

CONSTITUTION  
OF  
Australian and New Zealand Society of  
International Law Limited

Australian Business Number (ABN) [insert ABN]

A company limited by guarantee

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## Preliminary

### 1. Name of the company

The name of the **company** is Australian and New Zealand Society of International Law Limited (the **company**).

### 2. Type of company

The **company** is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 3. Liability of members limited to the guarantee

3.1 Each member must contribute an amount not more than \$1 (the guarantee) to the property of the **company** if the **company** is wound up:

- (a) while the member is a member, or within 12 months after they stop being a member, and
- (b) at the time of winding up, the debts and liabilities of the **company**, including the costs of winding up, incurred before the member stopped being a member exceed the company's assets.

3.2 The liability of each member is limited to the amount of the guarantee.

### 4. Definitions

In this constitution, words and phrases have the meaning set out in clauses 77 and 79.

## Charitable purposes and powers

### 5. Object

The object of the **company** is to pursue the charitable purpose of advancing education, including by:

- (a) increasing public awareness and understanding of international law;
- (b) developing and promoting the discipline of international law;
- (c) advancing the teaching of international law;
- (d) providing a forum for scholars, practitioners and students of international law to discuss research and issues of practice of international law;
- (e) taking over the assets and liabilities of the predecessor unincorporated **association**; and
- (f) doing such other things as are incidental or conducive to the attainment of these objects.

### 6. Powers

Subject to clause 7, the **company** has all the powers of a company limited by guarantee under the **Corporations Act** which may only be used to carry out its purpose(s) set out in clause 5.

## 7. Not-for-profit

- 7.1 The **company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 7.2 and 76.
- 7.2 Clause 7.1 does not stop the **company** from doing the following things, provided they are done in good faith:
- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **company**, or
  - (b) making a payment to a member in carrying out the **company's** charitable purpose(s).

## 8. Amending the constitution

- 8.1 Subject to clause 8.3, the members may amend this constitution by passing a **special resolution**.
- 8.2 Any amendment to this constitution will take effect from the date of the **special resolution**, or from any later date specified in the resolution.
- 8.3 While the **company** is a **registered charity**, the members must not pass a **special resolution** that amends this constitution if passing it would mean the **company** would no longer be a charity.

# Members

## 9. Membership and register of members

- 9.1 The minimum number of members is 3.
- 9.2 The members of the **company** are:
- (a) the **initial members**; and
  - (b) any other person that the directors allow to be a member, in accordance with this constitution.
- 9.3 The **company** must establish and maintain a register of members. The register of members must be kept by the **Secretary** and must contain:
- (a) for each current member:
    - i. name
    - ii. address
    - iii. any alternative address nominated by the member for the service of notices, and
    - iv. date the member was entered on to the register
  - (b) for each person who stopped being a member in the last 7 years:
    - i. name
    - ii. address
    - iii. any alternative address nominated by the member for the service of notices, and
    - iv. dates the membership started and ended
- 9.4 The **company** must allow current members to inspect the register of members.

9.5 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

#### **10. Who can be a member**

10.1 A person who supports the purposes of the **company** is eligible to apply to be a member of the **company** under clause 11.

10.2 In this clause, 'person' means an individual.

#### **11. How to apply to become a member**

A person (as defined in clause 10.2) may apply to become a member of the **company** by writing to the **Secretary** stating that they:

- (a) want to become a member
- (b) support the purpose(s) of the **company**, and
- (c) agree to comply with the **company's** constitution, including paying the guarantee under clause 3 if required.

#### **12. Directors decide whether to approve membership**

12.1 The directors must consider an application for membership within a reasonable time after the **Secretary** receives the application.

12.2 If the directors approve an application, the **Secretary** must as soon as possible:

- (a) enter the new member on the register of members, and
- (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 13).

12.3 If the directors reject an application:

- (a) the **Secretary** must write to the applicant as soon as possible to tell them that their application has been rejected, but
- (b) the directors do not have to give reasons.

12.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clause 11(a), 11(b) or 11(c). In that case, by applying to be a member, the applicant agrees to those three matters.

#### **13. When a person becomes a member**

Other than **initial members**, an applicant will become a member when they have been entered on the register of members.

#### **14. Membership fees**

14.1 Each member must pay an annual membership fee, unless the directors decide otherwise.

14.2 The annual membership fee shall be as the directors determine from time to time.

14.3 A member who has not paid the required membership fee in accordance with this clause may not exercise any of the rights associated with membership, including the right to exercise any vote a paid-up member may have at a meeting of members.

## 15. Transfer of membership

- 15.1 Membership of the **company** and the associated rights cannot be transferred or sold.

## 16. Life members

- 16.1 The **Council** may honour any member as a life member, who:
- (a) has rendered long and valued service to the **company** or the **association**; or
  - (b) has given outstanding service to the **company** or the **association** and demonstrated exceptional commitment to pursuing the **company's** objects over time.
- 16.2 **Life members** of the predecessor unincorporated **association** of the **company** that are also **initial members** are **life members**.
- 16.3 Life members have membership rights as members under this constitution.
- 16.4 Clause 14 does not apply to life members.
- 16.5 A life member ceases to be a life member on:
- (a) death;
  - (b) resignation by written notice to the company having immediate effect or with effect from a date specified in the notice;
  - (c) not having legal capacity; or
  - (d) the passing of a resolution by the **Council** to remove the life membership of a life member.

## 17. When a person stops being a member

- 17.1 A person (as defined in clause 10.2) immediately stops being a member if they:
- (a) die;
  - (b) fail to pay any required annual membership fee in accordance with clause 14 within one month after the date on which that fee becomes due or such later time as the directors may determine;
  - (c) resign, by writing to the **Secretary** having immediate effect or with effect from a specified date in the notice;
  - (d) are expelled under clause 19;
  - (e) have not responded within three months to a written request from the **Secretary** that they confirm in writing that they want to remain a member;
  - (f) do not have legal capacity; or
  - (g) cease to be a director.
- 17.2 In the event that a person ceases to be a member due to the operation of clause 17.1(g), the directors may admit that person as a member without a new application for membership.

## Dispute resolution and disciplinary procedures

### 18. Dispute resolution

- 18.1 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**.
- 18.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 19 until the disciplinary procedure is completed.
- 18.3 Those involved in the dispute must try to resolve it among themselves within 14 days of learning of it, or within a timeframe agreed by those involved.
- 18.4 If those involved in the dispute do not resolve it under clause 18.3, they must within 10 days (or within a timeframe agreed by those involved):
- (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.
- 18.5 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 the president of the law institute or society in the state or territory in which the **company** has its registered office.
- 18.6 A mediator chosen by the directors under clause 18.5(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.
- 18.7 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 the mediation is conducted in a manner free from bias, and
  - (d) not make a decision on the dispute.

### 19. Disciplining members

- 19.1 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**.
- 19.2 At least 14 days before the directors' meeting at which a resolution under clause 19.1 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.
- 19.3 Before the directors pass any resolution under clause 19.1, 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.
- 19.4 After considering any explanation under clause 19.3, 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**.
- 19.5 The directors cannot fine a member.
- 19.6 The **Secretary** must give written notice to the member of the decision under clause 19.4 as soon as possible.
- 19.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 19.8 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.



## General meetings of members

### 20. Calling a general meeting

- 20.1 The directors may call a **general meeting**, including an annual **general meeting**.
- 20.2 If members comprising at least 5% of the members who may vote at a **general meeting** make a written request to the **company** for a **general meeting** to be held for a proper purpose, the directors must:
- (a) within 21 days of the members' request, give all members notice of a **general meeting**, and
  - (b) hold the **general meeting** within 2 months of the members' request.
- 20.3 The percentage of votes that members have (in clause 20.2) is to be worked out as at midnight immediately preceding the day on which the members request the meeting.
- 20.4 The members who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the **company**.
- 20.5 The members making the request may sign the request by signing a physical form of the document by hand or by signing an electronic form of the document using electronic means, which identifies the person and indicates the person's intention.
- 20.6 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.
- 20.7 If the directors do not call the meeting within 21 days of being requested under clause 20.2, 50% or more of the members who made the request may call and arrange to hold a **general meeting**.
- 20.8 To call and hold a meeting under clause 20.7 the members must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution,
  - (b) call the meeting using the list of members on the **company's** register of members, which the **company** must provide to the members making the request at no cost, and
  - (c) hold the **general meeting** within three months after the request was given to the **company**.

## 21. Annual general meeting

- 21.1 A **general meeting**, called the annual **general meeting**, must be held:
- (a) Within 18 months after the registration of the company; and
  - (b) After the first annual **general meeting**, at least once in every calendar year.
- 21.2 Even if these items are not set out in the notice of the meeting, the business of an annual **general meeting** may include:
- (a) confirming the minutes of the last preceding annual **general meeting** and of any **general meeting** held since that meeting;
  - (b) a review of the **company's** activities;
  - (c) a review of the **company's** finances;
  - (d) any auditor's report;
  - (e) the election of directors; and
  - (f) the appointment and payment of auditors, if any.
- 21.3 Before or at the annual **general meeting**, the directors must give information to the members on the **company's** activities and finances during the period since the last annual general meeting.
- 21.4 The chairperson of the annual **general meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **company**.

## 22. Using technology to hold meetings

- 22.1 The **company** may hold a **general meeting** at two or more venues using any **virtual meeting platform** or using a **virtual meeting platform** only, where the platform gives members a reasonable opportunity to participate, including to hear and be heard.
- 22.2 Anyone using this platform is taken to be present in person at the meeting.
- 22.3 If the general meeting is held using a **virtual meeting platform** only, then
- (a) the place of the meeting is taken to be the registered office of the company, and
  - (b) the time of the meeting is taken to be the time at the registered office of the company.
- 22.4 If the **general meeting** is held at more than one physical venue (whether or not it is also held using a **virtual meeting platform**), then:
- (a) the place of the meeting is taken to be the main physical venue of the meeting as set out in the notice of the meeting, and
  - (b) the time of the meeting is taken to be the time at the main physical venue of the meeting as set out in the notice of the meeting.

## 23. Notice of general meetings

- 23.1 Notice of a **general meeting** must be given to:

- (a) each member entitled to vote at the meeting
  - (b) each director, and
  - (c) the auditor (if any).
- 23.2 Notice of a **general meeting** must be provided in writing at least 21 days before the meeting.
- 23.3 Subject to clause 23.4, notice of a general meeting may be provided less than 21 days before the meeting if members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 23.4 Notice of a **general meeting** cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
  - (b) appoint a director in order to replace a director who was removed, or
  - (c) remove an auditor.
- 23.5 Notice of a **general meeting** must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places or virtually, the **virtual meeting platform** that will be used to facilitate this)
  - (b) a statement regarding a member's right to request that documents be sent in electronic or physical form
  - (c) the general nature of the meeting's business
  - (d) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution, and
  - (e) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - i. the proxy does not need to be a member of the **company**
    - ii. the proxy form must be delivered to the **company** at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - iii. the proxy form must be delivered to the **company** at least 48 hours before the meeting.
- 23.6 If a **general meeting** is adjourned for one month or more, the members must be given new notice of the resumed meeting.

#### **24. Quorum at general meetings**

- 24.1 For a **general meeting** to be held, at least 15 members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 24.2 No business may be conducted at a **general meeting** if a quorum is not present.

- 24.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 24.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

#### **25. Right of non-members to attend meetings**

- 25.1 The chairperson of a **general meeting** may invite any person to attend and address a meeting.
- 25.2 Any auditor and any director of the **company** is entitled to attend and address a general meeting.
- 25.3 The **company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **company** is entitled to receive.

#### **26. President as Chairperson for general meetings**

- 26.1 The **President** shall be the chairperson of general meetings.
- 26.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
- (a) there is no **President**, or
  - (b) the **President** has given notice that they are unable to be present, or
  - (c) the **President** is not present within 30 minutes after the starting time set for the meeting, or
  - (d) the **President** is present but says they do not wish to act as chairperson of the meeting.

#### **27. Role of the chairperson**

- 27.1 The chairperson is responsible for the conduct of the **general meeting**.
- 27.2 The chairperson must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 27.3 The chairperson does not have a casting vote.

#### **28. Adjournment of meetings**

- 28.1 If a quorum is present, a **general meeting** must be adjourned if a majority of members present direct the chairperson to adjourn it.
- 28.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Members' resolutions and statements

### 29. Members' resolutions and statements

- 29.1 A member may give:
- (a) written notice to the **company** of a resolution they propose to move for a proper purpose at a **general meeting (members' resolution)**, and/or
  - (b) a written request to the **company** that the **company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting (members' statement)**.
- 29.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the member proposing the resolution.
- 29.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the member making the request.
- 29.4 If the **company** has been given notice of a members' resolution for a proper purpose under clause 29.1(a), the resolution must be considered at the next **general meeting** held more than two months after the notice is given.
- 29.5 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

### 30. Company must give notice of proposed resolution or distribute statement

- 30.1 If the **company** has been given a notice or request under clause 29:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **company's** cost, or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **company** will pay these expenses.
- 30.2 The **company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) it is more than 1 000 words long
  - (b) the directors consider it may be defamatory
  - (c) clause 30.1(b) applies, and the members who proposed the resolution or made the request have not paid the **company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
  - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

### 31. Resolutions without meetings

- 31.1 Subject to clause 31.3, the directors may put a resolution to the members to pass a resolution without a **general meeting** being held.
- 31.2 The directors must notify the auditor (if any) as soon as possible that a resolution without a general meeting has or will be put to members, and set out the wording of the resolution.
- 31.3 The **company** cannot pass resolutions without holding a meeting:
- (a) for a resolution to remove an auditor or remove a director
  - (b) for passing a **special resolution**, or
  - (c) where the **Corporations Act** or this constitution requires a meeting to be held.
- 31.4 A resolution is passed if all the members entitled to vote on the resolution sign or agree to the resolution, in the manner set out in clause 31.5 or clause 31.6.
- 31.5 Members may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 31.6 The **company** may send a resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## Voting at general meetings

### 32. How many votes a member has

Each member has one vote.

### 33. Challenge to member's right to vote

- 33.1 A member or the chairperson may only challenge a person's right to vote at a **general meeting** at that meeting.
- 33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 34. How voting is carried out

- 34.1 At any **general meeting**, voting must be conducted and decided by:
- (a) a show of hands, or
  - (b) where the meeting is being conducted by **virtual meeting technology**, another method chosen by the chairperson that is fair and reasonable in the circumstances,
- unless a vote in writing is properly demanded under clause 35 and the demand is not withdrawn.

- 34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 34.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **35. When and how a vote in writing must be held**

- 35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
  - (a) At least five **members present** who are entitled to vote on the relevant resolution,
  - (b) **Members present** with at least 5% of the votes that may be passed on the relevant resolution (worked out as at the midnight before the vote in writing is demanded), or
  - (c) The chairperson of the meeting.
- 35.2 A vote in writing must be taken when and how the chairperson directs, unless clause 35.3 applies.
- 35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:
  - (a) For the election of a chairperson under clause 26.2, or
  - (b) To decide whether to adjourn the meeting.
- 35.4 A demand for a vote in writing may be withdrawn.

### **36. Appointment of proxy**

- 36.1 A member may appoint a proxy to attend and vote at a **general meeting** on their behalf.
- 36.2 A proxy must be a member of the **company**.
- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
  - (a) speak at the meeting
  - (b) vote in a vote in writing or on a show of hands (but only to the extent allowed by the appointment), and
  - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
  - (a) the member's name and address
  - (b) the **company's** name
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.

- 36.5 Proxy forms must be received by the **company** at the address stated in the notice under clause 23.5(e) or at the **company's** registered address at least 48 hours before a meeting.
- 36.6 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 36.7 Unless the **company** receives written notice before the start or resumption of a **general meeting** at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
  - (b) no longer has the decision-making capacity to appoint a proxy
  - (c) revokes the proxy's appointment, or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 36.8 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **37. Voting by proxy**

- 37.1 A proxy is entitled to vote whether a vote is held in writing or on a show of hands.
- 37.2 When a vote is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
  - (b) if the way they must vote is specified on the proxy form, must vote that way, and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## **Directors**

### **38. Number of directors**

- 38.1 The number of directors must be such number between 3 and 9 as the members determine. In the absence of any such determination, the number of directors will be 9.
- 38.2 At least two directors, and one of the Vice-Presidents, shall be resident in New Zealand.
- 38.3 Together the directors will comprise the **Council**.

### **39. Election and appointment of directors**

- 39.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the **company**.
- 39.2 The **members** may, at a **general meeting** at which:
- (a) a director retires or otherwise vacates office; or



- (b) a director vacancy exists by operation of clause 38 or otherwise,
- by resolution fill the vacated office by electing an individual to that office.
- 39.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
  - (b) no votes were cast against that resolution.
- 39.4 A person is eligible for election as a director of the **company** if they:
- (a) are a member of the **company**
  - (b) are 18 years of age or older
  - (c) have a **director identification number**
  - (d) are nominated by two members or representatives of members entitled to vote
  - (e) give the **company** their signed consent to act as a director of the **company**, and
  - (f) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 39.5 Where a person is seeking election at a **general meeting** for the first time, the signed consent must be lodged at the **company's** registered office at least 28 days (or such other period as determined by the directors) before the date fixed for the holding of the **general meeting**.
- 39.6 In the event that it is required under a law, regulation or guideline applicable to the **company**<sup>1</sup>, the **company** must ensure that a majority of the directors are persons who have the requisite level or degree of responsibility to the general public.
- 39.7 The Council may at any time appoint a person as a director to fill a casual vacancy or as an additional director, provided the total number of directors does not exceed the number of directors determined under clause 38, and if that person:
- (a) is a **member**;
  - (b) has a **director identification number**;
  - (c) gives the **company** their signed consent to act as a director of the **company**; and
  - (d) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 39.8 A director appointed under clause 39.7 holds office until the conclusion of the next annual **general meeting** of the **company** but is eligible for election at that meeting.

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<sup>1</sup> Such as where the company or its public fund (if any) is endorsed as a deductible gift recipient and this is a condition for such endorsement.

39.9 If the number of directors is reduced to fewer than 3 or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to 3 (or higher if required for a quorum) or calling a **general meeting**, but for no other purpose.

#### **40. Term of office and retirement of directors**

40.1 Subject to clauses 40.2 and 40.6, directors are elected for terms of 2 years.

40.2 At each annual **general meeting**, any director who has held office for 2 years or more since last being elected, must retire from office but, subject to clause 40.5, is eligible for reappointment. A retiring director holds office until the conclusion of the meeting at which that director retires.

40.3 The members may by an ordinary resolution increase or decrease the period of time for which a director holds office under clause 40.1.

40.4 In addition to the right to remove directors under section 203D of the **Corporations Act**, the members may by an ordinary resolution remove any director before the expiration of that director's period of office, and may by an ordinary resolution appoint another person in the place of a director that is removed under this clause.

40.5 A director is entitled to seek reappointment as a director provided that a director's period of continuous service to the **company** would not, as a result of the reappointment, exceed a period of 6 years, excluding any period of service under clause 39.7.

40.6 The following transitional rules apply to the terms of office and retirement of directors:

- (a) At the first annual **general meeting** from the date of registration of the **company**, 5 directors must retire from office but are eligible for reappointment.
- (b) The directors who must retire at this meeting under this clause 40.6 will be decided by lot, unless they agree otherwise.
- (c) For the avoidance of doubt, this clause 40.6 ceases to have any application following the first annual **general meeting** from the date of registration of the **company**.

40.7 Other than a director appointed under clause 39.7, a director's term of office starts at the end of the **general meeting** at which they are elected and ends at the end of the **general meeting** at which they retire.

#### **41. When a director stops being a director**

41.1 A director stops being a director if they:

- (a) give written notice of resignation as a director to the **company**

- (b) die
- (c) are removed as a director by a resolution of the members
- (d) stop being a member of the **company**
- (e) are a representative of a member, and that member stops being a member
- (f) are a representative of a member, and the member notifies the **company** that the representative is no longer a representative
- (g) are absent for **3** consecutive directors' meetings without approval from the directors, or
- (h) become ineligible to be a director of the **company** under the **Corporations Act** or the **ACNC Act**.

## Office-bearers

### 42. Office-bearers

42.1 The office-bearers of the **company** are as follows:

- (a) **President**,
- (b) **2 Vice-Presidents**, and
- (c) **Treasurer**.

42.2 The role of the office-bearers shall be set out in the By-laws.

### 43. Election of President

43.1 The members may elect a **President** from amongst the directors by ordinary resolution passed at an annual **general meeting**.

43.2 Subject to clause 43.3, the **President** will hold office for a term of 2 years.

43.3 At an annual **general meeting**, a **President** who has held office for 2 years or more since last being elected, must retire from office but is eligible for reappointment. A retiring **President** holds office until the conclusion of the meeting at which the **President** retires.

43.4 A **President** is entitled to seek reappointment as **President** on 1 occasion provided that the **President's** period of continuous service in office does not exceed a period of 4 years.

### 44. Casual vacancy in the office of President

44.1 The **Council** may, at any time when a vacancy in the office of **President** arises, by operation of clause 41 or otherwise, fill the vacated office by appointing a person from amongst the directors.

44.2 A **President** appointed under clause 44.1 holds office until the conclusion of the next annual **general meeting** of the **company** but is eligible for election at that meeting.

#### **45. Appointment of Office-bearers other than President**

The 2 **Vice-Presidents** and **Treasurer** may be appointed from amongst the directors from time to time by the **Council** and shall remain in office for such period as determined by the **Council**.

### **Powers of directors**

#### **46. Powers of directors**

- 46.1 The directors are responsible for managing and directing the activities of the **company** to carry out the purpose(s) set out in clause 5.
- 46.2 The directors may use all the powers of the **company** except for powers that, under the **Corporations Act** or this constitution, may only be exercised by members.
- 46.3 The directors must decide on the responsible financial management of the **company** including:
- (a) any suitable written delegations of power under clause 47, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 46.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a **general meeting**.

#### **47. Delegation of directors' powers**

- 47.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the **company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 47.2 The **company** must keep appropriate records of any delegations.

#### **48. Committees**

- 48.1 The directors may delegate any of their powers and functions to a committee consisting of one or more directors and such other persons as they think fit and may revoke the delegation at any time.
- 48.2 A committee to which any powers or functions have been delegated under clause 48.1 must exercise these powers or functions:
- (a) in accordance with the terms and subject to any restrictions and any directions of the directors, and
  - (b) so as to be concurrent with, or to the exclusion of, the powers of the directors, and a power so exercised is taken to have been exercised by the directors.

#### **49. Payments to directors**

- 49.1 The **company** must not pay directors' fees.
- 49.2 The **company** may:

- (a) pay a director for work they do for the **company**, other than as a director, if the amount is no more than a reasonable fee for the work done, or
- (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the **company**.

49.3 Any payment made under clause 49.2 must be approved by the directors.

## 50. Execution of documents

50.1 The **company** may execute a document without using a common seal if the document is signed by:

- (a) two members of the Council of the **company**
- (b) a member of the Council and the **Secretary**, or
- (c) or some other person or combination of persons appointed by the Council for that purpose,
- (d) whether by signing a physical form of the document by hand or by signing an electronic form of the document using electronic means, which identifies the person and indicates the person's intention.

## 51. Validity

51.1 An act done by a director or by a meeting of the directors or a committee attended by a director is not invalid just because:

- (a) of a defect in the appointment of the director
- (b) the person is disqualified from being a director or has vacated office, or
- (c) the person is not entitled to vote,

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

## Duties of directors

### 52. Duties of directors

- (a) Subject to clause 52(b), the directors must comply with their duties as directors under legislation and common law (judge-made law).
- (b) While the **company** is a **registered charity**, the directors must comply with the duties described in governance standard 5 of the regulations made under the **ACNC Act** which are:
  - i. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company
  - ii. to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 5.
  - iii. not to misuse their position as a director
  - iv. not to misuse information they gain in their role as a director

- v. to disclose any perceived or actual material conflicts of interest in the manner set out in clause 53
- vi. to ensure that the financial affairs of the company are managed responsibly, and
- vii. not to allow the company to operate while it is insolvent.

### **53. Conflicts of interest**

- 53.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a **Council** meeting (or that is proposed in a resolution to be passed under cl 61):
- (a) to the other directors, or
  - (b) if all of the directors have the same conflict of interest, to the members at the next **general meeting**, or at an earlier time if reasonable to do so.
- 53.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 53.3 Each director who has a material personal interest in a matter that is being considered at a **Council** meeting (or that is proposed in a resolution to be passed under cl 61) must not:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter,
- except as provided under clauses 53.4.
- 53.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the **company**, and the other members have the same interest
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the **company** (see clause 72)
  - (c) their interest relates to a payment by the **company** under clause 71 (indemnity), or any contract relating to an indemnity that is allowed under the **Corporations Act**
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
  - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
    - i. identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
    - ii. says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Council meetings

### 54. When the Council meets

- 54.1 The directors may decide how often, where and when the Council meets.
- 54.2 The Council shall meet at least twice in a calendar year and at other times as determined by the directors.

### 55. Attendance at Council meetings

The Council may invite any person to attend a Council meeting but such person shall not be entitled to vote on any matter discussed by the Council.

### 56. Calling Council meetings

- 56.1 A director may call a Council meeting by giving reasonable notice to all of the other directors.
- 56.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 57. Chairperson for Council meetings

- 57.1 The **President** shall be the chairperson of Council meetings.
- 57.2 The directors at a Council meeting may choose a director to chair that meeting if the **President**:
  - (a) is not present within 30 minutes after the starting time set for the meeting, or
  - (b) has given notice that they are unable to be present, or
  - (c) is present but does not want to act as chairperson of the meeting.

### 58. Quorum at Council meetings

- 58.1 Unless the directors determine otherwise, the quorum for a Council meeting is a majority (more than 50%) of directors holding office.
- 58.2 A quorum must be present for the whole Council meeting.

### 59. Using technology to hold Council meetings

- 59.1 The Council may hold their meetings by using any **virtual meeting platform** that is agreed to by all of the directors.
- 59.2 The directors' agreement may be a standing (ongoing) one.
- 59.3 A director may only withdraw their consent within a reasonable period before the meeting.

### 60. Passing Council resolutions

A Council resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

### 61. Resolutions of Council without a meeting

- 61.1 The Council may pass a resolution without a Council meeting being held.

- 61.2 A resolution without a meeting is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 61.3 or clause 61.4.
- 61.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 61.4 The **company** may send a resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 61.5 The resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 61.3 or clause 61.4.

## Secretary

### 62. Appointment and role of Secretary

- 62.1 The **company** must have at least one **Secretary**, who may also be a director.
- 62.2 A **Secretary** must be appointed by the directors (after giving the **company** their signed consent to act as **Secretary**) and may be removed by the directors.
- 62.3 The directors must decide the terms and conditions under which the **Secretary** is appointed, including any remuneration.
- 62.4 The **Secretary** must ensure that the following are maintained:
- (a) a register of the **company's** members, and
  - (b) the minutes and other records of **general meetings** (including notices of meetings), Council meetings and resolutions.

## Minutes and records

### 63. Minutes and records

- 63.1 The **company** must, within one month of the relevant meeting or event, make and keep the following records:
- (a) minutes of proceedings and resolutions of **general meetings**.
  - (b) minutes of any other resolutions of members
  - (c) a copy of a notice of each **general meeting**
  - (d) a copy of a member's statement distributed to members under clause 30.
- 63.2 The **company** must, within one month of the relevant meeting or event, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and



- (b) minutes of any other resolutions of directors.
- 63.3 To allow members to inspect the **company's** records:
  - (a) the **company** must give a member access to the records set out in clause 63.1, and
  - (b) the directors may authorise a member to inspect other records of the **company**, including records referred to in clause 63.2 and clause 64.1.
- 63.4 The directors must ensure that minutes of a **general meeting**, or a directors' meeting are signed within a reasonable time after the meeting by:
  - (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 63.5 The directors must ensure that minutes of the passing of a resolution passed without a meeting (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

#### **64. Financial and related records**

- 64.1 The **company** must make and keep written financial records that:
  - (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 64.2 The **company** must also keep written records that correctly record its operations.
- 64.3 The **company** must retain its records for at least 7 years.
- 64.4 The directors must take reasonable steps to ensure that the **company's** records are kept safe.

## **By-laws**

#### **65. By-laws**

- 65.1 The Council may pass a resolution to make by-laws to give effect to this constitution.
- 65.2 **Members** and directors must comply with by-laws as if they were part of this constitution.

## **Notice**

#### **66. What is notice**

- 66.1 Anything written to or from the **company** under any clause in this constitution is written notice and is subject to clauses 67 to 69, unless specified otherwise.
- 66.2 Clauses 67 to 69 do not apply to a notice of proxy under clause 36.5.

#### **67. Notice to the company**

Written notice or any communication under this constitution may be given to the **company**, the directors or the **Secretary** by:

- (a) delivering it to the **company's** registered office
- (b) posting it to the **company's** registered office or to another address chosen by the **company** for notice to be provided
- (c) sending it to an email address or other electronic address notified by the **company** to the members as the **company's** email address or other electronic address, or
- (d) any other means provided by the **Corporations Act**.

## 68. Notice to members

68.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
- (d) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address), or
- (e) by any other means provided by the **Corporations Act**.

68.2 If a member elects to receive documents in physical form or electronic form, the company must take reasonable steps to send documents in a manner that complies with the election.

68.3 If the **company** does not have an address for the member, the **company** is not required to give notice in person.

## 69. When notice is taken to be given

69.1 A notice:

- (a) delivered in person, or left at the recipient's address: is taken to be given on the day it is delivered
- (b) sent by post: is taken to be given on the third **business day** after it is posted to the address notified by the recipient and payment of postage costs
- (c) sent by email or other electronic method: is taken to be given when it is sent, unless the sender receives an automated message that the notice has not been delivered, and
- (d) given under clause 68.1(d): is taken to be given on the **business day** after the notification that the notice is available is sent.

69.2 If the delivery or receipt of a notice is on a day which is not a **business day** or is after 5.00pm on a **business day**, it is deemed to be received at 9.00am on the following **business day**.

## Financial matters

### 70. Company's financial year

The **company's** financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

## Indemnity, insurance and access

### 71. Indemnity

- 71.1 The **company** indemnifies each officer of the **company** out of the assets of the **company**, to the extent permitted by law (including the Corporations Act), against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **company**.
- 71.2 In this clause, 'officer' means a director or **Secretary** and includes a director or **Secretary** after they have ceased to hold that office.
- 71.3 The indemnity is a continuing obligation and is enforceable by an officer:
- (a) even though that person is no longer an officer of the **company**, and
  - (b) is enforceable without that person having first to incur any expense or make any payment.

### 72. Insurance

To the extent permitted by law (including the **Corporations Act**), and if the directors consider it appropriate, the **company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **company** against any liability incurred by the person as an officer of the **company**.

### 73. Directors' access to documents

- 73.1 A director has a right of access to the financial records of the **company** at all reasonable times.
- 73.2 The directors may resolve to give a director or former director access to other records, including documents provided for or available to the directors.

## Winding up

### 74. Winding up voluntarily

- 74.1 If permitted by law, the **company** may be wound up voluntarily by **special resolution**.

### 75. Surplus assets not to be distributed to members

If the **company** is wound up, any **surplus assets** must not be distributed to a member or a former member of the **company**, unless that member or former member is a charity described in clause 76.1.

## 76. Distribution of surplus assets

- 76.1 Subject to clause 7.1, the **Corporations Act** and any other applicable Act, and any court order, any **surplus assets** that remain after the **company** is wound up must be distributed to one or more funds or institutions:
- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 5, and
  - (b) that are not for profit entities whose governing documents prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **company** under the constitution.
- 76.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **company** may apply to the Supreme Court to make this decision.

## Definitions and interpretation

### 77. Definitions

In this constitution:

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

**association** means the unincorporated association known as the Australian and New Zealand Society of International Law (ABN 94 662 977 865) established in 1992.

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

**company** means the **company** referred to in clause 1.

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

**Council** means the board of directors of the **company**.

**director identification number** has the same meaning it has in the Corporations Act.<sup>2</sup>

**general meeting** means a meeting of members.

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<sup>2</sup> At the time of adoption of this constitution, section 9 provides that a director identification number means a director identification number given under:

- (a) section 1272; or
- (b) section 308-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth).

**initial member** means a person who is named in the application for registration of the **company**, with their consent, as a proposed member of the **company**.

**life member** means a member honoured as a life member under clause 16.

**member present** means, in connection with a **general meeting**, a **member present** in person, by representative or by proxy at the meeting.

**President** means the person appointed under clause 42.1 to perform the role and duties of the President of the **company** from time to time.

**registered charity** means a charity that is registered under the **ACNC Act**.

**Secretary** means the person appointed as a secretary of the **company** in accordance with clause 62.2.

**special resolution** means a resolution:

- i. of which notice has been given under clause 23.5(d), and
- ii. that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.

**surplus assets** means any assets of the **company** that remain after paying all debts and other liabilities of the **company**, including the costs of winding up.

**Treasurer** means the person appointed under clause 45 to perform the role and duties of the Treasurer of the **company** from time to time.

**Vice-President** means a person appointed under clause 45 to perform the role and duties of the Vice-President of the **company** from time to time.

**virtual meeting platform** means any technology that allows members to participate in a meeting, including by asking questions orally and in writing, without being physically present at the meeting.

## **78. Reading this constitution with the Corporations Act**

- 78.1 The replaceable rules set out in the **Corporations Act** do not apply to the **company**.
- 78.2 While the **company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in this constitution which are inconsistent with those Acts, as they apply to a **registered charity**.
- 78.3 If the **company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in this constitution which is inconsistent with that Act.
- 78.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## **79. Interpretation**

In this constitution:

- (a) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

## **80. Signing and electronic communication**

Where, by a provision of this constitution, a document including a notice is required to be signed or communicated, that requirement may be satisfied in any manner permitted by the applicable law of a state or territory or the Commonwealth relating to electronic signing and transmission of documents.