

*CORPORATIONS ACT 2001*

**A PUBLIC COMPANY LIMITED BY GUARANTEE AND NOT HAVING  
SHARE CAPITAL**

**CONSTITUTION OF  
AUSTRALIAN RETAIL CREDIT ASSOCIATION LIMITED**

**(ACN 136 340 791)**

**As amended by Special Resolution dated 25 May 2010  
As amended by Special Resolution dated 15 November 2011  
As amended by Special Resolution dated 20 November 2012  
As amended by Special Resolution dated 14 November 2013  
As amended by Special Resolution dated 23 November 2021**

# CONSTITUTION OF AUSTRALIAN RETAIL CREDIT ASSOCIATION LIMITED

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## 1. Name

- 1.1. The name of the Company (hereinafter called "ARCA") is the "Australian Retail Credit Association."
- 1.2. The registered office of ARCA shall be situated in New South Wales or in such other place as the Board may from time to time determine.

## 2. Definitions

In this Constitution unless there is something in the subject or context inconsistent therewith:

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

"**Annual General Meeting**" means the general meeting of Members held each year as required by the Act and this Constitution.

"**ARCA**" means the abovementioned company.

"**Associate Member**" means a Member who has been duly admitted to ARCA in accordance with this Constitution, but who is not a Credit Provider, Credit Reporting Body or other person who satisfies the criteria for admission to any other Class.

"**Board**" means the Board of Directors as constituted in accordance with this Constitution.

"**Board Appointed Director**" has the meaning given in rule 15.4(b).

"**By-Laws**" means the by-laws of ARCA setting out the allocation of Members to Classes and Tiers and associated matters, as amended by the Board from time to time.

"**Casual Vacancy**" has the meaning given in rule 15.4(c).

"**Chair**" means the chair of the Board appointed under rule 22.10 or 22.13.

"**Chief Executive Officer**" means the Chief Executive Officer of ARCA from time to time.

"**Class**" means any of the classes set out in rule 8.1, being Financial Service Credit Providers, Credit Reporting Bodies, Non Financial Service Credit Providers and any other class established pursuant to rule 8.1(e).

"**Class Meeting**" means a meeting of a Class of Members to make decisions which that Class is required to make under the Act and this Constitution, including decisions to change the rights given to a Class under this Constitution.

"**Code of Conduct**" means any code of conduct or membership standards of ARCA (as amended from time to time) that applies only to Members and that is made in accordance with this Constitution.

"**Constitution**" means this Constitution.

"**Credit Provider**" means a Financial Service Credit Provider and a Non Financial Service Credit Provider.

"**Credit Reporting Body**" means an organisation or an agency that carries on a credit reporting business.

"**Deputy Chair**" means the deputy of the Chair appointed under rule 22.10.

"**Director**" means a member of the Board.

"**Financial Service Credit Provider**" means a credit provider as that term is defined in the Privacy Act 1988 (as amended from time to time) whose business is the provision of financial services and any other entity that is accepted by ARCA to be a Financial Service Credit Provider.

"**General Meeting**" means a meeting of Members other than the Annual General Meeting and, where the context requires, includes a Class Meeting.

"**Group member**" has the meaning given in rule 8.3(c).

**"Initial Members"** means those legal persons who have agreed to become or remain Members as at the date of the adoption of this Constitution.

**"Member"** means any member who has been duly admitted to ARCA in accordance with this Constitution, and, for the avoidance of doubt, includes an Associate Member.

**"Member Elected Director"** has the meaning given in rule 15.4(a).

**"Membership"** means membership of ARCA.

**"Non Financial Service Credit Provider"** means a credit provider as that term is defined in the Privacy Act 1988 (as amended from time to time), but which is not a Financial Service Credit Provider and may include telecommunications providers, energy retailers and similar organisations.

**"Office"** means the registered office for the time being of ARCA.

**"Officer"** means an officer as defined in the Act.

**"Ordinary Resolution"** means a resolution of the Board passed by at least 66% of the Directors who voted on the resolution.

**"Register"** means the register of Members kept pursuant to the Act.

**"Related Body Corporate"** has the meaning given in the Act.

**"Special Resolution"** means a resolution passed by at least 75% of the Members or Directors (as the case may be) entitled to vote on the resolution, including those resolutions listed in Schedule 1 of this Constitution.

**"Tier"** means a categorisation of Members within a Class determined by the Board from time to time, which will determine the number of votes the Member has and the annual subscription fee payable by that Member.

**"In writing"** or **"written"** includes printing, lithography and other modes of reproducing or representing words in a visible or tactile form which renders the message retrievable by people who know the language in question.

### 3. Interpretation

- 3.1. The "replaceable rules" now and hereafter contained in the Act do not apply to ARCA unless repeated in this Constitution.
- 3.2. This Constitution is subject to the Act. To the extent that any of the provisions in this Constitution are inconsistent with the Act and might prevent ARCA being registered under the Act, those provisions will be inoperative and have no effect.
- 3.3. A decision of the Board on the construction or interpretation of this Constitution, or on any By-Laws made pursuant to this Constitution or on any matter arising therefrom, is conclusive and binding on all Members of ARCA, subject to such construction or interpretation being varied or revised by the Members of ARCA in General Meeting or by the Supreme Court of New South Wales.
- 3.4. Unless the context or subject matter otherwise requires:
  - (a) words indicating one gender include the other gender and vice versa;
  - (b) the words 'including', 'such as', 'for example' and the like are not, and should not be interpreted to be, words of limitation, unless explicitly stated otherwise; and
  - (c) words indicating the singular include the plural and vice versa.
- 3.5. Any reference to a rule means a rule of this Constitution, unless specified otherwise.

### 4. Objects & Capacity

- 4.1. The objects of ARCA are:

- (a) To lead and advocate on issues that either impact on the integrity and functioning of credit reporting, or are impacted by the credit reporting system.
  - (b) To provide a forum for Credit Providers and Credit Reporting Bodies in Australia to identify, discuss and examine retail credit issues that directly or indirectly affect the credit reporting system and, where possible, to facilitate resolution of these issues.
  - (c) To develop and promote policies and Codes of Conduct to improve the practices of the retail credit industry and where appropriate provide advocacy and leadership to assist in achieving that outcome.
  - (d) To promote, through education and advocacy, responsible credit and best practice in consumer credit management as it relates to credit reporting.
  - (e) To facilitate the functioning of the credit reporting system by providing industry support services, systems and technology (so long as these do not duplicate or compete with services provided by Members or any organisation to which a substantial number of Members belong).
  - (f) To facilitate and conduct research into issues which impact upon responsible credit and credit reporting, as identified by Members.
- 4.2. Subject to rules 5, 6, 7, and 8, ARCA has the legal capacity and all of the powers provided by the Act.

## 5. Non-profit

- 5.1. The income and property of ARCA whenever and however derived will be applied solely towards the promotion of the objects of ARCA as set out in this Constitution and no portion of it is to be transferred directly or indirectly by way of profit to Members or Directors. This does not prevent the payment in good faith:
- (a) for goods supplied in the ordinary and usual course of business;
  - (b) of interest at a reasonable rate on money borrowed from any Member;
  - (c) of reasonable and proper rent for premises demised or let by any Member to ARCA;
  - (d) of remuneration to any officers or servants of ARCA in return for any services rendered to ARCA, where the provision of the service and the amount payable has the prior approval of the Board, and is not more than an amount which commercially would be reasonable payment for the service;
  - (e) of out-of-pocket expenses incurred by a Director in the performance of any duty as a Director where the amount payable does not exceed any amount previously approved by the Board;
  - (f) a financial benefit to a Director to which section 212 of the Act refers including payment of an insurance premium in respect of a contract insuring a Director provided that the financial benefit and/or insurance premium has the prior approval of the Board;
  - (g) of remuneration to Directors, where the remuneration has the prior approval of the Board and where the amount payable is approved by ordinary resolution of Members in a General Meeting.

## 6. Limited Liability & Members' Guarantee

- 6.1. The liability of the Members is limited.
- 6.2. Every Member undertakes to contribute an amount not exceeding two dollars (\$2.00) to the assets of ARCA in the event of the same being wound up while that person is a Member or within one year afterwards for:

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

## 7. Winding Up

- 7.1. If ARCA is wound up or dissolved and there remains any assets after the satisfaction of all its debts and liabilities, the excess will not be paid to or distributed among the Members, but will be given or transferred to:
- (a) a body or organisation which has objects which in the Board's opinion are consistent with the objects of ARCA; or
  - (b) a registered or exempt charity for the purposes of the Income Tax Assessment Act 1997.
- 7.2. A gift or transfer may only be made to a body, organisation or charity described in rule 7.1 if the body, organisation or charity prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on ARCA under or by virtue of rule 5.1 of this Constitution.

## 8. Classes and Tiers of Membership

- 8.1. The Members of ARCA are the Initial Members and such other legal persons the Board admits to Membership in accordance with this Constitution. Membership is held by a legal person and each legal person may only hold one Membership. Membership may be divided into the following Classes:
- (a) Financial Service Credit Providers;
  - (b) Credit Reporting Bodies;
  - (c) Non Financial Service Credit Providers;
  - (d) Associate Members, with such rights as are set out under rule 13.6; and
  - (e) such other Classes as the Members, by Special Resolution, approve from time to time, with such rights (including in relation to voting) as are approved by the Members.
- 8.2. A Group Member will be allocated to one of the Classes set out in 8.1 as determined by the Board under rule 9.2 and as notified to the Group Member under rule 9.3(b).
- 8.3. Membership is open to the following categories of legal persons:
- (a) Credit Providers;
  - (b) Credit Reporting Bodies;
  - (c) industry associations which represent Credit Providers, Credit Reporting Bodies or other persons eligible for Membership (**Group Member**); and
  - (d) such other categories of person who are within any other Class of Member approved under rule 8.1(e).
- 8.4. The Board will from time to time determine the criteria for the establishment of Tiers to which Members will be allocated, having regard to:
- (a) the factors which indicate comparative size between Members of that Class in relation to the provision of consumer credit, such as number of customer accounts, net assets, gross assets and number of credit reports generated in a year;

- (b) the number of Members in a Class and the desirable spread of Members across the Tiers within that Class;
  - (c) whether the persons represented by a Group Member are also Members of ARCA;
  - (d) the principle that all Members should be treated fairly and equitably;
  - (e) the desire to attract potential Members to ARCA; and
  - (f) such other factors as the Board considers appropriate.
- 8.5. The allocation of Members into Tiers is set out in the By-Laws. The Board may, by Special Resolution, vary the determination of Tiers and the allocation of Members to Tiers and, if it does so, will promptly notify all Members of that determination and comply with such Member approval processes as may be required by this Constitution (or as are otherwise mandated by the Act). Such a determination may not be made more than once in any 12 month period, except where the creation of a new Tier is required for the admission of a new Member who will be placed in that Tier.

## 9. Admission to Membership

- 9.1. Nominations for Membership:
- (a) may be made by a person in writing in such form as the Board approves from time to time;
  - (b) must provide such information as ARCA requires to determine the Class of Member and Tier in which the applicant would be placed; and
  - (c) must be lodged with the Chief Executive Officer.
- 9.2. As soon as practical after receiving the nomination for Membership, the Chief Executive Officer must refer the nomination to the Board which is to determine whether to approve or reject the nomination at the next Board meeting after receipt of the application. If the application is approved, the Board must also determine the Class of Membership and Tier in which the Member will be placed.
- 9.3. As soon as practical after the Board makes that determination, the Chief Executive Officer must:
- (a) notify the applicant in writing that the Board approved or rejected the nomination (whichever is applicable),
  - (b) if the Board approved the nomination, notify the Member in writing of the Class of Membership and Tier in which the Member has been placed or, if an Associate Member, notify the Associate Member of the approval and any conditions of the approval; and
  - (c) if the Board approved the nomination, request the applicant to pay (within 28 days after receipt by the applicant of the notification or such other timeframe as the Board may determine in accordance with rule 14) the sum payable under this Constitution by a Member as entrance fee and annual subscription.
- 9.4. The Chief Executive Officer must, on payment by the applicant of the amounts referred to in rule 9.3(a) within the period referred to in rule 9.3(a), enter the applicant's name in the register of Members and, on the name being so entered, the applicant becomes a Member.
- 9.5. Upon being admitted to Membership and informed of the admission, the applicant shall be bound by this Constitution, the By-Laws, any Code of Conduct and any other rules or codes which the Board determines should be applied to Members.
- 9.6. Each Member must give particulars of its address to the Chief Executive Officer (if those particulars have not already been stated on the Membership application) and must notify the Chief Executive Officer in writing of any subsequent change of address. The address so given shall be deemed to be the Member's registered address for the purpose of the issue of notices.



- 9.7. Each Member must give the Chief Executive Officer particulars of its nominated representative and an alternate representative and must notify the Chief Executive Officer in writing of any subsequent change of nominated representative or alternative. The purpose of the nominated representative and alternate representative (as applicable) is to attend meetings and vote on behalf of its Member in accordance with section 250D of the Act.

## 10. Associate Membership

- 10.1. An Associate Member will be admitted to Membership in the manner set out in rule 9.
- 10.2. Each Associate Member will remain an Associate Member for a fixed term, such term to be determined by the Board and notified to the Associate Member.
- 10.3. Upon expiry of the fixed term, the Associate Member may seek a renewal of its Membership.
- 10.4. Renewal of an Associate Member's Membership will be determined at the discretion of the Board.

## 11. Cessation of Membership

- 11.1. A legal person ceases to be a Member if the Member:
- (a) subject to rule 11.3, gives written notice of resignation to the Chief Executive Officer or the secretary, or
  - (b) is expelled from ARCA (as determined by the Board in accordance with rule 11.7 or 11.8);
  - (c) becomes insolvent, has a receiver, receiver and manager, administrator or liquidator appointed, or is wound up (except for the purposes of reconstruction or amalgamation);
  - (d) ceases to satisfy the criteria for admission to Membership
- 11.2. A Member is not entitled to resign that Membership except in accordance with this rule 11.
- 11.3. A Member may resign if that Member:
- (a) has paid all amounts payable by the Member to ARCA in respect of:
    - (i) the year in which the Member wishes to resign, regardless of whether that Member has made arrangements to pay such fee in instalments; and
    - (ii) all arrears of subscriptions due and unpaid at the date of on which the Member wishes to resign; and
  - (b) gives to the Chief Executive Officer or the secretary written notice of at least 30 days of the Member's intention to resign.
- 11.4. On the expiration of the period of notice pursuant to rule 11.3(b), the Member ceases to be a Member.
- 11.5. If a Member ceases to be a Member, the Chief Executive Officer must make an appropriate entry in the register of Members recording the date on which the Member ceased to be a Member.
- 11.6. If a Member ceases to be a Member, the Member shall:
- (a) continue to be liable for any unpaid entrance fees or annual subscriptions;
  - (b) continue to be liable for any and all arrears of subscriptions due and unpaid at the date of resignation;
  - (c) not be eligible to receive a refund for any part of the entrance fees or subscriptions paid; and
  - (d) continue to be liable for any sum not exceeding \$2.00 as a Member.

- 11.7. If any Member refuses or neglects to comply with the provisions of this Constitution or any Code of Conduct (other than an obligation to pay annual subscriptions or other amounts), such Member may be suspended or expelled by Special Resolution of the Board (and the decision of the Board shall be final) and such Special Resolution need not state the grounds, facts or opinions upon which it is based, provided that:
- (a) at least 7 days before the meeting at which such Special Resolution is passed the Member concerned is given notice in writing of the particulars of the alleged failure to comply with the provisions of this Constitution and, before any Special Resolution is moved, is given an opportunity to provide any explanation or defence (which may be given in writing or verbally);
  - (b) the meeting is held within 30 days of the date of the alleged failure to comply with the provisions of this Constitution; and
  - (c) any Member notified or any Member proposed to be notified may immediately be suspended from all privileges of ARCA until such time as the meeting is held.
- 11.8. A Member will cease to be entitled to any of the rights or privileges of Membership if any fees dues and payable to ARCA remain unpaid for 3 months and the Member has been given written notice of the default. All rights and privileges of Membership will be reinstated on payment of all arrears, except where the arrears are not paid in full within 3 months of the date of the written notice of default, in which case the Board may terminate the Membership.

## 12. Register of Members

- 12.1. The Chief Executive Officer must establish and maintain the Register and must enter in it the full names, addresses, and email addresses of Members, the date upon which they became Members and the date upon which any Member ceased to be a Member. The Register must not be used for any purpose not permitted by the Act.
- 12.2. The Register must be kept at the principal place of administration of ARCA and must be open for inspection, free of charge, by any Member.

## 13. Rights and duties of Members

- 13.1. Membership is not transferable whether by operation of law or otherwise. All rights and privileges of Membership cease on termination of Membership.
- 13.2. A Member must not enter into or give effect to any contract, arrangement or understanding under which a Member (or any associate of a Member) has or will receive any material benefit in consideration for voting in a particular way (including not voting) on any matter before a General Meeting.
- 13.3. Each Member must comply with each Code of Conduct, to the extent that such Code of Conduct applies to the business of that Member.
- 13.4. Each Member, other than Associate Members, will have the number of votes which applies to its Tier and Class of Membership as determined by the Board from time to time in accordance with this Constitution and the By-Laws. The Board may, by Special Resolution, determine the number of votes which each Member in a Class and Tier will have from time to time, having regard to:
- (a) the number of Members in a Class;
  - (b) giving smaller Members a greater number of votes in proportion to the annual subscription fee;
  - (c) treating Members across different Classes on a fair and equitable basis, which reflects the relative financial and other contributions which Members make to ARCA (but this does not

- require that voting rights are strictly correlated to the annual subscription fees paid by Members);
- (d) whether any bodies represented by a Group member are also Members of ARCA; and
  - (e) any Member approval processes as may be required by this Constitution (or as are otherwise mandated by the Act).
- 13.5. The number of Member votes allocated to each Class and Tier is set out in the By-Laws. The Board may, by Special Resolution, determine to vary the allocation of votes and, if it does so, will promptly notify all Members of that determination and comply with such Member approval processes as may be required by this Constitution (or as are otherwise mandated by the Act). Such a determination may not be made more than once in any 12 month period, except where required for the admission of new Members.
- 13.6. Associate Members do not have voting rights.
- 13.7. Each Member may, where it believes it is appropriate or necessary to do so, pursue its separate interests and take action that may be contrary to a position proposed or taken by ARCA.

## **14. Entrance Fee and Annual Subscription**

- 14.1. The Board may from time to time determine:
- (a) whether an annual subscription fee will be payable;
  - (b) the amount of annual subscription fee payable by each Member based on the Tier and Class of Membership of that Member, and
  - (c) the amount of entrance fee payable by any applicant for Membership.
- 14.2. The Board must set annual subscription fees on a basis which:
- (a) treats each Class of Members fairly and equitably, having regard to the number of Members in a Class and the financial position of Members in the Class;
  - (b) does not impose an undue burden on any Class or Tier, relative to any other Class or Tier; and
  - (c) takes account of whether any bodies represented by a Group member are also Members of ARCA and the fees which would be payable by the bodies represented by the Group member, if they were Members in their own right.
- 14.3. The decision to set entrance fees and annual subscription fees must be approved by a Special Resolution of the Board.
- 14.4. If a Member's Membership ceases, the Member's entrance fee and annual subscription fee is not refundable.
- 14.5. Subject to rule 14.6, the annual subscription fee period will be computed from 1 July in each year, and annual subscription fees will be due in advance within 30 days of that date.
- 14.6. Subject to rule 14.2, the Board may:
- (a) determine that the annual subscription fee be a different amount, including based on the date a Member's Membership commences;
  - (b) determine that the entrance fee and/or annual subscription fee payable by one or more Members or one or more Classes or Tiers be payable at a different time or times, including by instalments; and
  - (c) waive all or some of, the fees payable by one or more Members or one or more Classes or Tiers at any time.

## 15. Number and composition of directors

- 15.1. The minimum number of Directors is 3. Subject to rule 15.2, the maximum number of Directors is 12.
- 15.2. The Directors may change the maximum number of permitted Director positions in the manner required by the Act.
- 15.3. If at any time the number of Directors falls below 3, the remaining Director or Directors may act but only:
- (a) in an emergency;
  - (b) for the purpose of convening a general meeting of ARCA; or
  - (c) for the purpose of increasing the number of Directors to 3.
- 15.4. Subject to rule 15.5, a person may become a Director in the following ways:
- (a) election by the Members (**Member Elected Directors**);
  - (b) appointment by the Board (**Board Appointed Directors**); and
  - (c) appointment by the Board to fill any vacancy in the number of Member Elected Directors however arising (**Casual Vacancy**).
- 15.5. Subject to rule 15.4(c):
- (a) 6 Director positions are reserved for, and may only be filled by, Member Elected Directors, with the number of positions allocated for election from each Class and Tier as described in the By-Laws;
  - (b) 4 Director positions are reserved for, and may only be filled by, Board Appointed Directors;
- 15.6. 2 Director positions are each reserved for either Member Elected Directors or Board Appointed Directors, as determined by the Board not less than two months prior to the date scheduled for the holding of an annual general meeting, and may only be filled in accordance with such determination of the Board.

## 16. Qualifications and requirements of directors

- 16.1. To be eligible for election as a Member Elected Director under rule 15.5(a) a person must:
- (a) be 18 years of age or older;
  - (b) be nominated in writing for election by at least 1 Member in the way and within the timeframes determined by the Board from time to time and as set out in the By-Laws;
  - (c) be an employee of a Member or of the Related Body Corporate of a Member;
  - (d) not be ineligible to be a Director under the Act;
  - (e) have knowledge about and be committed to the objects of ARCA as set out in this Constitution;
  - (f) not be an employee of ARCA; and
  - (g) meet any other criteria relating to the composition of the Board and skills and qualifications of Directors as may be determined by the Board from time to time.
- 16.2. To be eligible for appointment as a Board Appointed Director under rule 15.5(b) a person must comply with all the requirements of rule 16.1 other than rules 16.1(b) and 16.1(c).
- 16.3. To be eligible to fill a Casual Vacancy under rule 15.5(c), a person must:
- (a) comply with all the requirements of rule 16.1 other than rule 16.1(b); and

- (b) be nominated in writing for appointment by the same Member for whom the relevant outgoing Director was an employee (or was an employee of a Related Body Corporate of that Member) within 1 month of the vacancy arising, failing which this requirement will not apply and the Board may appoint a person in accordance with rule 16.3(a) and otherwise at its discretion.

## 17. Directors' term of office and term limits

- 17.1. The term of office of a Member Elected Director:
  - (a) commences at the conclusion of the annual general meeting at which the election occurs or the results are declared; and
  - (b) continues until the conclusion of the first, second or third annual general meeting following that Director's election, with the relevant period to be determined by the Board not less than two months prior to the date scheduled for the holding of the annual general meeting at which the election occurs or the results are declared.
- 17.2. The term of office of a Board Appointed Director commences on the date that person is appointed as a Director and continues for the period determined by the Board at the time of appointment – such period not to exceed three years.
- 17.3. The term of office for a Casual Vacancy commences on the date that person is appointed as a Director and continues until the end of the next annual general meeting.
- 17.4. Each Director is to remain as a Director until that person's term of office expires or until that person resigns or is otherwise removed as a director of ARCA in accordance with the law and this Constitution.
- 17.5. A person who holds, or has held, the office of Director for nine or more consecutive years must retire at the conclusion of the ninth year of office but is:
  - (a) eligible for election or appointment for one further term of up to three years only if determined by Special Resolution of the Board; and
  - (b) again eligible for election or appointment once a period of three years has expired since that person last held office as a Director.
- 17.6. For the avoidance of doubt, the maximum term of office referred to in rule 17.5 includes any term served by a Director prior to the adoption of rule 17.5.

## 18. Validity of acts

- 18.1. An act done by a Director or by a meeting of the Board or a committee attended by a Director is not invalid just because:
  - (a) of a defect in the appointment of the Director;
  - (b) the person is disqualified from being a Director or has vacated office; or
  - (c) the person is not entitled to vote,
- 18.2. if that circumstance was not known by the person or the Board or committee, as the case may be, when the act was done.

## 19. Alternate directors

- 19.1. Subject to rule 19.2, a Director may, by notice in writing to ARCA, appoint a person to be the Director's alternate director for a period which the Director thinks fit and may, by notice in writing to ARCA, terminate the appointment of the alternate. An alternate director appointed by a Director must be a person who satisfies the eligibility requirements in rule 16.1 (other than rules 16.1(b) and 16.1(c)).
- 19.2. A Board Appointed Director may not appoint an alternate director.
- 19.3. Subject to rule 19.8, an alternate director is entitled, if the appointer does not attend a meeting of directors, to attend and vote in place of and on behalf of the appointer.
- 19.4. In the absence of the appointer, an alternate director may exercise any powers that the appointer may exercise, without reference to the appointer, and the exercise of that power by the alternate director is to be taken to be the exercise of the power by the appointer.
- 19.5. The office of an alternate director is vacated if and when the appointer vacates office as a Director.
- 19.6. An alternate director is not to be taken into account in determining the minimum or maximum number of Directors allowed under this Constitution.
- 19.7. In determining whether a quorum is present at a meeting of the Board, a Director or an alternate director who attends the meeting is to be counted once only.
- 19.8. An alternate director, while acting as a Director, is responsible to ARCA for his or her own acts and defaults and is not to be taken to be the agent of the Director by whom he or she was appointed.

## 20. Duties of Directors

- 20.1. Each Director must act in the best interests of ARCA as a whole and with due regard to the furtherance of ARCA's objectives. Each Director must also act in accordance with all non-excludable duties or obligations owed by the Director to ARCA or the Members under general law, the Act, or other provisions of this Constitution.
- 20.2. A Director will not, by virtue of their position as a Director, have access to customer information or confidential information relating to any of the other Members or their Related Bodies Corporate. A Director is entitled to request and receive such information in aggregated and summary form provided that such information does not disclose confidential information about the assets, business or affairs of other Members.
- 20.3. If in a Director's reasonable opinion, they require any information to which they are not otherwise entitled in order to discharge their duty as a Director, the following procedure must be followed:
  - (a) The Director must request the information from the Chief Executive Officer, providing details of why they believe they require access to the information;
  - (b) The Chief Executive Officer must promptly notify the Board of the request, and provide it with details of why the Director requires the information in question; and
  - (c) The Board must consider and determine whether to permit the Director access to the information requested and may impose conditions on the disclosure of the information requested, including notification of the release of the information to the relevant customer or data source.
- 20.4. The Directors recognise that the Chief Executive Officer may propose other restrictions regarding disclosure of information to a Director for approval by the Board.

## 21. Powers of the Board

- 21.1. The management of the business and general affairs of ARCA will be vested in the Board who, in addition to the powers and authorities conferred by this Constitution or otherwise may exercise all powers and do all acts and things as can be exercised or done by ARCA and are not required to be exercised or done by the Members in General Meeting. In particular, but without derogating from its general powers, the Board will have power from time to time:
- (a) to make such Codes of Conduct, rules, regulations and By-Laws not inconsistent with this Constitution as in the opinion of the Board are necessary or desirable in furtherance of ARCA's objectives and for the proper control, administration and management of ARCA's finances, affairs, interests, effects and property of the Members and to amend or rescind from time to time any such Codes of Conduct, rules, regulations and By-Laws;
  - (b) to enforce the observance of all Codes of Conduct, rules, regulations and By-Laws by suspension from enjoyment of Association privileges to any of them; and
  - (c) to appoint any delegate or delegates to represent ARCA for any purpose with such powers as may be thought fit.
- 21.2. The Board may, by Special Resolution, appoint a natural person to be the Chief Executive Officer, on such terms, conditions and remuneration as the Board determines. The Chief Executive Officer is responsible for the control and management of the business and day to day operations of ARCA. The Board may from time to time, and upon such terms and conditions and with such restrictions as they deem fit, confer upon the Chief Executive Officer all or any of its powers (which the Board may at any time or times alter, revoke, withdraw or vary).
- 21.3. The Board may, by Special Resolution, resolve to terminate the appointment of the Chief Executive Officer (subject to compliance with the terms of employment of the Chief Executive Officer).
- 21.4. In addition to anything else required by the Constitution, approval of, or variation to, the annual budget for ARCA must be approved by a Special Resolution of the Board.
- 21.5. In addition to anything required by the Act, the Board may not commit ARCA to commencing any material new line of business for ARCA (including appointment to a role under any government approved codes of conduct) except in accordance with a Special Resolution of the Members.

## 22. Meetings of the Board of Directors

- 22.1. The Board must meet as often as required for the transaction of the business of ARCA, but not less than 3 times in any 12 month period. The names of all Directors present and voting and minutes of all resolutions or proceedings of the Board must be entered in a book provided for the purpose. The quorum of the Board will be a majority of current Directors.
- 22.2. A Director may, whenever the Director thinks fit, convene a meeting of the Directors.
- 22.3. Subject to this Constitution, notice of a meeting of Directors must be given to each person who is at the time of giving the notice:
- (a) a Director; or
  - (b) an alternate director appointed under rule 19 (**Alternate directors**).
- 22.4. A notice of a meeting of Directors:
- (a) must specify the time and place of, or form of technology for, the meeting;
  - (b) need not state the nature of the business to be transacted at the meeting;
  - (c) may be given in person or by post, or, subject to the Act, by a form of technology; and
  - (d) is taken to have been given to an alternate director if it is given to the Director who appointed that alternate director.

- 22.5. A Director or alternate director may waive notice of a meeting of Directors by notifying ARCA to that effect in person or by post, or by a form of technology.
- 22.6. The non-receipt of notice of a meeting of Directors by, or a failure to give notice of a meeting of Directors to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
- (a) the non-receipt or failure occurred by accident or error;
  - (b) before or after the meeting, the Director or an alternate director appointed by the Director:
    - (i) waives notice of that meeting under rule 22.5;
    - (ii) notifies ARCA of his or her agreement to that act, matter, thing or resolution personally or by post, or by a form of technology; or
  - (c) the Director or an alternate director appointed by the Director attended the meeting.
- 22.7. Attendance by a person at a meeting of Directors waives any objection that person and:
- (a) if the person is a Director, an alternate director appointed by that person; or
  - (b) if the person is an alternate director, the Director who appointed that person as alternate director,
- may have to a failure to give notice of the meeting.
- 22.8. The Chair will, if present, preside at all meetings of the Board and in that person's absence the Deputy Chair of the Board will preside. If both the Chair and Deputy Chair of the Board are absent the Directors present at the meeting will elect one of them to be chair of the meeting.
- 22.9. A meeting of the Board may be called or held using any technology consented to by all Directors. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable period before the meeting.
- 22.10. Subject to rule 22.11, the Board shall at its first meeting after the Annual General Meeting elect from Directors a Chair and a Deputy Chair.
- 22.11. The Chair must be a Board Appointed Director or if, for whatever reason, there are no Board Appointed Directors, the Chair must be a Director.
- 22.12. The Board may by Ordinary Resolution remove any Chair or Deputy Chair, but doing so does not remove that person as a Director.
- 22.13. Subject to rule 22.11, the Board shall fill any casual vacancy in the office of Chair or Deputy Chair.
- 22.14. At a meeting of Directors, each Director has one vote. The chair does not have a casting vote.
- 22.15. Any decision of the Board that is not required by this Constitution to be a Special Resolution must be approved by an Ordinary Resolution.
- 22.16. In the case of an equality of votes on a proposed resolution, the proposed resolution is to be taken as having been lost.

## **23. Resolutions without meetings**

- 23.1. The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution assent to a document containing a statement that they are in favour of the resolution set out in the document.
- 23.2. Separate copies of a document may be used if the wording of the resolution and statement is identical in each copy.
- 23.3. The resolution is passed when the last Director assents.



- 23.4. A Director may signify assent to a document by signing the document or by notifying ARCA of the Director's assent in person or by post, fax, electronic, telephone or other method of written, audio or audio visual communication.
- 23.5. Where a Director signifies assent to a document otherwise than by signing the document, the Director must by way of confirmation sign the document at the next meeting of the Directors attended by that Director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- 23.6. Where a document is assented to in accordance with this rule 23, the document is to be taken as a minute of the passing of the resolution.

## **24. Ceasing to be a director**

- 24.1. Subject to the law, the office of Director will be immediately vacated and a casual vacancy created if that person:
- (a) becomes disqualified from managing any company under Part 2D.6 of the Act and is not given permission to manage a company under Sections 206F or 206G of the Act;
  - (b) fails to disclose in accordance with the Act the nature of any material personal interest in a matter that relates to the affairs of ARCA;
  - (c) becomes of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (d) dies;
  - (e) is absent from 3 consecutive meetings of the Board (including an absence where the person has an alternate director present at the meeting) without leave of absence from the Board;
  - (f) ceases to satisfy the eligibility criteria set out in rules 16.1(c) and 16.1(f); or
  - (g) is otherwise removed by Members in accordance with the Act.
- 24.2. Nothing in rule 24.1 prevents a director from vacating office by providing a written notice of resignation to ARCA addressed to the Chair or the secretary. Subject to the law, unless the notice provides otherwise, the resignation takes effect from the date the notice is received.

## **25. Sub-Committees**

- 25.1. The Board may delegate any of its powers to a sub-committee or sub-committees consisting of such individuals as the Board may from time to time determine and may from time to time revoke, withdraw, alter or vary the delegation or the appointment of any member of a sub-committee.
- 25.2. Any sub-committee so constituted or individual or individuals so appointed will in the exercise of the powers so delegated conform to any regulations that may from time to time be imposed by the Board.
- 25.3. If a sub-committee has more than one member, a quorum for a meeting of that sub-committee is constituted by a majority of the members of the sub-committee.
- 25.4. Meetings of any sub-committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Board.

## 26. Meetings of Members

- 26.1. The Annual General Meeting of ARCA must be held no later than 5 months after the end of each financial year (at such time and place determined by the Board) or such later time as permitted under the Act.
- 26.2. Each Member must be given not less than 21 clear days written notice of any General Meeting.
- 26.3. Subject to the Act, the contemporaneous linking together by a form of technology of a number of the Members sufficient to constitute a quorum constitutes a meeting of the Members and all the provisions in this Constitution relating to meetings of the Members apply, so far as they can and with such changes as are necessary, to meetings of the Members held using a form of technology.
- 26.4. General Meetings are to be held at the times, places and via the technology prescribed by ARCA in General Meeting or, if no time, place and form of technology is prescribed, then as determined by the Directors. Every notice convening a General Meeting must be in writing and must specify the place, the day and the hour of, and the form of technology for, the meeting and such information concerning the business proposed to be transacted as is required to be given by this Constitution or the Act.
- 26.5. A General Meeting may be convened by:
  - (a) the Directors by resolution of the board; or
  - (b) Members or the court in accordance with sections 249E, 249F and 249G of the Act.
- 26.6. A general meeting must be convened by the directors in accordance with section 249D of the Act.
- 26.7. Notwithstanding rule 26.4, the ordinary business of the Annual General Meeting may include any of the following, even if not referred to in the notice of meeting:
  - (a) to receive and consider the reports of the Board;
  - (b) to receive and consider the financial statements and the report of the auditor;
  - (c) to deal with any business of which due notice has been given in writing; and
  - (d) to deal with all business and notices of motion which shall be provided to the Chief Executive Officer at least 28 days prior to the date of the Annual General Meeting.
- 26.8. The Chair (if present) will be entitled to preside at all General Meetings. In the event of the Chair being absent, the Deputy Chair will preside and in the event of both of them being absent the Board will elect a director to be chair of the General Meeting.
- 26.9. Every question or motion submitted to the General Meeting will be decided in the first instance by a show of hands. On a show of hands every Member present and entitled to vote has one vote. In the case of equality of votes the chair will (both on a show of hands and on a poll) not have a casting vote in addition to the vote (if any) to which that person is entitled as a Member.
- 26.10. At any General Meeting (unless a poll is demanded by the chair or by at least five Members present and entitled to vote at the General Meeting) a declaration by the chair that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority, and any entry to that effect in the book of proceedings of ARCA, will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 26.11. If a poll is demanded it must be taken in the manner and at such time and place as the chair directs. On a poll, every Member present and entitled to vote or that Member's proxy (as the case may be) has the number of votes applicable to the Class and Tier in which, pursuant to rules 8.5 and 13.4, that Member is placed and in respect of which the Member is entitled to vote. The result of the poll will be deemed to be the resolution of the General Meeting at which the poll was demanded, provided that a poll on the election of a chair of General Meeting or any question of adjournment must be taken at the General Meeting and without adjournment. The demand for a poll will not prevent the continuance of the General Meeting for the transaction of any business other than the question on which a poll has been demanded. The demand for a poll may be withdrawn. In case of

- any dispute as to the admission or rejection of a vote the chair shall determine the same and such determination made in good faith be final and conclusive.
- 26.12. The chair may with the consent of the meeting adjourn the same from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 26.13. Any General Meeting at which a quorum is present may be adjourned by resolution as the meeting may determine and no notice of such adjournment need be given.
- 26.14. Subject to the Act, proxy voting is permitted, with respect to voting for the election of the Board and upon resolutions considered at General Meetings.
- 26.15. The chair may require any person purporting to act as a proxy to establish to the satisfaction of the chair that the person has been validly appointed as a proxy and is the person named in the relevant instrument of appointment, failing which the person may be excluded from attending or voting at the meeting.
- 26.16. A proxy may not vote at a General Meeting or adjourned meeting unless the instrument appointing the proxy is received:
- (a) at the registered office of ARCA, at the facsimile number at its registered office or at another place, facsimile number or electronic address specified for that purpose in the notice convening the General Meeting; and
  - (b) at least 48 hours before the time scheduled for the commencement of the General Meeting, as specified in the notice of meeting.
- 26.17. The authority of a proxy to speak and vote for a Member at a General Meeting is suspended while that Member is present at the meeting unless the Members present at the meeting resolve otherwise.
- 26.18. This rule 26 will apply to meetings of a Class of Members with any necessary changes.

## **27. Quorum for meetings**

- 27.1. At a General Meeting called by the Directors, 5 Members who are present and entitled to vote will be a quorum.
- 27.2. At a Class Meeting, the lesser of 5 Members of that Class and half the Members of the Class (rounded up to the nearest whole number) who are present and entitled to vote will be a quorum.
- 27.3. If a quorum is not present within 15 minutes of the time fixed for a General Meeting, the meeting if convened on or by the requisition of Members will be dissolved. If convened by the Directors, it must be adjourned to the same day in the next week at the same time and place, or as the Directors determine. If, at the adjourned meeting, a quorum is not present within 15 minutes of the time appointed for the meeting, the Members present will be a quorum.
- 27.4. This rule 27 will apply to meetings of a Class of Members, with any necessary changes.

## **28. Minutes of meetings**

- 28.1. The Board will cause minutes to be kept by the Chief Executive Officer in books provided for the purpose of recording:
- (a) all appointments of officers made by ARCA at the Annual General Meeting or by the Board, or of any business conducted at any General Meeting;
  - (b) the names of the Directors present at each meeting of the Board;
  - (c) the number of delegates of Members present and voting at General Meetings; and

- (d) all resolutions and proceedings at all meetings of ARCA.
- 28.2. Minutes of a meeting must be signed by the chair of the meeting or the chair of the next meeting within a reasonable time after the meeting.

## **29. Financial year**

- 29.1. The financial year of ARCA will commence on the first day of July of each year and end on the last day of June of the following year.

## **30. Accounts and audit**

- 30.1. The Board will cause correct accounts and books to be kept showing the financial affairs of ARCA and the particulars usually shown in books of account of a like nature and showing in particular (but not limited to):
  - (a) all sums of money received and expended by ARCA and the matters in respect of which the receipt and expenditure takes place;
  - (b) all sales and purchases of goods by ARCA; and
  - (c) the assets credits and liabilities of ARCA.
- 30.2. The books of account will:
  - (a) be kept at the registered office of ARCA or at such other place as the Board thinks fit;
  - (b) always be open to the inspection of the Directors; and
  - (c) be open to the inspection of Members at such times and places as determined by the Board from time to time.
- 30.3. ARCA must, within 4 months after the end of ARCA's financial year or not less than 21 days before each Annual General Meeting (whichever is the earlier), send to each Member, but subject to Section 316 of the Act, either:
  - (a) copy of the financial report required under Section 295 of the Act, a copy of the directors' report required under Section 298 of the Act and a copy of the auditor's report required under Section 308 of the Act; or
  - (b) a copy of the concise report that complies with Section 314(2) of the Act.

## **31. Auditors**

- 31.1. Auditors may be appointed by the Board and their duties regulated in accordance with the provisions of the Act.

## **32. Notices**

- 32.1. A notice may be given by ARCA to any Member either personally, or by sending the notice to the facsimile number or electronic address (if any) nominated by the Member, or by sending it by post to it or its registered address or if it has no registered address within the State of New South Wales to the address if any within the said State supplied by it to ARCA for the giving of notices.
- 32.2. Where a notice is sent by post service of the notice shall be deemed to be effective by properly addressing prepaying and posting the notice and shall be deemed to have been effected in the case of a notice convening a meeting on the day following that on which the same shall have been posted

and in any other case at the time at which the notice would have been delivered in the ordinary course of post.

- 32.3. Where a notice is sent by facsimile or by other electronic means, the notice is taken to have been given on the day following that on which the notice was sent.

### **33. Indemnity**

- 33.1. ARCA must indemnify, to the extent permitted by law, each person who is or has been a director, alternate director or other officer of ARCA, and may, if the Board so determines, indemnify any auditor or former auditor of ARCA for all losses or liabilities incurred by the person as an officer including, but not limited to, a liability for negligence or for reasonable legal costs on a full indemnity basis.
- 33.2. To the extent permitted by law, ARCA may pay a premium for a contract insuring a person who is or was an officer of ARCA against a liability (including a liability for legal costs) arising out of that person's conduct as such an officer.

### **34. Miscellaneous**

- 34.1. Any heading attached to any provisions of this Constitution will not affect the interpretation of this Constitution.
- 34.2. ARCA will give a copy of this Constitution to any Member within 7 days if that Member:
- (a) asks ARCA, in writing, for a copy; and
  - (b) pays a fee (up to the fee prescribed by the Act) if required by ARCA.

### **35. Amendments to Constitution**

- 35.1. This Constitution may only be altered or amended in a manner permitted by the Act.

## **Schedule 1 – Decisions requiring a Special Resolution of Members or Directors**

### **Part A – Decisions of Directors requiring a Special Resolution**

Rule 8.5

Rule 11.7

Rule 13.4

Rule 13.5

Rule 14.3

Rule 17.5(a)

Rule 21.2

Rule 21.3

Rule 21.4

### **Part B – Decisions of Members requiring a Special Resolution**

Rule 8.1(e)

Rule 21.5