



ALIA CONSTITUTION AMENDMENT PROPOSAL EXPLANATION

29 April 2019

SPECIAL RESOLUTION 1

1.1 DEFINITIONS

- *Amend the definition of Association.*

Add the ALIA Company and Business numbers as it is common practice to include them in a Constitution. Delete 'as hereby established' since the Association was established when it was registered with ASIC in 2000, and these words are technically incorrect.

- *Add Corporations Law as a defined term.*

As the Corporations Law is referenced in the Constitution, it needs to be defined. The definition has been worded so that it will not need to be changed should the Corporations Act 2001 (Cth) be amended in the future.

- *Delete the definition of Former Association.*

The definition is no longer necessary as the Former Association is not referenced within the Constitution.

- *Amend the definition of Year.*

A Board member is described as a Director, not office bearer within the Constitution, and this should be properly reflected in the defined term by replacing 'office bearer' with 'Director'.

1.2 INTERPRETATION: MEANING OF CERTAIN WORDS

- *Add the term 'digital' to clause 1.2 d).*

The intention of this amendment is to ensure any foreseeable future technological developments that enable the presentation of the written word are incorporated into the Constitution.

1.3 INTERPRETATION: APPLICATION OF THE CORPORATIONS LAW

- *Edit section 1.3 Interpretation heading and replace the text of the section.*

S110B of the Corporations Law has been repealed so this section of the Constitution is no longer relevant. The clause and heading is replaced with a more generic clause that deals with the repeal and replacement of statutes such as the Corporations Law.

2 EXCLUSION OF REPLACEABLE RULES

- *Correction of spelling error in section 2 heading.*

'Replacable' changed to 'Replaceable', the spelling used in the Corporations Act.

3.3 POWERS

- *Add 'and the Corporations Law' to section 3.3.*

Amendment to add in the defined primary legislation that applies to the Association.

4. INCOME AND PROPERTY

- *Replace 'benefit of members' with 'the purposes of pursuing the objects' in section 4.*

The phrase is consistent with terminology used in the previous sentence of this section.

5.1 CONTROL WITH THE BOARD

- *Add 'or person, subject to the Law' in section 5.1c).*

This amendment enables the Board to delegate to an individual in addition to a Division as long as it is consistent with the Corporations Law.

6. ESTABLISHMENT OF DIVISIONS

- *Delete clause 6 f) relating to By-Laws of the former Association.*

The clause refers to By-Laws of the Former Association that have been replaced by By-Laws pursuant to the Constitution of the current Association and is therefore redundant.

7.2 CATEGORIES OF MEMBERSHIP

- *Add 'subject to the Corporations Law' to clause 7.2 a).*

This makes it clear that membership categories cannot be created that conflict with the overriding Corporations legislation.

7.5 MEMBERSHIP FEES

- *Delete part of clause 7.5 i) relating to fees for sections and special interest groups.*

Fees are not charged for membership of sections or special interest groups, so this part of the clause is redundant.

- *Delete clause 7.5 j) relating to retired Members.*

A reduced membership fee has been introduced for retiree Members, so this clause is redundant.

- *Renumbering of clause 7.5 k).*

Renumbering of clause 7.5 k) as a result of the deletion of clause 7.5 j).

7.6 TERMINATION OF MEMBERSHIP

- *Clause 7.6 c) Remove term 'special resolution' and replace with 'by at least ¾ majority'.*

'Special resolution' is defined under the Corporations Law to mean a vote at a general meeting of Members. In this instance, it is more accurate to refer to a decision of the Board and require at least a ¾ majority.

- *Clause 7.6 c) Replace 'the rules of natural justice'.*

Board members may be challenged as to whether they might meet the high standard of interpretation the Australian courts have attached to the rules of natural justice. Replacement of 'the rules of natural justice' with 'a fair hearing' is a more realistic benchmark.

- *Clause 7.6 d) Amendment*

The Corporations Law refers to a 'register' rather than 'file or files', so this rewording brings the clause into line with the legislation. The Corporations Law also currently requires names to be kept for seven years after a Membership ceases. The Corporations Law requirement may be amended at some time, so the rewording to add 'as required by the Corporations Law' means the Constitution will not need to be amended should the legislation be amended.

- *Clause 7.6 f) Delete 'by special resolution'.*

Delete the phrase 'by special resolution' to ensure consistency with the amendment to clause 7.6 c).

7.7 READMISSION

- *Delete section 7.7 relating to the readmission of Members.*

An administration fee is not charged for Members seeking readmission, so this section is redundant.

7.8 REJECTION OF APPLICATION

7.9 LIMITED LIABILITY OF MEMBERS

7.10 CONTRIBUTION BY MEMBERS

- *Renumbering of sections 7.8, 7.9 and 7.10.*

These sections to be renumbered as a result of the deletion of section 7.7.

8.1 APPOINTMENT OF PROXIES

- *Section 8.1 Delete 'who must also be a Member'.*

Australian courts have ruled that the Corporations Law does not allow this restriction on who can be appointed as a proxy at a general meeting of Members, so this phrase has no force and must be removed from the Constitution.

9.5 COMPLAINTS

- *Amend section 9.5 relating to complaints made about a Member.*

Minor rewording of section to refer to a Board appointed committee rather than a complaints committee. This rewording is consistent with Part 8 of the Association By-Laws.

13.1 FUNCTIONS OF BOARD

- *Minor rewording clause 13.1 a).*

Minor rewording to provide clarity.

- *Minor amendment 13.1 b).*

Delete LTD to correct the name of the Commonwealth Bank of Australia.

- *Delete clause 13.1 f).*

The Association has been established, so this clause is redundant.

- *Renumber clause 13.1 g).*

Renumber clause to reflect deletion of clause 13.1 f).

14.5 CHAIR AT MEETINGS OF BOARD

- *Add 'or willing to act' to section in two places.*

There may be instances when the President or Vice-President attends the meeting but is not prepared to chair the meeting, for example, they may have a material conflict of interest. This minor amendment incorporates this possibility.

14.5 CHAIR AT MEETINGS OF BOARD

15.2 CHAIR OF A MEETING

15.3 VOTING AT MEETINGS OF A COMMITTEE

- *Correction of 'Chair' to 'chair' in the above where applicable.*

Chair is not a defined term within the Constitution, so should be used with a lower case 'c', not an upper case 'C'. Amendment of all references to 'Chair' to 'chair' in sections 11.4, 11.7, 11.8, 11.9, 11.12, 14.5, 15.2 and 15.3 and anywhere else it is used within the Constitution.

23 AUDIT

- *Insert Corporations Law compliance phrase.*

Different auditing requirements apply to companies limited by guarantee based on income levels. This rewording allows for compliance with the relevant Corporations Law without amending the Constitution even if the financial position of the Association changes or the Corporations Law requirements are amended.

24.1 GENERAL

- *Amend section 24.1*

Amend clause to include future unforeseen methods of distributing material to Members and to clarify when a notice is deemed to be delivered.

SPECIAL RESOLUTION 2

10.5 CONTENTS OF NOTICE

- *Amend Clause 10.5 d) ii relating to notices of a meeting.*

To ensure consistency with the amendment to section 8.1, and because the Corporations Law requires it, amend clause 10.5 d) ii to clarify that a proxy appointed for a general meeting need not be a Member of the Association.

- *Delete Clause 10.5 d) iii relating to Members casting 2 or more votes at a meeting.*

Clause 11.5 of the Constitution only allows one vote per member, so this clause is not valid and should be deleted.

11.1 QUORUM

- *Delete part of section 11.1 relating to the quorum at general meetings.*

The courts have ruled that the current wording means that provided the quorum is present when the meeting is declared open that is all that is required. If all but 2 of the Members at the meeting then immediately leave, the meeting remains quorate and can deal with all matters before the meeting – so the 2 Members remaining could pass all items. The change is designed to ensure a quorum is present when any business is being considered.

- *Add the words 'or proxy' to section 11.1*

Representative is a defined term that essentially refers to the Member, but it excludes proxies. This amendment will enable proxies to be included in the count to ascertain if a quorum is present at any general meeting.

11.3 CHAIR

- *Replace 'Chair' and 'Board' in section 11.3.*

Section 12 refers to the President as the head of the Association, so this amendment inserts more appropriate terminology into this section by replacing 'Chair' with 'President' and 'Board' with 'Association'.

11.4 ADJOURNMENT OF MEETING

11.7 SECRET BALLOT

11.8 PROCEDURE FOR A SECRET BALLOT

11.9 APPOINTMENT OF SCRUTINEERS

11.12 CASTING VOTE OF CHAIR

- *Correction of 'Chair' to 'chair' in the above where applicable.*

Chair is not a defined term within the Constitution, so should be used with a lower case 'c', not an upper case 'C'. Amendment of all references to 'Chair' to 'chair' in sections 11.4, 11.7, 11.8, 11.9, 11.12, 14.5, 15.2 and 15.3 and anywhere else it is used within the Constitution.

11.6 USE OF TECHNOLOGY

- *New section 11.6 inserted to incorporate the use of technology in any general meeting.*

The section is intended to future proof the Constitution so that a range of options are permitted to facilitate Member participation in general meetings adding clarity and flexibility to the broad power in the Corporations Act that permits the use of technology for meetings (section 249S of the Act).

11.6 VOTING: SHOW OF HANDS OR POLL

11.7 SECRET BALLOT

11.8 PROCEDURE FOR A SECRET BALLOT

11.9 APPOINTMENT OF SCRUTINEERS

11.10 A SECRET BALLOT MAY BE WITHDRAWN

11.12 CASTING VOTE OF CHAIR

11.13 VOTING

- *Replace 'secret ballot' with 'poll' where applicable.*

'Poll' being the standard term for formal, written ballots used in the Corporations Act and by the courts which have long defined parameters around polls (at least since 1789).

Replace the term 'secret ballot' with 'poll' wherever it occurs in sections 11.6, 11.7, 11.8, 11.9, 11.10, 11.12, and 11.13.

11.8 PROCEDURE FOR A SECRET BALLOT

- *Amend section 11.8 to clarify the procedure when a poll is used and to provide flexibility for the chair to accommodate polling of members attending the meeting via links such as teleconference and to guard against duplicate voting if a direct vote has been allowed.*

11.9 APPOINTMENT OF SCRUTINEERS

- *Amend section 11.9 to clarify the role of the chair of the meeting.*

Add 'under the direction of the chair' to clarify that any scrutineers act under the supervision of the chair of the meeting.

11.11 DETERMINATION OF VOTES

- *Amend section 11.12 with respect to a determination of the Association.*

This minor amendment inserts the words 'votes cast by' to clarify the intent of this section.

11.13 VOTING

- *Amend section 11.13 with respect to Member voting at a general meeting*

Clarification of the number of votes a Member may cast and the method by which this may occur, including direct vote when the Board invites direct votes (eg via a postal vote). This also gives clarity in line with the voting requirements in the Corporations Act.

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11.13 VOTING

- *Renumbering of sections 11.6 – 11.13.*

Renumbering of sections 11.6-11.13 as a result of the addition of a new section 11.6.

11.14 INCAPACITY

- *Delete section 11.14.*

Delete section 11.14 as it is inappropriate to differentiate how a Member may vote based on mental health issues.

11.15 VOTE BY PROXY VALID NOT WITHSTANDING INTERVENING DEATH OR REVOCATION

- *Delete references to mental health in section 11.15.*

Amend section 11.15 to remove inappropriate references to mental health issues experienced by Members.

SPECIAL RESOLUTION 3

12.1 COMPOSITION OF THE BOARD

- *Minor amendment to terminology in section 12.1.*

Minor technical amendment to change 'persons' to 'individuals' in line with Australian courts ruling that the definition of persons includes bodies corporate that cannot be directors. A more correct term in this case is 'individuals'.

12.2 DIRECTORS and 12.3 OPERATIONAL PROVISIONS

- *Amend sections 12.2 and 12.3 to provide for a two year Presidential term.*

In order to provide the President with an opportunity to have a significant impact on the direction of the Association and to complete significant projects undertaken as part of the

Presidential theme, it is proposed that the Constitution be amended to provide for a two year term for the President. This amendment would impact negatively on the Vice-President role. Combining a two-year Presidential term with a two-year term as Vice-President, four years in total, could reduce the pool of potential Presidential candidates. Four years is likely to be viewed by many individuals and their employers as onerous given the level of demands on the President's and Vice-President's time. The amendments to section 12.2 and 12.3 provide a solution whereby the President is elected by ALIA Members to commence on the Board as President for a period of two years. The President would continue to be supported by a Vice-President, but this role would be filled by an elected current member of the ALIA Board of Directors. At the commencement of each new Board following the Annual General Meeting, the ALIA Board would appoint one of the Directors as the Vice-President.

This proposal requires amendment of sections 12.2 and 12.3 of the ALIA Constitution to:

- Include the position of President for a two-year term elected directly by both Personal and Institutional ALIA Members.
- Change the Vice-President position from one elected by ALIA Members to one appointed by the ALIA Board of Directors from current members of the Board for a period of one year following the confirmation of the new Board at the Annual General meeting each year. All members of the Board would continue to be elected by ALIA Members.
- Include an additional general Director position, to be elected by ALIA Personal and Institutional Members, to retain the current total number of seven members of the ALIA Board.

The new Board structure would comprise:

- President (2-year term elected by ALIA Personal and Institutional Members).
- General Directors – 5 positions (2-year term elected by ALIA Personal and Institutional Members).
- Institutional Director (2-year term elected by ALIA Institutional Members).
- Vice-President (Annual appointment by the Board of one Director other than the President from the current Board membership).

These changes will be phased in from 2020.

12.3 OPERATIONAL PROVISIONS

- Amend section 12.3 to allow for the new Board structure included in section 12.2.

Three areas for amendment within section 12.3: change 'years' to 'Years' as it is a term included in the definitions section of the Constitution; remove reference to the Vice-President term in line with the amendments made to section 12.2 so that all Directors serve for a period of two years; and clarify the period after which a Director may re-join the Board.

- *Delete clause 12.3 c) relating to the first six months of incorporation of the Association.*

As the Association has been incorporated for many years, this clause is no longer relevant and should be deleted.

12.4 ROTATION OF DIRECTORS

- *Amend section 12.4 to accommodate the changes to the Board structure and election cycle proposed in section 12.2 and 12.3.*

To provide for the carry-over of corporate knowledge the current practice of overlapping terms of office would continue. Two general Directors and the President would be elected in uneven years for a period of two years and in the following even year three general Directors and an Institutional Director would be elected for a period of two years.

12.5 ELECTION OF DIRECTORS

- *Transitory clause inserted in section 12.5 to assist with the transition to the new Board structure*

Temporary clause inserted into section 12.5 to provide for the Vice-President elected as part of the 2019 Board election process to move into the position of President in 2020. The clause will automatically be deleted at the conclusion of the 2021 AGM.

- *Insert clauses dealing with casual vacancies on the Board in section 12.5*

The current By-Laws make reference to casual vacancies, but it is appropriate that this be included in the Constitution so that only the Members may change the arrangements.