

CONSTITUTION

of

AUSTRALIAN TELECOMMUNICATIONS ALLIANCE LTD

ACN 078 026 507

CONTENTS

1	INTERPRETATION AND NAME OF COMPANY.....	1
1.1	Name	1
1.2	Interpretation.....	1
1.3	Exclusion of Replaceable Rules	4
1.4	Constitution subject to Act	4
1.5	Objects.....	4
1.6	Powers	5
1.7	Application of Income and Property	5
1.8	Liability of Members	5
1.9	Amendment of Membership Categories and Entitlements	5
2	MEMBERS.....	6
2.1	Members	6
2.2	Application for Membership	6
2.3	Eligible Persons.....	6
2.4	Discretion to Grant Membership	6
2.5	Discretion to Refuse Membership	7
2.6	Eligibility in Multiple Categories	7
2.7	Related Bodies Corporate of Members.....	7
2.8	Nominee Applications	7
2.9	Categories of Membership.....	8
2.10	Membership Fees	8
2.11	Payment of Membership Fees.....	8
2.12	Review of Rejected Membership Applications	9
2.13	Cessation Of Membership	9
3	GENERAL MEETING	10
3.1	Annual General Meetings.....	10
3.2	Convening a General Meeting	10
3.3	Requisitioned Meeting.....	10
3.4	Venues	10
3.5	Notice.....	10
3.6	Changes to General Meeting.....	11
3.7	Representation At General Meetings	11
4	PROCEEDINGS AT GENERAL MEETINGS.....	11
4.1	Quorum	11
4.2	Individuals	12
4.3	Lack of Quorum	12
4.4	Chairperson of General Meeting	12
4.5	Powers of Chairperson	12
4.6	Adjournment of General Meeting	12
4.7	Questions	13
4.8	Method of voting	13
4.9	Resolutions.....	13
4.10	Designated Resolutions	14

4.11	Special Resolutions	14
4.12	Capacity to Vote.....	14
4.13	Proxies.....	15
5	BOARD OF DIRECTORS.....	16
5.1	Management.....	16
5.2	Duration of Appointment.....	17
5.3	Number	17
5.4	Nominations.....	17
5.5	Appointment of Directors	17
5.6	Removal	18
5.7	Duties.....	18
5.8	Powers of Directors.....	18
5.9	Delegation of Directors' powers.....	19
5.10	Conflicts of Interest.....	19
5.11	Voting.....	20
5.12	Re-election	20
5.13	Vacancy.....	20
5.14	Lapsing of Directorship	21
5.15	Membership Fees	21
5.16	Chairperson.....	22
5.17	No Casting Vote	22
5.18	Secretary	22
5.19	Office Bearers.....	22
6	POWERS AND DUTIES OF THE BOARD.....	23
6.1	Powers	23
6.2	Meetings.....	23
6.3	Scope of Membership and Categories.....	23
6.4	Policy	24
6.5	Operating Manual	24
6.6	Works Program	24
6.7	Resourcing	24
6.8	Australian Standards.....	24
6.9	Finance	24
6.10	Minutes	25
7	PROCEEDINGS OF THE BOARD.....	25
7.1	Convening Meetings.....	25
7.2	Alternate Directors.....	25
7.3	Acting Chairperson	26
7.4	Voting.....	26
7.5	Resolutions.....	26
7.6	Designated Majority	26
7.7	Ratification	27
7.8	Record of Directors	27
7.9	Quorum	27
7.10	Vacancies.....	27
7.11	Circular Resolution	28

7.12 Email Resolution 28

8 CHIEF EXECUTIVE OFFICER 28

9 ADVISORY GROUPS..... 29

10 FUNDING AND ACCOUNTABILITY 30

 10.1 Funding and Accountability 30

 10.2 Accounts and Records 30

 10.3 Annual Report 31

 10.4 Audit..... 31

 10.5 By-Laws..... 31

11 CONTRIBUTION ON WINDING UP 31

12 INDEMNITY..... 32

13 REPEAL, VARIATION AND AMENDMENT OF CONSTITUTION..... 32

14 MISCELLANEOUS 33

 14.1 Notice..... 33

 14.2 Inspection of Records 34

A Company Limited by Guarantee

Not having a Share Capital

CONSTITUTION

-of-

AUSTRALIAN TELECOMMUNICATIONS ALLIANCE LTD

1 INTERPRETATION AND NAME OF COMPANY

1.1 Name

The name of the Company is "Australian Telecommunications Alliance Ltd".

1.2 Interpretation

In this Constitution, unless the context otherwise requires:

(a) the following definitions apply unless the context otherwise requires:

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

"**ACCC**" means Australian Competition and Consumer Commission.

"**ACMA**" means the Australian Communications and Media Authority

"**Advisory Groups**" means the groups established for the delivery of ATA's works program as set up from time to time.

"**Association**" means a Member that is an organisation or corporation whose membership includes a significant number of individuals or organisations.

"**Authorised Representative**" means a person nominated as such by a Member.

"**Board**" means Members of the Board of Directors of the Company.

"**ATA**" means the Company;

"**Carrier**" has the same meaning as defined in the Telecommunications Act 1997.

"**Carrier/Carriage Service Provider/Content Service Provider**" has the same meaning as set out in **Clause 2.9(a)**.

"**Carriage Service Provider**" has the same meaning as defined in the Telecommunications Act 1997.

"**Chief Executive Officer**" or "**CEO**" means a person appointed by the Board under **Clause 8(a)**.

"**Commonwealth**" means the Commonwealth of Australia and its Territories.

“Communications Technologies” means any system, service equipment or facilities used for carrying communications by means of guided and/or unguided electromagnetic energy.

“Company” means the company limited by guarantee and called Australian Telecommunications Alliance Ltd.

“Constitution” means this document as amended from time to time.

“Content Service Provider” has the same meaning as defined in the Telecommunications Act 1997.

“Designated Majority” means the Designated Majority of the Board as prescribed by **Clause 7.5(b)**.

“Designated Resolution” means a resolution of Members as prescribed in **Clause 4.9(b)** .

"Director" means the directors of the Company from time to time.

"General Meeting" means a meeting of Members of the Company.

"High Revenue Members" means each of the five Members in the Carrier/Carriage Service Provider/Content Service Provider membership category with the greatest annual revenue in that category.

“Individual” means a Member who is:

- (i) a natural person; and
- (ii) not representing a Carrier/Carriage Service Provider/Content Service Provider, Association or Organisation.

“Industry” means persons, firms and corporations and government entities which are involved in the development, manufacture, sale, regulation, standardisation, operation or use of Communications Technologies.

“Members” mean Members of the Company which consist of Carriers, Carriage Service Providers, Content Service Providers, Associations, Organisations and Individuals as may be determined from time to time and whose names are entered on the Register of Members.

“Meeting” means a meeting of Members of the Company.

“Office” means the registered office of the Company.

“Office Bearer” means a person appointed as a member of the Board or as the Secretary or appointed to any other office.

“Operating Manual” means the document or documents prepared or caused to be prepared by the Board, which sets out the process by which the Company undertakes work.

“Organisation” means an organisation or corporation that is not a

Carrier/Carriage Service Provider/Content Service Provider or Association.

“Register of Members” means the register of Members kept by the Company.

"Related Body Corporate" has the same meaning given to the term "related body corporate" in the Act.

“Secretary” means any person appointed to perform the duties of a Secretary to the Company in accordance with **Clause 5.18**.

"Special Resolution" has the same meaning given to the term "special resolution" in the Act.

“TIO” means Telecommunications Industry Ombudsman.

“Works Program” means the program referred to in **Clause 6.6(a)**.

“Writing” means written, or produced by any substitute for writing, and includes printing, lithography, photography and other modes of representing or reproducing words in a visible form by any technology.

- (b) words importing the singular include the plural and vice versa.
- (c) words importing a gender include all genders.
- (d) words or expressions defined in the Act have those meanings.
- (e) the word person includes a reference to any individual, company, body corporate, association, partnership, firm, joint venture, trust or government agency.
- (f) a reference to a statute or code or the Act (or to a provision of the same) includes a reference to that statute, code or Act as modified or amended and in operation for the time being, or to any statute, code or provision enacted (whether by the State or Commonwealth) in its place and includes any regulation or rule for the time being in force under the statute, code or Act.
- (g) a person includes the person's successors or legal personal representatives.
- (h) a body (including an institute, association, authority or government agency) whether statutory or not;
 - (i) which ceases to exist; or
 - (ii) whose powers are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (i) the word including or includes means including but not limited to or including without limitation;

- (j) headings are for convenience only and must be ignored in interpreting this Constitution.

1.3 Exclusion of Replaceable Rules

The replaceable rules contained in the Act are excluded and do not apply to the Company (except insofar as they are repeated in this Constitution).

1.4 Constitution subject to Act

This Constitution is subject to the Act. Where there is any inconsistency between a clause of this Constitution and the Act, the Act prevails to the extent of inconsistency.

1.5 Objects

The objects for which the Company is established are to:

- (a) actively promote and lead a co-operative environment to address in a timely manner national and international issues involving communications standards, codes of practice and the development of operational guidelines for the Australian self regulatory, competitive, multi carrier, multi carriage service provider, multi network national environment;
- (b) establish and maintain flexible and open processes to address technical, consumer and operational issues affecting Australia's communication facilities and services and the development of innovative and cost effective communications services;
- (c) develop and approve technical standards and codes of practice for the communications industry;
- (d) undertake operational activities as required to provide industry wide competitively neutral operational services;
- (e) be an information resource to its Members and Industry participants, the federal and state governments and agencies, local governments and other interested parties;
- (f) maintain effective interfaces with the Federal Government, the ACCC, the ACMA and the TIO;
- (g) promote industry progress and harmony with minimal regulatory or legislative intervention;
- (h) to promote industry progress and provide information resources by establishing links with New Zealand consistent with the Closer Economic Relations agreement between Australia and New Zealand;
- (i) to optimise the community benefit of a competitive communications industry. This includes prompt response to issues of concern, eg. community safeguards, and taking advantage of innovations which offer community benefits;

- (j) to provide a forum for the creation, discussion, analysis and monitoring of policies and practices relating to the business activities and interests of Members and the Industry;
- (k) to preserve, maintain and encourage the integrity of Carriers, Carriage Service Providers and Content Service Providers and to suppress dishonourable, unprofessional and undesirable conduct or practices;
- (l) to advance the interests of Members and the Industry;
- (m) to make representations to federal and state governments and agencies, local governments, regulatory bodies, carriers and other interested parties with a view to promoting the common interests of Members and the Industry; and
- (n) to establish and operate programs and services to facilitate the resolution of issues and disputes between persons involved in and with the Industry.

1.6 Powers

The Company has all the powers given to it by the Act including all powers necessary to enable the Company to carry out its objects or enter into any transaction or do any act that is incidental, necessary or otherwise desirable to achieve its objects, including the acquisition or disposal of assets or liabilities for this purpose.

1.7 Application of Income and Property

All of the income and property of the Company must be applied solely towards the promotion of the objects of the Company outlined in **Clause 1.5** and no portion may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Members provided that this restriction does not prevent the payment in good faith of:

- (a) remuneration to any officers or employees of the Company or to any Member or any other person in return for services actually rendered to the Company;
- (b) interest on money lent to the Company by a Member at a rate not exceeding the rate for the time being charged by the Company's bankers for overdrawn accounts; or
- (c) reasonable and proper rent, remuneration or return for any premises of a Member occupied by the Company.

1.8 Liability of Members

The liability of the Members is limited.

1.9 Amendment of Membership Categories and Entitlements

A Special Resolution of the Members of the Company altering or adding to this Constitution, or making, varying or repealing the Company's by-laws, will not have effect unless (in addition to the requirements prescribed by the Act and this Constitution) at a duly convened meeting of the Company, more than three quarters of the votes that are entitled

to be cast at that meeting, are cast in favour of that Special Resolution, whether by Members actually present and entitled to vote in person or by Authorised Representative or by proxy.

2 MEMBERS

2.1 Members

Those who are Members of the Company when this Constitution is adopted and such other persons as the Company may admit to Membership in accordance with this Constitution are Members.

2.2 Application for Membership

Any person or corporation desiring to become a Member must submit to the Secretary of the Company an application in the form from time to time prescribed by the Board and containing such particulars, information and undertakings as the Board may determine from time to time. On receipt of a properly completed application form the Company may assign each person or corporation to a category of Membership as provided in **Clause 2.9**.

2.3 Eligible Persons

The Board will admit into Membership of the Company any person who meets the following eligibility criteria:

- (a) the person is a Carrier, Carriage Service Provider or Content Service Provider;
- (b) the person has provided the Company with a properly completed application form requesting admission into a category of Membership of the Company appropriate to the activities of that person;
- (c) the person has not previously been refused or terminated Membership from the Company; and
- (d) if a corporation and subject to the Board's discretion pursuant to **Clause 2.7**, the corporation is not a Related Body Corporate of an existing Member.

2.4 Discretion to Grant Membership

The Board may at its discretion admit to Membership of the Company a person other than a person referred to in **Clause 2.3** where the Board considers that:

- (a) admission of that person would advance achievement of the objects of the Company;
- (b) the interests of that person are not appropriately represented by a Member that is an Association or Organisation on behalf of persons carrying on activities within a sector of the Industry;
- (c) the person has provided the Company with a properly completed application form requesting admission into a category of Membership of the Company appropriate to the activities of that person;

- (d) the person has not previously been refused or terminated Membership from the Company; and
- (e) if a corporation and subject to the Board's discretion pursuant to **Clause 2.7**, the corporation is not a Related Body Corporate of an existing Member.

2.5 Discretion to Refuse Membership

The Board may refuse to grant Membership to persons or entities for any reason, including without limitation where in the Board's view such persons or entities do not have a legitimate interest in the conduct of the Industry.

2.6 Eligibility in Multiple Categories

Where an applicant for Membership of the Company is eligible under more than one category of Membership provided in **Clause 2.9**, that applicant must apply for or where appropriate change Membership to the level of Membership requiring payment of the highest Membership fee for which that applicant is or may be eligible.

2.7 Related Bodies Corporate of Members

A Related Body Corporate of a corporation which is a Member of the Company is not eligible for Membership of the Company unless the Board otherwise determines in relation to a particular Related Body Corporate. The Board must not determine to admit a Related Body Corporate of a Member of the Company unless the Board is satisfied that the Related Body Corporate conducts business substantially independently from the corporation which is a Member of the Company.

2.8 Nominee Applications

A corporation which is a Carrier, Carriage Service Provider or Content Service Provider may at its discretion nominate a Related Body Corporate (Nominee) as an applicant for Membership of the Company. The application must state the name of the corporation, or names of the corporations, whom the Nominee is authorised to represent. The Board shall consider the application of the Nominee as though the Nominee was the Carrier, Carriage Service Provider or Content Service Provider which the Nominee is authorised to represent. The Nominee by making the application for Membership of the Company warrants that it has, and will continue to have for so long as the Nominee is a Member of the Company, authority to act for and on behalf of the nominating Carrier, Carriage Service Provider or Content Service Provider respectively. Such warranty may be revoked at any time by written notice to the Board. Upon acceptance of the application for Membership by the Board the Nominee will be deemed to act as a Carrier, Carriage Service Provider or Content Service Provider for the purposes of this Constitution respectively and references in this Constitution to a Carrier, Carriage Service Provider or Content Service Provider respectively will be deemed to be references to any Nominee acting for on or behalf of any corporation pursuant to this Clause, provided that references to revenue of a Carrier, Carriage Service Provider or Content Service Provider will be read as references to revenue of the corporation or corporations represented by a Nominee, as well as the Nominee's revenue where the Nominee itself is a Carrier, Carriage Service Provider or Content Service Provider.

2.9 Categories of Membership

Subject to **Clause 2.6**, the Board's decision as to a successful applicant's category of membership is final.

The categories of membership in the Company are:

- (a) the group comprising Carriers, Carriage Service Providers and Content Service Providers ("**Carriers/Carriage Service Providers/Content Service Providers**");
- (b) Organisation;
- (c) Association; and
- (d) Individual.

Any amendments to the categories of Membership described in this **Clause 2.9** must comply with **Clause 4.11** and must facilitate admission to Membership of a broad range of persons who or which by their admission would advance achievement of the objects of the Company and who or which are engaged or proposing to engage in the Industry, but:

- (i) shall not facilitate any corporation or individual obtaining or exercising undue or disproportionate influence over the affairs of the Company as a result of aggregation of voting power with related persons or Related Bodies Corporate;
- (ii) where interests of a particular section of the Industry are appropriately represented by an association or organisation on behalf of persons or corporations carrying on activities within that sector of the Industry, the views of those persons or corporations should be presented through that organisation or association rather than through the individual persons or corporations becoming Members of the Company; and
- (iii) where organisations or associations are admitted to represent the interests of industry, users or consumers, those organisations or associations must be membership-based.

2.10 Membership Fees

The Board will by Designated Majority prescribe the annual fee for each category of Membership from time to time. The Board may, in its discretion, waive the membership fee for any Member or any applicant for membership.

2.11 Payment of Membership Fees

If an application for Membership is accepted the Secretary must send to the applicant written notice of its acceptance and a request for payment of a first fee. Upon receipt by the Company of the signed application in the prescribed form an eligible applicant may be entered in the Register of Members as a Member and the Member must be sent an invoice in respect of the first fee. Should the first fee not be paid within three (3) calendar months after the date of the invoice, the Secretary may, at his or her discretion, cancel acceptance of the application and remove the applicant's name from the Register of Members.

2.12 Review of Rejected Membership Applications

If the Board refuses to admit any person to Membership of the Company the refused person may request that the Board state in writing the Board's reasons for this refusal. The refused person may, within 30 days of receiving the Board's statement of reasons, request that this refusal be reviewed by a person or persons agreed by the refused person and the Board, or if the refused person and the Board are unable to agree, a person nominated by the Chairperson for the time being of the Australian Disputes Centre Limited. The procedure for determination of this review will be as determined by agreement between the refused person and the Company or, failing agreement, as determined by the Chairperson of the Australian Disputes Centre Limited. The Company and the refused person will each bear their own costs associated with any review pursuant to this **Clause 2.12**.

2.13 Cessation Of Membership

- (a) A Member may resign from Membership at any time by giving 28 days' notice in writing to the Secretary.
- (b) If the Board is of the opinion that a Member has neglected or wilfully refused to comply with the provisions of this Constitution or has been guilty of conduct unbecoming a Member or prejudicial to the interests of the Company or the Industry, the Board may pass a resolution terminating the Member's Membership of the Company.
- (c) If any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator or other like person over the whole or any part of a Member's assets, operations or business, the Board may pass a resolution terminating the Member's Membership of the Company.
- (d) Any Member whose Membership fee remains unpaid for three (3) calendar months may have all privileges of Membership suspended until payment of all arrears is made, and after four months the Board may pass a resolution terminating such Membership.
- (e) Before passing a resolution pursuant to paragraph (b) or (d), the Board must give a Member not less than 28 days written notice stating the relevant conduct and must provide the Member with a reasonable opportunity to be heard on such reasonable conditions as the Company may determine.
- (f) On termination of Membership of the Company, an ex-Member must cease to use any logo, trade mark or other indicia of Membership of the Company.
- (g) An ex-Member shall forfeit all and any rights and privileges of Membership as at the date of cessation of Membership and shall have no further rights against or claim upon the Company or the property or funds of the Company, except rights or claims as a creditor (if any), and any right or claim arising from actions or omissions during the period of Membership provided that any fees or other amounts paid by the covering Member to the Company for the right to be a Member of the Company shall not be refundable to the Member and the Member shall have no rights to reclaim these fees or amounts.

3 GENERAL MEETING

3.1 Annual General Meetings

Annual General Meetings of the Company must be held in accordance with the provisions of the Act. The business of an Annual General Meeting may include:

- (a) receiving and considering the statement of financial performance and statement of financial position and the reports of the Directors;
- (b) electing Directors;
- (c) appointing the auditor; and
- (d) fixing the remuneration of the auditor.

3.2 Convening a General Meeting

The Directors may convene a General Meeting of the Company whenever they think fit.

3.3 Requisitioned Meeting

- (a) Members may requisition the holding of a General Meeting in accordance with the Act and this Constitution.
- (b) The Directors must on requisition made in writing of:
 - (i) not less than seven (7) Members; or
 - (ii) Members who are together entitled to not less than 5% of the total voting rights as at the date of the deposit of the requisition exercisable at General Meetings,

immediately convene a General Meeting of the Company in accordance with the time limits under the Act. Any requisition made by Members must state the object of the Meeting proposed and must be signed by the requisitionists and deposited at the Registered Office. The requisition may consist of several documents in like form each signed by one or more requisitionists.

3.4 Venues

- (a) A General Meeting of a Company must be held at a reasonable time and place.
- (b) The Company may hold a General Meeting at two or more venues using technology that gives the members as a whole a reasonable opportunity to participate.

3.5 Notice

- (a) Subject to the provisions of the Act relating to Special Resolutions and agreements for shorter notice, at least twenty-one (21) days' notice of a General Meeting of the Company must be given to such persons as are entitled to receive such notices from the Company.

- (b) A notice of a General Meeting of the Company must:
- (i) set out the place, the day and the time for the general meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (ii) state the general nature of the business to be transacted at the meeting and any Special Resolutions to be proposed; and
 - (iii) include a statement that:
 - (A) a Member is entitled to attend and vote and is entitled to appoint a proxy;
 - (B) a proxy need not be a Member; and
 - (C) a Member who is entitled to cast 2 or more votes may specify the proportion of the number of votes on each proxy.

3.6 Changes to General Meeting

The Directors may change the venue for, and postpone or cancel, a General Meeting if they consider that the meeting has become unnecessary, or that a postponement is in the interests of Members, or that the venue would be unreasonable or impractical, or a change is otherwise necessary to conduct the meeting efficiently. However, a General Meeting called to comply with a Members' requisition may not be postponed or cancelled unless those who requisitioned the meeting first consent in writing.

3.7 Representation At General Meetings

Each Member is entitled to exercise its vote at General Meetings by its Authorised Representative or by proxy. Each Member must appoint an Authorised Representative. Such appointment must be in writing addressed to the Secretary and must contain the name, address, status and specimen signature of the Authorised Representative. Any such appointment may be terminated by the Member by notice in writing addressed to the Secretary and the Member is entitled at the same time to appoint another person in place of the person whose appointment was terminated.

4 PROCEEDINGS AT GENERAL MEETINGS

4.1 Quorum

No business may be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business. A quorum will comprise:

- (a) presence of seven (7) Members; or
- (b) presence in person or by proxy or by Authorised Representative of Members who are together entitled to not less than 25% of the total voting rights of all Members having at the date of the meeting a right to vote at General Meetings,

whichever is the greater number of Members.

4.2 Individuals

Individuals will be entitled to attend General Meetings of the Company, and to be heard at General Meetings but:

- (a) will not be allowed to vote at a General Meeting;
- (b) may not requisition a General Meeting; and
- (c) will not be counted in determining whether a quorum is present at the time when the General Meeting proceeds to business.

4.3 Lack of Quorum

If within half an hour from the time appointed for the meeting a quorum is not present, the meeting (if convened upon the requisition of Members) must be dissolved. In any other case the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Chairperson of the meeting may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the adjourned meeting the Members present (being not less than four (4) Members) constitute a quorum and may transact the business for which the meeting was called.

4.4 Chairperson of General Meeting

The Chairperson of the Board is the chair of every General Meeting of the Company, or if he or she is not present within fifteen minutes after the time appointed for the holding of the meeting, or if the Chairperson has notified the Secretary in writing that he or she will not be present, then the Members present may appoint one of their number to be Chairperson of the meeting.

4.5 Powers of Chairperson

- (a) The Chairperson is responsible for the general conduct of and procedures at a General Meeting.
- (b) The Chairperson's decision about general conduct and procedures is final.

4.6 Adjournment of General Meeting

The Chairperson may, with the consent of the majority of Members present at any General Meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a General Meeting is adjourned for thirty days or more notice of the adjourned meeting must be given as in the case of an original meeting. Otherwise it shall not be necessary to give notice of an adjournment or the business to be transacted at an adjourned meeting.

4.7 Questions

The Chairperson of any Annual General Meeting must allow reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company. The Chairperson must also allow a reasonable opportunity for the Members as a whole at the meeting to ask the Auditors (or the Auditors' representative) if present questions relevant to the conduct of the Auditors and the preparation and content of the Auditors' report.

4.8 Method of voting

- (a) At any General Meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (i) by the Chairperson; or
 - (ii) by at least seven (7) Members present in person, by proxy or by Authorised Representative; or
 - (iii) by Members with at least 5% of the votes that may be cast on the resolution.

The demand for a poll may be withdrawn.

- (b) Unless a poll is so demanded, a declaration by the Chairperson that:
- (i) a resolution has on a show of hands been carried unanimously, or carried by a particular majority, or not carried; and
 - (ii) an entry to that effect is recorded in the book containing the minutes of the proceedings of the Company,

is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- (c) If a poll is duly demanded it must be taken in such a manner as set out in By-Law Number 2, either at once or after an interval or adjournment or otherwise as the Chairperson directs. The result of the poll is the resolution of the meeting at which the poll was demanded. However, a poll demanded on the election of a Chairperson or on a question of adjournment must be taken forthwith.
- (d) A Member may vote in person, by Authorised Representative or by proxy.
- (e) On a show of hands or a poll every Member shall have one vote.

4.9 Resolutions

No resolution of Members will be taken to be carried whether on a show of hands or a poll unless the requisite majority comprises the following:

- (a) in the case of an ordinary resolution of Members, at a duly convened meeting of the Company, more than half of the votes that are entitled to be cast at that meeting, are cast in favour of that ordinary resolution, whether by Members actually present and entitled to vote in person or by Authorised Representative or by proxy; or
- (b) in the case of a Designated Resolution of Members, at a duly convened meeting of the Company, more than two thirds of the votes that are entitled to be cast at that meeting, are cast in favour of that Designated Resolution, whether by Members actually present and entitled to vote in person or by Authorised Representative or by proxy;
- (c) in the case of a Special Resolution of Members, as prescribed by the requirements of **Clause 1.9** of this Constitution and the Act.

Note: For voting requirements at meetings of the Board, see **Clauses 7.4** and **7.5** below.

4.10 Designated Resolutions

- (a) An increase or reduction in the number of office bearers of the Company will require a Designated Resolution of Members in General Meeting.

4.11 Special Resolutions

The following matters will require a Special Resolution of the Members in General Meeting:

- (a) any business which the Act states requires a Special Resolution;
- (b) * any variation to the categories of membership described in **Clause 2.9**;
- (c) any alteration to the Company's legal status;
- (d) voluntary winding up of the Company;
- (e) changing the objects or scope of the Company;
- (f) * changes to this Constitution;
- (g) * making, varying or repealing the Company's by-laws.

Note: Matters indicated with an asterisk (*) require a Designated Resolution and require a Designated Majority of the Board prior to submission to the Members: see **Clause 7.6** below.

4.12 Capacity to Vote

A Member, Authorised Representative or proxy who is of unsound mind, or is someone whose person or estate is liable to be dealt with in any way under the law relating to mental health, may not vote.

4.13 Proxies

- (a) The instrument appointing a proxy must be in writing under the hand of the appointor. The instrument appointing a proxy confers authority to demand or join in demanding a poll. A Member is entitled to instruct its proxy in favour of or against any proposed resolutions. Unless otherwise instructed the proxy may vote or abstain as he or she thinks fit.
- (b) The instrument appointing a proxy may be in the following form or in a common or usual form that otherwise complies with the provisions of section 250A of the Act:

I,
of
* being the Authorised Representative of
being a Member of the Australian Telecommunications Alliance Ltd
hereby appoint
of
or failing that person
hereby appoint
of

as my proxy to vote for me on my behalf at the +Annual General Meeting/+General Meeting of the Company to be held on the day of and at any adjournment thereof. My proxy is hereby authorised to vote +in favour of/+against the following resolutions.

Signed this day of

NOTE: If a Member wishes to vote for or against any resolution the Member must instruct the proxy accordingly. Unless otherwise instructed the proxy may vote as the proxy thinks fit.

- * Delete or leave blank if inapplicable
- + Delete whichever is not desired.

- (c) The instrument appointing a proxy must be deposited at the registered office of the Company or at such other place within the State as is specified for that purpose in the notice convening the meeting, or sent to the facsimile number specified in the notice convening the meeting, not less than twenty-four (24) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or in the case of a poll not less than twenty-four (24) hours before the time appointed for the taking of the poll and in default of the above the instrument of proxy is invalid.
- (d) A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument if no intimation in writing of such death, unsoundness of mind or revocation has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used.

5 BOARD OF DIRECTORS

5.1 Management

Subject to **Clauses 5.3 and 5.19** and any statutory class rights, the management of the Company is vested in the Board which must consist of not fewer than eight (8) Directors and not more than fourteen (14) Directors, including the Chairperson.

5.2 Duration of Appointment

Each Director shall be appointed for two years unless replaced or removed earlier in accordance with this Constitution.

5.3 Number

Without limiting **Clause 5.1**, the Board must comprise Directors who are appointed as follows:

- (a) the independent Chairperson is to be elected pursuant to **Clause 5.16**;
- (b) the High Revenue Members, as determined by the annual revenue of that Member during the most recent full financial year of the Company, may appoint in aggregate one Director each. The High Revenue Members can appoint a minimum of three (3) and maximum of five (5) Directors;
- (c) Members comprising the Carrier/Carriage Service Provider/Content Service Provider membership category (that are not High Revenue Members) may appoint in aggregate a minimum of two (2) and a maximum of five (5) Directors ;
- (d) the Organisation membership category may appoint in aggregate a minimum of two (2) and a maximum of three (3) Directors.

5.4 Nominations

The Board may determine the number of Directors eligible for election or re-election in any year, and must call for nominations for any vacant position on the Board when giving Notice of an Annual General Meeting under **Clause 3.5** -. Nominations must take place as follows:

- (a) In respect of Directors appointed under **Clause 5.3(b)**, each of the High Revenue Members must give written notice to the Company of the nominated Director at least 10 days after nominations are called for by the Board as described above.
- (b) In respect of Directors appointed under **Clause 5.3(c)**, any Member in the Carrier/Carriage Service Provider/Content Service Provider membership category may nominate a candidate and provide such nomination in writing to the Company when called for by the Board as described above;
- (c) In respect of Directors appointed under **Clause 5.3(d)**, any Member in the Organisation membership category, may nominate a candidate and provide such nomination in writing to the Company when called for by the Board as described above.

5.5 Appointment of Directors

- (a) A person is eligible for election as a Director of the Company if they:
 - (i) are the chief executive officer of a Member; or
 - (ii) are (where a Member is part of a global business whose chief executive officer is based outside Australia), the nominee of the Member who is the

most senior person based in Australia of that Member's global business and who is approved by the Chairperson; and

- (iii) give the Company their signed consent to act as a Director of the Company; and
 - (iv) are not otherwise ineligible to be a director under the Act.
- (b) If a Director of a Member is removed or resigns their position as set out in **Clause 5.5(a)(i)** or **5.5(a)(ii)** of that Member (or otherwise becomes ineligible to be a Director), that Director must immediately resign from the Board and the Board may appoint a Director to fill the casual vacancy as set out in **Clause 7.10(b)**.
- (c) If the number of Directors is reduced to fewer than eight (8), the continuing Directors may act for the purpose of increasing the number of Directors to eight (8) or calling a General Meeting, but for no other purpose.
- (d) All acts done at any meeting of Directors will be valid as if every such person has been duly appointed and every Director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Director or that any Director was disqualified or not entitled to vote.

5.6 Removal

Any Director appointed by a Member may be removed by the Member who nominated that person and must resign if so requested by the nominator.

5.7 Duties

Each Director must act in the best interests of the Company as a whole and with due regard to the furtherance of the Company's objectives. Each Director must also act in accordance with any non-excludable duty or obligation owed by the Director to the Company or the Members of the Company under general law, the Act, or other provisions of this Constitution.

5.8 Powers of Directors

- (a) The Directors may use all the powers of the Company except for powers that, under the Act or the Constitution, may only be used by Members.
- (b) The Directors must decide on the responsible financial management of the Company including:
 - (i) any suitable written delegations of power under **Clause 5.9**; and
 - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (c) The Directors cannot remove a Director or auditor. Directors and auditors may only be removed by a Members' Resolution at a General Meeting.

5.9 Delegation of Directors' powers

- (a) The Board may resolve to:
 - (i) establish one (1) or more committees consisting of such persons as they determine;
 - (ii) delegate to each committee such of their powers required for the effective and efficient running and administration of the committee;
 - (iii) revoke any or all of the powers delegated to each committee and vary the nature and scope of the powers delegated; and
 - (iv) change the makeup of a committee at any time or dissolve it altogether.
- (b) A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the Board which, for the avoidance of doubt, may be contained within policies, terms of reference, guidelines or protocols.
- (c) The Board may continue to exercise all of their powers despite any delegation made under this rule.
- (d) The delegation must be recorded in the Company's minute book.

5.10 Conflicts of Interest

- (a) 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 meeting of Directors (or that is proposed in a Circular Resolution):
 - (i) to the other Directors; or
 - (ii) 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.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a Circular Resolution) must not, except as provided under **Clause 5.10(d)**:
 - (i) be present at the meeting while the matter is being discussed; or
 - (ii) vote on the matter.
- (d) A Director may still be present and vote if:
 - (i) their interest arises because they are a Member of the Company, and the other Members have the same interest;

- (ii) 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;
- (iii) their interest relates to a payment by the Company under **Clause 12**, or any contract relating to an indemnity that is allowed under the Act;
- (iv) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
- (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) 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
 - (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

5.11 Voting

- (a) Each person nominated as a Director under **Clause 5.4(a)** shall, upon signing a consent to act as a director, be appointed as a Director of the Company with effect from the date on which the Board accepts the consent to act and appoints that person to the Board.
- (b) Each person nominated as a Director under **Clauses 5.4(b)** or **5.4(c)** shall, upon signing a consent to act as a director, be appointed as a Director of the Company:
 - (i) If the number of nominations are fewer than the number of vacant positions under **Clauses 5.4(b)**, or **5.4(c)** as relevant - with effect from the date on which the Board accepts the consent to act and appoints that person to the Board; and
 - (ii) If the number of nominations exceed the number of vacant positions under **Clauses 5.4(b)** or **5.4(c)** as relevant - following the election of the requisite Directors by a postal vote of the relevant category of Members and as described in By-Law Number 1, with effect from the date on which the Board accepts the consent to act and appoints that person to the Board.

5.12 Re-election

At each Annual General the Directors whose term has been determined under **Clause 5.4** to end at such meeting, shall retire at the end of that Annual General Meeting, but shall be eligible for re-election.

5.13 Vacancy

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act the office of a Director becomes vacant if:

- (a) the Director is removed from his position by the Member that appointed him or her; or
- (b) the Director is absent without the consent of the Board from three successive meetings of the Board, provided that a Director will be taken to be present at a meeting of the Board if represented by his or her alternate; or
- (c) the Director resigns by notice in writing to the Board; or
- (d) the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (e) the Director ceases to be a Director by virtue of this Constitution; or
- (f) the Member which appointed the Director under **Clause 5.4** ceases to be a Member; or
- (g) the Member which appointed the Director changes its Membership category; or
- (h) in respect of a Director appointed under **Clause 5.11(a)** ("**Outgoing Director**"), if the Member who nominated that Director for appointment ceases to be a High Revenue Member, as determined on the last day of each financial year of the Company ("**Balance Date**"). In this case, each Member who is a High Revenue Member as at the Balance Date and who has not already appointed a Director under **Clause 5.11(a)**, may give written notice to the Company nominating a person to fill the position made vacant by this clause. Each person nominated as a Director under this clause ("**Incoming Director**") shall, upon signing a consent to act as a director, be appointed as a Director of the Company with effect from the date on which the Board accepts the consent to act and appoints that person to the Board. The term of appointment of an Incoming Director expires on the date on which the term of the Outgoing Director would have expired had their position not been made vacant under this clause.

5.14 Lapsing of Directorship

If any Member entitled to nominate a Director ceases for any reason to be entitled to nominate a Director, the Director nominated by that Member will cease to be a Director of the Company and the position of that former Director will become a casual vacancy to be filled in accordance with **Clause 5.19(b)**.

5.15 Membership Fees

- a) No nominee of any Member is eligible to stand for election to the Board unless the nominating Member has paid all annual fee charges outstanding and any other outstanding charges properly levied by the Board.
- b) Where a Member has appointed a Director to the Board in accordance with **Clause 5.3** and that member has failed to comply with their payment obligations under **Clause 2.11**, then that Member must procure that Director to resign from the Board immediately, upon receipt of notice from the Board.

- c) Where a Director resigns in accordance with **Clause 5.15(b)**, **Clause 5.6** will not apply and **Clause 5.19(b)** will apply

5.16 Chairperson

The Board must by Designated Majority elect an independent person as a Director of the Company to be the Chairperson of the Board. The Chairperson will hold office for a two year term, expiring at the Board meeting immediately subsequent to the end of the two year term, at which time the Chairperson must retire, but is eligible for re-election. A person nominated as Chairperson must have relevant experience in the Industry and in acting as a director. The Chairperson will be entitled to receive a stipend in such amount as the Board may determine in accordance with the Act and to receive reimbursement of reasonable travelling and associated expenses. A person will not be taken to be an independent person if he or she is an employee of a Member or any of a Member's Related Bodies Corporate, a Director or other officer of a Member or any of a Member's Related Bodies Corporate, a person who is providing consultancy services to or is a dealer or agent of a Member or any of its Related Bodies Corporate, or a member of a Member Association or Organisation. The Chairperson must promptly disclose to the Board any shares or security interests in a Member or any of a Member's Related Bodies Corporate which he or she holds and unless disclosed to and permitted by the Board voting by a Designated Majority, the Chairperson must not hold shares or security interests in a Member or any of a Member's Related Bodies Corporate of more than \$10,000.00 in value.

5.17 No Casting Vote

The Chairperson is eligible to vote but shall have no casting vote if an equal number of votes occurs on a show of hands or on a poll.

5.18 Secretary

The Board must appoint a Secretary of the Company who holds office on such terms and conditions as the Board determines. The Secretary will not be an ex-officio Member of the Board but if a Director will be entitled to exercise a Director's powers.

5.19 Office Bearers

- (a) Subject to **Clause 4.10**, the Company may from time to time by Special Resolution passed at a General Meeting increase or reduce the number of Directors and other statutory Office Bearers.
- (b) Any Director may at any time resign office by giving to the Secretary notice in writing of his or her resignation. The Board may at any time, and from time to time, appoint any Member representative to the Board, either to fill a casual vacancy or as an addition to the existing office bearers or other Directors, provided that:
- (i) the total number of office bearers or other Directors must not at any time exceed the number fixed in accordance with this Constitution;
 - (ii) the person so appointed is a person who would otherwise be eligible to be nominated as a Director; and

- (iii) the person so appointed is a person who would be eligible to be nominated by the Member previously represented by the retiring Director.

Nothing in this Clause will affect the right of a Member entitled to appoint a Director pursuant to the provisions of **Clause 5.4** to replace that Director, including by filling a casual vacancy caused by the resignation of the Director. The Director appointed to fill a casual vacancy must retire at the time that the Director whom he or she is replacing would have retired in accordance with this Constitution, but may seek re-election.

- (c) Subject to **Clauses 5.3, 5.4** and **5.6**, the Company may, at a General Meeting by Special Resolution, remove any office bearer before the expiration of his or her period of office, and may by a Special Resolution appoint another person in his or her stead.
- (d) No Member belonging to the Association or Individual categories of membership may be nominated or elected as a Director or other Office Bearer of the Company.
- (e) No Member belonging to the Association or Individual categories of membership is entitled to nominate or elect a Director or other Office Bearer of the Company.

6 POWERS AND DUTIES OF THE BOARD

6.1 Powers

- (a) The business of the Company is managed by the Board who may pay all expenses incurred in promoting and registering the Company and may exercise all powers of the Company as are not prohibited by the Act or this Constitution required to be exercised by the Company in General Meeting, provided that any rule, regulation or by-law of the Company made by the Board may be disallowed by the Company in General Meeting and provided further that no resolution passed by the Company in General Meeting invalidates any prior act of the Board, which would have been valid if that resolution had not been passed.
- (b) The Board shall be accountable for the strategic direction of the Company and the fulfilment of all corporate governance responsibilities.
- (c) The Board shall ensure that professional competency is maintained among the Directors and that due process is observed.

6.2 Meetings

The Board shall meet at regular intervals, but at least once every 3 months.

6.3 Scope of Membership and Categories

The Board may, from time to time by Designated Majority, recommend expansion of the scope of Membership or the creation of new categories of Membership for approval by the Members by Special Resolution at a General Meeting.

6.4 Policy

The Board has ultimate responsibility for the policy of the Company but in formulating policy it shall operate in an open, responsive, competitively neutral manner to ensure that it has the confidence of the community, the Industry and government. In developing codes of practice and technical standards it shall act in accordance with accepted principles of transparency and consensus and in accordance with the accreditation process referred to in **Clause 6.8** where appropriate.

6.5 Operating Manual

The Board shall prepare and update from time to time, or cause to be prepared and updated from time to time, an Operating Manual which shall set out, amongst other things, the method of nomination for Advisory Groups, the nominal sizes of such Advisory Groups and shall describe the openness and transparency of process with which the Company is to conduct its deliberations and operations.

6.6 Works Program

- (a) The Board, upon considering advice from the Chief Executive Officer and Advisory Groups, shall by Designated Majority adopt and promulgate a Works Program.
- (b) The Board will be responsible for formal and documented approval of the Works Program of the Company.

6.7 Resourcing

The Board shall establish resourcing arrangements for the activities of the Company and shall constitute itself as the body responsible for the raising and allocation of funds to finance the Company's activities. The Board may at its discretion, by resolution passed by a Designated Majority, specify that the operating guidelines or principles or other requirements specified in any Operating Manual of the Company must be followed before any technical standard or code of practice will be approved by the Board, provided that any specification of guidelines or principles or other requirements will not preclude the Board by Designated Majority from, in exceptional circumstances, approving a code of practice or technical standard which does not comply with the Operating Manual, where the Board considers this appropriate.

6.8 Australian Standards

The Board may apply to the Standards Accreditation Board of Standards Australia to gain accreditation for the Company to be authorised to produce Australian Standards.

6.9 Finance

- (a) The Board may exercise all the powers of the Company to borrow money and to mortgage or charge its property or any part thereof and to issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Company.
- (b) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company shall be signed,

drawn, accepted, endorsed or otherwise executed as the case may be by any two Directors or in such other manner as the Board from time to time determines.

6.10 Minutes

The Board must cause minutes to be made:

- (a) of all appointments of officers;
- (b) of the names of the Directors present at all meetings of the Company and of the Board;
- (c) of all proceedings at all meetings of the Company and of the Board.

Such minutes must be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of the next succeeding meeting.

7 PROCEEDINGS OF THE BOARD

7.1 Convening Meetings

- (a) Subject to the provisions of **Clause 6.2** the Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as the Board thinks fit.
- (b) The Chairperson or any three (3) Directors not including the Secretary may at any time request a meeting of the Board, and the Secretary must convene a meeting of the Board on such requisition within twenty-one (21) days.
- (c) A Board meeting may be held with one or more of the Directors taking part by telephone, audiovisual link up or other instantaneous communication medium, if the meeting is conducted so that each Director is able to hear each other Director attending the meeting. Such a meeting is deemed to be held at such place as is agreed upon by the Directors provided that the following conditions are satisfied:
 - (i) each Director must acknowledge his or her presence at the commencement of the meeting to all other Directors taking part; and
 - (ii) a Director may not leave the meeting so conducted by disconnecting his or her telephone or other means of communication unless he or she has previously obtained the express consent of the Chairperson so to do.

A Board meeting held as above will be deemed to conclude at such time as there is no longer sufficient number of Directors present by telephone or other medium as constitutes a quorum pursuant to **Clause 7.9**, provided that conclusion of a meeting by loss of a quorum will not affect the validity of business transacted prior to the loss of quorum.

7.2 Alternate Directors

A Director, with the prior approval of the Chairperson, may by notice to the Company appoint an alternate Director to exercise the powers of the nominating Director if the

nominating Director is unable to attend a meeting of the Board. The nomination will take effect upon receipt of that notice by the Company and continue in operation until:

- (a) the end of the meeting for which they were nominated;
- (b) the office of the nominating Director becomes vacant pursuant to **Clauses 5.6** or **5.13**; or
- (c) the alternate Director otherwise ceases to be a Director of the Company.

7.3 Acting Chairperson

The Chairperson of the Board will be the Chairperson of every Directors' meeting of the Company, or if he or she is not present within fifteen minutes after the time appointed for the holding of the meeting, or if the Chairperson has notified the Secretary in writing that he or she will not be present, then the Directors present may appoint one of their number to be Acting Chairperson of the Meeting

7.4 Voting

On a show of hands or a poll every Director shall have one vote.

7.5 Resolutions

Subject to **Clause 7.12**, any resolution of the Board proposed at a meeting of the Board will not be taken to be carried, whether on a show of hands or a poll, unless:

- (a) in the case of an ordinary resolution of Directors, there is, at a duly convened meeting of the Board, more than half of the votes that are entitled to be cast at that meeting, are cast in favour of that ordinary resolution, whether by Directors actually present and entitled to vote in respect of that resolution or by an alternate director present and entitled to vote in respect of that resolution; or
- (b) in the case of a resolution requiring a Designated Majority, at a duly convened meeting of the Board
 - (i) more than two thirds of the votes, that are entitled to be cast at that meeting, are cast in favour of that resolution requiring a Designated Majority, whether by Directors actually present and entitled to vote in respect of that resolution or by an alternate director present and entitled to vote in respect of that resolution; and
 - (ii) more than two thirds of the votes, that are entitled to be cast by Directors appointed under **Clause 5.4(b)**, are cast in favour of that resolution requiring a Designated Majority, whether by Directors appointed under **Clause 5.4(b)** actually present and entitled to vote in respect of that resolution or by an alternate Director present and entitled to vote in respect of that resolution.

7.6 Designated Majority

The following matters will require a Designated Majority of the Board at a Board meeting:

- (a) the approval of technical standards and codes of practice submitted by the Advisory Groups;
- (b) promulgation, adoption and variation of a Works Program;
- (c) the promulgation, adoption and variation of the Operating Manual;
- (d) appointment of additional Directors pursuant to **Clause 5.19(b)**;
- (e) the prescription of the annual fee for each category of Membership;
- (f) adoption and variation of the Company's annual budget; and
- (g) the decision to undertake operational activities to provide Industry wide competitively neutral operational services.

7.7 Ratification

The following matters will require a Designated Majority of the Board and must also be subsequently ratified by the Members as specified in **Clause 4.9(b)**:

- (a) changes to this Constitution; and
- (b) making, varying or repealing the Company's by-laws.

7.8 Record of Directors

The Board will cause to be maintained a record of Directors present and voting at meetings of the Board in a form and setting out such details as are appropriate to evidence compliance with **Clauses 7.5, 7.9 and** this Clause, which will in the absence of manifest error be conclusive as to matters there stated, provided that failure to maintain a proper record as required by this Clause will not affect the validity of any decision made by the Board otherwise in conformity with this Constitution and the law.

7.9 Quorum

No business may be transacted at a meeting of the Board unless a quorum of Directors is present at the time when the meeting proceeds to business. A quorum will comprise of an amount equal to or greater than fifty percent of the current Directors.

7.10 Vacancies

- (a) In the event of a vacancy or vacancies in the office of a Director or offices of Directors the remaining Directors may act but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of the Board they may act only for the purpose of convening a General Meeting of the Company.
- (b) The Board may appoint a person as a Director that meets the criteria under **Clause 5.5(a)** to be a Director, to fill a casual vacancy. The Director appointed to fill the casual vacancy must retire at the next Annual General Meeting.

7.11 Circular Resolution

If all the Directors who are eligible to vote on a particular resolution of the Board have signed a document containing a statement that they are in favour of that resolution in terms set out in the document, a resolution in those terms is deemed to have been passed at a meeting of the Board on the day and time at which the document was last signed by a Director.

7.12 Email Resolution

A resolution by email in respect of a matter, takes effect on a resolution of the Board if:

- (a) the Company Secretary sends an email to all the directors entitled to vote on the matter setting out the words in which the proposed resolution is to be passed, the time by which Directors must vote on the proposed resolution and stating that the resolution is proposed under this **Clause 7.12**; and
- (b) every Director entitled to vote on the matter notifies all other Directors, by email, whether he or she votes in the affirmative in respect of that matter and does so without amendment or condition to the proposed resolution.

8 CHIEF EXECUTIVE OFFICER

- (a) The Board must appoint a person as the Chief Executive Officer who shall be entitled to attend meetings of the Board and to be heard but will not be entitled to vote. Appointment or removal of the Chief Executive Officer must be confirmed in writing by the Board.
- (b) The Board may entrust to and confer upon the Chief Executive Officer any of the powers exercisable by it upon such terms and conditions and with such restrictions as it may think fit and either collaterally with or to the exclusion of its own powers and may from time to time revoke, withdraw, alter or vary all or any of those powers.
- (c) The Chief Executive Officer may, subject to guidelines set out in the Operating Manual and any directions of the Board, appoint, engage and remove such employees, agents, subcontractors and other persons as deemed necessary or desirable for the purposes of the Company. All personnel shall at all times carry out their duties under the supervision and control of the Chief Executive Officer.
- (d) The Board may fix the remuneration of the Chief Executive Officer.
- (e) The Chief Executive Officer will be accountable to the Board for amongst other things:
 - (i) delivery of Works Program in a timely fashion in accordance with promulgated guidelines;
 - (ii) ensuring the alignment of the Works Program with the strategic direction of the company;

- (iii) endorsement of the membership of Advisory Groups as outlined under **Clause 9** ensuring to the greatest extent possible all Advisory Groups are representative of all parties interested in the subject matter of the proposed code or technical standard or other issue with the subject of their deliberations and recommendations;
- (iv) development of the Operating Manual for approval and endorsement by the Board;
- (v) performance of the administrative functions of the Company;
- (vi) provision of logistical support to Advisory Groups;
- (vii) facilitation of the resolution of disputes as between Members or other persons which may arise through participation in Advisory Groups;
- (viii) preparation of reports to the Board.

9 ADVISORY GROUPS

- (a) The CEO may at any time
 - (i) establish Advisory Groups for the delivery of ATA's works program in accordance with ATA's Operating procedures as amended from time to time;
 - (ii) where appropriate, facilitate development of codes or technical standards by bodies other than the Company, especially in instances where such codes or standards have applicability to persons or organisations in addition to the industry; and
 - (iii) where appropriate will co-operate with other self-regulatory and co-regulatory bodies at Federal, State and Territorial levels to ensure a coordinated approach to the development and implementation of codes and/or technical standards.
- (b) The constitution of all Advisory Groups will be endorsed by the CEO;
- (c) Advisory Groups are accountable to the CEO at all times;
- (d) Advisory Groups will advise the CEO on the:
 - (i) preparation of Works Programs to ensure it meets the strategic direction of the company;
 - (ii) due process, quality and timing objectives of codes, technical standards and other documentation;
 - (iii) content of codes and technical standards;
 - (iv) general developments in the industry which have an impact on matters falling within the scope of ATA.

10 FUNDING AND ACCOUNTABILITY

10.1 Funding and Accountability

- (a) Notwithstanding the provisions of **Clause 2.10** the Board may, at its discretion, adopt a fee for service approach where necessary or desirable. The Board may also, where appropriate, allocate costs as between participants based on the volume of resources used by those Industry participants.
- (b) Insofar as the Company may establish discrete entities to undertake specific responsibility for prescribed Industry wide activities, including initiatives in respect of dispute resolution, it may do so on the basis of full cost recovery.
- (c) Should a particular Industry group seek the creation of a specific standard or code as a priority, the creation of such a standard code may be funded on a case by case basis by the Industry group seeking the priority.

10.2 Accounts and Records

- (a) The Board must ensure that there are kept proper accounts and records of the transactions and affairs of the Company, to enable true and fair statements of financial performance and financial position to be prepared and to permit the preparation of any other documents required by the Act or this Constitution.
- (b) Subject to any reasonable restrictions as to the time and manner, such records are open to inspection by the Members.
- (c) The Board must do all things reasonably open to it to:
 - (i) ensure that all money payable to the Company is properly collected;
 - (ii) ensure that all money expended by the Company is properly expended and properly authorised;
 - (iii) ensure that adequate control is maintained over assets owned by or in the custody of the Company;
 - (iv) ensure that all liabilities incurred by the Company are properly authorised;
 - (v) ensure efficiency and economy of operations and avoidance of waste and extravagance;
 - (vi) ensure the development and maintenance of an adequate budgeting and accounting system; and
 - (vii) ensure the development and maintenance of an adequate internal audit system.

10.3 Annual Report

The Board must in respect of each financial year prepare an Annual Report for the Members, which contains:

- (a) the financial report;
- (b) the Director's report; and
- (c) the auditor's report.

10.4 Audit

- (a) The Board must ensure compliance with all statutory audit requirements.
- (b) The financial report of the Company must be audited for each financial year of the Company and the correctness of the statements of financial performance and financial position must be ascertained by the auditors of the Company complying with the Act.
- (c) Financial reports of the Company when approved by a general meeting will be conclusive except regarding an error identified within 3 months after the date of preparation. If an error is identified within this period, the financial report must immediately be corrected and will then be conclusive.
- (d) The auditor of the Company is to be appointed and removed from time to time in accordance with the Act.

10.5 By-Laws

The Board has the power to make, vary and repeal by-laws from time to time for the proper conduct and management of the Company and such by-laws are binding on all Members. A resolution of the Board to make, vary or repeal by-laws requires a Designated Majority and must be subsequently ratified by a Special Resolution of the Members.

11 CONTRIBUTION ON WINDING UP

- (a) Every Member undertakes to contribute to the property of the Company in the event of the Company being wound up while it is a Member or within one (1) year after it ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before it ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$100.00.
- (b) Upon the winding up or dissolution of the Company, any property that remains after the satisfaction of its debts and liabilities must be given or transferred to another body having objects similar to the objects of the Company and whose Constitution shall prohibit the distribution of its income, profit or assets among its Members to an extent at least as great as is imposed on the Company. The body chosen for the purposes of this clause must be a fund approved by the Commissioner of Taxation as a fund, authority or institution referred to in Section

78 of the Income Tax Assessment Act 1936 of the Commonwealth and determined by the Members at or before the time of dissolution and, in default thereof, by application to the Supreme Court of New South Wales. Where no body satisfies these requirements, the Board must select a registered charity for receipt of any property on dissolution of the Company.

12 INDEMNITY

- (a) Every Director, officer, auditor or agent of the Company is indemnified out of the property of the Company against any liability incurred by him or her in his or her capacity as officer, auditor or agent to another person unless:
- (i) the liability arises out of conduct involving a lack of good faith;
 - (ii) the liability is owed to the Company or Related Body Corporate; or
 - (iii) the liability is for a pecuniary order under section 1317G or a compensation order under section 1371H of the Act.
- (b) A liability in **Clause 12(a)** includes, but is not limited to, any loss, cost or expense suffered or incurred by the officer, auditor or agent:
- (i) in defending proceedings, whether civil or criminal, relating directly or indirectly to that person's capacity within the Company and where that person is acting properly in which judgment is in favour of that person or in which that person is acquitted; or
 - (ii) in connection with an application in relation to such proceedings, in which the Court grants relief to that person under the Act.
- (c) The Company may make a payment, or agree to make a payment, whether by way of advance, loan or otherwise, for any legal costs incurred by a Director, officer, auditor or agent of the Company, on condition that the Director, officer, auditor or agent of the Company, must repay the amount paid by the Company to the extent that the Company is ultimately found not liable to indemnify the Director, officer, auditor or agent of the Company, for those legal costs.

13 REPEAL, VARIATION AND AMENDMENT OF CONSTITUTION

- (a) This Constitution may only be amended by Special Resolution of the Members in General Meeting.
- (b) Amendments to this Constitution must not have the effect or likely effect of breaching Part IV or Part XIB of the Trade Practices Act 1974 (Cth) (which deal with anti-competitive conduct).
- (c) If a member wishes to object to a proposed amendment to this Constitution on the basis that the amendment may have the effect or likely effect of breaching Part IV or Part XIB of the Trade Practices Act 1974 (Cth), the Member must notify the Board in writing of its objection at least 14 days prior to the General Meeting at

which the amendment is to be considered. Upon receipt of such an objection, the Board must obtain an independent legal opinion regarding the proposed amendment. If this legal opinion provides that it is more likely than not that the amendment would breach Part IV or Part XIB of the Trade Practices Act 1974 (Cth) then the proposed amendment must be withdrawn.

14 MISCELLANEOUS

14.1 Notice

- (a) In the case of a notice of a meeting, where a notice is sent by prepaid post service of the notice is deemed to be effected on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post.
- (b) Notice may be given by:
- (i) delivery to the address of the party notified for the purposes of this Clause, in which case it is deemed to have been received when delivered if delivered on a business day, or otherwise on the first business day following delivery in any other case; or
 - (ii) facsimile transmission to the facsimile number of the party notified for the purposes of this Clause, in which case it is deemed to have been received when received if received on a business day, or otherwise at 9.00 am on the first business day after receipt, provided that in either case:
 - (A) a transmission report is produced by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause or if the recipient confirms by telephone that they have received the facsimile transmission in its entirety; and
 - (B) a confirming copy of the facsimile is sent to the recipient by prepaid post on the same day the facsimile transmission is transmitted if transmitted on a business day or, in any other case, on the next business day; or
 - (iii) certified mail or security post, in which case it is deemed to have been received on the third business day following mailing if mailed by prepaid post and the notice is not posted to or from a place outside Australia; or
 - (iv) e-mail to the e-mail address notified for the purpose of this Clause in which case it is deemed to have been received when received if received on a business day, or otherwise at 9.00am on the first business day after receipt, provided that in either case:
 - (A) a transmission report is produced by the machine from which the e-mail was sent which indicates that the e-mail was sent in its entirety to the e-mail address or the recipient confirms by

telephone that they have received the e-mail transmission in its entirety; and

- (B) a confirming copy of the e-mail is sent to the recipient by prepaid post on the same day the e-mail transmission is transmitted if transmitted on a business day or, in any other case, on the next business day; or
- (v) airmail to the address of the party notified for the purposes of this Clause, in which case it is deemed to have been received on the seventh business day following mailing if mailed by prepaid post where the notice is posted to or from a place outside Australia.

14.2 Inspection of Records

Subject to the Act, the Directors may determine whether and to what extent the documents and the records of the Company will be open to inspection by any person. This clause does not limit the rights of a Director or former Director under the law.

BY-LAW NUMBER 1**VOTING PROCEDURES FOR ELECTION OF BOARD MEMBERS:**

The following voting procedures are set out as called for by **Clause 5.11** of the Constitution.

In the event that nominations for Members of the Board exceed the authorised number of vacancies in any classification a ballot must be conducted prior to the Annual General meeting, in the following manner:

- (a) The Chairperson of the Board must appoint a returning officer.
- (b) The returning officer must arrange the preparation of a ballot paper setting out the name of each candidate and, if appropriate, the Member the candidate represents, in a sequence determined by the drawing of lots.
- (c) Each ballot paper must be initialled by the returning officer and distributed to the voting representative of each Member. The voting representative is the Authorised Representative of each Member.
- (d) The voting representatives may allocate his or her voting rights to a proxy who may vote in his or her place. This must be done by the voting representative passing the initialled, original ballot papers issued, to the proxy and then forwarding a completed and signed proxy form (mailed to voting representatives with ballot papers) to the Company's Head Office. In the event that the proxy is allocated to the Chairperson, both ballot papers and proxy forms must be forwarded to the Company's Head Office, for passing to the Chairperson.
- (e) Each voting representative must complete one ballot paper for each voting right held by the Member. The voting representative must vote by marking a vote against the names of preferred candidates. Votes may only be made for the same number of candidates as there are vacancies, such direction being clearly displayed on the ballot paper. Voting will not be prioritised: that is, the same mark (not a number) will be made against each candidate receiving a vote.
- (f) Each voting representative must return completed ballot papers to the Company on or before the date specified for the close of voting. The date is indicated on the ballot paper. The date specified must be verified by the post mark or other external transmission date indicated on papers returned other than by mail. Ballot papers received after the due date must be determined to be informal and must not be counted.
- (g) Any ballot paper in which the number of candidates marked as aforesaid is different to the number of vacancies must not be counted as a vote towards any of the candidates so marked.
- (h) The returning officer must count the votes allocated to each candidate on a formal ballot paper submitted, in the presence of two independent scrutineers appointed by the Chairperson, and must submit a certificate to the Chairperson signed by himself and both scrutineers showing the number of valid votes received by each candidate.
- (i) The first candidate elected is the candidate with the highest number of votes recorded, and so on until all the vacancies are filled.

- (j) In the event that the ballot is inconclusive due to an equality of votes, the balance of the required number of candidates must be selected by lot.

The Chairperson must declare the results of the ballot to the Annual General Meeting and authorise the destruction of the ballot paper.

BY-LAW NUMBER 2**VOTING PROCEDURES FOR POLLS AT GENERAL MEETINGS**

The following procedures are set out as called for by **Clause 4.8(c)** of the Constitution. In the event that a demand for a poll is made and sustained at any General Meeting the poll must be carried out in the following manner:

- (a) The Chairperson must appoint a Director, or if no Director is present and willing to act, a Member or a Member's Authorised Representative to act as a returning officer for the purposes of the poll.
- (b) The returning officer must initial and distribute a specific number of ballot papers in accordance with the category of Membership of each Member.
- (c) Ballot papers shall have marked on their face a "Yes", "No" and "Abstain" box and Member must place an "X", or other recognisable mark in one box in relation to each resolution of their choice.
- (d) The returning officer must arrange for the ballot to be counted in the presence of two independent scrutineers appointed by the Chairperson and must observe the following rules regarding the count:
 - (i) Any ballot papers solely marked with an "X" or other recognisable mark in one of the three aforementioned boxes is valid.
 - (ii) Any ballot paper unmarked is informal and must not be counted.
 - (iii) Any mutilated or crossed-out ballot paper or any ballot paper where more than one box has been marked with an "X" or other recognisable mark, is informal and must not be counted.
 - (iv) Any ballot paper solely marked "X" or otherwise clearly marked in the "Yes" box must be counted as a vote for the resolution.
 - (v) Any ballot paper solely marked "X" or otherwise clearly marked in the "No" box must be counted as a vote against the resolution.
 - (vi) Any ballot paper solely marked "X" or otherwise clearly marked in the "Abstain" box or any other ballot paper within clauses (ii) and (iii) hereof must not be counted for or against the resolution.
- (e) The returning officer must count the votes and the informal votes and record the result on a certificate which, after the returning officer and both scrutineers have affixed their signatures thereto, must be handed to the Chairperson.

- (f) The Chairperson must read the result of the ballot to the meeting and the ballot papers must be destroyed by shredding within twenty-four (24) hours.
- (g) The result of the poll is deemed to be a resolution of the Meeting at which the poll was demanded and an entry to that effect in the minute book of the Company must be made accordingly.