

Constitution – Companion Guide

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Introduction to this guide

The Australian Information Security Association (AISA, we or our) adopted a new constitution on 3rd October 2013 as part of the transition to a company limited by guarantee. The constitution was, in so far as it was possible and considering the needs and history of AISA, kept as short as possible.

To help with brevity and to provide flexibility the decision was made to provide more detail and direction in this companion guide, rather than in the constitution itself.

Important note: This guide is a companion to the constitution and is not a replacement for it. Please read this guide together with the constitution. If there is any difference between this guide and the constitution about the same thing, then what the constitution says must take priority.

When preparing this companion guide, we chose to adopt the same structure and numbering as the AISA constitution. Having a shared numbering system should help you better link the provisions of the constitution with the commentary in this guide.

Introduction to the AISA constitution

The AISA constitution contains the key rules about the governance and operation of AISA and the rights of members. It also guides AISA's internal management. These rules are binding, meaning that they must be followed by AISA, by the AISA board of directors (**Board**) and by you as a member. This is why it is important that you read and know about the AISA constitution.

In general terms, the AISA constitution has 14 rules, many with multiple paragraphs, and one schedule. It can be broken down into the following key sections:

Part A – Preliminary matters (see rules 1 and 2 of the constitution)

Part B – Purpose (see rule 3 of the constitution)

Part C – Members and membership, covering things like becoming a member, rights of members, ceasing to be a member and meetings and decisions of members (see rules 4, 5 and 6 of the constitution)

Part D – Not-for-profit (see rule 7 of the constitution)

Part E – Directors and secretary, including becoming a director, terms of office, ceasing to be a director and meetings and decisions of directors (see rules 8 and 9 of the constitution)

Part F – Winding up (see rule 10 of the constitution)

Part G – Administrative matters, including minutes and record keeping, insurance, notices, governing laws and company seal (see rules 11 to 14 of the constitution)

Schedule 1 – Dictionary, including defined terms and rules of interpretation

While the constitution is not set in stone and will be reviewed at least once every three years, it is still a document that should be able to withstand the passing of time. This is why you will notice many provisions being provided on a principle or guiding basis without specific detail. The specific detail is covered by the law in force from time to time together with AISA's internal policies and procedures.

Part A – Preliminary matters

1 Defined terms and interpretation

Rule 1 relates to the use of certain defined terms. When reading through the constitution you may notice that a number of the words and phrases begin with a capital letter. This indicates that the word or phrase has a specific defined meaning. To find out what that meaning is you will need to jump to the dictionary found at the very end of the constitution at Schedule 1.

We have used defined terms to help reduce unnecessary replication, simplify the language and shorten the drafting.

The dictionary schedule also contains a section about how to interpret the constitution. These rules are common and are not often needed. They are still important though and can be helpful in limiting confusion or disputes about what a rule of the constitution means.

2 Nature of company and liability

Rule 2 relates to the nature of the company. AISA is a public company limited by guarantee. This means that members are **not** shareholders and do **not have any rights over its property and assets. This is no different to the way things were when AISA was an incorporated association.**

Being ‘limited by guarantee’ means that if AISA was to close down and needed some additional money to pay off its debts at that time, it could ask you and all other members to contribute \$10 each, but no more. This guarantee of \$10 is completely separate from membership and joining fees.

The requirement to contribute up to \$10 applies while you are a member and for the first 12 months after your membership ends.

Part B - Purpose

3 Purpose

Most not-for-profit organisations include a statement of purpose in its constitution. AISA’s purpose can be found at rule 3 and states that “the purpose of the company is to help protect people living in Australia from the harm that can be caused by inadequate and inappropriate data and information security practices and systems”. Rule 3 then goes on to list a number of ways that AISA will pursue its purpose.

Part C – Members and Membership

4 Membership

4.1 Members of the company

Rule 4.1 describes in general terms who AISA's members are and how to become one. At this stage only individuals can become members. While we welcome the support and partnership of organisations and companies, we have chosen to limit full voting membership to individuals only.

When AISA converted from an incorporated association to a company limited by guarantee in late 2013, we wanted to make it very clear that if you were a fully paid up member at the time of the conversion that your membership would continue without interruption and without the need for you to re-join. This is the reason why we included rule 4.1(a)(i).

Rule 4.1(a)(ii) is the underpinning rule allowing the Board to admit additional people into membership of AISA. For more information and detail about the criteria to become a member, see rule 4.2.

Rules 4.1(b) and (c) set out some of the secretary's specific obligations when it comes to membership. You will note that the word "ensure" is used in these paragraphs. This allows the secretary to delegate certain tasks to others, rather than doing them him or herself. Note though, that while the tasks can be delegated, the end responsibility for making sure that the job is done stays with the secretary.

The secretary is also responsible for ensuring that the register of members is properly kept (see rule 4.5).

4.2 Membership eligibility criteria

Rule 4.2 is self-explanatory and describes the criteria for membership. In summary, to become and remain a member you must:

- have a commitment to AISA's purpose;
- agree to be bound by the AISA Code of Ethics and the AISA Branch Policy;
- complete and lodge a membership application form;
- pay the required joining fee together with the required annual fee;
- be aged 18 years or over;
- not have been convicted of a criminal offence with a maximum penalty of 12 months imprisonment or more;
- ensure that all information provided in your application is true and accurate; and
- be admitted into membership by the directors.

4.3 Members' rights

Rule 4.3 sets out your rights as a member. They are the right to:

- receive notices of and to attend and be heard at any general meeting of AISA; and
- vote at any general meeting of AISA.

4.4 Membership not transferable

Your membership cannot be transferred to any other person, organisation or company. This applies both when you are alive and upon your death.

If someone wishes to become a member of AISA he or she must meet the membership eligibility criteria, follow the application process and be admitted into membership by the Board.

4.5 Register of members

Rule 4.5 relates to the keeping of a register of members. This is a legal requirement. The information we keep on the official register of members is:

- your name and address; and
- the date your membership starts and ends.

Because the law permits this register to be accessed by other members and even by the public in certain circumstances, we do not keep your telephone number, email or any other contact details on the official members' register. We keep this additional information separate and for our own internal use.

4.6 Membership Fees

Rule 4.6 relates to fees associated with your membership of AISA.

The joining fee is currently \$20 and the annual fee is \$70. GST will be added to these amounts if required. Both the joining fee and the annual fee are payable when you first become a member. For each subsequent year only the annual fee is payable. Note however, if your membership lapses for any reason and you decide to re-join AISA at a later date, you will need to pay the joining fee as well as the annual fee.

The Board can waive all or some of the membership fee for one or more members at its discretion. Note though, any waiver or reduction in fees will only be granted in exceptional circumstances or in accordance with a Board decision in relation to a particular group of members. While the Board has made no such decision at this point in time, by way of example only, the Board may determine that the membership fee for students be less than \$70.

The Board can also amend the fees from time to time but, if the change results in an increase of 25% or more, then the Board must seek the approval of members at a general meeting.

We currently work on the basis that your membership becomes due at the end of the calendar quarter within which you joined in the following year. We set out the important dates for 2014 by way of example in the table below.

If you join between	Your membership expires on	And your annual fee is due by
1 January and 31 March 2014	31 March 2015	31 May 2015
1 April and 30 June 2014	30 June 2015	31 August 2015
1 July and 30 September 2014	30 September 2014	30 November 2015
1 October and 31 December 2014	31 December 2015	29 February 2016

If you wish, you may choose for your membership to be renewed automatically.

5 Ceasing to be a member

5.1 General overview

Rule 5 sets out the circumstances that can lead to your membership ceasing. In brief, your membership will end if you:

- resign from membership (see rule 5.2);
- die;
- unless we agree to provide an extension for payment, fail to pay your joining or annual fee by the required deadline (see rule 5.3);
- breach the AISA Code of Ethics or the AISA Branch Policy (see rule 5.4);
- are expelled from membership (see rules 5.5 and 5.6); or
- no longer comply with the membership eligibility criteria set out at rule 4.2.

It is important to note that the directors may adopt such other policies and procedures relating to the disciplining, suspension and expulsion of members as they wish. However if they do, the policies and procedures must still be consistent with the broader requirements of rule 5.

5.2 Resignation from membership

While we would much prefer that you contact us before resigning from AISA membership, you may resign from membership at any time and without the need to give any reasons.

To resign from AISA membership please send an email to members@aisa.org.au addressed to either the 'Chair' or 'Secretary' of AISA stating that you wish to resign from membership. You will also need to provide your membership number. To help verify that your notice of resignation is genuine, we will contact you either by phone or email using the contact details we have on file for you.

Unless your notice tells us that you would like to resign from membership as at some later date, your resignation will be effective from the date we receive your notice.

5.3 Automatic cessation of membership

Your membership will lapse automatically if you:

- do not pay the required joining fee or the initial annual fee in time – currently 2 weeks from being notified of admission into membership; or
- do not pay the required annual membership fee in time – currently within two months after the date on which your membership fee becomes due.

5.4 Code of Ethics and Branch Policy

AISA has adopted a Branch Policy and a Code of Ethics with an accompanying complaints handling policy. These documents can be found at <https://www.aisa.org.au/about-us/constitution-code-of-ethics/>. A breach of the AISA Code of Ethics or the AISA Branch Policy may, in certain circumstances, result in corrective, remedial or disciplinary action (including suspension or cessation of your membership). It is therefore essential that you read each of these documents carefully.

Matters relating to breaches of the Code of Ethics and the Branch Policy are treated separately from breaches of the AISA constitution. Please see rules 5.1(b), 5.5 and 5.6 to learn more about how other breaches are to be dealt with.

5.5 Expulsion of member

This part of the constitution deals with expulsion only. Rule 5.1(b) allows the Board to adopt additional policies and procedures relating to other forms of disciplinary action such as suspending your membership.

While it will generally be the path of last resort, your membership could end if you:

- have refused or neglected to comply with the provisions of the constitution; or
- have acted in a way that, in the opinion of the Board, is unbecoming or prejudicial to AISA's interests or reputation.

If the circumstances described above occur, due process will be followed. This means that:

- you will be given at least 14 days' notice of the meeting where the resolution to expel you from membership of AISA will be considered by the Board. This notice will be in writing and will include the reasons why you are being considered for expulsion;
- you will be given the opportunity to provide your side of the story to the directors in writing and/or face-to-face;
- the directors will need to pass a resolution to expel you (which will require a majority vote of greater than 50%); and
- if the directors do resolve to expel you from membership, you have a right for this decision to be reviewed by the members at a general meeting of AISA members (see rule 5.6).

There are also timeframes in place that bind the Board. So, the Board has 14 days to give you written notice of the decision to expel you from membership.

5.6 Appeal of Member Expulsion Resolution

You are entitled to appeal against a decision of the Board to expel you from membership.

Appeals must be in writing, emailed to secretary@aisa.org.au addressed to the AISA Secretary and received within 14 days after the date of your expulsion notice.

If your appeal is received within the required timeframe, the Board must ensure that a resolution confirming your expulsion is considered at a general meeting of AISA members. This general meeting must:

- be called within three months after the Board receives your appeal; and
- must not consider any other business other than the appeal.

Notice of a general meeting to consider an appeal will, in addition to the general requirements for a notice of meeting (see rule 6.2), contain:

- your name;
- the Board's initial decision, including the reasons why it thinks you should be expelled; and
- any information you have provided to the Board in support of your position.

At the general meeting called to consider the Board's decision to expel you from membership:

- the Board, through a director, will first have ten minutes to put forward its position about why it believes you should be expelled from membership; and
- you will then have ten minutes in reply to provide your position about why you think you should not be expelled from membership.

The chair may, at his or her discretion, determine that the length of time for speaking should be extended, so long as both you and the AISA director are given an equal opportunity to speak.

For the Board resolution to expel you from membership to be upheld, more than 50% of those present at the meeting must vote in favour of confirming the Board's decision.

If the Board's decision to expel you is confirmed by the members, your expulsion takes effect from the date of the members' resolution. If the members do not confirm your expulsion then the Board's decision will be overturned and you will remain as a member.

If we don't receive an appeal notice within the required timeframe then:

- the Board is not required to ensure that a resolution confirming your expulsion is considered by the members; and
- your expulsion takes effect from the date of the Board's initial decision.
- Once you have been expelled from membership of AISA you are not permitted to reapply for membership.

6 General meetings

6.1 Calling general meetings

Introduction

A general meeting of members can be initiated by the Board, by the members or by the court.

General meeting called by the Board

The Board can initiate a general meeting of members (including AISA's annual general meeting) by a simple majority resolution. As AISA's financial year ends on 30 June, the Board will normally call for the annual general meeting to be held on a date in October.

When considering the calling of a general meeting the Board will ordinarily resolve:

- to call a general meeting;
- the time, date and place of the general meeting;
- to adopt the notice of meeting and other documents relating to the general meeting and the resolutions to be put to the members; and
- to authorise a person, usually the company Secretary, to send out the notice of meeting to members.

Also, the law requires the Board to call a general meeting if 100 or more AISA members together request one. If the Board does not call a general meeting within 21 days of this request:

- a majority of those members that made the initial request to the Board may call and arrange to hold a general meeting;
- the meeting must be called in the same way, so far as is possible, in which AISA general meetings are called. The meeting must be held within 3 months after the date the initial member request was made to the Board; and
- AISA must pay the reasonable expenses incurred by the members in calling and arranging the meeting.

Note: While 100 members are entitled to ask the Board to call a general meeting, so too can 5% of members. However, for so long as the AISA membership is greater than 2,000, 100 members will be the lowest number of members required.

See sections 249D and 249E of the *Corporations Act 2001* (Cth)

General meeting called by members

At least 5% of AISA members may, together and at their own expense, call and hold a general meeting.

This meeting must be called in the same way, so far as is possible, as AISA general meetings are called.

See section 249F of the *Corporations Act 2001* (Cth)

General meeting called by the court

The Court may order an AISA general meeting if it is impracticable to call the meeting in any other way. The Court may make such an order on the application by any member who would be entitled to vote at the meeting or any director.

See section 249G of the *Corporations Act 2001* (Cth)

Using technology for general meetings

An AISA general meeting may be held in two or more places linked together by any technology so long as the technology used:

- gives all of the members in those places a reasonable opportunity to participate in the meeting;
- enables the chair to be aware of what is going on in each place; and
- enables the members in each place to vote on a show of hands and on a poll.

6.2 Notice of general meetings

Time for notices

We will give 21 days' notice of a general meeting to:

- all fully paid up members;
- all AISA directors; and
- our company auditor.

While it is unlikely we will ever want to call a general meeting with less than 21 days' notice, the law allows us to do so in certain circumstances and if 95% of members agree before the meeting or, in the case of AISA's annual general meeting, 100% of members. Due to the high number of AISA members, these thresholds are unlikely to ever be met.

We may give notice in a number of ways, including by email. See rule 13 for more detail.

See sections 249H, 249J and 249K of the *Corporations Act 2001* (Cth)

Contents of notice

A notice of a general meeting must:

- specify the date, time and place of the meeting – which must be reasonable;
- if the meeting is to be held in two or more places, specify the technology that will be used to facilitate this;
- specify the general nature of the business to be transacted at the meeting;
- **if a special resolution** is to be put to the meeting, provide the wording of the resolution and clearly state that it is a special resolution;
- contain a statement that the member has a right to appoint a proxy; and
- be accompanied by a proxy form (see 6.8 for more on proxies).

See sections 249L, 249R and 249S of the Corporations Act 2001 (Cth)

Attending a general meeting

A person who is entitled to receive notice of a meeting or who is requested by the chair to attend a general meeting is entitled to be present, whether the person is a member or not.

6.3 Quorum at general meetings

The term ‘quorum’ refers to the minimum number of members that must be present before a general meeting can go ahead. Quorum must then be present throughout the meeting. If there is no quorum, then the meeting cannot go ahead.

The quorum for a general meeting of AISA is 25 fully paid up members present in person or by proxy and entitled to vote at the meeting.

If a quorum is not present within 30 minutes after the time appointed for the general meeting, then the meeting will be adjourned to the same day in the next week at the same time and place. At the adjourned meeting the quorum is ten members present in person or by proxy and entitled to vote at the meeting.

If, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved. Then, if those calling the meeting still wish for the meeting to go ahead, they will need to go through the original process of calling a meeting again, including providing 21 days’ notice.

6.4 Chair of general meetings

The person who has been nominated as the chair of the Board will also be the chair of the general meetings of members.

The deputy chair of the Board, if there is one, will act as the chair of the general meeting if the chair is absent or is unwilling or unable to act. For instance, if the chair has a conflict of interest in relation to a particular decision being considered by the members.

If both the chair and deputy-chair are absent, or are both unwilling to act, then the members present at that meeting may elect a person present to chair the meeting.

6.5 Conduct of general meetings

General conduct

The chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting. As such the chair may introduce any procedures which he or she thinks necessary or desirable for:

- proper and orderly debate or discussion; and
- the proper and orderly casting or recording of votes.

Adjourning meetings

The chair of a general meeting at which a quorum is present may, with the consent of the majority of members present at the meeting, adjourn the meeting to such time and place as he or she thinks fit. However, no business is to be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.

If a meeting is adjourned under rule 6.5 of the constitution, then notice of the adjournment and the business to be considered at that adjourned meeting must be given to all persons who were entitled to receive notice of the original meeting.

6.6 Decisions at general meetings

Resolutions, including special resolutions

In most circumstances, resolutions put for consideration at a general meeting will be decided by a majority of votes cast by the members present at the meeting (including being present by technological means).

However, some resolutions must be passed by a higher percentage of members. These types of resolutions are called 'special resolutions'. A special resolution is a resolution that must be passed by at least 75% of members present at the meeting (including being present by technological means). For instance, a special resolution of AISA members is required in order for AISA to:

- change its name;
- change its constitution; and
- shut down and wind up.

Passing a resolution

Resolutions will almost always be determined by a 'show of hands'. This doesn't actually mean raising your hand, but a vote can be conducted this way. "Show of hands" really means conducting a vote in a way where the chair can get a general idea of the decision of members without having to actually count every vote. Another common approach is to ask all those in favour to say "I".

If voting by a show of hands does not give the chair a clear indication of the decision of the members, then he or she may call a poll. The chair and the members present can also call a poll at any time. See below under this section 6.6 for more on polls.

It is also important to note that each member present and entitled to vote may only cast one vote on a show of hands regardless of how many proxies they may hold.

Unless a poll is demanded, a declaration by the chair of the outcome of a vote together with an entry recording that outcome in the minutes of the meeting, is conclusive evidence of the outcome without proof of the number or proportion of the votes recorded in favour of or against the resolution.

Equal votes

If the number of votes cast for and against a resolution at a meeting of members is equal, then the chair may break the deadlock by casting a second vote. It is called a second vote because the chair may have already cast his or her vote as a member and may, under this rule, cast one more.

Polls

A poll is a form of voting that allows each vote to be counted and for the vote itself to be conducted in a confidential way.

All AISA members have one vote each. In these circumstances, the only times a poll is likely to be needed is if:

- a vote on a 'show of hands' is too close for the chair to be able to decide the outcome of the vote;
- in the view of the members or the chair, the vote would be best determined on a confidential basis; or
- the chair forms the view that proxy votes should be counted.

A poll may be demanded before or directly after a vote on a show of hands by:

- the chair of the meeting;
- at least five members present and entitled to vote on the relevant resolution; or
- at least 5% of the members present and entitled to vote on the relevant resolution.

If a poll is demanded, it will be taken when and in the manner that the chair directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.

A poll cannot be demanded at a general meeting on the election of a chair of the meeting.

6.7 Voting rights

Each member has the right to exercise one vote on a show of hands and on a poll.

See the heading 'Passing a resolution' and heading 'Polls' under section 6.6 above).

6.8 Representation at general meetings

If you are entitled to vote on a matter at a general meeting of members, you may do so:

- in person;
- by proxy; or
- by attorney.

Voting in person

At the moment, to vote at a meeting in person you can physically attend the general meeting or by telephone. Our constitution allows us to conduct meetings by other electronic means (see rule 6.1) so we may, in time, provide other ways such as by video or web conferencing.

Proxies

A proxy is someone that attends a meeting and, with your permission, exercises your vote on your behalf. You can either:

- direct the proxy on exactly how to cast your vote with respect to one or more of the proposed resolutions being put to the meeting (eg, yes, no, abstain); or
- give your proxy the right to cast your vote in whichever way he or she thinks fit.

Note: The person you name as a proxy to vote on your behalf at a general meeting doesn't have to be another AISA member, but can be if you wish.

If you cannot attend the meeting and you wish to appoint a proxy, then it is of course important to know that the person you have appointed as your proxy will actually turn up at the meeting.

If you do not know who to appoint as your proxy, or if you cannot be sure that the proxy will actually attend the meeting, then you can choose to appoint the AISA chair as your proxy.

We take members' voting rights seriously and believe that if a member clearly indicates an intention for his or her vote to be exercised in his or her absence by completing and lodging a proxy form, then we should do what we can to make sure that this happens. With this in mind, if you do not complete the name of the proxy on the provided proxy form, then we will take it that you have appointed the AISA chair as your proxy.

We also acknowledge that it is not always easy to attend a general meeting of AISA either in person or by other electronic means we may be able to put in place. Having over 2000 members it is quite easy to foresee that we might end up with more proxies than attendees. With this in mind, we have permitted the AISA chair to hold as many proxies as he or she is given.

However, in order for a proxy or attorney to vote at a general meeting, the relevant form must be received by AISA at least three Business Days before the time scheduled for the commencement of the meeting.

The authority of a proxy or attorney to speak and vote for you at a general meeting is suspended while you are present at the meeting unless the other members present at the meeting resolve otherwise.

Voting by attorney

If you have appointed a power of attorney, that person may exercise your vote for you at a general meeting so long as the chair of the meeting is satisfied that the person really is your attorney.

Part D – Not-for-profit

7 Not-for-profit provisions

Rule 7 is a common rule for a not-for-profit organisation and, together with rule 10 relating to winding up, goes to the very heart of what being a not-for-profit means.

Under rule 7 members must not receive any of AISA's assets or income except in certain circumstances, described below. Instead, AISA's assets and income must be used in the pursuit of its purpose.

AISA may, with the approval of the Board, make payment in good faith to a member:

- by way of reasonable and proper remuneration for any goods supplied or services rendered to AISA (including remuneration as an employee or consultant);
- by way of interest on money lent to AISA at a reasonable and proper rate per annum not exceeding the rate for the time being charged by AISA's bankers on overdrawn accounts;
- by way of reasonable and proper rent for premises let by that member to AISA; and
- for authorised out-of-pocket expenses reasonably and properly incurred in connection with the affairs of AISA

Part E – Director and Secretary

8 Directors

8.1 Number of directors

AISA, being a public company limited by guarantee, must have at least 3 directors. While we will strive to keep a minimum of 5 directors at all times, we did not want to adopt a higher minimum requirement than the law requires.

We have set the maximum number of directors at ten, which we think is a sensible and manageable number. However, there may come a time where we think that a different maximum number is better. If we do get to the point where we would like to reduce the maximum number of permitted directors (eg to 9 or 8), then the law currently requires us to seek members' approval.

8.2 Becoming a director

We included rule 8.2(a) to make it clear that the management committee members of AISA (when it was an incorporated association) would automatically become directors of AISA upon its conversion to a company limited by guarantee.

Now that AISA has converted to a company limited by guarantee and has adopted a new constitution, you can become a director of AISA in three ways. They are:

- Election by Members at our annual general meeting. If you become a director this way, you are elected to fill a three year term and are referred to as an 'Elected Director';
- Appointment by the directors. If you become a director this way, you will be appointed to fill a term of up to three years as determined by the Board and will be referred to as an 'Appointed Director'; and
- Appointment by the directors to fill any vacancy in the number of Elected Directors however arising. If you become a director this way, you will be appointed by the Board for the period up to the next AISA annual general meeting, at which point you must retire.

Regardless of how you become a director:

- you must first be an AISA member and meet the director eligibility criteria (see rule 8.5); and

- the members can remove you from the Board by resolution at a meeting of members. See section 6.1 for information about general meetings called by members.

8.3 Ratio of Elected Directors and Appointed Directors

We believe in maintaining a democratic process when forming the Board. We also acknowledge that a well-balanced Board both with respect to skills and diversity is important to the good governance of AISA.

It is for these reasons that we have adopted a hybrid approach where the majority of director positions are specifically quarantined for directors elected by members and the remaining positions are open to be filled at the discretion of the Board.

Taking this approach helps the Board to ensure that it has the most appropriate representation available to it. For instance, it may be that the Elected Directors lack:

- appropriate geographic, gender or race representation; or
- appropriate skills (eg, legal, accounting, marketing, industry knowledge).

Appointing appropriate directors to fill these gaps will help ensure a strong, well-balanced Board with the appropriate skills and diversity required to manage the organisation.

So, if we work with the current director maximum of ten, the Board will be comprised as follows:

- Two thirds of ten, rounded down, being 6 director positions are to be filled by Elected Directors; and
- the remaining four director positions are open to be filled at the director's discretion.

It is important to note:

- while the Board may appoint up to 4 directors, they may choose to appoint less;
- an Appointed Director has limits placed on his or her period in office (see rule 8.4); and
- the members can remove one, some or all of the directors, including Appointed Directors, by resolution at a meeting of members. See section 6.1 for information about how members may call a general meeting.

If the 6 positions specifically ear-marked for Elected Directors are not filled, or if an Elected Director retires or is removed as a director before his or her term expires, then the Board can appoint a person to fill this roll if they wish, but only for a period up to the next AISA annual general meeting at which point that person must retire.

8.4 Directors time in office

You are to remain as a Director until the term of your office expires or until you resign, retire or are otherwise removed as a director. However, subject to the restrictions described below, you may be reappointed or re-elected.

We think it is important to put a check on the maximum continuous time any person can remain as a director. At the same time though, we don't want you to be forced to leave if you, the Board and the members believe you are doing a good job and should continue serving AISA. With this in mind, we have drafted the constitution so that you must not:

- hold the office of Appointed Director for any more than six continuous years; and

- hold the office of a director for any more than nine continuous years unless otherwise resolved by a special resolution of Members.

The last things to note are that:

- if you have held office as a director for nine continuous years, you are eligible for re-election or re-appointment once a period of 12 months has expired since you last held office as a director; and
- this rule is not to be applied retrospectively – meaning that any time you spent in office on the management committee of AISA when it was an incorporated association prior to the adoption of this constitution is to be disregarded.

8.5 Qualifications and composition of directors

A well balanced board committed to the purpose of AISA is essential to AISA's governance and long term achievements. With this in mind, we may adopt specific policies relating to the composition of the board and skills and qualifications of directors from time to time. In general terms though, to be eligible to become a director of AISA you must:

- have knowledge, and expertise relevant to and be committed to AISA's purpose and activities; and
- be a member of AISA.

8.6 Vacation of office

Because AISA is a public company, directors are not permitted to remove other directors. Only members can remove directors. However, your position will automatically become vacant if you die as well as in certain other circumstances.

So, unless the directors resolve to confirm your position, you will automatically cease being a director if you:

- cease being an AISA member;
- are, due to physical or mental impairment, unable to properly perform your duties as a director;
- become bankrupt;
- are convicted of an indictable offence; or
- fail to attend more than three Board meetings in any six month period without leave of absence approved by the Board.

8.7 Payments to directors

While you will not be paid for being a director, you can, so long as the Board approves, be:

- reimbursed for all reasonable authorised travelling and other expenses you properly incur in connection with AISA's affairs (including attending and returning from AISA general meetings, Board meetings and meetings of committees and branches); and
- paid in another capacity other than that of director (eg, as an employee or as the owner of a venue).

8.8 Interested directors

Contracting with a director

You may hold any other position in AISA, other than auditor, in conjunction with your directorship. You may be appointed to that position for such time, on such terms and for such pay as the Board determines.

If you enter into a contract or other arrangement with AISA, then such contract is not voided merely because you hold office as a director or because of the fiduciary obligations arising out of that office.

Personal interests

The Board has adopted a conflicts of interest policy that applies to all directors and senior staff of AISA as well as to members of the Code of Ethics Review Committee and AISA branch committees. This policy should be read in connection with rule 8.8 of the constitution which provides that where you have a material personal interest in a matter to be considered at a meeting, you must not be present while the matter is being considered at the meeting or vote on the matter, unless the directors who do not have a material personal interest pass a resolution that permits you to do so.

If you are in any way interested in an arrangement (other than by having a material personal interest) you may, despite that interest:

- be counted when determining whether a quorum is present at any Board meeting considering that arrangement;
- sign or countersign any document relating to that arrangement; and
- vote in respect of the arrangement or any matter arising out of it.

8.9 Powers and duties of directors

Being a director, you, together with the rest of the Board, are responsible for managing the business of AISA. This means that, accept for certain matters that must be determined by the members, the Board may exercise all the powers that AISA has as a company.

The key decisions left to the members that cannot be made by the directors are:

- changing AISA's name;
- changing AISA's constitution;
- electing Elected Directors;
- closing down and winding up AISA; and
- appointing a new auditor.

Everything else is up to the Board, either directly or through others by way of delegation.

8.10 Directors' meetings

Directors may hold meetings (including by technological means) for the conduct of business and regulate them as they think fit.

8.11 Convening of meetings of directors

A meeting of directors may be convened by the chair, or by any three of the directors.

8.12 Notice of directors' meetings

Notice of a directors' meeting must be given to each current director, other than a director on leave of absence approved by the Board. The notice must:

- be given in a way permitted by rule 13;
- specify the time and place of and, if relevant, the form of technology for, the meeting; and
- state the nature of the business to be transacted at the meeting.

8.13 Quorum for directors' meetings

The term 'quorum' refers to the minimum number of members that must be present before a general meeting can go ahead. Quorum must then be present throughout the meeting. If there is no quorum then the meeting cannot go ahead.

The quorum for a Board meeting is four directors present at the meeting (including being present by participating by electronic means such as by telephone).

If, within 30 minutes after the time appointed for the meeting, a quorum is not present, then the meeting is to be cancelled and a new time and date set. The people who do turn up to the meeting can still discuss any matter, including the matters that were on the agenda for the meeting, but they cannot vote or otherwise make any decisions about those matters.

It is possible that from time to time the total number of directors could fall below four. Ordinarily, this would mean that the Board would be unable to convene as a Board and make decisions about the governance and management of AISA. To help ensure that this situation can be remedied and does not cause major disruptions to AISA's business, we have included what some might call a 'safety net' rule. This rule provides that, if at any time there are less than the number of directors required for a quorum, the remaining director or directors may act but only:

- in an emergency;
- for the purpose of convening an AISA general meeting; or
- for the purpose of increasing the number of directors to the number required for a quorum.

8.14 Chair and deputy-chair

Determining the chair

Under rule 8.14(a), it is the job of the Board to appoint one of the directors as the chair. Enabling the Board to choose the chair has three key benefits. They are:

- the Board is well placed to assess the skills and expertise of all directors and to determine which one is most suited to fill the role of chair, considering the needs of AISA at the time;
- the Board is likely to operate more smoothly under the stewardship of a chair that the directors themselves have appointed; and
- if the chair steps down, resigns as a director or if it turns out that the chair is not suited to the role after all, the Board can replace the chair with another director.

Determining the deputy-chair

Under rule 8.14(b), the directors may, if they wish, appoint a director to the office of deputy-chair. The benefits listed above associated with a Board appointed chair also apply with respect to a Board appointed deputy-chair.

Term as chair or deputy-chair

The chair and deputy-chair are appointed for such period of time as the Board decides so long as it is no longer than his or her actual term of office as a director.

Chairing meetings

The chair must preside as chair at each directors' meeting unless he or she is unable to attend or unwilling to act – because, for instance, he or she has a conflict of interest with respect to a matter being considered by the Board.

If the chair is unable to attend a directors' meeting or unwilling to act, then the deputy-chair, if one has been appointed, must preside as chair of that meeting.

If both the chair and deputy-chair are unable to attend a directors' meeting or are unwilling to act, then the directors present at that meeting must elect a person from among their number to preside as chair for that meeting.

8.15 Decisions of directors

If a quorum is present at a Board meeting (see 8.13 for more on quorum), then the directors present can go ahead with the meeting and can exercise all or any of the authorities, powers and discretions of the Board.

Questions considered at a Board meeting are decided by a majority of votes cast by the directors present at the meeting.

If the number of votes cast for and against a resolution at a Board meeting is equal, then the chair may break the deadlock by casting a second vote. It is called a second vote because the chair may have already cast one vote as a director and, under this rule, may cast one more.

8.16 Decisions without meetings

Introduction

It is not always easy or convenient for the Board to gather for a meeting, particularly if the decision that needs to be considered arises in-between the scheduled Board meetings and is urgent. Rule 8.16 allows the directors to make decisions without meetings so long as they comply with:

- the law; and
- any policies and procedures relating to the passing of director resolutions as determined by the Board from time to time.

Current process

The Board may make a decision without a meeting if the following process is followed:

Step 1 – provide all directors with notice: A document (including an email) setting out the resolution or resolutions to be considered must be sent to all directors other than a director on leave of absence approved by the Board.

Step 2 – unanimous approval of eligible directors required: In order for the resolution or resolutions to be passed:

- all eligible directors must indicate that they are in favour of the resolution or resolutions; and

- the number of eligible directors voting on each resolution must be sufficient to make a quorum (see rule 8.13).

Step 3 – confirmation of agreement if required: If a director signifies his or her agreement to a document other than by signing it, that director must confirm his or her agreement by signing the document at the next Board meeting he or she attends. However, failure to do so does not invalidate the matter to which the document relates.

Eligible directors

A director is not an “eligible director” and may not vote if he or she:

- is on a Board approved leave of absence; or
- is disqualified from considering the resolution on the grounds that he or she is not entitled at law to do so or has a conflict of interest.

When is the decision made?

A decision of the Board made under rule 8.16 and as described here is taken to have been made when the document (including an email) is last agreed to by a director.

Ways of signifying agreement to a resolution

A director may signify agreement to a document by signing the document or by notifying AISA of his or her assent in person or by post, facsimile, electronic, telephone or other method of written, audio or audio visual communication.

8.17 Committees (including branches)

Introduction

Many not-for-profit organisations depend on the support of others for its work and success. AISA is no different. One way of harnessing the energy, skills, expertise and support of others is through committees and, in AISA’s case, through branches. This rule 8.17 sets out the high level principles that must be followed when establishing a committee.

Examples of the types of committees that we use from time to time are:

- risk and finance committee;
- policy committee;
- advocacy committee; and
- topic-specific committees.

Committees generally

Under rule 8.17(a), the Board may resolve to:

- establish one or more committees, including AISA branch committees, consisting of such persons as it determines;
- delegate to each committee such of its powers as is required for the effective and efficient running and administration of the committee;
- revoke any or all of the powers delegated to any committee and vary the nature and scope of the powers delegated; and
- change the makeup of a committee at any time or dissolve it all together.

A committee must be conducted, and exercise the powers delegated to it, in accordance with any directions of the Board which, for the avoidance of doubt, may be contained within a policy, guidelines or protocols.

Just because the Board has delegated certain tasks and powers to a committee (including a branch committee), does not mean that it no longer has those powers. After all, the responsibility remains with the Board at all times. In other words, the buck stops with the Board regardless of what powers and to whom it delegates its powers and authority. This is why the Board may continue to exercise all of its powers despite any delegation.

Branches

Because branches are such an important part of AISA, we have also created a stand-alone Branch Policy which binds all members. In addition, rule 8.17(d) provides that each AISA branch and each member connected with an AISA branch must:

- comply with the AISA Branch Policy;
- comply with all relevant AISA policies, procedures and other guidelines as may be in force from time to time; and
- exercise any powers delegated in accordance with any directions of the Board from time to time.

8.18 Delegation to individuals

While the Board is responsible for the governance and direction of AISA, it cannot do everything on its own. AISA, like many other companies (both for profit and not-for-profit), engages employees as well as directors and members to perform certain tasks or to take on certain responsibilities.

So, rule 8.18 permits the Board to delegate any of its powers:

- to one or more directors;
- to one or more members; or
- to one or more employees.

Similar to the Board's powers when it comes to delegating to committees (see rule 8.17), the Board may delegate its powers to an individual for such time as it determine and may revoke or vary any power delegated.

Rule 8.18(c) requires a person to whom any powers have been delegated to exercise such powers in accordance with any Board direction.

Again, as with delegation to committees, the Board may continue to exercise all of its powers despite any delegation.

It is important to note that a delegation under rule 8.18 does not need to be given to a specified person. Instead, such delegation can be given to any person from time to time holding, occupying or performing the duties of, a specified office or position. For example, certain powers and authorities can be delegated to whichever person happens to be filling the role of CEO from time to time.

8.19 Validity of acts

An act done by a director or by the Board is not invalid just because:

- of a defect in the appointment of the director;

- the person is disqualified from being a director or has vacated office; or
- the person is not entitled to vote,

if that circumstance was not known by the director or the Board (as the case may be) when the act was done.

9 Secretaries

AISA must have a company secretary. As such, the Board must appoint one. The secretary may be, but does not need to be, a director.

In simple terms, the company secretary is the key contact between AISA and the relevant corporate regulator which, at this stage, is the Australian Securities and Investments Commission (ASIC). Duties commonly given to a company secretary include:

- ensuring that the necessary registers required by the law are established and properly maintained;
- ensuring that any required annual returns and annual reports are lodged with the appropriate regulator on time; and
- ensuring the organisation of, and attend, meetings of the members and the directors, including the sending out of notices, the preparation of agenda and the compilation of minutes.

As explained as part of the commentary of rule 4.1, if you are the secretary you can, but do not need to, do all of the things listed. The drafting uses the word 'ensure' which means that while the end responsibility lies with the secretary, you can delegate certain tasks to, or enlist the help of, others.

A secretary's appointment may be for the period, on the conditions and, unless the secretary is also a director, at the remuneration as determined by the Board.

A director may not be remunerated in his or her capacity as secretary.

Subject to any contract between the company and the relevant secretary, a secretary of the company may be removed or dismissed by the Board at any time, with or without cause. If that person is a director, such removal or dismissal does not remove that person from office as a director.

Part F – Winding up

10 Winding up

As previously explained at the commentary about rule 7, the winding up provisions of an organisation's constitution are essential to demonstrating the not-for-profit' character.

Our winding up provisions are found at rule 10. in brief, rule 10 requires that if AISA is wound up and there is money left over, the left over money must not be given to members and must instead be given to one or more other not-for-profit organisations with a similar purpose to AISA.

If any of the leftover money is government funding, then that government funding must be given back to the government department that gave the funding.

Part G - Administrative matters

11 Minutes and records

11.1 Minutes

it is good governance practice to record and keep accurate minutes of the decisions of directors, members and committees. It is also a requirement of the law.

So, the Board must ensure that the following minutes are recorded, approved and kept:

- meetings and resolutions of members;
- meetings and resolutions of directors; and
- meetings and resolutions of committees, including AISA branch committees.

These minutes can be kept in traditional minute books or in any other way that clearly identifies them as minutes, that clearly and accurately records the decisions made, are kept chronologically and are readily accessible to those who are permitted to access them.

11.2 Inspection of records

Transparency and accountability are key elements of any good governance framework but need to be balanced against the need for confidentiality in some circumstances. It may also be necessary to restrict access to Board minutes as they often contain confidential and sensitive information.

With this in mind, the board may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to inspection.

You may, upon reasonable notice to the Board, inspect any of AISA's records, provided that you only use the information obtained for a proper purpose in connection with membership of the company. In the case of Board minutes and resolutions, the Board may, at its complete discretion, refuse to provide all or some of the directors' minutes or provide such records in a redacted form.

The Board is required by law to keep its records and registers up to date. As such you, together with all other members, are required to provide us with such information as is required for AISA to comply with this rule. If events occur which would cause the information contained in a register maintained by AISA to be inaccurate, you must notify the company in writing of the change within 21 days of the date of such change occurring.

12 Indemnity and insurance

To the extent permitted by law, AISA indemnifies its officers and auditors (both current and past) for all losses or liabilities incurred by the person as an officer or auditor of the company including, but not limited to, a liability for negligence or for legal costs on a full indemnity basis.

This indemnity:

- may only be for losses or liabilities incurred as an officer or auditor of AISA (either before or after the adoption of this rule); and
- operates only to the extent that the loss or liability is not paid by insurance.

To the extent permitted by law, AISA may take out and pay for insurance for the benefit of its officers (both current and past) against any liability incurred by the person as an officer of the company including, but not limited to, a liability for negligence or for legal costs).

13 Notices

Both The law and technology change regularly. This is why we have not been too specific about the ways of providing notices and the associated procedures.

Rule 13 provides that 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:

- the law; and
- any policies and procedures relating to the giving and receiving of notices, documents and other communications as determine by the Board from time to time.

We will strive to use electronic forms of communication (such as email) as much as possible in our communications with you and will do what we can to enable you to communicate with us in the same way. However, due to the law or practical reasons, it may be that we will need to revert to hard copy paper communications or another form of communication altogether.

14 General

Common seal

Companies are no longer required to keep a common seal, but they can if they wish. AISA has chosen not to use a common seal. If we decide that AISA will have a common seal, then it must be kept and used in accordance with the law.

Jurisdiction

While AISA has a national reach, its registered address and principal place of business is located in New South Wales. This is why NSW has been stated as the jurisdiction governing this constitution.