



NETBALL AUSTRALIA LIMITED

13 April 2019

CONSTITUTION

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CORPORATIONS ACT (2001) (CTH)
CONSTITUTION
OF
NETBALL AUSTRALIA LIMITED ACN 003 142 818

PART I – OBJECTS, POWERS AND INTERPRETATION

1. PREAMBLE AND NAME OF COMPANY

- a) The Company recognises Aboriginal and Torres Strait Islander peoples as the First Australians and custodians of the lands of Australia and acknowledges the continuing relationship between Aboriginal and Torres Strait Islander peoples with traditional land and waters.
- b) The International Netball Federation (“INF”) is the sole international sporting authority entitled to make and enforce regulations for the governance, regulation and playing of netball. So that the above authority may be exercised in a fair and equitable manner, INF has drawn up the statutes and regulations governing netball.
- c) Each national federation, including the Company as a member of INF, shall be presumed to acquiesce in and be bound by the statutes and regulations. Subject to such acquiescence and restraint, one single national federation per country shall be recognised by INF as the sole international sporting power for the governance of the present statutes and regulations and control of netball in its own country. The Company has been recognised by INF as having exclusive right to govern netball in Australia.
- d) The name of the Company is Netball Australia Limited.

2. OBJECTS OF COMPANY

The Company is the peak body for the administration of Netball in Australia. The objects for which the Company is established and maintained are to:

- a) act as the sole Australian full member of the International Netball Federation in accordance with the Memorandum and Articles of Association and Regulations of International Netball Federation;
- b) conduct, encourage, promote, advance and manage Netball throughout Australia, through and by the Member Organisations in the interests of the Members and Netball;
- c) adopt, formulate, issue, interpret and amend policies in conjunction with the Member Organisations for the control and conduct of Netball in Australia;
- d) promote, control, manage and conduct Netball events, programs, competitions and championships at the national level and where appropriate, the international level;
- e) be the only body entitled to prepare and enter Australian teams in International Netball Federation sanctioned international netball competitions;
- f) maintain and enhance standards, quality and reputation of Netball for the collective and mutual benefit and interests of Members and Netball;
- g) promote the sport of Netball for commercial, government and public recognition and benefits;
- h) pursue through itself or others, such commercial arrangements, including sponsorship and marketing opportunities, government funding, fundraising and media rights as are appropriate to further Netball, and the Company;
- i) have regard to the public interest in its operations;
- j) encourage the provision and development of appropriate facilities for participation in Netball;
- k) use and protect the Intellectual Property;

- l) undertake and/or do all things or activities which are necessary, incidental or conducive to the advancement of Netball, and the Company; and
- m) undertake and/or do all things or activities which are necessary, incidental or conducive to the advancement of these Objects.

3. POWERS OF COMPANY

Solely for furthering the Objects, the Company has the legal capacity and powers of a company limited by guarantee as set out under section 124 of the Act.

4. DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Constitution unless the contrary intention appears, these words shall have the following meanings:

“Act” means the Corporations Act 2001 (Cth).

“Affiliate” means a region, district, association or club, howsoever described, whether incorporated, unincorporated or otherwise, which is a member of a Member Organisation.

“Appointed Director” means a person appointed under **Rule 27**.

“Awards Policy” means the Policy that outlines how the Company confers awards, including the Netball Australia Service Award.

“Board” means the body consisting of the Directors under **Rule 25**.

“Chair” means the person elected to that position under **Rule 25.2**.

“Chief Executive Officer” means the person who is appointed under **Rule 31**.

“Company” means Netball Australia Limited.

“Company Secretary” means the secretary or secretaries of the Company appointed in accordance with the Act.

“Constitution” means this constitution of the Company as amended from time to time.

“Delegate” means the persons elected or appointed from time to time by a Member Organisation to act for and on behalf of that Member Organisation and represent the Member Organisation at Meetings or otherwise under **Rule 13**.

“Director” means an Appointed Director or an Elected Director.

“Elected Director” means a Director elected under **Rule 26**.

“Financial Year” means the year commencing 1 January and ending 31 December in any year.

“Full Term” means:

- a) in respect of an Elected Director, the period set out in **Rule 26.3**; and
- b) in respect of an Appointed Director, the period set out in **Rule 27.3**.

“Individual Member” means a registered financial individual member of a Member Organisation or Affiliate (as the case may be).

“Intellectual Property” means all rights or goodwill subsisting in copyright, business names, names, trademarks (or signs), logos, designs, patents or service marks (whether registered or unregistered) relating to the Company or any event, competition or activity of or conducted, promoted or administered by the Company.

“Matters of Importance” means a matter which the Company or any Member Organisation considers would have an adverse or prejudicial impact upon the Company or a Member Organisation.

“**Meeting**” means the annual general meeting (“**Annual General Meeting**”) or any general meeting (“**General Meeting**”) of the Company.

“**Member**” means a member for the time being of the Company under Part III of this Constitution.

“**Member Organisation**” means an entity recognised under **Rule 5.1** to administer Netball in its particular State or Territory.

“**Netball**” means the sport and game of netball as determined by the International Netball Federation with such variations as may be recognised by the Company from time to time.

“**Notice of Motion**” has the meaning given in **Rule 18**.

“**Objects**” means the objects of the Company as set out in **Rule 2**.

“**Policies**” has the meaning given in **Rule 36**.

“**Service Award Holder**” means an individual upon whom service award membership of the Company has been conferred in accordance with the procedure set out in the Awards Policy.

“**Special Resolution**” means the same meaning as in the Act.

“**State**” means a State of Australia and includes any Territory of Australia.

“**State Acts**” means the incorporation legislation (by whatever name called) governing the Member Organisations, including the Act (if applicable).

“**Telecommunications Meetings**” has the meaning given in **Rule 23.1**.

4.2 Interpretation

In this Constitution:

- a) a reference to a function includes a reference to a power, authority and duty;
- b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority or the performance of the duty;
- c) words importing the singular include the plural and vice versa;
- d) words importing any gender include the other genders;
- e) words or expressions shall be interpreted in accordance with the provisions of the Act as they vary from time to time;
- f) references to persons include corporations and bodies politic;
- g) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- h) a reference to a statute or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction);
- i) references to notices in this Constitution include not only formal notices of Meetings but also all documents and other communications from the Company to its Members; and
- j) a reference to "writing" shall unless the contrary intention appears, be construed as including references to printing, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

4.3 Severance

If any provision of this Constitution or any phrase contained in them is invalid or unenforceable in any jurisdiction, the phrase or provision is to be read down for the purpose of that jurisdiction, to the extent necessary, so as to be valid and enforceable. If the rule or phrase cannot be so read down, it shall be severed to the extent of the invalidity or unenforceability. Such

severance shall not affect the remaining provisions of this Constitution or affect the validity or enforceability of any provision in any other jurisdiction.

4.4 Replaceable Rules

The replaceable rules referred to in the Act are displaced by this Constitution and do not apply except insofar as they are repeated in this Constitution.

PART II – MEMBER ORGANISATIONS

5. MEMBER ORGANISATIONS

5.1 Recognition of Member Organisations

The entity which is the only official representative of, and controlling authority for, Netball in a State shall be recognised as a Member Organisation and shall administer Netball in that particular State in accordance with the Member Organisation's Objects. The Member Organisations are:

A.C.T. Netball Association Incorporated
The New South Wales Netball Association Limited
Netball NT Incorporated
Netball Queensland Limited
South Australian Netball Association Incorporated
Tasmanian Netball Association Incorporated
Victorian Netball Association Incorporated
Netball WA (Incorporated)

5.2 Responsibilities of Member Organisations

Each Member Organisation must:

- a) be incorporated;
- b) appoint up to two Delegates to represent it at Meetings and other relevant meetings in accordance with this Constitution and may change their Delegates from time to time at their discretion by providing written notice to the Company;
- c) provide the Company with copies of its annual financial statements, annual report and associated documents as presented to its members within 30 days of its Annual General Meeting;
- d) apply its property and capacity solely in pursuit of its objects, which must be aligned, and not inconsistent, with the Objects;
- e) do all that is reasonably necessary to enable the Objects to be achieved by the Company;
- f) act in good faith and loyalty to ensure the maintenance and enhancement of the Company and Netball, its standards, quality and reputation for the collective and mutual benefit of the Members and Netball;
- g) at all times operate with, and promote, mutual trust and confidence between the Company and the Members; and
- h) at all times act on behalf of and in the interests of the Members and Netball.

5.3 Operation of Rules

The Company and the Member Organisations agree:

- a) that they are bound by this Constitution and that this Constitution operates to create uniformity in the way in which the Objects are pursued and how Netball is conducted, encouraged, promoted and administered in Australia;
- b) to act in good faith and loyalty to each other to ensure the maintenance and enhancement of Netball, its standards, quality and reputation for the collective and mutual benefit of the Members and Netball;
- c) not to do or permit to be done any act or thing which might adversely affect or derogate from the standards, quality and reputation of Netball, and its maintenance and enhancement;
- d) to make full and proper disclosure to each other of all Matters of Importance to the Company and Netball;
- e) to promote the economic and sporting success, strength and stability of one another and to act interdependently with one another; and
- f) to act for and on behalf of the interests of Netball, the Company and the Members.

6. MEMBER ORGANISATION CONSTITUTIONS

The constituent documents of each Member Organisation shall, as far as practicable, be aligned with and not be inconsistent with the Objects, having regard to the State Act applicable to each Member Organisation.

PART III – MEMBERSHIP

7. MEMBERS

7.1 Category of Members

The Members of the Company shall consist of:

- a) the Member Organisations, which subject to this Constitution, shall be represented by their Delegates who shall have the right to attend, debate and vote at Meetings for and on behalf of the Member Organisations;
- b) the Affiliates, which subject to this Constitution, have the right to attend but not debate or vote at Meetings for and on behalf of the Affiliate;
- c) Individual Members, who subject to this Constitution, have no right to attend, debate or vote at Meetings;
- d) Service Award Holders, who subject to this Constitution, may attend and debate, but not vote at, Meetings;
- e) such new categories of Members, created in accordance with **Rule 7.2**.

7.2 Creation of New Categories

Subject to the Act, the Company in Meeting has the right and power from time to time to create new categories of membership with such rights, privileges and obligations as are determined applicable (other than voting rights) by the Company, even if the effect of creating a new category is to alter rights, privileges or obligations of an existing category of Members. No new category of membership may be granted voting rights.

7.3 Service Award Holders

Conditions, obligations and privileges of Service Award Holders shall be as prescribed in the Awards Policy.

8. AFFILIATES AND INDIVIDUAL MEMBERS

8.1 Deeming Provisions

- a) All regions, districts, affiliated associations and affiliated clubs (howsoever described) of Member Organisations prior to the time of approval of this Constitution under the Act, shall be deemed Affiliates from the time of approval of this Constitution under the Act, and will be entitled to such benefits as are conferred on them by the Company, whether directly or indirectly.
- b) All persons who were individual members (howsoever described) of a Member Organisation or Affiliate prior to the time of approval of this Constitution under the Act, shall be deemed Individual Members from the time of approval of this Constitution under the Act, and will be entitled to such benefits as are conferred on them by the Company, whether directly or indirectly.

8.2 Membership Renewal

In order to remain Members, Affiliates and Individual Members each must:

- a) renew their membership with their respective Member Organisation annually;
- b) otherwise remain registered financial members of their Member Organisation in accordance with the procedures applicable from time to time; and
- c) pay the annual fees prescribed by the Company from time to time (if any) to the Company through their respective Member Organisation.

9. FEES

9.1 Determination of Member Organisation Fees

The annual membership subscription (if any), fees and any levies payable by Members (or any category of members) to the Company, the basis of, the time for and manner of payment shall be as approved by the Company in General Meeting.

9.2 Consequences of Non-Payment

Any Member Organisation which or who has not paid all monies due and payable by that Member Organisation to the Company shall (subject to the Board's discretion) have all rights under this Constitution immediately suspended from the expiry of the time prescribed for payment of those monies. Any suspension shall continue until the Member Organisation is reinstated by the Board.

10. REGISTER OF MEMBERS

10.1 Company Secretary to Keep Register

The Company Secretary shall ensure that a national register of Members is kept and maintained, in which shall be entered such information as is required under the Act from time to time.

10.2 Member Organisation Registers

Each Member Organisation shall maintain, in a form and with such details as are acceptable to the Company, a State register of all Affiliates and Individual Members in its State. Each Member Organisation shall provide a copy of the register at a time and in a form acceptable to the Company and shall provide prompt and regular updates of that register to the Company when requested. The use of Registers shall be governed by separate contracts between the Company and the Member Organisations.

10.3 Inspection of National Register

A Member does not have the right to inspect any document of the Company (including registers kept by the Company) except as required by law.

11. EFFECT OF MEMBERSHIP

Members acknowledge and agree that:

- a) this Constitution constitutes a contract between each of them and the Company and that they are bound by this Constitution and the Policies;
- b) they shall comply with and observe this Constitution and the Policies and any determination or resolution which may be made or passed by the Board; and
- c) this Constitution and the Policies are necessary and reasonable for promoting the Objects and particularly the advancement and protection of Netball.

12. DISCONTINUANCE OF MEMBERSHIP

12.1 Notice of Resignation

- a) Subject to this Constitution any Member which/who has paid all monies due and payable to the Company and has no other actual or contingent liability (other than any guarantee under **Rule 43.3**) to the Company may resign from the Company by giving three months' notice in writing to the Company of such intention to withdraw or resign and upon the expiration of that period of notice, the Member shall cease to be a Member.
- b) A Service Award Holder who has paid all monies due and payable to the Company may resign by notice in writing with immediate effect.
- c) Any Member ceasing to be a Member:
 - i. will not be entitled to any refund (or part refund) of a subscription or any other monies due and payable to the Company; and

- ii. will remain liable for and will pay to the Company all subscriptions and monies which were due at the date of ceasing to be a Member.

12.2 Expiration of Notice Period

Subject to **Rule 12.6** upon the expiration of any notice period applicable under **Rule 12.1** an entry, recording the date on which the Member who or which gave notice ceased to be a Member shall be recorded in the register.

12.3 Other reasons for cessation of membership

In addition to **Rule 12.1**, a Member will cease to be a Member:

- a) if the Member has not paid all monies due and payable by that Member to the Company by the due date for payment (including any contribution or fee) and the Board resolves to terminate the membership of the Member;
- b) if that Member's status or conduct in the Board's opinion renders it undesirable that that Member continue to be a Member (and the Board has the right to expel that Member in accordance with the Constitution or the Policies);
- c) where the Member is an individual, if the Member:
 - i. dies;
 - ii. becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health;
 - iii. is an undischarged bankrupt, or has executed a deed of arrangement under Part X of the Bankruptcy Act 1966 (or a similar law of another country) and the terms of the deed have not been fully complied with, or the person's creditors have accepted a composition under Part X of the Bankruptcy Act 1966 (or a similar law of another country) and final payment has not been made under the composition; or
 - iv. is convicted of an indictable offence; or
- d) where the Member is an organisation, if:
 - i. a liquidator, administrator or receiver is appointed in connection with the winding up of the Member;
 - ii. the Member suffers any form of insolvency event; or
 - iii. an order is made by a Court for the winding up or deregistration of the Member.

12.4 Forfeiture of Rights

A Member who or which ceases to be a Member, for whatever reason, shall forfeit all right in and claim upon the Company and its property including Intellectual Property. Any Company documents, records or other property in the possession, custody or control of that Member shall be returned to the Company immediately.

12.5 Membership may be Reinstated

Membership may be reinstated at the discretion of the Board, on application by the relevant Member in accordance with this Constitution and otherwise on such conditions as it sees fit.

12.6 Cessation of Membership

Where a Member Organisation ceases to be a Member in accordance with this Constitution or the Act, the continuing membership of Affiliates and Individual Members of that Member Organisation shall be determined at the sole discretion of the Board.

PART IV - MEETINGS

13. DELEGATES

- a) Each Member Organisation shall appoint up to two Delegates (by written notice to the Company Secretary), one of whom shall be a voting Delegate.
- b) Each Member Organisation has one vote at a Meeting.
- c) A Delegate must:
 - i. be appropriately empowered by the appointing Member Organisation to consider, make decisions and vote at Meetings; and
 - ii. not be a Director.
- d) A Delegate is entitled to:
 - i. exercise at a Meeting all the powers which the corporation or organisation which appointed them could exercise if it were a natural person; and
 - ii. be counted towards a quorum on the basis that the Member Organisation is to be considered personally present at a Meeting by its Delegates.

14. MEETINGS

14.1 Annual General Meeting

An Annual General Meeting of the Company shall be held once a year in accordance with the provisions of the Act and this Constitution and on a date and at a venue to be determined by the Board.

14.2 General Meetings

- a) The Board may, whenever it thinks fit, convene a General Meeting of the Company. Any General Meeting shall be held in accordance with this Constitution and the Act.
- b) Members may requisition the holding of a General Meeting only under the Act and the Directors must call a General Meeting as soon as practicable after receiving that requisition.

15. NOTICE OF MEETING

15.1 Notice of Meetings

Notice of every Meeting shall be given to Member Organisations (being the only voting Members of the Company) and all Directors at the address appearing in the register kept by the Company. No other person shall be entitled as of right to receive notices of Meetings.

Notice of Meetings shall be given at least 60 days prior to the Meeting and shall specify the place and day and hour of the Meeting.

The agenda for the Meeting stating the business to be transacted at the Meeting shall be given at least 30 days prior to the Meeting, together with any Notice of Motion received from Member Organisations in accordance with **Rule 18**.

Subject to the terms of **Rule 16**, observers are permitted to attend any Meeting as approved by the Board.

16. ENTITLEMENT TO ATTEND MEETING

No Member shall be represented at, or take part in a Meeting, unless all monies (set in accordance with Rule 9) then due and payable to the Company are paid. This rule does not apply where the monies alleged due and payable are the subject of a legitimate dispute or investigation.

17. BUSINESS

17.1 Business of Meetings

a) The business to be transacted at the Annual General Meeting includes:

- i. consideration of financial reports;
- ii. consideration of the annual report of the Board;
- iii. appointment of auditors;
- iv. approval of the remuneration of Directors in accordance with **Rule 32**; and
- v. election of Directors in accordance with **Rule 26**.

b) All business that is transacted at a Meeting, with the exception of those matters set out in **Rule 17.1 a)** shall be considered special business.

17.2 Business Transacted

In the case of the Annual General Meeting and a General Meeting, no business or general business other than that stated on the Meeting notice shall be transacted at that Meeting.

18. NOTICE OF MOTION

A Member Organisation may submit a notice of a resolution that they propose to move at a Meeting in accordance with the Act ("**Notice of Motion**"). Any Notice of Motion for inclusion as special business at a Meeting must be submitted in writing to the Company Secretary not less than 45 days (excluding receiving date and Meeting date) prior to the Meeting.

19. PROCEEDINGS AT MEETINGS

19.1 Quorum

No business shall be transacted at any Meeting unless a quorum is present at the time when the Meeting proceeds to business. A quorum for Meetings of the Company shall be a simple majority of the Member Organisations (where for the purposes of determining if a quorum is present, only one Delegate from each Member Organisation is to be counted).

19.2 Chair to Preside

The Chair shall, subject to this Constitution, preside as the Chair at every Meeting of the Company. If the Chair is not present, or is unwilling or unable to preside, the Directors shall choose one of their number present who shall, subject to this Constitution, preside as the chair (and have the rights of the Chair) for that Meeting only.

19.3 Cancellation and Adjournment of Meeting

- a) If within half an hour from the time appointed for the Meeting (or as agreed by the Meeting), a quorum is not present the Meeting shall be adjourned to such other day and at such other time and place as the Chair may determine. If at the adjourned Meeting a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting will lapse.
- b) The Chair may, with the consent of Delegates, adjourn any Meeting at which a quorum is present, and shall, if so directed by the Meeting, adjourn the Meeting from time to time and from place to place but no business shall be transacted at any adjourned Meeting other than the business left unfinished at the Meeting from which the adjournment took place.
- c) When a Meeting is adjourned for 30 days or more, notice of the adjourned Meeting shall be given as in the case of an original Meeting.
- d) Except as provided in **Rule 19.3c)** it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned Meeting.
- e) The Board may cancel or adjourn a Meeting, but this power does not extend to Meetings requisitioned by the Members.

19.4 Voting Procedure

Subject to **Rule 26.2**, at any 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:

- a) by the Chair; or
- b) by any Delegate.

19.5 Recording of Determinations

Unless a poll is demanded under **Rule 19.4**, a declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number of the votes recorded in favour of or against the resolution.

19.6 Where Poll Demanded

If a poll is duly demanded under **Rule 19.4** it shall be taken in such manner and either at once or after an interval or adjournment or otherwise as the Chair directs and the result of the poll shall be the resolution of the Meeting at which the poll was demanded.

19.7 Resolutions at Meetings

Except where a Special Resolution is required, all questions at Meetings shall be determined by the majority of votes (as set out in **Rule 20**). Except as otherwise provided in this Constitution, in the case of an equality of votes on a question at a Meeting, the Chair is not entitled to a casting vote and the motion will be deemed lost.

19.8 Minutes

The Company Secretary shall ensure that minutes of the resolutions and proceedings of each Meeting are kept in books provided for that purpose, together with a record of the names of persons present at all Meetings.

20. VOTING AT MEETINGS

Each Member Organisation shall, subject to this Constitution, be entitled to one vote at Meetings. No other Member shall be entitled to vote, but shall subject to this Constitution have, and be entitled to exercise, those rights set out in **Rule 7.1**.

- a) An objection to a person's right to vote at a Meeting:
 - i. may only be raised at a Meeting or adjourned Meeting at which the vote objected to is given or tendered; and
 - ii. must be determined by the Chair of the Meeting, whose decision is final.
- b) A vote not disallowed under an objection referred to in **Rule 20(b)** is valid for all purposes.
- c) If any vote is counted which ought not to have been counted or might have been rejected, the error will not invalidate the resolution unless the error is:
 - i. detected at the same Meeting; and
 - ii. of sufficient magnitude, in the opinion of the Chair as to invalidate the resolution.

21. PROXY VOTING

Proxy Voting

- a) A Member Organisation entitled to attend a Meeting of the Company is entitled to appoint another Member Organisation or the Company as their proxy to attend the Meeting in their place in accordance with the Act.
- b) A proxy may be revoked by the appointing Member Organisation at any time by notice in writing to the Company.
- c) The instrument appointing a proxy may be in a form determined by the Directors from time to time, provided it complies with the requirements of the Act and is lodged with the Company no later than 24 hours prior to the start of the Meeting.

22. CIRCULAR RESOLUTIONS

- a) A resolution may be passed without a Meeting being held if all the Member Organisations entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. A Delegate may sign such a circular resolution on behalf of their Member Organisation.
- b) Identical copies of the document may be distributed for signing by different Member Organisations and taken together will constitute one and the same document.
- c) The resolution is passed when the last Delegate signs the document and satisfies any requirement in this Constitution or the Act that the resolution be passed at a Meeting.

23. TELECOMMUNICATIONS MEETINGS OF THE COMPANY

23.1 Telecommunications Meeting

A Meeting of the Company may be held at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate (“**Telecommunications Meeting**”).

23.2 Conduct of Telecommunications Meeting

The following provisions apply to a Telecommunications Meeting:

- a) All persons participating in the Telecommunications Meeting must be linked by telephone, audio-visual or other instantaneous means for the purpose of the Telecommunications Meeting;
- b) Each of the persons taking part in the Telecommunications Meeting must be able to hear and be heard by each of the other persons taking part at the commencement of the Telecommunications Meeting and each person so taking part is deemed for the purposes of this Constitution to be present at the Telecommunications Meeting;
- c) At the commencement of the Telecommunications Meeting each person must announce his or her presence to all other persons taking part in the Telecommunications Meeting;
- d) A person must not leave a Telecommunications Meeting by disconnecting his or her telephone, audio-visual or other communication unless that person has previously notified the Chair;
- e) A person may be presumed conclusively to have been present and to have formed part of a quorum at all times during a Telecommunications Meeting unless that person has previously notified the Chair of leaving the Telecommunications Meeting; and
- f) A minute of proceedings of a Telecommunications Meeting is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified by the Chair as correct.

PART V - THE BOARD

24. POWERS OF THE BOARD

The Board is authorised to exercise all powers of the Company not required by the Act or this Constitution to be exercised by the Company in a Meeting.

25. COMPOSITION OF THE BOARD

25.1 Board Composition

- a) The Board shall comprise:
 - i. six Elected Directors elected by the Member Organisations in accordance with Rule 26; and
 - ii. up to two Appointed Directors who may be appointed in accordance with Rule 27.
- b) To be eligible to be elected or appointed as a Director a person must:
 - i. be an individual;
 - ii. be at least 18 years old; and
 - iii. not be otherwise ineligible or disqualified from holding office under this Constitution or the Act.
- c) At least two Directors must ordinarily reside in Australia.

25.2 Chair of Board

- a) The position of Chair of the Board shall be appointed by the Board from amongst the Directors as soon as practicable after each Annual General Meeting.
- b) The appointee will hold the position until the conclusion of the next Annual General Meeting following their appointment. A Director may be re-appointed as Chair.

26. ELECTED DIRECTORS

26.1 Qualifications for Elected Directors

- a) Nominees for Elected Director positions on the Board must meet the qualifications as prescribed from time to time by the Board and set out in the Policies.
- b) An employee of a Member Organisation and/or of the Company cannot also be an Elected Director.
- c) An Elected Director, who is a member of the board or management committee of a Member Organisation or Affiliate, must resign that position immediately should they be elected as a Director.
- d) An Elected Director is not required to be a Member but must, prior to being elected a Director, agree to be bound by the Constitution and the Policies.

26.2 Elections of Elected Directors

- a) The Company Secretary shall call for nominations at least 60 days before the date of the Annual General Meeting. All Member Organisations shall be notified of the call for nominations.
- b) Nominations for Elected Directors must be:
 - i. in writing addressing the criteria as outlined on the prescribed form provided for that purpose; and
 - ii. accompanied by a duly signed "**Consent to Act as Director**" form.
- c) Nominations must be received by the Company Secretary at least 45 days prior to the Annual General Meeting.
- d) If the number of eligible nominations received for the Board is equal to the number of vacancies to be filled or if there are insufficient eligible nominations received to fill all vacancies on the Board, then those nominated and eligible for

appointment shall only be elected if they are elected by the majority of the Member Organisations by secret ballot. If the nominees are not elected or if there are vacancies to be filled, the position will be deemed to be a casual vacancy and filled by the Board in accordance with **Rule 28.2**.

- e) If the number of nominations exceeds the number of vacancies to be filled, a secret ballot shall be taken. The voting shall be conducted by the preferential method as set out in the Elected Director Qualification and Election Procedure Policy.

26.3 Term of Appointment

Elected Directors shall be elected in accordance with this Constitution for a term of three years, which shall commence from the conclusion of the Annual General Meeting at which the election occurred and end at the conclusion of the Annual General Meeting in the third year of such term.

26.4 Ineligibility for Election or Appointment

- a) No person who has been elected as an Elected Director or appointed as an Appointed Director for three consecutive Full Terms shall be eligible for election or appointment as a Director until the next Annual General Meeting following the date of conclusion of their most recent term as a Director.
- b) This Rule has retrospective effect from the date of its adoption so the term of any current serving Director will be included in calculating the three consecutive Full Terms (nine consecutive years).
- c) The Company's Chief Executive Officer cannot be elected or appointed to the Board for three years after leaving the role.

27. APPOINTED DIRECTOR

27.1 Appointment of Appointed Directors

The Elected Directors may appoint up to two Appointed Directors.

27.2 Qualifications for Appointed Director

- a) The Appointed Directors shall have specific skills as determined by the Board to complement the Board composition.
- b) An employee of a Member Organisation and/or of the Company cannot also be an Appointed Director.
- c) An Appointed Director, who is a member of the board or management committee of a Member Organisation or Affiliate, must resign that position immediately should they be appointed a Director.
- d) An Appointed Director is not required to be a Member but must, prior to be appointed a Director, agree to be bound by the Constitution and the Policies.

27.3 Term of Appointment

Any Appointed Director may be appointed for a term of up to three years, which shall commence and conclude at the discretion of the Board.

28. VACANCIES OF DIRECTORS

28.1 Termination of Director

In addition to the circumstances (if any) in which the office of a Director becomes vacant by virtue of the Act and subject to any requirements or restrictions of the Act, the office of a Director becomes vacant if the Director:

- a) dies;
- b) becomes bankrupt or makes any arrangement or composition with her or his creditors generally;
- c) 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;
- d) resigns her or his office in writing to the Company;
- e) is disqualified in accordance with **Rule 30.1**;

- f) holds any office of employment of the Company;
- g) is absent for two consecutive meetings of the Board, without leave of absence having been granted by the Board;
- h) without the prior consent or later ratification of the Members in Meeting holds any office of profit under the Company; or
- i) has a direct or indirect material interest in any contract or proposed contract with the Company and fails to declare the nature of her or his interest.

28.2 Casual Vacancies

- a) Any casual vacancy in the number of Elected Directors may be filled by the Directors. Any Director appointed under the **Rule 28.2 a)** must retire from office at the conclusion of the next Annual General Meeting following his or her appointment (unless elected at that Annual General Meeting as an Elected Director).
- b) Any casual vacancy in the number of Appointed Directors may be filled by the Elected Directors from among appropriately qualified persons, for the remainder of the term of the Appointed Director whose vacancy is being filled.

28.3 Remaining Directors May Act

In the event of a casual vacancy or vacancies in the office of a Director, 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 increasing the number of Directors to a number sufficient to constitute such a quorum.

29. MEETINGS OF THE BOARD

29.1 Board to Meet

- a) The Board shall meet at a minimum of five times in every calendar year for the dispatch of business and may adjourn and, subject to this Constitution otherwise regulate, its meetings as it thinks fit. The Company Secretary shall, on the requisition of two Directors, convene a meeting of the Board within 30 days of receiving the requisition.
- b) Without limiting the power of the Board to regulate its meetings as it thinks fit, a meeting of the Board may be held where any Director, although not physically present at the meeting, is deemed to be present for all relevant purposes, provided that:
 - i. all persons participating in the meeting are able to communicate with each other effectively whether by means of telephone or other form of communication;
 - ii. notice of the meeting is given to all the Directors entitled to notice in accordance with the usual procedures agreed upon or determined from time to time by the Board;
 - iii. in the event that a failure in communications prevents condition (i) from being satisfied by that number of Directors which constitutes a quorum, and none of such Directors are present at the place where the meeting is deemed by virtue of the further provisions of this Rule to be held, then the meeting shall be suspended until condition (i) is satisfied again. If such condition is not satisfied within 30 minutes from the interruption the meeting shall be deemed to have terminated whereupon the provisions in respect of a quorum for meetings shall apply to the extent applicable to meetings of the Board; and
 - iv. any meeting held where one or more of the Directors is not physically present shall be deemed to be held at the place specified in the notice of meeting provided a Director is there present and if no Director is there present the meeting shall be deemed to be held at the place where the Chair is located.

29.2 Decisions of Board

- a) A question arising at a Director's meeting is to be decided by a majority of votes of Directors present to vote on the resolution. Each Director present has one vote on matters arising for the decision by Directors.
- b) The Chair shall not have a casting vote.

29.3 Resolutions not in Meeting

Subject to all Directors receiving notice of the proposed resolution, a resolution in writing, signed or assented to by electronic mail or other form of visible or other electronic communication by the majority of the Directors eligible to vote on the

resolution shall be as valid and effectual as if it had been passed at a meeting of Directors duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Directors.

29.4 Quorum

At meetings of the Board the number of Directors whose presence (or participation under **Rule 29.3**) is required to constitute a quorum is a simple majority of the Directors.

29.5 Notice of Board Meetings

Unless all Directors agree to hold a meeting at shorter notice (which agreement shall be sufficiently evidenced by their presence) not less than seven days' oral or written notice of the meeting of the Board shall be given to each Director by the Company Secretary. The agenda shall be forwarded to each Director not less than three days prior to such meeting.

29.6 Validity of Board Decisions

A procedural defect in decisions taken by the Board shall not result in such decision being invalidated.

29.7 Chair of Board meeting

The Chair appointed under **Rule 25.2** shall preside as Chair at every meeting of the Board. If the Chair is not present, or is unwilling or unable to preside, the Directors shall choose one of their number to preside as Chair for that meeting only.

30. CONFLICTS

30.1 Directors' Interests

A Director may not:

- a) In any circumstance hold any place of profit or position of employment in the Company, any Member Organisation or in any company or incorporated association in which the Company is a shareholder or otherwise interested; or
- b) Without the express approval by resolution of the Board contract with the Company in any capacity. Any such contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested will be voided for such reason.

If a Director acts contrary to this **Rule 30.1** she or he will be disqualified from office and cease being a Director.

30.2 Conflict of Interest

A Director shall declare her or his interest in any:

- a) contractual matter;
- b) selection matter;
- c) disciplinary matter;
- d) other financial matter; or
- e) representative interests,

in which a conflict of interest arises or may arise, and shall, unless otherwise determined by the Board, absent herself or himself from discussions of such matter and shall not be entitled to vote in respect of such matter. If the Director votes, the vote shall not be counted. In the event of any uncertainty as to whether it is necessary for a Director to absent herself or himself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board, or if this is not possible, the matter shall be adjourned or deferred.

30.3 Disclosure of Interests

The nature of the interest of such Director must be declared by the Director at the meeting of the Board at which the contract or other matter is first taken into consideration if the interest then exists or in any other case at the first meeting of the Board after the acquisition of the interest. If a Director becomes interested in a contract or other matter after it is made or entered

into the declaration of the interest must be made at the first meeting of the Board held after the Director becomes so interested.

30.4 General Disclosure

A general notice ("General Notice") that a Director is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under **Rule 30.3** as regards such Director and the said transactions. After such General Notice it is not necessary for such Director to give a special notice relating to any particular transaction with that firm or company.

Any notice shall be made in person at a meeting or in writing.

30.5 Recording Disclosures

The Company Secretary shall ensure that the minutes record any declaration made or any General Notice given by a Director in accordance with **Rule 30.3** and **Rule 30.4**.

31. CHIEF EXECUTIVE OFFICER

31.1 Appointment of Chief Executive Officer

The Chief Executive Officer shall be appointed by the Board for such term and on such conditions as the Board thinks fit. The Chief Executive Officer shall not be a Director but shall be entitled to attend and participate in debate at all meetings of the Board.

31.2 Broad Power to Manage

Subject to the Act, this Constitution, Policies and any directive of the Board, the Chief Executive Officer has power to perform all such things as appear necessary or desirable for the proper management and administration of the Company.

32. REMUNERATION OF DIRECTORS

No payment will be made to any Director other than payment:

- a) of out of pocket expenses incurred by the Director in the performance of any duty as Director in accordance with any Policy;
- b) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service;
- c) relating to an indemnity in favour of the Director and permitted by the Act or a contract of insurance permitted by the Act; or
- d) otherwise as approved by the Company in Meeting.

33. COMPANY SECRETARY

One or more Company Secretaries shall be appointed by the Board for such term, at such remuneration, and upon such conditions as it thinks fit. Any Company Secretary so appointed may be removed by the Board.

PART VI - MISCELLANEOUS

34. MEMBER FORUM OF THE COMPANY

34.1 Member Organisation Forums

The Company shall hold a Member Organisation forum of the Company at least twice per year which is to meet to:

- a) inform the Board of significant Member Organisation issues;
- b) assist the Board to develop or review the Company's strategic direction;
- c) discuss nationwide issues; and
- d) provide feedback to the Board on the results of its governance decisions in practice at the Member level.

34.2 Attendees at Member Organisation Forums

The following persons shall be invited to attend the Member Organisation forums of the Company:

- a) up to two representatives from each Member Organisation;
- b) the Directors; and
- c) such other persons the Board considers should be invited.

35. DELEGATIONS

35.1 Delegation of Functions to Committees

The Board may by instrument in writing create or establish or appoint from among its own members, the Members, or otherwise, committees to carry out such duties and functions, and with such powers, as the Board determines.

35.2 Delegation by Instrument

The Board may, in the establishing instrument, delegate such functions as are specified in the instrument, other than:

- a) this power of delegation; and
- b) a function imposed on the Board by the Act or any other law, or this Constitution.

35.3 Delegated Function Exercised in Accordance with Terms

A function, the exercise of which has been delegated under this Rule, may whilst the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

35.4 Procedure of Delegated Entity

- a) The procedures for any committee established shall, with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under Rule 29. The quorum shall be determined by the committee, but shall be no less than the majority of the total number of committee members.
- b) Within 14 days after any meeting of any committee, the committee shall send a copy of the minutes and any supporting documents to the Company Secretary.

35.5 Delegation may be Conditional

A delegation under this Rule may be made subject to such conditions or limitations as to the exercise of any function or at the time or circumstances as may be specified in the delegation.

35.6 Revocation of Delegation

The Board may by instrument in writing, revoke wholly or in part any delegation and may amend, repeal or veto any decision made by such committee where such decision is contrary to the Act, this Constitution, the Policies, or the terms of the committee's delegation.

36. POLICIES

36.1 Making and Amending Policies

The Directors may from time to time make rules, regulations and policies that are in pursuance of the Objects, and which are necessary or desirable for the control, administration and management of the Company's affairs ("**Policies**"), and the Directors may amend, vary, revoke, repeal and replace those Policies.

36.2 Policies Binding

All applicable Policies made under this **Rule 36** shall be binding on the Company and Members.

36.3 Notices Binding on Members

Amendments, alterations, interpretations or other changes to policies shall be advised to Member Organisations by means of notices approved by the Board and prepared and issued by the Company Secretary. Member Organisations shall be obliged to draw such notices to the attention of their respective Members.

37. APPLICATION OF INCOME

37.1 Income and Property Applied to Objects

- a) The income and property of the Company shall be applied solely towards the promotion of the Objects.
- b) No portion of the income or property of the Company shall be paid or transferred, directly or indirectly by way of dividend, bonus, gift, bequest, donation or otherwise to any Member, but this shall not preclude payment to a Member in good faith for expenses incurred or services rendered.

38. RECORDS AND ACCOUNTS

38.1 Chief Executive Officer

The Chief Executive Officer shall ensure that proper records and minutes concerning all transactions, business, meetings and dealings of the Company and the Board are established and maintained and shall produce these as appropriate at each Board meeting or Meeting.

38.2 Records Kept in Accordance with Act

Proper accounting and other records shall be kept in accordance with the Act, generally accepted accounting principles and/or any applicable code of conduct. The books of account shall be kept in the care and control of the Company Secretary.

38.3 Company to Retain Records

The Company shall retain such records for seven years after the completion of the transactions or operations to which they relate.

38.4 Board to Present Financial Reports

The Board shall present to the Annual General Meeting the financial reports of the Company in accordance with the Act.

38.5 Negotiable Instruments

All cheques and other negotiable instruments, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by two persons appointed in writing by the Board.

39. AUDITOR

- a) If required under the Act, the Directors must appoint one or more persons to the office of auditor to the Company unless the Members at a Meeting have appointed an auditor.
- b) The auditor of the Company is ineligible to be elected or appointed as a Director.
- c) The auditor of the Company is entitled to receive notice of, attend, and be heard at Meetings.

40. NOTICE

40.1 Manner of Notice

- a) Notices may be given by the Company to any Member by sending the notice by post or where available, by electronic mail, to the Member's registered address or electronic mail address.
- b) Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing and posting the notice. Service of the notice is deemed to have been effected two days after posting.
- c) Where a notice is sent by electronic mail, service of the notice shall be deemed to be effected upon receipt of a confirmation report confirming the electronic mail message was received at the electronic mail address to which it was sent.

41. ALTERATION OF CONSTITUTION

This Constitution can only be altered by Special Resolution of the Members in Meeting.

42. INDEMNITY AND INSURANCE

42.1 Indemnity

- a) Subject to **Rule 42.1 c)**, the Company must indemnify any current or former Director, Company Secretary, executive officer or auditor of the Company, or any person who takes part in, or is concerned with, management of the Company, 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.
- b) Subject to **Rule 42.1 c)**, the Company may indemnify any employee of the Company at the discretion of the Directors.
- c) **Rule 42.1 a)** does not apply to the extent that:
 - i. the Company is forbidden by the Act or other law 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 the Act or other law.
- d) Subject to this Constitution, the Act, or other law, the Company may pay all costs, losses and expenses which a person referred to in **Rules 42.1 a)** and **42.1 b)** might incur or become liable to pay by reason of any contract entered into or act or thing done by them as such a person or in any way in charge of their duties.
- e) Subject to the Act or any other relevant law, the Company may make an advance, on account of anticipated costs, losses and expenses, to a person referred to in **Rule 42.1 a)** to assist the person in defending any proceeding brought against the person in that capacity.
- f) If the Company makes an advance to a person under **Rule 42.1 e)** the person must repay that advance if:
 - i. judgment is not given in the person's favour;
 - ii. the person is not acquitted; or
 - iii. a court subsequently determines that the indemnification is not permitted.

42.2 Insurance

- a) Subject to **Rule 42.2 b)**, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been a Director, Company Secretary, executive officer, auditor or any person who takes part in, or is concerned with, management of the Company, against liability incurred by the person in that capacity, including a liability for legal costs.
- b) Rule **42.2 a)** does not apply to the extent that:
 - i. the Company is forbidden by the Act or other law to pay or agree to pay the premium; or
 - ii. the contract would, if the Company paid the premium, be made void by the Act or other law.

43. WINDING UP

43.1 Winding Up of the Company

Subject to this **Rule 43**, the Company may be wound up in accordance with the provisions of the Act.

43.2 Liability of Members

The liability of the Members of the Company is limited to the extent specified in **Rule 43.3**.

43.3 Members' Contributions

- a) Every Member Organisation undertakes to contribute to the assets of the Company in the event of it being wound up while a Member, or within one year after ceasing to be a Member for payment of the debts and liabilities of the Company contracted before the time at which it ceases to be a Member, and the costs, charges and expenses of winding up and for an adjustment of the rights of contributors among themselves, such amount as may be required not exceeding \$1.00.
- b) If any Member receives any dividend, bonus, gift, bequest, donation or other amount in contravention of **Rule 37**, the liability of every Member who has concurred in or authorised such payment shall be unlimited, and the liability of every Member who has received such dividend, bonus, gift, bequest, donation or other amount shall likewise be unlimited.

43.4 Distribution of Property on Winding Up

If upon winding up or dissolution of the Company there remains after satisfaction of all its debts and liabilities any assets or property, the same shall not be paid to or distributed amongst the Members of the Company but shall be given or transferred to somebody or bodies having objects similar to the Objects and which prohibits the distribution of its or their income and property among its or their Members to an extent at least as great as is imposed on the Company by this Constitution and which is also not carried on for profit and which is similarly exempt (or entitled to be exempt) from income tax. Such body or bodies to be determined by the Members of the Company at or before the time of dissolution, and in default thereof by any Court having competent jurisdiction. Notwithstanding anything to the contrary contained in this Constitution, if a Member Organisation falls within the category of bodies described in this Rule as having objects similar to the Objects, the fact of it being a Member shall not, of itself, disqualify it from any such distribution.