
AUSTRALIAN FINANCIAL COMPLAINTS LIMITED

(ACN 620 494 340)

A company limited by guarantee

CONSTITUTION

Contents

1.	Preliminaries	7
1.1.	<i>Definitions</i>	7
1.2.	<i>Interpretation</i>	10
1.3.	<i>Replaceable rules not to apply</i>	11
2.	Entrenched provisions	11
2.1.	<i>Objects</i>	11
2.2.	<i>Powers concerning the performance of statutory functions and duties</i>	13
2.3.	<i>Assets and income of the Company</i>	13
2.4.	<i>Restriction on changing Constitution</i>	13
3.	Membership	14
3.1.	<i>Classes of membership</i>	14
3.2.	<i>Approval as a Member</i>	15
3.3.	<i>Voluntary Cessation of Membership</i>	16
3.4.	<i>Expulsion from Membership</i>	16
3.5.	<i>Variation of class rights</i>	18
4.	Directors	19
4.1.	<i>Composition of Board</i>	19
4.2.	<i>Transitional Board</i>	20
4.3.	<i>Independent Chair</i>	20
4.4.	<i>Industry Directors</i>	21
4.5.	<i>Consumer Directors</i>	22
4.6.	<i>Tenure of office</i>	22
4.7.	<i>Vacation of office</i>	22
4.8.	<i>Vacancies</i>	23
4.9.	<i>Remuneration of Directors and the CEO</i>	24
4.10.	<i>Additional or special duties</i>	24
4.11.	<i>Expenses</i>	24
4.12.	<i>Directors' interests</i>	25
5.	Powers and duties of Directors	25
5.1.	<i>Directors to manage Company</i>	25

5.2.	<i>Exercise of powers</i>	26
5.3.	<i>Levies, Case Costs and other fees</i>	26
5.4.	<i>Powers of delegation</i>	27
5.5.	<i>Appointment of attorney</i>	27
5.6.	<i>Minutes</i>	28
5.7.	<i>Execution of Company cheques etc.</i>	28
5.8.	<i>Reporting</i>	28
6.	Proceedings of Directors	28
6.1.	<i>Directors' meetings</i>	28
6.2.	<i>Questions decided by ordinary resolution</i>	28
6.3.	<i>Quorum for Directors' meetings</i>	29
6.4.	<i>Remaining Directors may act</i>	29
6.5.	<i>Chair of Directors' meetings</i>	29
6.6.	<i>Written Resolution by Directors</i>	29
6.7.	<i>Directors' meeting is defined</i>	30
6.8.	<i>Validity of acts of Directors</i>	30
7.	Secretary	30
7.1.	<i>Appointment of Secretary</i>	30
7.2.	<i>Suspension and removal of Secretary</i>	30
7.3.	<i>Powers and duties of Secretary</i>	31
8.	Inspection of records	31
8.1.	<i>Inspection by Members</i>	31
9.	General meetings	31
9.1.	<i>Annual general meetings</i>	31
9.2.	<i>General meeting</i>	31
9.3.	<i>Notice of general meeting</i>	31
9.4.	<i>Cancellation or postponement of a meeting</i>	31
9.5.	<i>Notice of cancellation or postponement of a meeting</i>	32
9.6.	<i>Contents of notice of postponement of meeting</i>	32
9.7.	<i>Number of clear days for postponement of meeting</i>	32
9.8.	<i>Business at postponed meeting</i>	32
9.9.	<i>Proxy, attorney or representative at postponed meeting</i>	32

9.10.	<i>Non-receipt of notice</i>	33
9.11.	<i>Director entitled to notice of meeting</i>	33
10.	Proceedings at general meeting	33
10.1	<i>Representation of Member</i>	33
10.2	<i>Quorum</i>	34
10.3	<i>Failure to achieve a quorum</i>	34
10.4	<i>Appointment and powers of chair of general meetings</i>	34
10.5	<i>Conduct of general meetings</i>	34
10.6	<i>Adjournment of general meeting</i>	35
10.7	<i>Voting at general meeting</i>	35
10.8	<i>Questions decided by majority</i>	36
10.9	<i>Poll</i>	36
10.10	<i>Equality of votes</i>	36
10.11	<i>Objection to voting qualification</i>	37
10.12	<i>Appointment of proxy</i>	37
10.13	<i>Deposit of proxy and other instruments</i>	37
10.14	<i>Validity of voting in certain circumstances</i>	38
11.	Appointments by Directors	38
11.1.	<i>Ombudsman appointments</i>	38
11.2.	<i>Adjudicator appointments</i>	39
11.3.	<i>Panel Member appointments</i>	39
11.4.	<i>Independent Assessor appointment</i>	40
12.	Rules	40
12.1	<i>Approval process</i>	40
13.	Notices	42
13.1	<i>Service of notices</i>	42
13.2	<i>Post</i>	42
13.3	<i>Electronic transmission</i>	42
13.4	<i>Evidence of service</i>	42
13.5	<i>Person entitled to notice of general meeting</i>	43
13.6	<i>Notices to Group Members</i>	43
14.	Winding up	43

14.1	<i>Contributions</i>	43
15.	Indemnity and insurance	44
15.1	<i>Indemnity</i>	44
15.2	<i>Insurance</i>	44
15.3	<i>Contract</i>	44
16.	Immunity from liability	45
16.1	<i>Undertakings</i>	45
17.	Amendment of Constitution	45
17.1	<i>By Special Resolution</i>	45
17.2	<i>Date effective</i>	45

1. Preliminaries

1.1. Definitions

- a. In this Constitution unless the context otherwise requires:

“Adjudicator” means an EDR decision-maker appointed in accordance with clause 11.2.

“Adoption Date” means the date on which the Company adopts this Constitution.

“Annual General Meeting”, in relation to the Company, has the meaning ascribed by clause 9.1;

“Applicable Rules” means the Rules that apply to a Member in respect of a complaint;

“ASIC” means the Australian Securities and Investments Commission or any successor body;

“auditor” means the auditor or auditors for the time being of the Company;

“Australia” includes the external territories;

“Case Costs” means fees payable by Members for dealing with complaints charged in accordance with a scale fixed from time to time by the Directors under clause 5.3;

“CEO” means the Chief Executive Officer of the Company, who is also the Chief Ombudsman;

“Chair” means the person who is the independent chair of the board of Directors (whether appointed by the Minister in accordance with clause 4.2(d) or the Directors in accordance with clause 4.1(b));

“Chief Ombudsman” means the Chief Ombudsman appointed in accordance with clause 11.1 who is also the CEO;

“Company” means Australian Financial Complaints Limited (to be re-named Australian Financial Complaints Authority);

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

“Consumer Director” means a Director with experience in representing consumer interests relevant to the Company (whether appointed by the Minister in accordance with clause 4.2(d) or the Directors in accordance with clause 4.1(b));

“**Corporations Act**” means the *Corporations Act 2001* (Cth);

“**Director**” means a person occupying the position of director of the Company;

“**Directors**” means all or some of the Directors acting as a board;

“**EDR Decision-Maker**” means a person, or a panel of persons acting together, duly appointed to make binding decisions under the Rules;

“**executive officer**” means an officer, auditor or agent of the Company;

“**financial year**” means any 12 month period (including in respect of the first financial year of the Company, any part-12 month period between the date of registration of the Company and the commencement of the next financial year) determined by the Directors as the financial year of the Company;

“**Governmental Agency**” means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world;

“**Group**” means two or more Members who:

- a) are all Related Bodies Corporate; or
- b) are parties to a franchise agreement under which one Member is a franchisor and the other Member or other Members are franchisees,

“**Head Member**” means the Member nominated by a Group as its Head Member in accordance with clause 3.1(e);

“**Independent Assessor**” means the person appointed in accordance with clause 11.4;

“**Industry**” means the financial services, and superannuation industries and any similar or related or associated industries in which the Members and their Related Bodies Corporate carry on business;

“**Industry Director**” means a Director with experience in one or more of the kinds of businesses operated by Members (whether appointed by the Minister in accordance with clause 4.2(d) or the Directors in accordance with clause 4.1(b));

A person is “**Insolvent**” if:

- a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or

- b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- d) something having a substantially similar effect to (a) to (c) happens in connection with that person under Law.

“in writing” and **“written”** includes printing, photography and writing by electronic methods and all other modes of representing or reproducing words in visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;

“Law” includes:

- a) any general law;
- b) any law, regulation, authorisation, ruling, judgment, order or decree of any Governmental Agency; and
- c) any statute, regulation, proclamation, ordinance or by-law,

in Australia or any other jurisdiction;

“Levies” mean the Levies paid or payable by a Member pursuant to clause 5.3;

“Member” means a person whose name is entered in the Register as a member of the Company and has not ceased, or been expelled from, membership;

“Minister” means the Minister responsible for the authorisation of an external dispute resolution scheme pursuant to Part 7.10A of the Corporations Act;

“month” means calendar month;

“Objects” means the objects for which the Company is established, as set out in clause 2.1.

“Ombudsman” means an EDR Decision-Maker appointed pursuant to clause 11.1;

"Panel Member" means an EDR Decision-Maker appointed in accordance with clause 11.3;

"Register" means the register of Members kept in accordance with the Corporations Act;

"Registered Office" means the registered office of the Company;

"Related Body Corporate" has the meaning given to that term in the Corporations Act;

"Remuneration Tribunal" means the independent statutory body established by the *Remuneration Tribunal Act 1973*;

"Replaceable Rules" means the provisions referred to in section 141 of the Corporations Act;

"Rules" means the procedures, however described, established or as may be amended from time to time in accordance with this Constitution, for dealing with the resolution of complaints involving Members;

"seal" means the common seal of the Company;

"Secretary" means a person appointed by the Directors pursuant to clause 7.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of secretary of the Company;

"Small Business" means a small business as described in the Rules;

"Transitional Director" means a Director as referred to in clause 4.2(b) or as appointed pursuant to clause 4.2(c); and

"Voting Member" means a Member in the 'Voting Member' class of Members referred to in clause 3.1(d).

1.2. Interpretation

a. In this Constitution unless the contrary intention appears:

(gender) words importing any gender include all other genders;

(person) the word person includes a natural person, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;

(singular includes plural) the singular includes the plural and vice versa;

(amendments to statutes) a reference to a Law or a provision of a Law includes amendments, re-enactments or replacements of that Law or the provision, whether by a State or Territory or the Commonwealth of Australia or otherwise;

(from time to time) a power, an authority or a discretion held by a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;

(signed) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by Law relating to electronic transmissions or in any other manner approved by the Directors; and

(headings) headings to the clauses of this Constitution do not affect their construction.

1.3. Replaceable rules not to apply

- a. The Replaceable Rules do not apply to the Company.

2. Entrenched provisions

2.1. Objects

- a. The objects of the Company are to:
 - a. do all such things as may be necessary or appropriate for the performance of functions and exercise of powers it may be authorised by Law (including under the Corporations Act or Privacy Act or any other Act) to perform and exercise as the operator of an external dispute resolution scheme (however described) for the Industry;
 - b. establish, maintain, promote and acquire any other external dispute resolution scheme (including the operator of that scheme or the property, assets, liabilities or services of the operator) (however described) that may be necessary or convenient to fulfil the objects of the Company or as required by or contemplated by Law;
 - c. subscribe to, become a member of, cooperate or amalgamate with (including to transfer all or any part of the Company's property, assets, liabilities and services to) any other association or organisation that may be necessary or convenient to fulfil the objects of the Company or as required by or contemplated by Law.

- d. adopt from time to time procedures known as Rules for resolving complaints in or regarding the Industry;
- e. ensure that, at all times, the Company has sufficient and appropriate financial resources, staff, technology, research facilities and other resources to ensure its resolution of complaints is accessible, independent, fair, accountable, efficient, timely and effective;
- f. promote public awareness and understanding of the services and facilities provided by the Company;
- g. take such steps as the Company considers necessary or convenient to protect, promote and advance the Industry's complaint resolution procedures and conduct standards, including through providing support for the monitoring and improvement of relevant good Industry practice and codes of practice and identifying and investigating potential systemic issues that are likely to have an effect on consumers or Small Businesses.
- h. foster and promote sound and ethical business practices in the Industry;
- i. provide assistance to other dispute resolution schemes and organisations which have objects similar or complementary to those of the Company;
- j. consult and maintain relations with Federal, State and local governments and Governmental Agencies where relevant to the complaint resolution processes in respect of the Industry;
- k. encourage research in and to carry out or commission such investigations or research as may seem necessary in connection with any of the objects of the Company;
- l. compile and distribute to stakeholders statistical and other data of interest and to inform stakeholders on matters and questions affecting, or of interest to, the Industry;
- m. maintain effective lines of communication between the Company and its stakeholders, and to communicate to stakeholders results of the external dispute resolution scheme(s) (however described) operated by the Company and related matters; and
- n. do all such other things as are incidental or conducive to the attainment of the objects of the Company above.

2.2. Powers concerning the performance of statutory functions and duties

- a. Where the Company is required to satisfy any requirement or to discharge any duty under applicable Law, such requirements or duties are to be the responsibility of the Directors who are accordingly empowered to do, and to cause to be done, everything necessary or convenient to satisfy those requirements or duties.

2.3. Assets and income of the Company

- a. The Company's income is to be derived from contributions made by Members in an amount and manner as determined by the Company.
- b. Nothing in this clause 2.3 prevents the Company from receiving additional funding or income from the Commonwealth of Australia or any State or Territory, Governmental Agency or other source.
- c. The assets and income of the Company shall be applied solely in furtherance of its objects and no portion shall be distributed directly or indirectly to the Members of the Company except as bona fide compensation for services rendered or expenses incurred on behalf of the Company or to indemnify an officer of the Company for liabilities incurred to another person (other than the Company or a Related Body Corporate) or such an officer.
- d. In the event that the Company is wound up, any surplus assets remaining after the payment of the Company's debts and liabilities must be transferred to any organisation with similar purposes and which has rules prohibiting the distribution of its assets and income to its members.

2.4. Restriction on changing Constitution

- a. A special resolution altering, or adding to, or omitting clauses 2.1, 2.2, 2.3 or this clause 2.4, (each an "**Entrenched Provision**") does not have any effect unless and until that special resolution is also passed at a meeting of Members by:
 - i. a majority that together comprises, on a show of hands, at least 75% of Voting Members as vote in person, by proxy or attorney, or, on a poll, comprises at least 75% of the number of votes validly cast by Voting Members whether in person, by proxy or attorney;

where:

- ii. the Members' meeting has been convened by the Directors or by the holders of not less, in the aggregate, of 5% of the maximum number of votes which could be cast on a poll at a meeting of Members;

- iii. the notice convening the Members' meeting at which the special resolution is proposed has been given not less than 30 days before the date the meeting is to be held and sets out the opinion of the Directors as to whether or not it is in the interests of the Company as a whole if that special resolution is passed;
 - iv. the resolution by its express terms specifies the provision or provisions of the Company's Constitution which the resolution seeks to alter or add to; and
 - v. the Members' meeting at which that special resolution is to be proposed transacts no business other than the consideration of that special resolution, but nothing in this clause 2.4 prevents the special resolution also satisfying any requirement for a meeting of Members to vary the rights attaching to membership of the Company.
- b. A reference in this clause 2.4 to a special resolution altering or adding to an Entrenched Provision includes a reference to any resolution of any type which has the effect of altering, adding to or omitting an Entrenched Provision or any other effect which is equivalent or substantially similar to that effect.

3. Membership

3.1. Classes of membership

- a. The Directors may, from time to time, determine:
 - i. the various classes (and, if applicable, any sub-classes) of Members, including the establishment of new classes or sub-classes of Members;
 - ii. any restriction in the number of Members within each class;
 - iii. the qualifications for admission to each class; and
 - iv. the rights, privileges and obligations attached to being a Member in each class.
- b. Without limiting clause 3.1(a), the Directors may:
 - i. move Members from one class to another in its absolute discretion, and Members acknowledge and agree that doing so does not amount to variation of any Member's class rights; and
 - ii. where a membership category no longer contains any members, cancel that class.

- c. Any person who is admitted to membership will continue as a Member in the relevant class so long as the name of the person is in the Register as such.
- d. Without limiting clause 3.1(a), at the Adoption Date, the membership of the Company is divided into the following classes:
 - i. Voting Members;
 - ii. Non-Voting Members.

The rights of Members within the classes above are:

- i. only if those Members are Voting Members, the right to vote at general meetings of the Company; and
- ii. to enjoy any other benefits expressly bestowed by the Directors on that class from time to time.

For the avoidance of doubt, Non-Voting Members will not be entitled to vote at general meetings of the Company.

- e. Without limiting this clause 3.1 and notwithstanding anything in this Constitution to the contrary, from the Adoption Date up to and until the date by which the Company is authorised under section 1050(1) of the Corporations Act to operate an external dispute resolution scheme and, up to six months following such authorisation, in order to facilitate the establishment of the Company, the Member of the Company as at the Adoption Date will continue to be a Member of the Company and have the right to vote at general meetings of the Company and enjoy any other benefits expressly bestowed by the Directors on to it from time to time, until such time that the Directors determine that such Member will cease to be a Member of the Company.

3.2. Approval as a Member

- a. A person is eligible to be a Member if it is a participant in the Industry, or the Directors agree that it is appropriate for the person to be deemed eligible to be a Member.
- b. To become a Member a person must have been approved by the Directors as a Member.
- c. To apply for approval as a Member, a person must deliver to the Company a completed and signed application in the form approved by the Directors from time to time together with such particulars as the Directors may require.

- d. There is no limit on the number of Members. Membership is not transferable.
- e. Members who are members of a Group may, on their own initiative or at the request of the Chief Ombudsman, nominate a Head Member for that Group for the purposes of:
 - i. receiving communications from the Company, including notices and invoices on behalf of each Member of the Group;
 - ii. dealing with complaints and customer enquiries on behalf of the Member;
 - iii. exercising a vote of a Member of the Group; or
 - iv. such other matters as may be included in the nomination form of a Head Member.
- f. The Directors may:
 - i. approve a person as a Member subject to such terms and conditions as the Directors may in their discretion determine and may reject any application for Membership without being required to provide a reason for that rejection. Without limiting the generality of this clause 3.2(f) the Directors may impose different terms and conditions on admission to membership and on different persons admitted to membership; and
 - ii. for the avoidance of doubt, delegate any of the powers and functions under clauses 3.2(b) to 3.2(f)(i) (both inclusive).
- g. Each Member agrees with the Company to be bound by all Applicable Rules.

3.3. Voluntary Cessation of Membership

- a. A Member may withdraw from membership of the Company by giving to the Secretary not less than twelve months' written notice to that effect and its membership ceases upon expiry of such notice.
- b. The Directors may in their absolute discretion resolve to accept a Member's withdrawal from membership at any time, even if notice has not been given in accordance with this clause, and may waive any portion of the notice period.

3.4. Expulsion from Membership

- a. If a Member:

- i. refuses or neglects to comply with the provisions of this Constitution, or the Applicable Rules or with any binding decision (however described) made pursuant to the Applicable Rules;
- ii. fails to pay any monies owing to the Company within 30 days of receiving a notice requiring payment;
- iii. refuses or neglects to comply with the provisions of the Constitution, or the Applicable Rules or with any binding decision (however described) made pursuant to the Applicable Rules of any other external dispute resolution scheme (however described) approved under the Corporations Act or any other Act, including those approved by ASIC or other Governmental Agency;
- iv. fails to pay any monies owing to any other external dispute resolution scheme (however described) approved under the Corporations Act or any other Law, including those approved by ASIC, within 30 days of receiving a notice requiring payment;
- v. is expelled or excluded from any other external complaint resolution scheme (however described) approved under the Corporations Act or any other Law, including those approved by ASIC;
- vi. ceases to be duly authorised, licensed or to carry on business in the Industry; or
- vii. becomes Insolvent;

the Directors may by resolution expel that Member and/or each Member in the Member's Group. If the Directors pass such a resolution, the Member will cease to be a Member on the day the resolution is passed, or on the date specified by the Directors in the resolution.

b. A Member may not be expelled under clause 3.4(a) unless:

- i. the Member concerned has been given notice of the first meeting of the Directors at which the resolution for expulsion is to be considered which sets out the alleged grounds for expulsion:
 - a. at least 7 days prior to the date of that meeting for reasons of non-payment of monies to the Company; or
 - b. at least 21 days prior to the date of that meeting in any other instance; and

- ii. the Member has been given the opportunity to provide reasons in writing why the Member should not be expelled.
 - iii. For the avoidance of doubt, the only Member which must be given notice and an opportunity to provide reasons why it should not be expelled under this clause 3.4(b) is a Member referred to in clause 3.4(a)(i)-(vii) inclusive, and other Members in the Member's Group need not be given such notice or such an opportunity.
- c. An expelled Member may be reinstated by the Directors, or their delegate, upon such terms and conditions as they may see fit.
- d. Where a Member has ceased to be a Member, or gives notice of its withdrawal from membership, the Company must notify ASIC and any other relevant regulatory body or person as the Directors consider appropriate as soon as practicable after:
- i. the Directors receive notice of withdrawal of membership under clause 3.3; or
 - ii. a resolution is passed under clause 3.4(a).
- e. Cessation of membership, whether voluntarily or by expulsion:
- i. does not entitle the Member to repayment of the whole or any part of any Levy raised under clause 5.3 or of any other fee which has been previously paid by the Member;
 - ii. does not affect the Member's liability to pay any Levy or other fee which has become due and payable before such cessation; and
 - iii. does not affect the Member's rights and obligations under clause 3.2(g) in respect of any complaint commenced to be processed under an external complaint resolution scheme (however described) operated by the Company before such cessation (including any binding determination (however described) or any fees payable to the Company in respect of such a complaint).

3.5. Variation of class rights

Unless otherwise provided by the terms of members of a class of Members:

- a. all or any of the rights or privileges attached to the class may be varied, whether or not the Company is being wound up, only with the consent in writing of three-quarters of the Members of that class, or with the sanction

- of a special resolution passed at a separate meeting of the Members of that class;
- b. the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the Members of that class; and
 - c. the rights or privileges conferred upon the Members of that class are to be taken as not being varied by:
 - i. the admission of further Members in that class or any sub-class;
 - ii. the establishment of, and admission of Members in, any new class or category of membership, irrespective of the rights or privileges attached to that new class or sub-class; or
 - iii. the cessation of membership, whether under clauses 3.3 or 3.4 or otherwise.

4. Directors

4.1. Composition of Board

- a. The board of Directors must consist of:
 - i. the independent Chair;
 - ii. at least three but no more than five Industry Directors;
 - iii. at least three but no more than five Consumer Directors; and
 - iv. any other persons the Directors believe would be beneficial to the proper oversight of the Company.
- b. Subject to clause 4.2, the Directors are responsible for making all appointments to the board of Directors.
- c. Two or more Directors may not be officers of the same Member or officers of Members of the same Group.
- d. Except for the Transitional Board, the total number of Directors at any one time must not exceed eleven and there must be equal numbers of Industry Directors and Consumer Directors.
- e. For the avoidance of doubt, the Company in general meeting shall have no power to appoint Directors of the Company.

4.2. Transitional Board

- a. A Transitional Board will operate from the Adoption Date up to and until the date by which the Company is authorised under section 1050(1) of the Corporations Act to operate an external dispute resolution scheme and, subject to clause 4.2(f), up to six months following such authorisation.
- b. The Transitional Directors of the Company are the directors of the Company as at the Adoption Date.
- c. The Transitional Directors may appoint a person to replace a Transitional Director who ceases to be a Director or whose office is otherwise vacated on or before the appointment made in accordance with clauses 4.2(d) and 4.2(e). For the avoidance of doubt a person may be appointed as a Transitional Director notwithstanding they do not qualify for appointment pursuant to clause 4.1.
- d. During the period of 6 months after the Company has been authorised under the Corporations Act to operate an external dispute resolution scheme, the Minister may appoint:
 - i. the independent Chair; and
 - ii. other Directors, if the number of Directors (including that Director) whom the Minister has appointed, as mentioned in sub-clause (i), and this sub-clause, is less than half the total number of Directors.
- e. Immediately after any Ministerial appointments made under clause 4.2(d), the Transitional Board must appoint such additional Directors as may be necessary having regard to the requirements set out in clause 4.1.
- f. Upon the commencement of the terms of office of Directors appointed under clause 4.2(d) and 4.2(e) the Transitional Directors will retire, unless otherwise appointed under these clauses.

4.3. Independent Chair

- a. The Chair appointed under clause 4.2(d) or 4.3(d):
 - i. must be an independent person;
 - ii. may, at the time of appointment, be a person who already holds the office of Director, including a Transitional Director;
 - iii. subject to clause 4.2, holds office for so long as he or she remains a Director; and

- iv. ceases to be a Director upon ceasing to be the Chair.
- b. The Chair may resign from the office of chair of the board of Directors by giving one month's written notice to the Company (or such other shorter period as may be agreed by the Directors).
- c. In circumstances where:
 - i. the Minister has a right under clause 4.2(d) to appoint the independent Chair but has not made an appointment; or
 - ii. the Chair has ceased to hold the office of chair of the board of Directors and has not yet been replaced,

the Directors may make such arrangements for the chairing of meetings of the Directors as they think fit, pending the appointment of an independent Chair.

- d. In circumstances where:
 - i. the period during which the Minister may appoint an independent Chair under clause 4.2(e) has expired without the Minister appointing a period to the office; or
 - ii. the Chair has ceased to hold the office of chair of the board of Directors,
 - iii. the Directors may appoint a person to the office of independent Chair provided that the Directors: consult, as they consider appropriate in the circumstances, ASIC and relevant industry and consumer bodies about the appointment; and
 - iv. use their best endeavours to ensure that no person is appointed as the Chair who has a material interest which might conflict with their duties as independent Chair.

4.4. Industry Directors

- a. An Industry Director must be a person with experience in one or more of the kinds of businesses operated by Members.
- b. Prior to appointing an Industry Director, the Directors must consult with, and have due regard to the views of, such individuals and organisations (including key industry organisations) as the Directors consider appropriate in order to give proper consideration to the person's:
 - i. commitment to the highest standards of corporate governance;

- ii. expertise in and knowledge of one or more sectors of the Industry;
- iii. independence;
- iv. good standing; and
- v. capacity and willingness to consult with the Industry.

4.5. Consumer Directors

- a. A Consumer Director must be a person who has experience in representing consumer interests relevant to the Company.
- b. Prior to appointing a Consumer Director, the Directors must consult with, and have due regard to the views of, such individuals and organisations (including key consumer and community organisations) as the Directors consider appropriate in order to give proper consideration to the person's:
 - i. commitment to the highest standards of corporate governance;
 - ii. expertise in consumer affairs and/or Small Business issues;
 - iii. independence;
 - iv. good standing;
 - v. capacity and willingness to consult with consumer organisations and/or Small Business operators; and
 - vi. knowledge of issues relating to the Industry.

4.6. Tenure of office

- a. Subject to clause 4.2(e), a Director holds office for a maximum period of three years from the date of their appointment, and is eligible for re-appointment in accordance with this Constitution. In the case of a Director who was a Transitional Director, their first term of appointment is calculated from the Adoption Date.
- b. A Director may serve a maximum of three terms. Despite this, if the Directors reasonably believe that the needs of the Company are such that it is appropriate for a Director to serve one further term, the Directors may so resolve.

4.7. Vacation of office

- a. The office of a Director is automatically vacated if that Director:

- i. becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
- ii. ceases to be a Director by virtue of the Corporations Act or becomes prohibited by Law from being a Director;
- iii. 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;
- iv. resigns from office by notice in writing to the Company;
- v. has a direct or indirect interest in any contract or proposed contract with the Company and fails to declare the nature of that interest at a meeting of Directors as soon as practicable after the relevant facts have come to the Director's notice; or
- vi. has a conflict of interest which the Directors believe cannot be reasonably managed.

4.8. Vacancies

- a. If:
 - i. the independent Chair ceases to hold the office of chair of the board of Directors; or
 - ii. an Industry Director or a Consumer Director ceases to hold office with the result that there is no longer an equal number of Industry Directors and Consumer Directors,

the Directors must as soon as practical fill the vacancy.
- b. The validity of decisions of the Directors are not adversely affected by any failure to meet the requirements as to composition of the board of Directors set out in clause 4.1(a) as a result of:
 - i. the Minister not exercising the right to appoint an independent Chair during the 6 month period after the Company has been authorised under the Corporations Act to operate an external dispute resolution scheme; or
 - ii. an Industry Director or a Consumer Director ceasing to hold office creating a vacancy that has not yet been filled by a new appointment.

4.9. Remuneration of Directors and the CEO

- a. The Directors are to be remunerated for their services as Directors as follows:
 - i. subject to Part 2E of the Corporations Act, the aggregate amount of the remuneration of the Directors is a yearly sum not exceeding the sum from time to time determined by a resolution of the Directors. In setting the yearly sum, the Directors should have regard to:
 - a. the fact that the Company is a non-profit company;
 - b. relevant practices of other organisations of similar size and purpose; and
 - c. relevant information made publicly available by the Remuneration Tribunal in respect of organisations of similar size and purpose;
 - ii. the amount of the remuneration of the Directors is to be divided among them in the proportion and manner they agree or, in default of agreement, among them equally;
 - iii. the Directors' remuneration accrues from day to day.
- b. The Chief Ombudsman is to be remunerated for his/her services as CEO as determined from time to time by the Directors having regard to:
 - i. the fact that the Company is a non-profit company;
 - ii. relevant practices of other organisations of similar size and purpose; and
 - iii. relevant information made publicly available by the Remuneration Tribunal in respect of organisations of similar size and purpose.

4.10. Additional or special duties

- a. If a Director at the request of the Directors performs additional or special duties for the Company beyond his/her usual obligations as Director, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under clause 4.9.

4.11. Expenses

- a. A Director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director

may incur when travelling to or from meetings of the Directors or a committee or when otherwise engaged on the business of the Company.

4.12. Directors' interests

- a. A Director may not hold any other office or other employment in the Company, or a Related Body Corporate of the Company, other than as contemplated by this Constitution or approved by the other Directors.

5. Powers and duties of Directors

5.1. Directors to manage Company

- a. The business of the Company is to be managed by the Directors, who may exercise all such rights, powers or capacities of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.
- b. Without limiting the generality of clause 5.1a, the Directors:
 - i. must establish the Rules under clause 12.1;
 - ii. may amend or revoke all or part of the Rules in accordance with clause 12.1;
 - iii. develop and implement the Company's strategic direction and operation consistent with the Objects;
 - iv. must ensure that the Company, in its capacity as the authorised operator of an external dispute resolution scheme (however described), complies with its obligations under applicable Law and any conditions of authorisation imposed by the Minister including compliance with any direction from ASIC;
 - v. must regularly commission an independent review of the operations and procedures of any external dispute resolution scheme (however described) operated by the Company in accordance with any requirements under applicable Law or approval conditions;
 - vi. must oversee the financial management of the Company;
 - vii. appoint the Secretary;
 - viii. appoint the Independent Assessor;
 - ix. appoint and manage the performance of the CEO;

- x. provide strategic input and guidance to the CEO; and
- xi. shall exercise their powers at all times having regard to:
 - a. the importance of preserving the independence, integrity and fairness of the decision-making process within any external dispute resolution scheme (however described) operated by the Company; and
 - b. the importance of ensuring that any such scheme is appropriately resourced to carry out the objectives of the Company in a timely and efficient manner.

5.2. Exercise of powers

- a. A power of the board of Directors can be exercised only:
 - i. by resolution passed, or treated by clause 6 as passed, at a meeting of the Directors; or
 - ii. in accordance with a delegation of the power under clause 5.4.

5.3. Levies, Case Costs and other fees

- a. The Directors may from time to time obtain money for the purposes of the Company by raising a Levy from the Members. The form, amount and terms of any Levy may be determined by the Directors in their discretion.
- b. The Directors may serve upon each Member a notice requesting payment of any Levy to be raised from that Member, giving particulars of the total amount of the Levy to be raised and the amounts payable by each Member.
- c. Each Member shall, within one month after being requested to do so by the Company, provide a statement in the form approved by the Directors specifying the information required by the Directors to assess the amount of any Levy payable by that Member;
- d. Each Levy will be due and payable by each Member as at the date specified by the Directors.
- e. The Directors may from time to time fix the scale of Case Costs and may impose a fee for considering an application to be approved as a Member.
- f. A Member must pay Case Costs to the Company by the date for payment specified in an invoice issued by the Company to the Member.
- g. The Company may charge interest on any moneys payable by a Member to the Company, if not paid by the due date, (at such rate per annum as

determined by the Directors from time to time) for the period commencing at (and including) the due date for payment to (but excluding) the date those moneys are paid in full. If interest is charged by the Company on any unpaid moneys, any accrued interest will be compounded and added to the moneys payable at such intervals as the Directors may determine from time to time and is payable on demand.

5.4. Powers of delegation

- a. Subject to clause 5.4(c), the Directors may delegate any of their powers to:
 - i. one or more officers of the Company or a committee consisting of at least two Directors and such other persons as the Directors think fit to act on terms and conditions as the Directors prescribe including the quorum of any such committee; or
 - ii. the Chief Ombudsman (whether with or without the power to sub-delegate the power).
- b. Any delegation made by the Directors may be revoked at any time.
- c. Despite anything in this clause 5.4, the Directors may not delegate the following powers:
 - i. the power to expel a Member from membership under clause 3.4;
 - ii. the power to appoint, suspend and remove the Secretary under clause 7;
 - iii. the power to appoint an EDR Decision-Maker under clause 11;
 - iv. the power to appoint the Independent Assessor under clause 11.4;
 - v. the power to approve new Rules under clause 12; and
 - vi. any other powers required by law to be dealt with by the Directors.

5.5. Appointment of attorney

- a. The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes with such powers, or authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- b. A power of attorney granted under clause 5.5(a) may contain such provisions for the protection and convenience of persons dealing with the

attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

5.6. Minutes

- a. The Directors must cause minutes to be made of all proceedings of general meetings and of meetings of Directors, and cause those minutes to be entered in the minute book within one month after the relevant meeting is held.
- b. The minutes referred to in clause 5.6(a) must be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting.

5.7. Execution of Company cheques etc.

- a. The Directors may determine the manner in which and persons by whom cheques, electronic banking instructions or any other method of payment by the Company or receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

5.8. Reporting

- a. The Directors must report to Members on the operation of the Company at least once in each year, including publishing audited annual accounts of the Company.

6. Proceedings of Directors

6.1. Directors' meetings

- a. The Directors may meet together to conduct business and adjourn and otherwise regulate their meetings as they think fit.
- b. A Director may at any time, and the Secretary must on request from a Director, convene a meeting of the Directors by giving reasonable notice individually to every other Director.

6.2. Questions decided by ordinary resolution

- a. Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting. At the time a vote is taken, there must be an equal number of Industry Directors and Consumer Directors voting at the meeting. If there are an equal number of votes, the Chair shall have a second casting vote.

- b. Any such decision is for all purposes deemed a decision of the Directors.

6.3. Quorum for Directors' meetings

- a. At meetings of Directors, a quorum means the greater of:
 - i. 5; and
 - ii. the attendance of a simple majority of Directors in office at the relevant time (rounded down if the number of Directors in office at the relevant time is an odd number),

provided that such quorum includes the attendance of at least one Industry Director and one Consumer Director.

- b. The quorum must be present at all times during the meeting.

6.4. Remaining Directors may act

- a. The continuing Directors may act despite a vacancy in their number. If their number is reduced below that required for a quorum under clause 6.3, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to reach a quorum, or otherwise to bring their number up to the full complement of Directors.

6.5. Chair of Directors' meetings

- a. The Chair shall preside as Chair of each meeting of the Directors except that if the Chair is absent, unwilling to act, or not present within 15 minutes of the time appointed for the holding of the meeting, the Directors present at the meeting shall select one of their number to chair the meeting.

6.6. Written Resolution by Directors

- a. If all the Directors who are eligible to vote on a resolution have agreed to a document containing a statement that they are in favour of a resolution of the Directors in the terms set out in the document, a resolution in those terms is to be deemed to have been passed at a meeting of Directors held on a date on which the document was last agreed to by a Director.
- b. For the purposes of clause 6.6(a),
 - i. separate copies of a document may be used for agreement by the Directors if the wording of the resolution and statement is identical in each copy;
 - ii. the resolution is passed when the last Director provides written approval;and

- iii. any document referred to in this clause may be in the form of an electronic transmission.

6.7. Directors' meeting is defined

- a. For the purposes of this Constitution, a meeting of Directors means:
 - i. a meeting of Directors assembled in person on the same day and at the same time and place; or
 - ii. the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion notwithstanding that they (or one or more of them) are not physically present at the same place,and a Director participating in a meeting pursuant to clause 6.7(a)(ii) is to be deemed to be present (including for the purpose of constituting a quorum) and entitled to vote at the meeting.
- b. Clause 6.7(a) applies to meetings of Directors' committees as if references in that clause to Directors are references to committee members.

6.8. Validity of acts of Directors

- a. All acts done by any meeting of Directors or of a committee of the Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or member of a committee, or to act as a Director, or that a person so appointed was disqualified, valid as if a person had been duly appointed and was qualified to be a Director or to be a member of the committee.

7. Secretary

7.1. Appointment of Secretary

- a. There must be at least one Secretary of the Company who shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they think fit.

7.2. Suspension and removal of Secretary

- a. The Directors have the power to suspend or remove a Secretary.

7.3. Powers and duties of Secretary

- a. The Directors may vest in the Secretary such powers, duties and authorities as they may from time to time determine.

8. Inspection of records

8.1. Inspection by Members

- a. Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be opened to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by Law or authorised by the Directors or the Company in general meeting.

9. General meetings

9.1. Annual general meetings

- a. Annual general meetings are to be held in accordance with the Corporations Act.

9.2. General meeting

- a. The Directors may, whenever they think fit, convene a general meeting and must do so if required to do so under the Corporations Act.
- b. A general meeting may be held at more than one location provided that each location is connected by technological means that enables all those present to hear and participate in discussion,

9.3. Notice of general meeting

- a. Notice of a general meeting must be given in accordance with clause 13.5.

9.4. Cancellation or postponement of a meeting

- a. Where a general meeting (including an annual general meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

- b. This clause 9.4 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a court.

9.5. Notice of cancellation or postponement of a meeting

- a. Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:
 - i. to each Member individually; and
 - ii. to each other person entitled to be given notice of a general meeting.

9.6. Contents of notice of postponement of meeting

- a. A notice of postponement of a general meeting must specify:
 - i. the postponed date and time for the holding of the meeting;
 - ii. a place (or if clause 9.2(b) applies, places) for the holding of the meeting which may be either the same as or different from the place (or if clause 9.2(b) applies, places) specified in the notice convening the meeting; and
 - iii. if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

9.7. Number of clear days for postponement of meeting

- a. The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

9.8. Business at postponed meeting

- a. The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

9.9. Proxy, attorney or representative at postponed meeting

- a. Where by the terms of an instrument appointing a proxy or attorney or an appointment of a representative:

- i. the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
 - ii. the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of representative,
- b. then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of representative unless the Member appointing the proxy, attorney or representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

9.10. Non-receipt of notice

- a. The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

9.11. Director entitled to notice of meeting

- a. A Director is entitled to receive notice of and to attend all general meetings and is entitled to speak at those meetings.

10. Proceedings at general meeting

10.1 Representation of Member

- a. Any Member may be represented at any meeting of the Company by a proxy or attorney or a representative appointed under clause 10.1(b).
- b. A Member who is a body corporate may be represented at any meeting of the Company by a representative appointed under the Corporations Act.
- c. A person authorised under clause 10.1(b) is, in accordance with his or her authority and until it is revoked by the body corporate, entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were a natural person who was a Member of the Company.

- d. Unless the contrary intention appears, a reference to a Member in the succeeding provisions of this clause 10 means a Member, a proxy or attorney of a Member or a person appointed under clause 10.1(b) to represent a body corporate which is a Member.

10.2 Quorum

- a. No business may be transacted at any general meeting unless a quorum is present at the meeting comprising 20 or more Voting Members who are present in person or by proxy, attorney or representative appointed under clause 10.1. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the Chair of the meeting (on the Chair's own motion or at the request of a Voting Member) declares otherwise.

10.3 Failure to achieve a quorum

- a. Where a meeting is convened at the request of a Member or Members and a quorum is not present within half an hour from the time appointed for the meeting, the meeting must be dissolved.
- b. Where a meeting is convened in any other case and a quorum is not present within half an hour from the time appointed for the meeting:
 - i. the meeting must be adjourned to such day, time and place, as the Directors determine or, if no determination is made by them, to the same day in the next week at the same time and place; and
 - ii. if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting must be dissolved.

10.4 Appointment and powers of chair of general meetings

- a. The Chair must preside as chair of a general meeting, but if the Chair is unwilling to act or is not present within fifteen minutes of the time appointed for the holding of the meeting, the Directors present must elect one of their number to be chair of the meeting, or, if no Director is present or if all Directors present decline to take the chair, the Voting Members present must elect one of their number to act as chair of the meeting.

10.5 Conduct of general meetings

- a. The chair of a general meeting:

- i. has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
 - ii. may require the adoption of any procedure which is in the chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
 - iii. may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting,
- and a decision by the chair under this clause is final.

10.6 Adjournment of general meeting

- a. The chair of a general meeting may, with the consent of any 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.
- b. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- c. Except as provided by clause 10.6(b), it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

10.7 Voting at general meeting

- a. At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands of the Voting Members present unless a poll is (before or on the declaration of the result of the show of hands) demanded:
 - i. by the chair of the meeting; or
 - ii. by at least two present Voting Members, or by a present Voting Member who is entitled to at least 5% of the total voting rights of Voting Members under clauses 10.7(c)(ii), whichever is the lesser.
- b. Unless a poll is properly demanded, a declaration of the chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the 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 a resolution.

- c. Subject to clauses 10.3(b), 10.7(e), and 10.9(c):
 - i. on a show of hands every present Voting Member has one vote;
 - ii. on a poll, each Voting Member has one vote for each dollar paid by the Member in respect of Levies and Case Costs to the Company, or if determined by the Directors, the operator of any other external dispute resolution scheme acquired or amalgamated with the Company, in the financial year prior to the general meeting;
- d. On or before a general meeting, the Secretary may determine the number of votes of a Voting Member in accordance with clauses 10.7(c)(ii). A determination of the Secretary under this clause 10.7(d) is final.
- e. On a poll or on a show of hands, a vote may not be exercised in respect of a Voting Member if the Member or any Member in that Member's Group may be expelled in accordance with clause 3.4.

10.8 Questions decided by majority

- a. Subject to the requirements of the Corporations Act in relation to Special Resolutions and clause 10.9, a resolution is taken to be carried if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution exceeds one-half.

10.9 Poll

- a. If a poll is properly demanded, it must be taken in such manner and (subject to clause 10.9(b)) either at once or after an interval of adjournment or otherwise as the chair directs, and the result of the poll is the resolution of the meeting at which a poll was demanded.
- b. A poll may not be demanded on any resolution concerning the election of a chair or the adjournment of a meeting.
- c. A demand for a poll may be withdrawn.

10.10 Equality of votes

- a. In the event of there being an equality of votes, whether on a show of hands or on a poll, the chair of the meeting does not have a second or casting vote.

10.11 Objection to voting qualification

- a. An objection may be raised by a Voting Member to the qualification of another Voting Member only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- b. Any objection must be referred to the chair of the meeting whose decision is final.

10.12 Appointment of proxy

- a. An instrument appointing a proxy must be in writing under the hand of the appointer or his or her attorney duly authorised in writing or, if the appointer is a corporation under the seal or under the hand of an officer or attorney duly authorised, or otherwise authenticated. A proxy need not be a Member.
- b. An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- c. An instrument appointing a proxy is to be deemed to confer authority to demand or join in demanding a poll.
- d. An instrument appointing a proxy must be in the form approved by the Directors from time to time.

10.13 Deposit of proxy and other instruments

- a. An instrument appointing a proxy may not be treated as valid unless the instrument, and if signed under power of attorney or other authority, a copy of that power or authority certified as a true copy by a solicitor or barrister is or are received by the Company, not less than 48 hours before the time for the holding of the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the Registered Office or at such place as is specified for the purpose in the notice convening that meeting.
- b. An appointment of proxy received at an electronic address specified in the notice of general meeting for the receipt of the appointment or otherwise received by the company in accordance with the Corporations Act is taken to have been signed or executed or authenticated if the appointment:
 - i. includes or is accompanied by a personal identification code allocated by the company to the Voting Member making the appointment;

- ii. has been authenticated by the Voting Member in another manner approved by the Directors and specified in or with the notice of meeting; or
- iii. is otherwise authenticated in accordance with the Corporations Act.

10.14 Validity of voting in certain circumstances

- a. A vote given in accordance with the terms of an instrument of proxy or a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or the revocation of the instrument (or the authority under which the instrument was executed), if no notice in writing of the 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 or the power is exercised.

11. Appointments by Directors

11.1. Ombudsman appointments

- b. The Directors in accordance with the Rules:
 - i. must appoint a CEO and Chief Ombudsman;
 - ii. may appoint a Deputy Chief Ombudsman and other Ombudsman as deemed appropriate by the Directors,

for such period and on such terms and conditions of engagement as the Directors shall think fit (subject to clause 4.7).
- c. The CEO and Chief Ombudsman is responsible for the day to day management of the Company including:
 - i. the implementation of the strategic direction determined by the Directors;
 - ii. the establishment and maintenance of internal systems, procedures and processes to facilitate any external dispute resolution scheme (however described) that the Company is authorised under applicable Law to operate;
 - iii. carrying out the responsibilities that the Rules confer on the Chief Ombudsman or appointing one or more delegates to carry out those responsibilities;

- iv. the preparation of an annual budget and provision of financial reports to the Directors;
 - v. the recruitment and dismissing of employees, contractors and agents (other than people appointed by the Directors pursuant to this clause 11); and
 - vi. where improvements to the Rules are identified, making recommendations to the Directors for changes to the Rules.
- d. An Ombudsman shall exercise the powers and duties of the Ombudsman as set out in the Rules and shall:
- i. subject to holding relevant expertise, be entitled to sit as the sole EDR Decision-Maker in respect of all complaints prescribed by the Rules; and
 - ii. be able to demonstrate independence from government, industry and consumers in order to preserve the impartiality of the decision-making process.

11.2. Adjudicator appointments

- a. The Directors may from time to time appoint one or more persons to the position of Adjudicator as deemed appropriate by the Directors for such period and on such terms and conditions of engagement as the Directors shall think fit.
- b. An Adjudicator shall exercise the powers and duties of the Ombudsman as set out in the Rules and shall:
 - i. subject to holding relevant expertise, be entitled to sit as the sole EDR Decision-Maker in respect of a category of complaints prescribed by the Rules, as determined by the Chief Ombudsman; and
 - ii. be able to demonstrate independence from government, industry and consumers in order to preserve the impartiality of the decision-making process.

11.3. Panel Member appointments

- a. The Directors may from time to time, and in accordance with the Rules, appoint one or more persons to the position of Panel Member as deemed appropriate by the Directors for such period and on such terms and conditions of engagement as the Directors shall think fit.

- b. A Panel Member shall exercise the powers and duties of a Panel Member as set out in the Rules and shall, subject to holding relevant expertise, be entitled to sit as a member of a Panel who shall collectively be the EDR Decision-Maker in respect of complaints allocated to the Panel under the Rules.

11.4. Independent Assessor appointment

- a. The Directors must appoint an Independent Assessor and approve written procedures for the role. These procedures must entitle the Independent Assessor to review service issues raised in complaints that have not otherwise been resolved by the Company, but not to review the outcome of the case or the exercise of judgement by an EDR Decision-Maker including about the facts or merits of the case or whether the case is within the Company's jurisdiction.
- b. To ensure the impartiality of the Independent Assessor's review process, a person appointed as Independent Assessor must:
 - i. not have been an employee of the Company prior to appointment as Independent Assessor;
 - ii. be able to demonstrate independence from government, industry and consumers; and
 - iii. must report directly to the Directors.
- c. The period of the Independent Assessor's appointment and terms and conditions of engagement consistent with the purpose and independence of the role.

12. Rules

12.1 Approval process

- a. Applicable Rules shall apply until the Directors approve one or more new Rules in accordance with the following process:
 - i. The Directors shall consult with ASIC and individuals and organisations (including key consumer, community and industry organisations) as they consider necessary and appropriate in the circumstances;
 - ii. At the end of the consultation period, the Directors shall make available a copy of the proposed new Rules ("the **Proposed Rules**") on the Company's website and send a notice in writing to all individuals and

organisations that have been consulted. The notice shall state that unless a submission is received by the Company requesting a change to the Proposed Rules within the timeframe set by the Directors, the Directors shall meet to consider approving the Proposed Rules;

- iii. Any submission received pursuant to clause 12.1(a)(ii) shall specify in detail any amendments to the Proposed Rules and provide reasons why the amendment is requested;
- iv. A copy of the submission received pursuant to clause 12.1(a)(ii) shall be given to all individuals and organisations who have been consulted by the Directors. And such an individual or organisation may make a submission in reply by providing it to the Company within the timeframe stipulated by the Directors;
- v. The Directors shall consider the submissions and, if they are unable to resolve any outstanding issues, they shall refer the submissions to an independent person appointed by the Directors who is, in the Directors' opinion, appropriately qualified.
- vi. The independent person shall then consider the submissions and make a recommendation to the Directors as to whether the Proposed Rules should be amended and, if so, in what way ("the **Recommendation**");
- vii. Upon receiving the Recommendation, the Directors shall meet to consider whether or not they approve the Proposed Rules or whether the Proposed Rules should be amended in accordance with the Recommendation;
- viii. The Rules approved by the Directors in accordance with clause 12.1(a)(vii) shall then be submitted to ASIC if so required under the Corporations Act.

Any Rules submitted to ASIC for approval shall not become effective until such time as approval has been granted.

- b. Where only one set of Rules have been approved by the Directors, those Rules shall be the Applicable Rules.
- c. Where more than one Rules has been approved by the Directors, the Applicable Rules for a Member or for a particular complaint involving a Member will be those determined by the Chief Ombudsman.

- d. The provisions of this Constitution, and of the Applicable Rules in respect of a complaint, each as in force from time to time, shall form a binding contract between each Member and the Company.
- e. Clause 12.1(a) shall not apply in circumstances where ASIC has utilised a specific Law (including any statutory or regulatory power) to require the Directors to make an amendment to the Applicable Rules, or where the changes are determined by the Directors not to be material.

13. Notices

13.1 Service of notices

- a. The Company may give a document, demand, notice or other communication ("**notice**") to a Member:
 - i. personally;
 - ii. by sending it by post, to the address for the Member in the Register or an alternative address nominated by the Member; or
 - iii. by sending it to an electronic address nominated by the Member.

13.2 Post

- a. A document sent by post:
 - i. if sent to an address in Australia, may be sent by ordinary post; and
 - ii. if sent to an address outside Australia, must be sent by airmail,and in either case is taken to have been received on the day after the date of its posting.

13.3 Electronic transmission

- a. If a document is sent by electronic transmission, delivery of the document is taken:
 - i. to be effected by properly addressing and transmitting the electronic transmission; and
 - ii. to have been delivered on the day of its transmission.

13.4 Evidence of service

- a. A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or electronic transmission on a

particular date is prima facie evidence that the document was so sent on that date.

13.5 Person entitled to notice of general meeting

- a. Notice of every general meeting must be given in a manner authorised by clause 13.1. and in accordance with the Corporations Act to:
 - i. every Member, or where a Head Member has been nominated, to the Head Member on behalf of all members of the relevant Group;
 - ii. every Director; and
 - iii. the auditor.
- b. No other person is entitled to receive notices of general meetings.

13.6 Notices to Group Members

- a. A notice given in accordance with this clause 13 to the Head Member of a Group is taken to have been given to each Member in the Group.

14. Winding up

14.1 Contributions

- a. The Member(s) undertakes to contribute to the property of the Company if it is wound up:
 - i. while that person is the Member; or
 - ii. within one year after that person ceases to be the Member;
- b. in respect of:
 - i. the debts and liabilities of the Company contracted before that person ceases to be the Member,
 - ii. the costs, charges and expenses of winding up and
 - iii. the adjustment of the rights of the contributories among themselves.
- c. The amount to be contributed by each Member will not exceed \$100.

15. Indemnity and insurance

15.1 Indemnity

- a. The Company will indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company, or any person exercising a power or discretion or making a decision regarding a complaint under the Rules out of the property of the Company against:
 - i. every liability incurred by the person in that capacity (except a liability for legal costs); and
 - ii. all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- i. the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- ii. an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

15.2 Insurance

- a. The Company must pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or of a Related Body Corporate of the Company, or any person exercising a power or discretion or making a decision regarding a complaint under the Applicable Rules, against liability incurred by the person in that capacity, including a liability for legal costs, unless:
 - i. the Company is forbidden by statute to pay or agree to pay the premium; or
 - ii. the contract would, if the Company paid the premium, be made void by statute.

15.3 Contract

- a. The Company may enter into an agreement with a person referred to in clauses 15.1 and 15.2 with respect to the matters covered by those clauses.

An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by Law.

16. Immunity from liability

16.1 Undertakings

- a. To the extent permissible by Law, each Member agrees not to take legal action, and not suffer or permit any of its employees, agents, servants or contractors to take legal action, against the Company, its officers or employees or persons exercising a power or discretion or making a decision regarding a complaint under the Rules for anything done in accordance with any requirement of this Constitution, the Rules (including the publication of information or data), ASIC or any relevant regulator.

17. Amendment of Constitution

17.1 By Special Resolution

Subject to the Act and this Constitution, the Company may modify or repeal this Constitution or a provision of this Constitution by Special Resolution of the Voting Members.

17.2 Date effective

A Special Resolution modifying or repealing this Constitution takes effect:

- a. if no later date is specified in the resolution, the date on which the resolution is passed; or
- b. on a later date specified in or determined in accordance with the resolution.