



## Notice of General Meeting and Explanatory Memorandum

### HL7 Australia Limited

(ABN 37 629 010 297)

Date of Meeting 31 May 2022

Time of Meeting: 3:30 pm (AEST)

Place of Meeting: Via web-based videoconference technology to be accessed in accordance with instructions to be emailed to all Members a reasonable time before the meeting.

### NOTICE OF GENERAL MEETING

Pursuant to clauses 20.1 and 23 of the Constitution and Part 2G.2 of the Corporations Act, notice is hereby given that a general meeting of Members of HL7 Australia Limited will be held using web-based videoconference technology at 3:30 pm (AEST) on Tuesday, 31 May 2022.

### PURPOSE

The purpose of the general meeting is to consider, and if considered fit, to pass a special resolution amending the Constitution of HL7 Australia by adopting the revised version of the constitution set out in Attachment B to this notice of meeting.

### BACKGROUND

HL7 Australia has been operating under its current Constitution since being reconstituted as a public company limited by guarantee (HL7 Australia Limited) on 04 October 2018. Prior to this transition, HL7 Australia had been operating as an association incorporated under the laws of the Australian Capital Territory for over 15 years.

In making this transition, and following extensive consultation with the HL7 Australia membership, the HL7 Australia leadership established a constitutional framework for the new company that retained many traditional features of HL7 Australia, some of which are somewhat unusual in membership organisations incorporated as companies limited by guarantee ('**CLG**'), for example, members having different voting rights and the ability to involve different numbers of personnel in HL7 Australia activities depending on their level of membership. Many of these features reflect similar aspects of HL7 International Inc ('**HL7.org**') and facilitate members of HL7 Australia being able to benefit from the relationship between HL7 Australia and HL7.org, while allowing both organisations to have completely separate and independent corporate identities.

The transition was also taken as an opportunity to strengthen the Board's role in governance and to provide greater continuity by introducing staggered 2-year terms for directors and office bearers and to provide for renewal by limiting the maximum consecutive period that a person could serve as a director.



Changes were made to the processes for holding the AGM and the associated election of directors, some aspects of which were written into a By-law. In some areas, the Constitution delves into levels of specificity that is unusual for a professional or industry association incorporated as a CLG – and in some cases this has limited the Board’s ability to innovate and improve its management processes.

Experience over the 3½ years since the transition has highlighted a range of issues with the content and application of the Constitution and the associated By-laws, particularly in relation to the conduct of elections and general meetings and has revealed a lack of flexibility to handle unforeseen circumstances.

More importantly, more detailed examination of these issues has revealed that some key provisions of the Constitution are inconsistent with each other, with preferred HL7 Australia practices, and with specific requirements of the *Corporations Act 2001* (Cth) (**‘Corporations Act’**) applicable to HL7 Australia as a CLG, which is a form of ‘public company’.

On the basis of issues raised by Richard Dixon Hughes of DH4 Pty Ltd in his role as returning officer in HL7 Australia elections since the transition, his experience as a company director and his familiarity with the constitutional requirements for CLGs, the Board retained him to conduct further review into these issues and prepare an amendment to the Constitution and associated By-laws to address them.

**The Board now proposes that the constitution of HL7 Australia be amended by adopting a revised version of the constitution along the lines set out in Attachment B** to this Notice of Meeting and Explanatory Memorandum, with the revised version to come into effect, if adopted, on 01 June 2022.

The power to make By-laws is vested in the Board of HL7 Australia. Subject to Members giving their approval to amend the Constitution as proposed, the Board has resolved to replace the existing By-laws with a revised version of the By-laws along the lines of those set out in Attachment C. Provided that the proposed amendment to the constitution, passes, this change to the By-laws will come into effect at the same time as the proposed amendment to the constitution.

These By-laws have an integrated structure that will facilitate their update, maintenance, use and, where necessary, extension. They contain some provisions that are presently detailed in the Constitution (notably the table of membership classes and associated qualifications, rights and privileges, the identification of office bearer roles, and aspects of the conduct of Board elections). New parts are proposed to handle aspects such as the calculation of membership fees, which the Constitution requires to be specified in the By-laws but which were not previously included.

The EXPLANATORY MEMORANDUM below provides more detail on the principal areas of change proposed in the revised version of the constitution.

Current versions of the HL7 Australia constitution and By-laws may be found at the following location <https://drive.google.com/drive/folders/1kqxRPh4tWrEJWwrvhYBuLT4iYB86zZNz?usp=sharing>

## AGENDA

### Special Resolution:

Under the Corporations Act and clause 6 of the Constitution, the constitution of HL7 Australia may be amended by the Members passing a Special Resolution at a general meeting of HL7 Australia that has been properly convened for the purpose.



It is proposed that at the general meeting, the Members will consider and, if thought fit, to pass the following as a Special Resolution:

*“It is hereby resolved that:*

- (a) for the purposes of section 136(2) of the Corporations Act and for all other purposes, the constitution of HL7 Australia Limited be amended by adopting the revised version of the constitution substantially as set out in Attachment B to the notice of this general meeting as circulated and endorsed at this meeting; and*
- (b) the constitution as amended by this resolution come into effect from 1 June 2022.”*

Close of meeting

## NOTES

### Interpretation

In this Notice of Meeting and Explanatory Memorandum, unless the context otherwise dictates:

- (a) **Constitution** means the constitution of HL7 Australia Ltd (ACN 629 010 297) as at the date of this Notice of Meeting and Explanatory Memorandum;
- (b) **Notice of Meeting and Explanatory Memorandum** means this document including Attachment A, Attachment B and Attachment C hereto;
- (c) a term that is defined in the Constitution, covers the same subject and is not differently defined in this Notice of Meeting and Explanatory Memorandum has the meaning given to it in the Constitution; and
- (d) the rules of interpretation set out in clauses 73 and 74 of the Constitution apply to the interpretation of this Notice of Meeting and Explanatory Memorandum.

### Eligibility to vote

Each Member of HL7 Australia that was financial on 28 February 2022 and all who join or renew after that date are entitled to attend and vote at the General Meeting. Members who have yet to renew are reminded to do so as soon as possible to ensure that HL7 Australia has time to update your status on the Register so that you can vote (in person or by proxy) at the General Meeting.

In the case of Organisational Members, attendance and voting are by means of Representatives and/or proxies.

Organisational Members intending to attend and vote via their Representative(s) should ensure that the nomination(s) of their Representative(s) are up to date in order to ensure that instructions for accessing and voting at this general meeting are delivered to the right people.

### Special Resolution

A special resolution must be passed by at least 75% of the votes cast by Members entitled to vote on the resolution and present (in person, by Representative or by proxy) at a General Meeting.



#### Changes to revised version of the constitution before or at the General Meeting

If, in the period between the issue of this Notice of Meeting and Explanatory Memorandum and the vote on the proposed special resolution at the general meeting, the Board becomes aware of any errors or other matters that need to be corrected in the proposed revised version of the constitution at Attachment B, such corrections will be brought to the attention of Members as part of circulation and endorsement of the document at the general meeting.

#### Voting by proxy

A Member may appoint one or more proxies to vote on behalf of the Member at the general meeting by completing a copy or copies of the proxy form at Attachment A in respect of such proxies. If a Member appoints a proxy:

- (a) the proxy does not need to be a Member; and
- (b) the proxy form must be delivered to HL7 Australia by email to [secretary@HL7.com.au](mailto:secretary@HL7.com.au) with copies to [chair@HL7.com.au](mailto:chair@HL7.com.au), [admin@HL7.com.au](mailto:admin@HL7.com.au), and [returning.officer@HL7.com.au](mailto:returning.officer@HL7.com.au) and must be received by HL7 Australia at least 48 hours before the General Meeting.

#### Quorum

At least five Members (a quorum) must be present (including by technological means) in person, by proxy or by Representative (for Organisational members) for the whole meeting. When determining whether a quorum is present, a person may only be counted once even if that person is a Representative or proxy of more than one Member.

#### Further information

If you have any questions in relation to this General Meeting or if you have not received advice on how to join the meeting by videoconference, please email [secretary@HL7.com.au](mailto:secretary@HL7.com.au) with copies to [chair@HL7.com.au](mailto:chair@HL7.com.au), [admin@HL7.com.au](mailto:admin@HL7.com.au) and [returning.officer@HL7.com.au](mailto:returning.officer@HL7.com.au).

This Notice of Meeting, Explanatory Memorandum and associated notes are issued in accordance with a resolution of the Board of HL7 Australia

Brett Esler

Secretary

HL7 Australia Limited (ABN 37 629 010 297)

Dated: 9 May 2022



## EXPLANATORY MEMORANDUM

This Explanatory Memorandum has been prepared for the information of Members in connection with the business to be considered at the General Meeting to be held by web-based videoconferencing technology at 3:30 pm (AEST) on 31 May 2022.

The Explanatory Memorandum should be read in conjunction with the accompanying notice of general meeting and the proposed revised version of the constitution in Attachment B.

### Principal areas of change

The following are the principal areas of change in the revised version of the constitution and the main reasons they are being proposed.

#### Office bearers and other Directors, Board elections and AGM

1. Provisions relating to election and appointment of Directors, terms of office and office bearers, and the associated By-laws have been harmonised, simplified and modified in order to achieve the following:

- (a) More clearly catering for the now customary use of an electronic ballot system as the preferred and primary means of electing Directors, while still allowing for a competitive ballot at the AGM or appointment by resolution at a General Meeting, where necessary.

This is addressed by proposed clauses 41.3, 41.4 and 41.5 as well as Part 5 of the proposed By-Laws, which significantly revise current clause 41.6 and existing By-law 1.

- (b) Retaining core principles in the constitution (such as 2-year terms and maximum concurrent terms for Directors and half the Board retiring each year) with much of the associated detail being relegated to By-laws that have been harmonised with the revised constitution.

This is particularly addressed by proposed clauses 42 and 41.7, which effectively replace current clauses 43 and 41.8. Provisions in some other clauses that are ambiguous or could be misinterpreted have also been re-worded.

- (c) Putting the Chair and Director positions up for election by the membership – with the Board to be responsible for identifying (by means of a By-law) what other office-bearer positions are required and deciding how, when and by whom these positions will be filled. This is a change to the traditional approach of having candidates separately elected to the positions of secretary, treasurer and director of membership.

This change aligns with the position strongly supported by members in the 2018 plebiscite, but not implemented at the time. It is addressed by the proposed replacement of current clause 42 in its entirety (which specifies the office bearers and details of how and when they are to be elected) and its replacement with the proposed clause 44, noting that the office-bearer positions are listed in Part 4 of the revised version of the By-laws.

The proposed clause 44.2(b) also provides explicit cover and guidance for the Board in resolving any unexpected extended vacancy in the position of Chair.

- (d) More clearly delineating where the special rules for the appointment of public company directors under s201E of the Corporations Act apply – and removing ambiguity in the Constitution that could be interpreted as limiting the capacity for the Members of HL7

Australia to elect the Directors using an electronic ballot system or, alternatively, by competitive election at the AGM.

Clause 41 as proposed in the revised version of the constitution does this by clearly linking to the By-laws and identifying the 3 different paths that HL7 Australia may use to elect/appoint Directors (clause 41.3); setting parameters for election by an electronic ballot system (clauses 41.4 and 41.5 and Division 5B of the revised version of the By-laws); providing a framework for conducting a manual ballot at an AGM (clause 41.6 and Division 5C); and identifying the key requirement to be met in the fall back situation where Directors are to be directly appointed by resolution at a General Meeting (remaining limb of clause 41.6).

- (e) Providing more flexibility in the timing of the AGM, the associated calling of elections and the management of appointments to office-bearer positions to allow the Board to better manage a range of different situations that have arisen and other potential future risks.

Proposed clause 24.1 modifies current clause 22.1 to allow the AGM to be convened at any time in the September quarter. Current clauses 41.3, 41.4 and 41.5 relating to fixed dates for calling and closing nominations and holding Board elections are proposed for deletion in the revised version of the constitution in favour of the process defined in Division 5A of the proposed By-laws.

## Greater use of electronic technology

- 2. Incorporating measures to allow greater use of communications technology to hold meetings and electronic signature of documents to the maximum extent now permitted by recent changes in the Corporations Act; recognising email and web portals as the preferred means for the Company and Members to communicate with each other.

Measures include addition of proposed clauses 28.3, 28.4 and 28.5 and extension or revision of proposed clauses 47.1, 50, 54, 62, 63, 64

## Participants

- 3. A new clause 14, *Organisation members may nominate participants* is proposed to give Organisational Members the right to nominate a new category of "Participants" who may take part in most HL7 Australia activities (other than voting in general meetings and elections) – to restore some of the member privileges impacted by the next measure. It is expected that most people in this category will initially be the existing "Representatives" of Organisational Members.

- 4. To comply with sections 249X and 250D of the Corporations Act, in the proposed revision of the Constitution the number of persons who can vote on behalf of an Organisation Member at general meetings and in elections has been reduced to one Representative (at any time) or no more than two proxies at any given meeting.

*S249X (3) Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies.*

*250D(3) [More than one representative] A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.*



## Membership classes – qualifications, rights and privileges

5. Details of the different membership classes are proposed to be moved from the Constitution into the By-laws – to simplify the Constitution and avoid potential future inconsistencies between the Constitution and the By-laws as the By-laws are used to reflect changes in membership structure (as already envisaged in the existing Constitution).

Note: To meet on-going requirements of the Constitution, the proposed revision of the By-laws now covers how fees will be levied on Members and Applicants, thereby allowing the amount of associated detail in the Constitution to be reduced significantly.

## Role of Proxies

6. Amendments to the rules for appointment of proxies and voting by proxies are proposed to better reflect requirements of the Corporations Act and remove inconsistencies in relation to voting on a show of hands and voting in a poll.

## Circular resolutions of Members

7. The proposed revised version of the constitution omits current clause 33 which allows for a resolution to be approved by means of a circular resolution of Members.

Section 249A of the Corporations Act allows circular resolutions of members for private companies but does not apply to public companies, such as HL7 Australia. In addition to being of questionable legality, a circular resolution that requires unanimous approval of all members with no option for abstentions or uncontactable members is of marginal benefit to HL7 Australia.

## Constitutional basis for Directors to be required to resign if not re-elected

8. Clause 43 in the proposed revised version of the constitution now includes specific provisions addressing a Director who is not re-elected. Under these provisions, such a person ceases to be a Director and is obligated to do all things necessary under the law to bring about their resignation as a Director. These measures are also now reflected in a proposed consolidation of Director consent and acknowledgement forms in the revised By-laws.

## Directors serve HL7 Australia in a personal capacity

9. Even though a person who becomes a Director may have been eligible for election because they were a Representative of an Organisational Member, that person serves on the Board in a personal capacity and not as the Representative of the Member. Indeed, if the Board is to consider any matter that affects that Director's Organisational Member, such a Director would need to consider whether they have a potential conflict of interest.

In recognition of these facts and in the interests of Board stability, under clause 43 in the revised version of the constitution, it is proposed that a Director would NOT cease to be a Director where that Director was the Representative of a Member when the person was elected, and:

- (a) that Member stops being a Member; or
- (b) HL7 Australia is notified that the Director is no longer the Member's Representative.

Under the revised provisions, a Director affected by such changes would remain on the Board for the duration of their term but would not be able to re-contest their position unless they met the eligibility criteria in some other way (e.g. by becoming an Individual Member). The





proposed approach also removes the need to mirror similar requirements for Representatives and Participants.

## Not-for-profit status

10. Proposed Clause 69 in the revised version of the constitution adds a stand-alone section that provides an explicit statement confirming that HL7 Australia will apply its assets and income in furthering its objects and not distribute any portion of them to its Members. Compliance with such provisions is typically required if HL7 Australia seeks to claim any benefits of NFP status.

## Suspension of application processing pending general meeting

11. Proposed clause 16.6 gives the Board the discretion to suspend all processing of new applications for membership between notice of a General Meeting having been given and the holding of the General Meeting – to protect against possible “stacking” of a General Meeting.

## Objects clause

12. Proposed changes to clause 7 include placing more emphasis on supporting development, adoption, promotion, implementation, maintenance and use of HL7 Australia standards, products and services - at least equivalent to the emphasis placed on promotion of HL7 International’s standards, products and services.

References to “e-health” are also proposed to be modified to “digital health”.

## Maintenance and inspection of membership register

13. Proposed clause 10 has simplified the current clause 9 and aligned provisions relating to inspection of the Register, access to the Register, and restrictions on use of information from the Register with s173 of Corporations Act and the Corporations Regulations, which give Members the right to inspect the Register free of charge.

The law also requires HL7 Australia to release a copy of the Register to anyone who seeks a copy and prescribes restrictions on the use of this information. It is not appropriate for the Constitution to attempt to re-interpret or limit the application of these the regulatory provisions. The proposed simplification of the clause reflects this context.

## Eligibility for membership

14. Proposed clause 11.1 simplifies and expands on the current clause 10.1 and requires applicants to support HL7 Australia’s values, as well as its objects. These values include “being open, inclusive, transparent, consensus-building and ethical”. The requirement is less than what is required by many other similar bodies, where applicants for membership are expected to acknowledge the body’s code of conduct and/or code of ethics.

The reference to having supported HL7 Australia’s objects in the past has also been removed, as such support is irrelevant if the applicant no longer supports them. Forward references to the application process were also removed as redundant.

Proposed Clause 11.2 (taken from the ACNC template used as a precedent for the original version of the Constitution) has been included to make it clear that the “person” who applies for membership may in fact be an incorporated body (or other “Organisation” as defined).



## Other less significant changes in the revised version of the constitution

15. Where possible, obligations on individual office-bearers (mainly the secretary) are proposed to be transferred to the company as a whole, and the potential range of delegates able to exercise powers on behalf of the Board is proposed to be extended – giving the Board more flexibility in how it structures and manages administrative processes – and recognising that to comply with both the Constitution and Pt 2D.4 of the Corporations Act the Directors may need to appoint a secretary that is not a Director and would not be an elected “office-bearer”.

16. Some provisions that authorise By-laws to bypass Constitutional requirements have been removed or restructured.

The use of such provisions fosters incompatibility between the Constitution and the By-laws and potentially diminishes the constitution as the basic agreement between the Members, HL7 Australia and its Directors/Board on operating principles and the By-laws as a means of specifying processes and procedures that are compatible with the Constitution.

17. Provisions that were only required to facilitate the transition from an incorporated association to a CLG that are now extraneous have not been carried forward into the proposed revised version of the constitution; these include current clauses 9.1(a) and 41.1.

18. The clauses on “Values” and “Objects” are to appear separately in the specification of objects, values and powers.

19. The recipient of any residual HL7 Australia assets on winding up in proposed clause 71 has been updated from HISA to its successor, the Australasian Institute of Digital Health Limited (ACN 097 598 742).

20. Specifications of details to be included on a membership application form and some other forms and documents have been removed from the Constitution – to allow flexibility of implementation and the ability to address changing needs.

21. Proposed clause 23.1 corrects an error in current clause 21.1, which is not compatible with the equivalent wording in s249E(1) of the Corporations Act. The correction refers to “*Members with more than 50% of the votes ...*” replacing “*50% or more of the Members ...*”.

22. Consistency has been applied in the definition and use of the terms “Chair” (as elected by the Members to lead the organisation) and “chairperson” (of a meeting).

23. The minimum period for a renewal notice to be issued has been reduced from 1 month to 2 weeks before the membership renewal date.

24. The expression “vote in writing” in relation to General Meetings has been replaced with “poll” which is more consistent with the terminology used in the Corporations Act and some other constitutions. Whilst the ACNC template uses “vote in writing”, the term “poll” is considered more accepting of the use of technology in an organisation that fosters digital technology.

25. In proposed clause 58, relevant statutory time limits from the Corporations Act have been included in relation to the recording and maintenance of records and minutes.

26. In the revised version of the constitution, clause 68.2 is modified to align with rights that Directors and former Directors have to access certain records under section 198F of the Corporations Act –removing the implication that such access is only at the discretion of the Board.



27. Proposed clause 72.2 clarifies that the provisions relating to payments/benefits to Members do not preclude a Member from receiving services ordinarily provided by the Company or minor benefits directly related to membership of HL7 Australia.
28. Hyperlinked tables of contents have been included to guide readers through the proposed revised versions of the constitution and the By-laws.

#### [Recommendation of the Directors](#)

The Directors unanimously recommend that Members vote in favour of the Special Resolution.



Attachment A to Notice of Meeting and Explanatory Memorandum - PROXY FORM

On behalf of: ..... ('Appointing Member')
(Name of Appointing Member)

I hereby appoint the person(s) (each a 'proxy') listed hereunder as proxies for the Appointing Member at the general meeting of HL7 Australia Limited (ABN 37 629 010 297) to be held by web-based videoconference commencing at 3:30 pm AEST on 31 May 2022 and also at any adjournment thereof.

If only one person is appointed as proxy, that person exercises all of the Appointing Member's votes, otherwise, each of the appointed proxies exercises the number of votes indicated below.

I understand that, if the total number of votes allocated to an Appointing Member's proxies exceeds the number of votes held by the Appointing Member, then the number of votes held by each of the Appointing Member's proxies will be scaled back at the discretion of HL7 Australia so that the total number of such votes does not exceed the number of votes held by the Appointing Member.

Where voting instructions are given below, the proxy must vote in accordance with such instructions but where no such instructions are given and for other votes at the meeting (such as procedural motions), the proxy may decide how to vote (if at all).

Table with 3 columns: Proxy (give name & email if not chairperson), No of votes\*, Voting instructions on special resolution. Rows include Chairperson of the meeting and several empty rows for other proxies.

\*All if no figure given. \*\*The chairperson intends to vote all discretionary votes for the resolution.

Signed on behalf of the
Appointing Member:

by: ..... on: .....
Name Date

email: ..... Mobile: .....

Forward completed proxy forms to: secretary@HL7.com.au with copies to chair@HL7.com.au, admin@HL7.com.au, and returning.officer@HL7.com.au, so as to be received at least 48 hours before the general meeting.



HL7 Australia Limited (ABN 37 629 010 297)

ATTACHMENT B to Notice of Meeting and Explanatory Memorandum

Proposed revised version of HL7 Australia Constitution  
(for approval)

comprising 30 pages commencing on the next page.



# **CONSTITUTION OF HL7 AUSTRALIA LTD**

Australian Company Number 629 010 297  
Australian Business Number 37 629 010 297

A company limited by guarantee

As adopted on 31 May 2022  
to take effect from 01 June 2022

[Draft v1.95j for Member Approval – last updated 06 May 2022]

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## **PRELIMINARY**

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### **1. Name of the company**

The name of the company is HL7 Australia Ltd.

### **2. Type of company**

The Company is a public company limited by guarantee.

### **3. Limited liability of Members**

The liability of Members is limited to the amount of the guarantee in clause 4.

### **4. The guarantee**

Each Member must contribute an amount not more than \$10 to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after ceasing to be a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the Company incurred before the Member ceased to be a Member; or
- (b) costs of winding up.

### **5. Definitions**

In this constitution, words and phrases have the meaning set out in clauses 73 and 75.

### **6. Amending the constitution**

The Members may amend this constitution by passing a Special Resolution.

## **OBJECTS, VALUES AND POWERS**

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### **7. Objects**

The Company's objects are to:

- (a) facilitate adoption of digital health in Australia by promoting effective use of standards and products developed and maintained by the Company and by HL7 International, and supporting the enhancement and maintenance of these standards and products to meet local needs;
- (b) work in Australia and overseas with HL7 International and others to support and promote interoperability of health information systems through effective standardisation;
- (c) promote the widespread, consistent use of standards developed by the Company and HL7 International to facilitate effective interoperability and re-use of health information across the Australian health sector;
- (d) be recognised as the principal body in Australia promoting the development, understanding and adoption of standards developed by the Company and HL7 International, and providing for certification related to products and services of the Company and HL7 International;
- (e) be a respected and influential body both in Australia and internationally in the health information industry; and
- (f) do all such other lawful things as are incidental or conducive to attaining any or all of the above objects.

## **8. Values**

The Company aims to operate in accordance with the following values:

- (a) respecting and promoting the expertise and commitment of its Members;
- (b) building communities of interest and contributing positively to dialogue amongst stakeholders;
- (c) being open, inclusive, transparent, consensus-building and ethical; and
- (d) continuously seeking improvement through pursuit of contemporary best practice in standardisation and corporate governance.

## **9. Powers**

The Company has the following powers, which may only be used to carry out its objects as set out in clause 7:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

## **MEMBERS**

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### **10. Membership and register**

10.1 The Members are:

- (a) those properly registered members of the Company as at the date of adoption of this version of the constitution; and
- (b) those applicants admitted as members of the Company in accordance with clause 16.1(d),

other than those that have since ceased to be a member of the Company.

10.2 A register of Members must be kept in accordance with the law.

10.3 Without limiting the requirement under clause 10.2, the following must be entered in the Register in respect of each Member:

- (a) the name and address of the Member;
- (b) the date of admission to membership;
- (c) where applicable, the membership class to which the Member belongs;
- (d) where applicable, the date of cessation of membership;
- (e) any alternative address nominated by the Member for the service of notices; and
- (f) any other information required by the directors or the law from time to time.

10.4 The Company must allow a Member to inspect the Register at no cost to the Member.

10.5 Information that is accessed from the Register must only be used in accordance with the law.

### **11. Who can be a Member**

11.1 A person who supports the objects and values of the Company is eligible to apply to be a Member of the Company.

11.2 In this clause 'person' means an individual or Organisation.

**12. Membership classes and rights**

- 12.1 The Board is to define in the By-laws:
- (a) at least one membership class for Individual Members;
  - (a) at least one membership class for Organisation Members;
  - (b) the rights and privileges enjoyed by a Member in each membership class; and
  - (c) the qualifications, requirements and any other criteria to be met by a Member to be eligible to belong to each membership class.
- 12.2 Each Member will be assigned to a membership class based on the Member's preference, provided that the Member is eligible to belong to their preferred membership class.
- 12.3 The Board may, from time to time and in accordance with the law, determine and vary:
- (a) the membership classes;
  - (a) the rights and privileges attached to being a Member in a membership class;
  - (b) the qualifications, requirements or other criteria for a member to be eligible to belong to a membership class;
  - (c) the membership fee and any other fees associated with each membership class: and
  - (d) the membership class into which a Member is placed in any specific instance.

**13. Representatives of Organisation Members**

- 13.1 An Organisation Member may appoint an individual as a Representative to exercise all or any of the powers and rights the Organisation Member may have in relation to:
- (a) meetings of the Company's Members;
  - (b) the nomination of candidates and participation in ballots for the election of Directors under clause 41.3; and
  - (c) being the primary contact for receipt of notices sent by the Company to the Member.
- 13.2 The appointment of a Representative may be standing (ongoing).
- 13.3 A Representative has all the rights of a Member relevant to the purposes of the appointment as a Representative.
- 13.4 The appointment of a Representative by an Organisation Member must:
- (a) be in writing from the Organisation Member;
  - (b) include the name of the Representative; and
  - (c) be given to the Company or, for representation at a meeting, be given to the chairperson of the meeting.
- 13.5 The appointment may:
- (a) be by reference to an identified position, and
  - (b) set out restrictions on the Representative's powers.

- 13.6 A person ceases to be a Representative of a Member when:
- (a) the person dies;
  - (b) the relevant Member ceases to be a Member;
  - (c) the Company receives notice from the Member that the person is no longer its Representative; or
  - (d) the Company receives notice from the Representative that the person is relinquishing the role of Representative for the relevant Member.
- 13.7 An Organisation Member may nominate more than one Representative but only one Representative may exercise the Member's powers at any one time.
- 13.8 A single individual may not be a Representative for more than one Organisation Member at any given time but may be an Individual Member in their own right whilst also being a Representative.
- 13.9 The Company is to keep a record of Representatives with the Register.

#### **14. Organisation members may nominate Participants**

- 14.1 An Organisation Member has the right to nominate one or more Participants (up to the number specified in the By-Laws for the Organisation Member's membership class) to receive Participant benefits when participating in Professional Activities.
- 14.2 The Participant benefits available to a Participant under clause 14.1 include:
- (a) eligibility to participate in all Professional Activities available to Members and at the same rates as Members;
  - (b) the right to be nominated for and be elected to leadership and representative positions within the Company, including being a Director;
  - (c) the right to receive notice of, attend, and speak at the AGM of the Company,
  - (d) the right to receive communications, publications and information provided to Members to include:
    - (i) having access to Member-only areas on the Company's website; and
    - (ii) receiving notice of the proposed election of Directors and call for nominations,

but not the right to perform other functions of a Representative such as voting on behalf of the Organisation Member in an election or at a General Meeting (unless the Participant is also the Representative of the Organisation Member at that time).

- 14.3 Subject to the other provisions of this constitution:
- (a) a person nominated as a Participant by an Organisation Member may also be a Member in that person's own right; and
  - (b) a person nominated as a Representative of an Organisation Member is deemed to also be one of the Participants nominated by that Organisation Member and is counted as such.
- 14.4 The Company is to keep a record of Participants with the Register.

#### **15. Membership fees**

- 15.1 The Board may prescribe by way of the By-Laws or otherwise:
- (a) the amounts of the membership fee and any other fees to be paid by Members according to their membership class; and

- (b) the time (or times) and manner by which membership fees and any other fees are to be paid.
- 15.2 Each Member is to pay the Company the membership fee and any other fees prescribed under clause 15.1(a) by the time (or times) and in the manner prescribed under clause 15.1(b).
- 15.3 The Company is to give each Member notice of the membership fee not less than 14 days before payment of the membership fee is due. Such notice is to include:
  - (a) the amount of the fee;
  - (b) the time or times for payment of the fee; and
  - (c) the manner of payment of the fee.
- 15.4 On applying for membership of the Company, each applicant for membership is to pay the initial membership fee for their proposed membership class in addition to any application fee or other fee prescribed by the Board.
- 15.5 If an application for membership is declined, the Company is to reimburse any initial membership fee paid by the applicant.
- 15.6 A Member that has not paid their membership fee by the due date in accordance with clause 15.2 may not exercise any of the rights associated with that Member's membership (including rights to nominate candidates for election as Directors or to vote at a meeting of Members) until such membership fee is paid.
- 15.7 A failure of the Company to give notice to any Member within the time stipulated in clause 15.3 or the non-receipt by a Member of a notice given in accordance with clause 15.3 does not affect the obligation of the Member to pay the membership fee by the due date.
- 15.8 For avoidance of doubt, where a membership fee is payable by instalments, any reference in this constitution to a membership fee includes an instalment of a membership fee.
- 15.9 If the Board in its absolute discretion considers that circumstances warrant, it may in respect of one or more Members decide to
  - (a) waive, vary, defer or refund a membership fee or any other fee;
  - (b) extend a period of membership;
  - (c) accept a request from a Former Member to reinstate the Member; or
  - (d) implement a combination of such measures.

## **16. Applications for membership**

- 16.1 To become a Member of the Company an applicant must:
  - (a) satisfy the eligibility criteria under clause 10.1;
  - (a) complete and lodge a membership application in the form determined by the Board from time to time (which may include lodging an application using the Internet);
  - (b) ensure that all information provided when applying for membership of the Company is true and accurate;
  - (c) pay the applicable membership fee and any application fee that may be required under clause 15.4;
  - (d) be admitted into membership by the Board (or their delegate) in such manner as the Board determines; and

- (e) satisfy such other membership criteria as the Board may resolve from time to time, acting reasonably.
- 16.2 The Board is to make publicly available a transparent, contemporaneous description of the process, requirements and criteria for submission and determination of membership applications.
- 16.3 The requirements of clause 16.2 may be met by measures such as promulgating the description in the By-laws, publishing the description on the Company's website, providing the description with application forms, or by a combination of such measures or similar measures.
- 16.4 The Board must consider and determine an application for membership within a reasonable time from when the Company receives the application.
- 16.5 The Board may delegate the consideration and determination of membership applications to one or more persons, in which case the decision of that person or those persons will be taken to be the decision of the Board under clause 16.4.
- 16.6 The Board may, at its complete discretion, choose to postpone the determination of all (but not some) membership applications received during the period between the calling of a general meeting and the holding of such general meeting, or any adjournments of that general meeting.

**17. When a person becomes a Member**

An applicant becomes a Member when their membership details are entered onto the Register.

**18. When a person ceases to be a Member**

- 18.1 A person immediately ceases being a Member if the Member:
  - (a) dies;
  - (b) is wound up or otherwise dissolved or deregistered (for an incorporated member);
  - (c) resigns, by notice in writing to the Company, in which case the resignation takes effect from the date that it is received by the Company;
  - (d) is expelled under clause 21;
  - (e) has not responded within three months to a written request from the Company seeking to confirm that they want to remain a Member; or
  - (f) has not paid the applicable membership fee within one month of it becoming due.
- 18.2 When a Member ceases to be a Member, any amounts payable by the Member to the Company will become a debt due and owing to the Company on the date the Member ceased to be a Member and will be recoverable as a debt.

**19. Transfer of membership**

- 19.1 Except as otherwise provided in this clause 19, membership of the Company and the associated rights and privileges cannot be transferred, gifted or sold.
- 19.2 For the avoidance of doubt, nothing in this constitution prevents a Member from applying to transfer to a different membership class.
- 19.3 The Board may approve the transfer of a Member's membership to an associated entity where:
  - (a) the Member and the associated entity are Organisations;
  - (b) the Member has requested in writing that its membership be transferred;



- (c) the request arises from an organisational restructure, merger or business acquisition under which activities performed by the Member will in future be performed by the associated entity;
- (d) the associated entity satisfies the eligibility criteria under clause 11.1; and
- (e) the associated entity has provided any information required by the Board and agrees to the transfer of membership on terms acceptable to the Board.

19.4 When the Board approves a request to transfer a membership, the Register is to be updated to reflect the transfer of membership and associated changes in membership details.

## **DISPUTE RESOLUTION AND DISCIPLINE**

### **20. Dispute resolution**

20.1 The Board may make By-laws for the resolution of disputes under this constitution between a Member, Director, a Representative or a Participant and:

- (a) one or more Members;
- (b) one or more Directors;
- (c) the Company;
- (d) one or more Representatives; or
- (e) one of more Participants.

### **21. Disciplining Members**

21.1 In accordance with this clause and any By-laws, the Board may resolve to warn, suspend or expel a Member from the Company if the Board considers that:

- (a) the Member has breached this constitution or any By-law; or
- (b) the Member's behaviour is causing, has caused or is likely to cause harm to the Company.

21.2 At least 14 days before the meeting of the Board at which a resolution under clause 21.1 will be considered, the Company must notify the Member in writing:

- (a) that the Board is considering a resolution to warn, suspend or expel the Member;
- (b) the date of the meeting of the Board at which this resolution will be considered by the Directors;
- (c) what the Member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the Member may provide an explanation to the Board in writing or in person, and details of how to do so.

21.3 Before the Board passes any resolution under clause 21.1, the Member must be given a chance to explain or defend themselves by:

- (a) providing the Board with a written explanation; and/or
- (b) speaking at the meeting.

21.4 After considering any explanation provided pursuant to clause 21.3, the Board may:

- (a) take no further action;
- (b) warn the Member;

- (c) suspend the Member's rights as a Member for a period of no more than 12 months;
  - (d) expel the Member;
  - (e) refer the decision to an unbiased, independent person on conditions that the Board considers appropriate (however, the person can only make a decision that the Board could have made under this clause); or
  - (f) require the matter to be determined at a General Meeting.
- 21.5 The Company cannot fine a Member.
- 21.6 The Company must give written notice to the member of the decision under clause 21.4 as soon as possible and, in any event, within 14 days of the date the decision was made.
- 21.7 A Member may, by notice in writing to the Company within 14 days of the Member's receipt of a notice in accordance with clause 21.6 request that a resolution for expulsion (but not suspension) of that Member be reviewed by the Company at the next General Meeting.
- 21.8 If a Member makes a request in accordance with clause 21.7, the Board must propose at the next General Meeting that a resolution be moved to confirm the expulsion of the Member. If the Members at a General Meeting do not confirm the expulsion at that meeting, the Member is reinstated on and from the date of that General Meeting.
- 21.9 Neither the Company nor the Board will be liable for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.
- 21.10 The Board may reinstate an expelled Member or a suspended Member's rights on any terms and at any times as the Board may resolve.

## **GENERAL MEETINGS OF MEMBERS**

### **22. Calling of General Meetings by the Board**

- 22.1 The Board may call a General Meeting.
- 22.2 If Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Board must:
- (a) within 21 days of the Members' request, give all Members notice of a General Meeting; and
  - (b) hold the General Meeting within two months of the date of the Members' request.
- 22.3 The percentage of votes that Members have for the purposes of clause 20.2 is to be calculated as at midnight immediately before the day the Members request the meeting.
- 22.4 The Members who make the request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the Company.
- 22.5 Separate copies of a document setting out the request may be signed by Members if the wording of the request is the same in each copy.

**23. Failure of Board to call General Meeting requested by Members**

- 23.1 If the Board does not call a meeting requested by Members under clause 22.2 within 21 days, Members with more than 50% of the votes of all of the Members who made the request under clause 22.2 may call and hold a General Meeting.
- 23.2 To call and hold a meeting under clause 23.1 the Members must:
- (a) as far as possible, follow the procedures for General Meetings set out in this constitution;
  - (b) call the meeting using the list of Members on the Register; and
  - (c) hold the General Meeting within three months after the date the request was given to the Company.
- 23.3 The Company must pay the Members who request the General Meeting any reasonable out-of-pocket and verifiable expenses they incur because the Board did not call and hold the meeting.

**24. Annual General Meeting**

- 24.1 An annual general meeting ("AGM"), must be held at least once in each calendar year, on a date between 1 July and 30 September.
- 24.2 Even if these items are not set out in the notice of meeting, the business of an AGM may include:
- (a) a review of the Company's activities;
  - (b) a review of the Company's finances;
  - (c) any auditor's report;
  - (d) the election of Directors; and
  - (e) the appointment and payment of auditors, if any.
- 24.3 Before or at the AGM, the Board must give information to the Members on the Company's activities and finances during the period since the last AGM.
- 24.4 The chairperson of the AGM must give Members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

**25. Notice of General Meetings**

- 25.1 Notice of a General Meeting must be given to:
- (a) each Member entitled to vote at the meeting;
  - (b) each Director;
  - (c) the auditor (if any); and
  - (d) each Participant (for AGMs only).
- 25.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 25.3 Subject to clause 25.4, notice of a General Meeting may be provided less than 21 days before the meeting if:
- (a) for an AGM, all the Members entitled to attend and vote at the AGM agree beforehand; or
  - (b) for any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

- 25.4 Notice of a General Meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a Director;
  - (b) appoint a Director in order to replace a Director who was removed; or
  - (c) remove an auditor.
- 25.5 Notice of a General Meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (b) the general nature of the meeting's business;
  - (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
  - (d) a statement that a Member has the right to appoint proxies and that, if a Member appoints a proxy:
    - (i) the proxy does not need to be a Member; and
    - (ii) the proxy form must be delivered to the Company by email at the email address specified in the notice of the meeting at least 48 hours before the meeting.
- 25.6 If a General Meeting is adjourned for one month or more, the Members must be given new notice of the resumed meeting in accordance with clauses 25.2 and 25.3.
- 25.7 Subject to the Corporations Act, a person's attendance at a General Meeting waives any objection which that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person objects to the holding of the meeting at the beginning of the meeting.

## **26. Quorum at General Meetings**

- 26.1 For a General Meeting to be held, at least five Members (a quorum) must be present (including by technological means) in person, by proxy or by Representative for the whole meeting. When determining whether a quorum is present, an individual may only be counted once (even though that individual may be present in more than one capacity - as a Member, a Representative or a holder of proxies for one or more Members).
- 26.2 No business may be conducted at a General Meeting if a quorum is not present.
- 26.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting must be adjourned to the date, time and place that the chairperson of the meeting specifies. If the chairperson of the meeting does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week (if that day is not a business day in one or more places where the meeting is to be held, then the next business day in each of those places);
  - (b) if the time is not specified – the same time; and
  - (c) if the place is not specified – the same place.
- 26.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## **27. Auditor's right to attend meetings**

- 27.1 The auditor (if any) is entitled to attend any General Meeting and to be heard by the Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.

27.2 The Company must give the auditor (if any) any communications relating to the General Meeting that a Member of the Company is entitled to receive.

## **28. Using technology to hold meetings**

28.1 The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate in the meeting, including to hear and be heard.

28.2 Where a General Meeting is held using any form of technology:

- (a) anyone participating in the General Meeting is taken to be present in person;
- (b) the provisions of this constitution relating to General Meetings apply, so far as they can and with such changes as are necessary, to General Meetings held using that technology;
- (c) the General Meeting is taken to be held at the place determined by the chairperson of the meeting (which may be an online platform rather than a physical address) provided at least one of the Members present at the meeting was at the place for the duration of the General Meeting; and
- (d) the conduct of the General Meeting must comply with any By-laws made by the Board in relation to the conduct of meetings by technological means.

28.3 If the technology used in accordance with clause 28.2 encounters a technical difficulty, whether before or during the General Meeting, which results in a Member not being able to participate in the General Meeting, the chairperson of the meeting may, subject to the law and the requirements of clause 26 (Quorum at general meetings) being satisfied:

- (a) allow the meeting to continue; or
- (b) adjourn the meeting either for a reasonable period of time as may be required to fix the technology or to such other date, time and location as the chairperson of the meeting considers appropriate.

28.4 For the avoidance of doubt, where the chairperson of the meeting has allowed the General Meeting to continue in accordance with clause 28.3, any resolution passed at that meeting is valid.

28.5 Subject to the law and this constitution, the Board may make By-laws relating to the conduct of meetings and the passing of resolutions by technological means.

## **29. Chairperson for General Meetings**

29.1 The Chair is entitled to chair General Meetings.

29.2 Those individuals present and entitled to vote at a General Meeting may choose an individual to be the chairperson for that meeting if:

- (a) there is no Chair;
- (b) the Chair is not present within 30 minutes after the starting time set for the meeting; or
- (c) the Chair is present but declines to act as chairperson of the meeting.

## **30. Role of the chairperson of a General Meeting**

30.1 The chairperson of a General Meeting is responsible for the conduct of the General Meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including questions to the auditor, if the auditor is present).

30.2 The chairperson of a General Meeting may vote at the General Meeting, but does not have a casting vote.

**31. Adjournment of meetings**

31.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.

31.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

**MEMBERS' RESOLUTIONS AND STATEMENTS**

**32. Members' resolutions and statements**

32.1 Members with at least 5% of the votes that may be cast on a resolution may give:

- (a) written notice to the Company of a resolution they propose to move at a General Meeting; and/or
- (b) a written request to the Company that the Company give all of its Members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting.

32.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Members proposing the resolution.

32.3 A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Members making the request.

32.4 Separate copies of a document setting out the notice or request may be signed by Members if the wording is the same in each copy.

32.5 The percentage of votes that Members have for the purposes of clause 32.1 is to be calculated as at midnight before the request or notice (as applicable) is given to the Company.

32.6 If the Company has been given notice of a Members' Resolution under clause 32.1(a), the Members' Resolution must be considered at the next General Meeting held more than two months after the notice is given.

32.7 This clause does not limit any other right that a Member has to propose a resolution at a General Meeting.

**33. Notice of proposed resolution or statement**

33.1 If the Company has been given a notice or request under clause 32:

- (a) in time to send the notice of the proposed Members' Resolution or a copy of the Members' Statement to Members with a notice of meeting, the Company must do so at the Company's cost; or
- (b) too late to send the notice of the proposed Members' Resolution or a copy of the Members' Statement to Members with a notice of meeting, then the Members who proposed the resolution or made the request (as applicable) must pay, before the Company sends the resolution or statement (as applicable), the expenses the Company believes it will reasonably incur in giving Members notice of the proposed Members' Resolution or a copy of the Members' Statement; however, a resolution may be passed at a General Meeting that the Company will pay these expenses, in which case the company will pay such expenses.

33.2 The Company does not need to send the notice of the proposed Members' Resolution or a copy of the Members' Statement to Members if:

- (a) the Board considers it may be defamatory;

- (b) clause 33.1(b) applies, and the Members who proposed the resolution or made the request (as applicable) have not paid the Company enough money to cover the cost of sending the notice of the proposed Members' Resolution or a copy of the Members' Statement to Members; or
- (c) in the case of a proposed Members' Resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Members.

## **VOTING AT GENERAL MEETINGS**

### **34. How many votes a Member has**

A Member has the number of votes prescribed in the By-laws for a member of the Member's membership class.

### **35. Challenge to Member's right to vote**

35.1 A challenge to a Member's right to vote at a General Meeting:

- (a) may only be made at the General Meeting; and
- (b) must be determined by the chairperson of the General Meeting, whose decision is final.

### **36. How voting is carried out**

36.1 Voting at a General Meeting must be conducted and decided by:

- (a) a show of hands by those individuals personally present and entitled to vote;
- (b) a poll; or
- (c) another method chosen by the chairperson that is fair and reasonable in the circumstances (which may include a vote conducted using technological means available to all Members Present).

36.2 Before a vote is taken, the chairperson of the General Meeting must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

36.3 On a show of hands under clause 36.1(a), each individual personally present and entitled to vote may only exercise a single vote irrespective of whether that individual may exercise more than one vote in a poll.

36.4 On a show of hands, the decision of the chairperson of the General Meeting is conclusive evidence of the result of the vote.

36.5 The chairperson of the General Meeting and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **37. When and how a poll must be held**

37.1 A poll may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least five individuals personally present and entitled to vote;
- (b) Members Present with at least 5% of the votes that may be passed on the resolution on the poll (calculated as at the midnight before the poll is demanded); or
- (c) the chairperson of the General Meeting.

37.2 A poll must be taken when and how the chairperson of the General Meeting directs unless clause 37.3 applies.



- 37.3 A poll must be held immediately if it is demanded under clause 37.1:
- (a) for the election of a chairperson of the General Meeting under clause 29.2;  
or
  - (b) to decide whether to adjourn the meeting.
- 37.4 A demand for a poll may be withdrawn.
- 38. Appointment of proxy**
- 38.1 A Member or its Representative may appoint a proxy to attend and vote at a General Meeting on behalf of the Member.
- 38.2 An Organisation Member may appoint two proxies, with each proxy exercising one or more of the Member's votes as specified in writing by the Member, provided that the total number of votes to be exercised by the Organisation Member's proxies does not exceed the number of votes that the Member may exercise.
- 38.3 The By-laws may provide for a limit on the number of Members for whom a proxy may act.
- 38.4 A proxy does not need to be a Member.
- 38.5 A proxy appointed to attend and vote for a Member has the same rights as the Member to:
- (a) speak at the meeting;
  - (b) vote in a show of hands;
  - (c) vote in a poll (but only to the extent allowed by the appointment); and
  - (d) join in to demand a poll under clause 37.1.
- 38.6 An appointment of proxy (**'proxy form'**) must be addressed to the Company and be signed by or on behalf of the Member and must contain details of:
- (a) the name and address of the Member;
  - (b) if applicable, the name and contact details of the Representative or agent of the Member appointing the proxy;
  - (c) the proxy's name or the name of the office held by the proxy;
  - (d) the meeting(s) at which the appointment may be used; and
  - (e) if the proxy is to exercise fewer than the total number of votes of an Organisation Member, the number of votes that the proxy may exercise.
- 38.7 A proxy appointment may be standing.
- 38.8 Proxy forms must be received by the Company at the email address stated in the notice under clause 25.5(d) at least 48 hours before a meeting.
- 38.9 If the number of votes the proxy or proxies of a Member are appointed to exercise exceeds the number of votes that the Member may exercise, then the Company may in its sole discretion scale back the number of votes that the proxy or each of the proxies may exercise so that the total number of votes that the proxy or proxies may exercise does not exceed the number of votes that the Member may exercise.
- 38.10 A proxy does not have the authority to speak and vote for a Member at a meeting while the Member or the Member's appointed Representative is at the meeting.
- 38.11 Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing Member:
- (a) dies;

- (b) is mentally incapacitated;
- (c) revokes the proxy's appointment; or
- (d) revokes the authority of a Representative or agent who appointed the proxy.

38.12 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **39. Voting as a proxy**

39.1 A proxy need not vote on a resolution in a show of hands but, if the proxy does vote, the proxy must vote in accordance with any voting instructions on their proxy form, unless the proxy has two or more proxy forms that specify different ways to vote on the resolution, in which case, the proxy should not vote as a proxy on the resolution in the show of hands, except as otherwise provided in clause 39.3.

39.2 When a poll is held on a resolution, a proxy (including the chairperson of the meeting):

- (a) may vote but does not need to vote, unless the proxy form specifies the way the proxy must vote, in which case the proxy must cast the votes in the way specified on that proxy form; and
- (b) may cast the votes held in one or more ways at the discretion of the proxy, subject to meeting any requirements of clause 39.2(a) and the law.

39.3 If a proxy is also a Member or Representative, nothing in this clause 39 affects the way that the proxy can cast any votes they hold as a Member or as a Representative.

## **THE BOARD OF DIRECTORS**

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### **40. Number of Directors**

The Board of Directors shall comprise eight Directors.

### **41. Election and appointment of Directors**

41.1 The Board must make By-laws specifying the rules, processes and procedures for the election of Directors.

41.2 A person (being a natural person) is eligible for election or appointment as a Director of the Company if the person:

- (a) is a Member, Representative or Participant;
- (b) gives the Company signed consent to act as a Director of the Company;
- (c) is not ineligible to be a director under the Corporations Act; and
- (d) is not ineligible to be a Director under clause 41.7.

41.3 Every year an election of Directors is to be held:

- (a) to fill Director positions that will be vacant at the conclusion of the AGM; and
- (b) in accordance with any applicable By-laws:
  - (i) by an online ballot conducted in advance of the AGM using an electronic ballot system; or
  - (ii) by a ballot or resolution at the AGM, if it is not practical to conduct a ballot in advance of the AGM under clause 41.3(b)(i).

- 41.4 A ballot conducted using an electronic ballot system under clause 41.3(b)(i):
- (a) is to be accessible to all persons entitled to vote in the election;
  - (b) is to close on the day of the AGM or within the 6 days prior to the day of the AGM;
  - (c) is to allow voters a minimum of 5 days and a maximum of 20 days in which to cast their votes; and
  - (d) notwithstanding any other provision of this clause 41.4, may be closed any time after all eligible votes have been cast.
- 41.5 Directors elected as the result of an election conducted in accordance with the By-laws under clause 41.3 are to be announced at and are deemed to have been elected at the associated AGM without need for any further resolutions.
- 41.6 If several Directors are appointed by resolution at a General Meeting, each such Director must be appointed separately, unless:
- (a) the Directors are elected in a ballot that meets the requirements of subsections 201E(2) and 201E(3) of the Corporations Act; or
  - (b) those eligible to vote at the General Meeting have first passed a resolution that the appointments may be voted on together; and
  - (c) no votes were cast against that resolution.
- 41.7 After each period of seven or more consecutive years as a Director, a person is ineligible for re-election or appointment as a Director until a period of 18 months has passed from the date on which the person most recently ceased being a Director under this clause 41.7.
- 41.8 The Board may appoint a person as a Director to fill a casual vacancy if that person is eligible for appointment under clause 41.2.
- 42. Term of office**
- 42.1 Except as otherwise provided in this constitution, a Director's term of office starts at the end of the General Meeting at which the Director was elected and ends at the end of the AGM in the second calendar year after the Director was elected.
- NOTE: This should result in most elected Directors serving for a term of around 2 years before they need to submit themselves for re-election, which they may do, provided they remain eligible for election as a Director.
- 42.2 Each year
- (a) an election is to be held under clause 41.3 for at least half the total number of Director positions on the Board,
  - (b) the Directors that must retire at the end of the AGM include:
    - (i) any Director appointed by the Board under clause 41.8; and
    - (ii) any Director (including a Chair) whose term of office ends after the AGM under clause 42.1.
- 42.3 If after allowing for any Director positions that will become vacant through retirement under clause 42.2(b) and for any other reason, there are insufficient Director positions vacant to allow the number ('**Quota**') of directors required under clause 42.2(a) to be elected, then:
- (a) Sufficient further Directors other than the Chair must resign to enable the Quota to be met; and

- (b) the Director or Directors to retire from among the Directors that are not otherwise required to retire in that year will be decided by lot unless they agree otherwise.

42.4 A person who retires as a Director pursuant to this clause 42 is eligible for re-election as a Director provided that the person meets the eligibility requirements set out in clause 41.2.

### **43. When a Director ceases being a Director**

43.1 A person ceases being a Director if the person:

- (a) gives written notice of resignation as a Director to the Company;
- (b) dies;
- (c) is removed as a Director by a resolution of the Members;
- (d) is absent for three consecutive Directors' meetings without approval from the Board;
- (e) becomes ineligible to be a Director of the Company under the Corporations Act; or
- (f) is required to retire as a Director by operation of this constitution and is not re-elected as a Director under clause 41.3 or appointed by the Board under clause 41.8.

43.2 A person who ceases to be a Director of the Company by operation of this constitution and the By-laws is to do all things necessary under the law to effect their resignation as a Director of the Company.

### **44. Office bearers**

44.1 The office bearers of the Company comprise the Chair and any other office-bearer position identified in the By-laws.

44.2 A vacancy in the position of Chair shall be filled:

- (a) where the vacancy is to arise at the end of the AGM in any year, by means of a separate ballot at the same time that other Directors are elected under clause 41.2, or
- (b) where the vacancy arises because the person who is Chair ceases to be a Director or informs the Board that they are unable to continue as Chair through to the end of the next AGM or no candidate is elected to a vacant position of Chair at an AGM - by the Board appointing a Director or Directors to perform the functions of Chair on an interim basis and for such periods as they may determine until a Chair can be elected (normally at the next AGM).

44.3 Any office bearer position other than the Chair may be filled by resolution of the Directors from among the Directors or otherwise for the secretary in accordance with clause 57.

## **POWERS OF DIRECTORS**

### **45. Powers of Directors**

45.1 The Board is responsible for managing and directing the activities of the Company to achieve the objects set out in clause 7.

45.2 The Board may use all the powers of the Company except for powers that, under this constitution or the law, may only be used by Members.

- 45.3 The Board must decide on the responsible management of the Company including:
- (a) any suitable written delegations of power under clause 46; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

45.4 The Board cannot remove a Director or auditor. Directors and auditors may only be removed by a resolution of Members at a General Meeting.

**46. Delegation of Directors' powers**

46.1 The Board may resolve to delegate any of its powers and functions to a committee, to one or more Directors, to specified employees of the Company or to any other person or persons, as the Board considers appropriate.

46.2 The Board may delegate its powers for such time as it determines and may revoke or vary any power so delegated.

46.3 A person to whom any powers have been delegated must exercise the powers delegated in accordance with any directions of the Board.

46.4 The Board may continue to exercise all of its powers despite any delegation.

46.5 A delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position.

**47. Execution of documents**

47.1 The Company may execute a document without using a common seal if the document is signed by:

- (a) two Directors of the Company; or
- (b) a Director and the secretary.

47.2 A person may sign a document:

- (a) by signing a physical form of the document by hand;
- (b) by signing an electronic form of the document; or
- (c) by using electronic means,

provided that any signing of a document under sub-clauses (b) and (c) satisfies Part 1.2AA of the Corporations Act in relation to the use of technology to sign documents (including deeds).

**48. Duties of Directors**

The Directors must comply with their duties as directors under the law.

**49. Conflicts of interest**

49.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):

- (a) to the other Directors; or
- (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.

49.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting at which it is disclosed.

- 49.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under clause 49.4:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 49.4 A Director may still be present and vote when a matter in which the Director has an interest is being considered if:
- (a) the Director's interest arises because they are a Member or a Representative or a Participant, and all Members of the Company have the same interest;
  - (b) the Director's interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a director of the Company;
  - (c) the Director's interest relates to a payment by the Company under clause 66, or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter; or
  - (e) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
    - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## **DIRECTORS' MEETINGS**

### **50. When the Directors meet**

The Directors may decide how often, where, when and by what means they meet.

### **51. Calling Directors' meetings**

- 51.1 A Director may call a Directors' meeting by giving reasonable notice to all of the other Directors.
- 51.2 A Director may give notice in writing or by any other means of communication that has previously been agreed to by all of the Directors.

### **52. Chairperson for Directors' meetings**

- 52.1 The Chair is entitled to chair Directors' meetings.
- 52.2 The Directors at a Directors' meeting may choose a Director to be the chairperson for that meeting if the Chair is:
- (a) not present within 30 minutes after the starting time set for the meeting; or
  - (b) present but does not want to act as chairperson of the meeting.

### **53. Quorum at Directors' meetings**

- 53.1 The quorum for a Directors' meeting is a majority (more than 50%) of Directors, unless otherwise specified in the By-laws.
- 53.2 A quorum must be present for the whole Directors' meeting.

**54. Using technology to hold Directors' meetings**

- 54.1 The Directors may hold their meetings as virtual meetings under Part 2G.5 of the Corporations Act and by using any technology (such as video or teleconferencing) that is agreed to by all of the Directors. The Directors' agreement may be a standing (ongoing) one.
- 54.2 A Director may only withdraw his or her consent to the use of any technology within a reasonable period before a meeting that is to use such technology.

**55. Passing Directors' resolutions**

At a Directors' meeting a resolution is passed if Directors entitled to vote cast more votes in favour of the resolution than against it.

**56. Circular resolutions of Directors**

- 56.1 The Directors may pass a circular resolution without a Directors' meeting being held.
- 56.2 A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 56.3 or clause 56.4.
- 56.3 Each Director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 56.4 The Company may send a circular resolution by email to the Directors and the Directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 56.5 A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in clause 56.3 or clause 56.4.

**SECRETARY**

**57. Appointment and role of secretary**

- 57.1 The Company must have at least one secretary, who may also be a Director.
- 57.2 A secretary must be appointed by the Directors and may be removed from the role of secretary by the Directors.
- 57.3 Before being appointed as a secretary, a person must give the Company their signed consent to act as secretary of the Company.
- 57.4 The Directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 57.5 The role of the secretary includes ensuring that the minutes and other records of General Meetings (including notices of meetings), Directors' meetings and circular resolutions are maintained in accordance with the law.

**MINUTES AND RECORDS**

**58. Minutes and records**

- 58.1 The Company must, make and keep the following records:
- (a) minutes of proceedings and resolutions of a General Meeting within one month of the meeting;



- (b) a copy of a notice of each General Meeting within one month of the notice being given; and
  - (c) a copy of a Members' Statement distributed to Members under clause 32 and clause 33 within one month of distributing the statement.
- 58.2 The Company must make within one month and thereafter keep the following records:
- (a) minutes of proceedings and resolutions of Directors' meetings (including meetings of any committees); and
  - (b) minutes of circular resolutions of Directors.
- 58.3 To allow Members to inspect the Company's records:
- (a) the Company must give a Member or Representative access to the records set out in clause 58.1; and
  - (b) the Directors may authorise a Member or Representative to inspect other records of the Company, including records referred to in clauses 58.2 and 59.1.
- 58.4 The Directors must ensure that minutes of a General Meeting or a Directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next meeting.
- 58.5 The Directors must ensure that minutes of the passing of a circular resolution of Directors are signed by a Director within a reasonable time after the resolution is passed.
- 59. Financial and related records**
- 59.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 59.2 The Company must also keep written records that correctly record its operations.
- 59.3 The Company must retain its records for at least seven years.
- 59.4 The Directors must take reasonable steps to ensure that the Company's records are kept safe.

## **BY-LAWS**

### **60. By-laws**

- 60.1 The Board may pass a resolution to make, amend or repeal By-laws to give effect to this constitution or for the proper conduct, control and management of the Company in relation to the following matters:
- (a) any matters which this constitution specifies can be addressed in By-laws;
  - (b) the formation of any committees including their composition, terms of reference and other relevant matters; and
  - (c) any such other matter as provided for under this constitution or as are commonly the subject matter of regulations for the proper conduct of companies.



- 60.2 Members and Directors must comply with By-laws as if they were part of this constitution.
- 60.3 To the extent of any inconsistency between the By-laws and this constitution, this constitution prevails to the extent of that inconsistency.

## **NOTICE**

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### **61. What is notice**

- 61.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 62 to 64, unless specified otherwise.
- 61.2 Clauses 62 to 64 do not apply to a notice of proxy under clause 38.8.

### **62. Notice to the Company**

- 62.1 Written notice or any communication under this constitution may be given to the Company, the Directors or the secretary by:
- (a) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address;
  - (b) delivering it to the Company's registered office; or
  - (c) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided.
- 62.2 For abundance of clarity, the Company's preferred means of receiving notice under this constitution is by email addressed:
- (a) to the Company, the secretary and the Chair at their email addresses as published on the Company's website; or
  - (b) where the notice is in response to a specific matter where an email address for responses has been provided, to that email address.

### **63. Notice to Members**

- 63.1 Written notice or any communication under this constitution may be given to a Member:
- (a) in person;
  - (b) by sending it to the email or other electronic address nominated by the Member as an address for service of notices;
  - (c) if agreed to by the Member, by notifying the Member at an email or other electronic address nominated by the Member, that the notice is available at a specified place or address (including an electronic address).
  - (d) by posting it to, or leaving it at the address of the Member in the Register or at an alternative address (if any) nominated by the Member for service of notices; or
  - (e) sending it to the fax number nominated by the Member as an alternative address for service of notices (if any).
- 63.2 If the Company does not have an address for the Member, the Company is not required to give notice in person.

### **64. When notice is taken to be given**

A notice:

- (a) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent;

- (b) given under clause 63.1(b) is taken to be given on the business day after the notification that the notice is available is sent;
- (c) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered; or
- (d) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs.

## **FINANCIAL YEAR**

### **65. Company's financial year**

The Company's financial year is from 1 July to 30 June unless otherwise specified in the By-laws.

## **INDEMNITY, INSURANCE AND ACCESS**

### **66. Indemnity**

- 66.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 66.2 In this clause, 'officer' means a Director or secretary and includes a Director or secretary after they have ceased to hold that office.
- 66.3 In this clause, 'to the relevant extent' means:
  - (a) to the extent that the Company is not precluded by the law from doing so; and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 66.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

### **67. Insurance**

To the extent permitted by the law, and if the Directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

### **68. Directors' access to documents**

- 68.1 A Director has a right of access to the financial records of the Company at all reasonable times.
- 68.2 The Company must allow a Director or former Director to inspect and take copies of the books of the Company to the extent permitted by the law.

## **NOT-FOR-PROFIT**

### **69. No profits for Members**

Subject to clause 72, the assets and income of the Company must be applied solely in furtherance of the Objects and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly, to any Member.

## **WINDING UP**

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### **70. Surplus assets not to be distributed to members**

If the Company is wound up, any Surplus Assets must not be distributed to any Member or Former Member of the Company.

### **71. Distribution of surplus assets**

71.1 Subject to the Corporations Act, any other applicable law, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to:

- (a) the Australasian Institute of Digital Health Limited (ACN 097 598 742); or
- (b) if the Directors so determine, to any charity with a charitable purpose similar to the objects of the Company and which also prohibits the distribution of any surplus assets to its members to at least the same extent as the Company.

71.2 The Company may by Special Resolution nominate another company, fund, authority or institution for the purpose of clause 71.1

### **72. Other payments to Members**

72.1 Nothing in this constitution prevents the Company, with the approval of the Board, paying:

- (a) reasonable remuneration to a person who is a Member, Representative or Participant and who is an employee of the Company in respect of the work that person performs as an employee of the Company;
- (b) reasonable remuneration in consideration of services rendered or goods supplied by a Member to the Company in the ordinary course of business;
- (c) interest, at a reasonable rate, on money borrowed from a Member or other person;
- (d) reasonable rent for premises leased to the Company by a Member or other person;
- (e) out-of-pocket costs or expenses incurred by a Member or other person for or on behalf of the Company with the Board's prior approval; or
- (f) any other reasonable amount of a similar character to those described in this clause.

72.2 For the avoidance of doubt, nothing in this clause 72:

- (a) prevents a Member from receiving such services as may ordinarily be provided by the Company in the course of undertaking its activities; or
- (b) prohibits a Member from receiving a minor benefit that is directly related to being a Member of the Company.

## **DEFINITIONS AND INTERPRETATION**

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### **73. Definitions**

In this constitution:

**AGM** means the annual general meeting referred to in clause 24;

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

**By-laws** means any administrative rules for managing the affairs of the company made pursuant to clause 60 and as amended from time to time;

**Chair** means a person elected to be the Company's chairperson under clause 44.2;

**Company** means HL7 Australia Limited (ACN 629 010 297);

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

**Director** means a person who is, for the time being, a director of the Company;

**Former Member** means a person who was formerly a Member of the Company but is no longer a Member;

**General Meeting** means a meeting of members and includes the AGM;

**HL7 International** means Health Level Seven International Incorporated, a not-for-profit corporation incorporated in New Jersey, United States of America, and a global health information standards development organisation with its head office in Ann Arbor, Michigan, United States of America;

**Individual Member** means a Member that is a natural person other than a natural person trading as a sole trader;

**Member** means a person whose name is entered in the Register as a then current member of the Company;

**Member Present** means, in connection with a General Meeting, a Member present (including being present by technological means) in person, by Representative or by proxy at a venue for the meeting;

**Members' Resolution** means a resolution proposed in accordance with clause 32.1(a);

**Members' Statement** means a statement of Members in accordance with clause 32.1(b);

**Objects** means the Company's objects as described in clause 7;

**Organisation** means a natural person trading as a sole trader, a partnership acting through an authorised representative of the partnership, a corporation, an incorporated association, a public authority, instrumentality or government agency, or any other legal person that is not a natural person;

**Organisation Member** means a Member that is an Organisation;

**Participant** means a natural person nominated by an Organisation Member to receive Participant benefits in accordance with clause 14 and the By-laws;

**Professional Activities** means working groups, connectathons, educational activities and technical events conducted by the Company and by HL7 International for the purposes of developing, balloting, maintaining and supporting the application of standards, implementation guides, and other documents developed by the Company, HL7 International and associated entities;

**Representative** means a natural person appointed as a representative of an Organisation Member in accordance with clause 13;

**Special Resolution** means a resolution:

- (a) of which notice has been given under clause 25.5(c); and
- (b) that has been passed by at least 75% of the votes cast by those present and entitled to vote on the resolution;

**Register** means the register of Members kept pursuant to the Corporations Act; and

**Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

**74. Reading this constitution with the Corporations Act**

- 74.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 74.2 The Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- 74.3 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning in this constitution.

**75. Interpretation**

In this constitution:

- (a) a word importing the singular includes the plural (and vice versa);
- (b) a word indicating a gender includes every other gender;
- (c) a reference to a person includes any natural or legal person;
- (d) if a word or phrase is given a defined meaning, any other party of speech or grammatical form of that word or phrase has a corresponding meaning;
- (e) a reference to something being "written" or "in writing" includes that thing being representable or reproducible in visible form;
- (f) a reference to "the law" includes the common law (particularly as it applies to the governance and management of companies), the Corporations Act and regulations made under the Corporations Act;
- (g) a notice or document required by this constitution to be signed may be authenticated by any other manner permitted by the law;
- (h) the words "including", "for example", or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and
- (i) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

REVISED V1.05 FOR APPROVAL



HL7 Australia Limited (ABN 37 629 010 297)

ATTACHMENT C to Notice of Meeting and Explanatory Memorandum

Proposed revised version of HL7 Australia By-laws  
(for information)

comprising 25 pages commencing on the next page.



# HL7 AUSTRALIA BY-LAWS

Applicable from: 01 June 2022

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## PART 1 GENERAL

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### 1.1 Introduction

This edition of the By-laws of HL7 Australia Ltd (ACN 629 010 297) was adopted by resolution of the Board of on 09 May 2022 to take effect from 01 June 2022 and replaces all previous editions.

### 1.2 Interpretation

1.2.1 In these By-laws, unless the context otherwise dictates:

- (a) **Company** means HL7 Australia Ltd (ACN 629 010 297);
- (b) **Constitution** means the Company's constitution as amended from time to time;
- (c) **By-laws** means these By-laws approved by the Board under authority of clause 60 of the Constitution;
- (d) a term that is defined in the Constitution, covers the same subject and is not differently defined in these By-laws has the meaning given to it in the Constitution; and
- (e) the rules of interpretation set out in clauses 74 and 75 of the Constitution apply to the interpretation of these By-laws.

1.2.2 The Constitution overrides any provision in these By-laws that is inconsistent with the Constitution but only to the extent necessary to resolve such inconsistency.



## PART 2 MEMBERSHIP CLASSES

2.1 For purposes of clause 11 of the Constitution, the membership classes, the qualifications and other criteria for Members to belong to each membership class, and the privileges and rights of Members in each membership class are as set out in Table 1 below.

| Class                      | Qualifications   | Privileges   |
|----------------------------|--|--|
| Individual Member          | <ul style="list-style-type: none"> <li>(a) A natural person</li> <li>(b) Having a relevant interest in products and services of HL7 International and/or the Company</li> <li>(c) Who the Directors accept as an Individual Member</li> <li>(d) Who pays the annual subscription fee for an Individual Member</li> </ul>   | <p><b>One vote</b> at General Meetings and in Member ballots.</p> <p>The right for the Individual Member to receive Member benefits when participating in Professional Activities.</p>   |
| Tier 3 Organisation Member | <ul style="list-style-type: none"> <li>(a) An Organisation</li> <li>(b) Having a relevant interest in products and services of HL7 International and/or the Company</li> <li>(c) Who the Directors accept as a Tier 3 Organisational Member</li> <li>(d) Who pays the annual subscription fee for a Tier 3 Organisation Member</li> </ul>  | <p><b>Three votes</b> at General Meetings and in Member ballots.</p> <p>The right to have up to <b>three Participants</b> at any one time receive Member benefits when participating in Professional Activities.</p>   |
| Tier 2 Organisation Member | <ul style="list-style-type: none"> <li>(a) An Organisation</li> <li>(b) Having a relevant interest in products and services of HL7 International and/or the Company</li> <li>(c) Who the Directors accept as a Tier 2 Organisation Member</li> <li>(d) Who pays the annual subscription fee for a Tier 2 Organisation Member</li> </ul>  | <p><b>Six votes</b> at General Meetings and in Member ballots.</p> <p>The right to have up to <b>six Participants</b> at any one time receive Member benefits when participating in Professional Activities.</p>   |
| Tier 1 Organisation Member | <ul style="list-style-type: none"> <li>(a) An Organisation</li> <li>(b) Having a relevant interest in products and services of HL7 International and/or the Company</li> <li>(a) Who the Directors accept as a Tier 1 Organisation Member</li> <li>(b) Who pays the annual subscription fee for a Tier 1 Organisation Member</li> <li>(c) Who also pays at least the minimum sponsorship amount for a Tier 1 Organisation Member.</li> </ul> | <p><b>Twelve votes</b> at General Meetings and in Member ballots.</p> <p>The right to have <b>unlimited Participants</b> at any one time receive Member benefits when participating in Professional Activities.</p> <p><b>Promotion of the Member</b> as a Tier 1 Organisation Member and sponsor of the Company as agreed between the Member and the Company.</p> |

| Class                | Qualifications  | Privileges                  |
|----------------------|---|-----------------------------|
| Honorary Life Member | <ul style="list-style-type: none"> <li>(a) A natural person</li> <li>(b) Who has rendered outstanding meritorious service to the Company as determined by the Directors.</li> <li>(c) Who and has been appointed by the Members as an Honorary Life Member (by simple majority) at a General Meeting</li> </ul> | As for an Individual Member |

**Table 1 - Membership classes, qualifications for membership, and privileges**

## PART 3 FEES PAYABLE BY MEMBERS

3.1 The rates at which the membership fee and other fees payable by Members are charged (inclusive of GST) are set out in the following table.

| Membership class           | Annualised membership fee | Application fee (One off) | Annualised minimum sponsorship | Guarantee Fee (one-off) |
|----------------------------|---------------------------|---------------------------|--------------------------------|-------------------------|
| Individual Member          | \$154.00                  | \$0                       | \$0                            | <del>\$10</del>         |
| Tier 3 Organisation Member | \$583.00                  | \$0                       | \$0                            | <del>\$10</del>         |
| Tier 2 Organisation Member | \$5,494.50                | \$0                       | \$0                            | <del>\$10</del>         |
| Tier 1 Organisation Member | \$10,989.00               | \$0                       | \$22,000.00                    | <del>\$10</del>         |
| Honorary Life Member       | \$0                       | \$0                       | \$0                            | <del>\$10</del>         |

**Table 2 - Membership fee rates**

3.2 In this Part 3:

**Applicant** means an applicant for membership of the Company;

**First Period of Membership** has the meaning given in By-law 3.3;

**IMSF** has the meaning given in By-law 3.5;

**Renewal Date** means 01 March, 01 June, 01 September or 01 December in any year;

**Renewal Duration** means one of 6, 9, 12, 15, 18, 21 or 24 months; and

**Renewal Scale Factor** has the meaning given in By-law 3.5.

### 3.3 First period of membership

A Member's **first period of membership**:

- (a) commences on the day that the Member's membership application is accepted; and
- (b) runs until the next Renewal Date and then for the Renewal Duration selected by the Member at the time that the Member applied for membership.

### 3.4 Subsequent periods of membership

After a Member's First Period of Membership and provided that the Member renews their membership by paying the applicable membership fee and any minimum sponsorship, each subsequent membership period for that Member:

- (a) commences on the Renewal Date on which the Member's previous membership period expires; and
- (b) has the Renewal Duration selected by the Member at the time that the Member renews their membership.

### 3.5 Renewal scale factors

The **renewal scale factors** to be applied when adjusting annualised fees for different Renewal Durations are as set out in Table 3 hereunder.

| Membership period - Renewal Duration | Renewal scale-factor |
|--------------------------------------|----------------------|
| 6 months                             | 0.5                  |
| 9 months                             | 0.75                 |
| 12 months                            | 1.0                  |
| 15 months                            | 1.25                 |
| 18 months                            | 1.5                  |
| 21 months                            | 1.75                 |
| 24 months                            | 2.0                  |

**Table 3 - Scale factor by membership period Renewal Duration**

### 3.6 Fee payable on renewal of membership

3.6.1 The total fee payable by a Member on renewal of their membership under By-law 3.4 is calculated using the following steps:

- (a) In Table 2, identify the annualised membership fee for the Member's membership class;
- (b) In Table 3, identify the Renewal Scale Factor for the proposed Renewal Duration of the Member's first or next membership period;
- (c) Calculate the membership fee payable by multiplying the annualised membership fee from step (a) by the Renewal Scale Factor from step (b) and rounding the result to the nearest cent;

- (d) In Table 2, identify the annualised minimum sponsorship for the Member's membership class;
- (e) Calculate the minimum sponsorship payable by multiplying the annualised minimum sponsorship from step (d) by the Renewal Scale Factor from step (b) and rounding the result to the nearest cent;
- (f) Ensure that the actual sponsorship amount being offered by the Member is greater than or equal to the minimum sponsorship payable from step (e), or otherwise set the actual sponsorship amount to be the minimum sponsorship payable; and
- (g) Calculate the total fee payable on renewal by adding the membership fee payable from step (c) to the actual sponsorship amount from step (f).

3.6.2 Except as may be otherwise provided in the Constitution and these By-laws a Member must pay the total fee payable on renewal as calculated under By-law 3.6.1 on or before the Renewal Date on which the Member's previous membership period expires.

### 3.7 **Fee payable on application**

3.7.1 The total fee payable by an Applicant (including fees for the First Period of Membership) is calculated using the following steps:

- (a) In Table 2, identify the annualised membership fee for the Applicant's proposed membership class;
- (b) Identify the day on which the Applicant's proposed First Period of Membership ends based on the Renewal Duration selected by the Applicant in their membership application;
- (c) Calculate the **Initial Membership Scale Factor (IMSF)** by calculating the number of days between the day on which the Applicant's membership application is accepted and the day identified in step (b) on which the Applicant's First Period of Membership ends and dividing this number of days by 365.24;
- (d) Calculate the initial membership fee by multiplying the annualised membership fee from step (a) by the IMSF from step (c) and rounding the result to the nearest cent;
- (e) In Table 2, identify the annualised minimum sponsorship for the Applicant's proposed membership class;
- (f) Calculate the minimum sponsorship payable by multiplying the annualised minimum sponsorship from step (e) by the IMSF from step (c) and rounding the result to the nearest cent;
- (g) Ensure that the actual sponsorship amount being offered by the Applicant is greater than or equal to the minimum sponsorship payable from step (e), or otherwise set the actual sponsorship amount to be the minimum sponsorship payable;
- (h) Identify from Table 2 any one-off application fee payable for the Applicant's proposed membership class; and

- (i) Calculate the total fee payable by adding the initial membership fee from step (d) to any actual sponsorship amount from step (g) to any one-off application fee identified from step (h).
- 3.7.2 Except as may be otherwise provided in the Constitution and these By-laws an Applicant must pay the total application fee as calculated under By-law 3.6.1 prior to or at the same time as their membership application is submitted.
- 3.8 **Other**
- 3.8.1 Fees payable by Members and Applicants under this Part of the By-laws are ordinarily calculated and invoiced via the Company's online customer relationship management system (CRM) with payments being made through the associated online payment system.
- 3.8.2 The Company may, on request from an Applicant or Member and in the Company's absolute discretion, accept an alternative method and timing of payment provided that the Company receives all membership fees on or by the due date and any balance within such further reasonable period as the Company may advise in writing. Such alternative arrangements may arise because of the size of a transaction, the nature of a sponsorship arrangement, or statutory requirements imposed on an Applicant or Member.
- 3.8.3 Failure to pay membership renewal fees on time will result in loss of Member privileges from the date that such fees fall due until such fees are paid.
- 3.8.4 Failure of a Member to pay membership fees within a month of such fees becoming due will normally cause the Member to cease being a Member under clause 18.1(f) of the Constitution.
- 3.8.5 Except as may be otherwise allowed by the Constitution, these By-laws and operation of the law, membership fees and any other fee owed to the Company may not:
- (a) be paid in instalments;
  - (b) be reduced in whole or in part; or
  - (c) be refunded in whole or in part.
- 3.8.6 If the Board in its discretion allows payment of an amount owed to the Company to be deferred, the Board may decide whether and at what rate interest will be payable on any balance outstanding.
- 3.8.7 The Company in its discretion may refund any Guarantee Fee or Guarantee deposit previously paid by a Member. It may do this by payment or by reducing the membership fee payable at the Member's next membership renewal. Where a Member has received such a refund, the Member may become liable to contribute under clause 4 of the Constitution in the event that the Company is wound up while the Member is a Member or in the 12 months after the Member ceases to be a Member.

## **PART 4 OFFICE BEARERS**

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4.1 The office bearers are:

- (a) the Chair as elected by the Members or appointed by the Board under clause 44 of the Constitution;
- (b) the Secretary as appointed by the Board from time to time;
- (c) the Treasurer as appointed by the Board from time to time; and
- (d) the Director of Membership as appointed by the Board from time to time.

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## **PART 5 ELECTION OF DIRECTORS**

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### **5.1 Application**

- 5.1.1 This Part 5 applies to any election of Directors of the Company at an AGM under clause 41.3 of the Constitution.
- 5.1.2 This Part 5 may also be used for the election of a Director or Directors at a General Meeting other than an AGM to the extent that the provisions herein can be applied to such an election and subject to the requirements of the law in relation to notice of business at General Meetings.
- 5.1.3 For abundance of clarity, this Part 5 does not apply to any proposed direct appointment of a Director or Directors by means of resolutions at a General Meeting.

### **DIVISION 5A Election of directors - General**

#### **5.2 Returning Officer**

- 5.2.1 The Board must appoint a Returning Officer before commencing the conduct of an election of Directors to the Board under these By-laws.
- 5.2.2 The Returning Officer may be any person that is not or will not be a candidate in the election.
- 5.2.3 The Returning Officer will be responsible for conducting the election on behalf of the Company to include: receipt, checking and acceptance of nominations, the issue of ballot forms and any candidate material, the conduct and closing of balloting, the resolution of any issues raised by candidates or voters, and determining the results of the election in accordance with the Constitution and these By-laws.
- 5.2.4 The Company is to reimburse any expenses incurred by the Returning Officer in conducting the election and agreed by the Board and may also at the discretion of the Board compensate the Returning Officer for time directly spent in managing the conduct of the election.
- 5.2.5 The Company shall promptly provide the Returning Officer with information needed to conduct the election including:
- (a) information needed to assess the eligibility of candidates when requested by the Returning Officer;
  - (b) a list of eligible voters, their Member affiliations and associated membership class; and
  - (c) any changes in such information that may be relevant to the conduct of the election.

#### **5.3 Calling an election**

- 5.3.1 The Board must call an election by giving notice (**Election Notice**) of the election to all Members, Representatives and Participants at least 6 weeks before the proposed date of the AGM each year.

#### 5.3.2 Such Election Notice must:

- (a) state that an election is being conducted to fill Director positions that will fall vacant at the end of the AGM;
- (b) state the name and contact details of the Returning Officer who will be conducting the election on behalf of the Company;
- (c) state the total number of Directors that are to be elected in accordance with the Constitution and indicate whether or not the election will include the election of the Chair as one of the Directors;
- (d) where relevant, indicate any other office-bearer positions that the Board expects to appoint after the election;
- (e) call for eligible persons to nominate as candidates for election as a Director (and as Chair, when relevant);
- (f) state the eligibility criteria for holding a position as a Director;
- (g) state the time and date (**Nomination Closing Time**) by which all nominations for candidates must be received by the Returning Officer, being a date which is between 7 and 14 days after the date of the Election Notice;
- (h) indicate the documentation (**Candidate Statement**) that a candidate may submit in support of their nomination, including any applicable word limit for such documentation;
- (i) state the method for notifying the Company of nominations for candidates (which, unless the Board determines otherwise, is emailing a Nomination Form to the Returning Officer, Chair, and Secretary at email addresses to be provided in the Election Notice); and
- (j) indicate how and when the Board expects that a ballot will be conducted if the election is contested.

#### 5.4 **Nomination of candidates**

##### 5.4.1 To be nominated as a candidate for election as a Director, the nominee:

- (a) must submit a completed Nomination Form;
- (b) must submit a completed Candidate Consent and Acknowledgement form; and
- (c) should provide a photograph (in digitised form), Candidate Statement and any other documents specified in the Election Notice.

##### 5.4.2 For a nomination under By-law 5.4.1 to be valid, a nominee must be nominated by two nominators (**Nominators**), each of which must

- (a) be either a Member, Representative or Participant;
- (b) not be the same person as the nominee; and
- (c) not be a Representative of or Participant from the same Member as the nominee or the other Nominator.



- 5.4.3 The Nomination Form, Candidate Consent and Acknowledgement Form, Candidate Statement, nominee photograph and any other documents specified in the Election Notice must be delivered to the Returning Officer by the Nomination Closing Time.
- 5.4.4 A Nomination Form may be submitted in several different parts, with each part being signed and submitted by a different person on behalf of the nominee.
- 5.5 **Defective nominations**
- 5.5.1 If the Returning Officer forms the view that a Nomination Form or any other document that must be submitted as part of a nomination is or may be defective, the Returning Officer must, before rejecting the nomination, notify the nominee of the defect and offer the nominee an opportunity to remedy the defect within a reasonable period of time determined by the Returning Officer of not less than 2 business days, even if this period is after the Nomination Closing Time.
- 5.5.2 The Returning Officer must reject the nomination if the nominee does not remedy any defect identified under By-law 5.5.1 to the satisfaction of the Returning Officer but otherwise the Returning Officer must accept the nomination and may impose reasonable conditions on the nominee as part of such acceptance.
- 5.6 **Withdrawing nominations**
- A nominee may withdraw their nomination by notice in writing to the Returning Officer at any time before the commencement of voting in the election.
- 5.7 **Insufficient candidates**
- 5.7.1 If after reviewing the nominations received by the Nomination Closing Time, the Returning Officer has not received sufficient nominations to fill all vacant positions being balloted in an election, the Board may if practical and in its sole discretion give notice (**Supplementary Call Notice**) of a supplementary call for nominations closing on a specified date and time (**Supplementary Closing Time**) being no later than 10 days after the Nomination Closing Time.
- 5.7.2 A Supplementary Call Notice issued under this By-law is to set out:
- the number of nominations originally sought in the Election Notice, the number of vacancies remaining to be filled and the names and any Member affiliations of those candidates who have already been nominated, and;
  - such other details from the Election Notice as are applicable mutatis mutandis to the calling and closure of a supplementary call for nominations;
- 5.7.3 All nominations received in response to a Supplementary Call Notice will be reviewed by the Returning Officer and those that are not defective will be accepted and included in the ballot on the same basis as the other nominations received.
- 5.7.4 At the sole discretion of the Returning Officer a nomination that is received in response to a Supplementary Call Notice and contains a defect or defects may be referred back to the nominee to remedy such defect or defects and under such reasonable conditions as the Returning Officer may determine.

#### 5.8 **Uncontested elections**

- 5.8.1 If the total number of candidates that have nominated for any position after the Nomination Closing Time and any Supplementary Closing Time is less than or equal to the number of vacancies for that position, a Contested Ballot will not be conducted for that position and the candidates nominated for that position will be declared elected by the Returning Officer.
- 5.8.2 For abundance of clarity, the appointment of a Director elected under By-law 5.8.1 does not need to be confirmed by way of a separate resolution at the AGM.

#### 5.9 **Contested elections**

If the total number of candidates nominating for any position after the Nomination Closing Time and any Supplementary Closing Time is greater than the number of vacancies for that position, a secret ballot (**Contested Ballot**) for the position will be conducted using such means as the Board may determine in accordance with the Constitution and these By-laws.

#### 5.10 **Candidate information**

The information (**Candidate Information**) to be provided to voters in relation to each candidate in any Contested Ballot in which the candidate is not physically present at the time the ballot is conducted is to include:

- (a) the Candidate Statement;
- (b) any office bearer positions in which the candidate has indicated a willingness to serve on the Nomination Form;
- (c) where a candidate is a Representative or Participant, the related Organisation Member; and
- (d) a photographic image of the candidate.

#### 5.11 **Voting system**

- 5.11.1 A ballot for a single position in a contested election is to be determined by secret ballot using a preferential voting.
- 5.11.2 A single ballot for multiple positions in a contested election is to be determined by secret ballot using plurality-at-large voting in which voters have the option to vote for any number of candidates up to the number to be elected.

#### 5.12 **Separate ballots for Chair and General Directors**

- 5.12.1 In any election in which the Chair and other Directors (General Directors) are to be elected, a ballot will be conducted for the position of Chair and another ballot for the General Director positions.
- 5.12.2 For abundance of clarity, any candidate nominating for election as Chair may also nominate for election as a General Director.

#### 5.13 **Ballot order**

- 5.13.1 In an election, ballots will be determined for vacant positions in the following order,

- (a) first, any ballot for the position of Chair;
- (b) then, the ballot for the General Director position(s).

5.13.2 In an election where the candidate elected as Chair is also a candidate for a position of General Director, the person elected as Chair will be deemed to have withdrawn their nomination from the ballot for General Director.

#### 5.14 **Vote tallying**

5.14.1 The candidate or candidates with the highest number of votes on a ballot for a position as determined in accordance with the voting system specified in By-law 5.3 will be the candidate or candidates elected to the position specified for that ballot.

5.14.2 If two or more candidates on a given ballot each receive the same number of votes for that ballot, and in the absence of any agreement among the candidates as to which of them should be elected, the Returning Officer will decide by lot which of those candidates is to be elected.

5.14.3 The Returning Officer is to provide a report to the Board and to the AGM on the results of the election, identifying:

- (a) the number of votes received by each candidate both before and after distribution of preferences;
- (b) the numbers of voters supporting each candidate; and
- (c) whether there had been any irregularities or challenges, the measures used to address them and their potential impact on the results, if any.

#### 5.15 **Candidate statements**

Subject to any limitation on length, matters which a candidate may wish to consider for incorporation into their candidate statement include:

- (a) a brief summary of biographical highlights setting out any personal and professional information that the candidate wishes to provide;
- (b) the period of time the candidate may have been a Member, Representative, Participant, Director or office bearer and any achievements in these roles;
- (c) the name of the candidate's then current employer (if any);
- (d) a statement in support of the candidate's election to the Board or interest in serving in any office bearer positions;
- (e) if the candidate so desires, a photograph of the candidate; and
- (f) any matters which a voter might reasonably expect the candidate to declare in the interests of transparency or probity.

#### 5.16 **No candidate for Chair**

5.16.1 If there is no candidate nominated for Chair by the later of the Nomination Closing Time or any Supplementary Closing time:

- (a) the Board, after considering any advice from the Returning Officer, may issue a further call for nominations to elect a Chair at the AGM under Division 5C of these By-laws;
  - (b) a person who is already a candidate for election to another Director position may also nominate for election as Chair under By-law 5.16.1(a); and
  - (c) the Returning Officer, where necessary, is to allow for any election of a Chair at the AGM under By-law 5.16.1(a) when finalising the vote tally and announcing the results in any ballot for other Director positions.
- 5.16.2 If, notwithstanding any action taken under By-law 5.16.1 there has been no candidate nominated for election as Chair at the AGM in any year under these By-laws, the Board is to:
- (a) fill by application of clause 41.8 any vacancies in the position of Director remaining after the AGM (including any additional Director vacancy due to there being no Chair); and
  - (b) then by application of clause 44.2(b) resolve how the functions of the Chair are to be performed by the Directors until a Chair can next be next elected.

#### 5.17 Definitions

In this Part:

**Candidate Information** has the meaning given to that term in By-law 5.10;

**Candidate Consent and Acknowledgement Form** means a notice in writing which contains information of the type sought in the form in Annexure A to Part 5 of these By-laws;

**Candidate Statement** has the meaning given to that term in By-law 5.3.2(h);

**Contested Ballot** has the meaning given to that term in By-law 5.9;

**Election Notice** has the meaning given to that term in By-law 5.3.1;

**Nomination Closing Time** has the meaning given to that term in By-law 5.3.2(g);

**Nomination Form** means a notice in writing which contains information of the type sought in the form in Annexure B to Part 5 of these By-laws;

**Nominator** means a natural person that nominates a candidate under By-law 5.4.2;

**Returning Officer** means a person appointed under these By-laws to oversee the conduct of an election required under the Constitution;

**Supplementary Call Notice** has the meaning given to that term in By-law 5.7.1; and

**Supplementary Closing Time** has the meaning given to that term in By-law 5.7.1.

## **DIVISION 5B Election of directors by electronic ballot**

### **5.18 Application**

This Division 5B applies to any election of Directors of the Company conducted using an electronic ballot system under clauses 41.3(b) and 41.4 of the Constitution.

### **5.19 Voting by electronic ballot system**

5.19.1 A Contested Ballot conducted under this Division 5B of the By-laws may use such electronic ballot system as may be determined by the Board from time to time in accordance with these By-laws.

5.19.2 The voting period in a Contested Ballot conducted under this Division 5B of the By-laws shall be determined by the Returning Officer, and:

- (a) may commence as soon as the Candidate Information, any ballot information and voting instructions, and voter details are loaded into the electronic ballot system and can be made available to voters but no more than 26 days before the day of the AGM in that year;
- (b) must be open for a period meeting the requirements of clause 41.4(c) of the Constitution (i.e. a minimum of 5 days and a maximum of 20 days);
- (c) must close on or within 6 days prior to the day of the AGM under clause 41.4(b) of the Constitution;
- (d) may be extended beyond any initial closing time providing that the extended voting period still meets the requirements of clause 41.4 of the Constitution; and
- (e) may be closed at any time that all eligible votes have been cast.

5.19.3 A vote will be informal and may be disregarded if it is marked other than in accordance with the voting instructions conveyed to voters via the electronic ballot system.

5.19.4 The Returning Officer is to ensure that an audit trail of voting in any ballot conducted under this Division 5B of the By-laws is retained for a reasonable period to ensure that it is available for review and checking.

5.19.5 The electronic ballot system used to conduct a ballot is to provide reasonable measures to conceal the identity of the voter that cast any particular vote.

### **5.20 Changes in Member details while voting**

5.20.1 The Company's communications with a Member in relation to voting in a Contested Election will use the Member's contact details, membership class and Representative (where applicable) as recorded in the Register on the day that the Election Notice issued, unless:

- (a) the Member brings any subsequently requested change in the Member's details to the attention of both the Company and the Returning Officer;
- (b) the Company accepts the change; and

- (c) at the discretion and convenience of the Returning Officer the requested change is able to be reflected in the electronic ballot system without any adverse impact on the integrity of the election.

5.20.2 Any inability or failure on the part of the Company or the Returning Officer to make a change in Member details requested under By-law 5.20.1 is not grounds to invalidate the result of a Contested Election under these By-laws.

#### 5.21 **Failure to complete election by electronic ballot**

5.21.1 If for technical, administrative or other reasons, a contested election planned to be held using an electronic ballot system is unable to be successfully completed by using such a system (or any alternative electronic ballot system), the Company may elect to conduct the election at the AGM with the same candidates competing for the same positions.

5.21.2 If the conduct of an election is to be transferred to an AGM under By-law 5.21.1, then, to the maximum extent reasonably possible, the Company should give Members:

- (a) as much notice as possible of the change to allow them to plan to be present at the AGM if they wish to vote in the election; and
- (b) electronic access to the Candidate Information for as long as possible before the AGM.

### **DIVISION 5C Election of directors at a General Meeting**

#### 5.22 **Application**

5.22.1 This Division 5C applies to any election of Directors of the Company at an AGM under clause 41.3(c) of the Constitution'

#### 5.23 **Voting in contested ballots**

5.23.1 The Returning Officer shall be responsible for conducting any Contested Ballot under this Division 5C of the By-laws.

5.23.2 In any Contested Ballot conducted under this Division 5C:

- (a) those eligible to vote in the ballot should be given notice of the Company's intention to hold the ballot at least 5 days and no more than 30 days before the AGM at which the ballot is to be held;
- (b) the notice to be given under By-law 5.23.2(a) is to include:
  - (i) copies of the Candidate Information for all candidates or, alternatively, links to enable electronic access to such information; and
  - (ii) information on how voters may vote in the ballot and how it will be conducted and or, alternatively, links to enable electronic access to such information,
- (c) the ballot may be conducted by any means that enables all those present at the AGM (including those in virtual attendance) to participate;

- (d) a vote will be informal and may be disregarded if it is marked or submitted other than in accordance with the voting instructions conveyed to voters or if the voter's intention is unclear; and
  - (e) the process or system used to conduct the ballot is to take reasonable measures to conceal the identity of the voter that cast any particular vote.
- 5.23.3 The Returning Officer is to ensure that an audit trail of voting in a Contested Ballot conducted under this Division 5C of the By-laws is retained for a reasonable period and that it is available for review and checking.
- 5.23.4 Where a Contested Ballot at a General Meeting uses physical ballot papers, those present at the General Meeting may appoint a scrutineer to check the counting of the votes on the ballot papers.

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## HL7 Australia By-laws Annexure A to Part 5

### Candidate Consent and Acknowledgement Form

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I hereby consent to be appointed and to act as a director of HL7 Australia Limited (ACN 629 010 297) (**Company**) for the purpose of the Company's compliance with section 201D of the *Corporations Act 2001* (Cth) (**Corporations Act**).

My consent will be effective from the date of my appointment and will continue in force until I vacate the office of Director for any reason.

I disclose the following information for the purposes of enabling the Company to fulfil its obligations under Part 2D.5 of the Corporations Act

Full Name: .....

Former Names: .....

Date of Birth: .....

Place of Birth: .....

Residential Address: .....

Director ID .....

I agree to notify the Company of any change in any of the information I have provided in this document as soon as practicable but in any case, within seven days of the change.

I also acknowledge, represent and warrant to the Company that:

1. I am a Member of the Company, a Representative of a Member of the Company or a Participant from a Member of the Company.
2. I have read the Company's Constitution and By-laws, and understand that I am bound by the same.
3. I am eligible to be a director of the Company under the Company's Constitution, any applicable By-laws and the Corporations Act.
4. If I am appointed or elected as a director of the Company:
  - (a) I will use my best endeavours to perform my duties faithfully, diligently and to the best of my ability;
  - (b) I will represent the interests of the Company and its members as a whole and not the interests of any one member or group of members;
  - (c) I will owe statutory and general law duties to the Company including, without limitation, a duty:
    - (i) to exercise my powers and discharge my duties as a director with care and diligence;
    - (ii) to avoid conflicts of interest;
    - (iii) to act in good faith in the best interests of the Company;
    - (iv) to act for a proper purpose;
    - (v) not to improperly use my position;





## Candidate Consent and Acknowledgement Form

- (vi) not to improperly use information obtained by virtue of me being a director or having been a director to either gain an advantage for myself or for someone else, or to cause detriment to the Company;
  - (vii) not to disclose the Company's confidential information; and
  - (viii) to act in the best interests of the Company as a whole.
5. If I am appointed or elected as a director of the Company and I become ineligible to be a Director before the end of my appointed term, or otherwise cease being a Director under the Company's Constitution or By-laws, I will do all things necessary to give effect to my resignation as a director of the Company.
6. If I am appointed or elected as a director of the Company and I am found to have breached any obligation I owe to the Company, I may be subject to action, including for breach of contract under the Company's Constitution and By-laws.
7. I understand that:
- (a) if I am nominated as a candidate for election as a Director, I will attend the Company's next Annual General Meeting at which the election results will be announced; and
  - (b) if I am elected or appointed as a director, I will attend each subsequent Annual General Meeting while I am a director and do such things as are necessary to ensure smooth transition of the Board at the end of my term.

Signature of Nominee .....

Date: .....

Proposed Ed 2.00 for 01 June 2022



HL7 Australia By-laws
Annexure B to Part 5

Nomination Form

NOMINATED CANDIDATE

I, ..... (Name of Candidate)
accept nomination as a candidate for the positions indicated with an "x" in the box/boxes
below in the election for Directors of HL7 Australia Ltd (ACN 629 010 297) being held
this year:

- Chair (only relevant when there is a vacancy in the position of Chair to be filled)
General Director

The form of my name to appear on ballot documents is: .....

I am:

- an Individual Member
the Representative of Organisation Member: .....
a Participant from Organisation Member: .....

[Please place "x" in all relevant boxes and name Organisation Member where relevant].

If elected as a General Director, I am prepared to be appointed by the Board to any of the
following office-bearer positions (as indicated with an "x"):

- Secretary Treasurer Director of Membership

Signature of Candidate: .....

Date: .....

Submission Instructions:

Please email completed Nomination Form to: returningofficer@hl7.com.au.

All 3 pages of the Nomination Form must be completed and signed for it to be a valid
nomination. The Form may be submitted by emailing the completed document or by
emailing each page separately as completed.

Incomplete draft for review



# Nomination Form

## NOMINATOR 1

I, ..... (Name of Nominator)

Wish to nominate:

..... (Candidate Name)

as a candidate for the positions indicated with an "x" in the box/boxes below in the election for Directors of HL7 Australia Ltd (ACN 629 010 297) being held this year:

- Chair (only relevant when there is a vacancy in the position of Chair to be filled)
- General Director

I am:

- an Individual Member
- the Representative of Organisation Member: .....
- a Participant from Organisation Member: .....

[Please place "x" in all relevant boxes and name Organisation Member where relevant].

Signature of Nominator: .....

Date: .....

### Submission Instructions:

*Please email completed Nomination Form to: [returningofficer@hl7.com.au](mailto:returningofficer@hl7.com.au).*

*All 3 pages of the Nomination Form must be completed and signed for it to be a valid nomination. The Form may be submitted by emailing the completed document or by emailing each page separately as completed.*



# Nomination Form

## NOMINATOR 2

I, ..... (Name of Nominator)

Wish to nominate:

..... (Candidate Name)

as a candidate for the positions indicated with an "x" in the box/boxes below in the election for Directors of HL7 Australia Ltd (ACN 629 010 297) being held this year:

- Chair (only relevant when there is a vacancy in the position of Chair to be filled)
- General Director

I am:

- an Individual Member
- the Representative of Organisation Member: .....
- a Participant from Organisation Member: .....

[Please place "x" in all relevant boxes and name Organisation Member where relevant].

Signature of Nominator: .....

Date: .....

### Submission Instructions:

*Please email completed Nomination Form to: [returningofficer@hl7.com.au](mailto:returningofficer@hl7.com.au).*

*All 3 pages of the Nomination Form must be completed and signed for it to be a valid nomination. The Form may be submitted by emailing the completed document or by emailing each page separately as completed.*

## **PART 6 CONFIDENTIALITY**

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### **6.1 Overview**

Members, Representatives, Participants and Directors of the Company (each, a **Recipient**) may, by virtue of being a Recipient, receive Confidential Information from time to time, to assist them to carry out their obligations and exercise their rights in respect to the Company (**Permitted Purpose**).

The purpose of this By-law is to set out the Recipients' obligations with respect to that Confidential Information.

### **6.2 Obligations**

Recipients must, while they are a Recipient, and for 2 years after they cease being a Recipient:

- (a) only use Confidential Information for the Permitted Purpose;
- (b) keep the Confidential Information secret and confidential and not disclose it except as otherwise permitted under this By-law;
- (c) not reproduce or record or make any notes of any Confidential Information except to the extent necessary for the Permitted Purpose; and
- (d) immediately notify the Company if it becomes aware of any unauthorised disclosure of Confidential Information.

### **6.3 Exceptions**

The obligation of confidentiality set out in By-law 6.1 does not apply to:

- (a) Board Information which the Board authorises to be disclosed (such as a non-confidential summary of the Board's minutes or public announcements), but only to the extent that it has been authorised for disclosure; or
- (b) Confidential Information which:
  - (i) comes into the public domain other than because of a breach of this By-law or the breach of any applicable laws; or
  - (ii) is required to be disclosed by law or by order of a court, tribunal or similar regulatory body.

### **6.4 Disclosure required by law**

Recipients may only disclose Confidential Information under By-law 6.3(b):

- (a) after notifying the Company of the requirement to disclose the Confidential Information and providing the Company with a reasonable opportunity to, at its cost, resist the disclosure of the Confidential Information; and
- (b) only to the extent necessary to comply with the relevant legal obligation.

### 6.5 Return of Confidential Information

Recipients must promptly upon written demand by the Company:

- (a) cease to use or access any Confidential Information;
- (b) either permanently destroy or return to the Company, any Confidential Information held by the Recipients; and
- (c) notify the Company in writing that the Confidential Information has been destroyed or deleted.

### 6.6 Definitions

In this Part:

**Board Document** means a document or record in any form in which Board Information is embodied and from which may be retrieved with or without the assistance of any device, computer program, key, cipher or password;

**Board Information** includes all or any part of information concerning the Company or considered by or concerning the deliberations of the Board and includes:

- (a) reports and information submitted to the Board;
- (b) deliberations of the Board and formal and informal records of such deliberations; and
- (c) communications between the Board members or between an individual Director and any other Director, officer or employee of the Company, made in connection with the Permitted Purpose;

**Confidential Information** means any information (in whatever form) disclosed or otherwise made available to a Recipients which:

- (a) is marked as confidential or indicated to be confidential at the time of disclosure; or
- (b) by its nature is confidential, is known to be confidential or which the Recipients ought to have known was confidential;
- (c) is a business plan;
- (d) contains technical, financial, commercial or other information which is marked as being confidential or which the Recipients could reasonably regard as confidential;
- (e) is personal information;
- (f) is a Board Document or contains Board Information;
- (g) is designated by the chair of a Board meeting to be confidential; or
- (h) is contained in financial statements, management reports, revenue information and details relating to clients and employees;

**Permitted Purpose** has the meaning given to that term in By-law 6.1; and

**Recipient** has the meaning given to that term in By-law 6.1.