

CORPORATIONS ACT 2001

CONSTITUTION

of

**ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS
BOARD LIMITED**

(ACN 118 227 259)

Adopted by Special Resolution Passed on 7 August 2007

Registered Office
Level 7, 600 Bourke Street
MELBOURNE

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CORPORATIONS ACT 2001
COMPANY LIMITED BY GUARANTEE
CONSTITUTION
OF
ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD LIMITED
(ACN 118 227 159)

1. PRELIMINARY

1.1 Definitions

In this Constitution, the following words and expressions have the meanings indicated unless the context requires otherwise.

APESB means the corporation Accounting Professional & Ethical Standards Board Limited.

Auditor means the auditor of APESB.

Board means the Directors of APESB acting as a board.

By-laws means the First By-laws and any By-laws made in accordance with clause 31.1.

Constitution means the Constitution of APESB as amended from time to time.

Corporations Act means the *Corporations Act 2001*.

Director means a person holding office as a Director under this Constitution.

Extraordinary Resolution means a resolution passed by not less than 75 per cent of the votes cast at a meeting of the Board at which more than one half of all Directors are present and voting.

Facilitator means each of the entities responsible for creating APESB, being CPA Australia and ICAA.

First By-laws means the By-laws set out in Schedule 2 to this Constitution.

ICAA means the Institute of Chartered Accountants in Australia.

Member means a person who is a member of APESB under section 231 of the *Corporations Act*.

NIA means the National Institute of Accountants.

Objects means the primary objects of APESB set out in clause 2.1 and the secondary objects of APESB set out in clause 2.2.

Officer means an officer (as defined by the *Corporations Act*) of APESB.

Professional Body means CPA Australia, ICAA or NIA.

Register means the register of Members of APESB.

Registered Address means the preferred address of a Member notified by the Member and noted in the Register.

Registered Office means the registered office for the time being of APESB.

Representative means, in relation to a Member, the person appointed by that Member as its representative under section 250D of the *Corporations Act*.

Secretariat means the technical resource unit to be established by APESB on or to the effect of the terms set out in Schedule 1 to provide input to APESB on matters associated with professional and ethical standards.

Secretary means any person appointed by the Board pursuant to clause 32 and the *Corporations Act* to perform any of the duties of a company secretary of APESB.

Working Group means a group of persons formed by the Board with responsibility for achieving specific objectives as determined by the Board.

Working Group Register means the register of representatives of persons who are active participants of a particular Working Group. Each Working Group has a register of participants maintained for it.

1.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing any gender include the other gender;
- (c) words importing persons include corporations and organisations whether incorporated or not;
- (d) headings are for ease of reference only and do not affect the construction of this Constitution; and
- (e) a reference to the *Corporations Act* is a reference to the *Corporations Act* as modified and amended from time to time.

1.3 Corporations Act

An expression in a provision of this Constitution has the same meaning as in a provision of the *Corporations Act* that deals with the same matters as the provision, unless a contrary intention appears in this Constitution.

1.4 Replaceable rules

This Constitution displaces each of the replaceable rules in the *Corporations Act*.

1.5 Purpose

APESB is established to achieve its Objects .

2. OBJECTS

2.1 Primary objects

The primary objects of APESB are:

- (a) To develop and issue in the public interest professional and ethical standards that will apply to the membership of the Professional Bodies. Professional and ethical standards include but are not limited to;
 - Code of ethics for professional accountants;
 - Miscellaneous professional statements and guidance notes; and
 - Such other ethical issues or similar matters of interest in respect of the accounting profession.
- (b) To provide a formal and rigorous forum for the consideration, promulgation and approval of professional and ethical standards, which is performed in an open, timely, independent and proactive manner.
- (c) To establish the Secretariat.

2.2 Secondary objects

The secondary objects of APESB are:

- (a) To encompass the following specific responsibilities of APESB:
 - Reviewing the status of the professional and ethical standards on a yearly cycle and monitoring the needs of the accounting profession and the public, for areas requiring new or updated professional and ethical standards;
 - Ensuring rigorous review of all matters proposed or developed by the Secretariat;

- Referring matters to the Secretariat for research, direction and amendment;
 - Approving professional and ethical standards;
 - Tabling approved professional and ethical standards to the boards of the Professional Bodies;
 - Making recommendations to the boards of the Professional Bodies and other interested stakeholders on professional and ethical matters;
 - Seeking comment on exposure drafts from members of the Professional Bodies, the public and the Professional Bodies;
 - Monitoring the effectiveness of professional and ethical standards;
 - Ensuring that the standards approved do not adversely impact on the Professional Bodies' ability to comply with the International Federation of Accountants' [IFAC's] requirements as they pertain to professional and ethical standards;
 - Ensuring that the standards approved do not adversely impact on the Professional Bodies' ability to comply with the Financial Reporting Council's ("FRC") requirements as they pertain to professional and ethical matters; and
 - Reviewing the implementation of new and amended professional and ethical standards within six months of issue.
- (b) To carry on or engage in any other business or undertaking or project which may seem to APESB capable of being conveniently carried on in connection with or calculated directly or indirectly to further the objects of APESB.
- (c) To communicate, affiliate, amalgamate or enter into a partnership or into any arrangement for union of interests, co-operation, joint venture, reciprocal, concession or otherwise with anybody whether incorporated or unincorporated having objects of a like nature to those of APESB or carrying on, or engaged in, or about to carry on or engage in, any undertaking, project, business or transaction which APESB is authorised to carry on or engage in or any undertaking, project, business or transaction capable of being conducted so as directly or indirectly to benefit or further the objects of APESB.
- (d) To acquire and hold shares and other interests in any other company or to carry on any business or undertaking capable of being conducted so as to directly or indirectly benefit APESB.

- (e) To enter into any arrangements with any governments or authorities municipal, local or international or otherwise that may seem conducive to APESB objects or any of them and to obtain from any such government or authority any rights, privileges and concessions which APESB may think it desirable to obtain and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions.
- (f) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences and to contribute financially or otherwise assist any public, general or useful object whether in Australia or elsewhere consistent with the objects of this Constitution.
- (g) Generally to purchase, take on lease or in exchange hire or otherwise acquire any real and personal property and any rights or privileges which APESB may think necessary or convenient for the purposes of its business or the furtherance of these objects, and to hold and use such property and to sell, improve, manage, develop, exchange, lease, mortgage, enfranchise, dispose of, turn to account or otherwise deal with all or any part of the real and personal property and the rights of APESB.
- (h) To invest, lend and otherwise deal with moneys of APESB not immediately required in such manner as may from time to time be determined.
- (i) To draw, make, accept, discount, execute and issue cheques, promissory notes, bills of exchange, bills of lading, warrants, debentures and other negotiable or transferable instruments, including borrowing and raising money in such manner and on such terms as appropriate.
- (j) To undertake and execute any trusts the undertaking of which may seem desirable and either gratuitously or otherwise.
- (k) To apply for and obtain under any order, Act of Parliament or Royal Charter, provisional or otherwise, nationally or internationally, for enabling APESB to carry any of its objects into effect or for effecting any modification of the Constitution or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated, directly or indirectly, to prejudice APESB interests or the interests of any Member or Members of APESB.
- (l) To procure contributions to the funds of APESB whether by way of donations, subscriptions or otherwise and to accept any gift whether subject to a special trust or not for any one or more of these objects.
- (m) To do all such other things as are incidental or conducive to the attainment of these objects and to the advancement of the interests of APESB generally.

The secondary objects specified in this clause are, except where otherwise expressed, to be independent secondary objects and shall in no way be limited or restricted by reference to or inference from the terms of any other paragraph or the name of APESB.

2.3 Powers in S. 124

APESB can only exercise the powers in section 124 of the *Corporations Act* to:

- (a) carry out the Objects; and
- (b) do all things incidental or convenient in relation to the exercise of power under paragraph (a).

3. INCOME AND PROPERTY

The income and property of APESB must only be applied towards the promotion of the Objects.

4. NON-PAYMENT TO MEMBERS

No income or property of APESB is to be paid or transferred directly or indirectly, by way of dividend, bonus or otherwise to any Member provided that nothing in this Constitution will prevent payment to a Member:

- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to APESB; or
- (b) for reimbursement of authorised expenses incurred on behalf of APESB; or
- (c) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

5. PAYMENTS TO DIRECTORS

No payment by APESB is to be made to any Director other than:

- (a) the payment of out of pocket expenses incurred by a Director in the performance of any duty as Director where the amount payable does not exceed an amount previously approved by the Board;
- (b) payment for any service rendered to APESB by a Director in a professional or technical capacity where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
- (c) the payment of any salary or wage due to a Director as an employee of APESB where the terms of employment have been approved by the Board;
- (d) the provision of a financial benefit to a Director to which subsection 212(1)(b) of the *Corporations Act* refers; and
- (e) the payment of a Director's remuneration in accordance with clause 23.4

6. LIABILITY OF MEMBERS ON WINDING UP

If APESB is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding calendar year,

undertakes to contribute to the property of APESB for the:

- (c) payment of debts and liabilities of APESB (in relation to paragraph (b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves,

such amount as may be required, not exceeding \$10, and the liability of the Members is limited accordingly.

7. MEMBERS

7.1 Present Members

The Members of APESB at the time of adoption of this Constitution are:

- (a) the Facilitators; and
- (b) NIA.

7.2 Admission of new Members

The Board may by Extraordinary Resolution admit a body corporate as a Member of APESB upon:

- (a) such terms and conditions and in such category of membership as are specified in the Extraordinary Resolution;
- (b) receiving written consent of the Facilitators to such admission; and
- (c) that person undertaking to be bound by this Constitution.

A person other than a body corporate is not eligible for admission as a Member.

8. RESIGNATION OF MEMBERSHIP

8.1 Manner of resignation

A Member wishing to resign from membership of APESB must:

- (a) serve the Secretary with notice of resignation; and
- (b) pay all monies then owing and committed by the Member to APESB.

8.2 Acceptance of resignation

If:

- (a) a Member has complied with clause 8.1; or
- (b) the Member has not complied with clause 8.1 but undertakes to the Board to do so in a manner and within a time reasonably acceptable to the Board,

the Board may by resolution accept the resignation of the Member and, upon the expiration of 12 months from the date on which the Member gave notice under clause 8.1, or such lesser period as is specified in the resolution, the Member ceases to be a Member.

9. CESSATION OF MEMBERSHIP

A person ceases to be a Member of APESB if the person:

- (a) resigns as a Member in accordance with clause 8;
- (b) fails to pay that person's annual subscription within 6 months from the date determined by the Directors; or
- (c) becomes an externally-administered body corporate except for the purpose of a compromise or arrangement under Part 5.1 of the *Corporations Act* between the Member and its members only.

10. MEMBERSHIP FEES

10.1 Admission fee

The fee payable by a person upon becoming a Member is such amount as is determined from time to time by resolution of the Board.

10.2 Annual subscription

The annual subscription payable by a Member is such amount as is determined from time to time by resolution of the Board.

10.3 Monies outstanding on cessation of membership

A person who ceases to be a Member:

- (a) is not entitled to any refund (or part refund) of any subscription; and
- (b) remains liable for, and must pay to APESB, all subscriptions and other monies payable by that person under this Constitution which were due but unpaid to APESB at the date of ceasing to be a Member,

and the liability of that person under any other contract or arrangement with APESB is not to be affected by ceasing to be a Member except to the extent (if any) provided in that contract or arrangement.

11. GENERAL MEETINGS

11.1 Business of the annual general meeting

The business of the annual general meeting is to:

- (a) receive and consider the report of the Board for the preceding financial year;
- (b) receive and consider the financial statements of APESB for the preceding financial year;
- (c) receive and consider the report of the Auditor;
- (d) consider any notice of motion of which notice has been given in accordance with clause 11.3; and
- (e) consider any other business relating to the activities of APESB which may be raised at the meeting.

11.2 No business

No motion or business may be entertained or transacted at any meeting unless:

- (a) notice of the motion or business has been properly given or dispensed with; or
- (b) in the opinion of the majority of Members personally present and entitled to vote, the motion or business directly arises out of the notice or business properly before the meeting.

11.3 Notice of motion

- (a) Subject to section 249N of the *Corporations Act*, Members wishing to bring before the annual general meeting any motion or business not being the ordinary business of any meeting of the Members of APESB, must give notice in writing to the Board in accordance with the Constitution.
- (b) The notice shall be:
 - (i) addressed to the Board,
 - (ii) served not less than four (4) weeks before the day of the meeting
 - (iii) signed by not less than ten percent of the number of Members entered on the Register.

- (c) No motion or business (other than business brought forward by the Board) shall come before the meeting unless notice thereof has been given in accordance with the Constitution or By-laws of APESB.

11.4 The Board may convene

The Board may, at any time, convene a general meeting of APESB.

11.5 Member convening meetings

A Member may:

- (a) requisition the Board to convene a general meeting only in accordance with section 249D of the *Corporations Act*; and
- (b) not convene or join in convening a general meeting except under section 249F of the *Corporations Act*.

12. NOTICE OF GENERAL MEETINGS

12.1 All meetings

Subject to section 249H(2) of the *Corporations Act*, at least 21 days' notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given of any general meeting individually to:

- (a) each Member;
- (b) each Director; and
- (c) the Auditor;

12.2 Contents of the notice

A notice convening a general meeting:

- (a) must specify the place, date and time of the meeting;
- (b) if the meeting is to be held in two or more places, must specify the technology that will be used and instructions on how Members access that technology to participate in the meeting;
- (c) must set out the text of any resolution proposed and a statement of intention to propose them;
- (d) must state the general nature of the business to be transacted at the meeting; and
- (e) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.

12.3 Service of notice

Notice of any general meeting may be given by APESB to any Member who is entitled to notice under this Constitution:

- (a) by serving it on the Member at the Member's Registered Address or an alternative address nominated by the Member; or,
- (b) by sending it by prepaid post to the Member's Registered Address or an alternative address nominated by the Member; or,
- (c) by sending it to the facsimile number or electronic address (if any) nominated by the Member.

12.4 Non-receipt

The:

- (a) accidental failure or omission to send a notice of a meeting or the postponement of a meeting to any Member; or
- (b) non-receipt of a notice by any Member;

does not invalidate the proceedings, or any resolution passed, at the meeting.

12.5 Date of service

A notice:

- (a) sent by post is deemed to be served in accordance with clause 12.3(b) on the day being three days after the day on which it was posted;
- (b) sent by facsimile or other electronic transmission in accordance with clause 12.3(c) is deemed to be served on the day following its dispatch; and
- (c) given in any other manner permitted by the Constitution, is deemed to be served on the day determined by the Board by Extraordinary Resolution.

12.6 Postponement or cancellation

The Board:

- (a) may postpone or cancel any general meeting whenever it thinks fit (other than a meeting convened in accordance with section 249D of the *Corporations Act.*); and
- (b) must give notice of the postponement or cancellation to each person entitled to receive notice of a general meeting from APESB.

13. MEMBER

In clauses 14, 15, 18, 19 and 21, 'Member' includes a Member present in person or by proxy or attorney or Representative.

14. QUORUM**14.1 No business**

No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.

14.2 Quorum

Subject to clause 14.3, a quorum for a general meeting of APESB is the greater of two Members or twenty percent of Members entered in the Register who are present and entitled to vote.

14.3 Quorum not present

If a quorum is not present within 15 minutes after the time appointed for a meeting:

- (a) if the meeting was convened on the requisition of Members, it is automatically dissolved; and
- (b) in any other case:
 - (i) it stands adjourned to the same time and place 7 days after the meeting, or to another day (not being more than 14 days after the time appointed for the meeting), time and place determined by the chairperson; and
 - (ii) if at the adjourned meeting a quorum is not present within 15 minutes after the time appointed for the meeting, the meeting is dissolved.

15. CHAIRPERSON**15.1 Appointment**

The chairperson of any general meeting of APESB shall be:

- (a) the chairperson of the Board; or
- (b) in his or her absence, one of the Directors as chosen by the Directors present.

15.2 Absent chairperson

If:

- (a) no person is entitled to take the chair within 15 minutes of the time appointed for the holding of the meeting; or

(b) each person entitled to take the chair declines to do so;
then the Members may elect a Member as chairperson.

15.3 No casting vote

In case of equality of votes, the chairperson does not have a casting vote in addition to any other vote he or she may have.

15.4 Questions of procedure

If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

16. ADJOURNMENT

16.1 Power to adjourn

The chairperson of a meeting at which a quorum is present may and, if so directed by the meeting, must adjourn the meeting from time to time and place to place.

16.2 Venue

An adjourned meeting may take place at a different venue to the initial meeting.

16.3 Business at adjourned meeting

The only business that may be transacted at an adjourned meeting is the unfinished business of the initial meeting.

16.4 Notice of adjourned meeting

Notice of an adjourned meeting need only be given in accordance with clause 12 if the meeting has been adjourned for more than 28 days.

17. GENERAL MEETINGS – DECISION OF QUESTIONS

17.1 Show of hands

A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded before or on the declaration of the result of the show of hands.

17.2 Declaration binding

Unless a poll is demanded:

- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
- (b) an entry to that effect in the minutes of the meeting,

is conclusive evidence of that fact without proof of the number or proportion of the votes in favour of or against the resolution.

17.3 Decision by majority

Subject to the *Corporations Act* in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.

18. TAKING A POLL

18.1 Demanding a poll

A poll may be demanded by the chairperson or a Member, and must be taken when (either at once or after an interval or adjournment or otherwise) and in the manner that the chairperson directs.

18.2 Business may proceed

After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

18.3 Demand may be withdrawn

The demand for a poll may be withdrawn.

18.4 Election of chairperson

A poll demanded on the election of the chairperson or the adjournment of a meeting must be taken immediately.

19. VOTES OF MEMBERS

19.1 Entitlement to vote

Subject to clause 21, every Member:

- (a) is entitled to vote; and
- (b) both on a show of hands and on a poll has one vote.

19.2 Manner of voting

Votes may be given either:

- (a) personally;
- (b) by proxy;
- (c) by attorney; or
- (d) by a Representative,

in accordance with this Constitution and the By-laws.

20. OBJECTIONS TO VOTING ENTITLEMENT

20.1 Objection to qualification

An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered his or her or its vote.

20.2 Reference to chairperson

An objection must be referred to the chairperson of the meeting, whose decision is final.

20.3 Allowed vote

A vote which the chairperson does not disallow because of an objection is valid for all purposes.

21. MEMBERS NOT ENTITLED TO VOTE

A Member is not entitled:

- (a) to vote on any question by person, by proxy or by attorney or by a Representative; or
- (b) to vote at any general meeting of APESB; or
- (c) to vote at a poll in any ballot; or
- (d) to be counted in a quorum;

if:

- (e) the Member's subscription or other sum owing to APESB is overdue for 60 days or more; or
- (f) the Member's name, address or class of membership is not entered on the Register.

22. BALLOT

22.1 Determination by ballot

A decision of the Members, or any class of Members, which does not pursuant to the *Corporations Act* or any other legislation need to be made at a meeting, may, if the Board so resolves, be made by the relevant Members or class of Members by ballot in accordance with clause 22.2.

22.2 Manner of conduct of ballot

The Board must cause any ballot referred to in clause 22.1 to be conducted as follows:

- (a) voting instructions must be notified to each Member, who would have been entitled if present to vote at a general meeting held on the day of notification of the voting instructions;
- (b) voting instructions must:
 - (i) set out any resolutions proposed; and
 - (ii) contain full instructions as to the method by which Members may cast a vote;
- (c) any Member wishing to vote must do so in the manner indicated in the voting instructions;
- (d) not later than 7 days after the date set out in the voting instructions for receipt of completed votes, the Directors (or their delegates) must meet and examine the votes;
- (e) the Directors (or their delegates) must reject any vote:
 - (i) cast by a person not entitled to vote if present at a general meeting held on the day of posting the voting instructions; or
 - (ii) cast by a Member who has failed to observe the directions contained in the voting instructions, unless in the opinion of each Director (or delegate) the vote clearly indicates the voting intention of the Member in which case the vote must not be rejected; and
 - (iii) which in their reasonable opinion ought to be rejected;
- (f) the Directors (or their delegates), as soon as practicable, must report the results of the ballot to the Members.

22.3 Effect of ballot

A resolution passed by way of ballot has the same force and effect as a resolution passed at a general meeting of Members held on the date of the report referred to in clause 22.2(f).

23. THE BOARD

23.1 Composition of the Board

The Directors of APESB shall be comprised of a maximum of six (6) persons being:

- (a) persons appointed by a Facilitator under clause 23.2(a) or by NIA under clause 23.2(b);

- (b) the remaining person appointed by the Directors, being a person who is not a member of a professional accounting body (as defined in section 5(1) of the *Australian Securities and Investments Act 2001*) but is in the opinion of the Directors qualified in one way or another to contribute towards the attainment by APESB of its Objects.

23.2 Appointment of Directors

- (a) Each Facilitator is entitled by notice in writing to APESB:
 - (i) to appoint two persons to be Directors of APESB;
 - (ii) to remove from office a Director so appointed; and
 - (iii) to appoint a person to be a Director in the place of a Director so removed from office.
- (b) NIA is entitled by notice in writing to APESB:
 - (i) to appoint one person to be a Director of APESB;
 - (ii) to remove from office a Director so appointed; and
 - (iii) to appoint a person to be a Director in the place of a Director so removed from office.
- (c) The remaining member of the Board is to be appointed by the Directors as contemplated by clause 23.1(b).

23.3 Directors in office

At the time of adoption of this Constitution, the Directors are:

- (a) Jack Flanagan and Kenneth Levy, who shall be taken to have been appointed by CPA Australia under clause 23.2(a);
- (b) Harley McHutchison and Stuart Black, who shall be taken to be appointed by the Institute of Chartered Accountants in Australia under clause 23.2(a);
- (c) Robert Sendt, who shall be taken to be appointed by the National Institute of Accountants under clause 23.2(b); and
- (d) Kate Spargo, who shall be taken to have been appointed by the Directors under clause 23.2(c)

23.4 Directors' remuneration

The Directors shall be paid such remuneration as is from time to time determined by APESB in general meeting. The remuneration shall be deemed to accrue from day to day.

23.5 Directors' expenses

The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of APESB or otherwise in connection with the business of APESB.

24. VACATION OF OFFICE

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the *Corporations Act*, the office of a Director immediately becomes vacant if the Director:

- (a) resigns from that office by notice in writing to APESB;
- (b) is absent for two consecutive meetings of the Board without the consent of the Board;
- (c) receives any payment from APESB otherwise than in accordance with clause 5; or
- (d) is removed from office by a Facilitator under clause 23.2(a)(ii) or by NIA under clause 23.2(b)(ii) or by resolution under section 203D of the *Corporations Act*.

25. PROCEEDINGS OF MEETINGS OF THE BOARD

25.1 The Board may regulate

The Board may meet, adjourn and otherwise regulate its meetings as it thinks fit, provided that it must meet at least three (3) times in each calendar year.

25.2 Convening of meetings

The Secretary shall at any time on the written request of a Director, convene a meeting of the Board.

25.3 Notice

- (a) Subject to clause 25.3(d), not less than fourteen (14) days notice of every meeting of the Board must be given to each Director.
- (b) The notice must specify the place, day and hour of the meeting and must contain, as far as practicable, a statement of the general nature of the business to be transacted at the meeting. If the meeting is to be held in two or more places, the notice must specify the technology that will be used and instructions on how Directors access that technology to participate in the meeting.
- (c) The accidental omission to give any notice, or the non-receipt of any notice, does not affect the validity of the proceedings at the meeting.

- (d) A meeting of the Board may be convened with less than 14 days notice, provided that the convening of the meeting on short notice is ratified at the relevant meeting by resolution of the Board.

25.4 Meetings

The Board may meet either:

- (a) in person; or
- (b) by communicating with each other by any technological means consented to by a majority of Directors, subject to:
 - (i) each person taking part in the meeting being able to hear and be heard by every other person taking part in the meeting;
 - (ii) at the commencement of each meeting each person announcing his or her presence to all others in the meeting;
 - (iii) each person joining the meeting after commencement immediately announcing his or her presence to all others in the meeting;
 - (iv) if the Secretary is not present at the meeting, a Director who is present must either take the minutes or delegate that task to someone who is present at the meeting;
 - (v) any person leaving the meeting, or disconnecting their link to it, prior to the close of the meeting must announce their intention to do so to the chairperson;
 - (vi) each person who announces their presence in accordance with clauses (ii) and (iii) is conclusively presumed to have been present and formed part of a quorum at all times from their announcement until the close of the meeting, unless they have obtained the express consent of the chairperson to leave the meeting; and
 - (vii) a quorum being maintained at all times during the meeting.

25.5 Quorum

- (a) A quorum of the Board is three (3) Directors, one of whom must be a Director appointed by a Facilitator.
- (b) If a quorum is present, a meeting of the Board is competent to exercise all or any of the authorities, powers and discretions vested in it.

25.6 Chairperson

The Directors shall elect one of their number who is not a member of a Facilitator or of NIA as chairperson of their meetings and may determine the period for which he or she is to hold office. If at a meeting of the Directors:

- (a) a chairperson has not been so elected; or
- (b) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Directors present shall elect one of their number to be a chairperson of the meeting.

25.7 Director attending and voting by proxy

A Director may participate in, and vote by proxy at, a meeting of the Board if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointer.

25.8 How votes by proxy counted

A Director present at a meeting of the Board as the proxy of another Director, if entitled to vote on a matter the subject of a vote at the meeting:

- (a) has one vote in his or her own capacity as a Director; and
- (b) if that other Director would, if present, have been entitled to vote on that matter, has one vote also on behalf of the other Director.

26. DECISION OF QUESTIONS AT MEETINGS OF THE BOARD

26.1 Decision by majority

Subject to this Constitution, questions arising at meetings of the Board are to be decided by a majority of votes of Directors present and voting.

26.2 Casting vote

In case of an equality of votes the chairperson of the meeting shall not have a casting vote in addition to his or her deliberative vote.

26.3 Motion lost

If there are an equal number of votes cast in favour of and against a motion, the motion is lost.

27. RESOLUTIONS OF THE BOARD

27.1 Circulating resolution

The Directors may pass a resolution without a Board meeting being held if all of the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

27.2 Copies

Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

27.3 When the resolution is passed

The resolution is passed when the last Director signs.

27.4 Facsimile

Any document referred to in this clause may be in the form of a facsimile transmission or transmitted by other electronic means.

28. REMAINING DIRECTORS

Provided that there are at least three (3) Directors, the Board may act even if there is a vacancy on the Board.

29. COMMITTEES OF THE BOARD**29.1 Delegation**

Subject to the *Corporations Act* and clause 29.5 the Board may delegate any or all of its powers, authorities and discretions, other than those which by law must be dealt with by the Board, to:

- (a) any standing or other committee or committees;
- (b) the Secretary; or
- (c) any Officer,

on any conditions and for such period as it may think fit.

29.2 Revocation of delegation

The Board may at any time revoke or vary any delegation made in accordance with clause 29.1.

29.3 Regulation of committees

The meetings and proceedings of every committee created by the Board will be governed by such regulations or By-laws as from time to time may be made by the Board, and if no regulations or By-laws are made by the Board, meetings of any committee or Working Group shall be governed by the provisions of this Constitution and the By-laws which deal with meetings of the Board so far as they are applicable and are not inconsistent with any directions of the Board.

29.4 Sub-delegation

Subject to the directions referred to in clause 29.3 and the By-laws, any entity to which any powers, authorities and discretions of the Board are delegated in accordance with clause 29.1 may not sub-delegate all or any of the powers, authorities and discretions for the time being vested in it to sub-committees except with the prior approval of the Board.

29.5 Not binding

Any report or resolution of a committee does not bind APESB until ratified, adopted or confirmed by the Board, unless at the time of appointment of the committee the power to do so was expressly given to the committee to the exclusion of the Board.

30. VALIDITY OF ACTS

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, or of a member of a committee of the Board; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Board or the committee of the Board before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

31. BY-LAWS

31.1 New By-laws

APESB may from time to time, by Extraordinary Resolution of the Board in accordance with this Constitution, make new By-laws dealing with such matters as the Board determines, and may rescind, vary or add to any By-laws.

31.2 No inconsistency

A By-law must not be inconsistent with a provision of this Constitution.

32. SECRETARY

A Secretary shall, in accordance with the *Corporations Act*, be appointed by the Board for the term and on the conditions as the Board determines. A Secretary may be removed by the Board. The Board may appoint more than one Secretary.

33. SECRETARY DELEGATION

33.1 Secretary delegation

A Secretary may delegate some or all of his or her functions with the approval of the Board.

33.2 Revocation of delegation

A Secretary may at any time revoke any delegation made pursuant to clause 33.1, and shall immediately revoke any delegation on the order of the Board.

34. INSPECTION OF RECORDS

34.1 Inspection

Except as otherwise required by the *Corporations Act*, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of APESB are to be open for inspection by Members.

34.2 No right

A Member does not have the right to inspect any accounting records or other documents of APESB unless the Member is authorised to do so by a court order or a resolution of the Board.

35. INDEMNITY AND INSURANCE

35.1 Indemnity

To the maximum extent permitted by law, APESB shall indemnify each person who is or has been an Officer out of the property of APESB against:

- (a) any liability, except a liability for legal costs, incurred by the person in that capacity;
- (b) 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; and
- (c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of the person's duties as an Officer, if the incurring of those legal costs has been approved in accordance with APESB policy,

except to the extent that:

- (d) APESB is prohibited by law from indemnifying the person against the liability or the legal cost; or
- (e) an indemnity by APESB to the person against the liability or the legal costs would, if given, be made void by law.

35.2 Insurance

APESB may 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 an Officer against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) APESB is prohibited by law from paying or agreeing to pay the premium; or
- (b) the contract would, if APESB paid the premium, be made void by law.

35.3 Contract

APESB may enter into a deed or agreement with a person referred to in clauses 35.1 and 35.2 with respect to the matters covered by those clauses. A deed or agreement entered into pursuant to this clause may include provisions relating to access by such a person to accounting records and other documents of APESB.

35.4 Limit of indemnity

Subject to the provisions of the *Corporations Act*, an Officer shall not be liable for:

- (a) the acts, receipts, neglect or defaults of any other Officer;
- (b) joining in any receipt or other act of conformity or for any loss happening to the APESB through:
 - (i) an insufficiency or deficiency of title to any property acquired by order of the Officers for or on behalf of the APESB; or
 - (ii) an insufficiency or deficiency of any security in or upon which any of the moneys of the APESB shall be invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious act of any person with whom any moneys, securities or effects shall be deposited;
- (d) any loss occasioned by any error of judgment or oversight on the Officer's part; or
- (e) any other loss, damage or misfortune which occurs in the execution of the duties of the Officer's office,

unless the liability was incurred against the APESB or through the Officer's own dishonesty.

36. WINDING UP

If upon the winding up or dissolution of APESB there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid to or distributed among the Members, but shall be given or transferred to some other institution with similar objects to be determined by the Members at or before the time of dissolution and in default by application to the Supreme Court of the State of Victoria for determination.

SCHEDULE 1
TERMS OF REFERENCE
SECRETARIAT

1. Objectives

The objectives of the Secretariat include the following:

- (a) To provide input to APESB on professional and ethical standards, including but not limited to:
 - Code of ethics for professional accountants;
 - Miscellaneous professional statements and joint guidance notes;
 - The International Federation of Accountants' ("IFAC") ethical standards and other pronouncements; and
 - Such other ethical issues which affect the accounting profession.
- (b) To make recommendations to APESB on ethical matters as they relate to the accounting profession.

2. Responsibilities

The specific responsibilities of the Secretariat include:

- (a) Undertaking the research associated with making recommendations to APESB in respect to professional and ethical standards affecting the accounting profession and in the public interest;
- (b) Reviewing the professional and ethical standards on a yearly cycle and monitoring the needs of the Members, the accounting profession and the public, for areas requiring new or updated professional and ethical standards and making recommendations to APESB for amendment or promulgation as necessary;
- (c) Considering the international environment as is relevant to progress the objectives of APESB;
- (d) Reviewing the implementation of new and amended professional and ethical standards six months after issue and reporting as necessary to APESB;
- (e) Liaising with other committees of the Professional Bodies or such other individuals or groups, or government as are relevant to progress the objectives of APESB;

- (f) Co-ordinating meetings of APESB including preparing papers and organising travel and accommodation for the Directors; and
- (g) Maintaining an effective and efficient administrative process to support APESB in fulfilling its regulatory and legislative reporting obligations.

3. Manager

- (a) The manager shall have the necessary qualifications and experience to fulfil the obligations of the role;
- (b) The first appointed manager shall not be an existing employee of either Facilitator.

4. Review

- (a) The chairperson of APESB, CPA Australia, ICAA and NIA (through the Joint Standing Committee (“JSC”)), and the manager shall meet at least annually to discuss the performance of the Secretariat against an agreed annual performance plan; and
- (b) The manager of the Secretariat shall also meet at least annually with each staff member separately to discuss his or her performance.

5. Indemnity

The staff of the Secretariat shall be employed by APESB which shall indemnify and hold them harmless for any liability incurred in accordance with performing their duties as the staff but such indemnity shall not extend to matters not properly authorised or carried out in accordance with these terms of reference.

SCHEDULE 2

By-laws

of

**ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS
BOARD LIMITED**

(ACN 118 227 259)

CORPORATIONS ACT
COMPANY LIMITED BY GUARANTEE
By-laws
of
ACCOUNTING PROFESSIONAL & ETHICAL STANDARDS BOARD LIMITED
(ACN 118 227 259)

1. MEMBERSHIP

1.1 Conditions

An applicant for:

- (a) admission to membership of APESB, or;
- (b) a change in class of membership;

must:

- (c) subject to By-law 2 comply with the requirements set out in:
 - (i) the Constitution; and
 - (ii) these By-laws;for admission to membership; and
- (d) comply with any other condition or possess any other qualification as the Board may in its absolute discretion determine (whether generally or in any particular case).

1.2 Refusal of application

The Board may, in its absolute discretion and with or without giving reasons, refuse to:

- (a) accept any application;
- (b) admit any applicant for membership; or
- (c) grant any application for a change in the class of membership to which a Member is admitted.

2. SPECIAL CASES

The Board may dispense with any or all of the requirements set out in the Constitution and the By-laws regarding admission to membership and admit a body corporate or entity to membership of APESB or grant an application for a change in the class of membership to which the Member is admitted:

- (a) if that body has extensive experience or is engaged in an activity considered beneficial to furthering the Objects of APESB; or
- (b) if that body has rendered valuable service in advancing the interests or excellence in the development, adoption and/or use of accounting professional and ethical standards; or
- (c) for any special reason which the Board resolves is sufficient.

3. APPLICATION FOR MEMBERSHIP

3.1 Applications

An application by a body corporate for membership of APESB may be in a form approved by the Board, and containing the date of the application and the applicant's:

- (a) name, ABN and the full name and job title of the person to be appointed as its Representative;
- (b) preferred postal and electronic addresses for service of notices and other communications; and,
- (c) preferred telephone and facsimile contact numbers for use during business hours and, optionally, outside business hours.

3.2 Consideration of application

On receipt of the application, the Board will assess the eligibility of the applicant based on the details on the application form. The Board may request further information or evidence to support the application. A determination of the Board shall be final and conclusive.

4. ADMISSION

4.1 Notification and admission fee

As soon as practicable following acceptance of an application, the Secretary, on behalf of the Board, will issue a request for a memorandum of agreement which will set out the terms and conditions of entry and any admission fee payable.

4.2 Alternative status

If:

- (a) an applicant for admission to a class of membership is found by the Board not to be eligible for membership of that class of membership; and
- (b) the Board finds the applicant eligible for admission to another class;

the Board may, if the applicant is willing to accept the admission, admit the applicant to membership of that other class.

4.3 Admission

An applicant will become a Member of the relevant class of Members of APESB, and will be entitled to the privileges of membership, on payment of the admission fee payable under By-law 4.1.

4.4 Non-payment

If an amount due under By-law 4.1 is not paid within 60 days after the date of the request, the Board may in its discretion cancel its acceptance of the applicant for membership of APESB.

4.5 Membership rights

The rights and privileges of every Member will be personal to each Member and will not be transferable by the Member's own act or by operation of law.

4.6 Former Members

If the Board accepts the resignation of any Member, the Board must cause the Member's name to be listed on the Register as a former Member in accordance with the *Corporations Act*.

4.7 Removal of name

If a Member's membership ceases under clause 9 of the Constitution, the Board must cause the Member's name to be listed on the Register as a former Member in accordance with the *Corporations Act*.

5. REGISTERS

5.1 Separate registers

APESB must maintain:

- (a) the Register; and
- (b) any other register required by the *Corporations Act*.

5.2 Information on the Register

The Register must set out:

- (a) the class of membership of each Member;
- (b) the name, ABN and the full name and job title of the Member's Representative;
- (c) preferred postal and electronic addresses for service of notices and other communications; and
- (d) preferred telephone and facsimile contact numbers for use during business hours and, optionally, outside business hours.

5.3 Required Information

Each Member must furnish to the Board and enable the Board to compile a record of any information as is reasonably required of Members.

5.4 Entries in registers

No entry in the Register or any other register may be made or amended without the consent of the Board.

5.5 Enquiries

The Board may from time to time require any Member to satisfy the Board whether any particulars regarding that Member appearing in the Register, or any other register, are correct.

5.6 Rectification

The Board may, if satisfied that any particulars appearing on the Register or any other register are incorrect, order their removal and may subject to the *Corporations Act* order that the relevant register be rectified by making any other entry or entries as it deems fit.

5.7 Closing of the Register

The Register may be closed for a period not exceeding seven days immediately preceding the commencement of the period prescribed for service of notice of meetings of Members or the dispatch of voting papers. Only those Members whose names are entered on the Register at the time of closing are entitled to be served with notice of each meeting.

5.8 Notification by Members

Members must promptly notify the Secretary of any change in the details recorded on the Register.

6. FUNDS**6.1 Accounts at financial institutions**

All monies, when received on account of APESB must be paid into the accounts maintained by APESB.

6.2 Funds of APESB

The funds of APESB must be applied:

- (a) in accordance with the budget approved by the Board; and
- (b) subject to any directions which may be given from time to time by the Board.

6.3 Endorsement on cheques

Cheques or other negotiable instruments paid to any account maintained by APESB for collection requiring the endorsement of APESB may be endorsed by the Secretary or by such other Officer of APESB as may be appointed by the Board for that purpose.

7. INTERPRETATION

These By-laws and, except as otherwise directed thereby, any new By-laws shall be read and construed in accordance with clauses 1.1 to 1.5 (both inclusive) of the Constitution.