

CONSTITUTION OF THE AUSTRALIAN STONE ADVISORY ASSOCIATION LTD ("ASAA")

A COMPANY LIMITED BY GUARANTEE

edition 4: following changes at SGM 28/5/2012

PREAMBLE

An association for the benefit of the public by the promotion of Australian Natural Stone and the coordination and sponsorship of events and ventures and endeavours in the Stone Industry in Australia.

1. **1. INTERPRETATION**
2. **1.1 Replaceable Rules Inapplicable**

The replaceable rules now and hereafter contained in the Corporations Law do not apply to ASAA unless repeated in this Constitution or specifically made applicable to ASAA by a provision of this Constitution.

1.2 Definitions

In this Constitution unless the context otherwise requires:

"**Australian Stone Industry**" means those users and suppliers of products and services in the stone industry that are based or operating in Australia;

"**Board**" means the whole or any number of the Directors plus CEO for the time being assembled at a meeting of Directors and not being less than a quorum; and reference to "the Directors" shall be construed as references to the Board (excepting the CEO) unless the context requires otherwise;

"**Classes of Membership**" means the classes of membership of ASAA as defined in clause 9.3;

"**Constitution**" means this Constitution and all supplementary or amended Constitutions for the time being in force;

"**Corporations Law**" means the Corporations Law as enacted and amended by the Commonwealth of Australia and the States and Territories of Australia from time to time;

"**Director**" includes any natural person occupying the position of a director of ASAA (but not an associate director);

"**Directors**" means the Directors for the time being or such number of them as have authority to act for ASAA;

"**Initial Board**" means those persons who are Directors of ASAA at the time of adoption of this Constitution;

"**Interim Board**" means those persons who are appointed as Directors on the date of adoption of this constitution and serve until the appointment of the next Board at the next AGM of ASAA pursuant to clause 19.1;

"**Initial Members**" means the initial Members of ASAA as specified in clause 9.2;

"**Legal Person**" means the legal definition of a person, including without limitation a natural person (individual) or an Organisation -see also clause 1.3(c);

"**Members**" means Legal Persons admitted as members of ASAA pursuant to clause 9; "**Industry Class Members**" means those Members who have been admitted to membership pursuant to clause 9.4

"Student Class Members" means those Members who have been admitted to membership pursuant to clause 9.5.

"Representative Association Class Members" means those Members who have been admitted to membership pursuant to clause 9.6.

"Organisation" means a body corporate including without limitation an incorporated association or a Government agency;

"Register" means the register of Members to be kept pursuant to the Corporations Law;

"Secretary" includes the assistant or acting secretary of ASAA and any substitute for the time being for the secretary.

1.3 Construction

In this Constitution unless the context otherwise requires: in relation to this Constitution as if this Constitution were an instrument referred to in section 110B thereof.

- (a) words (including defined expressions) importing the singular include the plural and vice versa;
- (b) words (including defined expressions) importing any gender include the other genders;
- (c) words (including defined expressions) importing persons shall include corporations and bodies politic;
- (d) a reference to a statute ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (e) references to "writing" or "written" includes typing, printing and any mode of representing or reproducing words in visible form including words or figures displayed on an electronic screen;
- (f) references to "signatures" include "electronic signatures", being the result of a process applied to a document in electronic form by which a person authenticates the document and acknowledges that the document is being signed;
- (g) references to the "sending" of a document includes the sending of that document via electronic means, including, but not limited to, electronic mail;
- (h) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (i) references to this Constitution include its schedules and annexures; and
- (j) subject to the foregoing Division 10 of Part 1.2 of the Corporations Law applies

1.4 Headings

Headings do not affect the interpretation of this Constitution.

2 NAME

The name of the company shall be "**Australian Stone Advisory Association Ltd**" and is referred to as "**ASAA**".

3 OBJECTS

3.1 Principal Purposes

The principal purposes of ASAA being a not for profit organisation are:

- (a) to promote the use of Australian Natural Stone both within Australia and overseas;
- (b) to facilitate greater co-operation between various sectors of and competing entities within the Australian Natural Stone Industry for the overall benefit of the Stone Industry;
- (c) to develop standards of excellence in performance and product supply so as to differentiate Australian Natural Stone to stone or other products available from other sources;
- (d) to provide apprenticeship and traineeship opportunities for the public benefit in the area of the stone industry;
- (e) to provide industry training in the art of design, construction, manufacture and maintenance of stone products for the public benefit and not for particular businesses;

- (f) to provide information about the Stone Industry and related technology for the public benefit and not for particular businesses;
- (g) to make the benefits of scientific research publicly available;
- (h) to provide shows, and exhibitions to the public;
- (i) to provide a organisation in Australia for the facilitation of the Principal Purposes;
- (j) to provide a not for profit body to which members of the public can make donations for the furtherance the Principal Purposes;
- (k) to provide Alternative Dispute Resolution services to the public in the specialist area of the stone industry.

3.2 Activities

Solely for the purposes of achieving the principal purposes as set out in clause 3.1 ASAA will enhance the benefits to the public in the area of the Stone Industry through:

- (a) promoting Australian Natural Stone and the Australian Natural Stone Industry to the public in Australia;
- (b) promoting scientific research in the areas covered by the Stone Industry in Australia;
- (c) the provision of shows, exhibitions, and expositions to the public;
- (d) providing alternative dispute resolution services to the public in the specialist area of the Stone Industry;
- (e) facilitating the raising of revenue to fund the principal purposes through charity or other events;
- (f) providing free directory services to the public to assist with the consumption of products from the Stone Industry.
- (g) the collection of membership and other information to provide data for use in the promotion of the Australian Natural Stone Industry

4 CAPACITY

Subject to **clauses** 5, 6, 7 and 8, ASAA has the legal capacity and all the powers provided by the Corporations Law.

5 NON-PROFIT

The income and property of ASAA must be applied solely in promoting the objects of ASAA as set out in this Constitution and no portion of it is to be paid or transferred directly or indirectly by way of profit to Members or Directors. This does not prevent the payment in good faith:

- (a) for goods supplied in the ordinary and usual course of business;
- (b) of interest at a reasonable and proper rate on money borrowed from any Member;
- (c) of reasonable and proper rent for premises demised or let by any Member to ASAA;
- (d) of remuneration to any officers or servants of ASAA in return for any services rendered to ASAA other than in the capacity as director or officer, where the provision of the service has the prior approval of the directors of ASAA and where the amount payable is approved by the directors of ASAA and is not more than an amount which commercially would be a reasonable payment for the service;
- (e) of out-of -pocket expenses incurred by a director in the performance of any duty as a director of ASAA where the amount payable does not exceed any amount previously approved by the directors of ASAA;
- (f) of any salary or wage due to a director as an employee of ASAA where the terms of employment have been approved by the directors of ASAA; or
- (g) a financial benefit to a director to which subsection 243K(7A) of the Corporations Law refers or payment of an insurance premium in respect of a contract insuring a director to which subsection 243K(7B) of the Corporations Law refers provided that the financial benefit and/or insurance premium has been previously approved by the directors of ASAA.
- (h) of remuneration to Directors appointed pursuant to Clause 18.2(f) of this Constitution in the capacity as director or officer, where the remuneration has the prior approval of the directors of ASAA and where the amount pay able is approved by ordinary resolution of the members of ASAA in general meeting.

6 LIMITED LIABILITY

The liability of the Members is limited.

7 MEMBERS' GUARANTEE

Every Member undertakes to contribute an amount not exceeding one dollar (\$1) to the property of ASAA in the event of its being wound up while that person is a Member or within one year afterwards for:

- (a) payment of the debts and liabilities of ASAA contracted before the time when that Member ceased to be a Member;
- (b) the costs, charges and expenses of winding up; and
- (c) for an adjustment of the rights of contributories among themselves.

8 WINDING UP

On dissolution of the Company, the right to administer the ASAA must be transferred on to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.

If upon the winding up or dissolution of the ASAA there remains, after the satisfaction of all its debts and liabilities, any property or money whatsoever, the remaining assets shall be paid or distributed to another organisation with similar purposes which is not carried on for the profit or gain of its individual members.

9 MEMBERS

9.1 Members

The Members of ASAA are:

- (a) the Initial Members; and
- (b) such other Legal Persons the Directors admit to membership in accordance with ASAA's Constitution.

Membership is held by a Legal Person, and each Legal Person may only hold one membership in ASAA.

9.2 Initial Members

Those Legal Persons who have agreed to become or remain Members as at the date of the adoption of this Constitution shall be Initial Members. Any Legal Person who was a Member as at that date but who has not agreed to remain a Member shall immediately cease to be a Member.

9.3 Classes of Members

ASAA consists of the following classes of Members

- (a) Industry Class Members: Quarriers of Australian Stone;
- (b) Industry Class Members: Australian Processors ;
- (c) Industry Class Members: Australian Wholesaler or Stockist or Equipment Supplier;
- (d) Student Class Members;
- (e) Professional Service Provider Class Membership;
- (f) Representative Association Class Members.

9.4 Qualification for Industry Class Membership

Any Legal Person that is involved in the production of goods and services in the Australian Stone Industry may apply for membership.

9.5 Qualification for Student Class Membership

Any Legal Person who is a student at an accredited educational facility involved in the study of stone and/or stone related products and/or services may apply for membership.

9.6 Qualification for Professional Service Provider Class Membership

Any Legal Person who is Professional Service Provider to the Stone Industry may apply for membership.

9.7 Qualification for Representative Association Class Membership

An Association or Society having at least 100 members, or representing at least 30 organisations, may apply to be a Representative Association Class Member.

9.8 Application for Membership

An application for membership must be made in the form approved by the Board from time to time, provided that each such application must contain:

- (a) an undertaking on the part of the applicant to be bound by ASAA's Constitution;
- (b) an undertaking on the part of the applicant to be bound by the ASAA's Code of Conduct
- (c) the postal address and electronic mail address of the applicant;
- (d) particulars of the applicant's qualifications for membership as set out by the board from time to time;
- (e) if the applicant is an Organisation, the name of the Organisation's proposed Nominee(s); and
- (f) the signature (or where applicable, the seal) of the applicant, or such other form of authentication (electronic or otherwise) approved by the Board from time to time.

9.9 Lodging of Applications

An application for membership, accompanied by the applicable membership fee and entrance fee, where applicable, must be lodged with ASAA in the form and at the place (if any) approved by the Board from time to time.

9.10 Determination of Application by the Board

- (a) The Board must determine whether or not to approve each application for Membership at the next Board meeting after receipt of the application.
- (b) The Board may require an applicant to give such further information as it desires before approving or refusing the admission of an applicant for Membership.
- (c) An applicant for membership is taken to be admitted as a Member upon the Board approving the application and the name, address and email address of the Legal Person being entered in the Register in the appropriate Class of Membership.
- (d) The Board shall determine the class of membership appropriate for each membership application and shall notify the applicant of this determination advising the applicant if the membership fee paid is correct or additional monies need to be paid or refunded.
- (e) If a membership application is rejected by the Board, the board need not provide written reasons for so doing.

9.11 Notification of Change in Qualifications

Each Member must promptly notify ASAA of any change in the qualification of the Member to be a Member of ASAA.

9.12 Change in Class of Membership

If the Board considers that a Member no longer qualifies to remain a Member in a particular Class of Membership, the Board may by notice in writing to the Member, change the Class of Membership for that Member to a Class of Membership appropriate for that Member. The Secretary must make appropriate amendments to the Register to reflect the change.

10 REGISTER OF MEMBERS

The Secretary shall keep the Register and shall enter in it the full names, addresses, and email addresses of Members, the class of membership, the date upon which Members became Members and the date upon which any Member ceased to be a Member as well as any other information thought relevant by the Board . The Register must not be used for any other purpose and is to be open for inspection by Members.

11 RIGHTS AND DUTIES OF MEMBERS

11.1 Membership not Transferable

Membership of ASAA is personal and is not transferable whether by operation of law or otherwise. All rights and privileges of membership of ASAA cease on termination of membership.

12 MEMBERSHIP FEES

12.1 Annual Membership Fees

- (a) Unless exempted by the Board, each Member is obliged to pay an annual membership fee, payable in full each year on a date determined by the Board from time to time. Payment may be made within one month of the due date (or such other date as the Board may determine from time

to time) without prejudice to any rights of the Member.

- (b) The Board may from time to time determine the annual membership fees payable in respect of each Class of Membership.

12.2 Membership Fees payable on Application for Membership

An applicant for membership is obliged to pay the applicable annual membership fee at the time of application and any entrance fee determined by the Board from time to time.

12.3 Unpaid Membership Fees

A Member shall cease to be entitled to any of the rights or privileges of Membership if:

- (a) the annual membership fee or entrance fee, where applicable, of that Member remains unpaid for three (3) months after it becomes payable; and
- (b) a notice of default is given to the Member;

but, subject to clause 13.2, those rights and privileges shall be reinstated on payment of all arrears.

13 CESSATION OF MEMBERSHIP

13.1 Cessation of Membership

Membership of ASAA ceases if the Member;

- (a) resigns by submitting notice to the Directors;
- (b) being a natural person, dies, becomes bankrupt, makes a composition with or assigns the Member's estate for the benefit of the Member's creditors;
- (c) being an Organisation, becomes insolvent, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation);
- (d) ceases to satisfy the criteria for admission to membership of ASAA.

13.2 Termination of Membership for Non-Payment of Membership Fees

The Board may at any time terminate the membership of a Member for non-payment of membership fees if:

- (a) the membership fees payable by the Member have remained unpaid for a period of three (3) months after the due date for payment; and
- (b) a notice of default has been given to the Member pursuant to a resolution of the Directors; and
- (c) the membership fees payable by the Member remain in arrears for a period of one (1) month after the date of service of the notice of default upon the Member in relation to those outstanding fees.

13.3 Expulsion of Members for Conduct Detrimental to Objects

ASAA in general meeting may by special resolution terminate the membership of a Member if:

- (a) the Directors resolve that in the opinion of the Directors the Member may have been guilty of conduct detrimental to the interests of ASAA or to any of the principle purposes of ASAA; and
- (b) the notice of meeting specifies the purpose of the meeting and the general nature of conduct referred to in the Directors' resolution; and
- (c) the Member is given the opportunity to be heard at that part of the general meeting at which the resolution is considered.

13.4 Removal from the Register

Upon the termination of membership of a Member for any reason the name of the Member must be immediately removed from the Register.

13.5 Continuing Obligations

The termination of a membership for any reason does not in any way prejudice, lessen or otherwise affect the liabilities and obligations of a Member (whether they arise under this Constitution or otherwise) existing at the date of termination or which arise or crystallises after that date out of, or by reason of, facts or circumstances occurring or in existence at or before that date.

Without limiting the previous clause, termination of membership does not relieve a Member from any obligation to pay any membership fees payable on or before the date of termination and does not entitle the Member to any refund of any entrance or membership fees in part or in whole.

14 GENERAL MEETINGS

14.1 Annual General Meeting

An annual general meeting of ASAA must be held in accordance with the Corporations Law.

14.2 Holding of General Meetings

General meetings are to be held at the times and place prescribed by ASAA in general meeting or if no time or place is prescribed then as determined by the Directors.

14.3 Convening of General Meetings

The Directors may whenever they think fit and must upon a requisition made in accordance with section 249D of the Corporations Law convene a general meeting of ASAA.

14.4 Notice of Meetings

At least twenty-one (21) clear days notice of a general meeting must be given in accordance with clause 30 unless the Corporations Law otherwise provides. The notice must specify the place, day, and hour of meeting, and in the case of special business the general nature of that business, and in the case of an election of Directors, the names of the candidates for election.

14.5 Content of Notice of General Meeting

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two (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:
 - i. set out an intention to propose the resolution as a special resolution, and
 - ii. state that resolution; and
- (d) in the case of an election of Directors, state the names of the candidates for election; and
- (e) contain a statement setting out the following information:
 - i. that the Member has the right to appoint a proxy;
 - ii. that the proxy does not need to be a Member.

14.6 Omission to Give Notice

The accidental omission to give notice of a meeting to, or the non-receipt of notice of a meeting by, any person entitled to receive notice does not invalidate the proceedings at the meeting.

14.7 Special Business

All business will be special that is transacted at:

- (a) a general meeting not being an annual general meeting; or
- (b) an annual general meeting with the exception of:
 - i. the confirmation of the minutes of the preceding meeting;
 - ii. the receipt and consideration of the balance sheet, the profit and loss statement and the reports of the Directors and the auditors;
 - iii. the election of Directors;
 - iv. the transaction of any business which under the Corporations Law or this Constitution is required to be transacted.

14.8 Cancellation or Postponement of General Meeting

Except in the case of a general meeting convened on the requisition of Members, the Directors may at any time cancel or postpone a general meeting before the time for holding the meeting. The Directors shall endeavour to notify each Member orally or otherwise of the cancellation or postponement, but failure to notify a Member does not affect the validity of the cancellation or postponement.

14.9 Resolutions Evidenced by Each Member

- (a) Any written resolution of ASAA determined on without a general meeting (whether in one document or in several copies) and signed (including by electronic signature) by each Member entitled to vote is as valid and effectual as a resolution duly passed at a general meeting of ASAA

- unless the Corporations Law requires a resolution to be passed at a general meeting of ASAA.
- (b) The written resolution of ASAA may consist of:
- i. several copies of a document each signed by one or more Members and takes effect at the date and time on which the last Member necessary for the resolution to be passed, signs a copy of the resolution; or
 - ii. a record of several electronic messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last Member's message necessary for the resolution to be passed is received.

15 PROCEEDINGS AT MEETINGS

15.1 Quorum

Seven (7) Members present in person or by proxy or representative and entitled to vote are a quorum for all general meetings. No business is to be transacted at any general meeting unless a quorum is present at the time the meeting proceeds to business.

15.2 Lack of Quorum

If within thirty (30) minutes after the time appointed for the meeting a quorum is not present, the meeting will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Directors determine. If at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the meeting Five (5) Members present in person or by proxy or representative will be a quorum and if such reduced quorum is not then present the meeting will be dissolved.

15.3 Chairperson

The Chairperson of Directors or in the Chairperson's absence the deputy Chairperson may preside as Chairperson at every general meeting. If there is no Chairperson or deputy Chairperson or if neither is present within fifteen (15) minutes after the time appointed for the meeting or if they are both unwilling to act as Chairperson of the meeting the Directors must choose another Director as Chairperson. If no Director is so chosen or if all the Directors present decline to take the chair the Members present must choose one of their own number to be Chairperson.

15.4 Adjournment

The Chairperson of a general meeting may with the consent of a meeting at which a quorum is present (and must if directed by the meeting) adjourn the meeting from time to time and place to place but no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

15.5 Notice of Adjourned Meeting

It is not necessary to give notice of an adjournment or of the business to be transacted at an adjourned meeting, unless the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting is to be given as in the case of an original meeting.

15.6 Decision of Resolutions

At a general meeting a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by the Chairperson or (other than on the election of the Chairperson of a meeting or the adjournment of a meeting) by not less than three (3) Members having the right to vote at the meeting.

15.7 Minutes as Evidence of Result

Unless a poll is duly demanded, a declaration by the Chairperson that a resolution has on the show of hands been carried or carried unanimously or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book containing the minutes of the proceedings of ASAA signed by the Chairperson will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

15.8 Taking of Poll

If a poll is duly demanded it must be taken in the manner and at the time and place as the Chairperson of the

meeting directs. The result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded provided that a poll on the election of a Chairperson of a meeting or on any question of adjournment must be taken at the meeting and without adjournment. The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. The demand for a poll may be withdrawn. In the case of a dispute as to the admission or rejection of a vote on a show of hands or on a poll the Chairperson shall determine the dispute and the determination made in good faith will be final and conclusive.

15.9 Technology

ASAA may hold a general meeting at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

16 VOTES OF MEMBERS

16.1 Entitlement to vote

Every Member present in person or represented by proxy or representative has one vote, whether on a show of hands or on a poll.

16.2 Resolutions

Any resolution of Members will not be taken to be carried whether on a show of hands or a poll unless the requisite majority comprises the following:

- (a) in the case of an ordinary resolution of Members, there is an affirmative vote in each and every class of Members of more than 50% of Members present and entitled to vote (in person or by authorised representative or proxy);
- (b) in the case of a special resolution of Members, there is an affirmative vote in each and every class of Members of more than 75% of Members present and entitled to vote (in person or by authorised representative or proxy);

16.3 Special Resolutions

The following matters will require a special resolution of the Members in Meeting:

- (a) any business which the Corporations Law states requires a special resolution;
- (b) any alteration to ASAA's legal status;
- (c) voluntary winding up of ASAA;
- (d) changing the purposes, objects or scope of ASAA;
- (e) any variation or amendment to, or repeal of, this Constitution; and
- (f) making, varying, or repealing ASAA's by-laws.

17 PROXIES

17.1 Appointment of Proxy

A Member may appoint one proxy only, and that proxy is entitled to vote on a show of hands or on a poll.

17.2 Instrument of Proxy

The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.

17.3 Receipt of Proxies

The instrument appointing a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a notarially certified copy of that power or authority (or a copy certified in another manner acceptable to the Directors) must be received in the manner specified for that purpose in the notice convening the meeting, not less than twenty-four (24) hours before the time for holding the meeting or adjourned meeting or taking of the poll at which the person named in the instrument proposes to vote and in default the instrument of proxy will not be treated as valid.

17.4 Form of Proxy

Every instrument of proxy whether for a specified meeting or otherwise must as nearly as circumstances will

admit be addressed to ASAA in the following form: I/We of being a *Industry Class/Representative Association Class/ Professional Services Class Member of ASAA appoint (*Strike out whichever is not correct.)

of as my/our proxy to vote for me/us and on my/our behalf at the general meeting of ASAA to be held on the day of _____ and at any adjournment thereof.

This form is to be used **in favour of/against the resolution. (**Strike out whichever is not desired. Unless otherwise instructed the proxy may vote as the proxy thinks fit.)

As witness my/our hand/s this day of

Signed by the said in the presence of:

or in such other form as the Directors from time to time prescribe or in a particular case accept. An instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the Chairperson of the meeting to which it relates.

17.5 Power to Demand Poll

The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.

17.6 Votes of Proxies

A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or unsoundness of mind of the appointor or revocation of the instrument or of the authority under which the instrument was executed provided that no intimation in writing of the death unsoundness of mind or revocation has been received by ASAA before the meeting or adjourned meeting at which the instrument is used. A proxy is not revoked by the appointor attending and taking part in any meeting but if the appointor votes on a resolution either on a show of hands or on a poll the person acting as proxy for that appointor has no vote as proxy on that resolution.

17.7 Identification of Proxy

The Chairperson of a meeting may require a person acting as a proxy to establish to the satisfaction of the Chairperson that the person is the person nominated as proxy in the form of proxy lodged under this Constitution and failing compliance that person may be excluded from voting either upon a show of hands or upon a poll.

17.8 Power of Attorney

If a Member executes or proposes to execute an instrument or to act by or through an attorney, the Member must:

- (a) produce to ASAA for noting the instrument appointing the attorney; and
- (b) (if required) file with ASAA a certified copy of the last-mentioned instrument which is to be retained by ASAA.

The Directors may on the first production of that instrument of attorney and from time to time subsequently require any evidence as they think fit that the instrument of attorney is effective and current.

18 DIRECTORS

18.1 Minimum Number

If the number of Directors in office at any time (other than the term of the Initial Board) falls below three (3), the Directors shall not act in the affairs of ASAA (other than to appoint additional Directors) until the number of Directors is made up to at least three (3).

18.2 Constitution of the Board

The Board shall comprise:

- (a) Three (3) persons elected by the Industry Class Members;
- (b) One (1) person elected by the Representative Association

- Class Members;
- (c) One (1) person elected by the Professional Service Provider Members;
- (d) The CEO of ASAA
- (e) The elected Directors may appoint not more than two additional board members for terms not exceeding two years.

18.3 Director's Membership Requirements

Directors are to be Members or bona fide direct employees of Members at the time of election to the Board. Directors are elected as individuals. They are not elected as representatives of an Organisation or Member. Accordingly, a Director shall not be disqualified from office should the Director cease to be employed by the Organisation or Member that employed the Director at the time of election.

18.4 No Remuneration

Except as provided for in clause 5, no Director may receive any remuneration for services as a Director or as a Member.

19 APPOINTMENT AND REMOVAL OF DIRECTORS

19.1 Interim Board

Following the adoption of this Constitution, the Initial Board must meet as soon as practicable to:

- (a) determine the membership fees for each Class of Membership;
- (b) consider and determine each application for Membership received as at the date of (or immediately following) the adoption of this Constitution; and
- (c) determine and appoint a person to undertake the election of the Interim Board.

The Initial Board shall retire and cease to hold office immediately following the declaration of the election results for the Interim Board, from which time the Interim Board will hold office. The Interim Board shall be constituted of 5 Directors.

19.2 Election of First Board

At the first AGM of ASAA following the adoption of this Constitution, the Interim Board shall retire from office (with effect from the end of the AGM), and:

- (a) the Industry Class Members shall elect three (3) Directors;
- (b) the Representative Association Class Members shall elect up to one (1) Director;
- (c) the Professional Service Provider Class Members shall elect up to one (1) Director

A retiring member of the Interim Board is eligible for re-election as a Director of the First Board.

19.3 Election of Subsequent Boards

At every AGM 1 director representing the Industry Class membership, 1 director representing the Representative Association Class membership and 1 director representing the Professional Service Provider Membership shall retire but are eligible for re-election. (Note: By definition the industry class directors are appointed for a three (3) year term whilst the other directors are appointed for a one year term)

19.4 Nomination for Election

- (a) If on the close of nominations the number of candidates for election as Directors is equal to or less than the number of vacancies, the nominated candidates shall be declared elected at the AGM and the Board shall fill the remaining positions as set out in clause
- (b) If the number of candidates for any class of membership for election as Directors is greater than the number of vacancies on the Board for that class, a ballot must be held for the election of Director for that class.
- (c) If a ballot is required for all classes or for any classes of membership, balloting lists must be prepared listing the names of the candidates for those required classes.
- (d) Each Member entitled to vote may cast the number of votes equal to the number of vacancies in the relevant class of Membership, provided that no person so voting may cast more than 1 vote in favour of each candidate.
- (e) The candidates receiving the greatest number of votes in their favour must be declared by the Chairperson of the meeting to be elected as Directors.
- (f) In the event of a tie for a board position the result will be decided by lot.

19.5 Procedure for Election of Directors

- (a) Each candidate for election as a Director in accordance with clause 19.2 or 19.3 must be nominated by a Member of ASAA, seconded by another Member of ASAA, both of which Members must have paid their entrance fee (if any) and their memberships fees as at the time of nomination.
- (b) A candidate for election to the Board cannot stand for election in more than one Membership Class at the same election.
- (c) A nomination of a candidate for election:
 - i. must specify the full name and address of the candidate;
 - ii. must include such other information as is specified by the Board from time to time;
 - iii. may include a statement by the candidate of not more than 100 words; and
 - iv. must be in writing, signed by the candidate, the nominator and the seconder.
- (d) A nomination of a candidate for election must be received in the manner specified by ASAA not later than 5.00pm on the day which is twenty eight (28) days prior to the AGM at which the candidate seeks election, except that nominations for candidates for the Interim Board must be received on behalf of ASAA not later than 12 noon on the working day prior to the election for the Interim Board.
- (e) Other than for the election to the Interim Board, a list of the candidates' names together with the proposers' and seconders' names and any statement included with the nomination must be sent to Members with the notice of the AGM. In the case of the Interim Board, such a list may be provided to Members on the day of the election for the Interim Board.

19.6 Removal of Directors

ASAA in general meeting may by resolution remove any Director from office. However, no resolution for the removal of a Director from office is to be put to a general meeting unless notice signed by a Member duly qualified to vote at that meeting and signifying the intention of that Member to propose that resolution is received by ASAA not less than twenty eight (28) clear days before the date appointed for holding the meeting.

19.7 Casual Vacancies

- (a) Subject to clauses 15.3 and 19.1, any vacancy occurring in the Board whether by death, resignation or otherwise shall be filled within three (3) calendar months of the vacancy occurring (or such longer period as the Board may otherwise resolve) by the remaining Directors. The natural person filling the vacancy will be appointed for the remainder of the term of office of the Director who created the vacancy.
- (b) All such appointments shall be made by instrument executed by all of the surviving or continuing Board.
- (c) The continuing Directors may act notwithstanding any vacancy in their body but should the number of Directors fall below the minimum number fixed in accordance with this Constitution the Directors may act for the purpose of increasing the number of Directors to the minimum of summoning a general meeting of ASAA or in emergencies but for no other purpose.

20 DISQUALIFICATION OF DIRECTORS

The office of a Director must be vacated if:

- (a) the Director ceases to be or is removed as a Director pursuant to the Corporations Law;
- (b) the Director becomes an insolvent under administration or makes any composition or arrangement with the Directors' creditors or any class of them;
- (c) the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) the Director resigns from office by notice in writing to ASAA;
- (e) the period for which the Director is appointed expires;
- (f) the Director, without the permission of the other Directors, is absent from the meetings of the Directors for six (6) months continuously; or
- (g) the Director is directly or indirectly interested in any contract or proposed contract with ASAA and fails to declare the nature of that interest as required by the Corporations Law.

21 POWERS AND DUTIES OF DIRECTORS

21.1 Management of ASAA

Subject to clause 24.6, the management of the business and affairs of ASAA is to be vested in the Directors who in addition to the powers and authorities conferred by this Constitution or otherwise may exercise all powers and do all acts and things as can be exercised or done by ASAA and are not required to be exercised or done by ASAA in general meeting. The powers of the Directors are subject to the Corporations Law, this Constitution and to any regulations (not being inconsistent with this Constitution) from time to time made by ASAA in general meeting. No regulation made by ASAA in general meeting will invalidate any prior act of the Directors which would have been valid if that regulation had not been made.

21.2 Power to Appoint Chief Executive Officer

The Board may appoint a natural person to be the Chief Executive Officer (CEO) with such title and on such terms, conditions and remuneration as the Board determines. The Chief Executive Officer is responsible for the control and management of the business and day to day operations of ASAA.

The Board may from time to time and upon such terms and conditions and with such restrictions as they deem fit, confer upon the Chief Executive Officer all or any of its powers. The Board may at any time or times, alter, revoke withdraw or vary all or any of the powers delegated to the Chief Executive Officer.

21.3 Duties Regarding Board Papers

- (a) The Board must ensure that a complete set of all Board Papers in chronological order will be kept in an appropriate and secure manner.
- (b) Subject to paragraph (c) of this clause, ASAA, on receiving reasonable notice from a Director or former Director, must without charge:
 - i. permit the Director or former Director access during business hours to those Board papers which relate to the period during which he or she was a Director; and
 - ii. provide a copy to the Director or former Director of such Board papers, or any part of them, on request.
- (c) After a Director ceases to be a Director:
 - i. ASAA is only required to comply with paragraph (b) when the former Director is defending, or there is a reasonable prospect that the former Director will be defending, legal proceedings which relate to an act or omission of the former Director in performing the former Director's duties when he or she was a Director; and
 - ii. the former Director only has access to, and the right to take copies of, such Board papers for the sole purpose of defending legal proceedings which relate to that former Director's duties and acts as a Director.

For the purposes of this clause, "Board Papers" means all existing and future written communications given or made available to the Directors of ASAA or any one or more of them or tabled at meetings of the Board (including periodic board papers, submissions, minutes, letters, board committee and sub-committee papers) and any other documents in the possession of ASAA which are referred to in those documents.

21.4 Directors to act in Best Interest of ASAA as a Whole

Each Director must act in the best interests of ASAA as a whole and with due regard to the furtherance of ASAA's objectives. Each Director must also act in accordance with a non-excludable duty or obligation owed by the Director to ASAA or the Members of ASAA under general law, the Corporations Law, or other provisions of this Constitution. Notwithstanding the foregoing provisions of this clause, a Director may make a decision in the interest of the Legal Person which appointed that Director.

21.5 Sale of Undertaking

Any sale or disposal by the Directors of ASAA's whole undertaking or of ASAA's main undertaking is conditional upon ratification by ASAA in general meeting and shall not involve a sale or transfer of such undertaking to any Legal Person other than one or more funds, authorities or institutions to which surplus

assets of ASAA could be given or distributed on a winding up under clause 8. At the meeting to ratify any sale or disposal, any person who may benefit from the sale or disposal must not vote on the resolution.

21.6 Cheques, Bills, etc.

All cheques promissory notes drafts bills of exchange and other negotiable instruments and receipts for money paid to ASAA must be signed drawn accepted endorsed or otherwise executed by the persons and in the manner as the Directors determine.

21.7 Operating Manual

The Board shall cause to be prepared an operating manual which shall set out, inter alia, the process which ASAA is to conduct its deliberations and operations. This shall specify the appointment of panels of experts to advise the board on matters of policy for the development and administration of the .au domain name space, and shall describe the process with which ASAA shall achieve openness and transparency in the conduct of its business.

22 DIRECTOR'S CONTRACTS

22.1 Director's Interests

Subject to the Corporations Law:

- (a) no Director or proposed Director is disqualified by that office from:
 - i. entering into a contract, agreement or arrangement with ASAA;
 - ii. becoming or remaining a Director of any company in which ASAA is in any way interested or which is in any way interested in ASAA;
- (b) no contract, agreement or arrangement in which a Director is in any way interested, entered into by or on behalf of ASAA can be avoided; and
- (c) no Director who:
 - 1. enters into a contract, agreement or arrangement in which the Director has an interest; or
 - 2. is a director of another company with which ASAA has entered into a contract, agreement or arrangement, is liable to account to ASAA for any profits or remuneration realised by that Director as a result of that Director being interested or being a director of the other company.

22.2 Declaration of Interest

(a) The nature of a Director's interest in any contract agreement or arrangement must be declared by that Director at a meeting of the Directors in accordance with the Corporations Law as soon as practicable after the relevant facts have come to that Director's knowledge.

(b) A general notice that a Director is a member of any specified firm or corporation and is to be regarded as interested in all transactions with that firm or corporation is a sufficient declaration under this clause as regards the Director and the transactions. After giving the general notice it is not necessary for the Director to give any special notice relating to any particular transaction with that firm or corporation.

(c) It is the duty of the Secretary to record in the Minutes any declaration made or any general notice given by a Director in pursuance of this clause.

22.3 Votes by Interested Directors

Subject to the Corporations Law, a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:

(a) must not vote on the matter (or in relation to a proposed resolution under paragraph (ii) of this clause in relation to the matter, whether in relation to that or a different Director); and

(b) must not be present while the matter (or a proposed resolution of that kind) is being considered at the meeting, unless:

- i. the matter applies to an interest that the Director has as a Member in common with the other Members; or
- ii. the Directors have passed a resolution that specifies the Director, the interest and the matter, and states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering or voting on the matter.

23 DIRECTOR'S CONFLICTS OF INTEREST

A Director who holds an office or possesses a property whereby duties or interests might be created whether directly or indirectly in conflict with that Director's duties or interest as Director must, declare at a meeting of the Directors the fact and the nature and extent of the conflict.

24 PROCEEDINGS OF DIRECTORS

24.1 Procedure Generally

The Directors may meet together for the dispatch of business adjourn and otherwise regulate their meetings and proceedings as they think fit. Until otherwise determined three (3) Directors constitute a quorum. The quorum must be present at all times during the meeting. Notwithstanding the previous paragraph, in the case of the Initial Board, three (3) Directors constitute a quorum.

24.2 Calling of Meetings

A Director may at any time, and the Secretary must on the request of a Director, convene a meeting of the Directors by notice served upon the other Directors.

24.3 Notice of Meetings

Reasonable notice of a meeting of Directors is to be given to all Directors except to a Director whom the Secretary when giving notice to other Directors reasonably believes to be outside Australia. The notice need not be in writing.

24.4 Chairperson of Meetings

The Directors may elect a Chairperson and a deputy Chairperson of their meetings and the Chairperson and deputy Chairperson positions are declared vacant at each AGM. If no Chairperson or deputy Chairperson is elected or if at any meeting neither the Chairperson nor the deputy Chairperson is present within fifteen (15) minutes of the time appointed for the holding of the meeting or is unable or unwilling or refuses to act, the Directors present shall elect a Chairperson of their meeting from among their number.

24.5 Decision on Questions

Subject to clause 24.11, questions arising at any meeting of Directors are to be decided by a majority of votes. Each Director (not including the CEO) has one vote and a determination by a majority of the voting Directors will for all purposes be deemed a determination of the Directors. In case of an equality of votes at a meeting at which a quorum is present the Chairperson has a second or casting vote in addition to a deliberative vote.

24.6 Delegation to Committees

The Directors may delegate any of their powers to Committees consisting of Directors or other natural persons as the Directors think fit. Any Committee formed must, in the exercise of the power delegated to it, comply with the regulations that may be imposed on it from time to time by the Directors.

24.7 Procedure of Committees

The meetings and proceedings of Committees consisting of more than one person are to be governed by the clauses of this Constitution regulating the meetings and proceedings of the Directors so far as they are applicable and are not superseded by any regulations made by the Directors under this Constitution.

24.8 Advisory Panels

- (a) Advisory Panels will be used by the Board as the principle mechanism for developing policy recommendations to the Board for the purpose of clause 3.1(d) of this constitution.
- (b) The Directors may from time to time appoint individuals to chair an Advisory Panel, and provide that Advisory Panel with a brief to investigate, analyse and advise or report to the Directors regarding a particular issue or objective. Any interested Member or other person may be invited by the Chair of an Advisory Panel to participate in that Advisory Panel.

24.9 Procedure of Advisory Panels

The Chair of an Advisory Panel must report in writing to the Board on its activities from time to time.

Subject to any conditions imposed by the Board, the meetings and procedures of the Advisory Board must be convened and conducted as the Chair thinks fit.

24.10 Validation of Irregular Acts

All acts done by any meeting of the Directors or by a Committee or Advisory Panel or by any person acting as a Director will, even if it is later discovered that there was some defect in the appointment or continuance in office of a Director or person so acting or that they or any of them were disqualified or had vacated office or were not entitled to vote, be as valid as if every person had been duly appointed or had duly continued in office and was qualified and had continued to be a Director and had been entitled to vote.

24.11 Written Resolutions

- (a) A resolution in writing signed by all the Directors who are entitled to vote (not being less than a quorum) is as valid and effectual as if it had been passed at a meeting of Directors duly called and constituted and is deemed to constitute a minute of that meeting.
- (b) That resolution in writing may consist of:
 - i. several copies of a document each signed by one or more Directors and takes effect at the date and time on which the last Director necessary to form a quorum signs a copy of the resolution; or
 - ii. the record of several electronic mail messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last message is received from a Director necessary to form a quorum.

Subject to clause 15.4, a Director who is unable to attend a meeting of the Directors may authorise another Director to vote at that meeting.

The attending Director will have a vote for each absent Director by whom the attending Director is so authorised, in addition to the normal vote of the attending Director. Any such authority must be produced at the meeting at which it is to be used and be retained by the Secretary in ASAA's records. Absent Directors (if any) are not to be counted as Directors present for the purposes of a quorum (Clause 24.1).

24.13 Meetings by Communications Technology

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one.

A Director may only withdraw consent within a reasonable period before the meeting.

25 BORROWING POWERS

The Directors may exercise all the powers of ASAA to borrow money and to mortgage or charge all or part of its undertaking and assets and to issue debentures, debenture stock and other securities outright or as security for any debt, contract, guarantee, engagement, obligation or liability of ASAA or of any third party and on such terms and conditions as the Directors think fit.

26 MINUTES

The Directors shall cause minutes to be kept and entered up in accordance with the Corporations Law:

- (a) of the names of the Directors present at each meeting of the Directors and of any Committee; and
- (b) of all resolutions and proceedings of general meetings and of meetings of Directors and of Committees.

The minutes are to be signed by the Chairperson of the meeting at which the proceedings were held or by the Chairperson of the next succeeding meeting.

27 SECRETARY

One or more Secretaries must in accordance with the Corporations Law be appointed by the Directors for such terms, at such remuneration and upon such conditions as the Directors think fit. Any Secretary so appointed may be removed by the Directors.

28 ACCOUNTS

28.1 Accounting and Other Records

The Directors must cause proper accounting and other records to be kept and distribute copies of balance sheets as required by the Corporations Law.

28.2 Time for Accounts

The interval between the close of a financial year of ASAA and the issue of the printed Annual Report and accounts relating to it must not exceed the period (if any) prescribed by the Corporations Law.

28.3 Access by Members

The Directors may from time to time determine whether and to what extent and at what times and place and under what conditions or regulations the accounting and other records of ASAA are to be open to the inspection of Members not being Directors.

29 BY-LAWS

The Board has the power to make, vary and repeal by-laws from time to time for the proper conduct and management of ASAA and such by-laws are binding on all Members. A resolution of the Board to make, vary or repeal by-laws must subsequently be ratified by a special resolution of Members.

30 NOTICES

30.1 Modes of Giving Notice

ASAA may give notice to a Member or other Legal Person:

- (a) personally; or
- (b) in the case of a Member-by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member; or
- (c) in the case of a Director - by sending it by post to the address for the Director in the register of directors; or
- (d) in the case of the Auditor - by sending it by post to the last-known address of the Auditor; or
- (e) by sending it to the fax number (if any) or electronically to the electronic mail address (if any) nominated by the Member or other Legal Person.

30.2 When Notice Deemed Given

A notice may be given by ASAA to any Member either personally or by sending it by post to the Member at the Member's registered address. A notice sent by post is deemed to be given three (3) days after it is posted. A notice given by electronic means is deemed to be given on the day after it is sent, and in the form in which it was received.

30.3 Persons Entitled to Notice of General Meeting

Notice of every general meeting must be given in the manner authorised to:

- (a) every Member excluding any Student members;
- (b) every Director; and
- (c) the Auditor for the time being (if any) of ASAA.

No other person is entitled to receive notices of general meetings.

30.4 Signature to Notice

The signature to any notice to be given by ASAA may be written, printed, stamped, electronic, or by any other means otherwise approved by the Board from time to time.

31 REPEAL, VARIATION AND AMENDMENT OF CONSTITUTION

Subject to any provision in the Corporations Law to the contrary, this Constitution may only be varied, amended or repealed by a special resolution of ASAA in general meeting.

32 INDEMNITY TO OFFICERS

32.1 Mandatory Indemnity

ASAA shall indemnify each Officer of ASAA out of the assets of ASAA to the relevant extent against any Liability incurred by the Officer in or arising out of the conduct of the business of ASAA, or in or arising out of the discharge of the Duties of the Officer, unless the Liability was incurred by the Officer through the Officer's own dishonesty, negligence, lack of good faith or breach of duty.

32.2 Discretionary Indemnity

In addition to clause 32.1, if the Directors consider it appropriate to do so, ASAA may indemnify an Officer of ASAA and an Officer of a subsidiary of ASAA to the Relevant Extent out of the assets of ASAA against any Liability incurred by the Officer in or arising out of the conduct of the business of ASAA or of the subsidiary, or in arising out of the discharge of the Duties of the Officer.

32.3 Insurance Against Liability

If the Directors consider it appropriate to do so, ASAA may pay amounts by way of premium in respect of any contract effecting insurance on behalf or in respect of an Officer of ASAA or a subsidiary against Liability incurred by the Officer in or arising out of the conduct of the activities of ASAA or of the subsidiary or in or arising out of the discharge of the Duties of the Officer.

32.4 Interpretation In this clause: "**Officer**" means:

- (a) a Director, Secretary, executive officer or employee; or
- (b) a person appointed as a trustee by, or acting as a trustee at the request of, ASAA or, where applicable, the subsidiary of ASAA, and includes a former officer.

"**Duties of the Officer**" includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an Officer by ASAA or, where applicable, the subsidiary of ASAA to any other corporation.

"**Relevant Extent**" means:

- (a) the extent that ASAA is not precluded by law from doing so;
- (b) the extent and for the amount that the Officer is not otherwise entitled to be indemnified and is not actually indemnified by another Legal Person (including, in particular, an insurer under any insurance policy); and
- (c) where the Liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the Duties of the Officer in relation to another corporation, to the extent and for the amount that the Officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.

"**Liability**" means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.

End of ASAA Constitution.