

FINANCIAL OMBUDSMAN SERVICE LIMITED
(ACN 131 124 448)

A company limited by guarantee

CONSTITUTION

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CONSTITUTION OF THE FINANCIAL OMBUDSMAN SERVICE LIMITED

A company limited by guarantee

1 Preliminary

Definitions

1.1 In this Constitution unless the context otherwise requires:

“**Alternate Director**” means a person appointed as an alternate director under clause 6.5;

“**Adoption Date**” means 16 May 2008;

“**Annual General Meeting**”, in relation to the Company, has the meaning ascribed by clause 10.1;

“**Applicable Terms of Reference**” means the Terms of Reference that apply to a Member in respect of a dispute;

“**ASIC**” means the Australian Securities & Investments Commission or any successor body;

“**auditor**” means the auditor or auditors for the time being of the Company;

“**Australia**” includes the external territories;

“**Board Advisory Committee**” means a committee appointed pursuant to clause 18;

“**Case Costs**” means fees payable by Members for dealing with disputes charged in accordance with a scale fixed from time to time by the Directors under clause 5.8.

“**Chair**” means the person appointed under clauses 4.1(a), 4.3(a), or 4.6 and 4.7, or, in the case of a casual vacancy, under clause 4.18;

“**Chief Ombudsman**” means the Ombudsman appointed in accordance with clause 12;

“**Company**” means the Financial Ombudsman Service Limited;

“**Constitution**” means this Constitution as amended from time to time;

“**Consumers’ Director**” means a Director appointed in accordance with clauses 4.10 and 4.11;

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

“**Director**” means a Director for the time being of the Company, and where appropriate, includes an Alternate Director;

“**Directors**” means all or some of the Directors acting as a board;

“**executive officer**” means an officer, auditor or agent of the Company;

“Financial Service” means a Financial Service as described in the Terms of Reference;

“Financial Services Provider” means a Financial Service Provider as described in the Terms of Reference;

“financial year” means any 12 month period determined by the Directors as the financial year of the Company;

“Group” means two or more Members who:

- (a) are all Related Bodies Corporate; or
- (b) are parties to a franchise agreement under which one Member is a franchisor and the other Member or other Members are franchisees,

“Head Member” means the Member nominated by a Group as its Head Member in accordance with clause 3.5.

“Industry” means the financial services industry and any similar or related or associated industries in which the Members and their related bodies corporate carry on business;

“Industry Director” means a Director appointed in accordance with clauses 4.8 and 4.9;

A person is **“Insolvent”** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) something having a substantially similar effect to (a) to (c) happens in connection with that person under the law of any jurisdiction.

“in writing” and **“written”** includes printing, lithography, photography and typewriting and all other modes of representing or reproducing words in visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise;

“Levies” means the Levies paid or payable by a Member pursuant to clause 5.4;

“Member” means a person approved as a Member under clause 3.6;

“month” means calendar month;

“Ombudsman” means the Chief Ombudsman or other Ombudsman appointed pursuant to clause 12;

“**Register**” means the register of Members of the Company required to be kept under the Corporations Act and where appropriate includes a branch register;

“**Registered Office**” means the registered office of the Company;

“**Scheme**” means the dispute resolution scheme known as the “Financial Ombudsman Service”;

“**seal**” means the common seal of the Company;

“**Secretary**” means a person appointed by the Directors pursuant to clause 7.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of secretary of the Company;

“**Small Business**” means a business which is either:

- (a) if the business is or includes the manufacture of goods, less than 100 full time (or equivalent) employees; or
- (b) if the business is of another nature, less than 20 full time (or equivalent) employees.

“**Subsidiary**”, “**Holding Company**” and “**Related Body Corporate**” have the respective meanings ascribed by section 9 of the Corporations Act;

“**Terms of Reference**” means the procedures, however described, established from time to time in accordance with this Constitution, for dealing with the resolution of disputes involving Members;

“**Transition Director**” means a Director appointed pursuant to clauses 4.1 or 4.3(a);

Interpretation

1.2 In this Constitution unless the contrary intention appears:

- (a) (**gender**) words importing any gender include all other genders;
- (b) (**person**) the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (c) (**singular includes plural**) the singular includes the plural and vice versa;
- (d) (**regulations**) a reference to a law includes regulations and instruments made under that law;
- (e) (**amendments to statutes**) 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 the State or the Commonwealth of Australia or otherwise;
- (f) (**from time to time**) a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;
- (g) (**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 Directors; and

- (h) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

Corporations Act

1.3 In this Constitution unless the contrary intention appears:

- (a) 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; and
- (b) “section” means a section of the Corporations Act.

1.4 Headings to these clauses do not affect their construction.

Replaceable rules not to apply

1.5 The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

2 Entrenched Provisions

Objects

2.1 The objects of the Company are:

- (a) to establish, maintain and promote a dispute resolution scheme for the Industry to be known as the “Financial Ombudsman Service”;
- (b) to adopt from time to time procedures for resolving disputes known as Terms of Reference;
- (c) to develop the resources needed to be able to meet the objects of the Company;
- (d) to develop a wide public awareness of the benefits and services of the Scheme and the Company;
- (e) to take such steps as the Company considers necessary to protect, promote and advance the Industry’s dispute resolution procedures and standards, including by monitoring compliance with Industry Codes of Practice;
- (f) to provide dispute resolution services to other dispute resolution schemes which have objects similar or complementary to those of the Company;
- (g) to consult and maintain relations with stakeholders and other dispute resolution schemes which have objects similar or complementary to those of the Company;

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- (h) to consult and maintain relations with Federal, State and local governments and relevant regulatory agencies where relevant to the Industry's dispute resolution processes;
 - (i) to acquire, where relevant and appropriate, knowledge of proposed Australian or overseas legislation and other regulatory standards and codes of practice which may affect dispute resolution standards;
 - (j) to compile and distribute to stakeholders statistical and other data of interest and to inform stakeholders on matters and questions affecting, or of interest to, the Industry; and
 - (k) to maintain effective lines of communication between the Company and its stakeholders, and to communicate to stakeholders results of the Scheme and related matters.

Assets and income of the Company

- 2.2 The assets and income of the Company shall be applied solely in furtherance of the Scheme and no portion shall be distributed directly or indirectly to the Members of the Company except as bona fide compensation for services rendered or expenses incurred on behalf of the Company or to indemnify an officer of the Company for liabilities incurred to another person (other than the Company or a Related Body Corporate) or such an officer.
- 2.3 In the event that the Company is wound up, any surplus assets remaining after the payment of the Company's debts and liabilities must be transferred to any organisation with similar purposes and which has rules prohibiting the distribution of its assets and income to its members.

Restriction on changing Constitution

- 2.4 A special resolution altering, or adding to, or omitting clauses 2.1, 2.2, 2.3 or this clause 2.4, (each an "**Entrenched Provision**") does not have any effect unless and until that special resolution is also passed at a meeting of Members by:
 - (a) a majority that together comprises, on a show of hands, at least 75% of such Members as vote in person, by proxy or attorney, or, on a poll, comprises at least 75% of the number of votes validly cast whether in person, by proxy or attorney;

where:

 - (b) the Members' meeting has been convened by the Directors representing the Members or by the holders of not less, in the aggregate, of 10% of the maximum number of votes which could be cast at a meeting of Members;
 - (c) the notice convening the Members' meeting at which the special resolution is proposed to be given not less than 30 days before the date the meeting is to be held and sets out the opinion of the Directors as to whether or not it is in the interests of the Company as a whole if that special resolution is passed;

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- (d) the resolution by its express terms specifies the provision or provisions of the Company's Constitution which the resolution seeks to alter or add to; and
 - (e) the Members' meeting at which that special resolution is to be proposed transacts no business other than the consideration of that special resolution, but nothing in this clause 2.4 prevents the special resolution also satisfying any requirement for a meeting of Members to vary the rights attaching to Members.

A reference in this clause 2.4 to a special resolution altering or adding to an Entrenched Provision includes a reference to any resolution of any type which has the effect of altering, adding to or omitting an Entrenched Provision or any other effect which is equivalent or substantially similar to that effect.

3 Membership

- 3.1 A person is eligible to be a Member if, and only if, it is a Financial Services Provider.

Approval as a Member

- 3.2 To become a Member a person must have been approved by the Directors as a Member.
- 3.3 To apply for approval as a Member, a person must deliver to the Company a completed and signed application in the form approved by the Directors from time to time together with such particulars as the Directors may require.
- 3.4 There is no limit on the number of Members. Membership is not transferable.
- 3.5 Members who are members of a Group may, at the request of the Chief Ombudsman, nominate a Head Member for that Group for the purposes of:
 - (a) receiving communications from the Company, including notices and invoices on behalf of each Member of the Group;
 - (b) dealing with disputes and customer enquiries on behalf of the Member;
 - (c) exercising a vote of a Member of the Group; or
 - (d) such other matters as may included in the nomination form of a Head Member.
- 3.6 The Directors may:
 - (a) approve a person as a Member subject to such terms and conditions as the Directors may in their discretion determine and may reject any application for Membership without being required to provide a reason for that rejection. Without limiting the generality of this clause 3.6 the Directors may impose different terms and conditions on admission to membership and on different persons admitted to membership; and

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- (b) delegate any of the powers and functions under clauses 3.3 to 3.6(a) (both inclusive) to the Chief Ombudsman.

- 3.7 Each Member agrees with the Company to be bound by the Applicable Terms of Reference.

Cessation of Membership

- 3.8 A Member may withdraw from membership of the Company by giving to the Secretary and ASIC not less than twelve months' notice to that effect and its membership ceases upon expiry of such notice. The Directors may in their absolute discretion resolve, after notification to ASIC, to accept a Member's withdrawal from membership at any time even if notice has not been given in accordance with this clause and may waive any portion of the notice period.

- 3.9 There is no clause 3.9.

- 3.10 If a Member:

- (a) refuses or neglects to comply with the provisions of this Constitution, or the Applicable Terms of Reference or with any binding decision made pursuant to the Applicable Terms of Reference;
- (b) fails to pay any monies owing to the Company within 14 days of receiving a notice requiring payment;
- (c) refuses or neglects to comply with the provisions of the Constitution, or the Terms of Reference or with any binding decision made pursuant to the Terms of Reference of any other ASIC approved dispute resolution scheme;
- (d) fails to pay any monies owing to any other ASIC approved dispute resolution scheme within 14 days of receiving a notice requiring payment;
- (e) is expelled or excluded from any other ASIC approved dispute resolution scheme;
- (f) ceases to be a Financial Services Provider or carry on business in the Industry and the Company has given notice to ASIC;
- (g) is required to be licensed or authorised under any Act to be a Financial Services Provider and the Member ceases to be so licensed or authorised; or
- (h) becomes Insolvent;

the Directors, acting in good faith and in their sole discretion, may by resolution expel that Member and each Member in the Member's Group. If the Board passes such a Resolution, the Member will cease to be a Member on the Day the Resolution is passed.

- 3.11 A Member may not be expelled under clause 3.10 unless:

- (a) the Member concerned has been given notice of the first meeting of the Directors at which the resolution for expulsion is to be considered which sets out the alleged grounds for expulsion:
 - (i) at least 7 days prior to the date of that meeting for reasons of non-payment of monies to the Company; or

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- (ii) at least 21 days prior to the date of that meeting in any other instance; and
 - (b) the Member has been given the opportunity to provide reasons in writing why the Member should not be expelled.
 - 3.12 An expelled Member may be reinstated by the Directors in their absolute discretion and upon such terms and conditions as they may see fit.
 - 3.13 The Company must forward to ASIC a copy of the notice of any meeting called to consider a resolution for expulsion. Where a Member has ceased to be a Member the Company must notify ASIC as soon as practicable after:
 - (a) the Directors receive notice of withdrawal of membership under clause 3.8; or
 - (b) a resolution is passed under clause 3.10.
 - 3.14 Cessation of membership:
 - (a) does not entitle the Member to repayment of the whole or any part of any levy raised under clause 5.4 or of any other fee which has been previously paid by the Member;
 - (b) is without prejudice to the Member's liability to pay any levy or other fee which has become due and payable before such cessation; and
 - (c) is without prejudice to the Member's rights and obligations under clause 3.7 in respect of any dispute commenced to be processed under the Scheme before such cessation (including any determination or any fees payable to the Company in respect of such a dispute).
 - 3.15 Where a Member has joined the Company to comply with a requirement in an Act other than the Corporations Act, a reference to ASIC in clauses 3.8, 3.9, 3.10 and 3.13 shall also include a reference to the government agency responsible for the administration of that other Act.

4 Directors

Transition Directors

- 4.1 There is no clause 4.1.
- 4.2 There is no clause 4.2.
- 4.3 There is no clause 4.3.

Composition of Directors

- 4.4 On and with effect from 1 June 2009, the Directors are to consist of:
 - (a) one person appointed by the Directors in accordance with clauses 4.6 and 4.7 to be the independent Chair;
 - (b) four people appointed by the Directors to be Industry Directors in accordance with clauses 4.8 and 4.9;

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- (c) four people appointed by the Directors to be Consumers' Directors in accordance with clauses 4.10 and 4.11.

4.5 Two or more Directors may not be members of the same Group.

Independent Chair

4.6 The Directors must appoint a person to be a Director and independent Chair.

4.7 Prior to the Chair's appointment, the Directors must:

- (a) consult relevant industry and consumer bodies about the appointment; and
- (b) use their best endeavours to ensure that no person is appointed as the Chair who has a material interest which might conflict with their duties as independent Chair.

Industry Directors

4.8 An Industry Director must be a person with experience in and knowledge of one or more sectors of the Industry.

4.9 Prior to appointing an Industry Director, the Directors must consult with, and have due regard to the views of, such individuals and organisations (including key industry organisations) as the Directors consider appropriate in order to give proper consideration to the person's expertise in and knowledge of one or more sectors of the Industry, independence, capacity and willingness to consult with the Industry.

Consumers' Directors

4.10 A Consumers' Director must be a person who has an interest in, and is knowledgeable about, consumers' interests relevant to the Scheme.

4.11 Prior to appointing a Consumers' Director, the Directors must consult with, and have due regard to the views of, such individuals and organisations (including key consumer and community organisations) as the Directors consider appropriate in order to give proper consideration to the person's expertise in consumer affairs, independence, capacity and willingness to consult with consumer organisations, and knowledge of issues pertaining to the financial services industry.

Tenure of office

4.12 A Director holds office for a maximum period of three years from the date of their appointment, and is eligible for re-appointment.

4.13 There is no clause 4.13.

Vacation of office

4.14 The office of a Director is automatically vacated if that Director:

- (a) becomes bankrupt or makes any arrangement or composition with their creditors generally; or
- (b) ceases to be a Director by virtue of any provisions of the Corporations Act or becomes prohibited by law from being a Director; or

- (c) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (d) resigns from office by notice in writing to the Company; or
- (e) does any act which, in the opinion of the Directors, is likely to lead that Director or the Company into disrepute.

Remuneration of Directors

4.15 The Directors are to be remunerated for their services as Directors as follows:

- (a) subject to Part 2E of the Corporations Act, the amount of the remuneration of the Directors is a yearly sum not exceeding the sum from time to time determined by a resolution of the Directors. In setting the yearly sum, the Directors should take into consideration the fact that the Company is a non-profit company;
- (b) the amount of the remuneration of the Directors is to be divided among them in the proportion and manner they agree or, in default of agreement, among them equally;
- (c) the Directors' remuneration accrues from day to day.

Additional or special duties

4.16 If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under clause 4.15.

Expenses

4.17 A Director is entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

Casual vacancies

4.18 The Directors may appoint a person to fill a casual vacancy in the office of Chair.

4.19 A person appointed under clause 4.18 holds office for the remainder of the period during which his predecessor would have held office and is entitled to be re-appointed at the end of that period in accordance with clause 4.7.

Director's interests

4.20 Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, a Director may:

- (a) hold any office or place of profit in the Company, except that of auditor, Ombudsman, Panel Chair, Panel Member or any other senior position;
- (b) hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind;

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- (c) enter into any contract or arrangement with the Company;
 - (d) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;
 - (e) act in a professional capacity (or be a member of a firm which acts in a professional capacity) for the Company, except as auditor;
 - (f) participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may be present at any meeting where any matter is being considered by the Directors;
 - (g) sign or participate in the execution of a document by or on behalf of the Company; and
 - (h) do any of the above despite the fiduciary relationship of the Director's office:
 - (i) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and
 - (ii) without affecting the validity of any contract or arrangement.

A reference to the Company in this clause 4.20 is also a reference to each Related Body Corporate of the Company.

5 Powers and duties of Directors

Directors to manage Company

- 5.1 The business of the Company is to be managed by the Directors, who may exercise all such powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.
- 5.2 Without limiting the generality of clause 5.1, the Directors may exercise all of the powers of the Company to borrow or raise money, to charge any property or business of the Company or to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.
- 5.3 Without limiting the generality of clause 5.1, the Directors:
 - (a) must establish one or more Terms of Reference under clause 14;
 - (b) may amend or revoke any Applicable Terms of Reference from time to time after consulting with:
 - (i) the relevant Board Advisory Committee about any proposed changes that are not minor in nature;
 - (ii) appropriate individuals and organisations (including key consumer, community and industry organisations)

about the proposed changes that are not minor in nature; and; and

(iii) ASIC about all proposed changes (including those identified as minor);

(c) must commission an independent review of the operations and procedures of the Scheme in accordance with any requirements under the Corporations Act and any applicable Regulations or ASIC Regulatory Guide.

Levies

5.4 The Directors may at any time and from time to time obtain money for the purposes of the Company by raising a levy from the Members. The form, amount and terms of any levy may be determined by the Directors in their discretion and, without limitation, may include any or all of:

(a) an annual levy;

(b) an extraordinary levy; or

(c) a levy which varies between Members on any basis thought fit by the Directors (including a levy raised on a Group basis); and

(d) a fee for considering an application to be approved as a Member.

5.5 The Directors may serve upon each Member a notice requesting payment of any levy to be raised from that Member, giving particulars of the total amount of the levy to be raised and the amounts payable by each Member.

5.6 Each Member shall, within one month after being requested to do so by the Company, provide a statement in the form approved by the Board specifying the information required by the Board to assess the amount of any levy payable by that Member;

5.7 Each levy will be due and payable by each Member as at the date specified by the Directors.

5.8 The Directors may at any time and from time to time fix the scale of Case Costs.

5.9 A Member must pay Case Costs to the Company by the date for payment specified in an invoice issued by the Company to the Member.

5.10 The Company may charge interest on any moneys payable by a Member to the Company, if not paid by the due date, bear interest (at such rate per annum as determined by the Board from time to time) for the period commencing (and including) the due date for payment to (but excluding) the date those moneys are paid in full. If interest is charged by the Company on any unpaid moneys, any accrued interest will be compounded and added to the moneys payable at such intervals as the Board may determine from time to time and is payable on demand.

Directors' Committees

5.11 The Directors may delegate any of their powers to a committee or committees consisting of at least two of their number and such other persons as they think fit,

upon such terms and conditions as the Board may see fit and may fix the quorum of any such committee. Unless the Directors otherwise determine, a committee must include an equal number of Industry Directors and Consumers' Directors.

- 5.12 A committee to which any powers have been delegated must exercise those powers in accordance with the directions of the Directors.

Powers of delegation

- 5.13 The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

Appointment of Attorney

- 5.14 The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes with such powers, or authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- 5.15 A power of attorney granted under clause 5.14 may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

Minutes

- 5.16 The Directors must cause minutes to be made:
- (a) of the names of the Directors present at all general meetings and all meetings of Directors; and
 - (b) of all proceedings of general meetings and of meetings of Directors,

and cause those minutes to be entered within one month after the relevant meeting is held in the minute book.

- 5.17 The minutes referred to in clause 5.16 must be signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting.

Execution of Company Cheques etc.

- 5.18 The Directors may determine the manner in which and persons by whom cheques, electronic banking instructions, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

Reporting

- 5.19 The Directors must report to Members on the operation of the Scheme at least once in each year.

6 Proceedings of Directors

Directors' meetings

- 6.1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

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- 6.2 A Director may at any time, and the Secretary must on the requisition of a Director, convene a meeting of the Directors.

Questions decided by ordinary resolution

- 6.3 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting. At the time a vote is taken, there must be an equal number of Industry and Consumer Directors voting at the meeting. In the event that there are an equal number of votes, the chair of the meeting shall have a second casting vote.

Any such decision is for all purposes deemed a decision of the Directors.

- 6.4 An Alternate Director present at any meeting of Directors has one vote for each Director for which they are an Alternate Director and if they are a Director also has one vote as a Director.

Alternate Directors

- 6.5 A Director may with the approval of a majority of the other Directors appoint a person (whether an executive of a Member of the Company or not) to be an Alternate Director in the Director's place during such period as the Director thinks fit, but not exceeding three consecutive meetings of the Directors.
- 6.6 An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

Alternate Director's powers

- 6.7 An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

Alternate Director responsible for own acts and defaults

- 6.8 Whilst acting as a Director, an Alternate Director:
- (a) is an officer of the Company and not the agent of the appointor; and
 - (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

Alternate Director and remuneration

- 6.9 An Alternate Director is not entitled to receive from the Company any remuneration or benefit under clause 4.15 or 4.16.
- 6.10 The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.
- 6.11 An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

Quorum for Directors' meetings

- 6.12 At meetings of Directors, the number of Directors whose presence is necessary to constitute a quorum, is six or such greater number as is determined by the Directors

from time to time. Of the Directors present at meetings held on or after 1 June 2009, there must be at least two Directors appointed under clause 4.8 and at least two Directors appointed under clause 4.10.

Remaining Directors may act

- 6.13 The continuing Directors may act despite a vacancy in their number. If their number is reduced below 6, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to 9.

Chair of Directors' meetings

- 6.14 The Chair shall preside as Chair of each meeting of the Directors except that if the Chair is absent, unwilling to act or not present within 15 minutes of the time appointed for the holding of the meeting, the Directors shall select one of their number as Chair of the meeting.

Written Resolution by Directors

- 6.15 If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Directors in the terms set out in the document, a resolution in those terms is to be deemed to have been passed at a meeting of Directors held on a date on which the document was last signed by a Director.
- 6.16 For the purposes of clause 6.15, two or more separate documents containing statements in identical terms signed by one or more Directors are together deemed to constitute one document containing a statement in those terms signed by those Directors on the respective dates on which the separate documents are signed.

Directors' meeting is defined

- 6.17 For the purposes of this Constitution, a meeting of Directors means:
- (a) a meeting of Directors assembled in person on the same day and at the same time and place; or
 - (b) the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion notwithstanding that they (or one or more of them) are not physically present at the same place,

and a Director participating in a meeting pursuant to clause 6.17(b) is to be deemed to be present (including for the purpose of constituting a quorum) and entitled to vote at the meeting.

- 6.18 Clause 6.17 applies to meetings of Directors' committees as if references in that clause to Directors are references to committee members.

Validity of acts of Directors

- 6.19 All acts done by any meeting of Directors or of a committee of the Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or member of a committee, or to act as a Director, or that a person so appointed was disqualified, valid as if a person had been duly appointed and was qualified to be a Director or to be a member of the committee.

7 Secretary

Appointment of Secretary

- 7.1 There must be at least one Secretary of the Company who shall be appointed by the Directors for such term, at such remuneration and upon such conditions as they think fit.

Suspension and removal of Secretary

- 7.2 The Directors have the power to suspend or remove a Secretary.

Powers and duties of Secretary

- 7.3 The Directors may vest in the Secretary such powers, duties and authorities as they may from time to time determine. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

Secretary to attend meetings

- 7.4 The Secretary is entitled to attend all meetings of the Directors and all General Meetings of the Company and may be heard on any matter.
- 7.5 An Ombudsman can be appointed as a Secretary.

8 Common seal

Custody and use of the seal

- 8.1 The Directors must provide for the safe custody of any common seal of the Company.
- 8.2 The common seal may be used only by the authority of the Directors, or a committee of the Directors authorised by the Directors to authorise the use of the common seal, and the document to which the common seal is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

9 Inspection of records

Inspection by Members

- 9.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be opened to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or the Company in general meeting.

10 General meetings

Annual General Meetings

- 10.1 Annual general meetings are to be held in accordance with the Corporations Act.

General Meeting

- 10.2 The Directors may, whenever they think fit, convene a general meeting and must do so if required to do so under the Corporations Act.

Notice of General Meeting

- 10.3 Notice of a general meeting must be given in accordance with the Corporations Act.

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- 10.4 In computing the period of notice under clause 10.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

Cancellation or postponement of a meeting

- 10.5 Where a general meeting (including an annual general meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

This clause 10.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a court.

Notice of cancellation or postponement of a meeting

- 10.6 Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

- (a) to each Member individually; and
- (b) to each other person entitled to be given notice of a general meeting.

Contents of notice of postponement of meeting

- 10.7 A notice of postponement of a general meeting must specify:

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

Number of clear days for postponement of meeting

- 10.8 The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the Corporations Act.

Business at postponed meeting

- 10.9 The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

Proxy, attorney or Representative at postponed meeting

- 10.10 Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and

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- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this clause, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

Non-receipt of notice

- 10.11 The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

Director entitled to notice of meeting

- 10.12 A Director is entitled to receive notice of and to attend all general meetings and is entitled to speak at those meetings.

11 Proceedings at General Meeting

Representation of Member

- 11.1 Any Member may be represented at any meeting of the Company by a proxy or attorney or a representative appointed under clause 11.2.
- 11.2 A Member who is a body corporate may be represented at any meeting of the Company by a representative appointed under the Corporations Act.
- 11.3 A person authorised under clause 11.2 is, in accordance with his or her authority and until it is revoked by the body corporate, entitled to exercise the same powers on behalf of the body corporate as the body corporate could exercise if it were a natural person who was a Member or creditor (including debenture holder) of the Company.
- 11.4 Unless the contrary intention appears, a reference to a Member in the succeeding provisions of this clause 11 means a Member, a proxy or attorney of a Member or a person appointed under clause 11.2 to represent a body corporate which is a Member.

Quorum

- 11.5 No business may be transacted at any general meeting unless a quorum is present comprising 20 or more Members at the time notice of the meeting was given and who are present in person or by proxy, attorney or representative appointed under clause 11.2. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the Chair of the meeting (on the Chair's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

Failure to Achieve a Quorum

- 11.6 Where a meeting is convened upon the requisition of Members and a quorum is not present within half an hour from the time appointed for the meeting, the meeting must be dissolved.

11.7 Where a meeting is convened in any other case and a quorum is not present within half an hour from the time appointed for the meeting:

- (a) the meeting must be adjourned to such day, time and place, as the Directors determine or, if no determination is made by them, to the same day in the next week at the same time and place; and
- (b) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting the meeting must be dissolved.

Appointment and Powers of Chair of General Meetings

11.8 The Chair must preside as Chair at every general meeting, but if the Chair is unwilling to act or is not present within fifteen minutes of the time appointed for the holding of the meeting, the Directors present must elect one of their number to be Chair of the meeting, or, if no Director is present or if all Directors present decline to take the chair, the Members present must elect one of their number as Chair of the meeting.

Conduct of general meetings

11.9 The Chair of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the Chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the Chair under this clause is final.

Adjournment of General Meeting

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

11.11 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

11.12 Except as provided by clause 11.11, it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

Voting at General Meeting

11.13 At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands of the Members present unless a poll is (before or on the declaration of the result of the show of hands) demanded:

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- (a) by the Chair of the meeting; or
 - (b) by at least two Members having the right to vote at the meeting, or by a Member or Members present who are together entitled to at least 5% of the total voting rights of Members under clause 11.15(a) or 11.15(c), whichever is the lesser.
- 11.14 Unless a poll is properly demanded, a declaration of the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against a resolution.
- 11.15 Subject to clauses 11.7, 11.17 and 11.21:
- (a) on a show of hands every person present who is a proxy, attorney or representative of a Member has one vote;
 - (b) on a poll at the first General Meeting after the Adoption Date, every person present who is a proxy, attorney or representative of a Member has one vote for each dollar paid by the Member in a period of twelve months (such period to be determined by the Directors) to Banking Financial Services Ombudsman Limited, Financial Industry Complaints Service Limited or Insurance Ombudsman Service Limited; or
 - (c) on a poll at each General Meeting after the first General Meeting, each person present who is a proxy, attorney or representative of a Member has one vote for each dollar paid by the Member to the Company by way of Levies and Case Costs in the financial year prior to the meeting.
- 11.16 On or before the commencement of a general meeting, the Directors may determine the number of dollars paid by a Member in the relevant period in accordance with clauses 11.15(b) or 11.15(c). A determination of the Directors under this clause 11.16 is final.
- 11.17 On a poll or on a show of hands, a vote may not be exercised in respect of a Member if there is outstanding by the Member or any Member in that Member's Group a levy due and payable under clause 5.4, Case Costs due and payable under clause 5.6 or any other applicable fees.

Questions decided by Majority

- 11.18 Subject to the requirements of the Corporations Act in relation to special resolutions and clause 11.19, a resolution is taken to be carried if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution exceeds one-half.

Poll

- 11.19 If a poll is properly demanded, it must be taken in such manner and (subject to clause 11.20) either at once or after an interval of adjournment or otherwise as the Chair directs, and the result of the poll is the resolution of the meeting at which a poll was demanded.
- 11.20 A poll demanded on the election of a Chair or on a question of adjournment must be taken immediately.

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- 11.21 A demand for a poll may be withdrawn.

Equality of votes

- 11.22 In the event of there being an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting does not have a second or casting vote.

Objection to Voting Qualification

- 11.23 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 11.24 Any objection must be referred to the Chair of the meeting whose decision is final.
- 11.25 A vote not disallowed under such an objection is valid for all purposes.

Appointment of Proxy

- 11.26 An instrument appointing a proxy must be in writing under the hand of the appointer or his or her attorney duly authorised in writing or, if the appointer is a corporation under the seal or under the hand of an officer or attorney duly authorised, or otherwise authenticated. A proxy need not be a Member.
- 11.27 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- 11.28 An instrument appointing a proxy is to be deemed to confer authority to demand or join in demanding a poll.
- 11.29 An instrument appointing a proxy must be in the form approved by the Directors from time to time.

Deposit of Proxy and Other Instruments

- 11.30 An instrument appointing a proxy may not be treated as valid unless the instrument, and if signed under power of attorney or other authority, a copy of that power or authority certified as a true copy by a solicitor or barrister is or are received by the Company, not less than 48 hours before the time for the holding of the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the Registered Office or at such place as is specified for the purpose in the notice convening that meeting.
- 11.31 An appointment of proxy received at an electronic address specified in the notice of general meeting for the receipt of the appointment or otherwise received by the company in accordance with the Act is taken to have been signed or executed or authenticated if the appointment:
- (a) includes or is accompanied by a personal identification code allocated by the company to the member making the appointment;
 - (b) has been authenticated by the member in another manner approved by the Directors and specified in or with the notice of meeting; or
 - (c) is otherwise authenticated in accordance with the Act.

Validity of Voting in Certain Circumstances

- 11.32 A vote given in accordance with the terms of an instrument of proxy or a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or the revocation of the instrument (or the authority under which the instrument was executed), if no notice in writing of the death, unsoundness of mind, or revocation has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

Directors entitled to Notice of Meeting

- 11.33 Each Director and Alternate Director is entitled to receive notice of and to attend all general meetings and is entitled to speak at those meetings.

Resolution in Writing

- 11.34 Subject to the provisions of the Corporations Act, a resolution in writing signed by all the Members is as valid and effectual as if it had been passed at a general meeting thereof duly convened and held. Any such resolution may consist of several documents in like form, each signed by one or more Members.

12 Ombudsman

- 12.1 The Directors may from time to time, and in accordance with the Applicable Terms of Reference, appoint a Chief Ombudsman and such other Ombudsmen as deemed appropriate by the Directors for such period and on such terms and conditions of engagement as the Directors shall think fit.
- 12.2 An Ombudsman shall, exercise the powers and duties of the Ombudsman as set out in the Applicable Terms of Reference.

13 Panel Members, Referees and Adjudicators

13.1 The Directors may from time to time appoint one or more persons to the positions of:

- (a) Panel Chair
- (b) Panel Member;
- (c) Referee; or
- (d) Adjudicator,

for such period and on such terms and conditions of engagement as the Directors think fit.

13.2 Any person appointed pursuant to this clause shall exercise the powers and duties of that position as set out in the Applicable Terms of Reference.

14 Terms of Reference

14.1 The Applicable Terms of Reference at the Adoption Date shall be:

- (a) The Banking and Finance Division Terms of Reference;
- (b) The General Insurance Division Terms of Reference;
- (c) The Investments, Life Insurance & Superannuation Division Terms of Reference; and
- (d) The Terms of Reference of any other existing ASIC approved external dispute resolution scheme that may seek to transfer its members to the Company on or before 31 December 2009 (as amended in order to accommodate that transfer);

14.2 The Terms of Reference shall apply until the Directors approve one or more new Terms of Reference in accordance with the following process:

- (a) The Directors shall consult with ASIC, relevant Board Advisory Committees and appropriate individuals and organisations (including key consumer, community and industry organisations);
- (b) At the end of the consultation period, the Directors shall make available a copy of the proposed new Terms of Reference (“the Proposed Terms of Reference”) on the Company’s website and send a notice in writing to all individuals and organisations that have been consulted. The notice shall state that unless a submission is received by the Company requesting a change to the Proposed Terms of Reference within 30 days, the Directors shall meet to consider approving the Proposed Terms of Reference;
- (c) Any submission received pursuant to Clause 14.2(b) shall specify in detail any amendments to the Proposed Terms of Reference and provide reasons why the amendment is requested;

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- (d) A copy of the submission received pursuant to clause 14.2(b) shall be given to all individuals and organisations who have been consulted by the Directors. An individual or organisation may make a submission in reply by providing it to the Company within 30 days;
 - (e) The Directors shall consider the submissions and, if they are unable to resolve any outstanding issues, they shall refer the submissions to an appropriately qualified independent person appointed by the Directors.
 - (f) Within 30 days of the referral, the independent person shall consider the submissions and make a recommendation to the Directors as to whether the Proposed Terms of Reference should be amended (“the Recommendation”);
 - (g) Upon receiving the Recommendation, the Directors shall meet to consider whether or not they approve the Proposed Terms of Reference or whether the Proposed Terms of Reference should be amended in accordance with the Recommendation;
 - (h) The Terms of Reference approved by the Directors in accordance with clause 14.2(g) shall then be submitted to ASIC for approval.
- 14.3 Where only one Terms of Reference have been approved by the Directors, those Terms of Reference shall be the Applicable Terms of Reference.
- 14.4 Where more than one Terms of Reference has been approved by the Directors, the Applicable Terms of Reference for a Member or for a particular dispute involving a Member will be those determined by the Chief Ombudsman.
- 14.5 The provisions of this Constitution, and of the Applicable Terms of Reference in respect of a dispute, each as in force from time to time, shall form a binding contract between each Member and the Company.

15 Notices

Service of notices

- 15.1 The Company may give a document, demand, notice or other communication (“**notice**”) to a Member:
- (a) personally;
 - (b) by sending it by post, to the address for the Member in the Register or an alternative address nominated by the Member; or
 - (c) by sending it to a fax number or electronic address nominated by the Member.

Post

- 15.2 A document sent by post:
- (a) if sent to an address in Australia, may be sent by ordinary post; and
 - (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

Fax or electronic transmission

15.3 If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

Evidence of service

15.4 A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

Person entitled to notice of General Meeting

15.5 Notice of every General Meeting must be given in a manner authorised by clause 15.1 and in accordance with the Corporations Act to:

- (a) every Member, or where a Head Member has been nominated, to the Head Member on behalf of all members of the relevant Group;
- (b) every Director and Alternate Director; and
- (c) the auditor.

15.6 No other person is entitled to receive notices of General Meetings.

Notices to Group Members

15.7 A notice given in accordance with this clause 15 to the Head Member of a Group is taken to have been given to each Member in the Group.

16 Winding up

Contributions

16.1 Each Member undertakes to contribute to the Company's property, if the Company is wound up while he, she or it is a Member or within one year after he, she or it ceases to be a Member, for payment of the Company's debts and liabilities contracted before he, she or it ceases to be a Member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding \$100.

17 Indemnity and insurance

Indemnity

17.1 The Company will indemnify any current or former Director, Secretary or executive officer of the Company or of a Related Body Corporate of the Company, or any person exercising a power or discretion or making a decision regarding a dispute under the applicable Terms of Reference out of the property of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and

- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

Insurance

17.2 The Company must pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company or of a Related Body Corporate of the Company, or any person exercising a power or discretion or making a decision regarding a dispute under the applicable Terms of Reference, against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

Contract

17.3 The Company may enter into an agreement with a person referred to in clauses 17.1 and 17.2 with respect to the matters covered by those clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

18 Board Advisory Committees

Board Advisory Committees

18.1 The Directors may establish one or more Board Advisory Committees that will meet from time to time as determined by the Directors to consider matters relating to the operation of the Scheme.

Composition of a Board Advisory Committee

18.2 A Board Advisory Committee shall consist of:

- (a) A Director or Directors appointed by the Directors, one of whom will be appointed Chair of the Committee;
- (b) At least one and no more than three representatives of Industry appointed by the Directors; and
- (c) At least one and no more than three representatives of consumers or small businesses appointed by the Directors, being people who are knowledgeable about consumers' and/or small business interests relevant to the Scheme.

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- 18.3 The Directors may establish a Board Advisory Committee with more representatives or of a different composition of representatives than provided for in clause 18.2, if they consider that exceptional circumstances exist.

Appointment of Board Advisory Committee members

- 18.4 Prior to appointing a person to a Board Advisory Committee as a representative of Industry, consumer or small business interests, the Directors must:
- (a) call for nominations in writing from Members, consumers and small business representatives; and
 - (b) consult with such individuals and organisations (including key consumer, community and industry organisations) as the Directors consider appropriate.

Casual Vacancy

- 18.5 A casual vacancy on a Board Advisory Committee may be filled by a person appointed by the Directors.
- 18.6 A person appointed under clause 18.5 shall hold office for the remainder of the period during which his predecessor would have held office but such person shall be entitled to be re-appointed at the end of such period.

Tenure of office

- 18.7 Subject to clause 18.8, a member of a Board Advisory Committee shall hold office for a maximum period of two years and shall be eligible for re-appointment.
- 18.8 The office of Board Advisory Committee member shall be automatically vacated if that person:
- (a) becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
 - (b) becomes of unsound mind; or
 - (c) resigns from office by notice in writing to the Company; or
 - (d) does any act which, in the opinion of the Directors, is likely to lead that person or the Company into disrepute.

19 Immunity from liability

Each Member agrees not to take legal action, and not suffer or permit any of its employees, agents, servants or contractors to take legal action, against the Company, its officers or employees or persons exercising a power or discretion or making a decision regarding a dispute under the Applicable Terms of Reference for anything done in accordance with any requirement of this Constitution, the Applicable Terms of Reference (including the publication of information or data), ASIC or any relevant regulator.