

CONSTITUTION

Australian Gift & Homewares Association Limited

ACN 061 196 290

ABN 49 061 196 290

ADOPTED at the General Meeting on 21 February 2015.

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Australian Gift & Homewares Association Limited Constitution

Part A – The Association

1. Name and type of association

- 1.1. The name of the Association is Australian Gift & Homewares Association Limited.
- 1.2. The Association is a public company limited by guarantee.
- 1.3. The liability of Members is limited to the guarantee amount in clause 62.1.

2. Definitions and interpretation

- 2.1. In this Constitution unless contrary intention appears:

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

"Appointed Director" means a director appointed to the Board in accordance with clause 33.

"Association" means Australian Gift & Homewares Association Limited ACN 061 196 290.

"Board" means the board of directors that is constituted by the individuals who hold office as Directors, from time to time.

"Business Entity" means any corporation, partnership, trading trust, sole trader or other entity (whether incorporated or not) that has an ABN or IRD number:

- a. "ABN" means an Australian Business Number being a unique identifying number issued to all registrations in the Australian Business Register (ABR);
- b. "IRD number" means the unique identifying number issued to organisations by the New Zealand Inland Revenue Department.

"Chair" means the person appointed to chair:

- c. a General Meeting under clauses 22.1 and 22.2; or
- d. a Board meeting under clause 44.1.

"Company Secretary" means the individual appointed as secretary of the Company under clause 56.1.

"Constitution" means this Constitution as amended or supplemented from time to time.

“Director” means any individual holding a position of a director of the Association as appointed or elected pursuant to this Constitution.

“Elected Director” means a Director elected or appointed to the Board as described in clauses 31.2 or 37.1.

“General Meeting” means a formal meeting of Members as described in Part C of this Constitution.

“Member” means a member of the Association pursuant to clause 7.1.

“Office Bearer” means an individual holding any of the positions referred to in clause 39.1.

“Objects” mean the objects for which the Association is established as set out in clause 4.

“President” means the individual elected or appointed as president of the Association in accordance with this Constitution.

“Register” means the register of Members kept by the Association in accordance with the Act.

“Representative” means a natural person appointed to represent a Member as described in clause 11.1.

- 2.2. The following rules of interpretation apply unless contrary intention appears:
- a. a reference to any legislation or to any provision of any legislation includes any regulations made under it and any statutory modification or replacements thereto for the time being in force;
 - b. a reference to a word or phrase that is given a meaning in the Act has the same meaning in this Constitution;
 - c. a reference to a clause is a reference to a clause of this Constitution and includes any further embedded content;
 - d. the word *person* means a natural person and any company, corporation, association, body or entity whether incorporated or not;
 - e. the words *writing* and *written* means printing, typewriting and all other means of representing or reproducing words in visible form;
 - f. a gender includes all genders;
 - g. singular includes plural and vice versa;
 - h. where a word or phrase is defined, its other grammatical forms have corresponding meaning;

- i. headings, bold type and italics are for convenience only and do not affect the interpretation of this Constitution.

3. Replaceable Rules

- 3.1. The replaceable rules in the Act do not apply to the Association except to the extent that they are repeated in this Constitution.

4. Objects

- 4.1. The Objects of the Association are to advance the interests of Members, and to create the optimum commercial environment for wholesalers, retailers and other stakeholders in the Australian gift and homewares industry.

5. Powers

- 5.1. The Association has the legal capacity and powers of a company set out under section 124(1) of the Act.
- 5.2. The Association may only exercise the powers in section 124(1) of the Act to:
 - a. pursue the Objects; and
 - b. do all things incidental or convenient in relation to the exercise of power under clause 5.2(a).

6. Application of income and property

- 6.1. The income and property of the Association will only be applied towards the promotion of the Objects.
- 6.2. The Association must not distribute any surplus, income or assets directly or indirectly to its Members in the form of dividends or distribution of profits.
- 6.3. Clause 6.2 does not prevent the Association from paying a Member:
 - a. by way of reimbursement for expenses properly incurred by the Member on behalf of the Association;
 - b. in return for any services rendered or goods supplied in the ordinary course of business to the Association; or
 - c. for any other bona fide reason or purpose for the attainment of the Objects.

Part B - Membership

7. Membership eligibility

- 7.1. The Members of the Association are Business Entities that are admitted to membership by the Board from time to time and whose names are entered in the Register.

- 7.2. A Business Entity committed to the Objects and that satisfies the eligibility criteria of the relevant class and category of membership may apply to become a Member.
- 7.3. The Board may, from time to time, determine:
 - a. the various categories of membership within any class of membership;
 - b. the criteria for admission to each category; and
 - c. subject to clause 15, the rights and privileges attached to being a Member within each category.
- 7.4. The Board may transfer a Member from one category of membership to another category provided the Member satisfies the eligibility criteria for the new category and has either applied for the transfer or consents to the transfer.

8. Applications for Membership

- 8.1. Applications for membership must be made in the form and manner prescribed by the Board from time to time.
- 8.2. The Board may at its discretion accept or reject an applicant as a Member.
- 8.3. The Board does not have to give any reason for rejecting an application for membership.
- 8.4. The Association must notify the applicant of the Board's decision to accept or reject the application for admission to membership in accordance with the procedures determined by the Board from time to time.
- 8.5. Upon acceptance of an applicant to be a Member, the applicant must pay any subscriptions in accordance with clause 16.1 within a period as determined by the Board. If any such payment is not made then the Board may, in its discretion, cancel its acceptance of the applicant for membership of the Association.
- 8.6. Subject to clause 8.5, an applicant becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the Register.

9. Membership classes

- 9.1. The membership classes of the Association are:
 - a. Full Member; and
 - b. Retail Member.
- 9.2. The following shall be eligible to become a Full Member:

- a. A Business Entity operating in the gift and homewares industries which is engaged in the business of an importer, wholesaler, manufacturer, supplier or agent, but excluding any Business Entity that solely supplies its own retail outlet or outlets, or a retail outlet in which another party to which the Business Entity is related has an interest.
 - b. For the purposes of sub-clause (a), a Business Entity is related to another party if that other party has a controlling interest in the Business Entity or, if that party is also a Business Entity, a controlling interest is held in both Business Entities by the same person or by persons who are related parties or are relatives of one another.
 - c. The expressions “related parties” and “relative” has the same meaning as in the Act.
- 9.3. The following shall be eligible to become Retail Members, namely Business Entities that carry on any retail business in the gift and homewares industries.

10. Rights and obligations of Members

- 10.1. Full Members are entitled to:
- a. receive notices of and to attend and to speak at General Meetings;
 - b. vote at General Meetings in a manner permitted by this Constitution;
 - c. be eligible for election or appointment as a Director or in the case of a Business Entity, have a Representative, owner, employee or principal of the Member be eligible for election as a Director;
 - d. vote in an election for Directors.
- 10.2. Retail Members are entitled to receive notices of and to attend General Meetings but are not entitled to vote and subject to clause 33 are not eligible for election as a Director or in the case of a Business Entity, are not entitled to have a Representative, owner, employee or principal be eligible for election as a Director.
- 10.3. This Constitution constitutes a contract between the Association and each of the Members. Each Member agrees to be bound by this Constitution and subject to clause 29.2, any by-laws that may be made or passed by the Board or by the Association in General Meeting.

11. Representatives

- 11.1. A Member that is a Business Entity may, by written notice to the Association, appoint an individual as its Representative to exercise all or any of the powers the Member may exercise under this Constitution including representing and voting on behalf of the Member at General Meetings.

- 11.2. Subject to the Act, the Representative will be the contact person for receiving notices and communications from the Association on behalf of the Member.
- 11.3. The appointment may be a standing one and must identify the position if it is made by reference to a position held.
- 11.4. The Member may remove and replace its Representative by giving written notice to the Association in the time and manner as prescribed the Board.
- 11.5. The Representative will abide by this Constitution and support the Objects as if he/she were a Member himself/herself.

12. Cessation of Membership

- 12.1. A Member's membership of the Association will cease:
 - a. upon receipt by the Association of written notice of the Member's resignation from membership;
 - b. when the Member no longer meets the criteria for their respective class membership, unless transferred to another class by the Board;
 - c. if membership lapses under clause 16.2;
 - d. if the Member is expelled from the Association;
 - e. upon the death of a Member who is an individual;
 - f. if the Member becomes bankrupt, insolvent or enters voluntary liquidation or voluntary administration;
 - g. if the Member is subject of a court order for its winding up;
 - h. if the Member is dissolved or otherwise ceases trading; or
 - i. if the Member is convicted of an indictable offence unless the Board resolves otherwise.
- 12.2. Any Member who ceases to be a Member:
 - a. will not be entitled to any refund or part refund of any membership subscription; and
 - b. will not be readmitted as a Member until any unpaid monies outstanding at the time they ceased to be a Member are paid including any interest or other charges levied on any outstanding monies.

13. Disciplining Members

- 13.1. The Board may take disciplinary action against a Member who, in the opinion of the Board:
 - a. has persistently refused or neglected to comply with a provision or provisions of this Constitution; or

- b. has persistently and wilfully acted in a manner prejudicial to the interests of the Association.
- 13.2. The Board shall determine the procedures and rules relating to the disciplining of Members and the appeals process. This may include appointing a disciplinary committee to hear the matter and to recommend to the Board what penalties to impose, if any, against the Member.
- 13.3. The Board must ensure that procedural fairness is applied to any procedures and rules relating to the disciplining of Members and the appeals process.
- 13.4. The penalties that may be imposed by the Board or recommended by any disciplinary committee include, but are not limited to:
 - a. suspension of the membership rights of the Member for a specified period; or
 - b. expulsion of the Member from the Association.

14. Rights not transferable

- 14.1. A right, privilege or obligation which a person or Business Entity has by reason of being a Member:
 - a. is not capable of being transferred or transmitted to another person or Business Entity; and
 - b. terminates upon the person or Business Entity ceasing to be a Member.
- 14.2. Clause 14.1 does not preclude a Member from replacing its nominated Representative.

15. Variation or cancellation of class rights

- 15.1. The rights of any class of membership may be varied or cancelled:
 - a. by special resolution passed at a meeting of the class of Members whose rights are being varied or cancelled; or
 - b. with the written consent of Members with at least 75% of the votes in the class.
- 15.2. The provisions of this Constitution relating to General Meetings apply, with such changes as are necessary, to separate class meetings as if they were General Meetings.

16. Membership fees

- 16.1. The Board may from time to time charge fees to Members which may include joining fees, annual membership subscriptions and subject to clause 16.4, special levies. The Board may determine the amounts of such fees for each Member or each category of membership and the time and manner of payment of such fees.

- 16.2. If a Member fails to pay the fees when they are due, the Member will be notified of the default. The fee becomes overdue on the issuing of the default notice. If the default is not rectified within 30 days of the Member being notified, then membership will lapse and their name will be removed from the Register. The Board may make exceptions to this rule in special circumstances.
- 16.3. The Board may at its discretion determine that no fees (in full or in part) are payable by a Member or a particular category of membership.
- 16.4. If circumstances arise which affect the interests of the Association or the Members and which require unusual expenditure to help protect such interests, the Board may charge a special levy provided that the amount of any levy in any one financial year does not exceed the amount of a Member's annual membership subscription unless approved by Full Members in a General Meeting.

Part C - General Meetings

17. Calling of General Meetings

- 17.1. The Board may convene a General Meeting at any time it thinks fit.
- 17.2. Annual General Meetings will be convened by the Board in accordance with the Act.
- 17.3. Members may request or call and arrange to hold a General Meeting in accordance with the relevant provisions of the Act.
- 17.4. A General Meeting may be held at two or more places using any technology that gives the Members as a whole a reasonable opportunity to participate in the meeting.

18. Business at Annual General Meetings

- 18.1. The business of the Annual General Meeting may include the following matters even if not referred to in the notice of meeting:
 - a. consideration of the annual financial report, directors' report and auditor's report;
 - b. election or announcement of Directors; and
 - c. appointment of the auditor.

19. Notice of General Meetings

- 19.1. Except where a shorter notice period is permitted by the Act, at least 21 days' notice of any General Meeting must be given to:
 - a. every Member;
 - b. every Director; and
 - c. the auditor of the Association.

- 19.2. A notice of a General Meeting must specify:
- a. the date, time and place of the meeting;
 - b. the general nature of the business to be transacted at the meeting;
 - c. if a special resolution is to be proposed, state in full the proposed resolution and the intention to propose it as a special resolution;
 - d. if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - e. any other information required by the Act.
- 19.3. The non-receipt of a notice of a General Meeting or the accidental omission to give notice to any person entitled to receive the notice does not invalidate anything done or any resolution passed at the General Meeting.

20. Cancellation or postponement

- 20.1. The Board may cancel or postpone or change the venue of a General Meeting (other than a meeting requisitioned by Members) at any time prior to the meeting. The Board must endeavour to notify each person entitled to receive notice of the meeting of the cancellation, postponement or change of venue.

21. Quorum

- 21.1. No business shall be transacted at a General Meeting unless a quorum is present.
- 21.2. The quorum for any General Meeting is the number of Full Members entitled to vote being present that is equal to the number of Directors in office at the time plus one Full Member. In calculating a quorum, Members may be present in the ways stated in clause 21.3.
- 21.3. A Member is taken to be present if the Member is present:
- a. in person;
 - b. by Representative; or
 - c. by proxy or attorney.
- 21.4. If within half an hour after the appointed time for the commencement of a General Meeting a quorum is not present:
- a. the meeting if convened upon the requisition of Members shall be dissolved;
 - b. in any other case the meeting shall stand adjourned to such other day and at such other time and place as the President may determine.

- 21.5. If at the adjourned meeting the quorum is not present within half an hour after the appointed time for the commencement of the meeting, then the meeting will lapse.

22. Chair

- 22.1. The President will be the Chair of each General Meeting.
- 22.2. If the President is not present within 15 minutes after the time appointed for the commencement, or is unable or unwilling to act, the following may chair the meeting (in order of precedence):
- a. the Vice-President;
 - b. if the Vice-President is not present or is unable or unwilling to act, any other Director present who has been appointed as Chair by those other Directors present; or
 - c. if none of the Directors is present or is able or is willing to act, then a Full Member present chosen by a majority of the Full Members present shall take the position of Chair.
- 22.3. Despite anything in clause 22.2, if the President and/or Vice President and/or any other Director or Directors later attend a General Meeting or is willing to act, the senior of them (elected if necessary as outlined in clause 22.2 where 2 or more Directors are later in attendance) from time to time who is willing to act must take over as Chair of the General Meeting.

23. Conduct of General Meetings

- 23.1. The Chair of a General Meeting may at any time they consider it necessary or desirable for the proper and orderly conduct of the meeting, subject to the Act:
- a. impose a limit on the time that an individual may speak on a motion or other item of business, question, motion or resolution being considered by the meeting;
 - b. terminate debate or discussion; and
 - c. adopt any procedures for casting or recording votes at the meeting whether on a show of hands or a poll.
- 23.2. Any question arising at a General Meeting relating to the order of business, procedure or conduct of the meeting must be referred to the Chair of the meeting whose decision is final.
- 23.3. The Chair of a General Meeting may take any action they consider appropriate for the safety of persons attending the meeting or the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any individual who the Chair considers to be disruptive to the meeting or who is in attendance as an observer (being someone who is not eligible to vote at that meeting).

- 23.4. The Chair of the meeting may delegate powers conferred by clause 23.3 to any person they think fit.
- 23.5. Nothing in this clause limits the powers conferred on the Chair by law.

24. Adjournment

- 24.1. The Chair of a General Meeting at which a quorum is present may with the consent of the majority of Full Members present at the meeting adjourn the meeting from time to time and place to place but no business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 24.2. When a General Meeting is adjourned for 28 days or more, notice of the adjourned meeting must be given to each Member stating the place, date and time of the adjourned meeting and the nature of the business to be transacted at that meeting.

25. Voting and decisions

- 25.1. Decisions made at a General Meeting shall be determined by at least a majority of the votes cast by Full Members eligible to vote at that meeting, except in the case where a special resolution is required by the Act or this Constitution.
- 25.2. If the votes are equal, the motion is not carried.
- 25.3. Each Full Member entitled to vote at General Meetings will have 1 vote only, whether on a show of hands or a poll.
- 25.4. If an individual attends a General Meeting representing more than 1 Full Member with an entitlement to vote, either as a Representative, proxy or attorney, then:
- a. on a show of hands, the individual is entitled to 1 vote only regardless of the number of Full Members the individual represents; and
 - b. on a poll taken on a resolution, the individual has 1 vote for each Full Member the individual represents.
- 25.5. A Full Member will not be entitled to exercise their right to vote if at the time of the meeting, their membership subscription is overdue (as defined in clause 16.2) and unpaid.
- 25.6. At any General Meeting a resolution put to the vote at the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded in accordance with the Act.
- 25.7. Unless a poll is so demanded, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that

effect in the minutes of the proceedings of the General Meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour or against the resolution.

- 25.8. If a poll is duly demanded it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chair directs and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- 25.9. A poll demanded on the election of a Chair or on the question of an adjournment must be taken immediately.

26. Proxies and attorneys

- 26.1. A Full Member who is entitled to vote at a General Meeting may by written instrument appoint a person as their proxy or attorney to attend, speak and vote for the Member at the meeting.
- 26.2. A proxy or attorney need not be a Member.
- 26.3. The instrument appointing a proxy is valid if it is in accordance with the Act or in a form prescribed or accepted by the Board from time to time.
- 26.4. The instrument appointing an attorney must be in the form as prescribed or accepted by the Board from time to time.
- 26.5. An instrument appointing a proxy or attorney must be received by the Association no later than 48 hours before the time of the meeting in respect of which the proxy or attorney is appointed.
- 26.6. A proxy or attorney may demand or join in demanding a poll.
- 26.7. The Full Member appointing a proxy may give specific directions as to how the proxy is to vote on his or her behalf, otherwise the proxy may vote on behalf of the Member in any matter as he or she sees fit.
- 26.8. In the event of a Full Member not nominating a particular person as proxy on the proxy form, the proxy may be exercised by the Chair unless the Member indicates otherwise.
- 26.9. A vote cast in accordance with the terms of an instrument of proxy or attorney or other instrument of appointment is valid despite:
- a. the death or unsoundness of mind of the appointing Member; or
 - b. the revocation of the instrument or the authority under which the instrument was executed,
- unless the Association has received written notice of the matter at least 48 hours (or any shorter period the Board may permit) before the start of the General Meeting or adjourned General Meeting at which the instrument is used.

27. Direct voting

- 27.1. The Board may determine that at any General Meeting, a Member who is entitled to vote at that meeting is entitled to a direct vote. A 'direct vote' includes a vote delivered to the Association by post, fax or other electronic means approved by the Board. The Board may specify the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.
- 27.2. If a Member casts a direct vote on a particular resolution that is put to a vote at a General Meeting, and the Member or their Representative, proxy or attorney attends the meeting, then they are not entitled to vote and must not vote on the matter at the General Meeting.

28. Attendance of non-members at General Meetings

- 28.1. The Board may invite any person that is not a Member to attend a General Meeting and the Chair may invite them to speak at a General Meeting.

Part D - Board of Directors

29. Powers of the Board

- 29.1. The Board will govern the business and affairs of the Association and may exercise all powers and do all such things that may be exercised or done by the Association, except for anything which must be exercised by the Association in General Meeting as required by the Act or by this Constitution.
- 29.2. The Board may by resolution make, amend or revoke by-laws for the purposes of giving effect to any provision of this Constitution or to govern the procedures and activities of the Association. These by-laws are binding on the Board and the Members provided that if a by-law directly impinges on a Member's right as a Member under this Constitution then the by-law does not come into force until it has been approved by an ordinary resolution at a General Meeting of Members.
- 29.3. Any question, issue or dispute relating to or arising in consequence from this Constitution shall be determined by the Board.

30. Delegation of powers

- 30.1. The Board may delegate any of its powers and/or functions to one or more committees or any employee of the Association or any other person as the Board thinks fit.
- 30.2. In exercising any powers so delegated, the committee, employee or person must comply with any terms and conditions that are set by the Board.

31. Number of Directors

- 31.1. The maximum number of Directors is 10.
- 31.2. The Board shall comprise:
 - a. at least 5 and up to 9 Elected Directors elected by the Full Members; and
 - b. up to 1 Appointed Director appointed in accordance with clause 33.1.

32. Director eligibility

- 32.1. An Elected Director must be a Full Member or a Representative, owner, employee or principal of a Full Member.

33. Appointed Director

- 33.1. The Elected Directors may by resolution appoint 1 additional individual as an Appointed Director to serve on the Board at any time, where appropriate skill, experience or knowledge is sought that complement the existing skills on the Board and to enhance the ability of the Board to discharge its duties and advance the Objects of the Association.
- 33.2. An Appointed Director may be, but is not required to be, a Member or a Representative, owner, employee or principal of a Member.

34. Elections

- 34.1. At each Annual General Meeting, approximately one-third of Elected Directors elected approximately 3 years prior will finish their term.
- 34.2. Elections for Elected Directors will be held by ballot prior to an Annual General Meeting, which may include an electronic ballot as determined by the Board. Results of an election will be announced at the Annual General Meeting.
- 34.3. Elections will be held in accordance with the procedures determined by the Board and set out in the by-laws.
- 34.4. In the event that insufficient nominations are received to fill the Elected Director positions in any year, the remaining vacant positions may be filled by the Board as a casual vacancy.
- 34.5. If the number of nominations received is less than or equal to the number of positions to be filled, all nominees will be declared elected without the need for a ballot.

35. Terms of office

- 35.1. Elected Directors will hold office for a term of approximately 3 years commencing from the end of the Annual General Meeting at which they were elected until the end of the third following Annual General

Meeting, but shall be eligible for re-election or reappointment, subject to clause 32.

- 35.2. An Appointed Director may not serve more than 2 consecutive terms. Upon serving 2 consecutive terms of up to 3 years each, an Appointed Director may only be considered for re-appointment after a period of at least 1 year following the expiration of their second term.

36. Alternate Directors

- 36.1. Alternate Directors are not permitted.

37. Casual vacancies

- 37.1. In the event of a casual vacancy occurring on the Board the vacancy may be filled by:
- a. in the case of an Elected Director, the Board appointing another individual who satisfies the criteria under clause 32.1;
 - b. in the case of an Appointed Director, the Board appointing any appropriate individual.
- 37.2. Any individual so appointed to fill a vacancy of an Elected Director will hold office for the remainder of the term of that vacancy.
- 37.3. The Board may act even if there are vacancies on the Board. However, if the number of Directors is reduced below the minimum number required by this Constitution or the Act (whichever is higher), the continuing Directors may act only:
- a. in an emergency; or
 - b. for the purposes of appointing additional Directors up to the minimum number; or
 - c. to convene a General Meeting.
- 37.4. The office of a Director becomes vacant if the Director:
- a. dies;
 - b. is an Elected Director who ceases to meet the eligibility criteria under clause 32.1;
 - c. becomes bankrupt or makes any arrangement or composition with creditors generally;
 - d. is prohibited from being a director of a company under the Act;
 - e. resigns their office by written notice given to the Association;
 - f. is removed from office pursuant to clause 38;
 - g. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

- h. Is absent from three successive board meetings unless the board resolves to grant special leave
- i. is convicted on indictment of an offence and the Board does not at the next meeting after that conviction resolve to confirm the Director's appointment to the office of Director; or
- j. fails to disclose a material personal interest in breach of the law unless at the next meeting of the Board the Board resolves otherwise.

38. Removal of Director

- 38.1. Full Members may by ordinary resolution in a General Meeting remove any Director from office in accordance with the Act.

39. Office Bearers

- 39.1. The Office Bearers of the Association are:
 - a. President;
 - b. up to 2 Vice Presidents; and
 - c. Treasurer.
- 39.2. The Board will appoint the Office Bearers from amongst its number at the first Board meeting held after the Annual General Meeting or at any time after a vacancy arises.
- 39.3. Each Office Bearer will hold their position:
 - a. for a period of approximately 1 year or until the first Board meeting following the next Annual General Meeting following their appointment, provided they remain a Director, but will be eligible for reappointment; or
 - b. until they resign from their position as Office Bearer by written notice to the Association; or
 - c. until they are removed from their position as Office Bearer by resolution of the Board.
- 39.4. The President and Vice-President/s must be an Elected Director.
- 39.5. There will be a limit on the number of terms that a Director may serve as President of 10 consecutive 1-year terms. Upon serving 10 consecutive 1-year terms as President, an individual may stand again as President after a period of 1 year has expired following the expiration of their tenth term.
- 39.6. Office Bearers will not hold office beyond their retirement or removal from the Board as a Director.

40. Payments to Directors

- 40.1. The Board may resolve to pay remuneration to any Director for ordinary services as a Director. However, the total amount paid in any year to all Directors must not exceed the maximum amount fixed by the Members in General Meeting.
- 40.2. Directors are also entitled to receive payments for:
 - a. out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously agreed by the Board; or
 - b. any service rendered to the Association by the Director in a professional or technical capacity, other than in the capacity as a Director, where the provision of the service has the prior approval of the Board and is on reasonable commercial terms.
- 40.3. Any such payment under clause 40.2 is in addition to the maximum amount fixed by Members in General Meeting under clause 40.1.

Part E - Board meetings

41. Calling of Board meetings

- 41.1. The Board will meet for the dispatch of business, adjourn and otherwise regulate its meetings at such place and time as the Board may determine.
- 41.2. The President or any 2 or more Directors may at any time, and the Company Secretary must on the request of the President or any 2 or more Directors, call a Board meeting.

42. Notice

- 42.1. Subject to clause 42.2, all Directors must be given at least 7 days notice of a Board meeting.
- 42.2. In cases of urgency, a meeting can be held without notice being given in accordance with clause 42.1 provided that as much notice as practicable is given to each Director by the quickest means practicable.
- 42.3. Notice may be given orally or in writing and using any technology.

43. Quorum

- 43.1. No business shall be transacted at a meeting of the Board unless a quorum is present. The quorum for a meeting of the Board shall be half of the number of Directors currently in office, rounded up if not a whole number.

44. Chair

- 44.1. At a meeting of the Board, the President shall preside as Chair. If the President is absent or is unwilling to act, then the Vice President shall

preside as Chair and if the Vice President is not present or is unwilling to act, the remaining Directors shall choose another Director to preside as Chair at the meeting.

- 44.2. Despite anything in clause 44.1, if the President (or as applicable Vice President) later attends a meeting of Directors or is later willing to act then they must take the role of Chair of the meeting.

45. Voting and decisions

- 45.1. Decisions made at a meeting of the Board shall be determined by a majority of votes cast by Directors present and eligible to vote at the meeting. Each Director eligible to vote has 1 vote.
- 45.2. In the event of an equality of votes on any question, the Chair does not have a second or casting vote.

46. Conflict of interest

- 46.1. A Director who has an interest in a matter being considered at a Board meeting must disclose the nature and extent of that interest to the Board.
- 46.2. Unless permitted to do so by the Act, a Director who has a material personal interest must not be present while the matter is being considered at the meeting and must not vote on the matter.

47. Use of technology

- 47.1. A Board meeting may be held using any technology consented to by all the Directors. The consent may be a standing one.
- 47.2. A Director may only withdraw their consent to the use of technology proposed for a Board meeting if they do so at least 48 hours before the meeting.
- 47.3. A Board meeting held by means of technology is taken to be held at the place where the Chair of the meeting is, or at such other place as determined by the Chair of the meeting provided that at least 1 of the Directors involved was at that place for the duration of the meeting.
- 47.4. A Director who participates in a Board meeting permitted under clause 47.1 is taken to be present at the meeting and is entitled to vote.

48. Resolutions made outside of Board meetings

- 48.1. The Board may pass a resolution without a Board meeting being held. The resolution may be passed by written or electronic communication.
- 48.2. The resolution is passed if at least a majority of Directors entitled to vote on the resolution sign or authorise a document stating that they are in favour of the resolution proposed. The resolution is taken to be

passed when the last Director who constitutes a majority in favour signs or authorises the document.

- 48.3. Any such resolution may consist of multiple copies of the same document, each signed or authorised by one or more of the Directors. The document may be in the form of a facsimile transmission or electronic communication.

49. Validity of acts

- 49.1. Any act done by the Board is valid and effective despite any defect that may afterwards be discovered in the appointment or qualification of any Director.
- 49.2. A procedural defect in decisions made by the Board will not result in such decisions being invalidated.

Part F - Records

50. Minutes

- 50.1. The Board must ensure that minutes are made and kept of
- a. proceedings and resolutions of Board meetings;
 - b. proceedings and resolutions of General Meetings of Members;
 - c. resolutions passed by the Board without a meeting; and
 - d. proceedings and resolutions of any committees of the Board.

51. Registers

- 51.1. The Association must keep all registers required by this Constitution and the Act.
- 51.2. The registers must be made available as required by the Act.

52. Financial records

- 52.1. The Association must keep financial records that correctly record and explain its transactions, financial position and performance and enable financial statements to be prepared as required by the Act.

53. Financial year

- 53.1. The financial year is the year ending 30 June or such other date as the Board shall determine.

54. Auditor

- 54.1. If required by the Act, the Board must have the financial records of the Association audited.

54.2. Any auditor appointed must be an independent person who satisfies the requirements under the Act.

55. Inspection of records

55.1. A Member is not entitled to inspect the financial records or other documents of the Association unless authorised by the Board or the Act.

Part G - Administration

56. Company Secretary

56.1. There must be at least 1 Company Secretary appointed by the Board on any terms as the Board sees fit. The Board may remove or terminate such appointment subject to law.

57. Alteration of Constitution

57.1. This Constitution may only be altered by special resolution in accordance with the Act.

58. Notices

- 58.1. Any notice required to be given to a Member under this Constitution may be given:
- a. by handing the notice to the Member personally; or
 - b. by sending it by post to the Member at the address recorded in the Register; or
 - c. by email or facsimile transmission to an address or number provided by the Member.
- 58.2. Any notice required to be given to the Association may be given:
- a. by sending the notice by post to the registered address; or
 - b. by leaving the notice at the registered address; or
 - c. by email to the email address nominated by the Association for that purpose; or
 - d. by facsimile transmission to the facsimile number of the Association.
- 58.3. A notice is taken, unless the contrary is proved, to have been given or served:
- a. in the case of a notice given or served personally, on the date on which it is received by the Member or the Association;
 - b. in the case of a notice sent by post, on the next business day after posting; and

- c. in the case of a notice sent by electronic or facsimile transmission, on the date it was sent.

59. Indemnity and insurance

- 59.1. For the purposes of clauses 59.2 and 59.4, *officer* has the same meaning as in the Act including an individual who is or has been a Director or Company Secretary.
- 59.2. To the extent permitted by law, the Association will indemnify each officer and past officer against all liabilities incurred by the person as an officer of the Association, except for a liability:
 - a. owed to the Association or a related body corporate;
 - b. for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - c. arising out of conduct involving a lack of good faith.
- 59.3. To the extent permitted by law, the Association will indemnify each officer and past officer against reasonable legal costs incurred in defending an action for a liability incurred as an officer of the Association, except for legal costs incurred:
 - a. in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under clause 59.2;
 - b. in defending or resisting criminal proceedings in which the person is found guilty;
 - c. in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this sub-clause (c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order); or
 - d. in connection with proceedings for relief to the person under the Act in which the court denies the relief.
- 59.4. Subject to clause 59.5, the Association may purchase and maintain insurance or agree to pay a premium for a contract insuring a person who is or has been an officer of the Association against a liability incurred by the person as an officer of the Association.
- 59.5. The Association must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer of the Association against a liability, other than one for legal costs, arising out of:

- a. conduct involving a wilful breach of duty in relation to the Association; or
- b. a contravention of section 182 or 183 of the Act.

60. Execution of documents

- 60.1. The Association may execute a document without using a common seal if the document is signed by:
 - a. 2 Directors; or
 - b. 1 Director and the Company Secretary.
- 60.2. The Association may use a common seal. If the seal is fixed to a document the seal is to be witnessed by:
 - a. 2 Directors of the Association; or
 - b. 1 Director and the Company Secretary.

61. Jurisdiction

- 61.1. All Members submit to the non-exclusive jurisdiction of the Supreme Court of the New South Wales, the Federal Court of Australia and the Court that may hear appeals from those Courts.

62. Winding Up

- 62.1. If required, each Member must contribute up to the guarantee amount in the event of the Association being wound up while they are a Member, or within one year after their membership ceases. The guarantee amount is limited to:
 - a. for Full Members, \$100.00; and
 - b. for Retail Members, up to the amount of any unpaid subscription.
- 62.2. The contribution is for:
 - a. payment of the Association's debts and liabilities contracted before their membership ceased;
 - b. the costs of winding up; and
 - c. the adjustment of the rights of the contributories among themselves.
- 62.3. In the event of the winding up or the cancellation of the incorporation of the Association, the surplus assets of the Association must not be distributed to any Member of the Association as a Member.
- 62.4. Subject to the Act and any court order made under the Act, the surplus assets must be given to a body that:
 - a. has similar objects to the Association and whose constitution requires it to apply its income in promoting those objects; and

- b. whose constitution prohibits it from making distributions to its members to at least the same extent as in clause 6.
- 62.5. The body to which the surplus assets are to be given is to be determined by Members at or before the time of winding up, or failing that, by the Board at or before the time of winding up, and failing such determination, by application to a court that has jurisdiction in the matter.

Part H - Transitional arrangements

63. Members

- 63.1. At the adoption of this Constitution:
- a. the categories of Full Member listed in clause 5.4.1 of the constitution that is replaced by this Constitution shall continue until the Board endorses, changes or abandons those categories in accordance with clause 7.3 of this Constitution;
 - b. an Associate Member in accordance with clause 5.2.1(b) of the constitution that is replaced by this Constitution shall become a Retail Member in accordance with clause 9.1.b of this Constitution;
 - c. the categories of Associate Member listed in clause 5.5.1 of the constitution that is replaced by this Constitution shall cease until such time as the Board determines categories in accordance with clause 7.3 of this Constitution;
 - d. Companion Members – a Companion Member listed in the Register of Members shall continue subject to clause 12 of this Constitution and shall enjoy rights as a Retail Member; and
 - e. Hall of Fame Members – a Hall of Fame Member listed in the Register of Members shall continue subject to clause 12 of this Constitution and shall enjoy the rights as a Retail Member but:
 - i. may continue to describe themselves as a Hall of Fame Member; and
 - ii. despite clause 16 of this Constitution shall not be subject to any annual subscription or levy.
- 63.2. Disciplining of Members – at the adoption of this Constitution if a process has commenced with any Member and as a result of which a notice of complaint that has been issued in accordance with clause 11.1.2(a) of the constitution that is replaced by this Constitution then that process continues until completion in accordance with clause 11 of the constitution that is replaced by this Constitution.

64. Board

- 64.1. At the adoption of this Constitution, the Directors of the Association including the Office Bearers shall continue subject to this Constitution provided that:
- a. all Directors including Office Bearers shall be deemed Elected Directors;
 - b. if there is an Honorary Treasurer they shall be the Treasurer in accordance with clause 39.1.c of this Constitution;
 - c. if the number of Directors including Office Bearers exceeds the maximum in clause 31 of this Constitution then all existing Directors may continue even though the number exceeds the maximum until the sooner of the first annual general meeting after the adoption of this Constitution or until the number drops to the maximum as a result of Directors vacating their position in accordance with clause 37.4 of this Constitution provided that while the number of Elected Directors including Officer Bearers exceeds the maximum number set by clause 31.2.a of this Constitution then the Board must not appoint an Appointed Director in accordance with clauses 31.2.b and 33;
 - d. the following current Directors will retire at the Annual General Meeting in 2015 but, if eligible, may stand for re-election as an Elected Director:
 - i. Nigel Kirby
 - ii. Barry Marks
 - iii. Joel Farberman
 - iv. David Schwartz
 - v. Christophe Rymer
 - vi. Patricia Guest;
 - e. the following current Directors will retire at the Annual General Meeting in 2016 but, if eligible, may stand for re-election as an Elected Director:
 - i. Rowen Bavinton
 - ii. Renske Carbone
 - iii. Gloria Gattuso;
 - f. the following current Directors will retire at the Annual General Meeting in 2017 but, if eligible, may stand for re-election as an Elected Director:
 - i. Dean Osmond
 - ii. Richard Hogan
 - iii. Tim McCauley;
 - g. any Office Bearer appointed under the constitution that was replaced by this Constitution who continues without interruption in the same Office Bearer role in accordance with this Constitution shall count the term or terms provided they were consecutive in that Office Bearer position under the constitution that is replaced

by this Constitution as a term or terms for the purposes of clause 39.5 of this Constitution; and

- h. for the avoidance of doubt, any appointment in accordance with clause 64.1b is not a continuation in accordance with clause 64.1.g.

64.2. In line with the order issued by Fair Work Australia on 31 Jul 2012 that cancelled the Association's registration under the Fair Work (Registered Organisations) Act 2009 implementation of clause 21.1.3 of the constitution that is replaced by this Constitution is not required for this Constitution to apply.