

Special Resolutions Proposed for Australian Business Software Industry Association Limited Annual General Meeting on 28 October 2020

Each special resolution will be voted on separately. All proposed modifications under each special resolution will be voted on together, unless the special resolution is not passed in which case each modification will be voted on individually.

Special Resolution 1 - Formatting & Minor Changes

EXPLANATORY NOTES: The following proposed changes are designed to update the format of the constitution, clarify some clauses and correct any spelling errors.

- (a) Adding the ABN to the cover page.
- (b) Removing the clause for the initial board as it is no longer required.
- (c) Ensuring that body corporate rather than body is used in parts of the constitution.
- (d) Removing the signature section which appeared in the original constitution as it is no longer required.
- (e) Where address has been referred to in the constitution, this has been updated to “business address” in some instances.
- (f) Re-formatting and re-numbering clauses as required.

SPECIAL RESOLUTION:

That this AGM resolves to modify the Company Constitution as follows:

- (a) Adding the ABN to the cover page.
- (b) Deleting clause 36.3 that defines the Initial Board and replacing with:

36.3 Not in Use

- (c) Deleting clause 6.1 and replacing with a new clause 6.1 that states:

6.1 Pre-Condition to Membership

A person or a body corporate is entitled to apply to become a Member if that person agrees or body corporate agrees to assume the liability to pay the Member’s Guarantee Amount and otherwise satisfies the criteria for the relevant class of Membership.

- (d) Deleting the signature section that currently appears on page 32 of the Constitution.

Special Resolution 2 - Updated Meanings

EXPLANATORY NOTES: With a number of clauses being removed and added through these proposed Constitution amendments, a number of definitions need to be updated and/or removed.

The definition of Organisational Members has been moved out of the definitions section to the classes of membership section. This definition has also been updated to clarify that this applies to both Developer and Business Members.

SPECIAL RESOLUTION:

That this AGM resolves to modify the Company Constitution as follows:

- (a) Deleting the definition of Director under **clause 4.1** and replacing it with a new definition that states:

Director means any person appointed as a Director of the Company under **clause 36**.

- (b) Deleting the definition of Financial Voting Member under **clause 4.1** and replacing it with a new definition that states:

Financial Voting Member means a Voting Member who has paid an Entrance Fee and annual Subscription within the time limits specified in **clause 13(a)(v)**, namely, at the latest, within thirty (30) days after having been notified by the Company that the Voting Member is in arrears to the Company.

- (c) Deleting the definition of Member under **clause 4.1** and replacing it with a new definition that states:

Member means a member of the Company pursuant to **clause 6** and **clause 7**.

- (d) Deleting the definition of Member Present under **clause 4.1** that states:

Member Present means in connection with a meeting of Members, a Financial Voting Member being present in person or by proxy or attorney or, in the case of an Organisational Member, by a Representative.

- (e) Deleting the definition of Organisational Member under **clause 4.1** and replacing it with a new definition that states:

Organisational Members are those Members referred to in **clause 7.6**.

- (f) Adding a new **clause 7.6** Organisational Members that states:

An Organisational Member means a Developer or Business Member of the Company as specified in **clause 7** which is a body corporate and is subject to **clause 11**.

- (g) Deleting the definition of Representative under **clause 4.1** and replacing it with a new definition that states:

Representatives means the person authorised to act as a representative of an Organisational Member, as described in **clause 11**.

- (h) Deleting the definition of Software Developer under **clause 4.1** and replacing it with a new definition that states:

Software Developer means a developer of business software which may be more particularly defined and described in a Board policy on Software Developers, as determined by the Board from time to time.

- (i) Adding to **clause 4.2(a)** a new interpretation that states:

4.2 Interpretation

(a)

- (x) a reference to any member who is an Organisational Member is a reference to both the Organisational Member and its Representative.

- (j) Deleting **clause 7.5(b)** and replacing it with a new clause that states:

7.5 Lifetime Individual Members

- (b) Has provided distinguished service to the **Company** or in promoting its **Objects**; or

Special Resolution 3 - Clarifying the Purpose and Role of the Representative

EXPLANATORY NOTES: The purpose and role of a Representative for a Membership needs to be clarified. These points are taking into account earlier special resolutions that seek to update the definitions of Organisational Members and Representatives.

SPECIAL RESOLUTION:

That this AGM resolves to modify the Company Constitution as follows:

- (a) Deleting **clause 11(a)** and replacing it with a new clause that states:

11 Representative

- (a) An Organisational Member or an applicant for Membership that is a body corporate upon becoming a Member, must appoint as its Representative a natural person.

- (b) Adding a new **clause 11(k)** that states:

11 Representative

- (k) A right, privilege or obligation which a Representative has by reason of a body corporate being a Member of the Company terminates on cessation of the body corporate's membership in accordance with **clause 13**.

Special Resolution 4 - Using Technology at General Meetings

EXPLANATORY NOTES: Adding more detail to clause 17 to outline what the use of technology means in general meetings.

SPECIAL RESOLUTION:

That this AGM resolves to modify the Company Constitution as follows:

(a) Deleting **clause 17(c)** and replacing it with new clause that states:

17 Convening of a General Meeting

(c) A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate in the meeting, including to hear and be heard.

(b) Adding a new **clause 17(d)** that states:

17 Convening of a General Meeting

(d) Anyone using this technology pursuant to **clause 17(c)** is taken to be present in person at the meeting.

Special Resolution 5 - Updating Board Information

EXPLANATORY NOTES: Clarifying the clauses relating to the Board and Directors with the removal of references to clause 36.3 (the Initial Board). Clarification to clauses surrounding the vacation of office, Director term limits and the relationship of Elected Directors to Voting Members to match actual practices have also been made.

SPECIAL RESOLUTION:

That this AGM resolves to modify the Company Constitution as follows:

- (a) Deleting **clause 36.1(b)** and replacing it with a new clause that states:

36.1 Number of Directors

- (b) The Board may by resolution vary the number of Directors holding office within the limits referred to in **clause 36.1(a)**.

- (b) Deleting **clause 36.2(b)** that requires an Elected Director to be a Representative of a Voting Member at all times and replacing it with a new clause that states:

36.2 Constitution of Board

- (b) Not in Use.

- (c) Deleting clause 36.4 and replacing it with a new clause that states (changed text underlined for information purposes of this resolution only):

36.4 Elected Directors

- (a) Prior to each annual general meeting of the Company the Secretary will call for nominations from the Financial Voting Members for candidates for elections as Elected Directors for any vacant positions on the Board.
- (b) Each Financial Voting Member is entitled to nominate a candidate for election as an Elected Director. To the extent possible, the candidate being nominated for election should have a regular professional relationship with that Financial Voting Member.
- (c) Nomination of candidates for election as an Elected Director must be:
- (i) made in writing in the form prescribed by the Board from time to time;
 - (ii) made by a Financial Voting Member and seconded by another Financial Voting Member;
 - (iii) accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
 - (iv) delivered to the Secretary at least twenty eight (28) calendar days before the date fixed for the holding of the annual general meeting at which the election is to take place.

Financial Voting Members proposing individuals as candidates should be aware that, if their candidate is elected and thereafter steps down for any reason, the Financial Voting Member cannot automatically replace them in their elected position with another person.

- (d) Candidates for election as Elected Directors shall be identified by reference to their name as well as the name of the Financial Voting Member who nominated them.
- (e) Candidates must run for election as individuals.
- (f) Voting for the election of candidates as Elected Director is to be held at the annual general meeting of the Company.
- (g) If insufficient nominations are received to fill all vacancies of Elected Directors on the Board, the candidates nominated shall be deemed to be elected (effective from the conclusion of the annual general meeting) and further nominations for the vacant positions shall be received at the annual general meeting.
- (h) If insufficient further nominations are received at the annual general meeting, any vacant positions of Elected Directors remaining on the Board shall be deemed to be casual vacancies.
- (i) If the number of nominations received is equal to the number of vacancies of Elected Directors to be filled, the persons nominated shall be deemed to be elected (effective from the conclusion of the annual general meeting).
- (j) If the number of nominations received for Elected Directors exceeds the number of vacancies to be filled, a ballot shall be held at the annual general meeting. The Board shall determine, in its discretion, how the ballot shall be conducted.

- (d) Deleting **clauses 36.6(a)(i)** and **36.6(a)(ii)** and replacing them with new clauses that state:

36.6 Term

- (a) A Director
- (i) shall hold office from 1 January of the year following their election or appointment for a term of two (2) years, but shall be eligible for re-appointment or re-election for two (2) further terms of two (2) years each in accordance with this Constitution; and
 - (ii) shall not hold office for more than six (6) consecutive years excluding any period filling a casual vacancy.

- (e) Deleting **clause 36.6(b)** and replacing it with new clauses **36.6(b)** and **(c)** that state:

36.6 Term

- (b) Any Director filling a casual vacancy at the time of the sending of notices for the annual general meeting automatically retires from the office at the conclusion of that calendar year and may be eligible for re-election, subject to the requirements of this clause 36.
- (c) Once a Director has served the maximum term of six (6) consecutive years, other than the Chief Executive Officer, the Director is only eligible for reappointment or re-election to the Board:
 - (i) After a period of at least one (1) year has expired since the expiry of the Director's previous term on the Board; or
 - (ii) Where there is a casual vacancy in the office of a Director that cannot otherwise be filled.

- (f) Adding a new **clause 36.7(b)** that states:

The Board must appoint a Secretary in accordance with **clause 54**.

- (g) Deleting **clause 38(b)** and replacing it with a new clause that states:

38 Vacation of Office

- (b) In the event that a Director, having been a Voting Member or having had a regular professional relationship with a Voting Member, ceases to be a Voting Member or hold a professional relationship with a Voting Member, that person shall continue to be a Director until the end of their term unless the Member Director or the Member the Director has a regular professional relationship with (as applicable):
 - (i) Is expelled from the Company pursuant to **clause 14**; or
 - (ii) Subject to **clause 12(c)**, fails to pay the subscription.

(h) Deleting **clause 38(c)(viii)** and replacing it with a new clause that states:

38 Vacation of Office

(c)

(viii) Is absent without permission of the Board from three (3) consecutive meetings of the Board.

(i) Deleting **clause 39(a)** and replacing it with a new clause that states:

39 Casual Vacancy

(a) If the President vacates his or her office, or becomes unavailable for an extended period due to illness or such other similar reason, then the Vice President shall replace the President for the period the President is unavailable.

Special Resolution 6 - Increasing the Maximum Size of the Board

EXPLANATORY NOTES: Increasing the maximum size of the Board to encourage diversity of board membership (gender, cultural and technical background of Directors and represented businesses, areas of interest and expertise) with one more potential Co-opted Director and two more potential Elected Directors. This retains at least a 2/3rds majority of Elected Directors on the Board.

SPECIAL RESOLUTION:

That this AGM resolves to modify the Company Constitution as follows:

- (a) Deleting **clause 36.1(a)** and replacing it with a new clause that states:

36.1 Number of Directors

- (a) The Board of Directors shall consist of not less than seven (7) and not more than twelve (12) persons.

- (b) Deleting **clause 36.2(a)** and replacing it with a new clause that states:

36.2 Constitution of Board

- (a) The Board shall consist of:
- (i) at least seven (7) and no more than nine (9) Elected Directors; and
 - (ii) Up to three (3) Co-opted Directors;
- provided that the total number of Directors does not exceed the maximum fixed by **clause 36.1**

Special Resolution 7 - Adding a New Chief Executive Officer Clause

EXPLANATORY NOTES: In the event that the Board decides to nominate a Chief Executive Officer, a new clause has been added to outline their position. Other clauses have also been updated to include information about the CEO position.

SPECIAL RESOLUTION:

That this AGM resolves to modify the Company Constitution as follows:

(a) Adding a new **clause 44** that states:

44 Chief Executive Officer

The Board may appoint a Chief Executive Officer of the Company by appointing that person as a Managing Director of the Company and the Board may delegate to them such powers, discretions and duties of the Board as the Board thinks fit and, subject to the rights of the parties to any contract, may remove a person so appointed from that office.

(b) Adding a new **clause 36.2(a)(iii)** that states:

36.2 Constitution of Board

(a)

(iii) The Chief Executive Officer if appointed by the Board as a Managing Director under **clause 44**.

(c) Modifying the first sentence of **clause 36.6(a)** to exclude the Chief Executive Office from term limits:

36.6 Term

(a) A Director (excluding the Chief Executive Officer):