

# AUSTRALIAN IBERO-AMERICAN BUSINESS COUNCIL



Map showing 'Member' and 'Observer States' of the Organisation of Ibero-American States + Australia

## Constitution

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CORPORATIONS LAW

A PUBLIC COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL

CONSTITUTION

of

Australian Ibero-American Business Council Limited

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# Chapter 1 – INTERPRETATION

## 1 How to read this Constitution

1.1 This Constitution contains clauses setting out the manner in which the Members of the Council have agreed to conduct the internal administration of the Council. All of the Replaceable Rules set out in the Corporations Act which the Council is entitled to displace, are displaced by the clauses set out in this Constitution.

## 2 Definitions

2.1 In this Constitution, unless the context otherwise requires:

“**AGM**” means an annual general meeting of the Council;

“**ASIC**” means the Australian Securities and Investments Commission;

“**Auditor**” means the auditor for the time being of the Council;

“**Authorised Representative**” means a person nominated as such by a Member;

“**Board**” means the board of the Directors of the Council, and any other Members the Directors appoint ;

“**Constitution**” means this Constitution and any supplementary, substituted or amended Constitution for the time being in force;

“**Corporate Council**” means the Corporate Councillors collectively;

“**Corporate Councillor**” means a person who accepts the invitation of the Directors to become a Corporate Councillor because of involvement as a representative of a Corporate Member, or as an individual who has, or representative of an organisation which has, a role in advancing Australian Ibero-American trade and investment;

“**Chair**” means the person appointed to be the Chair of meetings of Directors or the Chair of meetings of Members (as applicable);

“**Chief Executive**” includes the assistant or acting Chief Executive or any substitute for the time being for the Chief Executive;

“**Council**” means the Australian Ibero-American Business Council Limited;

“**Director**” means any person formally and lawfully appointed as a director of the Council, including an alternate Director;

“**Directors**” means all or any number of the Directors for the time being;

“**Guarantee**” means the maximum amount each Member agrees to pay to the Council in accordance with clause 6;

“**Government Representation**” means an official representation of an OEI State, a Strategic Partnership State or Australia, including government instrumentalities, diplomatic, consular or trade missions or delegations or other government-funded bodies;

“**Law**” means the Corporations Act 2001 or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or re-enacted;

“**Member**” means a person admitted as a Member under Chapter 3 Division 1 and whose name is entered on the Register of Members;

“**OEI Member State**” means a State to which is a member of the Organization of Ibero-American States (OEI). (Organização dos Estados Ibero-americanos in Portuguese. Organización de Estados Iberoamericanos in Spanish), and/or a participant or observer in the annual Ibero-American summit;

“**OEI State**” means majority and or minority Portuguese- and Spanish-speaking nations of the Americas and Europe and Equatorial Guinea in Africa;

“**Officer**” means an officer of the Council within the meaning of the Law;

“**Register of Members**” means the Register of Members to be kept pursuant to the Law;

“**Replaceable Rule**” has the same meaning as in the Law;

“**Secretary**” includes the assistant or acting Secretary or any substitute for the time being for the Secretary;

“**Strategic Partnership State**” means a State with strong trade, cultural, economic, education or diplomatic interest in, or historical links, to either Australia or an OEI State; and

“**Subscription**” means the amount payable by a Member under clause 18.

## 2.2 Words importing:

- (a) persons include companies, corporations and organisations and vice versa;
- (b) the masculine gender include the feminine gender and vice versa; and
- (c) the singular number include the plural number and vice versa.

2.3 An expression used in this Constitution that has a particular meaning in any Part or Division of the Law has the same meaning as in the Part or Division.

## 3 Amendment to Constitution

3.1 No addition, alteration or amendment shall be made to the objects as set out in clause 7 unless previously submitted (as appropriate) to the Australian Taxation Office and the Australian Taxation Office has provided written advice that the proposed addition, alteration or amendment does not remove or have the effect of removing the tax-exempt status of the Council.

## **Chapter 2 - NATURE OF THE COUNCIL**

### **4 Name of the Company**

4.1 The name of the company is Australian Ibero-American Business Council Limited.

### **5 Public company limited by Guarantee**

5.1 The Council is a public company limited by Guarantee and is not for profit.

5.2 The Council must not be carried on for the purpose of the profit or gain of any Member.

5.3 The Council does not have the power to:

- (a) issue shares of any kind;
- (b) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the Council for the benefit of, or to a, Member: or
- (c) donate directly to a political party or union.

5.4 The restriction under clause 5.3 does not prevent the payment in good faith of:

- (a) remuneration as provided for in clauses 61 and 62;
- (b) interest on money lent to the Council by a Member at reasonable rates;
- (c) rent, management fees and any expenses that further the interests of the council; or
- (d) money, or the provision of other support, to anybody associated with the promotion and fostering of trade, commerce, culture and business between the nations of the OEI and Strategic Partnership States (together with their citizens, corporations and institutions) and Australia.

### **6 Guarantee of Members**

6.1 Each Member undertakes to contribute a maximum of ten dollars (A\$10.00) to the Council for payment of:

- (a) the debts and liabilities of the Council;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves, in the event that the Council is wound up -
  - (i) while the Member is a Member; or
  - (ii) within one year after the Member ceases to be a Member.

### **7 Objects of the Council**

7.1 The objects for which the Council is established are:

- (a) to promote and foster trade, commerce, culture and business links between Australia and the majority and minority Spanish and Portuguese speaking nations of the world (including OEI States, Strategic Partnership States, their citizens, corporations, governments and institutions, including Chambers of Commerce);
- (b) to provide a formal structure for the coordination of business, diplomatic and cultural activities and events for all Member categories including, but not limited to, interested representatives of the Australian and Ibero-American business sectors, Chambers of Commerce, representatives of OEI States, Strategic Partnership States and of the Ibero-American Organisation;
- (c) to promote an awareness in Australia of the legal systems, regulatory environment and general business culture of the OEI, OEI Member States, Strategic Partnership States and vice versa.
- (d) to engage in high-level dialogue on mutually beneficial economic and public policy issues with Australian and Ibero-American political leaders, senior officials, diplomats, business delegations, academics and cultural leaders.

## **8 Scope of powers of the Council**

- 8.1 The Council has the legal capacity and powers of an individual, both in and outside Australia. The Council also has all the powers of a body corporate other than those powers denied by the Law to a company limited by guarantee.
- 8.2 The board will at its absolute discretion be able to use an outsourced secretariat where appropriate, to provide administration and management functions in support of the Council's objectives.

## **Chapter 3 - MEMBERS**

### **DIVISION 1 - MEMBERSHIP**

#### **9 Number of Members**

- 9.1 There must be at least one Member.
- 9.2 There shall be no maximum limit on the number of Members.

#### **10 Admission to membership**

- 10.1 The Board may at its discretion admit any association, organisation, institution, body, entity or Government Representation which is eligible for membership under clause 12, as a Member on the terms and conditions it prescribes from time to time.

#### **11 Categories of Membership**

- 11.1 The categories of Members are:

- (a) Corporate Members;
- (b) Charter Members;
- (c) Associate Members; and
- (d) Such other category as the Board may from time to time determine.

- 11.2 The Members shall have the rights and obligations as set out in clause 12. All Members have the right to receive notices required to be given to Members under this Constitution.

#### **12 Eligibility for Membership**

##### **12.1 Corporate Member**

- (a) The Board may at its discretion admit as a Corporate Member, an individual, corporation or other entity which has an interest in trade, diplomacy, culture, investment, commerce and business in or between OEI States or Strategic Partnership States and Australia.
- (b) Consideration to become a Corporate membership is the provision of sponsorship to the Council of at least \$13,000 per annum (or some other higher amount as determined by the Directors from time to time) either in cash or value in kind, on an ongoing basis each year in which Membership is retained.
- (c) Subject to payment of the sponsorship under clause 12.1(b), no further subscription is payable by the Corporate Member. Member costs for specific events or trips may be extra.
- (d) A Corporate Member is entitled to nominate one Authorised Representative to attend and vote at meetings of Members.

- (e) A Corporate Member can have the status of 'Major Partner' conferred (with additional benefits as determined by the directors from time to time) at the absolute discretion of the board.

## 12.2 Charter Member

- (a) The Board may at its discretion admit as a Charter Member an association, organisation, institution, or body, entity or Government Representation which in the opinion of the Board:
  - (i) promotes the national commercial, trade, investment and business interests of any OEI State, Strategic Partnership State or OEI Member State;
  - (ii) represents trade, cultural, diplomatic, investment, business and/or academic interests; or
  - (iii) represents Australian organisations with interests in commercial, cultural, diplomatic, trade, investment, business and/or academic interests.
- (b) A Charter Member is entitled to nominate one Authorised Representative to attend and vote at meetings of Members.

## 12.3 Associate Member

- (a) The Board may at its discretion admit as an Associate Member an individual, association, organisation, institution, body, entity or Government Representation where the Board considers that the admission of that individual, association, organisation, institution, body, entity or Government Representation would advance achievement of the objects of the Council.
- (b) An Associate Member is entitled to nominate one Authorised Representative to attend meetings of Members, however such Authorised Representative is not entitled to vote.

12.4 In admitting any Member the Board will apply the following Guidelines in sections 12.5 through 12.9.

12.5 It is intended that the Members only comprise individuals, associations, organisations, institutions, bodies and entities which promote and foster or have an interest in trade, investment, culture, education, diplomacy, commerce and business in and between the OEI States, OEI Member States or Strategic Partnership States and Australia.

12.6 It is intended that an individual, corporation or other entity be admitted as Corporate Member only if its admission as such is not likely, in the opinion of the Board, to have a materially adverse effect on the interests of another Member.

12.7 Each OEI State, OEI Member State and Strategic Partnership State can only be represented by one Charter Member (although an Authorised Representative can represent more than one Charter Member).

12.8 Where there is more than one association, organisation, institution, body, entity, or Government Representation wishing to represent a particular OEI State, OEI Member State or Strategic Partnership State as a Charter Member, priority will be given to the

association, organisation, institution, body, entity or Government Representation which in the opinion of the Board best represents and promotes the national commercial, trade and business interests of the OEI State, OEI Member State or Strategic Partnership State.

- 12.9 A Charter Member will, if requested by the Board, become an Associate Member where the Board resolves that another organisation is more suitable (in accordance with the membership criteria) to be a Charter Member to represent that OEI State, OEI Member State or Strategic Partnership State.

### **13 Corporate Council**

- 13.1 The Council has appointed a Corporate Council of corporate, government, diplomatic and cultural leaders as patrons of the Council. Corporate Councillors are appointed and removed by the Board at the Board's discretion based on their involvement as a representative of a Corporate Partner, or as an individual who has, or representative of organisations who have a role in advancing Australian, OEI State, OEI Member State, Strategic Partnership State relations.
- 13.2 The Corporate Council has no fiduciary role.
- 13.3 Corporate Councillors are appointed or removed exclusively by invitation or instruction of the Board and are not automatically Members.
- 13.4 The form and function of Corporate Council and Corporate Councillors are at the absolute discretion of the board and can be changed, expanded, reduced or revoked at any time.

### **14 Address of Member**

- 14.1 Each Member shall provide to the Secretary details of an address where the Council can send notices.
- 14.2 If a Member fails to provide an address in accordance with clause 14.1, the address of the Member is deemed to be the registered office of the Council.

### **15 Application to become a Member**

- 15.1 Every application to become a Member shall be made in writing to the Chairman on the form prescribed by the Board and containing such information and undertakings as the Board may reasonably require and, subject to clause 12.1(b), shall be accompanied by the first annual subscription, which will be refunded in full if the application is not accepted.
- 15.2 The Board will consider the application as soon as practical. The Chairman will notify the applicant as soon as practicable following the Board's decision on the application as to whether or not the application was accepted, the category of membership to which the applicant is admitted and any terms and conditions of acceptance.

### **16 Authorised Representative**

- 16.1 Any Member which is not a natural person must by notice in writing to the Chairman appoint a natural person who will act as the Member's Authorised Representative to exercise the Member's rights. The Authorised Representative may (with the Member's

approval) appoint an alternate person to exercise some or all of those powers for a specified period and may terminate that appointment at any time. Notice of the appointment of an alternate must be given to the Chairman. The exercise of powers by the alternate is just as effective as if the powers were exercised by the appointed Authorised Representative.

16.2 Such person shall have the right to attend the General Meetings of the Council and, where appointed by a Corporate or Charter Member, to vote on behalf of the Corporate or Charter Member appointing that person.

16.3 The Member may terminate such appointment and must notify the Chairman of the termination and simultaneously nominate another person as its Authorised Representative.

## **17 Applicant to Agree to be Bound**

17.1 Every person admitted to membership of the Council shall be deemed to have agreed to be bound by the Constitution and by any rules, regulations or by-laws of the Council from time to time in force.

## **18 Members Subscriptions**

18.1 Entrance subscriptions and annual membership fees for the categories of membership shall be as determined by the Board from time to time.

## **DIVISION 2 - CESSATION OF MEMBERSHIP**

### **19 Events leading to cessation**

19.1 A Member ceases to be a member if:

- (a) The Member resigns in writing (the resignation being effective on the date the resignation is received by the Chairman unless another date is stated in the resignation notice).
- (b) The OEI State which the Member represents ceases to be an OEI State.
- (c) The OEI Member State which the Member represents ceases to be an OEI Member State without becoming an OEI State or Strategic Partnership State.
- (d) The Strategic Partnership State which the Member represents ceases to be a Strategic Partnership State without becoming an OEI State.
- (e) The Member becomes subject to any form of insolvency administration.
- (f) In the event that a Corporate Member fails to provide sponsorship as required under clause 12.1(a), the Corporate Member ceases to be a Corporate Member.

### **20 Non-payment of Subscription**

20.1 If any Subscription payable by a Member remains unpaid for more than three (3) months, the Board may suspend all or any privileges of membership of that member

until payment in full and if the Subscription remains unpaid for more than four (4) months the Board may terminate the membership of that Member.

## **21 Effect of Cessation**

21.1 A Member who ceases to be a Member continues to be liable for -

- (a) any Subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the Council; and
- (c) the Guarantee.

21.2 A Member who ceases to be a Member must immediately cease to use any logo, trademark or other indications of membership of the Council or in any other way hold themselves out as being a Member of the Council.

## **22 Power of Directors in respect of a Member's Conduct**

22.1 If any Member -

- (a) breaches any provision of the Constitution; or
- (b) is guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Council, the Board has the power to censure, suspend or expel the Member from the Council.

22.2 At least one week before the meeting of the Board at which a resolution under clause 22.1 is proposed the Council shall provide the Member with -

- (a) notice of the meeting;
- (b) the allegations against them;
- (c) the intended resolution; and
- (d) advice that the Member shall, at the meeting and before the passing of the resolution, have an opportunity to give, orally or in writing, any explanation or defence they may think fit.

22.3 Any Member referred to in clause 22.1 may, by notice in writing lodged with the Chairman at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Council in general meeting.

22.4 If an election is made under clause 22.3 -

- (a) a general meeting must be convened and the resolution considered; and
- (b) if the resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot), the Member concerned shall be dealt with accordingly.

## **Chapter 4 - MEETINGS OF MEMBERS**

### **DIVISION 1 - WHO MAY CALL MEETINGS OF MEMBERS**

#### **23 Calling of meetings of Members by a Director**

23.1 The Chairman (on receipt of a request by two (2) or more Directors) may call a general meeting of Members.

#### **24 Calling of general meetings by Directors when requested by Members**

24.1 Without limiting any applicable provisions of the Law regarding general meetings of a public company, the Board must call and arrange to hold a general meeting on the request of 51% or more Corporate and Charter Members.

#### **25 Failure of Directors to call general meeting**

25.1 Members who make a request under clause 24 may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Council.

#### **26 Calling of meetings by Members**

26.1 A majority of 51% or more Corporate and Charter Members may call and arrange to hold a general meeting as per clause 24.

#### **27 Expenses of calling meeting**

27.1 The Members calling a meeting under clause 24, 25 or 26 must pay the expenses of calling and holding the meeting unless the Board agrees otherwise.

### **DIVISION 2 - HOW TO CALL MEETINGS OF MEMBERS**

#### **28 Amount of notice of meetings**

28.1 Subject to the Law, at least 21 days notice must be given of a meeting of Members.

28.2 Subject to clause 28.3, the Council may call on shorter notice -

- (a) an AGM, if all of the Members entitled to attend and vote at the AGM agree beforehand; and
- (b) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.

28.3 At least 21 days notice must be given of a meeting of Members at which a resolution will be moved to -

- (a) remove a Director under clause 59;
- (b) appoint a Director in place of a Director removed under clause 59;

- (c) remove an Auditor

## **29 Notice of meetings of Members**

- 29.1 Written notice of the meeting of Members must be given individually to each Member entitled to vote at the meeting and to each Director.
- 29.2 Notice to joint Members must be given to the joint Member first named in the register of Members.
- 29.3 The Council may give the notice of meeting to a Member -
- (a) by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member;
  - (b) by sending it to the fax number or electronic address (if any) nominated by the Member; or
  - (c) by any other means authorised by the Law.
- 29.4 A notice of meeting sent by:
- (a) post is deemed to be received three days after it is posted; and
  - (b) fax or other electronic means is deemed to be received on the business day after it is sent.

## **30 Auditor entitled to notice and other communication**

- 30.1 The Council must give its Auditor:
- (a) notice of general meeting in the same way that a Member is entitled to receive notice; and
  - (b) any other communication relating to the general meeting that a Member is entitled to receive.

## **31 Contents of notice of meeting**

- 31.1 The notice of meeting must conform with the requirements of the Law.

## **32 Notice of adjourned meetings**

- 32.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

## **DIVISION 3 - MEMBERS' RIGHTS TO PUT RESOLUTIONS AT THE GENERAL MEETING**

### **33 Members' resolutions**

- 33.1 Ten (10) or more Members may give the Council notice of a resolution they propose to be moved at a general meeting.
- 33.2 The notice must:

- (a) be in writing;
- (b) set out the wording of the resolution; and
- (c) be signed by the Members proposing to move the resolution;

#### **DIVISION 4 - HOLDING OF MEMBERS MEETINGS**

#### **34 Time and place for meetings of Members**

34.1 A meeting of Members must be held at a reasonable time and place for the Chairman.

#### **35 Technology**

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

#### **36 Quorum**

36.1 The quorum for a meeting of Members is two (2) Members entitled to vote at such meeting and the quorum must be present at all times during the meeting. The Chairman or their authorised representative must be present.

36.2 In determining whether a quorum is present, individuals attending as proxies or Authorised Representatives are to be counted.

- (a) If a Member has appointed more than one proxy or Authorised Representative only one of them is to be counted.
- (b) If an individual is attending both as a Member and as a proxy or Authorised Representative they are to be counted only once.

36.3 A meeting that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is to be adjourned to a date, time and place as the Chairman specifies.

- (a) If the Chairman does not specify one or more of those requirements, the meeting is adjourned to –
  - (i) if the date is not specified, the same day of the next week;
  - (ii) if the time is not specified, the same time; or
  - (iii) if the place is not specified, the same place.

36.4 The quorum for the resumed meeting is two (2) Members entitled to vote at such meeting, one (1) of which must be the Chairman or their authorised representative. If no quorum is present at the resumed meeting the Chair can use his or her casting vote.

### 37 Chairing meetings of Members

37.1 The Chair, or their authorised representative, or, if not available a Corporate or Charter Member present at the meeting elected by the Members, shall preside as Chair at every meeting of Members.

### 38 Auditor's right to be heard at meetings of Members

38.1 The Auditor is entitled to attend and be heard at meetings of Members.

38.2 The Auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the Auditor in their capacity as Auditor.

38.3 The Auditor is entitled to be heard even if -

- (a) the Auditor retires at the meeting; or
- (b) the meeting passes a resolution to remove the Auditor from office.

38.4 The Auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

## DIVISION 5 - PROXIES AND BODY CORPORATE REPRESENTATIVES

### 39 Proxies and body corporate representatives

39.1 A Member who is entitled to attend and cast a vote at a meetings of Members may appoint a proxy to attend and vote for the Member at that meeting.

39.2 Any proxy must be appointed and has the rights set out in the Law.

39.3 The form of proxy to be used shall be as near as possible to the following:

<b>AUSTRALIAN IBERO-AMERICAN BUSINESS COUNCIL LIMITED</b>	
I	of
being a Member of the above-named Council hereby appoint	
	of
or failing him	
	of
as my proxy to vote for me on my behalf at the (Annual or Extraordinary as the case may be) General meeting of the Council to be held on the day of and at any adjournment thereof.	
Signed this	day of .
This form is to be used <u>*against / in favour of</u> the resolution.	
*Strike out whichever is not desired. (Unless otherwise instructed the proxy may vote as he thinks fit).	

## **DIVISION 6 - VOTING AT MEETINGS OF MEMBERS**

### **40 How many votes a Member has**

40.1 At a meeting of Members:

- (a) all resolutions (other than the appointment of Directors) shall be subject to a majority vote of the Members (Corporate and Charter); whereby
  - (i) the votes cast by the majority of Corporate Members shall comprise two thirds of the total votes cast on the resolution; and
  - (ii) the votes cast by a majority of Charter Members shall comprise one third of the total votes cast.
- (b) in determining the outcome of the resolution
  - (i) on a show of hands each Member entitled to vote at such meeting present shall have one vote to be exercised in accordance with the provisions of this clause; and
  - (ii) on a poll each Member entitled to vote at such meeting present in person or by its Authorised Representative or by proxy or by attorney or other duly authorised representative shall have one vote to be exercised in accordance with the provisions of this clause.

40.2 On a resolution for the election of Directors:

- (a) only Corporate Members may nominate, second and cast votes in relation to the election of general Directors nominated by a Corporate Member in accordance with Clause 51, and
- (b) only Charter Members may nominate, second and cast votes in relation to the election of a Director nominated by a Charter Member in accordance with Clause 51.

40.3 The Chair shall have a casting vote.

### **41 Objections to right to vote**

41.1 A challenge to a right to vote at a meeting of Members -

- (a) may only be made at the meeting; and
- (b) must be determined by the Chair whose decision is final.

### **42 How voting is carried out**

42.1 A resolution put to the vote at a meeting of Members must be decided on a show of hands unless a poll is demanded.

42.2 On a show of hands, a declaration by the Chair is conclusive evidence of the result.

42.3 Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

### **43 Matters on which a poll may be demanded**

43.1 A poll may be demanded on any resolution other than resolutions concerning:

- (a) The election of the Chair; or
- (b) The adjournment of the meeting.

43.2 A poll may be demanded by:

- (a) at least 51% of Members entitled to vote on the resolution; or
- (b) the Chair.

43.3 A poll may be demanded:

- (a) before a vote is taken;
- (b) before the voting results in a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

43.4 The percentages of votes that Members have is to be worked out as at midnight before the poll is demanded.

### **44 When and how polls must be taken**

44.1 A poll demanded on a matter other than the election of a Chair or the question of an adjournment must be taken when and in the manner the Chair directs.

44.2 A poll on the election of a Chair or on the question of an adjournment must be taken immediately.

## **DIVISION 7 - AGMs**

### **45 Holding of AGM**

45.1 The Council must hold an AGM at least once in each calendar year and within five months after the end of its financial year.

45.2 An AGM is to be held in addition to any other meetings held by the Council in a year.

45.3 If the Council only has one Member, it need not hold an AGM.

### **46 Extension of time for AGM**

46.1 The Council may lodge an application with the ASIC to extend the period within which it is required to hold the AGM in accordance with the law.

### **47 Consideration of Reports at AGM**

47.1 The Directors must lay before an AGM for the last financial year that ended before the AGM completed in accordance with the requirements of the Law:

- (a) the Financial report;
- (b) the Director's report; and
- (c) the Auditor's report,

#### **48 Business of the AGM**

48.1 The business of the AGM may include any of the following, even if not referred to in the notice of meeting -

- (a) the consideration of the annual financial report, Director's report and Auditor's report;
- (b) the election of Directors;
- (c) the appointment of the Auditor; and
- (d) the fixing of the Auditor's remuneration.

#### **49 Questions by Members of the Council**

49.1 The Chair of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Council.

#### **50 Questions by Members of Auditors**

50.1 If the Auditor or the Auditor's representative is at the meeting, the Chair of an AGM must allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditor or the Auditor's representative questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

## **Chapter 5 – DIRECTORS**

### **51 Number of Directors**

- 51.1 The Council must have at least three (3) General Directors (excluding the Chief Executive) unless the Members in general meeting otherwise determine.
- 51.2 The Board may invite the Chief Executive to also become a member of Board.
- 51.3 Charter Members are entitled to nominate one (1) non-executive board member.

### **52 Election of Directors**

- 52.1 Directors under clauses 51.1 and 51.3 shall be elected by the Members at an AGM and shall hold office for three (3) years after being elected, and may be eligible for re-election.

### **53 Directors may appoint other Directors**

- 53.1 The Directors may appoint a person as a Director to fill a casual vacancy in the positions under clause 51 at their absolute discretion.
- 53.2 Persons appointed under clause 53.1 will immediately become a Director, but the appointment will be subject to ratification at the next AGM. If the appointment is not confirmed, the person ceases to be a Director at the end of the AGM.
- 53.3 The term of any person who becomes a Director under clause 53.2 will be until the end of the term.

### **54 Non-eligibility of Auditor**

- 54.1 The Auditor is ineligible to be elected or appointed as a Director or alternate Director.

### **55 Procedure for Election of Directors**

- 55.1 The election of Directors shall take place as follows:
  - (a) Separate nomination procedures and elections shall be held for Directors representing each class of eligible members in accordance with clause 51.
  - (b) Each nomination of a person as a Corporate or Charter Director shall be in writing signed by two Members representing the respective membership class entitled to vote at such election held at the AGM and shall bear the candidates written consent.
  - (c) Each nomination shall be lodged with the Secretary at least fourteen (14) days prior to the AGM at which such election is to take place.
  - (d) Directors who wish to stand for election for a further term shall advise the Chairman of their intention to do so at least fourteen (14) days prior to the AGM.

- (e) If the number of nominations for Directors does not exceed the number of vacancies for such offices then the person so nominated shall be deemed to have been elected at the AGM.
- (f) If the number of nominations for Directors exceeds the number of vacancies for Directors, ballot papers shall be prepared containing the names of the candidates for Directors in alphabetical order.
- (g) Every Member present at the AGM shall be entitled to vote for any number of candidates in their respective membership class, not exceeding the number of vacancies and the candidates with the greatest number of votes shall be elected to fill those vacancies.

## **56 Alternate Directors**

- 56.1 With the other Directors' approval, a Director (except the Chief Executive) may appoint an alternate to exercise some or all of that Director's powers for a specified period.
- 56.2 If the appointing Director requests the Council to give his or her alternate notice of Directors' meetings, the Council must do so.
- 56.3 When an alternate exercises the Director's powers, the exercise of the powers is just as effective as if the powers were exercised by the Director.
- 56.4 The appointing Director may terminate the alternate's appointment at any time.
- 56.5 An appointment or its termination must be in writing and notification of same must be given to -
  - (a) the council; and
  - (b) the ASIC

## **57 Other offices held by Directors**

- 57.1 A Director may hold any other office or position of profit in the Council together with the Directorship at a remuneration and on such conditions as may be agreed in accordance with clauses 61 or 62.

## **58 Director may resign**

- 58.1 Director may resign as a Director of the Council by giving written notice of resignation to the Council at its registered office.

## **59 Removal of Directors**

- 59.1 The Council may, by resolution at a general meeting requiring 51% or more of all Corporate Members, not just those present, remove a Director.
- 59.2 A Director shall not be removed by, or required to vacate their office because of, any resolution, request or notice of the Directors or any of them.

## **60 Vacation of office of Director**

60.1 A Director must vacate office if the Director:

- (a) ceases to be a Director or becomes prohibited from being a Director by virtue of the Law;
- (b) resigns his or her office by written notice to the Council;
- (c) for more than three months is absent without permission of the other Directors from meetings of the Directors held during that period;
- (d) has a material personal interest in a matter that is being considered at a meeting of Directors and fails to comply with clause 68; or
- (e) is removed from the office of Director by a resolution of the Council in accordance with clause 59.

60.2 Subject to clause 60.1, where there are only three Directors, the Director shall not vacate their office voluntarily unless they have appointed, prior to their vacation, another person to be a Director.

## **61 Remuneration of Directors**

61.1 The Directors are to be paid the remuneration (if any) that the Council determines by resolution in general meeting.

61.2 The Council may pay a Director's travelling and other expenses that the Director properly incurs:-

- (a) in attending Directors' meetings or any meetings of committees of the Directors;
- (b) in attending any general meeting of the Council; and
- (c) in connection with the Council's business.

61.3 Any amount payable to a Director under this clause must be in accordance with the requirements of the Law.

## **62 Remuneration of Directors for extra services**

62.1 If the Council requests a Director to perform services in addition to those required by the Law, the Council may remunerate the Director in any manner the Council thinks fit.

62.2 Any remuneration paid as contemplated by clause 62.1 is in addition to remuneration paid under clause 61.

## **Chapter 6 - MANAGEMENT OF BUSINESS BY DIRECTORS**

### **63 Powers of Directors**

- 63.1 The business of the Council is to be managed by or under the direction of the Board.
- 63.2 The Board may exercise all of the powers of the Council except any powers that the Law or this Constitution requires the Council to exercise in general meeting.

### **64 Negotiable instruments**

- 64.1 Any two Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 64.2 The Board may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

### **65 Chief Executive**

- 65.1 The Board may appoint a Chief Executive of the Council for a period and on the terms (including as to remuneration) as the Board sees fit.
- 65.2 The Board may confer on a Chief Executive any of the powers that the Board can exercise, and may at its sole discretion invite the Chief Executive to join the board in which case he/she shall have the title of Executive Director
- 65.3 The Board may revoke or vary:
- (a) the appointment of the Chief Executive; or
  - (b) any of the powers conferred on the Chief Executive.
  - (c) the appointment of the Chief Executive Officer to the Board notwithstanding the provisions of Clause 59, and subject to the provisions of the Law.
- 65.4 If appointed to the board under Clause 51, the Chief Executive will have one vote as Executive Director.

### **66 Delegation to committees**

- 66.1 The Board may delegate any of its powers to a committee of Directors and such other persons as the Directors nominate who do not have to be Members.
- 66.2 A committee must exercise the powers delegated to it in accordance with any directions of the Directors.
- 66.3 The effect of the committee so exercising a power is the same as if the Directors exercised it.

### **67 Appointment of attorney for Council**

- 67.1 The Council's power to make, vary, ratify or discharge a contract may be exercised by an individual in accordance with the Law.

## **68 Voting by interested Director**

68.1 Subject to the Law and to clause 68.2, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:-

- (a) must not vote on the matter (or on a proposed resolution under clause 68.2(b) in relation to the matter, whether in relation to that or a different Director); and
- (b) must not be present while the matter (or proposed resolution of that kind) is being considered at the meeting.

68.2 Subject to clause 69, clause 68.1 does not apply:

- (a) to an interest that the Director has -
  - (i) as a Member or Authorised Representative of a Member; and
  - (ii) in common with the other Members or that would advance achievement of the objects of the Council; or
- (b) if the Directors have at any time passed a resolution that:
  - (i) specifies the Director, the interest and the matter; and
  - (ii) states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering or voting on the matter.

68.3 A resolution passed by Directors in accordance with clause 68.2(b) that a Director is a member of any specified organisation or is the proprietor of a particular business or represents a particular Member or a particular OEI State and is to be regarded as interested in all transactions with that organisation, business, Member or OEI State, is sufficient resolution under clause 68.2(b) as regards that Director and the transactions.

## **69 Accounting for profit**

69.1 No Director shall be liable to account to the Council for any profit arising from any office or place of profit or realised from any contract or arrangement by reason only of the Director holding that office or of the fiduciary relations so established, but the nature of his or her interest must be approved by a resolution of Directors in accordance with clause 68.

69.2 The company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## **Chapter 7 - DIRECTORS' MEETINGS**

### **70 Circulating resolutions**

- 70.1 The Board may pass a resolution without a Directors' meeting being held if all 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.
- 70.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 70.3 The resolution is passed when the last Director signs.

### **71 Calling Directors' meetings**

- 71.1 A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director.

### **72 Use of technology**

- 72.1 A Directors' meeting may be called or held using any technology consented to by the Directors.
- 72.2 Any consent may be a standing consent.
- 72.3 A Director may only withdraw their consent within a reasonable period before the meeting.

### **73 Quorum at Directors' meetings**

- 73.1 Unless the Directors determine otherwise, the quorum for a Directors' meeting is two (2) Directors, including the Chair, and the quorum must be present at all times during the meeting.

### **74 Passing of Directors' resolutions**

- 74.1 A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 74.2 The Chair has a casting vote in addition to any vote he or she has in his or her capacity as a Director.

## **Chapter 8 – THE BOARD**

### **75 Board Positions**

75.1 As soon as practicable after the elections of Directors, the Board must elect from the Directors:

- (a) a President (who shall also be Chairman of the Board), and
- (b) two (2) Senior Vice-President's, one (1) of whom shall be Treasurer.

75.2 Further Senior Vice Presidents and Presidents can be appointed at the discretion of the Board.

75.3 The term of the President will be five (5) years.

75.4 The Term of the Vice President's will be three (3) years.

75.5 The President will preside as Chair at every meeting of the Board or if there is no President or if at any meeting the President is not present within 10 minutes after the time appointed for the holding of the meeting, or is unwilling to act, a Senior Vice-President shall act as the Chair for the Board meeting.

### **76 Appointment of a Secretary**

76.1 The Board must appoint a Secretary in accordance with the Law. The Chief Executive Officer, if one is appointed, may be appointed as a Secretary.

### **77 Terms and conditions of office**

77.1 A Secretary holds office on the terms and conditions (including as to remuneration) that the Board determines.

## **Chapter 9 - DIRECTORS' AND MEMBERS' MINUTES**

### **78 Minutes**

78.1 The Council must keep minute books in which it records within one month of such event:

- (a) proceedings and resolutions of Members' meetings;
- (b) proceedings and resolutions of Board meetings and including committee meetings;
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

78.2 The Council must ensure that the minutes of a meeting are signed by the Chair of the meeting or the Chair of the next meeting within a reasonable time after the meeting.

78.3 The Council must ensure that the minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

### **79 Members' access to minutes**

79.1 Members are entitled to gain access to the minute book of meetings of Members in accordance with the Law.

## Chapter 10 - DISPUTE RESOLUTION AND DISCIPLINARY PROCEDURES

### 80 Dispute Resolution

80.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or director and:

- (a) one or more members,
- (b) one or more directors, or
- (c) the **company**.

80.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.

80.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

80.4 If those involved in the dispute do not resolve it under clause 80.3, they must within 10 days:

- (a) tell the directors about the dispute in writing,
- (b) agree or request that a mediator be appointed, and
- (c) attempt in good faith to settle the dispute by mediation.

80.5 The mediator must:

- (a) be chosen by agreement of those involved, or
- (b) where those involved do not agree:
  - (i) for disputes between members, a person chosen by the directors, or
  - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **company** has its registered office.

80.6 A mediator chosen by the directors under clause 80.5(b)(i):

- (a) may be a member or former member of the **company**
- (b) must not have a personal interest in the dispute, and
- (c) must not be biased towards or against anyone involved in the dispute.

80.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard

- (b) allow those involved a reasonable chance to review any written statements
- (c) ensure that those involved are given natural justice, and
- (d) not make a decision on the dispute.

## 81 Disciplining members

81.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the **company** if the directors consider that:

- (a) the member has breached this constitution, or
- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **company**.

81.2 At least 14 days before the directors' meeting at which a resolution under clause 81.1 will be considered, the secretary must notify the member in writing:

- (a) that the directors are considering a resolution to warn, suspend or expel the member,
- (b) that this resolution will be considered at a directors' meeting and the date of that meeting,
- (c) what the member is said to have done or not done,
- (d) the nature of the resolution that has been proposed, and
- (e) that the member may provide an explanation to the directors, and details of how to do so.

81.3 Before the directors pass any resolution under clause 81.1, the member must be given a chance to explain or defend themselves by:

- (a) sending the directors a written explanation before that directors' meeting, and/or
- (b) speaking at the meeting.

81.4 After considering any explanation under clause 81.3, the directors may:

- (a) take no further action,
- (b) warn the member,
- (c) suspend the member's rights as a member for a period of no more than 12 months,
- (d) expel the member ,
- (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
- (f) require the matter to be determined at a **general meeting**.

81.5 The directors cannot fine a member.

81.6 The secretary must give written notice to the member of the decision under clause 81.4 as soon as possible.

81.7 Disciplinary procedures must be completed as soon as reasonably practical.

81.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **Chapter 11 - WINDING UP**

### **82 Rights of Members on winding up**

82.1 If the Council is wound up or dissolved, the Members have no right to participate in any distribution or payment of the assets or property of the Council.

### **83 Distribution of assets**

83.1 If the Council is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities shall be given or transferred to some other institution or institutions -

- (a) having objects similar to the objects of the Council;
- (b) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by clause 5.2(b) and
- (c) which is approved by the Commissioner of Taxation as an institution exempt from sales tax and income tax.

83.2 The Board shall determine the identity of the institution or institutions for the purpose of clause 83.1 at the time of dissolution.

83.3 If the Board fails to determine the identity of the institution or institutions under clause 83.2, the Supreme Court of NSW, Australia shall make that determination.

## Chapter 12 - INDEMNITY

### 84 Indemnity

- 84.1 Every person who is an Officer shall be indemnified by the Council against, and shall be paid on demand by the Officer, the amount of any liability to another person (other than the Council or a related body corporate of the Council as defined in the Law) incurred in that person's capacity as an Officer unless such liability arises out of conduct involving a lack of good faith.
- 84.2 The Council shall indemnify any other employee of the Council at the Directors' discretion.
- 84.3 The Council shall indemnify an Officer against a liability for costs and expenses (including, without limitation, legal expenses on a full indemnity basis) incurred by the Officer:
- (a) in defending proceedings, whether civil or criminal, in which -
    - (i) judgment is given in favour of the Officer; or
    - (ii) the Officer is acquitted; or
  - (b) in connection with an application, in relation to proceedings under clause 84.3(a) in which a court grants relief to the Officer under the Law,
  - (c) SUBJECT only to an obligation on the Officer to repay to the Council the expenses advanced by the Council if:
    - (i) judgment is not given in the Officer's favour;
    - (ii) the Officer is not acquitted;
    - (iii) a court subsequently determines that the indemnification is not permitted; or
    - (iv) the indemnification is not permitted by the Law.
- 84.4 For the purposes of this clause, the Council shall have the burden of proving that the Officer to be indemnified is not entitled to the requested indemnification.
- 84.5 If the Council determines that the Officer to be indemnified is not entitled to be indemnified, that person shall be entitled to direct that the Council obtain and follow, at the Council's expense, an opinion as to such entitlement from a barrister with not less than 15 years relevant expertise practising in Australia.
- 84.6 The indemnification rights in this clause constitute a contract between the relevant parties seeking indemnification and the Council and shall continue to have effect following the rescission or restrictive modification of the clause with respect to events occurring prior to the rescission or modification of the clause.

### 85 Payment of costs

- 85.1 The Board may, out of the funds of the Council, pay all costs, losses and expenses which any Officer may incur or become liable to pay by reason of any contract entered

into or act or thing done by them as such Officer or in any way in discharge of their duties.

## **86 Limit of indemnity**

86.1 Subject to the provisions of the Law, an Officer of the Council shall not be liable for -

- (a) the acts, receipts, neglect or defaults of any other Officer;
- (b) joining in any receipt or other act of conformity or for any loss or expense happening to the Council through:
  - (i) the insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the Council; or
  - (ii) the insufficiency or deficiency of any security in or upon which any of the moneys of the Council shall be invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited;
- (d) any loss occasioned by any error of judgment or oversight on the Officer's part; or
- (e) any other loss, damage or misfortune which occurs in the execution of the duties of the Officer's office, unless the loss, damage or misfortune occurred through the Officer's own dishonesty.

## **87 Contract of Insurance**

87.1 The Council may pay a premium for a contract insuring a person who is or has been an Officer to the maximum extent permitted by the Law, including against:-

- (a) any liability incurred by the officer which does not arise out of conduct involving a wilful breach of duty in relation to the Council or a contravention of sections 232(5) or 232(6) of the Law;
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Council whether civil or criminal and whatever their outcome.

## **Chapter 13 - AMENDING THE CONSTITUTION**

### **88 Amending the Constitution**

88.1 The Constitution can only be changed or amended at an AGM and upon the vote of 75% of all Corporate Members.