

15<sup>th</sup> of June 2020

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Australian Competition and Consumer Commission

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**Submission to the ACCC - National Lotteries and Newsagents Association application for authorisation AA1000515 — interested party consultation**

**Background**

The Australian Newsagents Federation (trading as the Australian Lottery and Newsagents Association - ALNA) has a strong interest in collective bargaining arrangements, as authorised collective bargaining has been utilised and undertaken by our organisation for many years due to a power imbalance between individual member agents and their large suppliers in negotiations.

For this reason we appreciate this opportunity to comment as an interested party on the application for authorisation lodged by the National Lotteries and Newsagents Association (NLNA) (the Applicant), seeking authorisation to collectively bargain with Tabcorp.

Currently the Australian Lottery and Newsagents' Association (ALNA) is the only lottery and newsagent's association to hold national authorisation to collectively bargain on behalf of members throughout Australia with a wide range of counterparty targets including Tabcorp. ALNA is the national industry body representing Lottery Retailers and Newsagents' and it represents small businesses in almost every rural town, regional centre, urban and metropolitan shopping centre in Australia.

Over many years key industry stakeholders, and importantly lottery retailers, have been advocating to end the fragmentation of industry representation in this sector and to move to a more economically efficient model with a single national representative body and one voice. This is critical for the sustainability, survival and growth of the newsagent and lottery industry, which like most sectors in the current economic climate is very fragile. It also makes it more efficient for the government and regulators to deal with the industry effectively and without confusion, which is more important than ever.

ALNA has answered this challenge again and again, through its actions showing a flexible capacity to work in affiliations with state bodies over many years and most recently through a series of key mergers and the establishment of a national office and lottery operations to support members in every state and territory in Australia.

In the last few years ALNA has merged with the Lottery Agents Association of Tasmania (LAAT) in 2018, with Lottery Agents Queensland (LAQ) in February 2019 and with the Lottery Retailers Association (LRA) in Victoria in April 2019 to achieve industry unity and efficient representation. We

have representative General Managers and other staff who are based in and who cover the following jurisdictions, QLD, NSW/ACT, VIC, SA/TAS/NT & WA as well as our head office in NSW.

The applicants parent entity VANA Ltd which is a state based newsagency association and whose members used to be affiliated with ALNA, launched a new body, the National News and Lotteries Agents Ltd (NNLA) in October 2018 which had a similar member structure and purpose to the new NLNA (applicant) entity, but which we understand was subsequently closed in 2019 as it didn't appear to be well supported or to meet a specific and unprovided for need in the industry. They then launched the National Lottery & Newsagents Association (NLNA) in February 2020.

Despite this activity, ALNA reached out and initiated dialogue again with the applicants parent entity VANA in the latter part of 2019 and again in early January 2020 and offered to flexibly and constructively work with them toward the betterment of the broader industry, but despite seemingly positive intent, it became clear in February 2020 when VANA launched NLNA that this dialogue was not seemingly genuine as they had already registered the new NLNA entity business name prior to some of this occurring and without further flagging their intent.

Nonetheless, ALNA is as committed as ever to providing an efficient representative body nationally and to working with any associations who have an interest in achieving progress, and unification not division of representation of Newsagents and Lottery agents, as we have been doing.

### **Integrity of collective bargaining, the applicant, and the application**

As previously noted, ALNA has been a strong supporter of the ACCC small business collective bargaining regime for many years. A regime that has moved from initial strong opposition by the TPC/ACCC to substantial permission of such arrangements, which have positively assisted us in addressing the power imbalance between small businesses and their large suppliers in negotiations.

However, there is a need for the regime to maintain integrity and ALNA has expressed such concern in relation to the proposed class exemption previously.

Collective bargaining authorisation is a serious matter as it exempts parties to collective bargaining arrangement from possible legal action under the CCA. Such authorisation is a technical legal instrument of exemption and this should not be misconstrued as overall ACCC approval of an applicant and its operations.

Collective bargaining authorisation is about small businesses getting together, it is not about trade associations or other groupings or business models using an authorisation to foster their own goals.

Collective bargaining groups of small businesses should be at the centre of any authorisation and not the persons or organisation who claim to represent them and their strategies. The latter are to facilitate the hoped-for outcomes for a collective bargaining group.

We are concerned about the integrity of this application as the Applicant (NLNA) appears to simply be a re-badged Victorian Authorised Newsagents Association (VANA Ltd) and sadly the application seeks to further divide the industry for questionable purpose.

The NLNA constitution (attached) indicates that only subscribers can elect the initial board and the only subscriber is VANA and its directors. VANA seems to control this new body, for instance at

clause 43.2 there cannot be more independent directors than VANA directors. So, who does it really seek to represent and what is its intent?

While putting these governance issues to one side and how they impact what is promoted as supposedly a nationally representative body, it is not at all clear in the application whether there are other NLNA members who are lottery agents in addition to VANA and who can become a part of any collective bargaining group with the target (Tabcorp) and how such members become members? The applicant is trying to sign up 'subscribers' not 'members' which mean different things in their constitution. Whilst it is clear from an earlier email (attached) to VANA members that it is intended at least that VANA members are to be 'subscribers' of NLNA, it is not clear if they are already 'members', yet the application in 1.2 says that 'each member of VANA also has automatic membership of the NLNA'.

The public benefit claimed by the Applicant is already obtained for VANA members by way of the long standing VANA authorisation. It appears that the authorisation is simply not necessary and is technically flawed as it adds nothing to the public benefit flowing from the VANA authorisation, and we feel the commission should be concerned about authorising something that you have already authorised.

As such and to our earlier point, this application appears to be more about facilitating hoped-for outcomes aligned with having a national collective bargaining group rather than one that exists now.

Before the ACCC carefully considers the application, the Applicant, who bears the onus to prove that the application be granted, should show why the authorisation as a so-called national body is needed. Have several SA, TAS and WA lottery agents sought to join VANA as members for example, so a national name that is unhelpfully confusing in its similarity to the Australian Lottery and Newsagents Association (ALNA) was warranted to suit? There is no evidence in the application of the NLNA being national other than the claim by the applicant that it is and that it is needed.

Further, if there are agents in other states that wish to join VANA, they could already and can and the VANA authorisation would already cover them.

What seems to be intended here is a name change and some marketing positioning around being a national body with authorisation and then to seek members once authorised. By way of context, some of our members are receiving over 20 emails from this organisation a month with questionable claims about what they do and don't do and they have now appointed commission based tele sales people to sell subscriptions with nothing in their advertised role that would require member service, yet they have been promoted to the industry as business development managers. So, the authorisation tag potentially becomes a marketing tool for subscription sales rather than a solution to an existing problem with an existing national group of small business members who need to be collectively represented.

The Applicant does not seem to propose to act like a trade membership association either, more like a for profit marketing/buying group type business with subscribers, even though it calls itself a "Charity" in its constitution.

Newsagents are some of the most marginal businesses in Australia and this may get worse in the post COVID era. They need collective bargaining and strong representation and ALNA was heavily involved with all Governments in the COVID negotiations on issues such as the mandatory tenancy

code, business closures, Jobkeeper arrangements and now IR reforms and arguably it was extremely successful in its advocacy, keeping a threatened industry open and trading nationally when many others had to close. This did not happen by accident, it happened through co-ordinated collective action by a strong national body and its members with reach and relationships.

Governments do not like multiple representatives of the same industry and are concerned that those said to represent a particular sector do so and hence it is incumbent on the ACCC not to give groups status that they do not deserve.

Much of ALNA's work benefits the whole industry including many non-members and we have experienced staff who can actually help non-members with issues, and we do this all of the time.

The newsagency sector is fragile and in need of professional consolidated representation, previously VANA had membership reciprocity with ANF (ALNA) but moved away from this. Such links were notified to the ACCC some years ago. It is submitted that the ACCC should not authorise an application that is unnecessary. That makes mockery of public benefit. Even more so, any so-called urgent interim authorisation as VANA members are already protected.

The target of the application is TABCORP, Tabcorp is about lotteries and not wider newsagent services and suppliers. We estimate about half of VANA members are lottery agents and the applicant has not been specific about which are and are not, and which other lottery agents they represent in other jurisdictions or that these have been consulted with about this application. The NLNA Constitution states that the Company Secretary must keep a Register of members? Has this been provided to the ACCC?

As the small businesses named in the application are already looked after by VANA and the rationale for seeking the authorisation at 3.1 (c)- are all unnecessary as the existing VANA authorisation already covers them, and there is no evidence that anyone will not be part of a collective bargaining regime or could not have access if the authorisation is denied. The applicant has not proved that there will be a public benefit that will arise.

Another matter of note is that on the actual application the details of the proposed conduct at 3.1 (a) go much further than other authorisations and read as if they are to become part of the Tabcorp structure.

So, in summarising the public benefit or lack thereof.

**Does this authorisation achieve the economic goals of efficiency and progress?** We counter that it does not and in fact it reduces efficiency in professional representation for lottery retailers as it is questionable if this is what agents would receive if they 'subscribed' and most likely something else entirely, and it holds back progress and is superfluous with existing authorisations in place.

**Will authorisation and any negotiations result in public benefits such as improved transaction cost savings, improved input into contracts and improved retail competition by lottery agents?**

The applicants parent entity and its members named in this application already have authorisation and have stated they want to retain this. So, any additional public benefit in conducting a single coordinated negotiation process rather than a series of individual ad hoc negotiations covering common issues is negated.

The application does not reduce duplication of negotiation, approval and monitoring processes it actually increases them and is not likely to lead to any significant cost savings.

It is also unlikely that this authorisation will result in improved retail competition by lottery agents in the retail market or savings benefiting consumers, as the price of lottery products is set by regulators and VANA already have authorisation to collectively bargain on behalf of their members.

In conclusion, we believe there is plenty of evidence that the application is unnecessary and the ACCC should have concerns about the public benefit likely to result from the proposed arrangements and the integrity of the collective bargaining process as a result.

Based on the application and the opaque information provided and our arguments set out in this submission, the ACCC should not approve the application and certainly not approve any interim authorisation. Furthermore, there is no indication that the scope for input on contracts and price for lottery retailers will in anyway be limited by not approving this application, or that anyone will not be part of a collective bargaining regime as a result of denying it.

Your sincerely



Ben Kearney

Chief Executive Officer

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**Castle**

Corporate

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## CONSTITUTION OF

# National Lotteries and Newsagents Association Ltd

Registered under the *Corporations Act 2001*  
A company limited by guarantee

*Prepared for*  
**Saward Dawson**  
Level 1, 20 Albert Street  
BLACKBURN VIC 3130

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National Lotteries and Newsagents Association Ltd  
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**CORPORATIONS ACT  
A COMPANY LIMITED BY GUARANTEE  
CONSTITUTION OF  
NATIONAL LOTTERIES AND NEWSAGENTS ASSOCIATION LTD**

**PRELIMINARY**

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**1. Exclusion of Replaceable Rules**

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

**2. Definitions**

In this Constitution:–

**Act** means the *Corporations Act 2001* (Commonwealth).

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Commonwealth).

**Affiliate** in relation to a Director, means a company, trust or partnership of which that Director is, respectively, a director or shareholder, a beneficiary or a partner.

**Applicant** means a Person who wishes to apply for membership of the Company.

**Application for Membership** means the form, the contents of which may be determined by the Board from time to time, which is to be used by an Applicant.

**Board** means the body which is comprised of the Directors for the time being of the Company.

**Charged Member** means a Member against whom an allegation has been made which may lead to the Discipline of that Member.

**Company** means the entity whose name upon the adoption of this Constitution was National Lotteries and Newsagents Association Ltd and shall be taken to mean the same entity by whatever name from time to time it may be called.

**Constitution** means this document and any other similar document adopted by the Members from time to time.

**Director** means a natural person holding the office of director of the Company for the time being.

**Discipline** means, in relation to a Charged Member, any type or form of penalty or sanction, financial or otherwise, imposed by the Board or the Company, including the suspension or expulsion of that Charged Member.

**Disciplined Member** means a Member who has been suspended, fined or expelled under Articles 19 or 20 hereof.

**Financial Member** means a Member who has paid by the relevant due date the Membership Fees and all other sums owed by that Member to the Company.

**General Meeting** means a meeting of the Members and includes any means by which Members make decisions including but not limited to virtual meetings and circulating resolutions.

**Guarantee** means the sum not exceeding ten dollars (\$10.00) for which a Member may become liable upon the winding up or dissolution of the Company.

**Independent Director** means a Director who, or whose Affiliate, is not a fully paid member of the Parent.

**Industry** means the Australian newsagency industry, including the owners and employees of retail newsagents, suppliers to newsagents and other relevant stakeholders as determined by the Board from time to time.

**Member** means a Person whose name is entered in the Register as a member of the Company.

**Membership Fees** means the fees payable by an Applicant or a Member as determined by the Board from time to time.

**Notice of Allegation** means a notice in writing issued by the Secretary to a Charged Member on the instruction of the Board.

**Officer of the Company** has the same meaning as ascribed to the term 'officer' in Section 9 of the Act.

**Parent** means the registered company currently known as VANA Limited, ACN 004 238 644.

**Person** includes:—

- (a) a natural person; and
- (b) a registered company, corporation or incorporated association.

**Register** means the register of Members.

**Seal** means the common seal of the Company (if any).

**Secretary** means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of such joint secretaries.

**Service Address** means the address nominated by a Member for the purpose of receiving notices from the Company.

**Subscriber** means a person who consents to act as a Member prior to the registration of the Company.

**Unfinancial Member** means a Member who is in default of a financial obligation (including the payment by the due date of Membership Fees) to the Company.

**VANA Director** means a Director who, or whose Affiliate, is a fully paid member of the Parent and has been such for at least the past three (3) years.

**Voting Member** means a Member who:—

- (a) has been granted membership of a class of membership which confers an entitlement to vote at a General Meeting; and
- (b) is not an Unfinancial Member.

### 3. Interpretation

3.1 The *Acts Interpretation Act, 1901* (Commonwealth) shall apply in the interpretation of this Constitution as if it were an act of the Commonwealth.

3.2 Except so far as the contrary intention appears in this Constitution, an 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.

- 3.3 Any reference to any statute or any section, regulation or schedule of any statute or any other legislation is a reference to that statute as amended, consolidated, supplemented or replaced.

## PURPOSE OF COMPANY

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### 4. Objects

- 4.1 The Company is established to be a charity whose purpose is to advance the Industry in Australia by:-
- (a) promoting the Industry;
  - (b) pooling information, establishing networks and sharing specialised skills and resources with relevant stakeholders;
  - (c) providing a forum for all people engaged in the Industry to discuss best practice and enhancing the future of the Industry;
  - (d) establishing national supplier networks;
  - (e) improving the income of retail newsagencies across Australia;
  - (f) working with government at all levels to ensure that the interests of the Industry are represented in government legislation and in the public decision-making process; and
  - (c) any other services and activities that further the Company's purpose.
- 4.2 In order to attain these objects, the Company shall do all things incidental or conducive to the attainment of the objects or any of them.
- 4.3 The assets and income of the Company shall be applied solely in furtherance of its abovementioned objects and no portion shall be distributed directly or indirectly to the Members except as bona fide compensation for services rendered, expenses incurred on behalf of the Company or a benefit that is consistent with the Company genuinely carrying out its objects.
- 4.4 Nothing in this Constitution shall prevent the payment in good faith:-
- (a) of the payments contained in Articles 55 and 56 hereof;
  - (b) of insurance premiums to the extent permitted by the Act; and
  - (c) of indemnification to the extent permitted by the Act and this Constitution.

## MEMBERSHIP

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### 5. First Members

The Subscribers shall be the first Members of the Company and:-

- 5.1 they must consent in writing to become a Member of the Company;
- 5.2 they shall not be required to apply for membership;
- 5.3 they shall be admitted as Voting Members.

### 6. Eligibility

- 6.1 Any Person committed to the Objects of the Company may become a Member of the Company provided all eligibility requirements and other membership qualifications as set out in the by-laws or elsewhere have been met.

6.2 The provisions of Article 6.1 shall not apply to the Subscriber or Subscribers to the Company.

## **7. Application**

A Person may apply for membership of the Company by submitting to the Secretary:-

- 7.1 an Application for Membership;
- 7.2 an agreement in writing to provide a sum not exceeding the Guarantee to defray such liabilities and expenses of the Company upon its winding up or dissolution;
- 7.3 an agreement in writing to be bound by the Constitution of the Company; and
- 7.4 payment of the entrance fee and the annual subscription for the first year, where relevant.

## **8. Admission**

- 8.1 All Applications for Membership shall be submitted by the Secretary to the Board which shall determine each Application for Membership. The Board shall be entitled to use any criteria for determining whether to accept or reject an Application for Membership.
- 8.2 If the Board determines to accept an Applicant's Application for Membership, the Secretary shall, as soon as possible:-
  - (a) enter the name of the Applicant in the Register;
  - (b) notify the Applicant of the Board's determination.
- 8.3 An Applicant becomes a Member and is entitled to exercise the rights of membership when the name of the Applicant is entered in the Register.
- 8.4 The Board may decline any Application for Membership and is not bound to give reasons why the Application for Membership was not accepted.
- 8.5 The Secretary shall, as soon as possible after the Board has declined an Applicant's Application for Membership:-
  - (a) notify the Applicant of the Board's determination;
  - (b) return to the Applicant the entrance fee and annual subscription paid by the Applicant, if any.

## **9. Classes of Membership**

- 9.1 By special resolution, the Company may create different classes of membership and may confer on each such newly created class of membership such rights, privileges or benefits as the Company sees fit.
- 9.2 Where different classes of membership have been created, the Directors may, on accepting an Applicant's Application for Membership, admit an Applicant to a class of membership which appears appropriate to the Directors.

## **10. Membership Fees**

The Board shall determine:-

- 10.1 the quantum; and
- 10.2 the due date for payment,

of the entrance fees, the annual subscription and any other amount which an Applicant or a Member is required to pay to be admitted or remain as a Financial Member.

## **11. Register of Members**

- 11.1 The Secretary will maintain a Register at the registered office of the Company.
- 11.2 When an Applicant has been accepted for membership the Secretary will cause the Applicant's name to be entered in the Register, thereupon conferring membership.
- 11.3 Members must nominate a natural person as their representative. The Secretary shall keep a record of Member representatives. Members are also required to provide a notice of change of representative at least twenty-one (21) days prior to any General Meeting.

## **12. Service Address**

- 12.1 The Service Address of a Member in the Register will be the address nominated by the Member for the purpose of receiving notices from the Company and may be:–
  - (a) a residential address;
  - (b) a postal address;
  - (c) a business address;
  - (d) an email address.
- 12.2 The Company shall use its best endeavours to use the Service Address nominated by each Member for the purpose of delivering notices.
- 12.3 Each Member must notify the Secretary within fourteen (14) days of any change of name or Service Address of the Member and each such change shall be recorded in the Register.

## **13. Rights of Members**

The rights of a Member are not transferable.

## **14. Liability of Members**

The liability of a Member is limited to the extent of the Guarantee. This liability shall continue for the duration of the membership of a Member and for a period of twelve (12) months following the cessation of membership of a Member.

## **15. Cessation of Membership**

Membership of the Company will terminate upon:–

- 15.1 the Secretary receiving from a Member a letter of resignation;
- 15.2 a Member being expelled or suspended in accordance with this Constitution;
- 15.3 the death, legal incapacity or insolvency of a Member.

## **16. Consequences of Loss of Membership**

A Member whose membership of the Company is terminated will be liable for:–

- 16.1 all moneys due by that Member to the Company; and

16.2 the sum for which the Member is liable under Article 90 of this Constitution if applicable.

## **17. Prohibition on Claims on Company**

A Member whose membership is terminated will not make any claim, monetary or otherwise, on the Company, its funds or property except as a creditor thereof.

## **18. Prohibition on Representation as a Member**

Any Person who for any reason ceases to be a Member shall no longer represent themselves in any manner as being a Member.

## **19. Allegation of Charge**

19.1 Any allegation against a Member or any of its representatives that might lead to the discipline of a Member shall be lodged with the Secretary in writing, signed by any Member and detailing the circumstance which gave rise to such allegation.

19.2 If the Secretary considers the allegation to be such as may warrant the discipline of that Member, the Secretary shall issue a Notice of Allegation to the Member informing the Member:-

- (a) of the allegation; and
- (b) the date at which the Board will consider the allegation, such date to be not less than twenty eight (28) days after the date of the Notice of Allegation; and
- (c) inviting the Member to submit a written explanation to defend the allegation; and
- (d) inviting the Member to provide a representative to the Board to answer any questions which the Board may ask of them and to present their defence of the allegation.

19.3 If the Member chooses to defend the allegation, the Member must submit a written explanation which must be received by the Secretary not less than two (2) days prior to the Board meeting at which the allegation is to be heard. Such explanation shall be tabled at the Board meeting at which the allegation is to be heard and reasonable opportunity must be given for the Member to appear before the Board to answer the allegation.

19.4 The Board may:-

- (a) by two-thirds majority vote, expel; or
- (b) by a majority vote suspend or otherwise discipline

any Member for conduct inconsistent with any by-law, regulation or any provision contained in this Constitution or which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company.

19.5 Any Member so disciplined, fined, suspended or expelled shall be notified in writing by the Secretary within twenty-one (21) days of such penalty being imposed.

19.6 Any Member who may be disciplined, fined, suspended or expelled shall have the right to appeal against such penalty.

## **20. Appeal Against Discipline**

20.1 A Disciplined Member shall have the right to appeal against the decision of the Board at a General Meeting by giving notice of their or its intention to appeal. Such notice must be received by the Secretary within one (1) month of the deemed date of receipt of the notice

referred to in Article 19.5. Such notice of appeal shall operate as a stay of implementation of any decision.

- 20.2 The Board shall be required to convene a General Meeting within three (3) months of the date of receipt of the notice referred to in Article 20.1 and shall give no less than one (1) month's notice of the date of that General Meeting to the Disciplined Member.
- 20.3 The Disciplined Member shall be given the opportunity of being heard at the General Meeting with or without a solicitor or counsel.
- 20.4 The Disciplined Member may be represented by another Member.
- 20.5 A solicitor, with or without counsel, may be engaged by the Company to assist the Company at such General Meeting.
- 20.6 The Company shall be under no obligation to disclose to the Disciplined Member or any other Member the source of any information giving rise to the discipline.
- 20.7 The Voting Members shall, by a two-thirds majority, decide upon the appeal.

#### **21. Unsuccessful Appeal**

A Disciplined Member whose appeal is unsuccessful shall pay to the Company all or any costs or expenses reasonably incurred by the Company in connection with the hearing of the appeal as the Board may determine.

#### **22. Consequences of Expulsion or Suspension**

- 22.1 Any Member expelled from the Company may at any time apply to the Board to be re-admitted as a Member.
- 22.2 No person may be a Director following expulsion or during suspension unless such a person is subsequently re-admitted as a Member.

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### **MEETINGS OF MEMBERS**

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#### **23. Convening General Meetings**

- 23.1 A Director may whenever he thinks fit convene a General Meeting.
- 23.2 The Directors must convene a General Meeting on the request of Members in accordance with section 249D of the Act. The Members may convene a General Meeting in accordance with sections 249E and 249F of the Act.

#### **24. Contents of Notice of General Meetings**

A notice of a General Meeting shall specify:-

- 24.1 the place, the day and the time of the General Meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- 24.2 the general nature of the business to be transacted at the meeting; and
- 24.3 such other information as is required by section 249L of the Act.



**25. Meeting at Several Venues**

The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

**26. Period of Notice of General Meeting**

Subject to the provisions of the Act relating to agreements for shorter notice, at least twenty-one (21) days' notice must be given of a General Meeting.

**27. Persons entitled to Notice of General Meeting**

27.1 Notice of every General Meeting shall be given in the manner authorised by Article 78 to:-

- (a) every Member and to every Director; and
- (b) the auditor for the time being of the Company.

27.2 No other Person is entitled to receive notices of General Meetings.

**28. Annual General Meeting**

28.1 Subject to the Act, a General Meeting shall be held at least once in every calendar year and within the period of five (5) months after the end of the financial year at such time and place as may be determined by the Directors. The abovementioned General Meeting shall be called the "Annual General Meeting" and all other meetings of the Company shall be called "General Meetings".

28.2 The business of the Annual General Meeting may include any of the following, even if not referred to on the notice of meeting:-

- (a) the consideration of the Annual Financial Report, Directors' Report and Auditor's Report if required to be prepared;
- (b) the election of Directors;
- (c) the appointment of the auditor (if any);
- (d) the fixing of the auditor's remuneration if the Company has appointed an auditor.

**29. Chairperson of General Meetings**

29.1 The Directors may elect an individual to chair a General Meeting.

29.2 Where a General Meeting is held and:-

- (a) a chairperson has not been elected as provided by Article 29.1; or
- (b) the person so elected is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,

the Members present shall elect one of their number to be chairperson of the meeting (or part of it).

**30. Quorum for General Meetings**

30.1 No business shall be transacted at any General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.

30.2 A quorum is constituted by:-

- (a) two persons entitled to attend and vote at a General Meeting; or
- (b) at least one-half of the persons entitled to attend and vote at a General Meeting,

whichever is the greater.

30.3 For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a Member, shall be deemed to be a Member.

30.4 If the Company has only one Member, that Member may pass a resolution by the Member recording it and signing the record.

### **31. Adjournment of General Meetings if No Quorum Present**

If a quorum is not present within half an hour from the time appointed for the meeting:-

31.1 where the meeting was convened upon the request of Members - the meeting shall be dissolved; or

31.2 in any other case:-

- (a) the meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
- (b) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, then the meeting shall be dissolved.

### **32. Adjournment of General Meetings if Quorum Present**

32.1 The chairperson shall adjourn a General Meeting from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. No business shall be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.

32.2 When a General Meeting is adjourned for thirty (30) days or more, notice of the adjourned General Meeting shall be given as in the case of an original General Meeting.

32.3 Except as provided by Article 32.2, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned General Meeting.

### **33. Voting at General Meetings**

33.1 At any General Meeting a resolution put to the vote of the Members shall be decided on a show of hands unless a secret ballot is (before a vote is taken or before or immediately after the declaration of the result of the show of hands) demanded:-

- (a) by the chairperson;
- (b) by at least three (3) Members (present in person or by proxy or representative) entitled to vote on the resolution;
- (c) by a Member or Members (present in person or by proxy or representative) with at least 5% of the votes that may be cast on the resolution on a poll.

33.2 If a secret ballot is duly demanded:-

- (a) by the chairperson; or

- (b) by not less than one-third of the persons present at the meeting in question, such number being determined by including persons who are personally present, and persons who are represented by proxy or by corporate representative,

it shall be taken in such manner and, subject to Article 33.3, either at once or after an interval or adjournment or otherwise as the Chairperson directs, and the result of the secret ballot shall be the resolution of the meeting at which the secret ballot was demanded.

- 33.3 A secret ballot demanded on the election of a chairperson or on a question of adjournment shall be taken immediately.

#### **34. Passing a Resolution by Sole Member**

If the Company has one (1) Member, that Member may pass a resolution by the Member recording it and signing the record. The record of decisions made by the sole Member is valid and effective as if it were a resolution duly passed at a General Meeting. The proxy, attorney or corporate representative of the Corporate Member shall sign the record of decisions.

#### **35. Voting Deadlock**

In the case of a deadlock in the voting on a particular motion, the chairperson of the meeting shall have a casting vote in addition to any vote the chairperson may have in their capacity as a Member.

#### **36. Voting Entitlement**

Subject to any rights or restrictions for the time being attached to any Member:-

- 36.1 at General Meetings or meetings of classes of Members, each Voting Member may vote in person or by proxy or attorney or representative; and
- 36.2 on a show of hands every person present who is a Member or a representative of a Member has one vote, and on a secret ballot every person present in person or by proxy or attorney or representative has one vote.

#### **37. Voting Restrictions**

A Member is not entitled to vote at a General Meeting unless all sums presently payable by that Member in respect of the Company have been paid.

#### **38. Objections to Votes**

- 38.1 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 38.2 Any such objection shall be referred to the chairperson of the General Meeting, whose decision is final.
- 38.3 A vote not disallowed pursuant to such an objection is valid for all purposes.

### **MEMBERS' REPRESENTATIVES**

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#### **39. Proxies**

A Member who is entitled to attend and cast a vote at a General Meeting may appoint a natural person (whether or not a Member) as the Member's proxy to attend and vote for the Member at the General Meeting.

**40. Appointment of Proxy**

- 40.1 An instrument appointing a proxy shall be in writing under the hand of the appointor or of their attorney duly authorised in writing or, if the appointor is a corporation, either under seal or executed in accordance with the Act or under the hand of an officer or attorney duly authorised.
- 40.2 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.
- 40.3 An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a secret ballot.

**41. Form of Proxy**

An instrument appointing a proxy shall be in a form that is similar as the circumstances allow to the form shown in Schedule 1 hereof.

**42. Validity of Proxy Appointment**

An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than forty eight (48) hours before the time for holding the General Meeting or adjourned General Meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty four (24) hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the General Meeting.

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**DIRECTORS**

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**43. Minimum Number of Directors**

- 43.1 The total number of the Directors shall be not less than three (3).
- 43.2 At no time shall there be more Independent Directors than VANA Directors.
- 43.3 If, inadvertently, the number of Independent Directors equals or exceeds the number of VANA Directors, the appointment of those Independent Directors which resulted in the excess number of Independent Directors shall be invalid and shall lack legal effect.

**44. Altering the Number of Directors**

The Voting Members may from time to time by resolution passed at a General Meeting fix the number of Directors or increase or reduce the number of Directors (but so that the number shall be not less than three).

**45. First Directors**

The first Directors shall be appointed in writing by the Subscriber or Subscribers.

**46. Qualification of Directors**

It shall not be necessary for a Director to be a Member by way of qualification and a Director who is not a Member of the Company shall be entitled to receive notices of and attend and speak at General Meetings.

**47. Tenure of Directors**

Until he resigns, dies or is removed from or vacates office as provided in this Constitution every Director shall continue to hold office.

**48. Appointment of Director by Board**

48.1 Subject to the provisions of Article 43, the Directors shall have power to:-

- (a) appoint a new Director to fill any casual vacancy; and
- (b) appoint additional Directors.

48.2 Any Director appointed to fill a casual vacancy shall hold office only until the next following Annual General Meeting of the Company and shall then be eligible for election.

**49. Appointment of Director by Members**

Subject to the provisions of Article 43, the Members may at any time and from time to time by ordinary resolution:-

49.1 appoint a new Director to fill any casual vacancy;

49.2 appoint additional Directors.

**50. Chief Executive Officer**

50.1 The Directors may from time to time appoint a natural person being one or more of their number, or not so qualified, to the office of Chief Executive Officer for such period and on such terms as they think fit, and, subject to the terms of any agreement entered into in a particular case, may revoke any such appointment.

50.2 Any such appointment of a Chief Executive Officer automatically terminates if the appointee ceases from any cause to be a Director.

**51. Powers of Chief Executive Officer**

51.1 The Directors may, upon such terms and conditions and with such restrictions and as they think fit, confer upon a Chief Executive Officer any of the powers exercisable by them.

51.2 Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.

51.3 The Directors may at any time withdraw or vary any of the powers so conferred on a Chief Executive Officer.

**52. Casual Vacancy of Directors**

In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act but, if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute such a quorum or of convening a General Meeting for that purpose.

**53. Defects in Appointment of Directors**

All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or a member of the committee, or to act as, a Director, or

that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

#### **54. Removal of a Director**

The Members may at any time and from time to time, in accordance with the provisions of section 203D of the Act remove any Director provided that:-

- 54.1 the total number of Directors shall not at any time fall below the minimum fixed by this Constitution; and
- 54.2 the provisions set out in Article 43 are not thereby infringed.

#### **55. Loss of Office**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act, the office of a Director becomes vacant if:-

- 55.1 the Director dies or 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;
- 55.2 the Director resigns from office by notice in writing to the Company;
- 55.3 the Director is absent without the consent of the Directors from all meetings of the Directors held during a period of six (6) months;
- 55.4 without the consent of the Members, the Director holds any other office of profit under the Company; and
- 55.5 the Director is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest as required by Article 62.

#### **56. Remuneration of Directors**

- 56.1 A Director:-
  - (a) may receive remuneration for services provided that such remuneration has been approved by all the Directors and the rate of remuneration is fair and reasonable and is on reasonable commercial terms;
  - (b) who provides professional or technical services to the Company shall be entitled to receive payment for those services where the provision of the service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms;
  - (c) who is an employee of the Company may be paid a salary or wage where the terms of employment have been approved by a resolution of the Board.
- 56.2 The remuneration under Article 56.1(a) shall accrue on a daily basis.

#### **57. Reimbursement of Expenses**

A Director shall be entitled to receive reimbursement of out-of-pocket expenses incurred in carrying out the duties of a director where the payment does not exceed the amount previously approved by the Board.

## **58. Powers of Directors**

- 58.1 Subject to the Act and to any other provision of this Constitution, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Act or by this Constitution, required to be exercised by the Members.
- 58.2 Without limiting the generality of Article 58.1, the Directors 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.
- 58.3 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be in such manner as the Directors determine.

## **59. Appointment of Company Attorney**

- 59.1 The Directors may, by power of attorney, appoint any person or persons (either by name or by reference to position or office held) to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- 59.2 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in them.

## **60. Delegation of Powers**

- 60.1 The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- 60.2 A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
- 60.3 The members of such a committee may elect one of their number as chairperson of their meetings.
- 60.4 Where such a meeting is held and:-
- (a) a chairperson has not been elected as provided by Article 60.3; or
  - (b) the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,
- the members present shall elect one of their number to be chairperson of the meeting or part of it.
- 60.5 A committee may meet and adjourn as it thinks proper.
- 60.6 Questions arising at a meeting of a committee shall be determined by a majority of votes of the members present and voting.

- 60.7 In the case of an equality of votes, the chairperson shall not have a casting vote in addition to any vote the chairperson may have in the capacity as a committee member.

## **61. Duties of Directors**

- 61.1 While the Company is and remains as a registered charity under the ACNC Act, the Directors must comply with their duties as Directors under the Act, common law, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:-
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
  - (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in Article 4;
  - (c) not to misuse their position as a Director;
  - (d) not to misuse information they gain in their role as a Director;
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in Article 62;
  - (f) to ensure that the financial affairs of the Company are managed responsibly, and
  - (g) not to allow the Company to operate while it is insolvent.
- 61.2 While the Company is not a registered charity under the ACNC Act, the Directors must comply with the statutory duties of directors as provided in the Act and the common law duties imposed on directors.

## **62. Material Personal Interests**

- 62.1 A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution):-
- (a) to the other Directors, or
  - (b) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.
- 62.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.
- 62.3 Each Director who has a material personal interest in a matter that is being considered at a meeting of Directors (or that is proposed in a circular resolution) must not, except as provided under Article 62.4:-
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 62.4 A Director may still be present and vote if:-
- (a) their interest arises because they are a representative of a Member;



- (b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company as set out in Article 74;
- (c) their interest relates to a payment by the Company under Articles 75 and 76, or any contract relating to an indemnity that is allowed under the Act;
- (d) the Australian Securities & Investments Commission makes an order allowing the Director to vote on the matter, or
- (e) where the Company is not registered as an entity under the ACNC Act, the Directors who do not have a material personal interest in the matter pass a resolution that:-
  - (i) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company, and
  - (ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.

## MEETINGS OF DIRECTORS

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### **63. Frequency of Board Meetings**

The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

### **64. Convening Board Meetings**

The Board may at any time, and a Secretary shall on the requisition of a Director, convene a meeting of the Directors.

### **65. Notice of Board Meetings**

Reasonable notice in the circumstances must be given of all Board meetings unless all Directors consent to waive the requirement for notice of a Board meeting.

### **66. Quorum for Board Meetings**

66.1 A quorum for a meeting of Directors shall be constituted by:-

- (a) two Directors; or
- (b) at least two-thirds of the Directors,

whichever is the greater, provided that each such person is entitled under the Act and this Constitution to vote on a motion that may be moved at that meeting.

66.2 The quorum must be present at all times during a meeting of Directors.

### **67. Chairperson of Board Meetings**

67.1 The Directors shall elect one of their number as chairperson and another of their number as deputy chairperson of its meetings and determine the period for which such chairperson or deputy chairperson is to hold office.

67.2 Where a meeting of the Directors is held and:-

- (a) a chairperson or deputy chairperson has not been elected as provided by Article 67.1; or
- (b) the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting,

the Directors present shall elect one of their number to be chairperson of such meeting or part of it.

**68. Voting at Board Meetings**

68.1 Subject to this Constitution, questions arising at a meeting of Directors shall be decided by a majority of votes of Directors present and voting and any such decision shall for all purposes be deemed a decision of the Directors.

68.2 Each Director is entitled to cast one (1) vote on each matter for determination.

**69. Voting Deadlock**

In the case of a deadlock in the voting on a particular motion, the chairperson of the meeting shall have a casting vote in addition to any vote the chairperson may have in their capacity as a Director.

**70. Virtual Meetings of Directors**

70.1 A meeting of Directors may be called or held using any technology consented to by all the Directors. A consent of a Director for the purposes of this Article may be a standing one. A Director may only withdraw their consent within a reasonable time before the meeting of Directors.

70.2 For the purposes of this Constitution, the contemporaneous linking together by an instantaneous communication device of a number of Directors not less than the quorum, whether or not any one or more of the Directors is out of Australia, shall be deemed to constitute a meeting of the Directors and all the provisions of this Constitution as to meetings of the Directors shall apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:-

- (a) all the Directors for the time being entitled to receive notice of the meeting of Directors shall be entitled to notice of a meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting. Notice of any such meeting shall be given on the instantaneous communication device or in any other manner permitted by this Constitution; and
- (b) each of the Directors taking part in the meeting by an instantaneous communication device must be able to hear each other of the Directors taking part at the commencement of the meeting.

70.3 A Director may not leave a meeting held by an instantaneous communication device by disconnecting their instantaneous communication device unless they have previously expressly notified the Chairperson of the meeting of their intention to leave the meeting and a Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of their leaving the meeting.

70.4 A minute of the proceedings at meetings held by an instantaneous communication device shall be sufficient evidence of such proceeding and of the observance of all necessary formalities if certified as a correct minute by the Chairperson of the meeting.

70.5 For the purpose of this Article "instantaneous communication device" shall include telephone, television or any other audio and/or visual device which permits instantaneous communication.

**71. Passing Resolutions without Meetings**

- 71.1 If all the Directors entitled to vote on a resolution have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
- 71.2 For the purposes of Article 71.1, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate document.

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**OTHER OFFICERS**

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**72. Secretary**

A Secretary holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

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**INSURANCE AND INDEMNITY OF APPLICABLE PERSONS**

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**73. Applicable Persons**

The provisions of Articles 74, 75, 76 and 77 shall apply to Applicable Persons, which expression shall include:—

- 73.1 every person who is or has been an Officer of the Company;
- 73.2 every person who is or has been an Officer of a Related Body Corporate of the Company;
- 73.3 if the Directors determine, an employee or former employee of the Company or a Related Body Corporate of the Company;
- 73.4 if the Directors determine and to the extent permitted under the Act, an auditor or former auditor of the Company or a Related Body Corporate of the Company.

**74. Insurance**

- 74.1 To the extent permitted under the Act, the Company may pay, or agree to pay, a premium in respect of a contract insuring any one or more Applicable Persons against any liability incurred by the Applicable Person PROVIDED THAT the liability does not arise out of conduct involving:—
- (a) a wilful breach of duty in relation to the Company or a Related Body Corporate of the Company; or
  - (b) a contravention of section 182 or 183 of the Act.
- 74.2 To the extent permitted under the Act, the Company may pay, or agree to pay, an Applicable Person for costs and expenses incurred by that Applicable Person in defending proceedings, whatever the outcome of the proceedings.

## **75. Indemnity**

- 75.1 The Company does not exempt an Applicable Person from a liability to the Company incurred in their capacity as an Applicable Person.
- 75.2 To the extent permitted by the Act, the Company indemnifies any Applicable Person against non legal costs incurred as an Applicable Person except:–
- (a) for a liability owed to the Company or a Related Body Corporate of the Company;
  - (b) for a liability for a pecuniary penalty order under section 1317G or compensation order under section 1317H or section 1317HA of the Act;
  - (c) for a liability owed to a third party arising out of conduct involving a lack of good faith.
- 75.3 To the extent permitted by the Act, the Company indemnifies any Applicable Person against legal costs incurred in defending an action for a liability incurred as an Applicable Person except:–
- (a) in defending or resisting proceedings in which the Applicable Person is found to have a liability for which they could not be indemnified under Article 75.2; or
  - (b) in defending or resisting criminal proceedings in which the Applicable Person is found guilty; or
  - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission (and any of its successors) or a liquidator for a court order if the grounds for making the order are found by a court to have been established; or
  - (d) in connection with proceedings for relief to the Applicable Person under the Act in which the Court denies relief.
- 75.4 Where the costs and expenses incurred by an Applicable Person under Articles 75.1, 75.2 or 75.3 are recovered by the Company under an insurance policy taken out or paid for by the Company pursuant to Article 74, the extent of the indemnification of an Applicable Person shall be reduced accordingly.

## **76. Loan to an Applicable Person**

- 76.1 To the extent permitted by the Act, the Directors may give a loan or advance to an Applicable Person to assist with the payment of costs and expenses of the Applicable Person which may be incurred under Article 75, where, in the opinion of the Directors, the costs and expenses are likely to become an amount for which the Company may become liable.
- 76.2 If, upon a determination of the proceedings, the costs and expenses for which the loan or advance was given are not the liability of the Company, the loan or advance given to the Applicable Person shall be recoverable according to the terms of the loan or advance.

## **77. Definition of "Proceedings"**

In Articles 74, 75 and 76, the term "proceedings" means any proceedings and any appeal in relation to any proceedings, whether civil or criminal, being proceedings in which it is alleged that the Applicable Person has done or omitted to do some act, matter or thing in their capacity under which the person has become an Applicable Person (including proceedings alleging that the Applicable Person was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a Related Body Corporate).

## ADMINISTRATION

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### 78. Notices

78.1 A notice may be given by the Company to any Member either:-

- (a) by serving it on their representative personally;
- (b) by sending it by post to them at their address as shown in the Register or to the Service Address supplied by them to the Company for the giving of notices to them.

78.2 Where a notice is sent by:-

- (a) post, service of the notice shall be deemed to be effective by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice of a Member, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) by facsimile transmission, service of the notice shall be deemed to be effected within twenty four (24) hours of the transmission, unless the Company receives notification that the transmission was not successful.
- (c) by electronic transmission, service of the notice shall be deemed to be effected within twenty four (24) hours of the transmission, unless the Company receives notification that the transmission was not successful.

### 79. Minutes

The Directors will cause minutes of:-

- 79.1 all proceedings and resolutions of meetings of the Company's Members;
- 79.2 all proceedings and resolutions of meetings of the Directors, including meetings of a committee of Directors;
- 79.3 resolutions passed by Members without a meeting;
- 79.4 resolutions passed by Directors without a meeting,

to be duly entered into the books kept for that purpose in accordance with the Act.

### 80. Evidentiary Standing of Minutes

A minute recorded and signed in accordance with the Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

### 81. Inspection of Minute Books

Books containing the minutes of the Company's Members and resolutions passed by Members without a meeting will be open for inspection by any Member free of charge.

### 82. Inspection of Accounting Records and Other Documents

Subject to the Act, the Directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in meeting of the Company's Members.

**83. Execution of Documents**

83.1 The Company may have a Seal, known as the common seal, on which its name, its Australian Company Number and the words "Common Seal" are engraved.

83.2 If the Company has a seal the Directors shall provide for the safe custody of the Seal.

83.3 The Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.

83.4 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by:-

- (a) two Directors; or
- (b) one Director and one Secretary; or
- (c) one Director and another person appointed by the Directors for that purpose.

The signature of such persons may be affixed to the document by manual, autographic or mechanical means.

83.5 The Company may execute a document without using a seal if the document is signed by:-

- (a) two Directors; or
- (b) one Director and one Secretary; or
- (c) one Director and another person appointed by the Directors for that purpose.

The signature of such persons may be affixed to the document by manual, autographic or mechanical means.

**84. Creation, Amendment and Repeal of By-Laws**

The Board has power to make by-laws concerning membership application and qualification for membership of the Company and any other matter which the Board believes suitable for including in such by-laws.

**85. Amendment of Constitution**

The Company may only alter this Constitution by special resolution passed by the Members.

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**FINANCIAL MATTERS**

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**86. Accounts**

The Directors will cause to be kept proper books of account in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.

**87. Audit**

87.1 The provisions in this Article 87 shall apply to the Company unless the Company is:-

- (a) a Small Company; or
- (b) otherwise exempted under the Act from the requirement to be audited.

87.2 A registered company auditor must be appointed. No appointment of an auditor shall be effective unless the auditor has first tendered to the Company a signed consent to so act.

- 87.3 The auditor must not be an officer of the Company.
- 87.4 The first auditor shall be appointed within one (1) month of the registration of the Company by:-
- (a) the Directors; or
  - (b) the Members,
- and shall hold office until the first Annual General Meeting of the Company.
- 87.5 The Company must:-
- (a) at its first Annual General Meeting appoint an auditor; and
  - (b) at each subsequent Annual General Meeting, if there is a vacancy in the office of auditor, appoint an auditor to fill the vacancy.
- 87.6 An auditor appointed pursuant to Article 87.5 shall hold office until resignation or removal from office or until the auditor is not capable of acting as auditor for any reason.
- 87.7 An auditor may be removed by resolution passed at a General Meeting.
- 87.8 Where an auditor resigns in accordance with Article 87.6 or is removed in accordance with Article 87.7, the Board may appoint another person to be the auditor.
- 87.9 The auditor appointed pursuant to Article 87.8 shall remain as auditor until the next Annual General Meeting, whereupon their appointment shall be subject to the ratification or otherwise of the Members.

## **88. Dividends and Reserves**

No payment of dividends or other distributions to Members shall be made.

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## **WINDING UP**

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### **89. Procedure**

The Company may be dissolved by a special resolution of Members.

### **90. Contribution of Members on Winding Up**

In the event of the Company being wound up while a Person is a Member, or within one year of ceasing to be a Member, every Member undertakes to contribute to the assets of the Company such amount as may be required not exceeding the Guarantee for the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member of the Company, and the costs charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

### **91. Distribution of Property on Winding Up**

91.1 In the event of the Company being wound up, any surplus assets remaining after the payment of the Company's liabilities and expenses shall not be paid or distributed to the Members but will be given or transferred to such other institution or company:-

- (a) having similar objects to those described in Article 4.1; and

Constitution  
National Lotteries and Newsagents Association Ltd

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- (b) is an institution or body and which prohibits the distribution of income, profit or assets to its Members; and
- (c) which has gained approval from the Commissioner to be recognised as a body whose income is exempt from taxation; and
- (d) if the Company has been registered by the Australian Charities and Not-for-profits Commission as a registered charity, the other fund, authority or institution is a registered charity.

91.2 Such institution or company will be determined by the Members of the Company on or before the time of such winding up or dissolution, failing such determination the institution or company shall be determined by application to the Supreme Court in the deemed State of registration.

The Person whose details are shown below is the Person specified in the application for the Company's registration as the Person who consents to become a Member and who has agreed to the terms of the foregoing Constitution.

Full name and address of Subscriber

VANA Ltd  
ACN 004 238 644  
Suite 4, 202 Ferntree Gully Road  
CLAYTON VIC 3168

DATED: 29th January, 2020



**National Lotteries and Newsagents Association Ltd**

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**FORM OF PROXY**

I/We	[Name]	
------	--------	--

being a Member/Members of the abovenamed Company, hereby appoint

Proxy	[Name]	
	[Address]	

or, in their absence,

Proxy	[Name]	
	[Address]	

as my/our proxy to vote for me/us on my/our behalf at the General Meeting of the Company to be held on the date shown below and at any adjournment of that meeting.

Date of general meeting	
-------------------------	--

Signed by the Member(s)	
-------------------------	--

Signed by the Member(s)	
-------------------------	--

If this is a directed proxy, please indicate your voting intentions in relation to the resolution(s).

Resolution Number	Vote in favour of	Vote against	Abstain from voting



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Castle Corporate Pty Ltd  
ABN 36 065 276 655  
Level 2  
2A Cambridge Street  
BOX HILL VIC 3128  
P 03 9898 6666  
W [castlecorp.com.au](http://castlecorp.com.au)  
E [castle@castlecorp.com.au](mailto:castle@castlecorp.com.au)

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**From:** EXTERNAL - Ben  
**Sent:** Monday, 15 June 2020 12:10 PM  
**To:** EXTERNAL - Ben  
**Subject:** FW: VANA GOES NATIONAL THROUGH THE NLNA

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**VANA GOES NATIONAL THROUGH THE  
NATIONAL LOTTERIES AND NEWSAGENTS  
ASSOCIATION (NLNA)**

Wednesday 26<sup>th</sup> February 2020

Good Afternoon Members,

A quick note on us going National.

For VANA, it will be business as usual, no changes at all.

Same website, same workshops, same awards night and same regional workshops.

Our new association, the National Lotteries and Newsagents Association (NLNA) has been formed as of today and you will automatically become a subscriber **free of charge as a part of your VANA Membership.**

We will represent you on all the national issues and interests, particularly in the Government space.

National initiatives will be available to VANA Members as well. As a part of this, you will also receive weekly Human Resources and Industrial Relations updates.

It's always been my intention to form a National body, as one voice. We have a highly professional and dynamic team led by our CEO, Brendan Tohill, who will also function as the CEO of the NLNA. We welcome Kammeron (George) Cran to our NLNA Advisory Board after 14 years in senior management at News Corp. New to our operational team is Nicki Spencer (IPA, Qualified Auditor & Not For Profit Expert) who will be our National Finance Manager and Malcolm Packman (previously with Seven, Nine & Telstra) who will be our National Business Manager, based in our Brisbane office.

The industry needs energy and change immediately. The Amazon Hub program is a prime example of us disrupting the channel rather than our industry being disrupted.

We are at the table on all the key matters with Tabcorp, Nine, News Corp and have steering committees on distribution.

The drive is always on improving income, improving foot traffic and lifting the profile of the industry and our wonderful newsagents.

Finally, after our launch yesterday in Sydney, it was amazing how much support the industry has given us on the NLNA with News Corp, Nine, Tabcorp, Amazon Hub, Henderson Greetings, ACCO Brands, Fitzpatrick Insurance, Tyro Eftpos Solutions and Ladbrokes all in attendance.

Yours Sincerely,



Chris Pecora  
VANA  
Chairman



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**To:** EXTERNAL - Ben  
**Subject:** FW: The benefits of joining the National Lotteries & Newsagents Association (NLNA)

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**Subject:** FW: The benefits of joining the National Lotteries & Newsagents Association (NLNA)

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**NLNA**



*National Lotteries and Newsagents Association*

Revenue Pillars



### Amazon Hub

We get foot traffic in via Amazon Hub - spinning online back into retail. Newsagents receive monthly commission. With the lockers the retailer is hands off. Most lucrative point is essentially these Amazon buyers are 16-24 age bracket and new people / buyers into the newsagency channel - what an opportunity for an on sell with cards & gifting & Lotto.

[Learn More](#)



### NSTOCK

Nstock is our wholesale buying platform that is available to you upon subscription. Quality items that the public want i.e. Gifting items, and general items like Sunglasses and Pop Sockets, Handbags and luggage etc. We buy at below wholesale pricing and you the newsagent gets a healthy margin and all the hard work is done by NLNA in procuring quality items at great margin.

[Learn More](#)



### How to Improve your income workshops

You subscribe to us and you become a part of our family. We are here to improve your income. We give you guidance to get in the green zone at Tatts, and we get the industry pillars into the workshops so you can hear firsthand what's happening in the industry. We assist in





### Industry leading Events

Celebrating our great industry and keeping it vibrant healthy and relevant.

[Learn More](#)

merchandising and all areas that can improve your income with Nine, NewsCorp, Tabcorp, Amazon Hub, Greeting Cards and Nstock pillars.

[Learn More](#)



Ladbroke's silent-seller monthly income

[Learn More](#)

Cost Savings



1) We reduce costs Insurance - Free Lotto Insurance & EFTPOS - Tyro least cost routing-real savings.



2) Subscribe now only \$40.00 per month +GST, most competitive and incredible value for what you receive.

Opportunity



**TABCORP** - We have a seat at the table - and work coherently & cohesively to assist members to maximise YOUR income especially via our support at Roadshows and via our Digital newsletter and Social media platforms.

**Distribution** - We have a formalised steering committee co-ordinated by us with both NewsCorp & Nine senior management Our management of this demonstrates again we are proactive and with meetings every quarter.

**Communication** - Digital Newsletter 90% of Newsagents open our newsletter via you tube on their phone. We know this is only 35% at best on mail chimp. social media - Instagram sharing great photos of our Newsagents and the industry. It's positive and exciting. The industry applauds it.

**How To Improve Your Income Workshops** - Industry pillar updates and Merchandising advice to improve your income. Fully catered for events.

**Industry support** - Launched on Sydney Harbour 25<sup>th</sup> February 2020 - demonstrates the industry is supporting us with Senior Executive Teams from Tabcorp , NewsCorp , Nine , Amazon Hub , Tyro , Fitzpatrick Insurance , Ladbrokes , Henderson Greetings and ACCO BRANDS attending ,the industry believe we are heading in the right direction. Innovative and dynamic.

**Strength of the Organisation**



[CLICK HERE FOR MORE INFORMATION](#)

**Stability** - 141 years of proven performance and financial stability. NLNA Board -Dynamic, innovative, experienced and highly professional. The key driver is always improving income for newsagents. IR/HR Weekly UPDATES.

**Government** – From the Prime Minister to the Treasurer to the Federal Small Business Minister, Every Premier in every state along with every small business minister and Liquor & Gaming Minister in every state has been written to along with an attachment of the NLNA Press Release. Government relations is a key component for change in our industry, we are driven by outcomes.

**Publicity and Promotion**- Keeping our industry positive and energised and recognising the great small retailers in our community.

[Press Release](#)

# Subscribe Now

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**From:** EXTERNAL - Ben  
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**To:** EXTERNAL - Ben  
**Subject:** FW: VANA EXPANSION

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**Subject:** VANA EXPANSION

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## VANA EXPANSION

5<sup>th</sup> June 2020

We are pleased to announce a further expansion to the VANA team with the recruitment of two new Business Development Officers Karen Aaarsman and Asher Yuen.



As the most influential, relevant and powerful Association in Australia we think it's important ALL Victorian newsagents are VANA Members to enjoy the benefits we offer like-

- Ninsurance (competitive premiums for your insurance renewals)
- Tyro (Tap & Save least cost routing)
- Blueshyft (iPad parcel pick up & Ladbrokes)
- Amazon Hub (Lockers)



- How To Improve Your Income Workshops (Physical or via zoom)
- Government representation & advice on Job keeper, small business grants and rent relief
- Lobbying with Tatts, NewsCorp, Nine & Bauer Media we have a seat at the table with the industry pillars.

- NSTOCK wholesale buying platform -Trio Rouge, Passport Eye Wear, Pop Sockets, Milleni Leather and Toys Link.

We are here to reduce costs, increase foot traffic and most of all improve income.

Have a good weekend.

You are not alone!

Regards,



Brendan Tohill

CEO

VANA

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