



CONSTITUTION

Assistive Technology Suppliers Australia Ltd

A company limited by guarantee.

October 2023

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1. Preliminary

1.1. Name of the Company

The name of the Company is Assistive Technology Suppliers Australia Ltd (the Company).

1.2. Type of company

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

1.3. Limited liability of members

The liability of Members is limited to the amount of the guarantee in clause 1.4.

1.4. The guarantee

Each Member must contribute an amount not more than \$1 (the guarantee) to the property of the Company if the Company is wound up while the person is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the person stopped being a Member; or
- (b) costs of winding up.

2. Definitions and Interpretations

2.1. Definitions

In this Constitution unless the context requires otherwise:

ABN means an Australian Business Number issued by the Australian Business Register.

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

Affiliate means a person recognised by the Board as an affiliate in accordance with clause 6.

AGM or Annual General Meeting means the Annual General Meeting of the Company.

Appointed Director means a Director appointed under clause 10.5.

Assistive Technology means any product (including devices, equipment, instruments and software), especially produced for, generally available to, or used by persons with a disability:

- (a) for participation;
- (b) to protect, support, train, measure or substitute for body functions/structures and activities;
or
- (c) to prevent impairments, activity limitations or participation restrictions.

AT Business means an entity with an ABN that conducts a business (whether for profit or not-for-profit) involved in one or both of the following:

- (a) the supply of Assistive Technology; and
- (b) training in the use of Assistive Technology.

Board means the board of Directors of the Company.

CEO means a person appointed as Chief Executive Officer of the Company by the Board.

Chair means the person elected as the chair of the Company under clause 11.3(b).

Code of Practice means the Code of Practice for the Australian Assistive Technology Products and Services Industry administered by the Company as amended from time to time.

Committee means a committee established by the Board under clause 15.

Company means Assistive Technology Suppliers Australia Ltd.

Company Secretary means a person appointed as secretary of the Company by the Board under clause 13 who must ordinarily reside in Australia.

Constitution means this Constitution as amended from time to time, and a reference to a particular clause is a reference to a clause of this Constitution.

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

Director means a Director of the Company and includes Elected Directors and Appointed Directors.

Directors mean, as the case requires, all or some of the Directors acting together as a Board in accordance with their powers and authority under this Constitution.

Elected Director means a Director elected under clause 10.4.

General Meeting means a general meeting of Members and includes the AGM.

Intellectual Property includes all rights subsisting in copyright, business names, names, trade-marks (or signs), logos, designs, equipment including computer software, images (including photographs, videos or films) or service marks relating to the Company or any activity of or conducted, promoted or administered by the Company.

Member means an AT Business admitted as a Member under clause 4.

Object mean the object of the Company in clause 3.1.

Policy means a policy made under clause 16.

Registered Charity means a charity that is registered under the ACNC Act.

Representative means a person (other than a proxy) appointed by a Member to represent the Member at a General Meeting of the Company.

Special Resolution has the same meaning as that given to it in the *Corporations Act*.¹

State means a states or territory of Australia.

¹ At the time of adoption of this Constitution, section 9 of the Corporations Act provides that a special resolution is a resolution:

- (a) of which notice has been given to the Members in accordance with clause 7.3; and
- (b) that has been passed by at least 75% of the votes cast by Members entitled to vote on the resolution.

2.2. Interpretation

In this Constitution unless the context requires otherwise:

- (a) While the Company is a Registered Charity, the ACNC Act and the *Corporations Act* override any clauses in this Constitution which are inconsistent with those Acts.
- (b) If the Company is not a Registered Charity (even if it remains a charity), the *Corporations Act* overrides any clause in this Constitution which is inconsistent with that Act.
- (c) (presence of a Member) a reference to a Member present at a General Meeting means the Member present in person or by Representative.
- (d) (document) a reference to a document or instrument includes any amendments made to it from time to time and, unless the contrary intention appears, includes a replacement;
- (e) (gender) words importing any gender include all other genders;
- (f) (person) the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (g) (successors) a reference to an organisation includes a reference to its successors;
- (h) (singular includes plural) the singular includes the plural and vice versa;
- (i) (instruments) a reference to a law includes regulations and instruments made under it;
- (j) (amendments to legislation) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by a State or the Commonwealth or otherwise;
- (k) (include) the words include, includes, including and for example are not to be interpreted as words of limitation;
- (l) (signed) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Board;
- (m) (writing) writing and written includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise; and
- (n) (headings) headings are inserted for convenience and do not affect the interpretation of this Constitution.

2.3. Corporations Act

- (a) In this Constitution, unless the context requires otherwise, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the *Corporations Act*, the same meaning as in that provision of the *Corporations Act*.
- (b) The provisions of the *Corporations Act* that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

3. Charitable purposes and powers

3.1. Object

The Company's Object is to advance health and social and public welfare by:

- (a) funding and promoting:
 - (i) research into Assistive Technology;
 - (ii) the education of the public as to the availability of Assistive Technology to meet the needs of persons with a disability;
 - (iii) "Best practice" in the way Assistive Technology is supplied; and
 - (iv) community accessible Assistive Technology events;
- (b) giving the Assistive Technology users and suppliers a voice that:
 - (i) provides positive influence on Government policy;
 - (ii) educates Governments and other stake holders about Assistive Technology;
 - (iii) promotes a robust competitive and commercially viable marketplace with the aim that Assistive Technology is available to users at a reasonable cost;
 - (iv) advocates to achieve excellence, quality, value and positive outcomes for suppliers, Assistive Technology users, stakeholders and the broader community;
 - (v) works with governments at all levels to ensure the viability of the Assistive Technology industry for the sake of those who use Assistive Technology; and
 - (vi) delivers quality and value in Assistive Technology solutions for people with a disability and their carers;
- (c) improving the quality of Assistive Technology provision by:
 - (i) supporting the ongoing training and education of health care professionals;
 - (ii) promoting ethical business practices that safeguard the interests of users of Assistive Technology;
 - (iii) participating in the development of appropriate and cost-effective product standards; and
 - (iv) maintaining and enhancing services standards, quality and reputation of the Members for the collective mutual benefit and interests of the Members and the public;
- (d) developing alliances with all industry stakeholders to:
 - (i) drive continued improvement in outcomes for Assistive Technology users;
 - (ii) minimise the total lifetime costs of Assistive Technology on society and Assistive Technology users;
 - (iii) ensure an open, fair and competitive market; and
 - (iv) promote the services, activities and events of the Company; and
- (e) undertaking such other actions or activities that are necessary, incidental or conducive to advance this Object.

3.2. Powers

Subject to clause 3.3, the Company has all the powers of a natural person.

3.3. Not-for-profit

- (a) The Company must not distribute any income or assets directly or indirectly to its Members, except as provided in clauses 3.3 and 20.
- (b) The income and property of the Company must only be applied towards the promotion of the Object of the Company.

- (c) This clause 3.3 does not stop the Company from doing the following things, provided they are done in good faith:
 - (i) paying a Member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
 - (ii) making a payment to a Member in carrying out the Company's charitable Object.

3.4. Amending the Constitution

The Members may amend this Constitution by passing a Special Resolution.

4. Membership

4.1. Members

A Member of the Company is an AT Business which is:

- (a) a Member of Assistive Technology Suppliers Australia Inc. at the time of the adoption of this Constitution; or
- (b) is elected as a Member by the Board.

4.2. Admission of Members

The Board may elect as a Member any AT Business which:

- (a) applies to be a Member in a form approved by the Board;
- (b) agrees to comply with the Company's Constitution, Policies and associated rules;
- (c) adopts the Code of Practice and signs a commitment to act in accordance with the Code of Practice;
- (d) agrees to pay the fee determined to apply to the Member under clause 5.1; and
- (e) agrees to support the Company in the encouragement and promotion of its Object.

4.3. Board to Approve Membership

- (a) The Board must consider an application for membership within a reasonable time after receiving the application.
- (b) If the Board approves an application, the Company Secretary must as soon as possible:
 - (i) enter the new Member on the register of members, and
 - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started.
- (c) If the Board rejects an application, the Company Secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.

4.4. Register of Members

- (a) The Company must establish and maintain a register of members. The register of members must be kept by the Company Secretary and must contain the following details for each current Member:
 - (i) name and ABN;
 - (ii) authorised Representative of the Member;
 - (iii) postal and street address;
 - (iv) email address;
 - (v) any alternative address nominated by the Member for the service of notices; and
 - (vi) date the Member was entered on the register.
- (b) Members must provide updated contact details to the Company when requested by the Company.

4.5. Cessation of Membership

- (a) A Member ceases to be a Member if the Member:
 - (i) is expelled pursuant to clause 5.2;
 - (ii) being a natural person, dies;
 - (iii) is wound up, dissolved, deregistered or otherwise ceases to be an AT Business;
 - (iv) becomes insolvent or bankrupt;
 - (v) transfers ownership of its business to a new owner or otherwise effects a change of control and the Board confirms the cessation of membership;
 - (vi) resigns, by writing to the Company Secretary;
 - (vii) is expelled under clause 4.7; or
 - (viii) has not responded within three months to a written request from the Company Secretary that they confirm in writing that they want to remain a Member and the Board confirms the cessation of membership.
- (b) To the extent permissible by law, a Member which ceases to be a Member forfeits all rights in and claims upon the Company or the Board for damages or otherwise, or claim upon the Company's property including Intellectual Property.

4.6. Dispute resolution and disciplinary procedures

- (a) The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a Member or Director and:
 - (i) one or more Members;
 - (ii) one or more Directors; or
 - (iii) the Company.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 4.7 until the disciplinary procedure is completed.
- (c) Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- (d) If those involved in the dispute do not resolve it under clause 4.6(c), they must within 10 days:
 - (i) tell the Board about the dispute in writing;

- (ii) agree or request that a mediator be appointed; and
 - (iii) attempt in good faith to settle the dispute by mediation.
- (e) The mediator must:
 - (i) be chosen by agreement of those involved; or
 - (ii) where those involved do not agree:
 - (A) for disputes between Members, a person chosen by the Board; or
 - (B) for other disputes, a person chosen by either the Commissioner of the ACNC or the president of the law institute or society in the State in which the Company has its registered office.
- (f) A mediator chosen by the Board under clause 4.6(e)(iii):
 - (i) may be a Member or former Member of the Company
 - (ii) must not have a personal interest in the dispute; and
 - (iii) must not be biased towards or against anyone involved in the dispute.
- (g) When conducting the mediation, the mediator must:
 - (i) allow those involved a reasonable chance to be heard;
 - (ii) allow those involved a reasonable chance to review any written statements;
 - (iii) ensure that those involved are given natural justice; and
 - (iv) not make a decision on the dispute.

4.7. Disciplining members

- (a) In accordance with this clause, the Board may resolve to warn, suspend or expel a Member from the Company if the Board considers that:
 - (i) the Member has breached this Constitution; or
 - (ii) the Member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- (b) At least 14 days before the Board meeting at which a resolution under clause 4.7(a) will be considered, the Company Secretary must notify the Member in writing:
 - (i) that the Board is considering a resolution to warn, suspend or expel the Member;
 - (ii) that this resolution will be considered at a Board meeting and the date of that meeting;
 - (iii) what the Member is said to have done or not done;
 - (iv) the nature of the resolution that has been proposed; and
 - (v) that the Member may provide an explanation to the Board, and details of how to do so.
- (c) Before the Board passes any resolution under clause 4.7(a) the Member must be given a chance to explain or defend themselves by:
 - (i) sending the Board a written explanation before that Board meeting; and/or
 - (ii) speaking at the meeting.
- (d) After considering any explanation under clause 4.7(c) the Board may:
 - (i) take no further action;
 - (ii) warn the Member;
 - (iii) suspend the Member's rights as a Member for a period of no more than 12 months;
 - (iv) expel the Member;

- (v) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this clause); or
 - (vi) require the matter to be determined at a General Meeting.
- (e) The Board cannot fine a Member.
 - (f) The Company Secretary must give written notice to the Member of the decision under clause 4.7(d) as soon as possible.
 - (g) Disciplinary procedures must be completed as soon as reasonably practical.
 - (h) There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.

5. Fees

5.1. Membership Fee

- (a) The Board must determine from time to time:
 - (i) the amount (if any) payable by an applicant for membership;
 - (ii) the amount of the annual fee payable by each Member, or any category of Members;
 - (iii) any other amount to be paid by each Member, or any category of Members, whether of a recurrent or any other nature; and
 - (iv) the payment method and the due date for payment.
- (b) Each Member must pay to the Company the amounts determined under, this clause 5 in accordance with, clause 5.1(a).

5.2. Non-Payment of Fees

The Board may suspend or expel a Member while the payment of any fee or other amount determined under clause 5.1 is in arrears greater than 60 days.

5.3. Deferral or reduction of fees

- (a) The Board may defer the obligations of a Member to pay a fee or other amount, or reduce (including to zero) the fee or other amount payable by a Member, if the Board is satisfied that:
 - (i) there are reasonable grounds for doing so;
 - (ii) the Company will not be materially disadvantaged as a result; and
 - (iii) the Member agrees to pay the deferred or (if greater than zero) the reduced fee or other amount within a time fixed by the Board.
- (b) If the Board defers or reduces a fee or other amount payable by a Member under this clause 5.3 that Member will retain their rights to attend and vote at a General Meeting, unless otherwise specified by the Board.

6. Affiliates

- (a) A person who does not wish to be or is not eligible to be a Member but who has an interest in the Object may apply to the Board for involvement in the Company as an Affiliate.
- (b) An application for involvement in the Company as an Affiliate must be in writing in a form approved by the Board.
- (c) The Board may determine from time to time categories and conditions, including fees, attaching to being an Affiliate.
- (d) The Board may invite Affiliates to attend General Meetings.
- (e) The Board may remove a person as an Affiliate if the person fails to pay any fee determined by the Board or in the Board's opinion ceases:
 - (i) to have an active interest in the Company;
 - (ii) to be committed to the Company's Object; or
 - (iii) to meet the conditions attached to being an Associate,or is found by the Board to have made statements or acted in such a way as to discredit or bring into disrepute either the Affiliate, the Company, or any Member.
- (f) An Affiliate may by notice to the Company Secretary resign as an Affiliate with immediate effect or with effect from a particular date subsequent to, but not being later than one month from, the date of that notice.

7. General Meetings

7.1. Annual General Meeting

AGMs of the Company are to be held:

- (a) at least once in every calendar year;
- (b) according to the *Corporations Act*; and
- (c) at a date and venue (or venues) determined by the Board.

7.2. Power to convene General Meeting

- (a) The Board may convene a General Meeting when it thinks fit and must do so if required by the *Corporations Act*.
- (b) If Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Board must:
 - (i) within 21 days of the Members' request, give all Members notice of a General Meeting; and
 - (ii) hold the General Meeting within 2 months of the Members' request.
- (c) The percentage of votes that Members have in clause 7.2(b) is to be worked out as at midnight before the Members request the General Meeting.
- (d) The Members who make the request for a General Meeting must:
 - (i) state in the request any resolution to be proposed at the meeting;
 - (ii) sign the request, and

- (iii) give the request to the Company.
- (e) Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.
- (f) If the Board does not call the General Meeting within 21 days of being requested under paragraph (b), the Members who made the request may call and arrange to hold a General Meeting.
- (g) To call and hold a General Meeting under paragraph (f), the Members must:
 - (i) as far as possible, follow the procedures for General Meetings set out in this Constitution;
 - (ii) call the General Meeting using the list of Members on the Company's register of Members, which the Company must provide to the Members making the request at no cost; and
 - (iii) hold the General Meeting within three months after the request was given to the Company.
- (h) The Company must pay the Members who request the General Meeting any reasonable expenses they incur in holding the General Meeting because the Board did not call and hold the General Meeting.

7.3. Notice of a General Meeting

- (a) Notice of a General Meeting of Members must be given:
 - (i) to all Members entitled to attend the General Meeting, the Directors, the CEO and the auditor of the Company; and
 - (ii) in accordance with this Constitution and the *Corporations Act*.
- (b) At least 45 days prior to the proposed date of the AGM, the Company Secretary will request from Members notices of motions, which must be received no less than 28 days prior to the AGM.
- (c) At least 21 days' notice of the time and place of a General Meeting must be given, together with:
 - (i) all information required to be included in accordance with the *Corporations Act*;
 - (ii) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (iii) in the case of a proposed Special Resolution, the intention to propose the Special Resolution and the terms of the proposed Special Resolution;
 - (iv) where applicable, any notice of motion received from any Member or Director in accordance with the *Corporations Act*; and
 - (v) where applicable, a list of all nominations received pursuant to clause 10.4(c) for positions to be elected at the General Meeting.
- (d) If a General Meeting is adjourned (put off) for one month or more, the Members must be given new notice of the resumed meeting.

7.4. Business to be transacted at the AGM

- (a) The business of an Annual General Meeting may include:

- (i) a review of the Company's activities;
 - (ii) a review of the Company's finances;
 - (iii) an auditor's report;
 - (iv) the election of Elected Directors; and
 - (v) the appointment and payment of auditors, if any.
- (b) Before or at the Annual General Meeting, the Board must give information to the Members on the Company's activities and finances during the period since the last Annual General Meeting.
- (c) The chair of the Annual General Meeting must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.
- (d) No business other than that stated in the notice of meeting may be transacted at a General Meeting.

7.5. Cancellation or postponement of General Meeting

Where a General Meeting (including an AGM) is convened by the Board the Board may, if it thinks fit, cancel the meeting or postpone the meeting to a date and time it determines. This clause does not apply to a General Meeting convened by:

- (a) Members according to the *Corporations Act*;
- (b) the Board at the request of Members; or
- (c) a court.

7.6. Written notice of cancellation or postponement of General Meeting

Notice of the cancellation or postponement of a General Meeting must state the reasons for doing so and be given to each person entitled to receive notice of the General Meeting.

7.7. Contents of notice postponing General Meeting

A notice postponing a General Meeting must specify:

- (a) the new date and time for the meeting;
- (b) the place where the meeting is to be held, which may be either the same as or different to the place specified in the notice originally convening the meeting; and
- (c) if the meeting is to be held in two or more places, the technology that will be used to hold the meeting in that manner.

7.8. Notice of postponement of General Meeting

The notice to be given of a notice postponing a General Meeting is the same notice required by clause 7.3(c).

7.9. Business at postponed General Meeting

The only business that may be transacted at a postponed General Meeting is the business specified in the notice originally convening the General Meeting.

8. Procedures at a General Meeting

8.1. Quorum at General Meetings

- (a) For a General Meeting to be held, the quorum of Members is the number of Elected Directors elected at the previous AGM plus one. These people must be present in person, by Representative or via technological means for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a Representative for more than one Member).
- (b) No business may be conducted at a General Meeting if a quorum is not present.
- (c) If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chair specifies.
- (d) If the chair does not specify one or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified – the same day in the next week;
 - (ii) if the time is not specified – the same time; and
 - (iii) if the place is not specified – the same place.
- (e) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

8.2. Auditor's right to attend meetings

- (a) The auditor (if any) is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- (b) The Company must give the auditor (if any) any communications relating to the General Meeting that a Member of the Company is entitled to receive.

8.3. Chief Executive Officer's right to attend meetings

- (a) The CEO is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the CEO in their capacity as CEO.
- (b) The Company must give the CEO any communications relating to the General Meeting that a Member of the Company is entitled to receive.
- (c) The CEO does not hold any voting rights at a General Meeting.

8.4. Using technology to hold meetings

- (a) The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Anyone using this technology is taken to be present in person at the meeting.

8.5. Chair for general meetings

- (a) The Chair appointed pursuant to clause 10.3(c) is entitled to chair General Meetings.
- (b) If a General Meeting is convened and there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the meeting, or is unable or unwilling to act, the following may preside as Chair (in order of entitlement):
 - (i) a Director (or other person) chosen by a majority of the Directors present;
 - (ii) the only Director present; or
 - (iii) a Representative of a Member who is entitled to vote and is chosen by a majority of the Members present.

8.6. Conduct of General Meetings

The Chair:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted;
- (b) may require the adoption of any procedure which in their opinion is necessary or desirable for proper and orderly debate or discussion or the proper and orderly casting or recording of votes;
- (c) must give Members a reasonable opportunity to make comments and ask questions, including to the auditor (if any); and
- (d) may, having regard where necessary to the *Corporations Act*, terminate discussion or debate on any matter whenever they consider it necessary or desirable for the proper conduct of the meeting.

8.7. Adjournment of General Meeting

- (a) The Chair may, with the consent of a majority of Members present at any General Meeting at which a quorum is present, and must if so directed by a majority of Members present at the General Meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered at the General Meeting.
- (b) The adjournment may be either to a later time at the same meeting or to an adjourned meeting at any time and place agreed by vote of the Members present.
- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

8.8. Notice of adjourned General Meeting

- (a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned General Meeting unless a meeting is adjourned for 30 days or more.
- (b) Where a General Meeting is adjourned for 30 days or more, at least the same period of notice as was originally required for the meeting must be given for the adjourned meeting.

8.9. Members' resolutions and statements

- (a) Members with at least 10% of the votes that may be cast on a resolution may give:
 - (i) written notice to the Company of a resolution they propose to move at a General Meeting (Members' Resolution); and/or
 - (ii) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (Members' Statement).
- (b) A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.
- (c) A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Members making the request.
- (d) Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.
- (e) The percentage of votes that Members have (as described in clause 8.9(a)) is to be worked out as at midnight before the request or notice is given to the Company.
- (f) If the Company has been given notice of a Members' Resolution under clause 8.9(a) the resolution must be considered at the next General Meeting held not later than two months after the notice is given.
- (g) This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.

8.10. Circular resolutions of Members

- (a) Subject to clause 8.10(c), the Board may put a resolution to the Members to pass a resolution without a General Meeting being held (a Circular Resolution).
- (b) The Board must notify the auditor (if any) and the CEO as soon as possible that a Circular Resolution has or will be put to Members and set out the wording of the Circular Resolution.
- (c) Circular Resolutions cannot be used:
 - (i) for a resolution to remove an auditor, appoint a Director or remove a Director;
 - (ii) for passing a Special Resolution; or

- (iii) where the *Corporations Act* or this Constitution requires a meeting to be held.
- (d) A Circular Resolution is passed:
 - (i) if all the Members entitled to vote on the Circular Resolution sign or agree to the Circular Resolution, in the manner set out in clause 8.10(e) or clause 8.10(f); and
 - (ii) on the day on which the Company Secretary, or other officer authorised by the Board to collect such documents, received the document, or the last document signed by all the Members.
- (e) Members may sign:
 - (i) a single document setting out the Circular Resolution and containing a statement that they agree to the Circular Resolution; or
 - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (f) The Company may send a Circular Resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the Circular Resolution in their reply.

9. Voting at General Meetings

9.1. Votes of Members

- (a) At a General Meeting, on a show of hands and on a poll, each of the Members has one vote.
- (b) Only the Members are entitled to vote at General Meetings.

9.2. Challenge to member's right to vote

- (a) A Member or the Chair may only challenge a person's right to vote at a General Meeting at that meeting.
- (b) If a challenge is made under clause 9.2(a) the Chair must decide whether or not the person may vote. The Chair's decision is final.

9.3. Questions decided by majority

Subject to the requirements of the *Corporations Act* and except in the case of a Special Resolution, a resolution is carried if a simple majority of the votes cast on the resolution is in favour of it.

9.4. Equality of votes

- (a) Where an equal number of votes are cast in favour of and against the resolution, the resolution is not carried.

- (b) The Chair does not have a casting vote.

9.5. Declaration of results

- (a) At any General Meeting, a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn.
- (b) 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 minutes of the meetings of the Company, is conclusive evidence of the fact.
- (c) Neither the Chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded for or against the resolution.

9.6. Poll

- (a) If a poll is properly demanded in accordance with the *Corporations Act* (requested by at least 5% of Members) or by the Chair of the General Meeting, it must be taken in the manner and at the date and time directed by the Chair, and the result of the poll is the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.
- (c) A demand for a poll may be withdrawn.
- (d) A demand for a poll does not prevent the General Meeting continuing for the transaction of any business other than the question on which the poll was demanded.

9.7. Chair to determine any poll dispute

If there is a dispute about the admission or rejection of a vote in a poll, the Chair must decide it and the Chair's decision is final.

9.8. Electronic voting

Voting by electronic communication at General Meetings may be permitted from time to time in such instances and according to such procedures as the Board may determine.

10. Management and the Board

10.1. Management of the Company

- (a) The Board is responsible for managing and directing the activities of the Company to achieve the Object.
- (b) The Directors are to act in the best interests of the Company and not as representatives of an AT Business or any other organisation.
- (c) The Board may exercise all the powers of the Company except for powers that, under the *Corporations Act* or this Constitution, may only be exercised by Members.
- (d) The Board must decide on the responsible financial management of the Company including:
 - (i) any suitable written delegations of power; and
 - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (e) The Directors cannot remove an Elected Director or auditor. A Members' resolution at a General Meeting is required to remove Elected Directors and auditors.
- (f) The Company may sign a document if the document is signed by:
 - (i) two Directors of the Company; or
 - (ii) a Director and the Company Secretary.

10.2. Composition of the Board

- (a) Subject to any Board policy, the Board of Directors consists of at least three and no more than nine directors, comprised of Elected Directors (elected under clause 10.4) and Appointed Directors (appointed under clause 10.5). At all times, the Board of Directors must be comprised of a majority of Elected Directors (except where directors have been appointed under clause 10.7).
- (b) The initial Board consists of the existing management committee of Assistive Technology Suppliers Australia Inc. constituted under the *Associations Incorporations Act 2009* (NSW).
- (c) Subject to clause 10.2(a), Directors are elected or appointed for terms of up to 3 years. The Directors to retire each year are those who have been longest in office since last being elected (including service on the management committee of Assistive Technology Suppliers Australia Inc.). Where persons became Directors on the same day, those to retire must be decided by lot unless they otherwise agree among themselves.
- (d) An Elected Director's term of office starts at the end of the Annual General Meeting at which the Elected Director is elected and ends:
 - (i) for Elected Directors elected for a 1 year term, at the end of the first Annual General Meeting after the Elected Director is elected;
 - (ii) for Elected Directors elected for a 2 year term, at the end of the second Annual General Meeting after the Elected Director is elected;

- (iii) for Elected Directors elected for a 3 year term, at the end of the third Annual General Meeting after the Elected Director is elected.
- (e) Subject to clause 10.6, an Elected Director whose term ends, is eligible for re-election.
- (f) There must not be more than one Director elected or appointed to the Company from the same AT Business.

10.3 Office Bearers

- (a) The Elected and Appointed Directors together form the Board of the Company.
- (b) Within the Board, a Director must be appointed to each of the positions of:
 - (i) Chair;
 - (ii) Vice Chair (up to two Vice Chairs may be appointed); and
 - (iii) Finance Director.
- (c) The Chair, Vice Chair/s and Finance Director must be appointed annually at the meeting of the Board next after the AGM from their number by the Directors.
- (d) The Chair, Vice Chair and the Finance Director are the office bearers of the Company.
- (e) A Vice Chair and the Finance Director may be the same person.

10.4 Election and nomination of Elected Directors

- (a) Each of the Elected Directors must be appointed by a separate resolution, unless:
 - (i) the Members present have first passed a resolution that the appointments may be voted on together; and
 - (ii) no votes were cast against that resolution.
- (b) A person is eligible for election as an Elected Director if they:
 - (i) are a Member or a Representative;
 - (ii) are nominated in accordance with clause 10.4(c) (unless the person was previously elected as a Director at a General Meeting and has been a Director since that meeting);
 - (iii) give the Company their signed consent to act as a Director of the Company; and
 - (iv) are not ineligible to be a Director under the *Corporations Act* or the ACNC Act.
- (c) At least 45 days prior to the proposed date of the AGM at which a resolution or resolutions will be proposed to fill a vacancy in an Elected Director position, the Company Secretary must request from Members nominations (which comply with this clause 10.4) for elections to positions falling vacant, which must be received no less than 28 days prior to the AGM.
- (d) Any Member or Director may nominate a person to fill a vacancy in an Elected Director position that is to be the subject of an election at the next AGM.

- (e) A nomination must be:
 - (i) in the form required by the Board; and
 - (ii) signed by the nominator and the nominee.

10.5 Appointed Directors

- (a) In addition to the Elected Directors and subject to clause 10.2(a), the Board may appoint up to four persons who:
 - (i) give the Company their signed consent to act as a Director of the Company; and
 - (ii) are not ineligible to be a Director under the *Corporations Act* or the ACNC Act,to be Appointed Directors because of their special business acumen and/or technical skills.
- (b) Subject to clause 10.6, an Appointed Director holds office for a term determined by the Board but not exceeding three years.
- (c) A person may only serve nine consecutive years as an Appointed Director.
- (d) Subject to clauses 10.2(a), 10.4 and 10.6, a person who is not reappointed as an Appointed Director is otherwise eligible to be elected to an Elected Director position.

10.6 Maximum consecutive years in office for Directors

- (a) A Director must not serve more than nine consecutive years as a Director (including as a member of the management committee of Assistive Technology Suppliers Australia Inc.).
- (b) A Director who has served the maximum number of years in accordance with clause 10.6(a) is not eligible to be a Director for three years following the completion of their maximum consecutive years.
- (c) A Director must not serve more than an aggregated eighteen years as a Director (including as a member of the management committee of Assistive Technology Suppliers Australia Inc.).

10.7 Casual vacancies on the Board

- (a) The Board may at any time appoint a person from among the Members and Representatives to fill a casual vacancy in the ranks of the Elected Directors.
- (b) The Board may at any time appoint a person to fill a casual vacancy in the ranks of the Appointed Directors.
- (c) A person appointed under clause 10.7(a) holds office for the remainder of the vacating Elected Director's term and, subject to this Constitution, is eligible for re- election.
- (d) The Board may act even if there are vacancies on the Board.
- (a) If at any time the number of Directors in office is fewer than three, the Board may meet and act only:

- (i) to appoint a Director;
- (ii) to elect an AT Business as a Member of the Company; or
- (iii) to convene a General Meeting.

10.8 Remuneration of Directors

A Director must not be paid for services as a Director but, with the approval of the Board and subject to the *Corporations Act*, may be:

- (a) paid by the Company for services rendered to it other than as a Director on terms that would be reasonable in the circumstances if the Company and the Director were dealing at arm's length, or on terms that are less favourable to the Director than these terms; and
- (b) reimbursed by the Company for their reasonable travelling, accommodation and other expenses when:
 - (i) travelling to or from meetings of the Board, a Committee or the Company; or
 - (ii) otherwise engaged in the affairs of the Company.

10.9 Vacation of office

Subject to the *Corporations Act*, a person ceases to be a Director if the person:

- (a) dies;
- (b) is removed as a Director by a resolution of the Members;
- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (d) resigns from office by notice in writing to the Company;
- (e) is a Representative of a Member, and that Member ceases to be a Member;
- (f) is a Representative of a Member, and the Member notifies the Company that the person is no longer the Member's Representative;
- (g) is not present at three consecutive Board meetings without leave of absence from the Board;
- (h) becomes ineligible to be a Director of the Company under the *Corporations Act* or the ACNC Act; or
- (i) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the *Corporations Act* or the ACNC Act.

10.10 Alternate Director

A Director cannot appoint an alternate.

10.11 Duties of Directors

The Directors must comply with their duties as Directors under legislation and common law (judge-made law), and, if the Company is a Registered Charity, with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the Object;

- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 10.12;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

10.12 Conflicts of interest

- (a) A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting (or that is proposed in a circular resolution):
 - (i) to the other Directors; or
 - (ii) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- (c) Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is proposed in a circular resolution) must not, except as provided under clause 10.12(d):
 - (i) be present at the meeting while the matter is being discussed, or
 - (ii) vote on the matter.
- (d) A Director may still be present and vote if:
 - (i) their interest arises because they are a Member of the Company, and the other Members have the same interest;
 - (ii) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 19.2);
 - (iii) their interest relates to a payment by the Company under clause 19.1 (indemnity), or any contract relating to an indemnity that is allowed under the *Corporations Act*;
 - (iv) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter; or
 - (v) the Directors who do not have a material personal interest in the matter pass a resolution that:
 - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
 - (B) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

10.13 Code of Conduct

The Board may:

- (a) adopt a Code of Conduct for Directors; and
- (b) periodically review the Code of Conduct in light of the general principles of good corporate governance.

11. Proceedings of Board

11.1. Board meetings

- (a) Subject to clause 11.1(b) the Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Directors must meet at least six times in each calendar year.

11.2. Convening Board meetings

- (a) A Director may, and the CEO on the request of a Director must, convene a Board meeting.
- (b) Notice of a Board meeting must be given individually to each Director (except a Director on leave of absence approved by the Board). Notice may be given in person, or by post or by telephone, facsimile or other electronic means.
- (c) Normally, the CEO is to be invited to attend all Board meetings in accordance with clause 14.1(d).
- (d) The Board may invite other people to attend Board meetings.
- (e) The non-receipt of a notice of a Board meeting or the accidental omission to give notice of a meeting to a person entitled to receive notice does not invalidate anything done (including the passing of a resolution) at a Board meeting.

11.3. Chair

- (a) The Chair appointed pursuant to clause 10.3(c) is to chair Board meetings.
- (b) Despite clause 11.3(a) if:
 - (i) there is no person appointed as Chair; or
 - (ii) the Chair is not present within 15 minutes after the time appointed for the holding of a Board meeting; or
 - (iii) the Chair is unwilling to act,the Directors present may appoint one of their number to be chair of the meeting.
- (c) A Director appointed as Chair may be re-appointed as Chair in following years, so long as they remain a Director.

11.4. Quorum at Board meetings

- (a) Unless the Board determines otherwise, the quorum for a Board meeting is a simple majority (more than 50%) of Directors.
- (b) A quorum must be present for the whole Board meeting.

11.5. Using technology to hold Board meetings

- (a) The Directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors.
- (b) The Directors' agreement may be a standing (ongoing) one.
- (c) A Director may only withdraw their consent within a reasonable period before the meeting.

11.6. Passing directors' resolutions

- (a) A Directors' resolution must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.
- (b) Each Director present has one vote on a matter arising for decision by the Board.
- (c) The chair of the meeting does not have a casting vote.

11.7. Circular resolutions of directors

- (a) The Board may pass a circular resolution without a Board meeting being held.
- (b) A circular resolution is passed if all of the Directors entitled to vote in favour of the resolution sign or otherwise agree to the resolution in the manner set out in clause 11.7(c) and 11.7(d) and send the relevant document or email to the Company Secretary.
- (c) Each Director may sign:
 - (i) a single document setting out the resolution and containing a statement that they agree to the resolution, or
 - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The Company Secretary may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (e) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 11.7(c) and 11.7(d) and the relevant document or email is received by the Company Secretary.
- (f)

11.8. Validity of acts of Directors

Everything done at a Directors' meeting or a Committee meeting, or by a person acting as a Director, is valid even if it is discovered later that there was some defect in the appointment, election or qualification of any of them or that any of them was disqualified or had vacated office.

11.9. Minutes

- (a) The Directors must cause minutes of meetings to be made and kept according to the *Corporations Act*.
- (b) The Company must, within one month, make and keep the following records:
 - (i) minutes of proceedings and resolutions of Board meetings (including meetings of any committees);
 - (ii) minutes of circular resolutions of Directors;
 - (iii) minutes of proceedings and resolutions of General Meetings;
 - (iv) a copy of circular resolutions of Members;
 - (v) a copy of a notice of each General Meeting; and
 - (vi) a copy of a Members' Statement distributed to Members.
- (c) The Board must ensure that minutes of a General Meeting or a Board meeting are signed within a reasonable time after the meeting by:
 - (i) the chair of the meeting; or
 - (ii) the chair of the next meeting.
- (d) The Board must ensure that minutes of the passing of a circular resolution (of Members or Directors) are signed by a Director within a reasonable time after the resolution is passed.
- (e) 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.

11.10. Financial and related records

- (a) The Board must cause proper accounting and other records to be kept and must distribute copies of financial statements as required by the *Corporations Act*, the ACNC Act and the *Australian Charities and Not-For-Profits Commission Regulations 2022* (Cth).
- (b) The Company must make and keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance; and
 - (ii) enable true and fair financial statements to be prepared and to be audited.
- (c) The Company must also keep written records that correctly record its operations.
- (d) The Company must retain its records for at least seven years.
- (e) The Board must take reasonable steps to ensure that the Company's records are kept safe and up to date.

12. Auditor

A properly qualified auditor or auditors must be appointed by the Members and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the *Corporations Act*.

13. Company Secretary

- (a) There must be at least one Company Secretary who is to be appointed by the Board.
- (b) The Company Secretary may also be a Director.
- (c) Directors may suspend or remove a Company Secretary.
- (d) A Company Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Board.

14. Chief Executive Officer

14.1. Appointment of Chief Executive Officer

- (a) The Board must appoint an CEO.
- (b) The CEO holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, delegated to them by the Board.
- (c) The exercise of those powers and authorities, and the performance of those duties, by the CEO are subject at all times to the control of the Board.
- (d) The CEO is entitled, subject to a determination otherwise by the Board, to attend all meetings of the Company, all Board meetings and any Committee meetings and may speak on any matter, but does not have a vote.
- (e) Subject to the law and to the terms and conditions of the appointment, the Board may suspend or remove the CEO from that office.

14.2. Director delegations to the Chief Executive Officer

The Board may delegate to the CEO the power (subject to such reservations on the power as are decided by the Board) to conduct the day-to-day management and control of the business and affairs of the Company. The delegation may include the power and responsibility to:

- (a) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Board and to implement them to the extent approved by the Board;
- (b) manage the financial and other reporting mechanisms of the Company;
- (c) approve and incur expenditure subject to specified expenditure limits; and
- (d) sub-delegate their powers and responsibilities to employees or internal management committees of the Company.

15. Committees

- (a) The Board may delegate any of its powers to Committees consisting of those persons they think fit (including Directors) and may vary or revoke any delegation.
- (b) A Committee must exercise the powers delegated to it according to the terms of the delegation and any directions of the Board outlined in any terms of reference.
- (c) Powers delegated to and exercised by a Committee are taken to have been exercised by the Board.
- (d) Unless otherwise determined by the Board, Committee meetings are governed by the provisions of this Constitution dealing with Board meetings, as far as they are capable of application.

16. Policies

- (a) The Board may from time to time make policies:
 - (i) that are required to be made under this Constitution; or
 - (ii) which in its opinion are necessary or desirable for the control, administration and management of the Company's affairs and may amend, repeal and replace those policies.
- (b) The Policies referred to in this clause 16, take effect 7 days after the service of the Policy on the Member.
- (c) A Policy:
 - (i) is subject to this Constitution;
 - (ii) must be consistent with this Constitution;
 - (iii) when in force, is binding on all Members and has the same effect as a provision in this Constitution; and
 - (iv) may be overruled if a resolution to that effect is passed by the Members at a General Meeting.

17. Service of Documents

- (a) In this clause 17, document includes a notice.
- (b) The Company may give a document to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or

- (iii) by sending it to a facsimile number or electronic address nominated by the Member.
- (c) A Member may give a document to the Company:
 - (i) by delivering it to the Company's registered office;
 - (ii) by sending it by post to the Company's registered office; or
 - (iii) by sending it to a facsimile number or electronic address nominated by the Company.
- (d) A document sent by post if sent to an address:
 - (i) in Australia, is taken to have been received on the fifth business day after the date of its posting; and
 - (ii) outside Australia, or sent from an address outside Australia, is taken to have been received on the tenth business day after the date of its posting.
- (e) If a document is sent by facsimile or electronic transmission, delivery of the document is taken to have been served on the business day following its transmission.

18. Financial year

The Company's financial year is from 1 July to 30 June unless the Board passes a resolution to change the financial year.

19. Indemnity, insurance and access

19.1. Indemnity

- (a) The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- (b) In this clause, 'officer' means a Director, Company Secretary or CEO and includes a Director, Company Secretary or CEO after they have ceased to hold that office.
- (c) In this clause, 'to the relevant extent' means:
 - (i) to the extent that the Company is not precluded by law (including the *Corporations Act*) from doing so, and
 - (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

19.2. Insurance

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

19.3. Directors' access to documents

- (a) A Director has a right of access to the financial records of the Company at all reasonable times.
- (b) The Company must give a Director access to the following documents, published to the Directors or to the members of a Committee, or tabled at a Board meeting or a Committee meeting, where the publication or tabling occurred when the Director was a director:
 - (i) Board papers and papers for any Committee;
 - (ii) submissions to, and presentations at, Board or Committee meetings;
 - (iii) other documents tabled at Board or Committee meetings; and
 - (iv) minutes of Board and Committee meetings.
- (c) The Company must give a former Director access to the documents referred to in paragraphs (a) and (b) but only for the period of seven years after the Director ceases to be a Director and for the purposes of legal proceedings in which it is alleged that the Director has done or omitted to do some act, matter or thing in the Director's capacity as a Director or otherwise in connection with the Director holding office as a director of the Company and:
 - (i) to which the Director is a party;
 - (ii) that the Director proposes in good faith to bring; or
 - (iii) that the Director has reason to believe will be brought against the Director;or for a longer period if a document is relevant to such legal proceedings and they have not concluded in the seven year period.

20. Winding up

20.1. Surplus assets

- (a) Surplus assets are not to be distributed to Members.
- (b) If the Company is wound up, any surplus assets must not be distributed to a Member or a former Member of the Company, unless that Member or former Member is a charity described in clause 20.2(a).

20.2. Distribution of surplus assets

- (a) Subject to the *Corporations Act* and any other applicable Act, and any court order, any surplus property that remains after the Company is wound up must be distributed to one or more charities:
 - (i) with charitable purpose(s) similar to, or inclusive of, the Object; and
 - (ii) which also prohibit the distribution of income and property to its members to at least the same extent as the Company.
- (b) The decision as to the charity or charities to be given the surplus property must be made by a Special Resolution of the Members at or before the time of winding up. If the Members do not make this decision, the Company may apply to the Supreme Court of New South Wales to make this decision.