



CONSTITUTION

Revised for Board consideration

THE INTERNATIONAL CENTRE OF EXCELLENCE
IN TOURISM AND HOSPITALITY EDUCATION LIMITED, THE-ICE®

A Company Limited by Guarantee

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Constitution

PART 1 - PRELIMINARY

1. Definitions

In this Constitution:-

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

“**Alternate Director**” means a person duly appointed by a Director to exercise some or all of that Director’s powers.

“**Annual Subscription Fee**” means the annual amount payable by Members which may be subject to increases as determined from time to time in respect of any or all categories of Membership.

“**Assessment Panel**” means the independent assessment body comprised of six (6) or more qualified Australian/ international academics specialising in TH&E education, training and research and/ or pedagogy experts, with membership on the Assessment Panel being by invitation of the Board, and their key responsibilities being assessment of membership applications of prospective Members of THE-ICE and maintenance of transparency in the membership application process.

“**Auditor**” means the Auditor/s of THE-ICE that may be appointed by the Board from time to time.

“**Board**” means the governing Board of Directors which may comprise at any time of between five (5) and eleven (11) Directors, or one (1) or more Directors, with authority to act on behalf of THE-ICE on matters concerning the management and affairs of THE-ICE according to the Act and this Constitution.

“**Chair**” means that person duly elected to chair Board Meetings and General Meetings.

“**Circular Resolution**” means a Resolution being of such nature that may be circulated amongst the Board or Members without physically holding a meeting which will only be passed when at least fifty one percent (51%) of the Board or Members have signed their agreement for an Ordinary Resolution, or one hundred percent (100%) of the Board or Members have signed their agreement for a Special Resolution.

“**Company**” and “**THE-ICE**” means the Company Limited by Guarantee to which this Constitution applies that is duly registered as the International Centre of Excellence in Tourism and Hospitality Education Limited (THE-ICE).

“**Course / Programme**” may include, but is not limited to: award programmes within the range of Certificate through to PhD as encompassed in the Australian Qualification Framework or those similarly encompassed in comparable international frameworks.

“**Delegate**” in relation to any Member means the designated representative of that Member.

“**Director**” means a Director of THE-ICE, or an Alternate Director acting under authority, which office carries a duty to the Company and under the Act to exercise their powers for a proper purpose.

“**Eligible Associate**” means an Associate of THE-ICE of at least two (2) successive years standing.

“**General Meetings**” include any meeting or Annual General Meeting of the Members convened and held according to this Constitution or the Act.

Commented [KA1]: The office of Director carries with it a legislated duty to the Company to exercise their powers for a proper purpose - this definition just reiterates the Board’s authority to act on behalf of THE-ICE

Commented [KA2]: Clarifies the numbers required to pass a Circular Resolution, whether by the Board or the Members

Commented [KA3]: Clarifies the broad ranges of programmes that may be accredited by THE-ICE

Commented [KA4]: Clarifies the legal obligations of Directors

“Guest” means a person who, with the approval of the Chair, may be invited by a Member to attend and speak at a General Meeting but carries no voting entitlements.

Commented [KA5]: Clarifies that any “Guest” cannot hold voting entitlements

“Institution” - may include, but is not limited to, a: university, institute, college, school and/or learning centre whether ownership of same is private or public, held in trust for a non-profit organisation, held on behalf of public by a statutory authority, or enabled by legislation by the relevant government as the case may be.

Commented [KA6]: Clarifies the broad range of institutions that may apply for their programmes to be accredited by THE-ICE

“Members” refers to the following categories and/or terms of membership of THE-ICE:

“Associates of THE-ICE” were previously known as “Associates”. They hold voting entitlements as specified at clause 17 herein and may include such institutions or organisations that have been assessed by the Assessment Panel as complying with THE-ICE’s Pre-accreditation Standards of Excellence assessment and that have been approved from time to time by Ordinary Resolution of the Board under clause 14 to become Associates of THE-ICE.

Commented [KA7]: “Associates of THE-ICE” has been used for some time as the new terminology for the previously-labelled “Associates”

Commented [KA8]: Previously, acceptance of new members was only able to be passed by an ordinary resolution of the Voting Members at General Meeting (at 14.1.5 of the existing Constitution) – this makes it available for the Board to accept new members

“Full Members with Foundation Status” are those Full Members listed at clause 9.2 that became Foundation Members of THE-ICE during the founding period and before incorporation of the Company in June 2008 and that have continuously maintained their Full Membership status, or been reinstated as same at the discretion of Board.

Commented [KA9]: Clarifies that a returning Full Member with Foundation status may be reinstated at the discretion of the Board

“Full Members” hold voting entitlements as specified at clause 16 herein and include Members with Foundation Status, AccreditationPLUS Status, Accreditation Status and Affiliate Status.

Commented [KA10]: Clarifies the terminology that has been used for some time, listing the “status” of Full Members

“Observers of THE-ICE” were previously known as “Affiliates”. They hold no voting entitlements as specified at clause 18 herein and may include such institutions or organisations that have been invited from time to time by the Board to join THE-ICE network as Observers of THE-ICE.

Commented [KA11]: “Observers of THE-ICE” has been used for some time as the new terminology for the previously-labelled “Affiliates”

“Voting Members” includes all Full Members (Foundation Status, AccreditationPLUS Status, Accreditation Status, Affiliate Status) as well as Associates of THE-ICE.

Commented [KA12]: Reiterating the new terminology as related to voting entitlements

“Membership Criteria” means the criteria set out in clause 13 herein which may be subject to amendment from time to time through Resolution.

“Month” means one calendar month, or the end of the business day following should the Month not end on a business day in the Australian State or Territory of operation of THE-ICE with the same standards being applicable to any specified “day”, “week” or “year”.

“Ordinary Resolution” means a Resolution that requires at least 21 days’ Notice of Meeting to be given (ss 249H & 249L of the Act), and requires a “Majority Vote” (of Directors or Voting Members, as the case may be, who are present at the Meeting, whether themselves or their Delegate/s and whether in person or by electronic means) of at least fifty one percent (51%) to be passed, whether at Board Meeting or General Meeting. Matters which may pass by Ordinary Resolution may include, but are not limited to: election/ re-election of Directors; appointment of Auditor/s; appointment of Secretary; acceptance of reports at the Annual General Meeting; an increase or reduction in the number of Directors, and strategic and/ or commercial decisions.

Commented [KA13]: Clarifies the numbers required to pass an Ordinary Resolution at either Board Meeting or General Meeting and introduces attendance by “electronic means” as qualifying for voting and attendance purposes

“Programme / Course” may include, but is not limited to: award programmes within the range of Certificate through to PhD as encompassed in the Australian Qualification Framework or those similarly encompassed in comparable international frameworks.

Commented [KA14]: See comment for “course/ programme” above

“Register” means the Register of Members kept in accordance with the Act.

“Replaceable Rules” means any provision of the Act designated under s 141 of the Act as “replaceable rules” and so capable of being displaced or modified by a Company’s Constitution.

“Secretary” means the person duly appointed as Company Secretary of THE-ICE.

"Special Resolution" has the meaning given under s 9 of the Act, being a Resolution that requires at least 21 days' Notice of Meeting to be given specifying the proposed Special Resolution (ss 249H & 249L of the Act), and requires a "Special Majority" (of Directors or Voting Members, as the case may be, who are present at the Meeting, whether themselves or their Delegate/s and whether in person or by electronic means) of at least seventy five percent (75%) to be passed, whether at Board Meeting or General Meeting.

Commented [KA15]: Clarifies the numbers required to pass a Special Resolution at either Board Meeting or General Meeting and introduces attendance by "electronic means" as qualifying for voting and attendance purposes

"TH&E" means the broad field of study that includes, but is not limited to: tourism, travel, travel agency, airline, hospitality, hotel, catering, facilities management, events, spa, cruise ship industry, resort, food, wine, culinary and gastronomy studies.

Commented [KA16]: Clarifies the broad range of courses that may be considered as being covered by the term "TH&E" and includes "cruise ship industry"

"THE-ICE Standards of Excellence" means the benchmarking assessment schema used to assess the quality standards in the delivery of tourism, hospitality, hotel, event and culinary arts management programmes of institutions that are members or prospective members of THE-ICE, whether by way of accreditation or re-accreditation, and which must be maintained throughout any membership period.

Commented [KA17]: Clarified by adding that the Standards also apply to re-accreditation & maintaining of standards in general

2. Interpretation

In this Constitution, unless the contrary intention appears:-

- (a) Subject to clause 1, a word has the same meaning as the definition of the word in the Act.
- (b) Reference to a Section of the Act includes any substituted statutory provision/s.
- (c) Reference to any singular includes any plural.
- (d) Reference to a person means a natural person, a corporation, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, an authority or a government agency.
- (e) Headings and/or sequence do not affect interpretation.
- (f) Equivalent meanings shall apply to varying grammatical forms of defined expressions.
- (g) The terms "writing" and "written" include printing, typing and other modes of reproducing words in a visible form including, but not limited to, any representation of words whether in a physical document or by accepted forms of electronic communication.

3. Replaceable Rules

Any applicable Replaceable Rules are displaced by this Constitution under s 135 of the Act.

4. Act

Despite any other provision in this Constitution:-

- (a) If the Act prohibits a thing being done, the thing may not be done.
- (b) If the Act requires a thing to be done, authority is given for that thing to be done.
- (c) If a provision of this Constitution is, or becomes, inconsistent with the Act (other than a Replaceable Rule) then that provision must be read down or, failing that, severed from this Constitution to the extent of the inconsistency.

5. Changes to Constitution

5.1 This Constitution may only be modified or repealed by passing a Special Resolution (s 136 of the Act).

5.2 If a new Constitution is adopted, or an existing Constitution is modified or repealed, that adoption, modification or repeal takes effect:

- (a) on the date on which the Special Resolution is passed if it specified no later date; or
- (b) on the date that may be specified in, or determined in accordance with, the Special Resolution if that date is later than the date on which the Special Resolution is passed (s 137 of the Act).

6. Company Name

The Company Name is the International Centre of Excellence in Tourism and Hospitality Education Limited (THE-ICE).

7. Company

The Company is a company limited by guarantee under the Act.

8. Objectives of the Company

The Objectives of the Company are to:-

8.1 Promote the Agreed Objectives with the Members including, but not limited to:

- (a) Representing the interests of the Members at national and international levels and, where appropriate, the interests of any other institutions that may be accredited by THE-ICE from time to time.
- (b) Providing a forum for the exchange of ideas and the collaboration of educational services offered by the Members of THE-ICE for the benefit of students and the Field.
- (c) Circulating market trends and other information that may be relevant to the education services provided by the Members of THE-ICE.
- (d) Having an effective role in the promotion of TH&E education for the mutual benefit of potential students, education institutions and related organisations offering graduates relevant career opportunities.

8.2 Promote relevant scientific research by: enhancing TH&E education and training; fostering an international cooperative culture; improving linkages between national and international educational organisations; and developing vocational, higher education, continuing professional development, exchange, and other educational programmes.

8.3 Develop and promote an International Centre of Excellence in Tourism and Hospitality Education (Company) in TH&E programmes with the capability of pursuing world class, relevant education, training, and research.

8.4 Advance and enhance education benchmarking by providing services for the assessment and accreditation of TH&E education programmes and conducting research to enhance the economic, social, cultural and ecological sustainability of TH&E education and training.

Commented [KA18]: The previous Constitution incorrectly stated at 5.1.2 that the Constitution could be changed with the majority (51%) approval of the Foundation Members. Under the Corporations Act at s 136, the Constitution can only be changed by a Special Resolution (75%) of all voting members.

Commented [KA19]: Re-ordered & changed slightly to more surely establish the current objectives of THE-ICE

- 8.5 Ensure that all Members of THE-ICE will, through their participation with THE-ICE, maximise efforts and benefits so that the performance of THE-ICE will be greater than that of each Member performing independently.
- 8.6 Subscribe to, become a member of, and cooperate with, any other national and/or international associations or organisations whose objectives are similar to those of THE-ICE.
- 8.7 Provide a contact point for national and international institutions, industry experts, government bodies or other interested parties in the design, development, evaluation or delivery of education services provided by Members of THE-ICE.
- 8.8 Undertake research and/or other professional services that may be commissioned from time to time by a Member or other person at the cost of that person or Member.
- 8.9 Do any and all things that may be required for the advancement of any or all of the Objectives listed at 8.1 - 8.8 inclusive.

PART 2 – MEMBERS

9. Types of Membership

- 9.1 There are two (2) categories of membership:-
 - (a) Full Members, with the following Status distinctions:
 - (i) Foundation Status;
 - (ii) AccreditationPLUS Status;
 - (iii) Accreditation Status; and
 - (iv) Affiliate Status.
 - (b) Associates of THE-ICE.
- 9.2 The institutions that have been recognised as Foundation Members of THE-ICE since its inception in 2004 are:
 - (a) Australian School of Management, Perth WA
 - (b) Blue Mountains International Hotel Management School Pty Ltd, Leura NSW trading as Australian International School of Management, Canberra, ACT
 - (c) Blue Mountains International Hotel Management School Pty Ltd, trading as Blue Mountains Hotel School, Leura NSW
 - (d) Charles Darwin University, Darwin, NT
 - (e) Griffith University
 - (f) International College of Management, Sydney
 - (g) Murdoch University Perth, WA
 - (h) Northern Sydney Institute, Sydney NSW
 - (i) Southern Cross University, Lismore NSW

Commented [KA20]: Inserting the new terminology – Definitions state previous term/s used

Commented [KA21]: Full listing of original Foundation Members

Commented [KA22]: Rectified previous omission of Griffith University

- (j) The Hotel School Sydney, NSW
- (k) University of Queensland, St Lucia, QLD
- (l) Victoria University & Victoria University Vocational Education, Melbourne, VIC
- (m) William Angliss Institute, Melbourne VIC
- (n) Think: Education Group trading as William Blue School of Hospitality Management, Sydney, NSW.

9.3 Continuous membership of THE-ICE is required for the ongoing recognition of the status of Foundation Membership, however THE-ICE Board reserves the right to reinstate any of the Foundation Members to their original status.

Commented [KA23]: Terms of continued recognition as Foundation Members now included

10 Liability of Members

10.1 The liability of each Voting Member is limited and, subject to the Act, no Observer of THE-ICE shall have any financial liability to the Company.

Commented [KA24]: Inserting the new terminology

10.2 Each Voting Member shall be liable for the sum of \$100 should the Company be wound up while membership is current, or within one (1) year of a Voting Member ceasing to be a Member, for payment towards the Company debts and liabilities, costs, charges and expenses of winding up, and for the adjustment of the rights of the contributories among themselves.

11 Subscriptions and Levies

11.1 The Annual Subscription Fee is due and payable by each Voting Member according to their relevant membership category within thirty (30) days of the later of:

- (a) 1st July annually, being the beginning of the financial year in Australia; or
- (b) An invoice being issued by THE-ICE to the Member for the Annual Subscription Fee

with such Annual Subscription Fee being subject to increases as may be determined from time to time in respect of any or all categories of Membership by Ordinary Resolution.

11.2 The Board may impose one-off levies on all Voting Members for particular projects or in particular circumstances where so approved by Ordinary Resolution in General Meeting and in the proportions so determined provided that:

- (a) Any such resolution sets out the reason for the levy, the total amount of the levy, and the proportion of the levy that is payable by each Voting Member;
- (b) Any such levy does not exceed the sum of two thousand five hundred dollars (\$2,500) per Voting Member; and
- (c) The total of any such levies in any calendar year does not exceed the sum of five thousand dollars (\$5,000) per Voting Member.

11.3 Where requested by a Voting Member for the purposes of clause 11.2, the Board must convene a General Meeting in a timely manner.

11.4 A Voting Member is not liable to pay a levy imposed under clause 11.2 if that Voting Member resigns by giving notice in writing pursuant to clause 15 herein within thirty (30) calendar days of the date the levy is imposed.

Commented [KA25]: Increased from 14 days to 30 days

12 Income and Property (Assets)

12.1 The income and property of THE-ICE shall be applied towards the promotion of the Agreed Objectives and no proportion shall be paid to the Members whether directly or indirectly, by way of dividend, bonus or otherwise.

12.2 Clause 12.1 herein does not preclude remuneration payments to any officer or employee of THE-ICE, or to any Member in return for any services actually rendered or goods supplied to THE-ICE in the ordinary course of business including proper rental costs for premises let by any Member to THE-ICE.

13 Membership Criteria

13.1 A Voting Member must at all times be an institution that has been assessed by the Assessment Panel as meeting THE-ICE Standards of Excellence and:

(a) Vocational and Education Training (VET) providers must be registered with the equivalent of Australian government authorities and vocational education frameworks of the domicile country. Australian VET institutions must be Registered Training Organisations (RTOs) under the relevant Australian State or Territory authorities and comply with the requirements of the Australian Quality Training Framework (AQTF), Education Services for Overseas Students (ESOS) legislation, and any other regulatory frameworks that may be relevant from time to time.

(b) Higher Education providers must meet the legislative requirements of government authorities and higher education frameworks of the domicile country. Australian Higher Education providers must meet the equivalent requirements of accreditation authorities such as the Tertiary Education Quality Standards Agency (TEQSA), and any other regulatory frameworks that may be relevant from time to time.

13.2 Voting Members must at all times demonstrate commitment to the objectives of THE-ICE as listed at Clause 8 herein.

14 Incoming Members

14.1 Institutions that meet the criteria set out in clause 13 may become an Associate of THE-ICE, or a Full Member upon successful completion of THE-ICE Pre-Accreditation Fast Track, through the following process:

(a) Stating that intention in writing to the General Manager of THE-ICE and submitting an executed Associate of THE-ICE Agreement, or an executed Full Member of THE-ICE Agreement, and the relevant application fee;

(b) Completing such Pre-Accreditation application procedure as may be determined from time to time and subsequently being assessed by the Assessment Panel as meeting the applicable criteria of THE-ICE Standards of Excellence;

(c) The Board approving that application by Ordinary Resolution or Circular Resolution; and

(d) That institution remitting the applicable Annual Membership Fee to THE-ICE.

14.2 New Membership criteria may be subject to amendment from time to time through the passing of additional policies by way of Resolutions.

14.3 The Chair will notify any new membership in writing to all Members.

Commented [KA26]: Reference to the objectives of THE-ICE added

Commented [KA27]: Inserting the new terminology – Definitions state previous term/s used - and introduces the Fast Track process

Commented [KA28]: Enables future changes to the application process

Commented [KA29]: Allows the Board to approve new Members by ordinary or circular resolution – limited under 9.4 of the existing Constitution to the unanimous vote of Full Members

Commented [KA30]: Again, enabling future change to the membership criteria

15 Outgoing Members

- 15.1 Any Observer of THE-ICE may resign by giving notice in writing to THE-ICE which will be effected immediately, and any Full Member or Associate of THE-ICE may resign by giving three (3) calendar months' notice in writing to THE-ICE.
- 15.2 The Board may cancel the membership of a Voting Member if that Voting Member ceases to comply with clause 13 herein or:
- (a) That Voting Member has any Annual Subscription Fee or levy that remains outstanding thirty (30) calendar days following a written notice from THE-ICE requesting payment; or
 - (b) That Voting Member is a Company and becomes an externally-administered Body Corporate.
- 15.3 A Member who fails to attend in any form two (2) consecutive General Meetings, without giving at least twenty four (24) hours' written notice of their intended absence, will be asked to provide THE-ICE with a written explanation of their absence within seven (7) days of such request.
- 15.4 Within seven (7) calendar days of receiving a written explanation under clause 15.4 the Full Members must unanimously:
- (a) Pass a Resolution that the written explanation be accepted and the relevant membership be retained; or
 - (b) Pass a Resolution that the written explanation be rejected and the relevant membership be cancelled
- and a Full Member will be taken to accept such written explanation unless that Full Member replies in the alternative in writing to THE-ICE within seven (7) days of the written explanation.
- 15.6 The Chair will notify any resignation or cancellation of membership in writing to all Members.

16 Full Members

- 16.1 A Full Member is entitled to receive notices of General Meetings and is entitled to appoint two (2) Delegates under clause 32 herein to attend, to speak at, and to vote at General Meetings.
- 16.2 With the approval of the Chair, a Full Member may invite Guests to attend and speak at General Meetings without voting entitlements.
- 16.3 A Full Member may itself be appointed as a Delegate by a Voting Member and may exercise the powers of that Voting Member if duly authorised to do so under clause 32 herein.

17 Associates of THE-ICE

- 17.1 An Associate of THE-ICE is entitled to receive notices of General Meetings and is entitled to appoint one (1) Delegate under clause 32 herein to attend, to speak at, and to vote at General Meetings.
- 17.2 With the approval of the Chair, an Associate of THE-ICE may invite Guests to attend and speak at General Meetings without voting entitlements.
- 17.3 An Associate of THE-ICE may itself be appointed as a Delegate by a Voting Member and may exercise the powers of that Voting Member if duly authorised to do so under clause 32 herein.

Commented [KA31]: Inserting the new terminology – Definitions state previous term/s used

18 Observers of THE-ICE

An **Observer of THE-ICE** is entitled to receive notices of General Meetings and is entitled to appoint one (1) Delegate without voting rights under clause 32 to attend and to speak at General Meetings.

Commented [KA32]: Inserting the new terminology – Definitions state previous term/s used

19 No Transfer of Membership

Membership is attributed to the approved institution and is not transferable.

Commented [KA33]: Reworded for clarity

PART 3 – MEETINGS OF MEMBERS

20 Convening Meetings

20.1 The Board may convene a Meeting at a time and place the Board may decide provided that at least two (2) General Meetings take place in any calendar year and that under s 249H of the Act at least 21 days' notice is given unless the following applies:

- (a) The meeting to be convened is an Annual General Meeting and all of the Voting Members agree beforehand the calling on shorter notice; or
- (b) The meeting to be convened is a General Meeting and at least ninety five percent (95%) of the Voting Members agree beforehand the calling on shorter notice.

20.2 Shorter notice of meeting under clause 20.1 is not allowed under s 249H of the Act if a resolution will be moved to remove a Director under s 203D of the Act or appoint a replacement Director for one removed under that section, or remove an Auditor under s 329 of the Act.

20.3 Unless convened at the request of Members under s 249D of the Act the Board may cancel or postpone a General Meeting by notice to the Members specifying the place, day and time for holding the postponed General Meeting.

Annexure 1 – Section 249D – *Corporations Act 2001* (Cth)

21 Notice of Meeting

Written notice of every General Meeting shall be given to each of the appointed Auditor, the Directors, the Members, and/or their duly appointed Delegate/s, in the manner and time required by the Act under section 249H and clauses 20-22 herein.

22 Content of Notice of Meeting

A Notice of Meeting must at least specify the following under s 249L of the Act:

- (a) The place, date and time of the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
- (b) The general nature of the meeting's business;
- (c) If a special resolution is to be proposed at the meeting then an intention must be set out proposing the Special Resolution and stating the resolution; and
- (d) A statement setting out the Member's rights to appoint a Delegate, or more than one as the case may be, the voting entitlement of those Delegates, and whether those Delegates are required to be Members.

Annexure 2 – Section 249L – *Corporations Act 2011* (Cth)

23 Quorum at General Meeting

23.1 The quorum for a General Meeting is **twenty five (25%), or the nearest number when rounded up, of the Full Members and the quorum must be present (whether in person, by Delegate or by electronic means)** at all times during the meeting.

Commented [KA34]: With s 249T of the Corporations Act being a replaceable rule – quorum has been reduced to 25% of the Full Members, rather than the previous 51% required at 22.2 of the existing Constitution – also allows for electronic

23.2 If there is no quorum within 30 minutes after the time appointed for a General Meeting then:-

(a) the meeting must be dissolved under s 249T of the Act; and

(b) **may be adjourned either to a time, date and place the Directors specify, or (if one or more of those things are not specified); then**

Commented [KA35]: Reworded for clarity

(i) **to the same day in the next week (if the date is not specified under 23.2(b));**

(ii) **to the same time (if the time is not specified under 23.2(b); and/or**

(iii) **to the same place (if the place is not specified under 23.2(b)).**

24 Election of Deputy Chair and Chair

24.1 To be eligible for election as Chair or Deputy Chair a person:

(a) must be a Director of THE-ICE; and

(b) **must be recognised by the Directors as having experience and knowledge in connection with the Tourism, Hospitality, Events and Culinary Arts (TH&E) training, education and/or industry.**

Commented [KA36]: Altered to include culinary arts, and training

24.2 A person who fulfils the eligibility requirements at clause 24.1 and accepts such nomination may be **elected by the Board as Chair or Deputy Chair by Ordinary Resolution.**

Commented [KA37]: Allows Board to elect Chair and/or Deputy Chair

24.3 The term of office for Chair or Deputy Chair is **two (2) years** with the following exceptions:

Commented [KA38]: The new term in office of two years inserted

(a) A person will cease to hold office as Chair or Deputy Chair should they no longer hold office as a Director;

(b) Should a Chair or Deputy Chair be unable or unwilling to continue to act for their full two (2) year term under clause 24.3, the Board may elect by Resolution another person who is eligible under clauses 24.1 – 24.2.

25 Responsibilities of Chair and Deputy Chair at General Meeting

25.1 **If no Chair or Deputy Chair has been duly elected in accordance with clause 24, or if the duly elected Chair or Deputy Chair is unable or unwilling to act as Chair at any General Meeting then the Directors may appoint an Interim Chair to act as Chair for that meeting, or any part of it.**

Commented [KA39]: Clarifies that if the Chair or Deputy Chair are available then an Interim Chair must be elected on a needs basis

25.2 The Chair at General Meeting has general conduct of the meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act, and if the duly elected Chair is unable or unwilling to act as Chair at any General Meeting then the Deputy Chair will assume the role and responsibilities of Chair for that meeting.

25.3 Without limiting the powers under clause 25.2 the Chair may refuse a person admission to a General Meeting, or require that a person leave and not return to a General Meeting, if that person:-

(a) Refuses to permit reasonable examination of any article in his or her possession; or

(b) Is reported to the Board as being in possession of any:

- (i) electronic or recording device;
- (ii) placard or banner; or
- (iii) other article;

which the Chair considers to be dangerous, offensive, or liable to cause disruption.

26 Adjournments

- 26.1 An adjourned General Meeting must be dissolved if a quorum is not present within thirty (30) minutes after the time appointed for the adjourned General Meeting.
- 26.2 The Chair must adjourn a General Meeting if the majority vote of Voting Members present direct so, whether by show of hands or other manner.
- 26.3 Only the Chair may demand a poll be conducted on any resolution concerning the adjournment of a General Meeting.
- 26.4 Business that may be conducted at an adjourned General Meeting includes only the unfinished business from the originally scheduled meeting, with no new business to be introduced.
- 26.5 There is no requirement to provide an agenda by notice to all Members of an adjourned General Meeting provided that the adjourned General Meeting is held within thirty (30) days of the originally scheduled meeting.

27 Manner of Voting

- 27.1 A question put to a General Meeting must be decided:-
 - (a) on a declaration of a show of hands of the Voting Members; or
 - (b) by poll of the Voting Members before or on the declaration of the show of hands if demanded by:
 - (i) the Chair of the meeting;
 - (ii) any Full Member; or
 - (iii) at least twenty five percent (25%) of the Voting Members present at the General Meeting whether acting in their own right or as Delegate for a Voting Member or Members if more than one.
- 27.2 Each Member is entitled to the number of votes specified for their membership category in clauses 16-18 herein, whether by show of hands or by poll and whether in person or by duly appointed Delegate or Delegates, specifically:
 - (a) Full Members are entitled to two (2) votes;
 - (b) Associates of THE-ICE are entitled to one (1) vote; and
 - (c) Observers of THE-ICE have no voting entitlements.
- 27.3 The Chair of each General Meeting shall cause a Register to be kept of all persons attending that General Meeting and their function in attending, specifically:

- (a) Each person's name;
- (b) Whether attending as a duly appointed Delegate of a Member, or Members if more than one;
- (c) Whether attending as a Guest of a Member, or Members if more than one;
- (d) The Member and category of membership, or Members and categories of membership if more than one, for which they are attending; and
- (e) The number of votes applicable to each representation as Delegate or Delegates if more than one.

27.4 At the commencement of each General meeting the Chair shall announce or distribute a notice specifying the number of Delegates including Guests in attendance and the total number of votes each Delegate may exercise on a poll.

28 Poll – General Meetings

28.1 Any poll to be conducted under clause 27.1 herein must be taken as and when the Full Members instruct the Chair to so direct with the exception of a poll on a question of adjournment which must be taken without any adjournment.

28.2 If any question arises as to the number of votes to which any person is entitled on a poll, the Chair must decide the matter with reference to the Register under clauses (c) – 27.4 herein and such decision made by the Chair in good faith is final.

28.3 The demand for a poll does not prevent the meeting from dealing with other business.

28.4 The result of a poll is the resolution of the meeting.

28.5 The demand for a poll may be withdrawn.

28.6 No poll may be demanded on the election of a Chair of a meeting.

29 Casting Vote

At any General Meeting the Chair may have the casting vote in addition to the vote/s they are eligible to make as a Member, or as Delegate/s of Member/s (s 250E of the Act), and at any Board Meeting the Chair may have the casting vote in addition to any vote they may have in their capacity as Director or Alternate Director (s 248G of the Act).

Commented [KA40]: Clarifying that the Chair has the casting vote, legislated under s 250E & 248G of the Act

30 Declaration of a Result

Unless a poll is demanded under clause 27.1 any declaration by the Chair that a resolution has been carried or lost with an entry made to that effect in the minutes is conclusive evidence of that fact.

31 Objection to a Voter's Qualification

An objection to the qualification of any voter may only be made at the meeting in which the vote is cast, and may only be made by a Voting Member or their duly appointed Delegate, with the decision of the Chair on the objection being final.

32 Representation at General Meetings

- 32.1 A Delegate may be duly appointed to represent a Voting Member (including attending, speaking at, and voting at) all or any number of General Meetings by a written Notice of Appointment being executed by that Member and lodged with the Secretary in accordance with clause 32.6 with such appointment able to be amended or withdrawn by notice in writing to the Secretary.
- 32.2 A Guest may be invited by a Voting Member to attend and speak at any General Meeting (but not vote unless duly appointed as a Delegate) only once approval in writing has been given by the Chair.
- 32.3 Unless a Notice of Appointment specifies otherwise, which may include for or against voting stipulations, a Delegate of a Voting Member is taken to have authority to speak to any proposed resolution at General Meeting and:-
- (a) To vote on the following matters:
 - (i) The convening of a General Meeting with shorter notice than is otherwise required by the Act or this Constitution;
 - (ii) Any Special Resolution where less than twenty-one (21) days' notice was given under clause 20;
 - (iii) Any Ordinary Resolution or Special Resolution unless stipulated in the alternative on the relevant Notice of Appointment;
 - (iv) Any amendment or motion moved to proposed resolutions; and
 - (v) Any procedural motion including that to elect a Chair.
 - (b) To demand or join in demanding a poll on any resolution on which the Delegate has been duly appointed to vote.
 - (c) To act generally at all or any General Meeting pursuant to the relevant Notice of Appointment including any meeting that may have been nominated then adjourned.
- 32.4 A Notice of Appointment may direct the manner in which the Delegate is to vote in respect of a particular resolution and, where an instrument so provides, the Delegate shall only be entitled to vote as directed in the Notice of Appointment for that particular resolution.
- 32.5 A Notice of Appointment need not be in any particular form but shall not entitle the Delegate to attend, speak or act at any meeting unless the Notice of Appointment is:
- (a) In writing;
 - (b) Signed by the Member, or if the Member is a Body Corporate then executed by a person duly authorised by the governing body of the Member in accordance with the Act;
 - (c) Deposited at the registered address of THE-ICE, or other such place that may be specified in the notice of meeting, at least twenty four (24) hours before the poll or meeting or adjourned meeting as the case may be;
 - (d) Tabled at any meeting or adjourned meeting at which the Delegate proposes to act; and
 - (e) Produced at the time that any relevant poll is taken.

32.6 By majority vote at Board meeting, the Directors may waive any or all of the requirements of clauses 32.1 – 32.5 upon the production of such evidence as the Directors deem to prove the validity of an appointment as Delegate.

32.7 A vote made under the terms of a Notice of Appointment is valid despite any revocation if such revocation is not notified in writing prior to the time that such Notice of Appointment may be required to be deposited, tabled or produced under clause 32.5 (c, d & e).

PART 4 – DIRECTORS

33 Number

There will be no less than five (5) and no more than eleven (11) Directors at any one time.

34 Qualification

Any person may be appointed as Director by Special Resolution at a Board Meeting, or by Ordinary Resolution at a General Meeting, subject to Clause 35.1 & 35.2 herein.

Commented [KA41]: There is agreement to leave Directorship open to all rather than being restricted to Members and/or their Delegates only

35 Appointment & Removal

35.1 Any Member may nominate a person for election as a Director provided such nomination is seconded by another Member.

35.2 A Nomination for Director need not be in any particular form but shall not be considered unless the Nomination is:

- (a) In writing;
- (b) Signed by the Nominator and a Seconder;
- (c) Accompanied by a biographical sketch of the Nominee; and
- (d) Accompanied by the Nominee's written consent to act as Director if elected.

35.3 The Board may:

- (a) Remove a Director from office by Ordinary Resolution;
- (b) Appoint another person as a Director following clause 35.3(a) being exercised by Ordinary Resolution; and/or
- (c) Remove a Director from office in accordance with section 203D of the Act whereby the replacement Director's term of office will be calculated from the date that the replaced Director was last appointed as Director.

Annexure 3 –Section 203D – *Corporations Act 2011* (Cth)

36 Resignation

A Director may resign as a director by giving written notice of such resignation to the registered office of THE-ICE unless such resignation would result in the Company contravening section 201A and clause 33 herein regarding the minimum number of Directors.

37 Disqualification

A person ceases to be a Director if and when the Act or this Constitution otherwise requires or permits, however, a person who ceases to be a Director is eligible for reappointment or re-election as a Director subject to the Act.

38 Retirement

38.1 The term of office of any new or re-elected Director following this Constitution coming into effect is **two (2) years**, or at the end of the second Annual General Meeting following the Director's last appointment, whichever is longer and after which time the Director is retired notwithstanding their eligibility for re-election.

Commented [KA42]: The new term in office of two years inserted

38.2 If a Director retires at General Meeting the vacated office may be filled by election and Ordinary Resolution unless a Resolution is passed not to fill the vacated office.

38.3 If a vacant office is not filled by election pursuant to clause 38.2 herein and the retiring Director offers themselves for re-election, then that Director is re-elected unless there is a resolution at the meeting at which they retire that the vacated office not be filled or a resolution is put and lost for the re-election of that Director.

39 Remuneration and Expenses of Directors

The Directors are not entitled to remuneration, however:

- (a) Under s 199B of the Act the Company may pay a premium for a contract insuring a person who is or has been a Director against any liability incurred as a Director for the Company;
- (b) Under s 202A of the Act travelling and other expenses that are reasonably and properly incurred in connection with Company business may be reimbursed to Directors with the prior approval by Ordinary Resolution including, but not limited to, costs of attending meetings of Directors or meetings of committees of Directors or General Meetings as may be applicable.

40 Directors' Meetings

40.1 Subject to the Act and this Constitution, the Directors may meet together, adjourn and regulate their meetings as they may decide.

40.2 A Director may call a Directors' meeting ("Board Meeting") and the Secretary must at the request in writing of a Director, call a Board Meeting.

40.3 Unless all Directors entitled to vote at the Board Meeting agree otherwise, a person calling a Board Meeting must give to each Director a Notice of Board Meeting that:

- (a) Sets out the place, date and time of the meeting and, if the Board Meeting is to be held in two or more places, the technology that will be used to facilitate this;
- (b) Sets out the general nature of the Board Meeting's business incorporating relevant information so far as is reasonably available; and
- (c) Allows at least two (2) clear business days before the Board Meeting or such other period as all the Directors may otherwise determine as a matter of general policy.

40.4 The Chair at Board Meeting shall be that person appointed as Chair under clauses 24 and 25 herein.

40.5 Unless the Directors otherwise determine as a matter of general policy, a majority [at least half, or half if an even number] of the Directors in office at the time constitutes a quorum for a Board Meeting (whether in person, by duly appointing an Alternate Director, or by electronic means) and that quorum must be present at all times during the meeting.

Commented [KA43]: Quorum slightly reduced from “the majority” to half – and allowed for electronic attendance

40.6 Any material personal interest that a Director may have in a matter relating to the affairs of the Company must be disclosed by written notice pursuant to s 191 of the Act.

Annexure 4 – Section 191 – *Corporations Act 2011* (Cth)

40.7 A Director with a material personal interest disclosed pursuant to clause 40.6 herein may not be present at, or vote at, a Board Meeting that is considering that material personal interest unless excepted under s 195 or 196 of the Act.

Annexure 5 – Section 195 – *Corporations Act 2011* (Cth)

Annexure 6 – Section 196 – *Corporations Act 2011* (Cth)

40.8 Any Ordinary Resolution of the Board or Members must be passed by a Simple Majority of the votes cast by Directors or Members entitled to vote on the resolution whether in Meeting or by Circular Resolution, and any Special Resolution must be passed by a Special Majority of the votes cast by Directors or Members entitled to vote on the resolution if in Meeting, or by all votes being in favour if by Circular Resolution.

41 Alternate Directors

41.1 With the approval of the other Directors, a Director may duly appoint an Alternate Director to exercise some or all of the Director’s powers for a specified period by making such appointment in writing and delivering to the registered office of the Company.

41.2 If the appointing Director requests the Company to give the duly appointed Alternate Director notice of Board Meetings, the Company must do so.

41.3 If a duly appointed Alternate Director exercises a Director’s power, the exercise of that power is just as effective as if the power was exercised by the Director.

41.4 The appointing Director may revoke the duly appointed Alternate Director's appointment at any time by delivering written revocation of such to the registered office of the Company.

41.5 A duly appointed Alternate Director's appointment ceases should the appointing Director cease to be a Director.

41.6 If a duly appointed Alternate Director is also a Director in their own capacity, that Director is entitled to vote twice.

41.7 The provisions of this Constitution that apply to Directors also apply to duly appointed Alternate Directors.

42 Director’s Interests

Subject to s 208 of the Act, a Director and an entity in which a Director has a personal interest may in any capacity:

- (a) enter into any contract or arrangement with the Company;
- (b) be appointed to and hold any office or place of profit under the Company, other than the office of Auditor;
- (c) act in any professional capacity, other than as Auditor, for the Company; and

- (d) may receive and retain for their own benefit any remuneration, profits or benefits as if they were not a Director.

Annexure 7 – Section 208 – *Corporations Act 2011* (Cth)

43 Directors' Powers

- 43.1 Company business is to be managed by the Directors who may exercise all such powers of the Company as may be required to be exercised under the Act or this Constitution.
- 43.2 The Directors may exercise all the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in General Meeting or otherwise.
- 43.3 Notwithstanding clause 43.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- 43.4 A Special Majority of Directors is required for the Directors to implement a Special Resolution.
- 43.5 The Directors may appoint any person or persons as power of attorney of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.
- 43.6 A power of attorney granted under clause 43.5 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 all or any of the powers, authorities and discretions vested in the attorney including by way of appointment of a substitute attorney.
- 43.7 The Directors must cause minutes of meetings to be made and kept in accordance with the Act.
- 43.8 The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

Commented [KA44]: Enables the Board to pass resolutions that are not of the type that under the Act requires voting of the full membership.

Commented [KA45]: As above but clarifies that any Special Resolution may not be passed by the Board without a Special Majority of Director's votes (note, cannot apply to changing the Constitution or some other major changes such as name, company type, etc)

44 Delegation of Powers

A delegation of powers by the Directors:

- (a) may authorise the delegate to sub-delegate all or any of the powers vested in the delegate; and
- (b) may be concurrent with or to the exclusion of the exercise of those powers by the Directors.

45 Circular Resolutions

- 45.1 The Board or Members may pass an Ordinary Resolution without a physical Meeting being held if a majority of the Directors or Members who are entitled to vote on the resolution, and being not less than the number required for a quorum at a Meeting, sign a document containing a statement that they are in favour of the resolution set out in the document.
- 45.2 The Board or Members may pass a Special Resolution in accordance with the Act without a physical Meeting being held if all of the Directors or Members who are entitled to vote on the resolution (which does not include those Directors who may have been granted a leave of absence by the Chair for the entire period that the resolution is to be circulated) sign a document containing a statement that they are in favour of the resolution set out in the document, and provided that proper notice as required under the Act has been complied with.

Commented [KA46]: Clarifies that leave of absence may be granted to Directors – and specifies that the Board may also pass special resolutions by way of circular resolution – but that these require 100% to be in favour

- 45.3 A resolution passed under clauses 45.1 or 45.2 is taken to have been passed when signed by the last Director or Member required to pass the resolution.
- 45.4 Electronic versions and/or separate copies of a document may be used for signing by Directors or Members if the wording of the resolution and statement is identical on each version or copy.
- 45.5 A document referred to in this clause must be sent to every Director or Member who is entitled to vote on the resolution whether or not the Director or Member signs the document.

PART 5 – OTHER MATTERS

46 Chief Executive

- 46.1 The Board may appoint a Chief Executive alone, or a Chief Executive and a Deputy Chief Executive in each case for either a fixed term or without limitation as to the period of appointment, but not for life, and may remove persons so appointed and appoint replacements.
- 46.2 A Chief Executive or Deputy Chief Executive has only those powers and authorities conferred by the terms of the Chief Executive or Deputy Chief Executive's appointment or subsequently conferred by the Directors and the Directors may vary the powers and authorities for the time being conferred on a Chief Executive or a Deputy Chief Executive.

47 Secretary, Treasurer and Public Officers

- 47.1 **The Board must appoint by Ordinary Resolution** at least one (1) Secretary and may appoint additional Secretaries and/or one (1) Assistant Secretary provided that the person appointed as Secretary also holds the office of Director.
- 47.2 **The Board must appoint by Ordinary Resolution** at least one (1) Treasurer with no requirement for that person or persons to also hold the office of Director.
- 47.3 A Secretary and a Treasurer holds their respective office on the terms and conditions, and with the powers, duties and authorities, as determined by the Directors with the exercise of those powers and authorities and the performance of those duties being subject at all times to the control of the Directors.
- 47.4 The Board may suspend or remove a Secretary or Public Officer from that office.

Commented [KA47]: Allowed for Board to appoint Secretary, rather than going to the full membership

Commented [KA48]: Allowed for Board to appoint Treasurer (left out of existing Constitution)

48 Seals

- 48.1 The Company may, but is not required to, have a common seal.
- 48.2 The common seal and any official seal may be used only with the authority of the Board or of a committee of Directors so authorised by the Board.
- 48.3 The sealing of a document with the common seal must be witnessed by two persons being:
- (a) a Director; and
 - (b) the duly appointed Secretary or another Director or other person as may have been appointed by the Board for that purpose.
- 48.4 The Board may decide that any such signature need not be hand-written. If so, then the Board must specify in which cases and how the signature must be affixed and verified by a person appointed for that purpose by the Board.

49 Inspection

Unless authorised by Special Resolution of the Board or under the Act, a Member who is not a Director is not entitled to:

- (a) inspect the Company's books; nor
- (b) obtain information about the Company's operations;

if the Board thinks it may be contrary to the interests of the Company.

50 Notices

50.1 Notices as may be required under the Act or this Constitution may be given to Members or former Members in any of the following manners:

- (a) In person;
- (b) Posting to the address for the Member as listed in the Register, or an alternate address if one has been nominated by the Member;
- (c) Sending electronically via facsimile or email or other electronic address as may have been nominated by the Member; or
- (d) By any other means permitted under the Act.

50.2 Any Notice sent by post is taken to have been received three (3) clear business days after the day of posting while any Notice sent electronically is taken to have been received at the end of the business day following the day of sending.

50.3 Sufficient evidence of posting is a certificate in writing signed by a Director or the Secretary stating that a Notice was posted by addressing, stamping and posting such Notice.

51 Winding Up

51.1 If THE-ICE is wound up and there remains, after satisfaction of all its debts and liabilities, any property, such property shall not be distributed amongst the Members but shall be given or transferred to some other non-profit institution or institutions having Objectives similar to the Objectives of THE-ICE and whose Constitution also prohibits the distribution of its income or property among its Members.

51.2 Such institution or institutions who may receive the property referred to in clause 51.1 are to be determined by the Members of THE-ICE at or before the time of the winding up or, in default, by application to the relevant jurisdiction at the time.

52 Indemnity of Officers and/or Employees

Any and all officers and/or employees of THE-ICE are indemnified against any liability incurred by that officer and/or employee who is acting in that capacity except in the case of liability arising from bad faith and including costs and expenses of:

- (a) defending proceedings (civil or criminal) in which judgment is given in favour of the officer or employee or in which the officer or employee is acquitted; and/or
- (b) an application in relation to proceedings, whether they be civil or criminal, in which the court grants relief to the officer or employee under the Act.

Commented [KA49]: Inserted to further protect privacy – was left somewhat open under clause 50 of existing Constitution

53 Calculation of time

Any period of time referred to by this Constitution or the Act is to be calculated pursuant to s 105 of the Act which provides (without limiting ss 36(1) of the *Acts Interpretation Act 1901*):

- (a) In calculating how many days a particular day, act or event is before or after another day, act or event, the first-mentioned day, or the day of the first-mentioned act or event, is to be counted but not the other day, or the day of the other act or event.

And if there is no specified time for giving of a notice or serving of a document under this Constitution or the Act then the Board may specify the time.

Corporations Act 2001 (Cth)

Section 249D **Calling of general meeting by directors when requested by members**

Chapter 2G Meetings

Part 2G.2 Meetings of members of companies

Division 2 Who may call meetings of members

249D Calling of general meeting by directors when requested by members

- (1) The directors of a company must call and arrange to hold a general meeting on the request of:
- (a) members with at least 5% of the votes that may be cast at the general meeting; or
 - (b) at least 100 members who are entitled to vote at the general meeting.
- (1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:
- (a) a particular company; or
 - (b) a particular class of company.
- Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.
- (2) The request must:
- (a) be in writing; and
 - (b) state any resolution to be proposed at the meeting; and
 - (c) be signed by the members making the request; and
 - (d) be given to the company.
- (3) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- (4) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.
- (5) The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

Corporations Act 2001 (Cth)

Section 249L Contents of notice of meetings of members

Chapter 2G	Meetings
Part 2G.2	Meetings of members of companies
Division 3	How to call meetings of members

Section 249L Contents of notice of meetings of members

- (1) A notice of a meeting of a company's members must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
 - (b) state the general nature of the meeting's business; and
 - (c) if a special resolution is to be proposed at the meeting--set out an intention to propose the special resolution and state the resolution; and
 - (d) if a member is entitled to appoint a proxy--contain a statement setting out the following information:
 - (i) that the member has a right to appoint a proxy;
 - (ii) whether or not the proxy needs to be a member of the company;
 - (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

Note: There may be other requirements for disclosure to members.

- (2) The notice of the AGM of a listed company must also:
- (a) inform members that the resolution referred to in subsection 250R(2) (resolution on remuneration report) will be put at the AGM; and
 - (b) if at the previous AGM at least 25% of the votes cast on a resolution that the remuneration report be adopted were against adoption of the report (but the same was not the case at the AGM before that):
 - (i) explain the circumstances in which subsection 250V(1) would apply; and
 - (ii) inform members that the resolution described in subsection 250V(1) as the spill resolution will be put at the AGM if that subsection applies.

Note: Subsection 250R(2) requires a resolution to adopt a remuneration report for a listed company to be put to the vote at the company's AGM.

- (3) The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.

Corporations Act 2001 (Cth)

Section 203D Removal by members—public companies

Chapter 2D Officers and employees

Part 2D.3 Appointment, remuneration and cessation of appointment of directors

Division 3 Resignation, retirement or removal of directors

203D Removal by members—public companies

Resolution for removal of director

- (1) A public company may by resolution remove a director from office despite anything in:
- (a) the company's constitution (if any); or
 - (b) an agreement between the company and the director; or
 - (c) an agreement between any or all members of the company and the director.

If the director was appointed to represent the interests of particular shareholders or debenture holders, the resolution to remove the director does not take effect until a replacement to represent their interests has been appointed.

Note: See sections 249C to 249G for the rules on who may call meetings, sections 249H to 249M on how to call meetings and sections 249N to 249Q for rules on members' resolutions.

Notice of intention to move resolution for removal of director

- (2) Notice of intention to move the resolution must be given to the company at least 2 months before the meeting is to be held. However, if the company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(3)).

Director to be informed

- (3) The company must give the director a copy of the notice as soon as practicable after it is received.

Director's right to put case to members

- (4) The director is entitled to put their case to members by:
- (a) giving the company a written statement for circulation to members (see subsections (5) and (6)); and
 - (b) speaking to the motion at the meeting (whether or not the director is a member of the company).
- (5) The written statement is to be circulated by the company to members by:
- (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - (b) if there is not time to comply with paragraph (a)--having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.
- (6) The director's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.

Time of retirement

- (7) If a person is appointed to replace a director removed under this section, the time at which:
- (a) the replacement director; or
 - (b) any other director;
- is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.

Strict liability offences

- (8) An offence based on subsection (3) or (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*

Corporations Act 2001 (Cth)

Section 191 **Material personal interest – director’s duty to disclose**

Chapter 2D Officers and employees

Part 2D.1 Duties and powers

Division 2 Disclosure of, and voting on matters involving, material personal interests

191 Material personal interest--director's duty to disclose

Director's duty to notify other directors of material personal interest when conflict arises

(1) A director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest unless subsection (2) says otherwise.

(1A) For an offence based on subsection (1), strict liability applies to the circumstance, that the director of a company has a material personal interest in a matter that relates to the affairs of the company.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

(2) The director does not need to give notice of an interest under subsection (1) if:

(a) the interest:

- (i) arises because the director is a member of the company and is held in common with the
- (ii) arises in relation to the director's remuneration as a director of the company; or
- (iii) relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the company if it is not approved by the members; or
- (iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the company; or
- (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv); or
- (vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the company (but only if the contract does not make the company or a related body corporate the insurer); or
- (vii) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under section 199A or any contract relating to such an indemnity; or
- (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or

(b) the company is a proprietary company and the other directors are aware of the nature and extent of the interest and its relation to the affairs of the company; or

(c) all the following conditions are satisfied:

- (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the company under subsection (1);
- (ii) if a person who was not a director of the company at the time when the notice under subsection (1) was given is appointed as a director of the company--the notice is given to that person;

(iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or

(d) the director has given a standing notice of the nature and extent of the interest under section 192 and the notice is still effective in relation to the interest.

Note: Subparagraph (c)(ii)--the notice may be given to the person referred to in this subparagraph by someone other than the director to whose interests it relates (for example, by the secretary).

(3) The notice required by subsection (1) must:

(a) give details of:

(i) the nature and extent of the interest; and

(ii) the relation of the interest to the affairs of the company; and

(b) be given at a directors' meeting as soon as practicable after the director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

Effect of contravention by director

(4) A contravention of this section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

Section does not apply to single director proprietary company

(5) This section does not apply to a proprietary company that has only 1 director.

Corporations Act 2001 (Cth)

Section 195 **Restrictions on voting—directors of public companies only**

Chapter 2D Officers and employees

Part 2D.1 Duties and powers

Division 2 Disclosure of, and voting on matters involving, material personal interests

195 Restrictions on voting - directors of public companies only

Restrictions on voting and being present

(1) A director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.

(1A) Subsection (1) does not apply if:

- (a) subsection (2) or (3) allows the director to be present; or
- (b) the interest does not need to be disclosed under section 191.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the *Criminal Code* .

(1B) An offence based on subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

Participation with approval of other directors

(2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:

- (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
- (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

Participation with ASIC approval

(3) The director may be present and vote if they are so entitled under a declaration or order made by ASIC under section 196.

Director may consider or vote on resolution to deal with matter at general meeting

(4) If there are not enough directors to form a quorum for a directors' meeting because of subsection (1), 1 or more of the directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

Effect of contravention by director

(5) A contravention by a director of:

- (a) this section; or
 - (b) a condition attached to a declaration or order made by ASIC under section 196;
- does not affect the validity of any resolution.

Corporations Act 2001 (Cth)

Section 196 ASIC power to make declarations and class orders

Chapter 2D Officers and employees

Part 2D.1 Duties and powers

Division 2 Disclosure of, and voting on matters involving, material personal interests

196 ASIC power to make declarations and class orders

ASIC's power to make specific declarations

- (1) ASIC may declare in writing that a director of a public company who has a material personal interest in a matter that is being, or is to be, considered at a directors' meeting may, despite the director's interest, be present while the matter is being considered at the meeting, vote on the matter, or both be present and vote. However, ASIC may only make the declaration if:
 - (a) the number of directors entitled to be present and vote on the matter would be less than the quorum for a directors' meeting if the director were not allowed to vote on the matter at the meeting; and
 - (b) the matter needs to be dealt with urgently, or there is some other compelling reason for the matter being dealt with at the directors' meeting, rather than by a general meeting called under subsection 195(4).
- (2) The declaration may:
 - (a) apply to all or only some of the directors; or
 - (b) specify conditions that the company or director must comply with.

ASIC's power to make class orders

- (3) ASIC may make an order in writing that enables directors who have a material personal interest in a matter to be present while the matter is being considered at a directors' meeting, vote on that matter, or both be present and vote. The order may be made in respect of a specified class of public companies, directors, resolutions or interests.
- (4) The order may be expressed to be subject to conditions.
- (5) Notice of the making, revocation or suspension of the order must be published in the *Gazette*.

Corporations Act 2001 (Cth)

Section 208 **Need for member approval for financial benefit**

Chapter 2E Related party transactions

Part 2E.1 Member approval needed for related party benefit

Division 1 Need for member approval

208 Need for member approval for financial benefit

- (1) For a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company:
- (a) the public company or entity must:
 - (i) obtain the approval of the public company's members in the way set out in sections 217 to 227; and
 - (ii) give the benefit within 15 months after the approval; or
 - (b) the giving of the benefit must fall within an exception set out in sections 210 to 216.

Note 1: Section 228 defines *related party*, section 9 defines *entity*, section 50AA defines control and section 229 affects the meaning of *giving a financial benefit*.

Note 2: For the criminal liability of a person dishonestly involved in a contravention of this subsection, see subsection 209(3). Section 79 defines *involved*.

- (2) If:
- (a) the giving of the benefit is required by a contract; and
 - (b) the making of the contract was approved in accordance with subparagraph (1)(a)(i) as a financial benefit given to the related party; and
 - (c) the contract was made:
 - (i) within 15 months after that approval; or
 - (ii) before that approval, if the contract was conditional on the approval being obtained;
- member approval for the giving of the benefit is taken to have been given and the benefit need not be given within the 15 months.

Corporations Act 2001 (Cth)

Section 241 General Powers of the Court

Chapter 2F Members' rights and remedies

Part 2F, 1A Proceedings on behalf of a company by members and others

241 General Powers of the Court

- (1) The Court may make any orders, and give any directions, that it considers appropriate in relation to proceedings brought or intervened in with leave, or an application for leave, including:
 - (a) interim orders; and
 - (b) directions about the conduct of the proceedings, including requiring mediation; and
 - (c) an order directing the company, or an officer of the company, to do, or not to do, any act; and
 - (d) an order appointing an independent person to investigate, and report to the Court on:
 - (i) the financial affairs of the company; or
 - (ii) the facts or circumstances which gave rise to the cause of action the subject of the proceedings; or
 - (iii) the costs incurred in the proceedings by the parties to the proceedings and the person granted leave.
- (2) A person appointed by the Court under paragraph (1)(d) is entitled, on giving reasonable notice to the company, to inspect any books of the company for any purpose connected with their appointment.
- (3) If the Court appoints a person under paragraph (1)(d):
 - (a) the Court must also make an order stating who is liable for the remuneration and expenses of the person appointed; and
 - (b) the Court may vary the order at any time; and
 - (c) the persons who may be made liable under the order, or the order as varied, are:
 - (i) all or any of the parties to the proceedings or application; and
 - (ii) the company; and
 - (d) if the order, or the order as varied, makes 2 or more persons liable, the order may also determine the nature and extent of the liability of each of those persons.
- (4) Subsection (3) does not affect the powers of the Court as to costs.