
Constitution of Manufacturing Industry Skills Council

ACN 006 441 685

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Revised November 2014

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Change notice (this does not form a part of the constitution)

The following changes have been made to this constitution since the major changes on 27th August 2004 where the Company became the Manufacturing Industry Skills Council:

Rule/ Clause	Nature of change	Date of change
1.2 (f)	Replace reference to Australian National Training Authority with a general reference to the Australian Government	17/11/2005
11.5 (a)	Reduce quorum for board meetings from 6 to 5 directors	17/11/2005
3.2	Delete second sentence and reference to Industry Advisory Committees	18/06/2007
7.5	Delete entire rule and its reference to Industry Advisory Committees	18/06/2007
1.2 (d)	Replace reference to the National Industry Skills forum with 'relevant bodies'	7/05/2010
2.2	Replace allowance for inclusion of the automotive industry with 'not used'	7/05/2010
3.1 (b)	Replace allowance for inclusion of the automotive industry with 'not used'	7/05/2010
3.1 (c)	Delete reference to old rule 3.1 (b)	7/05/2010
11.1 (a)	Delete reference to old rule 11.1 (b)	7/05/2010
11.1 (b)	Replace allowance for inclusion of the automotive industry with 'not used'	7/05/2010
11.5 (a)	Delete reference to old rule 11.5 (b)	7/05/2010
11.5 (b)	Replace allowance for inclusion of the automotive industry with 'not used'	7/05/2010
13.2 (a)	Delete reference to old rule 13.2 (b) and change quorum to seven	7/05/2010
1.2 (a,c,d,e,f)	Add reference to 'workforce development'	25/11/2011
1.2 (e)	Add reference to 'international'	25/11/2011
1.2 (g)	Specify 'Manufacturing' Industry Skills Council	25/11/2011
2.1	Change LHMU name to new name of 'United Voice'	25/11/2011
3.1 a) (ii)	Change LHMU name to new name of 'United Voice'	25/11/2011
3.2	Change clause title to 'Director' qualification and add new sub-clause (d)	25/11/2011
4	New rule added covering cessation of Director's appointment	25/11/2011
12.1 (b)	Delete unused sub-clause (b) and renumber other sub-clauses	25/11/2011
12.2	Delete 'reasonable' and add 'in writing', delete references to 'Australia'	25/11/2011
12.5	Delete unused sub-clause (b)	25/11/2011
12.8	Change rule by replacing 'all' with 'two thirds'	25/11/2011
14	Delete unused sub-clause (b) and renumber other sub-clauses	25/11/2011
19.1	Add new sub-clauses (f) and (g)	25/11/2011
2.1	Change to rule by deleting reference to federal or national union offices	22/11/2013
2.1	Change to rule to provide for members (and not the board) to admit new members	22/11/2013
3.1	Delete 'The XXX shall nominate the first rotation of Director' (four places)	22/11/2013
3.4	Change 'ordinary resolution' to 'special resolution'	22/11/2013
4.1	Add 'respective'	22/11/2013
11.2	Delete provision for only oral notice being provided	22/11/2013
11.3	Simplify and standardise terminology on the use of technology for meetings	22/11/2013
12	Add new wording to maintain consistency with similar provisions for the Board	22/11/2013
13.2	Re-position statement to earlier in this section (was 13.11)	22/11/2013
13.3	Relevant sections of Corps. Act written into the previously incomplete rule	22/11/2013
13.4	Relevant sections of Corps. Act written into the previously incomplete rule with the addition of 'stating the general nature of the business...'	22/11/2013
13.7	Change rule to 'must give written notice' instead of 'may give notice...'	22/11/2013
13.9	Was previously 13.7 – new words adding 'agreement of members'	22/11/2013
13.11	New section detailing use of technology, consistent with similar provision for the Board	22/11/2013
14.6	Changes to include 'audited' financial statements and also around general business and Q and A session	22/11/2013
14.7	Changes around general business Q and A session but no resolution without notice	22/11/2013
15.1	Simplify opening rule re proxies	22/11/2013
15.2	Move rule 15.10 to here to better sequence information on proxies	22/11/2013
15.3	Delete last sentence to simplify and clarify notice for proxies	22/11/2013
15.5	Added 'electronic address'	22/11/2013
16.2	Clarify 'casting vote' and delete irrelevant sentence on majority votes	22/11/2013
13.3b	Change number requesting meeting from 5% to five members	21/11/2014
13.8b	Change number who agree from 95% to eleven members	21/11/2014
17.2a	Change number from 5% to three members	21/11/2014
17.3a & b	Add process involving secretary to carry out a poll	21/11/2014
19.2	Add "...following a motion carried by the board to accept the minute..."	21/11/2014

1. PRELIMINARY

1.1 Company limited by guarantee

The Company is limited by guarantee and the liability of members is limited as provided in this document.

1.2 Objects of the Company

The Company, which is bipartite and not for profit in nature, is formed with the object to:

- (a) advance education and training and workforce development and to identify generic and emerging skills to support the employment of individuals and provide for local community development and to give strategic advice to government on these issues;
- (b) undertake and 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 and their workforce to integrate skill development with business and workforce development;
- (d) support accurate industry intelligence on future directions, including provision of strategic advice on industry skills and training needs as well as workforce development to relevant bodies;
- (e) research, collect, plan, coordinate and provide input to national and international research and develop strategies relating to education and training and workforce within the industries;
- (f) act as the principal voice, recognised by the relevant Australia Government body or bodies, of the industries on issues related to education and training and workforce development;
- (g) market the advantages of recognised training to all users and stakeholders relevant to Manufacturing Industry Skill Council; 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 8.1, 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 services rendered to the Company. In addition, rule 1.3 does not prevent the Company paying to a member:

- (a) reasonable remuneration for goods supplied by the member to the Company in the ordinary course of business;
- (b) reasonable rent for premises lent by the member to the Company; and
- (c) reimbursement of reasonable expenses (including travel and accommodation) incurred.

1.5 Replaceable rules

The replaceable rules referred to in section 141 of the Corporations 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.

"**ACNC Act**" means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

"**ACNC Commissioner**" means the Commissioner of the Australian Not-for-Profits Commission.

"**Alternate**" means an alternate Director appointed under rule 4.1.

"**Appointor**" in relation to an Alternate, means the employer organisation/industry association or union, as the case may be, which appointed the Alternate.

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

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

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

"**Director**" means a person who is, for the time being, a director of the Company including, where appropriate, an Alternate.

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

"**ordinary resolution**" means a resolution passed at a meeting of members by a majority of the members present and voting at the meeting.

"**organisation**" means a registered employer organisation; or an industry association; or a registered union of employees.

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

"**RTO**" means a Registered Training Organisation or successor title that is shown on the Official National Register of training organisations www.training.gov.au .

"**RTO Beneficiary**" means a person whose primary personal income is derived from, or is directly associated with, the activities or revenue from an RTO.

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

See sections
168 and 169

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 a rule 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 any 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 which suggests one gender includes the other genders.
- (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) which 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 Corporations Act.

2. MEMBERSHIP

2.1 Membership

The membership of the Council relates to its coverage, which presently includes, but is not restricted to, the metal and engineering, automotive components, aerospace, furnishing, textile, clothing and footwear, hydrocarbons, oils, and chemicals industry sectors

The number of members shall be 14.

Seven of the members will be the following employer organisations/industry associations:

- Australian Industry Group (Ai Group)
- Australian Chamber of Commerce and Industry (ACCI)
- Council of Textile & Fashion Industries Australia Limited (TFIA)
- Furnishing Industry Association of Australia Limited (FIAA)
- Footwear Manufacturing Association of Australia (FMAA)
- Plastics and Chemicals Industries Association Inc (PACIA)
- Australian Petroleum Production and Exploration Association Limited (APPEA)

Seven of the members will be the following unions:

- Australian Manufacturing Workers' Union (AMWU)
- Australian Workers Union (AWU)
- Textile Clothing and Footwear Union of Australia (TCFUA)
- Construction, Forestry, Mining and Energy Union (CFMEU)
- National Union of Workers (NUW)
- United Voice
- Communication, Electrical and Plumbing Union (CEPU)

Other organisations may be admitted to membership following resolution by members at a general meeting.

There shall be no entrance or subscription fee levied or required of a member of the company.

3. DIRECTORS

3.1 Number of Directors

- a) The Company will be bipartite in nature and shall comprise 11 Directors who shall be nominated as follows:

Process Manufacturing sector

- (i) One Director shall be nominated by PACIA
- (ii) One Director shall be nominated on an annual rotating basis by one of the following two unions
 - NUW and United Voice

Metal/Engineering and Aerospace sector

- (iii) One Director shall be nominated by the Australian Industry Group, representing the aerospace sector
- (iv) One Director, who is a member of the Australian Industry Group from the metal/engineering sector and a member of a State Chamber of Commerce and Industry, shall be nominated jointly by the Australian Industry Group and a State Chamber of Commerce and Industry
- (v) One Director shall be nominated by the AMWU
- (vi) One Director shall be nominated on an annual rotating basis by one of the following two unions:
 - AWU and CEPU

Textile, Clothing, Footwear and Furnishing Sector

- (vii) One Director shall be nominated by the FIAA
- (viii) One Director shall be appointed on an annual rotating basis by one of the following two employer organisations/industry associations:
 - TFIA and FMAA
- (ix) One Director shall be nominated on an annual rotating basis by one of the following two unions:
 - TCFUA and CFMEU

Peak employer associations

- (x) One Director shall be nominated by the Australian Industry Group
 - (xi) One Director shall be nominated by ACCI
- (b) A Director nominated under *paragraphs 3.1 (a) (i), (iii), (iv), (v) (vii), (x) and (xi)* shall be appointed for a two year period and shall be eligible for re-appointment.
- A Director nominated under *paragraphs (a) (ii), (vi), (viii) and (ix)* shall be appointed for a 12 month period and shall be eligible for re-appointment.
- (c) The Directors shall appoint a Chair and Deputy Chair from within their number.

Where the Chair is a Director nominated by an employer organisation/industry association, the Deputy Chair shall be a Director nominated by a union. Where the Chair is a Director nominated by a union, the Deputy Chair shall be a Director nominated by an employer organisation/industry association.

The Chair and Deputy Chair shall hold office for one year and are eligible for re-appointment.

3.2 **Director qualification**

- a) A Director must be a nominee of a member.
- b) The members will appoint Directors who, as a whole, have the necessary skills, qualities and experience to represent the respective employee, employer and/or industry interests.
- c) Neither the auditor of the Company nor any partner or employee of the auditor is eligible to act as a Director.
- d) An RTO Beneficiary is not eligible to act as a Director.

3.3 **Cessation of Director's appointment**

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under section 206F or 206G of the Corporations Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings (either personally or by an Alternate) for three consecutive meetings without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) becomes an insolvent under administration;
- (g) is removed from office under rule 3;
- (h) ceases to qualify as a Director under rule 3; or
- (i) is removed by the ACNC Commissioner under the ACNC Act or is disqualified by the ACNC Commissioner from eligibility to be a responsible entity under regulations made pursuant to the ACNC Act.

Rule 3.9(e)
replaces section
203A

3.4 **Removal from office**

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

3.5 **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;
- (b) to convene a meeting of members; and
- (c) in emergencies.

4. **ALTERNATE DIRECTORS**

4.1 **Appointment of Alternates**

Replaces
section 201K

Subject to rule 3.2, the respective employer organisations/industry associations and unions which nominate the Directors under rule 3 may appoint a person to act as Alternate for a specified period or each time the Director nominated under rule 3.1 (the nominated Director) is unable to attend a Board meeting or act as a Director.

4.2 **Notice of Board meetings**

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointer has requested it, the Company need not give notice of Board meetings to an Alternate.

4.3 **Obligations and entitlements of Alternates**

An Alternate:

- (a) may attend and vote in place of the nominated Director at a Board meeting at which the nominated Director is not present;
- (b) if also a Director, has a separate right to vote as Alternate;
- (c) if Alternate for more than one nominated Director, has a separate right to vote in place of each nominated Director;
- (d) when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the nominated Director as a Director; and
- (e) with the approval of the Board, is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

4.4 **Termination of appointment**

The Appointor may at any time revoke the appointment of a person as an Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) the nominated Director ceases to be a Director; or

- (b) an event occurs which would cause the Alternate to cease to be a Director under rule 3.3 if the Alternate were a Director.

4.5 **Appointments and revocations in writing**

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

5. **POWERS OF THE BOARD**

5.1 **Powers generally**

Replaces
section 198A

Except as otherwise required by the Act, any other applicable law or this document, and subject to the powers of the Company in general meeting, the Board:

- (a) has power to manage the business of the Company;
- (b) may exercise every right, power or capacity of the Company; and
- (c) shall meet at least four times per year.

Unless it otherwise determines, the Board shall be represented in any public manner by the person who at the time the elected Chair of the Board or, if the Chair is unavailable, the elected Deputy Chair of the Board.

5.2 **Exercise of powers**

Note section
34AB of the
*Acts
Interpretation
Act 1901* (Cth)

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 11; or
- (b) in accordance with a delegation of the power under rule 7.

6. **EXECUTING NEGOTIABLE INSTRUMENTS**

Replaces
section 198B

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**

Note section
34AB of the
*Acts
Interpretation
Act 1901* (Cth)

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 document which regulate the meetings and proceedings of the Board.

8. **DIRECTORS' DUTIES AND INTERESTS**

8.1 **Compliance with duties under the Act**

Each Director must:

- (a) exercise his or her powers and discharge his or her duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) act in good faith in the Company's best interests, and to further the objects of the Company as specified in Rule 1.2;
- (c) not misuse his or her position as a director of the Company to:
 - (i) gain an advantage for himself or herself, or someone else; or
 - (ii) cause detriment to the Company; and
- (d) not misuse information obtained in the performance of his or her duties as a director of the Company to:
 - (i) gain an advantage for himself or herself, or someone else; or
 - (ii) cause detriment to the Company.

8.2 **Director not disqualified from holding other offices etc**

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 or an RTO Beneficiary;
- (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 Corporations Act as if sections 191 and 192 as if the Corporations Act applied to the company.

8.4 Director interested in a matter

Each Director must comply with section 195 of the Corporations 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.

The company will develop and maintain a conflict of interest policy, consistent with section 195 of the Corporations Act, to define Director's 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 inadvertently:

- (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

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:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company will develop and maintain a policy on confidentiality.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

9. DIRECTORS' REMUNERATION

9.1 Restrictions on payments to Directors

Subject to rule 9.2 and rule 10 the Company must not pay fees or other remuneration to a Director.

9.2 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 goods supplied by the Director to the Company in the ordinary course of business; and
- (c) reasonable rent for premises leased by the Director to the Company.

10. OFFICERS' INDEMNITY AND INSURANCE

10.1 Indemnity

Subject to and so far as permitted by the Corporations 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 a Liability incurred 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; and
- (b) 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 Corporations Act, the Company may enter into, and pay premiums on, a contract of insurance in respect of a Director, officer, employee or other agent of the Company.

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

Subject to the Corporations 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.

11. BOARD MEETINGS

11.1 Convening Board meetings

- (a) No less than six Directors may at any time, and the Secretary must on request from no less than six Directors, convene a Board meeting.

11.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give notice in writing of the meeting (and, if it is adjourned, of its resumption) individually to:

Replaces
section 248C

- (i) each Director; and
- (ii) each Alternate in respect of whom the Appointor has given notice under rule 4.2 requiring notice of Board meetings to be given to that Alternate,

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

11.3 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. 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 two or more places, at the place where the Chair of the meeting is located.

11.4 Chairing Board meetings

Replaces
section 248E

The Chair of the Board shall preside as chair of every Board meeting. If there is no Chair or the Chair is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Deputy Chair of the Board shall be the Chair. If the Deputy Chair is then not present or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

11.5 Quorum

Replaces
section 248F

- (a) The quorum for a Board meeting is five Directors with at least two Directors nominated under rule 3.1 (a) (i), (iii), (iv), (vii), (viii) (x) and (xi) and two Directors nominated under rule 3.1 (a) (ii), (v), (vi) and (ix).
- (b) A quorum must be present for the whole meeting. An Alternate who is also a Director or a person who is an Alternate for more than one Director nominated under rule 3.1 may only be counted once toward a quorum. 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.

11.6 Majority decisions

A resolution of the Board must be passed by a two thirds majority of the votes cast by Directors entitled to vote on the resolution. The Chair of a Board meeting does not have a casting vote.

11.7 Procedural rules

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

11.8 Written resolution

Where two thirds of 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 entitled Director signs.

11.9 **Additional provisions concerning written resolutions**

For the purpose of rule 11.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document;
- (b) signature of a document by an Alternate is not required if the Director in relation to whom they have been appointed as an alternate has signed the document;
- (c) signature of a document by the Director in relation to whom the Alternate has been appointed is not required if that Alternate has signed the document in that capacity; and
- (d) a 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 in legible form.

11.10 **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. **WRITTEN RESOLUTION OF MEMBERS**

12.1 **Majority of members to sign**

Where two thirds of the members entitled to receive notice of a 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 resolution of the members in those terms is passed at the time when the last entitled member signs.

12.2 **Form of the written resolution**

For the purpose of rule 12:

- (a) two or more separate documents in identical terms, each of which is signed by one or more members, are treated as one document;
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a member or under the name of a member with the member's authority is taken to be a document signed by that member and is taken to be signed when received by the Company in legible form.

13. **MEETINGS OF MEMBERS**

13.1 **Annual general meeting**

The Company must hold an annual general meeting within five months after the end of the financial year of the Company.

13.2 Proper purpose

A meeting of members must be held for a proper purpose.

13.3 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 requested in writing by at least five members; and
 - (i) the directors must call the meeting within 21 days after the request is given to the company; and
 - (ii) the meeting is to be held not later than 2 months after the request is given to the company.

13.4 Form of meeting request by members

- (a) For the purpose of rule 13.3(b), the request must be in writing and:
 - (i) state the general nature of the business to be conducted at the meeting; and
 - (ii) state any resolution to be proposed at the meeting; and
 - (iii) be signed by the members making the request; and
 - (iv) be given to the company.
- (b) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

13.5 Notice of meeting

Subject to rule 13.6, 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 (other than an Alternate); and
- (c) to the auditor.

13.6 Notice of meeting requirements

A notice of a meeting of members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (b) state the general nature of the business to be conducted at the meeting; and
- (c) include any proposed resolutions; and

- (d) contain a statement that the member has a right to appoint a proxy and the manner in which that appointment can be made.

13.7 **Manner of giving notice of meetings**

The Company must give written notice of a meeting to a member:

- (a) personally; or
- (b) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member; or
- (c) by sending to the fax number or electronic address (if any) nominated by the member; or
- (d) by sending it to the member by other electronic means (if any) nominated by the member.

13.8 **Short notice**

Where the Company has elected to convene a meeting of members as the annual general meeting:

- (a) if all the members entitled to attend and vote agree; or
- (b) otherwise, if eleven members with the power to cast votes at the meeting agree,

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

13.9 **Postponement or cancellation**

The Board may, with agreement of two thirds of the members:

- (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.

13.10 **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.

13.11 **Use of technology**

The Company may hold a meeting of members using any means of audio or audio visual communication by which each member participating can hear and be heard by each other member participating. A meeting of members held solely or partly by technology is treated as held at the place at which the greatest number of the members present at the meeting is located or, if an equal number of members is located in each of two or more places, at the place where the Chair of the meeting is located.

13.12 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.

14. PROCEEDINGS AT MEETINGS OF MEMBERS

14.1 Member present at meeting

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

14.2 Quorum

- (a) The quorum for a meeting of members is seven members and must include at least three members of the employer organisations/industry associations referred to in rule 2.1 and at least three members of the unions referred to in rule 2.1.
- (b) Each individual present may only be counted once toward a quorum. If a member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

14.3 Quorum not present

Replaces sections 249T(3) and (4)

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 Corporations 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.

14.4 Chairing meetings of members

Replaces sections 249U(1) to (3)

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,

the members present must elect a member or Director present to chair the meeting.

14.5 Attendance at general meetings

See section 249V

- (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 which concerns the auditor in the capacity of auditor.

14.6 **Business at annual general meetings**

The ordinary business of the annual general meeting is:

- (a) to confirm the minutes of any previous annual general meeting and of any other general meeting held since then;
- (b) to receive and consider:
 - (i) the annual report of the Board of Directors on the activities of the Company during the preceding financial year; and
 - (ii) the audited financial statements of the Company for the preceding financial year submitted by the Board of Directors; and
 - (iii) any items of general business where notice of such business has been provided to the Secretary prior to the notice of meeting being issued.
- (c) to provide a question and answer session for members.

14.7 **Business at general meetings other than the annual general meeting**

The ordinary business of a general meeting other than an annual general meeting is:

- (a) to confirm the minutes of any previous annual general meeting and of any other general meeting held since then;
- (b) to consider any resolutions set out in the notice for the meeting where notice of such resolution has been provided to the Secretary prior to the notice of meeting being issued;
- (c) to provide a question and answer session for members

14.8 **Adjournment**

Replaces
section 249U(4)

Subject to rule 13.8, 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.

14.9 **Business at adjourned meetings**

Replaces
section 249W(2)

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

15. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

15.1 **Appointment of proxies**

A member may appoint a proxy to attend and act for the member at a meeting of members.

15.2 **Rights of proxies and corporate representatives**

- (a) Subject to any restrictions specified in the notice of appointment, a proxy appointed to attend and vote for a member has the same rights as the member to speak at the meeting, to vote (but only to the extent allowed by the appointment) and join in a demand for a poll.
- (b) Unless otherwise specified in the appointment, the representative of a member which is a body corporate may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution

15.3 **Appointment of proxies**

An appointment of proxy must be made by written notice to the Company and is valid if signed by the member of the Company making the appointment and contains the following information:

- (a) the member's name and address;
- (b) the Company's name;
- (c) the proxy's name;
- (d) the meetings at which the appointment may be used.

15.4 **Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members.

15.5 **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 including electronic address specified for the purpose in the relevant notice of meeting) at least 2 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

15.6 **Corporate representatives**

A member that is a body corporate may appoint an individual to act as its representative at meetings of members.

15.7 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.

15.8 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:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

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

15.9 Priority of conflicting appointments of attorney or representative

If more than one 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 15.9(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.

15.10 More than one 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 one 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.

15.11 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.

16. ENTITLEMENT TO VOTE

16.1 Number of votes

- (a) Each member has one 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 one vote in exercising that proxy on a show of hands.

16.2 Casting vote of Chair

The Chair of a meeting of members does not have a casting vote.

16.3 Voting restrictions

If:

- (a) the Corporations 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 250BB of the Corporations Act, on a show of hands the vote is invalid and the Company must not count it and on a poll rule 17.3(c) applies.

16.4 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. A challenge, or any other doubt as to the validity of a vote, must be decided by a vote of members at the meeting.

17. HOW VOTING IS CARRIED OUT

17.1 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 17.2 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.

17.2 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 three 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.

17.3 **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 17.3(c), be carried out by the Secretary or other person that the members appoint in the manner that the majority of members at the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 17.3(c), be carried out by the Secretary or other person that the members appoint in the manner that the majority of members at the meeting directs;
- (c) votes which section 250BB of the Corporations Act (which is taken to apply to the Company) 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 two 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.

18. **SECRETARY**

18.1 **Appointment of Secretary**

The Board shall appoint an individual to be Secretary.

18.2 **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.

18.3 **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 Corporations Act and is not given permission or leave to manage the Company under section 206F or 206G of the Corporations 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 18.4.

18.4 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.

19. MINUTES

19.1 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);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,
- (f) declarations by Directors of any material personal interests and any conflicts of interest, and
- (g) changes in circumstances of a Director which make them ineligible to continue to act in that position.

19.2 Minutes as evidence

A minute recorded and signed by the Chair following a motion carried out by the Board to accept the minute is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

19.3 Inspection of minute books

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members.

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

- (a) The Board must cause the Company to prepare a financial report and other reports that comply with the ACNC Act and the Company must report to those members who elect to receive a hard copy or electronic copy of those reports by notice in writing to the Company, by the earlier of: 21 days before the next annual general meeting of the Company after the end of the financial year; or
- (b) 4 months after the end of the financial year.

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.

The auditor must be appointed in accordance with the Corporations Act where that Act regulates 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 three 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

Replaces
section 247D

Subject to rule 19.3 of this Constitution and section 247A of the Corporations 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.

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 who stopped being a member within the last seven years;
- (d) the date on which the person 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, after the winding up of the Company, there remains 'surplus assets' as defined in the Act, such surplus assets shall be distributed to an organization which is not carried on for the profit or gain

of its individual members and which has similar objects and has rules which prohibit the distribution of its assets and income to its Directors.

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 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:
 - (i) within Australia - three business days after posting; or
 - (ii) to a place outside Australia - five business days after posting.

Replaces
section 249J(4)

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

23.3 Business days

For the purposes of rule 23.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

23.4 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.

23.5 **Notices to "lost" members**

If:

- (a) on two 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.

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.

END