section 249D of the Corporations Act when requested by the members to do so.
- (c) The Company must hold an annual general meeting if required by, and in accordance with, the Corporations Act. The first annual general meeting will be held prior to 30 September 2010.
- (d) Subject to rule 10.1(f), the board of directors may postpone, cancel or change the venue for a general meeting by giving notice not later than five Business Days before the time at which the general meeting was to be held to those who are at the date of the notice:
 - (i) a member of the company;
 - (ii) a director of the company; or
 - (iii) an auditor of the company.
- (e) A notice postponing or changing the venue for a general meeting must specify the date, time and place of the general meeting.
- (f) A general meeting convened under section 249D of the Corporations Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the member or members who requested it.

- (g) A meeting of members may be held in two or more places linked together by any technology that gives the members as a whole in those places a reasonable opportunity to participate in proceedings, enables the chair to be aware of proceedings in each place, and enables the members in each place to vote on a show of hands and on a poll.

10.2 Notice of general meetings

- (a) Subject to the provision of the Corporations Act relating to special resolutions and consent to short notice, at least 21 days notice of a general meeting must be given to each organisation or person who is at the date of the notice:
 - (i) a member of the company;
 - (ii) a director of the company; or
 - (iii) an auditor of the company.
- (b) A notice of a general meeting must specify the date, time and place of the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this) and, except as provided in rule 10.2(c), state the general nature of the business to be transacted at the meeting and any other matters required under the Corporations Act.
- (c) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of the annual financial report and the reports of the directors and auditor, the election of directors or the appointment or fixing of the remuneration of the auditor of the company.
- (d) A member, director or auditor may waive notice of any general meeting by notice in writing to the company.
- (e) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to a member, director or auditor entitled to receive notice of a general meeting under this rule 10.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
 - (i) the non-receipt or failure occurred by accident or error; or
 - (ii) before or after the meeting, the member, director or auditor:
 - (A) has waived or waives notice of that meeting under rule 10.2(d); or
 - (B) has notified or notifies the company of their agreement to that act, matter, thing or resolution by notice in writing to the company.
- (f) The attendance of a member, director or auditor at a general meeting:
 - (i) waives any objection that organisation or person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (ii) waives any objection that organisation or person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting or in rule 10.2(c), unless the person objects to considering the matter when it is presented.

10.3 Admission to general meetings

- (a) The chair of a general meeting may refuse admission to a person, or require that person to leave and remain out of the meeting, if that person:
 - (i) has a camera, tape recorder or video camera, or another audio or visual recording device;
 - (ii) has a placard or banner;
 - (iii) has an article which the chair considers to be dangerous, offensive or liable to cause disruption or injury;
 - (iv) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner;
 - (vi) is, or is in the opinion of the chair, intoxicated or otherwise under the influence of drugs or alcohol; or
 - (vii) is not:
 - (A) a proxy, attorney or representative of a member of the company;
 - (B) a director of the company; or
 - (C) an auditor of the company.
- (b) An organisation or person who is entitled to receive notice of a meeting or who is requested by the directors or the chair to attend a general meeting is entitled to be present, whether the person is a member or not.
- (c) A request made to a person or organisation to be present at a meeting of members may be:
 - (i) Given for a specific meeting or a specific part of one meeting only; or
 - (ii) A standing request entitling a person or organisation to attend all meetings of members until such request is revoked by the board of directors or the chair.
- (d) For the avoidance of doubt, a person or organisation attending a meeting of members at the request of the board of directors or the chair:
 - (i) must not be counted when determining whether a quorum is present; and
 - (ii) is not entitled to vote unless acting as proxy for a member.

10.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business and remains present throughout the meeting.
- (b) A quorum consists of:

- (i) if the number of members entitled to vote is 20 or more, eight of those members;
 - (ii) if the number of members entitled to vote is between two and 19 (inclusive), two of those members; or
 - (iii) if only one member is entitled to vote, that member, present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (i) where the meeting was convened by, or at the request of, members, the meeting must be dissolved; or
 - (ii) in any other case:
 - (A) the meeting stands adjourned to the day, time and place, as determined by the directors present or, if no determination is made by the directors, to the same day in the next week at the same time and place;
 - (B) if the company has two or more members, at the adjourned meeting the quorum is two members; and
 - (C) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

10.5 Chair of general meetings

- (a) The chair of the board of directors must preside as chair at each general meeting if present within 15 minutes after the time appointed for the meeting and be willing to act.
- (b) If at a meeting of members:
 - (i) there is no chair of the board of directors;
 - (ii) the chair of the board of directors is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chair of the board of directors is present within that time but is not willing to act as chair of the meeting or of part of the meeting;

then if the board of directors has elected a vice chair of the board of directors, the vice chair of the board of directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) preside as the chair of the meeting or part of it.
- (c) The directors present at a general meeting may elect a person present to chair the meeting if:
 - (i) there is no chair or vice-chair of the board of directors present at the meeting;
 - (ii) the chair and vice-chair of the board of directors are not present within 15 minutes after the time appointed for the meeting; or

- (iii) the chair and vice-chair of the board of directors are present within that time but neither are willing to act as chair of the meeting.
- (d) Subject to rules 10.5(a), (b) and (c), if at a general meeting:
- (i) a chair or vice-chair has not been elected by the directors; or
 - (ii) an elected chair is not available or is not willing to act as a chair of the meeting (or part of the meeting),
- the members present must elect as chair of the meeting another person who is present and willing to act.

10.6 Conduct of general meetings

The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in the opinion of the chair necessary or desirable for the proper, orderly and efficient running of the meeting.

10.7 Adjournment of general meetings

- (a) The chair of a general meeting may at any time during the course of the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting.
- (b) If the chair exercises the chair's right under rule 10.7(a), it is in the chair's sole discretion whether to seek the approval of the members present to the adjournment.
- (c) If the chair seeks the members' approval to adjourn the meeting, the chair must adjourn the meeting if the members present with a majority of votes agree or direct that the chair must do so.
- (d) The chair's rights under rule 10.7(a) are exclusive and, unless otherwise required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.
- (e) No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (f) Notice of an adjournment and the business to be transacted at an adjourned meeting must be given to all persons who were entitled to receive notice of the meeting and the subject of the adjournment.
- (g) Subject to rule 10.1(f), where a meeting is adjourned, the board of directors may postpone, cancel or change the venue of the adjourned meeting.

10.8 Decisions at general meetings (including polls)

- (a) Except in the case of any resolution which as a matter of law requires a special resolution, questions arising at a general meeting are to be decided by a majority of votes cast by the members present at the meeting and that decision is for all purposes a decision of the members.
- (b) Subject to the Corporations Act, in the case of an equality of votes upon any proposed resolution at a meeting of members the chair does not have a second or

casting vote in addition to any vote the chair may have in the chair's capacity as a member.

- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before a vote being decided by show of hands is taken or before or immediately after the declaration of the result of the show of hands:
 - (i) by the chair of the meeting;
 - (ii) by at least five members present and entitled to vote on the relevant resolution; or
 - (iii) by a member or members present at the meeting and representing at least 5% of the votes that may be cast on the resolution on a poll.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chair of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken when and in the manner the chair of the meeting directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (g) A poll cannot be demanded at a general meeting on the election of a chair of the meeting.
- (h) The demand for a poll may be withdrawn.

10.9 Voting rights generally

- (a) The voting rights for members are described at rule 5.3.
- (b) A member is not entitled to vote on any resolution if at the time the resolution is put to the members for consideration:
 - (i) any fees or any other amount due and payable by that member to the company under this constitution have not been paid;
 - (ii) the member has been provided with notice that it no longer meets the eligibility criteria for the class of membership to which it belongs and has not yet complied with the terms of the notice; or
 - (iii) where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (c) The company must disregard any vote on a resolution purported to be cast by a member present at a general meeting where that person is not entitled to vote on that resolution.

10.10 Voting on a show of hands and by proxy

- (a) A person present at a general meeting may only act as proxy for one member.
- (b) Where a vote is taken on a show of hands, a person who is present at the meeting and who is entitled to vote by proxy, attorney or Representative, may exercise one vote only.
- (c) An objection to the qualification of a person to vote at a general meeting:
 - (i) must be raised before or immediately after the result of the motion on which the vote objected to is given or tendered; and
 - (ii) must be referred to the chair of the meeting, whose decision is final.
- (d) A vote not disallowed by the chair of a meeting under rule 10.10(c) is valid for all purposes.

10.11 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
 - (i) by its Representative;
 - (ii) by proxy in the form at Appendix 2 (as amended by the board of directors from time to time); or
 - (iii) by an attorney.
- (b) A proxy, attorney or Representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (c) Unless otherwise provided in the Corporations Act or in the appointment, an appointment of a proxy, attorney or Representative is taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this constitution;
 - (ii) to speak to any proposed resolution on which the proxy, attorney or Representative may vote;
 - (iii) to demand or join in demanding a poll on any resolution on which the proxy, attorney or Representative may vote;
 - (iv) even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions:
 - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (B) to vote on any procedural motion, including any motion to elect the chair, to vacate the chair or to adjourn the meeting; and
 - (C) to act generally at the meeting; and

- (v) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (d) The chair of a meeting may require any person purporting to act as a proxy, attorney or Representative to establish to the satisfaction of the chair that the person has been validly appointed as a proxy, attorney or Representative and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- (e) An instrument appointing an attorney or Representative must be in a form as the board of directors may prescribe or accept. An instrument appointing a proxy is valid if it is signed by the member making the appointment and contains the name and address of that member, the name of the company, the name of the proxy and the meetings of members at which the proxy may be used. Subject to rule 10.11(f), the chair of a meeting of members may determine that an instrument appointing a proxy is valid even if it contains only some of this information.
- (f) If the name of the proxy in a proxy form of a member is not filled in, the proxy of that member is invalid.
- (g) An instrument appointing a proxy or attorney may direct the manner in which the proxy or attorney is to vote in respect of a particular resolution and, where an instrument so provides, the proxy or attorney is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) A proxy or attorney may not vote at a general meeting or adjourned meeting unless the instrument appointing the proxy or attorney, and the original or a certified copy of the power of attorney or other authority (if any) under which the instrument is signed, are received:
 - (i) at the registered office of the company, at the facsimile number at its registered office or at another place, facsimile number or electronic address specified for that purpose in the notice convening the meeting; and
 - (ii) at least 48 hours before the time scheduled for the commencement of the meeting, or such other date and time for receipt as specified in the notice of meeting.
- (i) Unless the company has received written notice of the matter by the time and at the place or in the manner set out in rule 10.11(h), a vote cast by a proxy or attorney is valid even if, before the proxy or attorney votes:
 - (i) a Cessation Event occurs in relation to the appointer;
 - (ii) the member revokes the proxy's or attorney's appointment; or
 - (iii) the member revokes the authority under which a third party appointed the proxy or attorney.
- (j) The authority of a proxy or attorney to speak and vote for a member at a general meeting is suspended while the member is present at the meeting unless otherwise resolved by the members present at that meeting.

11 Directors

11.1 Appointment and removal of directors

- (a) The minimum number of directors is three;
- (b) The maximum number of directors is twelve, unless the company by special resolution determines a greater number. All directors must be natural persons.
- (c) Up to eight directors may, subject to rule 11.1(j)(i), be elected by members as “Elected Directors” and the remaining positions, together with any positions not filled by way of election by members, will be casual vacancies which, subject to rule 11.1(j)(ii), may be filled by way of appointment by the Elected Directors as “Appointed Directors”.
- (d) An Appointed Director must retire from office at the next annual general meeting following his or her appointment. For the avoidance of doubt, the board of directors may, subject to rule 11.1(j)(ii), at their discretion, at the conclusion of a meeting of members or any time thereafter, resolve to reappoint any Appointed Director who has retired.
- (e) An election of directors must take place at each annual general meeting in the manner described at rule 11.18, and at that meeting at least two Elected Directors must retire. For the avoidance of doubt, but subject to rule 11.1(j)(i), an Elected Director who is retiring pursuant to this rule 11.1(e) is eligible for re-election or appointment.
- (f) In determining which Elected Directors must retire at a meeting in accordance with rule 11.1(e) the following rules apply:
 - (i) Those directors ineligible for re-election under rule 11.1(j) must retire.
 - (ii) If the number of directors determined under rule 11.1(f)(i) is less than two, additional Elected Directors must retire according to who has been longest in office since they were last elected. If the total number of Elected Directors to retire would thereby exceed two, then those Elected Directors must determine by agreement among themselves which of them is to retire so that the total number of Elected Directors retiring is two.
 - (iii) If agreement cannot be reached as to which Elected Directors should retire under rule 11.1(f)(ii), then the decision must be determined by way of random selection conducted by any disinterested person conveniently available.
- (g) The retirement of a director from office and the re-election of the director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- (h) A person elected as a director to replace a director removed by a resolution of members must retire on the same day that the director in whose place he or she was appointed would have had to retire.
- (i) A director may be an employee or associate of a member but does not need to be.
- (j) Unless otherwise resolved by a special resolution of members:

- (i) a person is not eligible for election as a director after the sixth consecutive annual general meeting following their first election unless at least 20 months has elapsed since they last served as a director; and
- (ii) a person is not eligible to be appointed as a director more than three times in succession.

11.2 Qualifications of Directors

A Director of the company must have skills, knowledge, learning or experience in one or more of the following areas;

- (a) Accounting and financial management;
- (b) Law;
- (c) Corporate Governance;
- (d) Alternative Dispute Resolution;
- (e) Professional Standards; or
- (f) Such other area or areas of skill, knowledge, learning or experience as the board of directors determines from time to time.

11.3 Vacation of office

- (a) In addition to the circumstances prescribed by the Corporations Act, unless the board of directors otherwise resolves to confirm the director's appointment, the office of a director becomes vacant if the director:
 - (i) becomes of unsound mind;
 - (ii) becomes bankrupt;
 - (iii) is convicted of an indictable offence; or
 - (iv) fails to attend more than three consecutive meetings of the board of directors without leave of absence from the board of directors.
- (b) Nothing in rule 11.3(a) prevents a director from vacating the office of director if the director resigns by notice in writing to the company.

11.4 Payments to directors

- (a) Subject to rule 11.4(c), the directors are entitled to be paid all reasonable travelling and other expenses properly incurred by them in connection with the affairs of the company, including attending and returning from general meetings of the company, meetings of the board of directors, and of committees of the board of directors, but will not otherwise receive any payment for acting as a director.
- (b) Nothing in this rule 11.4 restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director.
- (c) Notwithstanding anything else in this constitution, no payment of any kind which is permitted to be paid to a director by this constitution can be made by the company to a director until that payment is approved by the board of directors.

11.5 Independence of directors

A person does not need to be employed by, or associated with, a member to qualify as a director of the company but directors who are employed by, or associated with, members do not represent the interests of those members when exercising their duties as a director of the company.

11.6 Interested directors

Subject to clause 11.18:

- (a) a director may hold any other office, other than auditor, in the company or a related body corporate in conjunction with their directorship. A director may be appointed to that office on such terms as to remuneration, tenure of office and otherwise as the board of directors resolves.
- (b) A director of the company may be a director or other officer of:
 - (i) a related body corporate;
 - (ii) a body corporate promoted by the company; or
 - (iii) a body corporate in which the company is interested, as shareholder or otherwise,

or be otherwise interested in any of those bodies corporate. A director is not accountable to the company for any remuneration or other benefits received by the director as a director or officer of that body corporate or from having an interest in that body corporate.

- (c) The board of directors may exercise the voting rights conferred by shares in any body corporate held or owned by the company as the board of directors thinks fit. This includes voting in favour of any resolution appointing a director as a director or other officer of that body corporate, or voting for the payment of remuneration to the directors or other officers of that body corporate. A director may, if permitted by law, vote in favour of the exercise of those voting rights even if the director is, or may be about to be, appointed a director or other officer of that other body corporate.
- (d) A director is not disqualified merely because of being a director from contracting with the company in any respect including, without limitation, being employed by the company or acting in any professional capacity, other than auditor, on behalf of the company.
- (e) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is voided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (f) No director contracting with the company or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under a contract or arrangement of that kind merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (g) Where a director has a material personal interest in a matter to be considered at a meeting, that director must not be present while the matter is being considered at the meeting nor vote on the matter, unless the directors who do not have a material personal interest pass a resolution in accordance with section 195(2) of the Corporations Act, or another exception applies under the Corporations Act, which permits that director to do so.

- (h) Subject to rules 11.6(i) and (j), a director who is in any way interested in a contract or arrangement or proposed contract or arrangement (other than by having a material personal interest) may, despite that interest:
 - (i) be counted in determining whether or not a quorum is present at any meeting of the board of directors considering that contract or arrangement or proposed contract or arrangement;
 - (ii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
 - (iii) vote in respect of the contract or arrangement or proposed contract or arrangement or any matter arising out of those things.
- (i) Rule 11.6(h) does not apply if, and to the extent that, it would be contrary to Chapter 2D.1, Division 2 of the Corporations Act or any other provision of the Corporations Act.
- (j) The board of directors may make regulations requiring the disclosure of interests that a director, and any person deemed by the board of directors to be related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this rule bind all directors and apply in addition to any obligations imposed on the directors by the Corporations Act to disclose interests to the company.

11.7 Powers and duties of directors

- (a) The board of directors is responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required by the Corporations Act or this constitution to be exercised by the company in general meeting.
- (b) Without limiting the generality of rule 11.7(a), the board of directors may:
 - (i) exercise all the powers of the company to borrow or otherwise raise money, to charge any property or business of the company or all or any of its uncalled capital and to give any other security for a debt, liability or obligation of the company or of any other person.
 - (ii) determine how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments and other documents including electronic and online payments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of the company.
 - (iii) pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
 - (iv) appoint or employ any person to be an officer, agent or attorney of the company for the purposes, for the period and on such conditions as they think fit;
 - (v) resolve to delegate any of their powers to an officer, agent or attorney and the officer, agent or attorney must exercise the powers delegated in accordance with any directions of the board of directors;
 - (vi) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and

- (vii) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer (excluding a director of the company), agent or attorney of the company at any time, with or without cause.
- (c) A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the board of directors think fit.

11.8 Proceedings of the board of directors

- (a) The directors may hold meetings for the conduct of business and adjourn and otherwise regulate their meetings as they think fit. Directors must convene and hold a meeting of the board of directors at least once in any 3 month period.
- (b) Subject to the Corporations Act, the contemporaneous linking together by a form of technology of a number of the directors sufficient to constitute a quorum constitutes a meeting of the board of directors and all the provisions in this constitution relating to meetings of the board of directors apply, so far as they can and with such changes as are necessary, to meetings of the board of directors held using a form of technology.
- (c) A person who is requested by the board of directors or the chair to attend a meeting of the board of directors is entitled to do so.
- (d) A request made to a person to be present at a meeting of the board of directors may be:
 - (i) Given for a specific meeting or a specific part of one meeting only; or
 - (ii) A standing request entitling a person to attend all meetings of the board of directors until such request is revoked by the board of directors or the chair.
- (e) For the avoidance of doubt, a person who is not a director and who is attending a meeting of the board of directors:
 - (i) must not be counted when determining whether a quorum is present; and
 - (ii) is not entitled to vote.

11.9 Convening of meetings of the board of directors

- (a) A director may, whenever the director thinks fit, convene a meeting of the board of directors.
- (b) A secretary must, at the request of a director, ensure that a meeting of the board of directors is convened.

11.10 Notice of meetings of the board of directors

- (a) Subject to this constitution, notice of a meeting of the board of directors must be given to each person who is at the time of giving the notice a director of the company, other than a director on leave of absence approved by the board of directors.
- (b) A notice of a meeting of the board of directors:

- (i) must specify the time and place of and, if relevant, the form of technology and connection particulars for, the meeting;
 - (ii) must state the nature of the business to be transacted at the meeting; and
 - (iii) may be given in person, by post or, subject to the Corporations Act, by a form of technology.
- (c) A director may waive notice of a meeting of the board of directors by notifying the company to that effect in person, by post or by a form of technology.
- (d) The non-receipt of notice of a meeting of the board of directors by, or a failure to give notice of a meeting of the board of directors to, a director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- (i) the non-receipt or failure occurred by accident or error;
 - (ii) before or after the meeting, the director:
 - (A) has waived or waives notice of that meeting under rule 11.10(c); or
 - (B) has notified or notifies the company of that director's agreement to that act, matter, thing or resolution personally, by post or by a form of technology; or
 - (iii) the director attended the meeting.
- (e) Attendance by a person at a meeting of the board of directors waives any objection that person may have to a failure to give notice of the meeting.

11.11 Quorum at meetings of the board of directors

- (a) No business may be transacted at a meeting of the board of directors unless there is a quorum of directors at the time the business is dealt with.
- (b) A quorum consists of five Directors so long as at least one of those directors present is an Office Bearer.
- (c) If there is a vacancy in the office of a director, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of the board of directors, the remaining director or directors may act only in an emergency or for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a general meeting of the company.

11.12 Chair and vice-chair of directors

- (a) The directors may elect one of the directors to the office of chair of the board of directors and, subject to rules 11.1 and 11.3, may determine the period for which that director is to be chair of the board of directors.
- (b) The directors may elect one of the directors to the office of vice-chair of the board of directors and, subject to rule 11.1 and 11.3, may determine the period for which that director is to be vice-chair of the board of directors.
- (c) The chair of directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) preside as chair at each meeting of the board of directors.

- (d) If at a meeting of the board of directors:
 - (i) there is no chair of the board of directors;
 - (ii) the chair of the board of directors is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chair of the board of directors is present within that time but is not willing to act as chair of the meeting or of part of the meeting,

then if the directors have elected a vice-chair of the board of directors, the vice-chair of the board of directors must (if present within 15 minutes after the time appointed for the holding of the meeting and willing to act) preside as the chair of the meeting or part of it.

- (e) Subject to rules 11.12(a) and (d), if at a meeting of the board of directors:
 - (i) there is no vice-chair of the board of directors;
 - (ii) the vice-chair of the board of directors is not present within 15 minutes after the time appointed for the holding of the meeting or of part of the meeting; or
 - (iii) the vice-chair of the board of directors is present within that time but is not willing to act as chair of the meeting or part of the meeting,

the directors present must elect one of themselves to be chair of the meeting or part of the meeting.

11.13 Decisions of directors

- (a) A meeting of the board of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of the board of directors are to be decided by a majority of votes cast by the directors present and a decision of that kind is for all purposes a determination of the directors.
- (c) Subject to the Corporations Act, in the case of an equality of votes upon any proposed resolution at a meeting of the board of directors, the chair of the meeting does not have a second or casting vote in addition to any vote the chair may have in the chair's capacity as a director.

11.14 Written resolutions

- (a) An act, matter or thing is taken to have been done or a resolution passed by a meeting of the board of directors, if a document containing a statement to that effect is assented to by all of the directors other than:
 - (i) a director on leave of absence approved by the board of directors;
 - (ii) a director who is disqualified from considering the act, matter or thing in question on the grounds that the director is not entitled at law to do so or has a conflict of interest; and
 - (iii) a director who the board of directors reasonably believes is not entitled to do the act, matter or thing or to vote on the resolution in question,

and the directors who assent to the document would have constituted a quorum at a meeting held to consider that act, matter, thing or resolution.

- (b) The act, matter or thing is taken to have been done or the resolution passed when the document is assented to by the last of the assenting directors.
- (c) Two or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document.
- (d) A director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, facsimile, electronic, telephone or other method of written, electronic, audio or audio visual communication.
- (e) Where a director signifies assent to a document otherwise than by physically or electronically signing the document, the director must by way of confirmation physically or electronically sign the document before the end of the next meeting of the board of directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (f) Where a document is assented to in accordance with this rule 11.14, the document is to be taken as a minute of a meeting of the board of directors.

11.15 Delegation to committees

- (a) The board of directors may resolve to delegate any of the directors' powers to a committee or committees:
 - (i) consisting of such number of directors or member representatives (or both) as it thinks fit; or
 - (ii) consisting of such number of people as it thinks fit so long as at least one member of the committee is a director.
- (b) The board of directors may delegate the powers of directors for such time as it determines and may revoke or vary any power delegated under rule 11.15(a) at any time.
- (c) A committee to which any directors' powers have been delegated must exercise the powers delegated in accordance with any directions of the board of directors.
- (d) The provisions of this constitution applying to meetings and resolutions of the board of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee.

11.16 Delegation to individuals

- (a) The board of directors may resolve to delegate any of the directors' powers:
 - (i) to one director;
 - (ii) to one member representative; or
 - (iii) to one employee.
- (b) The board of directors may delegate the directors' powers for such time as it determines and may revoke or vary any power delegated under rule 11.16(a) at any time.
- (c) A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the board of directors.

11.17 Validity of acts

An act done by a person acting as a director or by a meeting of the board of directors or a committee of directors attended by a person acting as a director is not invalidated by reason only of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee, as the case may be, when the act was done.

11.18 Appointment and removal of directors

- (a) Notwithstanding anything else within this rule 11, the directors in office on the date the company was incorporated:
 - (i) must retire at the company's first annual general meeting; and
 - (ii) are eligible for election at the first annual general meeting or for later election or appointment (as the case may be).
- (b) While the minimum number of directors is three, the board of directors must strive to maintain a board of at least seven. The maximum number of directors is to be fixed by the board of directors, but must not be more than 12 unless the company in general meeting determines otherwise. The board of directors must not determine a maximum which is less than the number of directors in office at the time the determination takes effect. All directors must be natural persons.
- (c) Up to 75% of the maximum number of permitted directors (rounded up to the nearest whole number) may, subject to rule 11.18(j)(i), be elected by members (Elected Directors) and the remaining positions, together with any positions not filled by way of election by members, will be casual vacancies and may, subject to rule 11.18(j)(ii), be filled by way of board appointment (Appointed Directors).
- (d) Appointed Directors must retire from office at the next annual general meeting following his or her appointment. For the avoidance of doubt, the board of directors may, subject to rule 11.18(j)(ii), at their discretion, at the conclusion of a meeting of members or any time thereafter, resolve to reappoint an Appointed Director who has retired.
- (e) An election of directors must take place each year in the manner described at rule **Error! Reference source not found.** and at that meeting, except at the first annual general meeting at which all directors must retire, one-third of the Elected Directors (rounded down, if necessary, to the nearest whole number) must retire.
- (f) In determining which directors must retire at a meeting in accordance with rule 11.18(e) the following rules apply:
 - (i) Those directors who have been longest in office since they were last elected must retire.
 - (ii) If the number of Elected Directors longest in office since they were last elected is greater than one-third (rounded down, if necessary, to the nearest

whole number), then the Elected Directors to retire must be determined by agreement among themselves.

- (iii) If agreement cannot be reached as to which Elected Directors should retire, then the decision must be determined by way of random selection.
 - (g) The retirement of a director from office and the re-election of the director or the election of another person to that office (as the case may be) takes effect at the conclusion of the meeting at which the retirement and re-election or election occur.
 - (h) A person elected as a director to replace a director removed by a resolution of members must retire on the same day that the director in whose place he or she was appointed would have had to retire.
 - (i) A director may be an employee or associate of a member but does not need to be.
 - (j) Unless otherwise resolved by a special resolution of members:
 - (i) a person must not fill a position of Elected Director for any more than 6 consecutive years; and
 - (ii) a person must not fill a position of Appointed Director for any more than 3 consecutive years.
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12 Secretaries

- (a) The board of directors must appoint at least one secretary and may appoint additional secretaries.
- (b) The appointment of a secretary may be for the period, on the conditions and, subject to paragraph (c), at the remuneration the board of directors determines.
- (c) A director may not be remunerated in his or her capacity as secretary.
- (d) Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the board of directors at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.
- (e) The duties of the secretary include, but are not limited to, the following:
 - (i) to ensure that the necessary registers required to be kept by the Corporations Act are established and properly maintained;
 - (ii) to ensure that all returns required to be lodged with the Australian Securities and Investments Commission are prepared and filed within appropriate time limits;
 - (iii) to ensure the organisation of, and attend, meetings of the members and the board of directors, including the sending out of notices, the preparation of agenda and the compilation of minutes;
 - (iv) to supervise the preparation of the company's tax returns; and
 - (v) to carry out any other administrative functions that are necessary for the running of the company or to ensure that such functions are carried out.

13 Seals

13.1 Adoption of common seal

- (a) The board of directors may determine that the company have a common seal or for the company to no longer have a common seal.
- (b) Rules 13.2, 13.3 and 13.4 only apply if the company has a common seal.

13.2 Safe custody of Seal

The board of directors must provide for the safe custody of the Seal.

13.3 Use of Seal

- (a) The Seal must be used only by the authority of the board of directors or a committee of the board of directors authorised by the board of directors to authorise the use of the Seal.
- (b) The authority to use the Seal may be given before or after the Seal is used.
- (c) Until the board of directors otherwise determines, the fixing of the Seal to a document must be witnessed by a director and by another director, a secretary or another person appointed by the directors to witness that document or a class of documents in which that document is included.

13.4 Duplicate seal

- (a) The company may have for use in place of its common seal one or more duplicate seals, each of which must be a facsimile of the common seal of the company with the addition on its face of the words "duplicate seal" and the name of the place where it is to be used.
- (b) A document sealed with a duplicate seal is to be taken as having been sealed with the common seal of the company.

14 Winding up

Upon the winding up or dissolution of the company, any assets remaining after satisfaction of all of the company's debts and liabilities, will not be paid to or distributed among the members, but will be transferred to some other organisation determined by the board of directors at or before the time of winding up or dissolution of the company and, in default of any determination, by the Supreme Court of New South Wales, Australia:

- (a) that has objectives similar to the objectives of the company;
- (b) whose constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of rule 8; and
- (c) which, if the company is endorsed as a deductible gift recipient for the purposes of any Commonwealth taxation law, is a deductible gift recipient for the purposes of any Commonwealth taxation law.

15 Minutes and records

15.1 Minutes

The board of directors must cause minutes of:

- (a) all proceedings and resolutions of general meetings;
- (b) proceedings and resolutions of meetings of the board of directors and of committees;
- (c) resolutions passed by members without a meeting; and
- (d) resolutions passed by the board of directors without a meeting,

to be recorded and entered in books kept for that purpose, within one month after the meeting is held or the resolution is passed.

15.2 Signing of minutes

- (a) Minutes of a meeting must be signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.
- (b) Minutes of the passing of a resolution without a meeting must be signed by a director within a reasonable time after the resolution is passed.

15.3 Minutes as evidence

A minute that is recorded and signed in accordance with rules 15.1 and 15.2 is evidence of the proceeding, a resolution to which it relates, unless the contrary is proved.

15.4 Inspection of records

- (a) Subject to the Corporations Act, the board of directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of members other than directors.
- (b) A member other than a director does not have the right to inspect any books, records or documents of the company except as provided by law or authorised by the board of directors.
- (c) The company must establish and administer all registers required to be kept by the company in accordance with the Corporations Act and each member must provide the company with such information as is required for the company to comply with this rule 15.4(c). If events occur which would cause the information contained in a register maintained by the company to be inaccurate the member must notify the company in writing of the change within 21 days after the date of such change occurring.
- (d) Unless proved incorrect, the register is sufficient evidence of the matters shown in the register.
- (e) The company must keep the financial records required by the Corporations Act.

16 Indemnity and insurance

16.1 Persons to whom rules 16.2 and 16.4 apply

Rules 16.2 and 16.4 apply:

- (a) to each person who is or has been a director or secretary of the company;
- (b) to such other officers or former officers of the company or of its related bodies corporate as the board of directors in each case determines; and
- (c) if the board of directors so determines, to any auditor or former auditor of the company or of its related bodies corporate.

16.2 Indemnity

The company may indemnify, to the extent permitted by law, each person to whom this rule 16.2 applies for all losses or liabilities incurred by the person as an officer and, if the board of directors so determines, an auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

16.3 Extent of Indemnity

The indemnity in rule 16.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 16.2 applies even though that person may have ceased to be an officer or auditor of the company or of a related body corporate;
- (b) applies to losses and liabilities incurred both before and after the date of adoption of that rule; and
- (c) operates only to the extent that the loss or liability is not paid by insurance.

16.4 Insurance

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 16.4 applies against any liability incurred by the person as an officer or auditor of the company or of a related body corporate including, but not limited to, a liability for negligence or for legal costs.

16.5 Savings

Nothing in rule 16.2 or 16.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide insurance for any person to whom those rules do not apply.

17 Notices

17.1 Notices by the company to members

- (a) A notice may be given by the company to a member:
 - (i) by serving it personally at, or by sending it by post in a prepaid envelope to, the member's address as shown in the register of members or any other address, or by facsimile or electronic mail to a facsimile number or electronic address, as the member has supplied to the company for the giving of notices; or
 - (ii) if the member does not have a registered address and has not supplied another address to the company for the giving of notices, by exhibiting it at the registered office of the company.
- (b) The fact that a person has supplied a facsimile number or electronic address for the giving of notices does not require the company to give any notice to that person by facsimile or electronic mail.
- (c) A signature to any notice given by the company to a member under this rule 17 may be in writing or a facsimile printed or fixed by some mechanical or other means.
- (d) A certificate signed by a director or secretary of the company to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

17.2 Notices by the company to directors

Subject to this constitution, a notice may be given by the company to any auditor or director either by serving it personally at, or by sending it by post in a prepaid envelope to, the auditor's or director's usual residential or business address, or such other address, or by facsimile or electronic mail to such facsimile number or electronic address, as the auditor or director has supplied to the company for the giving of notices.

17.3 Notices by members or directors to the company

- (a) Subject to this constitution, a notice may be given by a member or director to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by facsimile or electronic mail to the principal facsimile number or electronic address at the registered office of the company.
- (b) The board of directors may resolve generally, or on a case by case basis, that a notice that is to be received by the company is not to be accepted if given by electronic means (excluding by facsimile).
- (c) If a resolution of the board of directors is passed under rule 17.3(b), the company must give sufficient notice of the resolution to those required to give the particular notice to allow for the giving of notice by other means.

17.4 Notices to members outside Australia

A notice to be sent to a member outside Australia and its external territories must be sent by airmail, by facsimile or by electronic mail, or in another way that ensures it will be received quickly.

17.5 Time of service

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
 - (i) in the case of a notice of a general meeting, on the day after the date of its posting; or
 - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by facsimile, the notice is to be taken to be given on the Business Day after it is sent.
- (c) Where a notice is sent by electronic mail, service of the notice is taken to be effected if the sender receives a confirmation of delivery and is to have been effected on the Business Day after it is sent.
- (d) Where the company gives a notice under rule 17.1(a)(ii) by exhibiting it at the registered office of the company, service of the notice is to be taken to be effected when the notice was first so exhibited.

17.6 Other communications and documents

Rules 17.1 to 17.5 (inclusive) apply, so far as they can and with necessary changes, to the service of any communication or document.

17.7 Notices in writing

A reference in this constitution to a notice in writing includes a notice given by facsimile or another form of written communication.

18 Rules

18.1 Power to formulate rules of the company

Without limiting the board of directors' powers under this constitution, the board of directors may from time to time pass resolutions to make regulations and rules relating to;

- (a) the qualifications of members and applicants for membership;
- (b) the procedure and timing of an application for admission;
- (c) procedure for nomination of directors;
- (d) the delegation by the board of directors of its powers to committees;
- (e) the powers, role and function of any committee members or directors;
- (f) any other matter not being inconsistent with this constitution which relates to the operations or conduct of the company.

18.2 Inconsistency

In the event of any inconsistency between rules or regulations formulated pursuant to rule 18.1 and the provisions of this constitution or the provisions of the Corporations Act, the provisions of this constitution and the Corporations Act shall prevail.

19 General

19.1 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the registered office of the company is located, the Federal Court of Australia and the Courts which may hear appeals from those Courts.

19.2 Prohibition and enforceability

Any provision of, or the application of any provision of, this constitution which is void, illegal, prohibited or unenforceable in any place:

- (a) is, in that place, ineffective only to the extent to which it is void, illegal, prohibited or unenforceable; and
- (b) does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

Schedule 1 — Dictionary and Interpretation

1 Dictionary

In this constitution:

ADR means alternative dispute resolution.

Appointed Director has the meaning given at rule 11.18(c)

Approval Standards are the standards described as such in Attachment A as amended from time to time.

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the company's registered office is located.

Corporations Act means the *Corporations Act 2001* (Cth).

Elected Director has the meaning given at rule 11.18(c)

Expulsion Event means, in respect of a member:

- (a) the member has wilfully refused or neglected to comply with the provisions of this constitution;
- (b) the conduct of the member, in the opinion of the board of directors, is unbecoming of the member or prejudicial to the interests or reputation of the Company; or
- (c) the member is, or any step is taken for the member to become, an externally administered body corporate).

NMAS means the National Mediator Accreditation System.

Office Bearer means the position of chair, vice chair (if any), secretary, treasurer and any other position resolved by the board of directors to be an office bearer position from time to time.

Practice Standards are the standards described as such in Attachment A as amended from time to time.

Representative, in relation to a Member, means a representative of a member in the way permitted by section 250D of the Corporations Act or a corresponding previous law regardless of whether that member is in fact bound by the Corporations Act.

RMAB means Recognised Mediator Accreditation Body.

Seal means any common seal or duplicate seal of the company.

2 Interpretation

2.1 General

- (a) A member is to be taken to be present at a general meeting if a Representative of the member is present in person or is present by way of telephone or other telecommunications device.
- (b) A director is to be taken to be present at a meeting of the board of directors if the director is present in person or by telephone or other telecommunications device.
- (c) Where a provision of this constitution establishes an office of chair, the chair may be referred to as a chair, chairman or chairwoman.
- (d) A reference in a rule in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (e) In this constitution, headings and underlinings are for convenience only and do not affect the interpretation of this constitution and, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing a gender include every other gender;
 - (iii) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
 - (iv) a reference to a person includes a corporate entity and/or that person's successors and legal personal representatives;
 - (v) a reference to any statute, regulation, proclamation, ordinance or by-laws includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
 - (vi) where a reference is made to anybody or authority which has ceased to exist, such reference will be deemed a reference to the body or authority as then serves substantially the same objects as that body or authority; and
 - (vii) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

2.2 Application of the Corporations Act

- (a) This constitution is to be interpreted subject to the Corporations Act.
- (b) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Corporations Act, has the same meaning as in that provision.

- (c) Subject to rule 2.2 (b), unless the contrary intention appears, an expression in a rule that is defined in section 9 of the Corporations Act has the same meaning as in that section.

2.3 Exercise of powers

- (a) The company may exercise in any manner permitted by the Corporations Act any power which under the Corporations Act a company limited by guarantee may exercise if authorised by its constitution.
- (b) Where this constitution provides that a person or body may do a particular act or thing and the word "may" is used, the act or thing may be done at the discretion of the person or body.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.
- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
 - (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
 - (i) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;
 - (ii) the delegation may be either general or limited in any manner provided in the terms of delegation;

- (iii) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of, a specified office or position;
- (iv) the delegation may include the power to delegate;
- (v) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
- (vi) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.

2.4 Replaceable rules not to apply

The replaceable rules contained in the Corporations Act from time to time do not apply to the company.

2.5 Single member company

If at any time the company has only one member then, unless the contrary intention appears:

- (a) a reference in a rule to the “members” is a reference to that member; and
- (b) without limiting rule (a), a rule which confers power or imposes an obligation on the members to do a particular act or thing confers that power or imposes that obligation on that member.

Appendix 1 — Form of Application for membership of the Mediator Standards Board Limited (the Company)

Full Name

Name of Organisation applying for membership

Address

Street Address of Organisation applying for membership

City

State

Postcode

Phone:

() _____

Email:

Name of Authorised
Representative:

Phone:

Contact details of Authorised Representative

*The Applicant applies to become a member of the Company in the class nominated below:
(tick as appropriate – 1 box only)*

1. RMAB Organisation Member – An organisation that is a Recognised Mediator Accreditation Body (RMAB) under the NMAS.
2. Training Organisation member – An organisation providing education and training as set out in the Approval Standards to no less than 25 participants per year.
3. Professional Organisation Member – A professional or service organisation (who is not an RMAB) that has at least 30 mediator members accredited under the NMAS.
4. Representative Organisation Member – A national or state based representative organisation that has 3 or more RMABs as members.
5. Community Organisation Member – A community or state based mediation organisation that is not an RMAB
6. Government Member – A:
 - Commonwealth government agency (that is not an RMAB) as nominated by the Australian Government Attorney-General's Department; and
 - A government agency from each State and Territory (that is not an RMAB) with ADR policy expertise, as nominated by the Attorney-General or equivalent in each State or Territory.
7. Consumer Organisation Member – An organisation that uses, but does not provide, mediation services

The Applicant acknowledges that admission as a member of the Company is at the discretion of the board. If admitted as a member of the Company, the Applicant agrees to be bound by the Company's constitution, to pay any membership fees associated with the class of membership for which it is applying and to a member's liability of \$10.

Signature

Authorised Signatory

Date

Appendix 2 — Form of Proxy for the Mediators Standards Board Limited (MSB)

(please print name of MSB member organisation)

of

(please print address of MSB member organisation)

is a member of MSB and is entitled to attend and vote at the general meeting to be held on **[insert date]**

1 Appointment of proxy

I, being the authorised Representative of a member of MSB hereby appoint the following to act as proxy for the member I represent:

Name of proxy

2 The powers of my proxy

The proxy may:

- (a) attend, vote and act generally on behalf of the member I represent at the general meeting and any adjournment of that meeting; and
- (b) consent to short notice of the meeting or any adjournment.

3 Manner of voting by the proxy

Note: You must mark one of the following boxes

I direct the proxy to vote in the manner set out in the table in Part 4 (**Direction to vote**).

I do not wish to direct the proxy how to vote but wish to permit the proxy to vote as he or she thinks fit.

4 Direction to vote

I instruct the proxy to vote as follows:

Ordinary business					
Resolution no.	Resolution name	For	Against	Abstain	
	[insert details of the resolution]				
Special Business					
Resolution no.	Resolution name	For	Against	Abstain	
	[insert details of the resolution]				

(Signature of Authorised Representative)

(Date)

(Printed name of Authorised Representative)

Form of Proxy Instructions to Member

5 Member's name and address

The member's name and address and the member's Representative name and address should be the same as it appears on the company register. Written notice of any change to these details should be given to MSB so they can be updated on the register of members.

6 Appointment of proxy

Each member may appoint a person of its choice (including the Representative of another MSB member) to act as its proxy.

If this proxy form is returned without the appointment of a proxy then the proxy will be declared invalid.

7 Directing the proxy how to vote

If you wish to instruct the proxy how to vote then you will need to:

- insert an X into the first box in section 3 headed "Manner of voting by proxy"; and
- indicate how the proxy is to vote by filling out the table set out in section 4. Otherwise the proxy may vote as he/she thinks fit or abstain from voting.

In directing the proxy how to vote, you may direct them to vote for or against the resolution, or not vote at all, by marking the box called "abstain".

8 Signing this form

You may sign this form as the authorised Representative of the member, or have the member's attorney sign it.

9 Returning this form

A copy of a proxy form is attached. If you wish to appoint a proxy you need to:

- fill out that proxy form;
- sign it or arrange for the member's attorney to sign it;
- deliver that form (and the document appointing the attorney) by **[insert date]** to one of the following places:
 - **[insert place]**;
 - **[insert fax]**; or
 - **[insert email address]**.

If you have signed the proxy through an attorney, then as well as returning your proxy vote to the Company (MSB) to one of the addresses above, you must give the Company either:

- the document that appoints the attorney; or
- a certified copy of it.

10 Enquiries

Please call **[insert telephone number]** if you have any enquiries about this proxy form.

Attachment A – The Standards