

Constitution of Australian Consumers' Association

ACN 000 281 925

a not for profit company limited by guarantee

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Corporations Act 2001

Company limited by guarantee

Constitution

of

Australian Consumers' Association

1 Nature of the Company

1.1 Limited liability and guarantee

1.1.1 The Company is a public company limited by guarantee.

1.1.2 The liability of each member is limited to \$1. This means that if the Company does not have enough assets to cover all of its liabilities upon winding up, each member must contribute up to a maximum of \$1 to the assets of the Company.

1.2 Powers

1.2.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.

1.2.2 The Company may only exercise its powers and use its income, assets and profits for the purpose and objectives set out in rule 2.

1.3 Not for Profit

1.3.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the purpose and objectives of the Company set out in rule 2.

1.3.2 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company in their capacity as members of the Company.

2 Purpose and objectives of the Company

2.1 Recognising the inequality in bargaining power between consumers and businesses, the overall purpose of the Company is to work for fair, just and safe markets that meet the needs of Australian consumers. To achieve this purpose, the Company seeks to:

2.1.1 ensure that consumers are able to understand and use or defend their rights;

2.1.2 empower consumers to engage actively in markets and make informed choices that reflect their best interests and values;

2.1.3 drive transformation of markets to create better products and services at fair and competitive prices;

2.1.4 give consumers a voice in the debates that matter to them;

2.1.5 achieve strong consumer protection through appropriate laws and industry behaviour; and

2.1.6 ensure that consumers receive a fair deal.

2.2 The Company pursues its purpose and objectives by:

- 2.2.1 conducting research and testing in relation to products, services and markets;
- 2.2.2 promoting good practice in the production, marketing and delivery of products and services, including transparency around claims made about products and services;
- 2.2.3 promoting transparency around the price, quality, characteristics and safety of consumer products and services;
- 2.2.4 pursuing market and regulatory arrangements that enhance and protect the interests of consumers and ensure easy, effective redress for concerns about products, services or other conduct by suppliers;
- 2.2.5 raising awareness among industry, government and the broader community about issues that matter to consumers;
- 2.2.6 providing information, tools and services to meet the diverse needs of consumers; and
- 2.2.7 doing all other activities ancillary to, or necessary for, the fulfilment of the purpose and objectives of the Company.

3 Members of CHOICE

3.1 Description of a member of CHOICE

A member of CHOICE is an individual or body corporate who subscribes to one or more of the CHOICE membership options approved by the Board.

3.2 Rights of members of CHOICE

- 3.2.1 A member of CHOICE is not a member of the Company for the purposes of the Act or this constitution and is not eligible for election as a director.
- 3.2.2 A member of CHOICE has no right to receive notices of, attend and be heard at general meetings or any right to vote at a general meeting of the Company.
- 3.2.3 A member of CHOICE may apply to become a member of the Company in accordance with rule 4.2.1.
- 3.2.4 The remaining provisions of this constitution referring to “members” do not apply to individuals or body corporates who are only members of CHOICE.

4 Members of the Company (Australian Consumers’ Association)

Membership in the Company and rights granted by membership in the Company

4.1 Members of the Company

- 4.1.1 The Company has one category of membership, **voting members** as outlined in rule 4.2 (which includes life members as outlined in rule 4.3).
- 4.1.2 A reference to a “member” throughout this constitution is a reference to a voting member (and not to a member of CHOICE as set out in rule 3).
- 4.1.3 Additional categories of members, if recommended by the Board, may be created by the members in general meeting.
- 4.1.4 There is no limit on the number of members of the Company.

4.2 Voting members

- 4.2.1 Any individual who is a member of CHOICE may apply to become a voting member, subject to any eligibility criteria that the Board may determine and publish.
- 4.2.2 The Board may decide, in its absolute discretion, to accept or reject an application by a member of CHOICE to become a voting member. In exercising this discretion, the Board may consider any factors, including:
- 4.2.2(a) the need to maintain and protect the role and reputation of the Company as an independent, impartial and unbiased commentator on products, services and markets;
 - 4.2.2(b) any actual or perceived conflict of interest that might arise if the person were to be elected to the Board; and
 - 4.2.2(c) any relationship the person may have with industry, business or government interests that might lead the person to promote interests that conflict with the purpose and objectives of the Company.
- 4.2.3 The Board is not required to, but may in its discretion, give reasons for a decision to reject an application by a member of CHOICE to become a voting member.

4.3 Life members

- 4.3.1 If, in the opinion of the Board, a member has made over a period of years a significant contribution to the Company, the Board may appoint that member to life membership.
- 4.3.2 Life members are not required to pay any fees to the Company.
- 4.3.3 Subject to rule 4.3.2, a life member has all the rights and privileges of a voting member and is subject to this constitution.

Membership fees

4.4 Fees

The Board will determine and publish any fees that a member must pay in order to become or remain a member.

Ceasing to be a member

4.5 Ceasing to be a member

A member ceases to be a member:

- 4.5.1 two months after the member (other than a life member) ceases to be a member of CHOICE in accordance with rule 3.1;
- 4.5.2 if any fees referred to in rule 4.4 are not paid within two months of the due date;
- 4.5.3 if the member resigns from membership of the Company by giving written notice to the secretary, effective either on the date of receipt of the notice or any later date provided in the notice;
- 4.5.4 if the member is expelled under rule 4.6; or
- 4.5.5 on the death of the member.

4.6 **Disciplining and removing members**

4.6.1 If any member:

- 4.6.1(a) wilfully refuses or neglects to comply with the provisions of this constitution; or
- 4.6.1(b) in the opinion of the Board, engages in conduct which is unbecoming of a member or may be prejudicial to the interests of the Company, taking into account those factors set out in rule 4.2.2,

the Board may resolve to expel the member from the Company and remove the member's name from the register.

4.6.2 At least two weeks before the meeting of the Board at which a resolution under rule 4.6.1 is considered, the Board must give to the member notice of:

- 4.6.2(a) the meeting;
- 4.6.2(b) what is alleged against the member; and
- 4.6.2(c) the intended resolution.

4.6.3 The member must have an opportunity to speak or present a written statement at the meeting prior to the consideration of the resolution, to give any explanation or defence the member sees fit.

4.6.4 The Board may reinstate any member who ceases to be a member under rule 4.6.1, and restore the name of that member to the register, subject to any terms and conditions it sees fit.

4.7 **Effect of ceasing to be a member**

If any person ceases to be a member, the member remains liable to pay to the Company any money which, at the time of ceasing to be a member, is owed to the Company on any account and for any sum not exceeding \$1 for which the member may be liable under rule 1.1.2 of this constitution.

Register of members

4.8 **Register of members**

4.8.1 The Company must keep a register in accordance with the Act.

4.8.2 The register must record the following for each member:

- 4.8.2(a) the full name of the member;
- 4.8.2(b) the address of the member;
- 4.8.2(c) the date that the member's membership started and ended; and
- 4.8.2(d) any other information that the Board requires.

5 Meetings of members

General provisions

5.1 **Calling of general meeting**

5.1.1 A majority of directors may call a general meeting whenever they see fit.

5.1.2 Members may call a general meeting in accordance with the Act.

5.1.3 A general meeting of the Company, to be called the **annual general meeting**, must be held at least once in each calendar year and within 5 months after the end of its financial year, or otherwise as required by the Act.

5.2 Postponement of general meeting

5.2.1 The Board may postpone the holding of any general meeting whenever it sees fit (other than a meeting requisitioned by members as provided by the Act).

5.2.2 A postponed meeting (as distinct from being adjourned under rule 5.5.3 or rule 5.6.3) must be held within 42 days of the original date of the meeting and the Company must give members notice of the postponed meeting in accordance with rule 5.4.

5.3 Technology

The Company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Notice of general meetings

5.4 Notice of general meetings

5.4.1 Subject to the provisions of any relevant law relating to special resolutions and consent to short notice, at least 21 days' notice of a general meeting must be given to each person who is at the date of the notice:

5.4.1(a) a member of the Company;

5.4.1(b) a director of the Company; and

5.4.1(c) an auditor of the Company.

5.4.2 A notice of a general meeting must:

5.4.2(a) be given in a way permitted by rule 10;

5.4.2(b) specify the date, time and place of the meeting;

5.4.2(c) if the meeting is to be held in 2 or more places, specify the technology that will be available to members to attend;

5.4.2(d) state the general nature of the business to be transacted at the meeting including any matters to be determined by special resolution; and

5.4.2(e) include any other information required by law.

5.4.3 The non-receipt of notice of a members' meeting, or a failure to give notice of a members' meeting, does not invalidate any act, matter or thing done or resolution passed at the meeting if:

5.4.3(a) the non-receipt or failure occurred by accident or error; or

5.4.3(b) the member attended the meeting.

Quorum

5.5 Quorum

5.5.1 The quorum for a meeting of the Company's members is 12 members and the quorum must be present at all times during the meeting.

- 5.5.2 In determining whether a quorum is present, individuals attending as proxies or attorneys are counted. However, if a member has appointed more than one proxy or attorney, only one of them is counted. If an individual is attending both as a member and as a proxy or attorney, the individual is counted only once.
- 5.5.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- 5.5.3(a) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
- 5.5.3(b) in any other case, the meeting is adjourned to the same day in the next week at the same time and place, or such other date, time and place that the Board specifies.
- 5.5.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

Conduct and business of general meetings

5.6 Procedure at general meetings

- 5.6.1 A general meeting will be chaired by the chair of the Company or, if the Company has co-chairs, one of the two co-chairs (in accordance with any relevant policies or procedures determined by the Board or, in the absence of such policies and procedures, by agreement between the two co-chairs).
- 5.6.2 Where a general meeting is held and:
- 5.6.2(a) there is no chair of the Company; or
- 5.6.2(b) the chair (or the relevant co-chair) is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the deputy chair or other co-chair (as the case may be) of the Company if present presides as chair of the meeting or, if the deputy chair or other co-chair (as the case may be) is not present or is unwilling to act, the directors present may appoint a director to be chair of the meeting. If the directors do not appoint a director to be chair of the meeting, the members present may appoint a member to be chair of the meeting.
- 5.6.3 The chair of the meeting may, with the consent of the members present at the meeting, adjourn the meeting.
- 5.6.4 The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.
- 5.6.5 The chair of the meeting may in her or his absolute discretion refuse to admit, or require to leave and remain out of the meeting, any person who is not a member, director or auditor of the Company.
- 5.6.6 The secretary of the Company is entitled to be present and to speak at any general meeting.
- 5.6.7 The auditor of the Company and any assistant of the auditor is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company.

- 5.6.8 Any professional adviser of the Company, at the request of any director, is entitled to be present and, at the request of the chair or the co-chairs (as the case may be), to speak at any general meeting.

5.7 **Business of an annual general meeting**

- 5.7.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- 5.7.1(a) the consideration of the annual financial report, directors' report and auditor's report;
- 5.7.1(b) the appointment of the auditor; and
- 5.7.1(c) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

- 5.7.2 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.

- 5.7.3 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.

- 5.7.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must:

- 5.7.4(a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit, the preparation and content of the auditor's report, the accounting policies adopted by the Company in relation to the preparation of the financial statements and the independence of the auditor in relation to the conduct of the audit; and
- 5.7.4(b) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor in accordance with the Act.

Adjournments of general meetings

5.8 **Notice of adjourned meeting**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

5.9 **Business at adjourned meetings**

A meeting that resumes after an adjournment may only deal with matters that were on the notice of the initial meeting.

Decisions at general meetings

5.10 **How voting is carried out**

- 5.10.1 A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded in accordance with rules 5.11 and 5.12. This does not apply to the election of directors, which takes place by ballot.

- 5.10.2 On a show of hands, a declaration by the chair of the meeting is conclusive evidence of the result. Neither the chair of the meeting nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 5.10.3 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members present at the meeting in person or by proxy or attorney and entitled to vote on the resolutions.

Note: In accordance with the Act, the Company may only modify or repeal the constitution or a provision of the constitution, or adopt a new constitution, by special resolution of the Company. A special resolution is a resolution passed by at least 75% of the votes cast by members entitled to vote on the resolution, either in person or by proxy or attorney, and which otherwise satisfies the requirements of the Act.

5.11 **Matters on which a poll may be demanded**

- 5.11.1 A poll is a formal vote cast in writing at a meeting of the Company.
- 5.11.2 A poll may be demanded on any resolution, except for the election of a chair of the meeting or on the adjournment of a meeting.
- 5.11.3 A demand for a poll may be withdrawn.

5.12 **When a poll is effectively demanded**

- 5.12.1 At a meeting of the Company's members, a poll may be demanded by:
- 5.12.1(a) at least 5 members entitled to vote on the resolution;
 - 5.12.1(b) members representing at least 5% of the votes that may be cast on the resolution on a poll; or
 - 5.12.1(c) the chair of the meeting.
- 5.12.2 The poll may be demanded:
- 5.12.2(a) before a vote is taken;
 - 5.12.2(b) before the voting results on a show of hands are declared; or
 - 5.12.2(c) immediately after the voting results on a show of hands are declared.

5.13 **When and how polls must be taken**

- 5.13.1 A poll must be taken when and in the manner the chair of the meeting directs.
- 5.13.2 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 5.13.3 The result of the poll determines the resolution of the meeting at which the poll was demanded.

5.14 **Chair's casting vote**

- 5.14.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote she or he may have in her or his capacity as a member or proxy or attorney.
- 5.14.2 The chair of the meeting has a discretion both as to use of the casting vote and as to the way in which it is used.

5.15 Resolutions proposed by members

5.15.1 A member may only propose a resolution to be included as special business at a meeting where:

5.15.1(a) the resolution has previously been approved by the Board; or

5.15.1(b) members with at least 5% of the votes that may be cast on the resolution have given the Company 2 months' notice of the resolution or the requirements of the Act have otherwise been satisfied.

Voting rights

5.16 How vote may be exercised

5.16.1 Subject to rules 5.17 and 5.18 at any general meeting of members, each member present has 1 vote on a show of hands and on a poll.

5.16.2 The vote may be exercised in person or by proxy or attorney.

5.17 Voting disqualification

A member who is within the two month period referred to in rules 4.5.1 or 4.5.2 is not entitled to vote at a general meeting unless that member makes the payments required under those rules at or prior to the general meeting.

5.18 Objections to right to vote

5.18.1 A challenge to a right to vote at a meeting of members:

5.18.1(a) may only be made at the meeting; and

5.18.1(b) must be determined by the chair of the meeting, whose decision is final.

5.19 Who can appoint a proxy

5.19.1 A member may appoint an individual as the member's proxy to attend and vote for the member at a meeting of the Company's members. The proxy need not be a member.

5.19.2 The Board may determine the form of the instrument for appointment of a proxy.

5.19.3 The chair of the meeting may exclude a person purporting to be a proxy from attending or voting at the meeting if the chair of the meeting is not satisfied that the person has been validly appointed as a proxy or is the person named in the relevant instrument of appointment.

5.19.4 If a proxy is not named on the proxy form then the proxy is given to the chair of the meeting.

5.19.5 A proxy is not permitted to vote at a general meeting (including one that has been adjourned) unless the instrument appointing the proxy is received:

5.19.5(a) at the Company's registered office or through any technological means specified for that purpose in the notice convening the meeting; and

5.19.5(b) at least 48 hours before the commencement time specified in the notice of meeting.

5.19.6 If the proxy of a member, and the member, are both present at the meeting, the proxy may speak and vote for the member with the consent of the member.

5.20 **Attorney of member**

An attorney for a member may do whatever the member could do personally as a member, but if the attorney is to vote at a meeting of members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

6 **Directors**

Number of directors

6.1 **Number of directors**

The Company has between 9 and 12 directors comprising:

- 6.1.1 9 elected directors, elected by the members in accordance with rules 6.5 and 6.8; and
- 6.1.2 up to 3 co-opted directors, co-opted by the Board in accordance with rules 6.9 and 6.10.

Qualification to be a director

6.2 **Who can be a director**

6.2.1 Only members of the Company are eligible to be a director of the Company.

6.2.2 Any person who:

- 6.2.2(a) is currently employed by the Company;
- 6.2.2(b) was employed by the Company at any time in the 3 years before the Nomination Date; or
- 6.2.2(c) provides consulting or independent contractor services to the Company, whether through a corporate entity or otherwise as at the Nomination Date,

cannot be a director of the Company.

6.3 **Other skills and qualities of directors**

6.3.1 An individual nominated for election or appointed as a director of the Company should also:

- 6.3.1(a) hold governance experience commensurate with a position on the Board of the Company;
- 6.3.1(b) have other competencies, skills and experience as set by the Board; and
- 6.3.1(c) satisfy the factors set out in rule 4.2.2 to a high standard.

Election of directors

6.4 **How to nominate**

6.4.1 A nomination of a candidate for election as director must:

- 6.4.1(a) be in the manner and form specified by the Board; and
- 6.4.1(b) include a signed declaration from two other members of the Company indicating their support for the candidate's nomination.

- 6.4.2 A nomination of a candidate for election must be received at the registered office of the Company on or before the Nomination Date.
- 6.4.3 The Company must give notice in writing of the Nomination Date to each member at least 28 days before the Nomination Date.

6.5 Dealing with nominations

- 6.5.1 The Board may appoint a returning officer for the purpose of the nomination and election of directors. If the Board does not appoint a returning officer, the secretary will act as the returning officer.
- 6.5.2 The returning officer must not accept any nominations that do not meet the requirements set out in rules 6.2, 6.4.1 and 6.4.2.
- 6.5.3 If the number of nominations received is less than or equal to the number of positions to be elected, those candidates must be declared elected at the next annual general meeting. Any vacant elected director position remaining on the Board is taken to be a casual vacancy.
- 6.5.4 If the number of nominations received is more than the number of positions to be elected, a ballot must be held in accordance with rule 6.8.

Nominations Committee

6.6 Establishment of Nominations Committee

The Board may establish a Nominations Committee, to consist of the chair or, if there are co-chairs, at least one of the co-chairs (as determined in accordance with any relevant policies or procedures determined by the Board or, in the absence of such policies and procedures, by agreement between them), and an equal number of directors and members of the Company.

6.7 Role of the Nominations Committee

- 6.7.1 The role of the Nominations Committee is to assist the Company to identify individuals having appropriate competencies, skills and experience to serve as a director of the company, including qualities consistent with rule 6.3, to help achieve the purpose and objectives of the Company set out in rule 2.
- 6.7.2 The Nominations Committee may:
- 6.7.2(a) evaluate all nominations including requesting written information on the candidates' skills, qualifications and experience relevant to the criteria in rule 6.3 and, where appropriate, interviewing the candidate;
 - 6.7.2(b) provide information to the Board, that the Board in its discretion may provide to members, on the degree to which candidates meet the competencies, skills and experience requirements set by the Board, including the extent to which a candidate fulfils the criteria in rule 6.3; and
 - 6.7.2(c) undertake other activities consistent with the terms of this constitution and generally accepted principles of good corporate governance as the Board may determine.

Ballot

6.8 Ballot

Notice of ballot

- 6.8.1 If a ballot is required, the returning officer must list in the notice of annual general meeting distributed to members:

- 6.8.1(a) the maximum number of vacancies that may be filled at the annual general meeting under this constitution;
- 6.8.1(b) a list of the candidates;
- 6.8.1(c) any information provided by the Nominations Committee that the Board determines to include;
- 6.8.1(d) information on how to vote (either electronically or by way of postal vote) and the Closing Date (as defined in rule 6.8.5); and
- 6.8.1(e) any such other information as the Board determines to include.

Method of voting

- 6.8.2 Prior to any ballot for election of directors, the Board, subject to compliance with the Act, may prescribe the method or methods of voting, including by any electronic means, provided that a postal ballot is one of the prescribed methods of voting.
- 6.8.3 In the case of postal voting, members will be distributed:
 - 6.8.3(a) a ballot paper; and
 - 6.8.3(b) an unsealed envelope, bearing the address of the Company, and having space on the reverse side for the name, address and signature of the member to which it is sent.
- 6.8.4 The Board must ensure a secure method of identifying a member by reference to a personal identification code or any other manner approved by the Board where an electronic voting system is used.
- 6.8.5 Every member wishing to vote must do so by completing the electronic voting process or by returning the ballot paper to "The Returning Officer" by 5.00 p.m. Sydney time on the date (**Closing Date**) which is 3 days prior to the date of the relevant annual general meeting.
- 6.8.6 A member is permitted to vote in favour of any number of candidates equal to or less than the number of vacancies to be filled at the annual general meeting.

Counting of votes

- 6.8.7 The Company must reject an electronic vote or ballot paper in circumstances where:
 - 6.8.7(a) the person who has exercised the vote is not registered as a member;
 - 6.8.7(b) it is not clear which candidate(s) the member wishes to vote for;
 - 6.8.7(c) the number of candidates for whom the member has voted is greater than the number of current vacancies; or
 - 6.8.7(d) the electronic voting process is completed or the ballot paper is received by the Company after 5.00 p.m. on the Closing Date.
- 6.8.8 The returning officer is responsible for the counting of votes, and must ensure that the Company completes counting all votes (other than those rejected), as recorded through the electronic voting process or on ballot papers, prior to the next annual general meeting.
- 6.8.9 The candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.

- 6.8.10 If two or more candidates receive an equal number of votes, and there are not enough vacancies for all of these candidates to be elected, the candidate(s) to be elected must be decided by lot.
- 6.8.11 Any candidate is entitled to appoint a scrutineer to be present during the counting of votes.
- 6.8.12 The chair of the meeting will announce the outcome of the election at the next annual general meeting.

Co-opted Directors

6.9 Power of the Board to appoint

The Board may co-opt up to 3 additional directors at any time to provide additional skills required by the Board.

6.10 Qualification of co-opted directors

- 6.10.1 Only individuals who satisfy rule 6.2 and, in the opinion of the Board, would be eligible under rule 6.3, may be co-opted as directors.
- 6.10.2 For the purposes of rule 6.10.1, the references to "Nomination Date" in rule 6.2 should be read as references to "proposed date of appointment".

Term of office

6.11 Elected directors

Elected directors hold office:

- 6.11.1 from the end of the annual general meeting at which they are elected; and
- 6.11.2 until the end of the third annual general meeting after they are elected, subject to rule 6.14.

6.12 Co-opted directors

Co-opted directors hold office:

- 6.12.1 from the time they are co-opted; and
- 6.12.2 until the end of the third annual general meeting after they are co-opted, or a shorter period as determined by the Board, subject to rule 6.14.

6.13 Limit on consecutive terms of office

No director may serve for more than three consecutive terms of office (not including any term filled as a casual vacancy in accordance with rule 6.15.2(b)), unless exempted from this restriction by a resolution of the other directors, where the other directors determine that there are exceptional circumstances.

6.14 Ceasing to be a director

- 6.14.1 Subject to the Act, directors may resign in writing to the Company. Subject to the Act and unless written resignation provides otherwise, the resignation takes effect from the date the resignation is received by the Company.

- 6.14.2 Directors may be removed at a general meeting in accordance with the Act. The resulting vacancy may be filled at the general meeting.
- 6.14.3 A director ceases to be a director if she or he:
- 6.14.3(a) becomes bankrupt or suspends payment or compounds with her or his creditors;
 - 6.14.3(b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - 6.14.3(c) is not present at 3 consecutive Board meetings without special leave of absence from the Board;
 - 6.14.3(d) ceases to be a member;
 - 6.14.3(e) becomes disqualified from being a director under the Act or any order made under the Act;
 - 6.14.3(f) enters into an employment relationship with the Company; or
 - 6.14.3(g) provides consulting or independent contractor services to the Company, whether through a corporate entity or otherwise.

Casual vacancies

6.15 Appointment

- 6.15.1 If there is a vacancy in an elected director position, the Board may appoint a person who satisfies rule 6.2 and, in the opinion of the Board, is eligible under rule 6.3, to fill that vacancy. For the purposes of this rule, the references to "Nomination Date" in rule 6.2 should be read as references to "proposed date of appointment".
- 6.15.2 Where a director is appointed to fill a vacancy arising:
- 6.15.2(a) under rule 6.5.3, that director holds office until the end of the third annual general meeting after the annual general meeting at which the vacancy arose; or
 - 6.15.2(b) other than under rule 6.5.3, that director holds office for the remainder of the term of office of the person whose position on the Board she or he is filling.
- 6.15.3 The Board may continue to act despite any vacancy in directors.

Powers of directors

6.16 General business management

- 6.16.1 The business of the Company is to be managed by or under the direction of the Board.
- 6.16.2 The Board may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 6.16.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the Board which would have been valid if that rule or resolution had not been made or passed.

6.17 Borrowing powers

6.17.1 Without limiting rule 6.16, but subject to rule 1.3.2, the Board may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

6.18 Appointment of attorney

6.18.1 The Board may appoint any person(s) to be the attorney(s) of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Board), for the period and subject to the conditions it sees fit.

6.18.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the Board sees fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

6.19 Negotiable instruments

6.19.1 Any two directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

6.19.2 The Board may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

6.20 Validation of acts of directors and secretaries

Even if it is subsequently found that a person who has acted as a director was not properly elected, co-opted or appointed, the validity of:

6.20.1 the acts of that person as a director, and

6.20.2 decisions of meetings of the Board in which that person has participated,
is not affected.

Directors' interests**6.21 Prohibition on being present or voting**

6.21.1 Except where permitted by the Act, a director who has a material personal interest in a matter that is being considered at a meeting of directors:

6.21.1(a) must not be counted in a quorum;

6.21.1(b) must not vote on the matter; and

6.21.1(c) must not be present while the matter is being considered at the meeting.

6.21.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the Act from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.

6.22 Director to disclose interests

Each director must comply with the Act in relation to the disclosure of director's interests.

Payments to directors

6.23 No directors' remuneration

No director may receive any remuneration for her or his services in her or his capacity as a director of the Company.

6.24 Directors' expenses

6.24.1 Despite rules 1.3.2 and 6.23 the Company may permit payments for out-of-pocket expenses incurred in carrying out the duties of a director where the payments are within limits approved by the Board.

6.24.2 The Board must approve all payments the Company makes to its directors.

6.25 Financial benefit

6.25.1 Subject to rule 6.25.2, the Company must not provide any financial benefit to a director or any related party of a director, other than in accordance with rule 6.24.

6.25.2 Rule 6.25.1 does not prevent the Company from entering into a contract or arrangement with a company in which a director has an interest provided that the director has complied with her or his obligations under rules 6.21 and 6.22.

6.25.3 The Company must not make loans to directors, or provide guarantees or security for obligations undertaken by directors other than obligations which were undertaken by the director solely in promotion of the objectives of the Company.

Office bearers

6.26 Office bearers

6.26.1 The office bearers of the Company are to be determined by the Board and, at the Board's discretion, will comprise of:

6.26.1(a) the chair, the deputy chair and the secretary; or

6.26.1(b) two co-chairs and the secretary.

6.26.2 Subject to rule 6.26.3, office bearers are appointed by the Board at the first Board meeting after the annual general meeting and hold office until the end of the first meeting of the Board held after the next annual general meeting, unless the officer bearer resigns from her or his position, ceases to be a director (where the office bearer is a director), or is removed by resolution of the Board.

6.26.3 Where a vacancy arises in an officer bearer position, a replacement office bearer is to be appointed by the Board at the first Board meeting after the vacancy arises or, if the vacancy arises during a Board meeting, at that meeting and such replacement office bearer will hold office until after the next annual general meeting. In filling a vacancy in an officer bearer position, the Board may determine whether the new composition will be in accordance with rule 6.26.1(a) or 6.26.1(b).

6.26.4 Except for the secretary, only directors may be office bearers. Any director is eligible for election to any office bearer position.

6.26.5 Subject to this rule 6.26, the officer bearers are to be appointed by the Board in such manner as the Board determines.

Committees

6.27 Delegation to committee of directors

- 6.27.1 The Board may delegate any of its powers to a committee of directors and revoke the delegation.
- 6.27.2 A committee must exercise the powers delegated to it in accordance with any directions of the Board. The exercise of the power by the committee is as effective as if the Board had exercised it.
- 6.27.3 The meetings and proceedings of any committee of directors are governed by the provisions in this constitution regulating the meetings and proceedings of the Board.

6.28 Delegation generally

- 6.28.1 For managing any affairs of the Company in any specified locality the Board may:
- 6.28.1(a) establish any local committees, boards or branches;
 - 6.28.1(b) appoint any members of the Company to be a member of the local committee, board or branch;
 - 6.28.1(c) appoint any managers or agents, fix their remuneration and delegate to them any of the powers vested in the Board; and
 - 6.28.1(d) authorise the members for the time being of the local committee, board or branch to fill any vacancies on it and to act despite vacancies.
- 6.28.2 Any committee (including a committee of directors and a local board or branch) or person appointed to the committee, exercising delegated powers, must conform to any regulations that may be imposed by the Board. The committee may be authorised to sub-delegate any of the powers vested in it.

7 Meetings of the Board of directors

Meetings of the Board of directors

7.1 Convening meetings of the Board

- 7.1.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.
- 7.1.2 The chair (including a co-chair), the deputy chair or any three directors may at any time, and on their request the secretary must, call a meeting of the Board.
- 7.1.3 A board meeting will be chaired by the chair of the Company or, if the Company has co-chairs, one of the two co-chairs (in accordance with any relevant policies or procedures determined by the Board or, in the absence of such policies and procedures, by agreement between the two co-chairs).
- 7.1.4 Where a Board meeting is held and:
- 7.1.4(a) there is no chair of the Company; or
 - 7.1.4(b) the chair (or the relevant co-chair) is not present within 30 minutes after the time appointed for the holding of the Board meeting or is unwilling to act;

the deputy chair or other co-chair (as the case may be) of the Company if present presides as chair of the Board meeting or, if the deputy chair or other co-chair (as the

case may be) is not present or is unwilling to act, the directors present may appoint a director to be chair of the Board meeting.

7.2 Technology meeting of the Board

- 7.2.1 A Board meeting may be held using any form of technology approved by the Board and specified in the notice of meeting.
- 7.2.2 A director may participate in a meeting by a form of technology not specified in the notice of meeting only with the prior approval of the chair or the co-chairs (as the case may be).

Notice of meetings of the Board

7.3 Notice of meetings of the Board

- 7.3.1 Reasonable notice of a Board meeting must be given to each current director, other than a director on leave of absence approved by the Board.
- 7.3.2 A notice of a Board meeting must:
- 7.3.2(a) be given in a way permitted by rule 10;
 - 7.3.2(b) specify the time and place of and, if relevant, the form of technology for, the meeting; and
 - 7.3.2(c) state the nature of the business to be transacted at the meeting.
- 7.3.3 A resolution passed at a Board meeting is not invalid just because a director did not receive notice of the meeting provided that:
- 7.3.3(a) the notice was not received because of accident or error;
 - 7.3.3(b) before or after the meeting, the director notifies the Company of her or his agreement to the resolution; or
 - 7.3.3(c) the director attended the meeting.

Quorum

7.4 Quorum

The quorum for a Board meeting is a majority of the directors entitled to vote. The quorum must be present at all times during the meeting.

Decisions at meetings of the Board

7.5 Passing of directors' resolutions

- 7.5.1 A resolution of the Board must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- 7.5.2 The chair of the Board meeting has a casting vote if necessary in addition to any vote she or he has as a director. The chair of the Board meeting has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

Decisions without meetings

7.6 Circulating resolutions

- 7.6.1 The Board may pass a resolution without holding a Board meeting if 75% of the directors entitled to vote on the resolution either:
- 7.6.1(a) sign a document containing a statement that they are in favour of the resolution set out in the document; or
 - 7.6.1(b) otherwise provide their agreement to the resolution by any other method approved by the Board.
- 7.6.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- 7.6.3 The resolution is passed when the last director signs or otherwise provides their agreement to the resolution as permitted under this rule 7.6.

8 Chief Executive Officer

- 8.1 The Board may appoint any person, not being a director, to the position of chief executive officer for the period and on the terms (including as to remuneration) the Board sees fit.
- 8.2 The chief executive officer is not a member of the Board, but may attend meetings of the Board except where the Board otherwise decides.
- 8.3 The Board may, upon terms and conditions and with any restrictions it sees fit, confer on a chief executive officer any of the powers that the Board can exercise.
- 8.4 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the Board.
- 8.5 The Board may revoke or vary:
- 8.5.1 an appointment; or
 - 8.5.2 any of the powers conferred on the chief executive officer.
- 8.6 If the chief executive officer becomes incapable of acting in that capacity the Board may appoint any other person, not being a director, to act temporarily as chief executive officer.

9 Minutes

- 9.1 The Board must ensure that:
- 9.1.1 minutes are taken and kept of all general meetings, meetings of the Board and resolutions without a meeting; and
 - 9.1.2 in the case of minutes of meetings – the minutes are signed within a reasonable time after the meeting by the chair of the meeting or the chair of the next meeting; or
 - 9.1.3 in the case of minutes of resolutions without a meeting – the minutes are signed by a director within a reasonable time after the resolution is passed,
- as required in accordance with the Act.

10 Notices

10.1 Any notice, document or other communication required or permitted to be given under this constitution or law may be given in any manner (including through the use of technology) so long as such manner complies with:

10.1.1 the law; and

10.1.2 any policies and procedures relating to the giving and receiving of notices, documents and other communications as determined by the Board.

11 Indemnity and insurance

11.1 Indemnity

11.1.1 To the extent permitted by the Act, the Company indemnifies every person who is or has been an officer of the Company against:

11.1.1(a) any liability (other than the liability for legal costs) incurred by that person as an officer of the Company; and

11.1.1(b) reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company, unless prohibited by the Act.

11.1.2 The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.

11.2 Insurance

11.2.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

11.2.1(a) conduct involving a wilful breach of duty in relation to the Company; or

11.2.1(b) contraventions of the Act in respect of which the Act does not permit such premiums to be paid.

11.3 Director voting on contract of indemnity or insurance

Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance, merely because the contract indemnifies or insures or would indemnify or insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

11.4 Liability

An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of her or his office unless it arises through her or his own negligence, default, breach of duty or breach of trust.

12 Winding up

- 12.1 If the Company is wound up or dissolved, the amount that remains after such winding up or dissolution and the satisfaction of all debts and liabilities will be transferred to another organisation with similar objects and purposes which is not carried on for the profit or gain of its members as determined by the members of the Company.
- 12.2 If the Company is endorsed as a deductible gift recipient by the Commissioner of Taxation under Division 30 of the *Income Tax Assessment Act 1997* and such endorsement is revoked, the Company must transfer to another organisation which is endorsed as a deductible gift recipient as determined by the members of the Company any surplus representing:
- 12.2.1 gifts of money or property made for the principal purpose of the Company;
 - 12.2.2 contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
 - 12.2.3 money received by the Company because of such gifts and contributions.
- 12.3 If the members do not make the necessary determination under rules 12.1 and 12.2, the Company may apply to the Supreme Court to determine the organisation or organisations to whom the transfers are to be made.

13 Accounts, audit and records

13.1 Accounts

- 13.1.1 The Board must cause proper accounting and other records to be kept in accordance with the Act.
- 13.1.2 The Board must distribute copies of every financial statement (including every document required by law to be attached to it) as required by the Act.

13.2 Audit

- 13.2.1 Subject to the Act, a registered company auditor must be appointed.
- 13.2.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

14 Miscellaneous provisions

14.1 Rights of inspection

- 14.1.1 The Board, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.
- 14.1.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolutions of members passed without meetings, except as provided by law or authorised by the Board or by the Company in general meeting.
- 14.1.3 Directors have the rights of inspection and access provided by the Act.

14.2 Confidential information

Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

14.3 Execution of documents

Without limiting the ways in which the Company may execute documents under the Act and subject to this constitution, a Company may execute a document if the document is signed by:

14.3.1 two directors of the Company; or

14.3.2 a director and a company secretary of the Company; or

14.3.3 any other person authorised by the Board for that purpose.

14.4 Formalities omitted

If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which would have been valid but for the omission, unless it is proved to the satisfaction of the Board that the omission has directly prejudiced any member financially. The decision of the Board is final and binding on all members.

14.5 Alterations

14.5.1 If the Company is endorsed as an income tax exempt fund, a tax concession charity or a deductible gift recipient by the Australian Taxation Office, before making any alterations to this constitution (in particular rules 1.3, 2, 6.2, 6.3, 6.23, 6.24, 6.25, 6.27, 6.28, 8.3, 8.4, or 12) the Board must consider:

14.5.1(a) whether those alterations may affect the entitlement of the Company to that endorsement; and

14.5.1(b) whether, as a term of the endorsement, the Company is required to notify the Australian Taxation Office or any other government authority of the alterations to this constitution.

Schedule 1 – Dictionary and interpretation

1 Replaceable rules excluded

The replaceable rules contained in the Act do not apply to the Company.

2 Definitions

In this constitution:

- 2.1.1 **Act** means the *Corporations Act 2001* (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- 2.1.2 **Board** means the directors assembled as the board of the Company;
- 2.1.3 **Company** means Australian Consumers' Association ACN 000 281 925;
- 2.1.4 **member** means either a voting member or a life member, but does not include a member of CHOICE;
- 2.1.5 **Nomination Date** means the date prescribed by the Board as being the final date for acceptance of nominations for the office of director, which will be at least 90 days prior to the next annual general meeting;
- 2.1.6 **Nominations Committee** means a committee established under rule 6.6 for the purpose of, among other things, identifying candidates for election or appointment as directors; and
- 2.1.7 **officer** means, for the purposes of rules 11.1, 11.2, 11.3 and 11.4, a director or secretary or a member of a local committee, board or branch appointed under rule 6.28.1.

3 Interpretation

- 3.1.1 Reference to:
 - 3.1.1(a) one gender includes the others;
 - 3.1.1(b) the singular includes the plural and the plural includes the singular; and
 - 3.1.1(c) a person includes a body corporate.
- 3.1.2 Except so far as the contrary intention appears in this constitution:
 - 3.1.2(a) an expression has in this constitution the same meaning as in the Act; and
 - 3.1.2(b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- 3.1.3 "Including" and similar expressions are not words of limitation.
- 3.1.4 Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.