

Constitution of Digital Skills Organisation Limited

As adopted at the Annual General Meeting on 20 November 2024

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CONSTITUTION OF DIGITAL SKILLS ORGANISATION LIMITED

1. PRELIMINARY

1.1 Company limited by guarantee

The Company is limited by guarantee and the liability of Members is limited as provided at rule 3.6 of this Constitution.

1.2 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 Constitution.

1.3 Definitions

The following definitions apply in this Constitution:

AASN Provider means an organisation engaged by the Commonwealth of Australia in relation to the Australian Apprenticeship Support Network.

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

Advisory Committee has the meaning provided at rule 14.1(a)(ii).

Annual General Meeting means the annual general meeting of the Company, held as required by section 250N of the Corporations Act.

Associate Member means a Member admitted to that class of membership as specified in the table in rule 3.3(d).

Approved Person means a person who has been approved and recommended by the Nominations and Remuneration Committee as a suitable and appropriate person (taking into account their skills and experience and the other skill sets and experience of other Directors) to take on a Director Role or be appointed as a Board Appointed Director.

Audit and Risk Committee means the committee established in accordance with rule 14.4(a) to perform the functions detailed at rule 14.4(b).

Board means the Directors acting collectively under this Constitution.

Board Appointed Director means a Director appointed by the Board in accordance with rule 4.9.

Board Committee has the meaning provided at rule 14.1(a)(i).

Business Day means any day that is not a Saturday, Sunday or a national public holiday, where a 'national public holiday' is a public service holiday throughout Australia promulgated in the Australian Government Gazette.

By-Laws means any rules or procedures made by the Board for the purpose of giving effect to this Constitution.

Chair means the chair of the Board appointed in accordance with rule 18.5.

Chief Executive Officer means a chief executive officer of the Company appointed under rule 12.1.

Committee means either a Board Committee or an Advisory Committee (as the case may be) established in accordance with rule 14.1(a).

Company means the company, being Digital Skills Organisation Limited (ACN 641 892 382), whatever its name is for the time being.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth).

Constitution means this constitution for the Company.

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

Director means a person who is, for the time being, a director of the Company, with all Directors further categorised as Independent Directors, Employee Representative Directors or Employer Representative Directors.

Director Role means an allocated role on the Board to ensure that the composition of the Board reflects the requirements of rule 4.3, being:

- (a) in respect of Independent Directors, the roles of Independent Director Role 1 through to Independent Director Role 6 (as defined in rule 6.3(b));
- (b) in respect of Employee Representative Directors, the roles of Employee Representative Director Role 1 through to Employee Representative Director Role 2 (as defined in rule 7.3(b)); and
- (c) in respect of Employer Representative Directors, the roles of Employer Representative Director Role 1 through to Employer Representative Director Role 2 (as defined in rule 8.3(b)).

Employee Representative Director means a Director who is nominated to represent the interests of employees and their unions who is elected by the Employee Representative Members in accordance with rule 7. For the avoidance of doubt, an Employee Representative Director cannot also be an Independent Director.

Employee Representative Member means a Member admitted to that class of membership as specified in the table in rule 3.3(d) and in accordance with the eligibility criteria set out in that table and/or in the By-Laws (if any) of the Company.

Employer Representative Director means a Director, who is not an Independent Director or an Employee Representative Director, who is elected by the Employer Representative Members in accordance with rule 8. For the avoidance of doubt, an Employer Representative Director cannot also be an Independent Director.

Employer Representative Member means a Member admitted to that class of membership as specified in the table in rule 3.3(d) and in accordance with the eligibility criteria set out in that table and/or in the By-Laws (if any) of the Company.

Employment Service Provider means an organisation that is funded by the Commonwealth of Australia as part of a program for the provision of employment services.

FTB Sector Peak Bodies means any membership based organisation which is representative of a particular sub-sector or interest group within the broader Industry Sectors.

FTB Sector Stakeholders means any stakeholders who have an interest in the VET qualifications process for the Industry Sectors, including FTB Sector Peak Bodies, employers, unions, students and Commonwealth, State and Territory governments.

Government Agency means a:

- (d) government or government department or other body;
- (e) governmental, semi-governmental or judicial person; or
- (f) person (whether autonomous or not) who is charged with the administration of the law.

Group Training Organisation means an organisation which hires apprentices and trainees and places them with the host employer.

Independent Director means a Director (whether nominated and elected in accordance with rule 6 or a Board Appointed Director) who is free of any interest, position or relationship that might influence, or reasonably be perceived to influence, in a material respect their capacity to bring an independent judgement to bear on issues before the Board and to act in the best interests of the Company as a whole rather than in the interests of an individual Member or other party (or where such interest, position or relationship exists, the Director has taken all necessary steps (to the satisfaction of the Board) to ensure that any such influence is perceived only and does not affect their capacity to bring an independent judgement to bear on issues before the Board and to act in the best interests of the Company as a whole rather than in the interests of an individual Member or other party), as determined by the Board acting reasonably.

Industry Sectors means the Finance, Technology and Business Services industry sectors.

Initial Directors means the Directors of the Company as at the date of adoption of this Constitution.

Initial Members means the Members of the Company as at the date of adoption of this Constitution.

Jobs and Skills Council means another organisation funded by the Commonwealth of Australia as represented by the Department of Education, Skills and Employment (whatever its name may be from time to time), as part of the *Industry Clusters – Strengthening Australia's National Vocational Education and Training System* program or any equivalent successor program relating to the VET sector.

The constituent documents of any Jobs and Skills Council must:

- (g) require the Jobs and Skills Council to pursue objects similar to those of the Company in respect of the VET sector and to apply its income solely towards promoting those objects; and
- (h) prohibit the Jobs and Skills Council from making distributions to its members.

Liability has the meaning provided at rule 17.1(b).

Member means a member of the Company whose name is entered in the Register.

Membership Classes means the classes of membership provided for in rule 3.3(d), together with any other classes of membership established in accordance with rule 3.3(a) and 3.3(b).

Membership Term means any fixed period of membership which may be imposed by the Company pursuant to its By-Laws (if any).

Nominations and Remuneration Committee means the committee established in accordance with rule 14.3(a) to perform the functions detailed at rule 14.3(b).

Officer has the meaning provided in the Corporations Act.

Ordinary Resolution means a resolution passed by more than 50% of the Vote Numbers cast by the Members entitled to vote on the resolution being cast in favour of the resolution.

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

Registered Training Organisation means a training provider registered by the Australian Skills Quality Authority or a State regulator to deliver VET services.

Relevant Majority means:

- (a) in the case of a decision, matter or resolution to be determined by Ordinary Resolution, more than 50%; and
- (b) in the case of a decision, matter or resolution to be determined by Special Resolution, more than 75%.

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

Sector Representative Member means a Member admitted to that class of membership as specified in the table in rule 3.3(d) and in accordance with the eligibility criteria set out in that table.

Special Resolution means a resolution passed by more than 75% of the Vote Numbers cast by the Voting Members entitled to vote on the resolution being cast in favour of the resolution.

VET means vocational education and training.

Voting Members means Employer Representative Members, Employee Representative Members and Sector Representative Members (together with Members of any other Membership Class established in accordance with rule 3.3(a) and 3.3(b) with voting rights) but not including Associate Members.

1.4 **Interpretation**

The following rules apply in interpreting this Constitution, except where the context makes it clear that a rule is not intended to apply:

- (a) headings and marginal notes are for convenience only and do not affect interpretation;
- (b) a reference to:
 - (i) any 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;
- (c) a singular word includes the plural, and vice versa;
- (d) a word that suggests one gender includes the other genders;
- (e) the word **includes** in any form is not a word of limitation;
- (f) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning. The meaning of general words is not limited by specific examples;
- (g) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing;
- (h) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it;
- (i) a reference to a power is also a reference to authority or discretion;
- (j) a reference to "\$" means the Australian dollar;
- (k) a reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form; and
- (l) a word (other than a word defined in rule 1.3) which is defined by the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act.

2. **OBJECTS AND POWERS**

2.1 **Objects of the Company**

- (a) The Company is formed with the vision of providing innovative and world-leading approaches to designing and delivering vocational training and skilling across the Industry Sectors in Australia.
- (b) For the purposes of this Constitution 'skilling' refers to the ability to apply knowledge in a workplace setting within the Industry Sectors and may refer to:
 - (i) developing digital and business skills which are common across all industries and types of employment;
 - (ii) delivery of skills through:
 - (A) employers and industry groups who describe the need for skills in the workplace;
 - (B) training providers;
 - (C) state and Federal Governments who govern the National Training System; and
 - (iii) skills training delivery through schools and higher education facilities.

- (c) The purpose of the Company is to curate and initiate projects and strategic initiatives in skilling people for work.
- (d) organisational objectives of the Company are to, in line with its vision and purpose:
 - (i) undertake workforce planning to understand and address workforce challenges and prioritise initiatives;
 - (ii) to develop training products that meet evolving industry needs and reflect the reform agenda of the Australian Government;
 - (iii) to drive improvements in the development and delivery of training, education and assessment through the implementation, promotion and monitoring of initiatives;
 - (iv) to provide a strong, strategic industry voice and act as steward for the Industry Sectors.
- (e) The Company may do all things that are necessary, convenient or incidental to carrying out, or for the attainment of its vision, purpose and objects.

2.2 **Objects do not limit powers**

The objects in rule 2.1 do not limit the powers of the Company under the Corporations Act or otherwise.

2.3 **Application of income and property**

- (a) Subject to rules 2.4 and 16.1, the Company must only apply its income and assets solely towards promoting the objects of the Company as set out in rule 2.1.
- (b) Subject to rule 2.4, no part of the Company's income or assets may be paid, or transferred directly or indirectly by way of dividend, bonus or otherwise to Members.

2.4 **Certain payments allowed**

Rule 2.3 does not prevent the Company from paying to a Member, provided these payments are made in good faith:

- (a) reasonable remuneration to any Officer or employee of the Company, or to any Member or other person, in return for services rendered to the Company on an arm's length basis;
- (b) interest on money lent by the Member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts; and
- (c) reasonable remuneration for goods supplied by the Member in the ordinary course of business or reasonable rent for any premises leased by the Member on an arm's length basis.

2.5 **By-Laws**

- (a) The Board may pass a resolution to make any By-Laws considered necessary or convenient.
- (b) Subject to rule 2.5(c), Members and Directors must comply with By-Laws as if they were part of this Constitution.

- (c) If there is any inconsistency between this Constitution and any By-Laws created, the terms of this Constitution will prevail to the extent of the inconsistency.

3. **MEMBERSHIP**

3.1 **Membership**

Subject to rules 3.7 and 3.8, the Members as and from the date of adoption of this Constitution are:

- (a) the Initial Members; and
- (b) any other person the Board admits to membership of the Company in accordance with rule 3.2.

3.2 **Eligibility for membership**

- (a) An individual or organisation is not eligible to be a Voting Member if they are, or are an Officer of, a Commonwealth, State, Territory or local government agency or body (including government business enterprises).
- (b) An individual or organisation will not be eligible to become a Member if:
 - (i) the Board consider that, as the case may be, either:
 - (A) the individual; or
 - (B) any one or more of the Officers or shareholders of the organisation, are of bad character; or
 - (ii) the Board consider that they fail to meet any particular eligibility criteria for the relevant Membership Class as set out in the third column of the table in rule 3.3(d) and the By-Laws (if any) of the Company.
- (c) Subject to the terms of this Constitution and the ultimate discretion of the Board, every individual or organisation eligible to be a Member will be entitled to:
 - (i) be admitted as a Member of the Company (in the relevant Membership Class determined by the Board); and
 - (ii) remain a Member in that Membership Class for the Membership Term so long as that individual or organisation remains eligible to be a Member and complies with this Constitution and the By-Laws of the Company.
- (d) An individual or organisation is not entitled to remain a Member of the Company if that individual or organisation ceases to be eligible to be a Member of the Company and this Constitution and the By-Laws do not otherwise permit that individual or company to remain a Member.

3.3 **Classes of members**

- (a) The Board may, subject to rule 3.3(b), establish different classes of membership and may prescribe the qualifications, rights and privileges of persons admitted to membership in, or transferred into, such classes of membership.

- (b) If, in exercising this power, the Board would vary the rights, restrictions or obligations of existing Members, then the new class of membership will not be created unless it is agreed by Special Resolution of existing Members.
- (c) Where an existing Member does not belong to a Membership Class, the Board may allocate a Membership Class to the existing Member, having regard to the existing Member's qualifications and their satisfaction of the eligibility criteria established for the relevant Membership Class. The Board's allocation of a Membership Class to an existing Member is final and binding on the existing Members and the existing Member will not have any right to object to the Board's allocation.
- (d) Unless otherwise determined by rules 3.3(a) and 3.3(b), the only classes of membership in the Company are as follows:

Class of Member	Description	Eligibility criteria	Eligibility to vote
Employer Representative Member	a person representing interests of employers	as detailed in the By-Laws of the Company.	Yes
Employee Representative Member	a person representing interests of employees	as detailed in the By-Laws of the Company.	Yes
Sector Representative Member	a person representing or associated with a particular Industry Sector, with particular skills, qualifications or experience relevant to the activities of the Company	as detailed in the By-Laws of the Company.	Yes
Associate Member	all other Members not accepted into or relevant to one of the membership classes above	As detailed in the By-Laws of the Company.	No

3.4 **Rights and Powers of Members**

Subject to this Constitution and any specific rights or restrictions applicable to Members of a particular Membership Class:

- (a) all Voting Members are entitled to:
 - (i) receive notice of meetings;
 - (ii) attend and participate in meetings;
 - (iii) vote in the election of Independent Directors in accordance with rule 6;
 - (iv) seek election to the Board (other than as an Independent Director); and
 - (v) exercise any other rights provided for under this Constitution or the By-Laws;
- (b) only Employee Representative Members are entitled to vote in the election of Employee Representative Directors in accordance with rule 7;
- (c) only Employer Representative Members are entitled to vote in the election of Employer Representative Directors in accordance with rule 8;

- (d) Associate Members are:
 - (i) not entitled to receive notice of meetings;
 - (ii) not entitled to attend or participate in meetings;
 - (iii) not entitled to any voting rights;
 - (iv) not entitled to seek election to the Board in any capacity; and
 - (v) entitled to exercise any other rights specifically provided for Associate Members under this Constitution or the By-Laws.

3.5 **Process for applying for membership**

- (a) An individual or organisation may apply to become a Member by writing to the Company stating:
 - (i) that they want and consent to becoming a Member;
 - (ii) nominating the particular Membership Class that they meet the eligibility criteria for and want to join;
 - (iii) how they comply with any eligibility criteria established under rule 3.2 and/or the By-Laws (if any) of the Company, including providing any supporting evidence; and
 - (iv) that they agree to comply with this Constitution and the By-Laws (if any) of the Company, including paying the guarantee under rule 3.6(a) if required.

This will be their application for membership for the purposes of this Constitution.

- (b) An individual or organisation may become an Associate Member if they first make application for membership for one of the other Membership Classes and are subsequently invited by the Board to become an Associate Member.
- (c) If the Directors approve an application for membership, the Secretary must as soon as possible:
 - (i) enter the applicant on the Register; and
 - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started (which will be the date the applicant was entered on the Register), and the Membership Class to apply to their membership.
- (d) If the Directors reject an application for membership, the Secretary must write to the applicant as soon as reasonably practicable to tell them that their application was rejected, but does not have to give reasons.
- (e) If the Directors approve an application for membership, the Directors may determine the Membership Class that the applicant will join, having regard to the applicant's satisfaction of the relevant eligibility criteria for that Membership Class.

3.6 **Limited liability of Members**

- (a) If the Company is wound up, each Member undertakes to contribute to the assets of the Company up to an amount not exceeding \$1.00 for payment of the debts and liabilities of the Company, including the costs of the winding up.
- (b) The undertaking in rule 3.6(a) continues for one year after a person ceases to be a Member.

3.7 **Resigning as a Member**

A Member may resign from the Company by giving written notice to the Board.

3.8 **Expelling a Member**

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

3.9 **Expiry of Membership**

Where a Membership Term applies to the Member's membership, that Member will automatically cease to be a member of the Company at the expiry of the Membership Term.

3.10 **Membership not transferrable**

A right, privilege, or obligation which a person has by reason of being a Member:

- (a) is not capable of being transferred or transmitted to another person;
- (b) remains with that person; and
- (c) expires upon cessation of their membership.

4. **DIRECTORS GENERALLY**

4.1 **Number of Directors**

- (a) The Company must have at least three Directors and, until otherwise decided by Ordinary Resolution, not more than twelve Directors, but with the ideal number of Directors being nine.

4.2 **Eligibility of Directors**

- (a) In accordance with section 201B of the Corporations Act a Director must be an individual who is at least 18 years of age.
- (b) A Director need not be a Member.
- (c) A person is not eligible to serve as a Director unless they are capable of demonstrating:
 - (i) practical experience in, or a strong connection to, any of the Industry Sectors as either a representative of an employer, or a representative of employees or a subject matter expert;
 - (ii) experience or expertise in one of the following fields: accounting, finance, marketing, law, corporate governance, education, vocational education and training or technology; or
 - (iii) that they meet any other eligibility category that the Board determines is necessary to ensure the Board has a broad skillset and provides for a diverse range of backgrounds.
- (d) A person is not eligible to serve as a Director if the person is also an Officer of:
 - (i) a Commonwealth, State, Territory or local government agency or body (including government business enterprises);
 - (ii) any of the following organisations which have a commercial relationship with the Company (which may cause the potential for a conflict of interest to arise):
 - (A) a Registered Training Organisation;
 - (B) a Group Training Organisation;
 - (C) an Employment Service Provider; or
 - (D) an AASN Provider.
- (e) Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.
- (f) A person is not eligible to serve on the Board as an Independent Director unless they have first met the requirements of rule 6.1(a).

- (g) A person is not eligible to serve on the Board as an Employee Representative Director unless they have first met the requirements of rule 7.1(a).
- (h) A person is not eligible to serve on the Board as an Employer Representative Director unless they have first provided a nomination in accordance with rule 8.1(a).

4.3 **Composition of Board**

- (a) Subject to the number of Directors for the time being fixed under rule 4.1 not being exceeded, the Board is to comprise of:
 - (i) a majority of Independent Directors; and
 - (ii) at least 2 Employee Representative Directors; and,
 - (iii) at least 2 Employer Representative Directors.
- (b) The Company must publicly:
 - (i) disclose to the Members the names of the Directors; and
 - (ii) identify those Directors who are Independent Directors, those Directors who are Employee Representative Directors and those Directors who are Employer Representative Directors.

4.4 **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 the ACNC Act (or an order made under the Corporations Act or the ACNC Act) to be a director of a company;
- (b) becomes disqualified from managing companies under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under either sections 206GAB or 206G of the Corporations Act;
- (c) is deceased, or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to personally attend three consecutive Board meetings (not including meetings of a Board Committee) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) in the case of an Independent Director, ceases to meet the requirements of an Independent Director (as determined by the Board acting reasonably);
- (g) in the case of an Employee Representative Director, ceases to be a representative of a relevant trade union (as determined by the Board acting reasonably);
- (h) in the case of an Employer Representative Director, ceases to be a representative of an employer organisation (as determined by the Board acting reasonably);
- (i) is removed from office under rule 4.5; or
- (j) ceases to be eligible to act as a Director under rule 4.2.

4.5 **Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company may by Ordinary Resolution, and subject to section 203D of the Corporations Act, remove a Director from office.

4.6 **Too few Directors**

If the number of Directors is reduced below three, the continuing Directors may act as the Board only:

- (a) to convene a meeting of the Members; and
- (b) in emergencies.

4.7 **Board vacancies**

- (a) The Board may act despite a vacancy occurring in any Director Role on the Board, notwithstanding that the composition of the Board required under rule 4.3 may not be met as a result of the vacancy.
- (b) Subject to rule 4.2, to the composition of the Board under rule 4.3 being met and to the number of Directors for the time being fixed under rule 4.1 not being exceeded, the Board may appoint a person as an additional Director (to fill any vacancy in a Director Role for Independent Directors, Employee Representative Directors or Employer Representative Directors) at any time, except during a general meeting of the Members.
- (c) The Board must not appoint a person as a Director to fill any vacancy in a Director Role on the Board unless and until it has obtained a consent to act as a Director signed by the relevant person and unless the Board is satisfied that the Director meets the relevant requirements to be eligible as an Independent Director, Employee Representative Director or Employer Representative Director (as the case may be) and fulfil the vacant Director Role.
- (d) Any Director appointed to a Director Role under rule 4.7(b) automatically retires at the end of the next Annual General Meeting after their appointment.
- (e) A Director who is required to retire under rule 4.7(d) may seek re-election at the relevant Annual General Meeting (in any available Director Role for which they meet the relevant requirements) by providing a nomination in accordance with rule 6.1(a), 7.1(a) or 8.1(a) (as the case may be).

4.8 **Director Roles**

- (a) Each Independent Director, Employee Representative Director and Employer Representative Director elected to the Board in accordance with rule 6.2, 7.2 or 8.2 as the case may be, will be elected in a Director Role (to be nominated at the time they are put forward as a candidate for election).
- (b) Any Director elected to a Director Role will hold office for the remainder of the term for that Director Role, namely:
 - (i) for Independent Directors until the time determined in accordance with rule 6.3(a)(ii);
 - (ii) for Employee Representative Director, until the time determined in accordance with rule 7.3(a)(ii); and

- (iii) for Employer Representative Directors, until the time determined in accordance with rule 8.3(a)(ii).

4.9 **Appointment of Directors by the Board**

- (a) Subject to rule 4.2, rule 4.9(b), to the composition of the Board under rule 4.3 being met and to the number of Directors for the time being fixed under rule 4.1 not being exceeded, the Board may appoint a person as an additional Director (**Board Appointed Director**) for a fixed term of appointment not exceeding 1 year (**Term**) at any time, except during a general meeting of the Members.
- (b) The Board must not appoint a Board Appointed Director unless and until:
 - (i) the person is an Approved Person; and
 - (ii) it has obtained a consent to act as a Director signed by the relevant person.
- (c) Any Board Appointed Director automatically retires at the end of their Term.
- (d) A Board Appointed Director who is required to retire under rule 4.9(c) may seek re-election (in any available Director Role for which they meet the relevant requirements) by providing a nomination in accordance with rule 6.1(a), 7.1(a) or 8.1(a) (as the case may be).

5. **INITIAL DIRECTORS**

- (a) For the purposes of this Constitution, subject to them satisfying the requirements to serve on the Board in a particular Director Role (and having met the requirements of that Director Role), any of the Initial Directors may be candidates for election as:
 - (i) Independent Directors (in any of the Director Roles for Independent Directors) in accordance with rule 6.2; or
 - (ii) Employer Representative Directors (in any of the Director Roles for Employer Representative Directors) in accordance with rule 8.2.
- (b) Upon any Initial Director being elected by the Members as an Independent Director in accordance with rule 6.2 or Employer Representative Director in accordance with rule 8.2, their term of office will be referable to the Director Role to which they are allocated on election (and any previous term of office that applied to them as Initial Directors will no longer be applicable).
- (c) On ceasing to be an Initial Director pursuant to rule 5(b), the terms of appointment held by such former Initial Director will no longer apply, with their term of appointment to instead be referable to the Director Role into which they were elected.

6. **INDEPENDENT DIRECTORS**

6.1 **Nomination for Independent Directors**

- (a) The Company in a general meeting cannot validly elect a person as an Independent Director unless at least 30 days (or any other period fixed by the Board) before the date of the meeting or Annual General Meeting at which the election is to occur, the Company receives both:

- (i) a nomination from the person, which outlines the basis on which they are capable of meeting the requirements of being an Independent Director; and
 - (ii) a consent to act as a Director signed by the person.
- (b) For a person who provides a nomination pursuant to rule 6.1(a)(i) to be eligible for appointment as an Independent Director in accordance with rule 6.2:
- (i) the Board must be satisfied that they meet the definition of an Independent Director pursuant to this Constitution; and
 - (ii) the person must be an Approved Person; and
 - (iii) the Board will take into account the need for a balanced representation across members of the Board, with a view to the composition of the Board ensuring that all relevant stakeholders are appropriately represented; and
 - (iv) the Board will make the final decision as to whether the person is suitable to be nominated as a candidate for election as an Independent Director.
- (c) The Company must notify Voting Members of every candidate for election as an Independent Director (and the Director Role to which they are eligible for appointment) at least 21 days before the relevant meeting or Annual General Meeting at which the Independent Director is proposed to be elected.
- (d) If insufficient nominations are received or candidates approved by the Board to fill all vacancies in Director Roles on the Board for Independent Directors:
- (i) the candidates nominated for the vacant Director Roles will be elected in accordance with rule 6.1(e) or 6.1(f) (as the case may be); and
 - (ii) any vacant Director Roles remaining on the Board for Independent Directors are taken to be vacancies in those Director Roles.
- (e) If there is only one candidate nominated for a vacant Director Role for Independent Directors, the candidate nominated is taken to be elected in that Director Role.
- (f) If there is more than one candidate nominated for a vacant Director Role for Independent Directors, a ballot must be held and determined in accordance with rule 6.2(a).

6.2 Election of Independent Directors

- (a) Subject to rule 4.1, rule 4.2, rule 6.1, section 201E of the Corporations Act, the transitional arrangements under rule 5 and to the composition of the Board under rule 4.3 being met, the Voting Members may elect a person as an Independent Director in any of the six (6) Director Roles available for Independent Directors by Ordinary Resolution at any time (including at an Annual General Meeting).

6.3 Maximum term of office for Independent Directors

- (a) Subject to rules 6.3(b) and 6.3(d) and to rule 5 in respect of Initial Directors, the term of office for an Independent Director elected under rule 6.2 will be determined with reference to the Director Role to which they are allocated on election and:
 - (i) starts at:

- (A) in the case of Independent Directors elected by the Members in accordance with rule 6.2 on or before the first Annual General Meeting following the adoption of this Constitution, at the end of the extraordinary general meeting at which they were elected; or
 - (B) in the case of all other Independent Directors elected by the Members in accordance with rule 6.2, at the end of the Annual General Meeting at which they were elected; and
- (ii) ceases at the earlier of:
 - (A) the end of the third Annual General Meeting after the Independent Director was first elected; and
 - (B) their date of rotation attributed to the Director Role to which they are allocated on election, as determined in accordance with rules 6.3(b) and 9,

at which time they must retire.
- (b) In respect of those Independent Directors elected in accordance with rule 6.2 on or before the next Annual General Meeting following the initial adoption of this Constitution and in the case of all other Independent Directors elected by the Members in accordance with rule 6.2, at the end of the Annual General Meeting at which they were elected and to facilitate rotation arrangements pursuant to rule 9, each Independent Director to be appointed pursuant to rule 6.2 will be in an allocated Director Role, with the term of appointment to apply to that Director Role to expire as follows:
 - (i) One (**Independent Director Role 1**) at the conclusion of the second Annual General Meeting after this Constitution takes effect (and subsequently at each third Annual General Meeting thereafter);
 - (ii) One (**Independent Director Role 2** and **Independent Director Role 3**) at the conclusion of the third Annual General Meeting after this Constitution takes effect (and subsequently at each third Annual General Meeting thereafter); and
 - (iii) One (**Independent Director Role 4** and **Independent Director Role 5**) at the conclusion of the fourth Annual General Meeting after this Constitution takes effect (and subsequently at each third Annual General Meeting thereafter);
 - (i) One (**Independent Director Role 6**) at the conclusion of the 2027 Annual General Meeting (and subsequently at each third Annual General Meeting thereafter)
- (b) Following the expiry of an Independent Director's term of office (in their particular Director Role) in accordance with rule 6.3(b), such person may seek re-election by the Members as an Independent Director (in a particular Director Role) in accordance with rule 6.2 by providing a further nomination in accordance with rule 6.1.
- (c) An Independent Director whose term has expired in accordance with rule 6.3(a)(ii), who seeks re-election and is re-elected by the Members as an Independent Director in accordance with rule 6.2 must retire from office no later than the date of the ninth consecutive Annual General Meeting after the Independent Director was first elected in one of the Director Roles for Independent Directors and is prohibited from re-nominating and seeking further consecutive re-election as an Independent Director under rule 6.2 at that time.

- (d) A former Independent Director, having retired in accordance with rule 6.3(d), will become eligible for re-election after a lapse of one year from the Annual General Meeting at which they ceased to be an Independent Director.

7. EMPLOYEE REPRESENTATIVE DIRECTORS

7.1 Nomination for Employee Representative Directors

- (e) The Employee Representative Members cannot validly elect a person as an Employee Representative Director unless at least 30 days (or any other period fixed by the Board) before the date of the meeting or Annual General Meeting at which the election is to occur, the Company receives both:
 - (i) a nomination from the person, which outlines the basis on which they are capable of meeting the requirements of being an Employee Representative Director; and
 - (ii) a consent to act as a Director signed by the person,
- (f) For a person who provides a nomination pursuant to rule 7.1(a)(i) to be eligible for election as an Employee Representative Director in accordance with rule 7.2, the Board must be satisfied that they are an appropriate person to be an Employee Representative Director, with the Board making the final decision as to whether the person is suitable to be nominated as a candidate for election as an Employee Representative Director.
- (g) The Company must notify Voting Members of every candidate for election as an Employee Representative Director (and the Director Role to which they are eligible for appointment) at least 21 days before the relevant meeting or Annual General Meeting at which the Employee Representative Director is proposed to be elected.
- (h) If insufficient nominations are received or candidates approved by the Board to fill all vacancies in Director Roles on the Board for Employee Representative Directors:
 - (i) the candidates nominated for a Director Role will be elected in accordance with rule 7.1(e) or 7.1(f) (as the case may be); and
 - (ii) any vacant Director Roles remaining on the Board for Employee Representative Directors are taken to be vacancies in those Director Roles.
- (i) If there is only one candidate nominated for a vacant Director Role for Employee Representative Directors, the candidate nominated is taken to be elected in that Director Role.
- (j) If there is more than one candidate nominated for a vacant Director Role for Employee Representative Directors, a ballot must be held in accordance with rule 7.2(a).

7.2 Election of Employee Representative Directors

- (a) Subject to rules 4.1, and 4.2, rule 7.1, section 201E of the Corporations Act and to the composition of the Board under rule 4.3 being met, the Employee Representative Members may elect a person as an Employee Representative Director in a Director Role for Employee Representative Directors by Ordinary Resolution at any time (including at an Annual General Meeting).

7.3 **Maximum term of office for Employee Representative Directors**

- (a) Subject to rules 7.3(c) and 7.3(d), the term of office for an Employee Representative Director will be determined with reference to the Director Role to which they are allocated on election and:
- (i) starts at:
 - (A) in the case of Employee Representative Directors elected by the Members in accordance with rule 7.2 on or before the first Annual General Meeting following the adoption of this Constitution, at the end of the extraordinary general meeting at which they were elected; or
 - (B) in the case of all other Employee Representative Directors elected by the Members in accordance with rule 7.2, at the end of the Annual General Meeting at which they were elected; and
 - (ii) ceases at the earlier of:
 - (A) the end of the third Annual General Meeting after the Employee Representative Director was first elected; and
 - (B) the date of rotation attributed to the Director Role to which they are allocated on election, as determined in accordance with rule 7.3(b) and rule 9,

at which time they must retire.
- (b) In respect of those Employee Representative Directors elected on or before the next Annual General Meeting following the adoption of this Constitution, to facilitate rotation arrangements pursuant to rule 9, their appointment will be in an allocated Director Role, with the term of appointment to apply to that Director Role to expire as follows:
- (i) one (**Employee Representative Director Role 1**) at the conclusion of the second Annual General Meeting after this Constitution takes effect (and subsequently at each third Annual General Meeting thereafter); and
 - (ii) one (**Employee Representative Director Role 2**) at the conclusion of the third Annual General Meeting after this Constitution takes effect (and subsequently at each third Annual General Meeting thereafter).
- (c) Subject to rule 7.3(d), an Employee Representative Director who is required to retire under rule 7.3(a)(ii) may seek re-election by the Employee Representative Members as an Employee Representative Director in a Director Role for a further term at the relevant Annual General Meeting by providing a further nomination in accordance with rule 7.1.
- (d) An Employee Representative Director, having retired in accordance with rule 7.3(a), who seeks re-election and is re-elected in a Director Role as an Employee Representative Director in accordance with rule 7.2 must retire from office on the date of the ninth consecutive Annual General Meeting after the Employee Representative Director was first elected as an Employee Representative Director and is prohibited from re-nominating and seeking further consecutive re-election as an Employee Representative Director at that Annual General Meeting.
- (e) A former Employee Representative Director, having retired in accordance with rule 7.3(d), will become eligible for re-election after a lapse of one year from the Annual General Meeting at which they ceased to be an Employee Representative Director.

8. EMPLOYER REPRESENTATIVE DIRECTORS

8.1 Nomination for Employer Representative Directors

- (a) The Employer Representative Members cannot validly elect a person as an Employer Representative Director unless at least 30 days (or any other period fixed by the Board) before the date of the meeting or Annual General Meeting at which the election is to occur, the Company receives both:
 - (i) a nomination from the person, which outlines the basis on which they are capable of meeting the requirements of being an Employer Representative Director; and
 - (ii) a consent to act as a Director signed by the person.
- (b) For a person who provides a nomination pursuant to rule 8.1(a)(i) to be eligible for election as an Employer Representative Director in accordance with rule 8.2, the Board must be satisfied that they are an appropriate person to be an Employer Representative Director, with the Board making the final decision as to whether the person is suitable to be nominated as a candidate for election as an Employer Representative Director.
- (c) The Company must notify Voting Members of every candidate for election as an Employer Representative Director (and the Director Role to which they are eligible for appointment) at least 21 days before the relevant meeting or Annual General Meeting at which the Employer Representative Director is proposed to be elected.
- (d) If insufficient nominations are received or candidates approved by the Board to fill all vacancies in Director Roles on the Board for Employer Representative Directors:
 - (i) the candidates nominated for the vacant Director Roles will be elected in accordance with rule 8.1(e) or 8.1(f) (as the case may be); and
 - (ii) any vacant Director Roles remaining on the Board for Employer Representative Directors are taken to be vacancies in those Director Roles.
- (e) If there is only one candidate nominated for a vacant Director Role for Employer Representative Directors, the candidate nominated is taken to be elected in that Director Role.
- (f) If there is more than one candidate nominated for a vacant Director Role for Employer Representative Directors, a ballot must be held in accordance with rule 8.2.

8.2 Election of Employer Representative Directors

- (a) Subject to rules 4.1 and 4.2, rule 8.1, section 201E of the Corporations Act and to the composition of the Board under rule 4.3 being met, the Employer Representative Members may elect a person as an Employer Representative Director in a Director Role for Employer Representative Directors by Ordinary Resolution at any time (including at an Annual General Meeting).

8.3 **Maximum term of office for Employer Representative Directors**

- (a) Subject to rule 8.3(b), rule 8.3(d) and to rule 5 in respect of Initial Directors, the term of office for an Employer Representative Director will be determined with reference to the Director Role to which they are allocated on election and:
- (i) starts at:
 - (A) in the case of Employer Representative Directors elected by the Members in accordance with rule 8.2 on or before the first Annual General Meeting following the adoption of this Constitution, at the end of the extraordinary general meeting at which they were elected; or
 - (B) in the case of all other Employee Representative Directors elected by the Members in accordance with rule 8.2, at the end of the Annual General Meeting at which they were elected; and
 - (ii) ceases at the earlier of:
 - (A) the end of the third Annual General Meeting after the Employer Representative Director was first elected; and
 - (B) the date of rotation attributed to the Director Role to which they are allocated on election, as determined in accordance with rule 8.3(b) and rule 9,at which time they must retire.
- (b) In respect of those Employer Representative Directors elected on or before the next Annual General Meeting following the adoption of this Constitution, to facilitate rotation arrangements pursuant to rule 9, their appointment will be in an allocated Director Role, with the term of appointment to apply to that Director Role to expire as follows:
- (i) one (**Employer Representative Director Role 1**) at the conclusion of the second Annual General Meeting after this Constitution takes effect (and subsequently at each third Annual General Meeting thereafter); and
 - (ii) one (**Employer Representative Director Role 2**) at the conclusion of the fourth Annual General Meeting after this Constitution takes effect (and subsequently at each third Annual General Meeting thereafter).
- (c) Subject to rule 8.3(d), a Director who is required to retire under rule 8.3(a)(ii) may seek re-election by the Employer Representative Members as an Employer Representative Director for a further term in a Director Role at the relevant Annual General Meeting by providing a further nomination in accordance with rule 8.1.
- (d) An Employer Representative Director, having retired in accordance with rule 8.3(a), who seeks re-election and is re-elected in a Director Role as an Employee Representative Director in accordance with rule 8.2, must retire from office on the date of the ninth consecutive Annual General Meeting after the Employer Representative Director was first elected as an Employer Representative Director and is prohibited from re-nominating and seeking further consecutive re-election as an Employer Representative Director at that Annual General Meeting.
- (e) A former Employer Representative Director, having retired in accordance with rule 8.3(d), will become eligible for re-election after a lapse of one year from the Annual General Meeting at which they ceased to be an Employer Representative Director.

9. ROTATION ARRANGEMENTS FOR ALL DIRECTORS

- (a) At each Annual General Meeting, one third of the Directors (not including any appointed by the Board to fill a casual vacancy in accordance with rule 4.7 or any appointed by the Board pursuant to rule 4.9) must retire.
- (b) The Directors who must retire at each Annual General Meeting under rule 9(a) will be those Directors who have been allocated to the Director Roles as set out in the following

Independent Director Role 1	2024 Annual General Meeting and each third Annual General Meeting thereafter
Independent Director Role 2	2025 Annual General Meeting and each third Annual General Meeting thereafter
Independent Director Role 3	2025 Annual General Meeting and each third Annual General Meeting thereafter
Independent Director Role 4	2026 Annual General Meeting and each third Annual General Meeting thereafter
Independent Director Role 5	2026 Annual General Meeting and each third Annual General Meeting thereafter
Independent Director Role 6	2027 Annual General Meeting and each third Annual General Meeting thereafter
Employee Representative Director Role 1	2024 Annual General Meeting and each third Annual General Meeting thereafter
Employee Representative Director Role 2	2025 Annual General Meeting and each third Annual General Meeting thereafter
Employer Representative Director Role 1	2024 Annual General Meeting and each third Annual General Meeting thereafter
Employer Representative Director Role 2	2026 Annual General Meeting and each third Annual General Meeting thereafter

- (c) For the avoidance of doubt, the sequencing of Director Roles to retire will be as follows:

2023 AGM	2024 AGM and each third subsequent AGM	2025 AGM and each third subsequent AGM	2026 AGM and each third subsequent AGM	2027 AGM and each third subsequent AGM
N/A	Independent Director Role 1	Independent Director Role 2	Independent Director Role 4	Independent Director Role 6
N/A	Employee Representative Director Role 1	Independent Director Role 3	Independent Director Role 5	
N/A	Employer Representative Director Role 1	Employee Representative Director Role 2	Employer Representative Director Role 2	

- (d) A Director who is required to retire from a Director Role under rule 9(b), 8.3(a)(ii) may seek re-election for a further term in that same Director Role in accordance with rules 6.2, 7.2 or 8.2, provided the Director has given the Company notice of their intention to do so by way of a nomination provided in accordance with rule 6.1, 7.1 or 8.1 (as applicable).

10. **POWERS OF THE BOARD**

10.1 **Powers generally**

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

- (a) has power to manage the business of the Company;
- (b) may engage and determine the remuneration and entitlements of the employees of the Company; and
- (c) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

10.2 **Exercise of powers**

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 18; or
- (b) in accordance with a delegation of the power under rules 12 or 13.

11. **EXECUTING NEGOTIABLE INSTRUMENTS**

11.1 **Requirements for execution of negotiable instruments**

Negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company by being signed by two Directors, or a Director and Secretary, or in such other manner (including the use of facsimile signatures if thought appropriate) as the Board may decide.

12. **CHIEF EXECUTIVE OFFICER**

12.1 **Appointment of Chief Executive Officer**

- (a) The Board may:
 - (i) appoint one or more persons to be the Chief Executive Officer; and
 - (ii) determine the remuneration and entitlements (in addition to any entitlements required by law) for the Chief Executive Officer.
- (b) The Chief Executive Officer is not to be a Director.

12.2 **Delegation to the Chief Executive Officer**

- (a) The Board may delegate any of the powers and functions of the Board (other than those matters reserved for the Board under rule 13.2 and the powers and functions required by law to be dealt with by the Directors as a Board) to the Chief Executive Officer:
 - (i) on the terms and subject to any restrictions the Board decides; and

(ii) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time.

(b) This rule 12.2 does not limit rule 13.

12.3 **Termination of appointment of Chief Executive Officer**

Subject to any agreement between the Company and the Chief Executive Officer, the Board may at any time remove or dismiss the Chief Executive Officer from employment of the Company, whether or not the appointment was expressed to be for a specified term.

13. **DELEGATION OF BOARD POWERS AND FUNCTIONS**

13.1 **Power to delegate**

Subject to rule 13.2, the Board may delegate any of its powers and functions (other than those powers and functions required by law to be dealt with by the Directors as a Board) as permitted by section 198D of the Corporations Act.

13.2 **Board reservation**

Without limitation, the following powers and functions are reserved for the Board:

- (a) approval of:
- (i) the Company's strategy and annual budget;
 - (ii) significant changes to the organisational structure of the Company;
 - (iii) the acquisition, establishment, disposal or cessation of any significant assets of the Company; and
- (b) the appointment, reappointment or replacement of the:
- (i) Chief Executive Officer; and
 - (ii) Secretary.

13.3 **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.

13.4 **Terms of delegation**

- (a) A delegation of powers under rule 13.1 may be made:
- (i) for a specified period or without specifying a period; and
 - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) A document of delegation may contain any provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

14. **COMMITTEES**

14.1 **Establishment and operation of Committees**

- (a) The Board may establish either or both of the following:
 - (i) committees with powers delegated by the Board, comprising of only Directors (**Board Committees**); and
 - (ii) advisory committees, with no delegated powers of the Board, to advise the Board on specified matters (**Advisory Committees**),
 where such a Committee will:
 - (iii) promote the efficient and effective governance of the Company; or
 - (iv) will otherwise assist the Company in furthering its objects set out at rule 2.
- (b) The Board may develop terms of reference to govern each Committee's operations.
- (c) Subject to any specific terms of the Board, the meetings and proceedings of Committees are, to the greatest extent practical, governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.
- (d) The Board must publicly disclose to the Members of the Company:
 - (i) the nature and purpose of any Committees established;
 - (ii) whether the Committee is a Board Committee or an Advisory Committee; and
 - (iii) the members of any such Committee, including details of the relevant qualifications and experience of the members of the Committee.
- (e) The Board may, at any time and at its discretion, either:
 - (i) amend the terms of reference of;
 - (ii) revoke any delegations to (in respect of a Board Committee); or
 - (iii) otherwise abolish,
 any Committee previously established.
- (f) Committee members are required to:
 - (i) disclose any actual, potential or perceived conflicts of interest they have in relation to affairs of the Committee to the other members of the Committee; and
 - (ii) must not:
 - (A) be present while any matter which relates to their conflict of interest is being considered at the meeting; or
 - (B) vote on the matter,
 unless those Committee members who do not have a conflict of interest in the matter have passed a resolution that:
 - (C) identifies the Committee member;
 - (D) the nature and extent of their conflict of interest; and

- (E) states that those Committee members are satisfied that the interest should not disqualify the Committee member from voting or being present.
- (g) The Board must document the formation of any Committee in the minutes of the Board.

14.2 **Board Committees**

- (a) All members of a Board Committee must be Directors.
- (b) Subject to the restrictions applying to the delegation of Board powers and functions under rule 13 and as otherwise permitted under section 198D of the Corporations Act, the Board may delegate any of its powers and functions to a Board Committee.
- (c) If the Board delegates any of its powers and functions to a Board Committee under rule 14.2:
 - (i) the Board may impose any restrictions or duties on the exercise of those delegated powers and functions (including by specifying those matters reserved for the Board);
 - (ii) the relevant Board Committee must comply with any restrictions or duties imposed in accordance with rule 14.2(c)(i); and
 - (iii) the delegation must be recorded in the minutes of the Board.
- (d) A Board Committee which is delegated the power and functions of the Board under rule 14.2 is not permitted to further sub-delegate these powers or functions.

14.3 **Nominations and Remuneration Committee**

- (a) The Board is to:
 - (i) establish and maintain a Nominations and Remuneration Committee; and
 - (ii) develop and make publicly available to the Members a copy of the terms of reference for the Nominations and Remuneration Committee.
- (b) The Nominations and Remuneration Committee's functions must include:
 - (i) reviewing the nominations received by the Company for potential Directors in light of the skills matrix adopted by the Board to determine the skills, experience and expertise required for the members of the Board; and
 - (ii) making recommendations to the Board as to those nominees who are appropriate to be considered as candidates for election or appointment as Directors (as the case may be).
- (c) The Nominations and Remuneration Committee must:
 - (i) be a Board Committee;
 - (ii) have four members, comprised of:
 - (A) the Chair of the Board;
 - (B) one (1) Independent Director (who is not the Chair of the Board);

- (C) one (1) Employee Representative Director; and
- (D) one (1) Employer Representative Director; and
- (iii) be chaired by the Chair of the Board.

14.4 **Audit and Risk Committee**

- (a) The Board is to:
 - (i) establish and maintain an Audit and Risk Committee;
 - (ii) develop and make publicly available to the Members a copy of the charter for the Audit and Risk Committee; and
 - (iii) publicly disclose to the Members of the Company the relevant qualifications and experience of the members of the Audit and Risk Committee.
- (b) The Audit and Risk Committee's functions must include reviewing the appropriateness of the Company's:
 - (i) financial reporting; and
 - (ii) performance reporting; and
 - (iii) system of risk oversight and management; and
 - (iv) system of internal controls,for the Company.
- (c) The Audit and Risk Committee must:
 - (i) be a Board Committee;
 - (ii) have at least three members and be comprised of a majority of Independent Directors; and
 - (iii) be chaired by an Independent Director, who is not the Chair of the Board.
- (d) At the end of each reporting period, the Company must disclose to the Members the number of times the Audit and Risk Committee met throughout the reporting period and the individual attendances of the members at those meetings.

14.5 **Advisory Committees**

- (a) Subject to rule 14.5(b), a member of an Advisory Committee does not need to be a Director or Member.
- (b) At least one member of any Advisory Committee established must be a Director.

14.6 **Reimbursement of Advisory Committee members**

- (a) Subject to rule 14.6(b), the Company may reimburse an Advisory Committee member for any reasonable expenses (including travelling and accommodation expenses) incurred by the Advisory Committee member:
 - (i) in attending Advisory Committee meetings;

- (ii) on the business of the Company; or
 - (iii) in carrying out duties as an Advisory Committee member,
- upon the receipt of a valid itemised invoice in respect of such expenses.
- (b) For the purposes of rule 14.6(a), the Board may by resolution:
- (i) determine what constitute reasonable expenses; and
 - (ii) stipulate any additional procedures to be complied with in relation to the reimbursement of expenses.

15. **DIRECTORS' DUTIES AND INTERESTS**

15.1 **Compliance with duties under the Corporations Act and general law**

Each Director must comply with their respective duties under the Corporations Act and under the general law. Without limitation, these duties require that Directors:

- (a) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) act for a proper purpose and in good faith in the best interests of the Company;
- (c) not misuse their position as a Director;
- (d) not misuse information they gain in their role as a Director;
- (e) disclose any actual, potential or perceived material conflicts of interest; and
- (f) not allow the Company to trade while it is insolvent.

15.2 **Director can hold other offices**

Subject to the restriction at rule 4.2(d)(i), a Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership, other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

15.3 **Disclosure of interests**

- (a) Each Director must comply with the general law in respect of disclosure of conflicts of interest or duty, and with section 191 of the Corporations Act in respect of disclosure of material personal interests.
- (b) The Board must agree in writing on its policy for the regulation of conflicts of interest, which must, amongst other things, include a requirement that Directors only be engaged to provide goods or services to or on behalf of the Company if:
 - (i) that Director is for bona fide reasons considered by the Board and agreed to be a suitable person to provide, such goods or services;

- (ii) bona fide attempts have been made to identify others who provide the goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
- (iii) the goods or services are provided on arms-length terms;
- (iv) the provision of the goods and services is disclosed clearly and expressly to the Members in the annual report of the Company; and
- (v) the Board agrees by ordinary resolution (excluding the interested Director) to the provision of the goods or services by the Director.

15.4 **Director interested in a matter**

- (a) 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.
- (b) Subject to section 195 of the Corporations Act:
 - (i) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in relation to which that Director has a conflict of interest or duty;
 - (ii) the Company may proceed with any transaction in relation to which a Director has an interest or conflict of duty and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iii) the Director may retain any benefits accruing to the Director under the transaction; and
 - (iv) the Company cannot avoid the transaction merely because of the existence of the Director's interest or conflict of duty.
- (c) If the interest is required to be disclosed under section 191 of the Corporations Act, rule 15.4(b)(iii) applies only if it is disclosed before the transaction is entered into.

15.5 **Agreements with third parties**

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

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

15.6 **Obligation of secrecy**

- (a) Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:
 - (i) in the course of their duties as an Officer of the Company;
 - (ii) by a decision of either the Board or the Company in general meeting; or
 - (iii) by law (including as a result of any contractual obligations of the Company) or for public accountability reasons (including following a request by either House of Parliament).

- (b) 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.

16. **DIRECTORS' REMUNERATION**

16.1 **Directors' remuneration and expenses**

- (a) Subject to this rule 16.1, the Directors are to be remunerated for their services as Directors (including attendance at and preparation for Board meetings) at a daily fee to be determined and payable in the manner agreed by the Board.
- (b) For the purposes of this rule, unless otherwise determined by the Board, a meeting day is a day on which a Board meeting is held and a Director's qualifying meeting day time for a meeting day incorporates both the duration of the meeting and the time spent in preparation for the Board meeting (event though the preparation time was spent prior to the meeting day).
- (c) The maximum fee payable to a Director for any one meeting day is one daily fee.
- (d) The limit on the total amount of remuneration payable via a daily fee to each Director is fixed at an amount advised by the Commonwealth of Australia (represented by the Department of Education and Workplace Relations (DEWR)) and maybe varied from time to time.
- (e) The amount of a daily fee paid to an office holder for a meeting day is:
 - (i) if the Director's qualifying meeting day time is less than 2 hours— 40% of the daily fee;
 - (ii) if the Director's qualifying meeting day time is at least 2 hours and less than 3 hours—60% of the daily fee; or
 - (iii) otherwise—100% of the daily fee.
- (f) Subject to rules 16.1(g) and 16.1(h), the Company may pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:
 - (i) in attending meetings of the Company, the Board, or a Committee;
 - (ii) on the business of the Company; or
 - (iii) in carrying out duties as a Director,upon the receipt of a valid itemised invoice in respect of such expenses.
- (g) A Director is only entitled to receive a payment under rule 16.1(e) in respect of air travel up to the amount which represents the best fare available on the day.
- (h) For the purposes of rule 16.1(f), the Board may by resolution:

- (i) determine what constitute reasonable expenses; and
- (ii) stipulate additional procedures to be complied with in relation to the reimbursement of expenses.

16.2 **Payments to Directors with Board approval**

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

- (a) reasonable remuneration for any service rendered to the Company by the Director in a professional or technical capacity where the amount payable is approved by the Board and is on reasonable commercial terms;
- (b) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board; and
- (c) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business or reasonable rent for premises leased by the Director to the Company.

17. **INDEMNITY AND INSURANCE**

17.1 **Indemnity**

- (a) Subject to and so far as permitted by the Corporations Act, the Competition and Consumer Act and any other applicable law:
 - (i) the Company must indemnify every Officer of the Company and may indemnify its auditor against any Liability incurred as such an Officer or auditor, unless the Liability arises out of conduct involving a lack of good faith; and
 - (ii) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer or auditor in defending an action for a Liability incurred as such an Officer or auditor or in resisting or responding to actions taken by a Government Agency or a liquidator.
- (b) 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.

17.2 **Insurance**

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

17.3 **Former Officers and auditors**

The indemnity in favour of Officers under rule 17.1 is a continuing indemnity. The indemnity applies in respect of all acts done by a person while an Officer or auditor of the Company even though the person may not be an Officer or auditor of the Company at the time the claim is made.

17.4 **Director's Access, Indemnity and Insurance Deed**

Subject to the Corporations Act, the Competition and Consumer Act and any other applicable law, the Company may, without limiting a person's rights under this rule 17:

- (a) enter into an agreement with; or
- (b) execute a deed in favour of,
a person who is or has been an Officer of the Company to give effect to the rights of the person under this rule 17 on any terms and conditions that the Board thinks fit.

18. **BOARD MEETINGS**

18.1 **Convening Board meetings**

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

18.2 **Minimum number of Board meetings**

The Board must convene, as a minimum, at least four times annually.

18.3 **Notice of Board meeting**

The convenor of each Board meeting:

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

but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

18.4 **Use of technology**

- (a) A Board meeting may be held using any means of audio or audio-visual communication through which each Director participating can hear and be heard by each other Director participating, or in any other way permitted by section 248D of the Corporations Act.
- (b) 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.

18.5 **Chairing Board meetings**

- (a) The Board is to elect a Director as Chair. Subject to rule 18.5(c), the Chair will chair all Board meetings while they hold such office.
- (b) The Chair must be an Independent Director.
- (c) 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 Directors present must elect an Independent Director present to chair the meeting.

- (d) The Chair elected in rule 18.5(a):
 - (i) holds that office for a term equal to the shorter of:
 - (A) their term of appointment as an Independent Director; and
 - (B) three years from the date of their election as Chair in accordance with this rule; and
 - (ii) may nominate for re-election by the Board in the following year, subject to their continuing appointment as an Independent Director and the restriction at rule 18.5(e).
- (e) An Independent Director may not nominate for re-election as the Chair at the end of the ninth consecutive year after the Independent Director was first elected as Chair.

18.6 **Quorum of Board meetings**

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is a majority of current Directors, including at least one Independent Director, at least one Employer Representative Director and at least one Employee Representative Director, and a quorum must be present for the whole meeting.
- (b) 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.
- (c) If a meeting is held in another way permitted by section 248D of the Corporations Act, the Board must resolve the basis on which Directors are to be treated as present.

18.7 **Majority decisions of the Board**

- (a) A resolution of the Board is passed if a majority of the votes cast by Directors entitled to vote on the resolution are in favour of it.
- (b) The Chair of a Board meeting does not have a casting vote.
- (c) If an equal number of votes is cast for and against a resolution of the Board, the matter is decided in the negative.

18.8 **Procedural rules**

- (a) The Board may adjourn and, subject to this Constitution, otherwise regulate its meetings as it decides (including through procedures detailed in any By-Laws).
- (b) The procedural rules of the Board may, amongst other things, detail the circumstance in which observers and advisers are permitted to attend and speak at meetings of the Board.

18.9 **Circular resolutions of the Board**

- (a) The Directors may pass a resolution without a directors' meeting being held if a majority of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution made in accordance with rule 18.9(a) is taken to be passed when the last Director signs the resolution.

18.10 **Additional provisions concerning circular resolutions**

For the purpose of rule 18.9:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) 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.

18.11 **Valid proceedings of the Board**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a Board 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.

18.12 **Observers**

- (a) The Board may, at its discretion, permit observers (such as representatives from FTB Sector Stakeholders) to attend and speak at meetings of the Board.
- (b) In no circumstance will an observer be counted in constituting a quorum or be permitted to vote on any decision of the Board.
- (c) The Board may revoke the permission granted under rule 18.12(a) at any time.

19. **MEETINGS OF MEMBERS**

19.1 **Annual General Meeting**

The Company must hold an Annual General Meeting in accordance with the requirements of section 250N of the Corporations Act.

19.2 **Calling meetings of Members**

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N of the Corporations Act or by order made under section 249G of the Corporations Act.

19.3 **Notice of meeting**

- (a) Subject to rule 19.4, at least 21 days' written notice of a meeting of Members must be given individually to:
 - (i) each Voting Member (whether or not the Voting Member is entitled to vote at the meeting);
 - (ii) each Director; and
 - (iii) to the auditor.

- (b) Subject to any regulation made under section 249LA of the Corporations Act, the notice of meeting must comply with section 249L of the Corporations Act and may be given in any manner permitted by section 249J(3) of the Corporations Act.

19.4 **Short notice**

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

- (a) if the Company has elected to convene a meeting of Members as the Annual General Meeting, and if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

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

19.5 **Postponement or cancellation**

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

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

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

19.6 **Fresh notice**

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

19.7 **Technology**

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

19.8 **Accidental omission**

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

20. **PROCEEDINGS AT MEETINGS OF MEMBERS**

20.1 **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.

20.2 **Quorum of Members meetings**

- (a) The quorum for a meeting of Members is a majority of current Voting Members, including representation of at least one Member from each Membership Class (excluding Associate Members).

- (b) Each individual present at a meeting of Members may only be counted once toward a quorum.
- (c) If a Member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

20.3 **Quorum not present**

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

- (a) if called as a result of a request of Members under section 249D of the 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.

20.4 **Chairing meetings of Members**

- (a) If the Board has appointed a Chair in accordance with rule 18.5, the Chair will also chair meetings of the Members.
- (b) If:
 - (i) there is no Chair; or
 - (ii) the Chair is not present at the time for which a meeting of the Members is called or is not willing to chair the meeting,

the Voting Members present must elect a Member or Director present to chair the meeting.

20.5 **Attendance and participation at general meetings**

- (a) Every Voting 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 the Members and to speak on any part of the business of the meeting which concerns the auditor in their capacity as an auditor.

20.6 **Adjournment**

Subject to rule 19.6, the chair of a meeting of Members at which a quorum is present:

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

20.7 **Business at adjourned meetings**

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

20.8 **Circular resolution of Members**

- (a) If all 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 in those terms is passed at the time when the last Member signs.
- (b) For the avoidance of doubt, where a resolution needs to be passed by Members of a Membership Class, if all the Members in the Membership Class who are 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 in those terms is passed by the Members of a Membership Class at the time when the last Member of that Membership Class signs and will be effective as if it were passed at a meeting of Members.

20.9 **Additional provisions concerning circular resolutions of Members**

For the purpose of rule 20.8:

- (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) signature of a document by the Member who appointed a proxy, attorney or (in the case of a Member which is a body corporate) a representative is not required if that proxy, attorney or representative has signed the document in that capacity; and
- (c) a facsimile or electronic message containing the text of the document expressed to have been signed by a Member that is sent to the Company is a document signed by that Member at the time of its receipt by the Company.

21. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

21.1 **Appointment of proxies**

- (a) Each Voting Member may appoint a proxy (who is to be a natural person) to attend and act for the Voting Member at a meeting of the Members.
- (b) An appointment of a proxy must be made by written notice to the Company that:
 - (i) complies with section 250A(1) of the Corporations Act; or
 - (ii) is in a form and mode, and is signed or otherwise authenticated by the Voting Member, in a manner satisfactory to the Board.

21.2 **Member's attorney**

- (a) A Voting Member may appoint an attorney to act, or appoint a proxy to act, at a meeting of Members.
- (b) If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

21.3 **Deposit of proxy appointment forms, authorities and powers of attorney**

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

- (a) in the case of a proxy, the proxy appointment form and, if it is executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) of the Corporations Act by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company in accordance with section 250B(3) of the Corporations Act at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

21.4 **Corporate representatives**

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

21.5 **Appointment for particular meeting, standing appointment and revocation**

- (a) A Voting 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.
- (b) A proxy, attorney or representative may, but need not, be a Member.

21.6 **Position of proxy or attorney if Member present**

The appointment of a proxy or attorney is not revoked by the Voting Member attending and taking part in the general meeting, but if the Voting Member votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the Voting Member's proxy or attorney on the resolution.

21.7 **Priority of conflicting appointments of attorney or representative**

If more than one attorney or representative appointed by a Voting 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 21.7(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.

21.8 More than one current proxy appointments

An appointment of proxy by a Voting 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 Voting Member which would result in there being more than one proxy of that Voting 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.

21.9 Continuing authority

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

22. ENTITLEMENT TO VOTE

22.1 Number of votes

- (a) Subject to rules 22.1(b) sections 250BB(1) and 250BC of the Corporations Act, and any rights or restrictions imposed on or attached to a Membership Class:
 - (i) each Voting Member has that number of votes determined by the process in rule 23.3; and
 - (ii) a Voting Member who is present and entitled to vote and is also a proxy, attorney or representative of another Voting Member (who is also entitled to vote) is entitled to cast the number of votes held by them and by the Voting Member for whom they are proxy, attorney or representative) is entitled to cast that number of votes determined by the process in rule 23.3 for both themselves and for the Voting Member for whom they are proxy, attorney or representative.
- (b) Associate Members are not entitled to vote at any meeting of Members or on any matter on which the Members may decide.

22.2 Casting vote of chair

- (a) The chair of a meeting of Members does not have a second or casting vote.
- (b) If an equal number of votes is cast for and against a resolution at a meeting of Members, the matter is decided in the negative.

22.3 **Voting restrictions**

- (a) If:
 - (i) 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
 - (ii) 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.
- (b) If:
 - (i) this Constitution provides that only Members of a specific Membership Class are entitled to vote on a resolution; and
 - (ii) the notice of the meeting at which the resolution is proposed states that fact, then, subject to any application of rule 22.3:
 - (iii) only Voting Members in that specified Membership Class are entitled to vote on that resolution;
 - (iv) other Members have not right to vote on that resolution; and
 - (v) the Company must not count any votes purported to be cast by any such other Members in respect of that resolution.
- (c) If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1) of the Corporations Act, rule 23.2(b) applies.

22.4 **Decision on right to vote**

- (a) A Voting Member or Director may challenge a person's right to vote at a meeting of Members.
- (b) A challenge under rule 22.4(a) may only be made at the meeting of Members.
- (c) A challenge, or any other doubt as to the validity of a vote, must be decided by the chair of the meeting, whose decision is final.

23. **HOW VOTING IS CARRIED OUT**

23.1 **Method of voting**

- (a) A resolution put to the vote at a meeting of Members must be decided on a poll, with voting in accordance with rule 23.3.
- (b) Where a meeting of Members is being facilitated through the use of technology, the technology used must enable Members to be clearly identified and their votes counted in accordance with the requirements of rule 23.3.

23.2 **When and how polls must be taken**

On a poll:

- (a) the poll must be taken, subject to rule 23.2(b), in the manner that the chair of the meeting directs;
- (b) votes which sections 250BB(1) or 250BC of the Corporations Act require to be cast in a given way must be treated as cast in that way;
- (c) 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
- (d) the result of the poll is taken as final in respect of the resolution in respect of which it was taken.

23.3 **Process for Voting**

- (a) For the purposes of determining the number of votes held by each Member, each Membership Class other than Associate Members (**Voting Membership Class**) is attributed 120 votes out of a total of 360 available, with the votes attributed to each of those Voting Membership Classes to then be divided equally between the total number of Voting Members within each respective Voting Membership Class to determine the number of votes able to be cast by each Voting Member. The number of votes each Voting Member in a Voting Membership Class is entitled to cast in respect of a decision, matter or resolution (**Vote Numbers**) is therefore calculated as follows:

$$V = \frac{120}{M}$$

V = Number of votes each Voting Member in a Voting Membership Class is entitled to cast

M = the number of Voting Members in that Voting Membership Class to which the Voting Member belongs

- (b) The total number of votes cast in relation to a decision, matter or resolution (using the Vote Numbers) by the Voting Members present and entitled to vote on the decision, matter or resolution must be tallied to calculate the total Vote Numbers cast in favour out of the total Vote Numbers cast. If the total number of Vote Numbers cast in favour of the decision, matter or resolution (as a proportion of the total Vote Numbers cast) is:
 - (i) greater than the Relevant Majority for the decision, matter or resolution, the decision, matter or resolution is decided in the positive; or
 - (ii) equal to or less than the Relevant Majority for the decision, matter or resolution, the decision, matter or resolution is decided in the negative.
- (c) Associate Members are not Voting Members and are not entitled to vote on any decision, matter or resolution to be determined by the Members.

24. **SECRETARY**

24.1 **Appointment of Secretary**

The Board:

- (a) must appoint at least one individual who ordinarily resides in Australia; and

- (b) may appoint more than one individual,

to be the Secretary, either for a specified term or without specifying a term.

24.2 **Terms and conditions of office**

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

24.3 **Cessation of Secretary's appointment**

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

- (a) is not permitted by the Corporations Act (or an order made under the Corporations 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 sections 206GAB or 206G of the Corporations Act;
- (c) is deceased, or 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 24.4.

24.4 **Removal from office**

Subject to any agreement between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

25. **MINUTES**

25.1 **Minutes must be kept**

The Board must keep minutes of:

- (a) proceedings and resolutions of meetings of the Members;
- (b) the names of Directors present at each Board meeting and the names of those present at any Committee meeting;
- (c) proceedings and resolutions of Board meetings and any Committee meetings;
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

in accordance with sections 191, 192 and 251A of the Corporations Act.

25.2 **Minutes as evidence**

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

25.3 **Inspection of minute books**

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

26. **COMPANY SEALS**

26.1 **Common seal**

The Board:

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

26.2 **Use of seals**

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

26.3 **Fixing seals to documents**

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

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

27. **FINANCIAL REPORTS, AUDIT AND REGISTERS**

27.1 **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, if required by Part 2M.3 of the Corporations Act, audited,

and must allow a Director and, where the financial statements are required by Part 2M.3 of the Corporations Act to be audited or reviewed, the auditor to inspect those records at all reasonable times.

27.2 **Financial reporting**

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company to prepare a:

- (a) financial report; and
- (b) directors' report,

that comply with that part and must report to Members in accordance with section 316A of the Corporations Act.

27.3 **Audit or review**

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company's financial report for each financial year to be audited or reviewed, and obtain an auditor's report.

27.4 **Inspection of financial records and books**

Subject to rule 25.3 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 of the Company.

27.5 **Register of Members**

- (a) The Company must establish and maintain the Register.
- (b) In accordance with section 169 of the Corporations Act, the Register must contain the following information:
 - (i) the name and address of each Member;
 - (ii) the date on which the entry of the Member's name in the Register is made;
 - (iii) the Membership Class allocated to each Member;
 - (iv) the name and details of each person who stopped being a Member within the last seven years;
 - (v) the date on which the person stopped being a Member; and
 - (vi) 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.

28. **NOTICES**

28.1 **Notices by Company**

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

- (a) in writing and signed on behalf of the Company (by original or printed signature);
- (b) addressed to the Member 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 Member's address;
 - (iii) sent by fax to the fax number (if any) nominated by that Member; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that Member.

28.2 Overseas Members

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

28.3 When notice is given

- (a) A notice to a Member by the Company is regarded as given and received:
- (i) if it is delivered personally:
 - (A) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or
 - (B) 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;
 - (ii) if it is sent by fax or electronic message or given under section 249J(3)(cb) of the Corporations Act:
 - (A) by 5.00 pm (local time in the place from which it is sent or given) on a Business Day - on that day; or
 - (B) after 5.00 pm (local time in the place from which it is sent or given) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and
 - (iii) if it is sent by mail:
 - (A) within Australia - one Business Day after posting; or
 - (B) to a place outside Australia - three Business Days after posting.
- (b) A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

28.4 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither:

- (a) the day on which the notice is given; nor
- (b) the day on which the action is to be taken,

may be counted in determining whether the required period has passed.

28.5 Notices to "lost" Members

- (a) If:
- (i) on two or more consecutive occasions a notice (served on a Member in accordance with this rule 28) is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
 - (ii) the Board believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Company under rule 28.2,
- the Company may give effective notice to that Member by exhibiting the notice at the Company's registered office for at least 48 hours.

- (b) This rule 28.5 ceases to apply if the Member gives the Company notice of a new address.

29. **WINDING UP**

29.1 **Winding up**

The Company may, by Special Resolution, resolve to voluntarily wind up.

29.2 **No distribution of surplus assets to Members**

In the event of the winding up of the Company, any surplus property remaining after satisfaction of all the Company's debts and liabilities must not be paid to, or distributed amongst, the Members.

29.3 **Distribution of surplus assets**

- (a) Any surplus property remaining after satisfaction of all the Company's debts and liabilities must be paid or transferred to:
 - (i) another Jobs and Skills Council; or
 - (ii) if no other Jobs and Skills Council exists or is operational at the time of winding up, to an entity in Australia, the constituent documents of which:
 - (A) require the entity to pursue objects similar to those of the Company and to apply its income solely towards promoting those objects; and
 - (B) prohibit the entity from making distributions to its members, including by way of the distribution of surplus assets on winding up.
- (b) The entity selected for the purposes of rule 29.3(a) is to be determined by the Board or, if no such determination is made, by the liquidator of the Company.

30. **AMENDING CONSTITUTION**

30.1 **Amendment procedure**

- (a) The Company may, by Special Resolution, resolve to amend this Constitution.
- (b) All previous acts and appointments legal and valid under this Constitution, prior to the amendment or repeal of this Constitution or under the former Constitution (subject to any later rules), will remain legal and valid.