



ADSO ALLIANCE OF DEFENCE SERVICE ORGANISATIONS

BY LAWS

ALLIANCE OF DEFENCE SERVICE ORGANISATIONS

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BY-LAWS OF THE ALLIANCE OF DEFENCE SERVICE ORGBANISATION LIMITED

INTRODUCTION

These By-laws set out the minimum standards to be applied in the effective, accountable, transparent and efficient operation and management of the Alliance of Defence Service Organisations hereinafter referred to as ADSO by the Directors of the Company.

They are to be read in conjunction with all other provisions in respect of corporate governance of companies as are set out in the relevant Legislation and Rules, as the case may be.

These By-laws join Directors of ADSO to the provisions of **ACNC Governance Standard 3** which requires that; *“charities to not act in a way that, under Commonwealth, state or territory law, could be dealt with as:*

- *an indictable offence (being a serious crime that is generally tried by a judge and a jury), or*
- *a breach of law that has a civil (not criminal) penalty of 60 penalty units (currently \$10,800) or more”*

BY-LAW 1 EFFECT OF BY-LAWS

1A Authority

- a. These By-laws are made pursuant to **Rule 21**.
- b. The Board shall have the power from time to time, to make such By-laws and policies as are in its opinion necessary and desirable for the proper control, administration and management of ADSO’s affairs, operations, interests, effects and property and to amend or repeal from time to time, such By-laws.
- c. These By-laws shall:
 - i. be subject to the Constitution.
 - ii. not be inconsistent with any provision contained in the Constitution, the Act or the Regulations; and
 - iii. be binding on all classes of Membership and shall have the same effect as the Company’s Rules.

1B DEFINITIONS

These By-laws shall be construed with reference to the *Company’s Act 2001* (Cth) and the Constitution. Terms used herein shall be taken as having the same meanings as they have when used in that Law unless the contrary intention appears.

- (1) In these By-laws, unless the contrary intention appears, terms in these By-laws have the same meanings given to them as in the Constitution. All terms defined in the Act have the same meaning given to them by the Act in these By-laws.

“Act” means the *Company Act 2001* (Cth). Both terms are interchangeable

“Applicant” means any entity eligible for admission as either a Member or Associate Member of the Company.

“Associate Member” also known as a **“Friend of the Company”** means an individual or non-military entity that supports the Company’s objects. An Associate Member shall not hold office nor be eligible to vote. Both terms are interchangeable.

“Board” means the Board of Directors of the Company. Both terms are interchangeable.

“By-Laws” means the By-Laws and policies of the Company.

“Committee” means a Committee of the Company elected or appointed as constituted under these By-laws or Constitution;

“Company” means the company named in Rule **Error! Reference source not found.** of the Constitution.

“Conflict of interest” is defined as: **“A situation where a person has a personal interest in a matter the subject of a decision or duty of that person.”**¹

“Constitution” means the Constitution for the time being, the Constitution of The Alliance of Defence Service Organisations Limited.

“Council Member” means a meeting of Members sitting in Council.

“Council Meeting” means General Meeting. These terms are interchangeable.

“Entity” displaces the term **“person”** and means any Member or Associate Member of the Company.

“Ex-officio Members” means those Members who have been appointed with the Board’s approval without election

“Fiduciary duty” means an equitable duty to act in good faith for the benefit of another.²

Guarantee Member means the initial Founding Members of ADSO.

“Indictable offence” means *“an offence that can be prosecuted on indictment”* and which is *“typically tried before a judge and jury”* or whether the accused elects to be tried by judge alone³;

¹ *Butterworths Concise Australian Legal Dictionary* 2006, 3rd edn, Chatswood NSW.

² Above, n.1. Persons subject to a fiduciary duty are not permitted to profit from their positions (other than where expressly permitted) or to put themselves in a position where the fiduciary duty and personal interest may conflict: *Hospital Products Ltd v United States Surgical Corp* (1984) 156CLR41; 55ALR417.

³ *Butterworth’s Concise Australian Legal Dictionary* 2006, 3rd edn, Chatswood NSW, at 218.

Additionally, according to the Dictionary notes, *“An offence does not cease to be indictable because it is dealt with summarily: Ross v R* (1979) 141 CLR 432: 24ALR 137.” **IMPORTANT NOTE:** This High Court decision in *Ross* (*supra*) enables the Company to deal with Members who have been convicted of an offence which has been dealt with by a court of summary jurisdiction – namely a

“**Member**” means any person who is a Member of the Company under Rule **Error! Reference source not found.**, and the term **Membership** has a corresponding meaning.

“**Misconduct**” is defined as any circumstance where any Member of the Company under these Rules, By-laws or policies in force at the time the misconduct was committed, who without reasonable excuse, fails to fulfil their duty or obligation as a Member of the Company.

“**Must**” has the same meaning as “**shall.**” Both terms are interchangeable.

“**Patron**” means a person so appointed to be the protector, or supporter⁴ of the Company, howsoever stated.

“**Objects and Activities**” means the Objects and Activities of the Company as set out in Rule 4.1.

“**Should**” refers to something that is strongly recommended and is considered to be best practice.

“**Reasonable**” is defined as: “*Agreeable to reason, not irrational, absurd or ridiculous.*”⁵

“**Rule**” means an individual section of this Constitution and includes where necessary, a section of the Act imported into this Constitution by the Act.

Special Resolution means a resolution of the Company passed at a General Meeting by not less than 75% of the votes cast by Members present and eligible to vote on a resolution of which written notice has been provided in accordance with Rule **Error! Reference source not found.**

“**The Company**” means The Alliance of Defence Service Organisations Limited.

“**The Council**” means a General Meeting of the Company chaired by the person who is the Chairman elected by the Council at that time.

The term “**Member however prescribed**” refers to Members and Associate Members of the Company.

BY-LAW 2 OBJECTS AND ACTIVITIES OF THE COMPANY (RULE 4 REFERS)

1 The purposes of the Company are those purposes which are set out in Rule 4.1 of the Constitution.

BY-LAW 3 INTERPRETATION (RULE 2 REFERS)

1.1 In these By-laws, unless the contrary intention appears:

- (i) expressions referring to “writing” shall be construed as including references to printing, photography, web site and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail.

Magistrates Court. This is particularly important where a person has been convicted and dealt with in a Magistrates Court of any child sex offence. The Criminal Convictions provisions in the By-laws address dealing with a Member convicted of an indictable offence.

⁴ *Macquarie Essential Dictionary* 2006, 4th edition, Macquarie University NSW.

⁵ *Australian Doctors’ Fund v Commonwealth* (1994) 34 ALD 459, Beazley J.

- (ii) words importing the singular include the plural and vice versa;
- (iii) words importing any gender include the other gender;
- (iv) references to persons include Companies and bodies politic;
- (v) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (vi) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction);
- (vii) an expression used in the Act that is given a special meaning for the purposes of the Act, has in any Rule of this Constitution that deals with the same matter, the same meaning as in the Act; and
- (viii) all headings contained in this Constitution are for guidance and do not form part of the substance of the Constitution.

1.2 Parties Bound

Under the provisions of these By-laws, an entity who applies to be admitted as a Member, or Associate Member, shall be deemed to have agreed to be bound by the provisions of this Constitution and By-laws.

1.3 Directors and Council Members Bound by these Rules and By-Laws

Directors of the Company Council Members shall be deemed to be bound by the provisions of these By-laws in all matters relevant to the discharge of their duties as instructed by their Member Associations or Association Branches, as the case may be.

1.4 Words etc., not defined in these Rules

A word or expression that is not defined in these By-laws, but is defined in the Act, has, if the context permits, the meaning given by the Act.

1.5 Act and Rules prevail

- (1) Where an inconsistency between these By-laws and the Rules exists, the Rules shall apply only to the extent that the inconsistency exists.
- (2) Where the Rules or these By-laws are silent or inconsistent on any matter, the Act shall apply.

BY-LAW 4
POWERS OF DIRECTORS
(RULE 5 and RULE 8 REFERS)

1 General

- 1.1 The business of the Company is to be managed by or under the direction of the Directors.
- 1.2 The Directors may exercise all the powers of the Company except any powers that the Act or the Company's Constitution (if any) requires the Company to exercise in a general meeting.
For example, the Directors may issue shares, borrow money and issue debentures.⁶
- 1.2 The Company may open and operate a bank account to assist it in the normal operation of the Company.
- 1.3 The Company has the power to make, amend, and repeal these By-laws in accordance with the Constitution for the purposes therein mentioned.

2 Patron

2.1 Board to make recommendation

Consistent with the provisions of Rule 5.3, a person may be appointed Patron or friend of the Company at the Annual General Meeting of the Company upon the recommendation of the Board.

3 Eligibility

- 3.1 A person who is not an Ordinary Member of a Member of the Company or who is an Associate Member entity, shall not nominate for, nor hold office except the office of Patron.
- 3.2 A person elected Patron who is not an Ordinary Member of a Member of the Company shall be deemed to be a Member whilst holding such office and for the tenure of that office only.

BY LAW 5
DUTIES OF DIRECTORS
(Companies Act 2001 (Cth) and RULE 6 REFERS)

1 Fiduciary duty of care owed to Company⁷

A Director or an Officer of the Company, owes fiduciary duty of care in respect of the discharge of his responsibilities and duties in all matters relevant the conduct and transaction of the Company's business and are subject by law to the provisions relating to Directors' duties.

2 Directors' Duties⁸

⁶ *Companies Act 2001 (C'th)*, s.198A.

⁷ A definition of **Fiduciary duty** is found in By-law 1B **Definitions**. See also additional comments annotated in **footnote 8 below**.

⁸ Adapted from, Vermeesch, R.B. & Lindgren, K.E., (1998) *Business Law of Australia*, 9th edn. Sydney, Butterworths pp. 749 – 763. Justice Kevin Lindgren QC is a Judge of the Federal Court of Australia and a former Founding Professor of Law University of Newcastle NSW; Prof Barbara Vermeesch LL.M., is a Solicitor of the Supreme Court of NSW and

2.1 A Director or Officer of the Company must at all times, when acting in the performance of his duties as a Director or Officer of the Company:

- (i) Act *bona fide* in the best interests of the Company as a whole; and
- (ii) Act in good faith or for a proper purpose; and
- (iii) Not make improper use of property or confidential information of the Company;
- (iv) Not to compete with the Company; and
- (v) Retain directors' discretion; and
- (vi) Avoid any conflict of interest whether the conflict be real or perceived; and
- (vii) Act with due care and diligence in the performance of his duties as a Director or Officer of the Company.

2.2 A Director also owes a duty of care under the common law of negligence.⁹

2.3 A Director or Officer of the Company who, without lawful or reasonable excuse, fails to fulfil his fiduciary duty, or fails without lawful or reasonable excuse, fails to fulfil his duties and obligations in respect of these Directors' Duties, commits a breach of the Act, the Constitution and these By-laws.

3 Business judgements – due care and diligence by Directors or other Officers¹⁰

3.1 A Director or other Officer of a Company in this instance ADSO Limited (the Company), who makes a business judgment (the judgment) is taken to meet the requirements of subsection 180(1) of the Act in respect of exercising due care and diligence, and their equivalent duties at common law and in equity, in respect of the judgment if they:

- (a) make the judgment in good faith for a proper purpose; and
- (b) do not have a material personal interest in the subject matter of the judgment; and
- (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- (d) rationally believe that the judgment is in the best interests of the Company.

Visiting Professor, Faculty of Law and Legal Practice, University of Technology, Sydney NSW. The provisions of Directors Duties were also adapted from LAW00720 Topic 12, S. Kearns, *Company Law II, Fiduciary Duties: the Director as Trustee*, Lismore NSW Southern Cross University, pp. 70.72.

⁹ COMPANYS LAW UPDATE: RECENT DECISIONS ABOUT DIRECTORS' DUTIES AND LIABILITIES – OCTOBER 2007, Stephens Lawyers & Consultants <http://www.stephens.com.au/view/22/47> [accessed 22 February 2011].

¹⁰ Above, n. 6, Division 1, s.180 - **Care and diligence—civil obligation only.**

- 3.2 The Director's or Officer's belief that the judgment is in the best interests of the Company is a rational, one unless the belief is one that no reasonable person in their position would hold.
- 3.3 In this By-law **business judgment** means any decision to take or not take action in respect of a matter relevant to the business operations of the Company.¹¹

¹¹ Above, n 6, s.180(3)

BY-LAW 6
MEMBERSHIP OF THE COMPANY
(RULE 6 REFERS)

1 Eligibility for Membership

1.1 The following shall be eligible to apply to be admitted as Members of the Company:

- (i) Any entity however prescribed, in Rule 6 of the Constitution.

2 Classes of Membership

2.1 There shall be three classes of Members, namely:

- (i) Guarantee Members (also known as Foundation Members);
- (ii) Members; and
- (iii) Associate Members (also known as Friends of the Company)

2.2 A Member shall be entitled to receive notice of General Meetings, to attend and vote thereat, and shall be eligible to hold any office in the Company.

2.3 The number of Members eligible to be admitted to Membership of the Company is unlimited.

2.4 The Board has the discretion absolutely to restrict the maximum number of Associate Members to admission to the Company.

2.5 An Associate Member as defined in **By-law 1B**, shall not be eligible to move motions, vote or hold office.

3 Application for Membership

3.1 The Company may apply a policy in respect of applications for Membership of the Company, as may be required, from time to time.

3.2 An application for Membership of the Company may be in the manner and form as prescribed by the Board, from time to time.

3.3 An application for Membership must be forwarded to the Company's Registered Office.

4 Parties Bound

4.1 Under the provisions of Rule 2.2 and this By-Law, each Member or entity who applies to be admitted as Member or upon whom Membership or Associate Membership is conferred, shall be deemed to have agreed to be bound by the provisions of this Constitution and these By-Laws.¹²

¹² Sievers, A.S., *Associations and Clubs law in Australia and New Zealand* 3rd edn 2010, Federation Press, Leichhardt NSW p. 162; viz: *In the present case, the Association being an incorporated body is a legal entity distinct from its Members. Every person who is*

5 Membership Administration

- 5.1 The Board may record and retain details of Members Membership history.
- 5.2 The Board is subject to the **Privacy Act 1988** (Cth) in respect of Members' Membership history.

6 Membership Fees (Subscriptions)

- 6.1 The Board may impose a Membership fee, to be paid annually.
- 6.2 The Board has the discretion absolutely, to:
- Determine the commencement date of when a Membership fee is to be introduced;
 - Determine the level of fees to be paid;
 - Determine a class of fees to be applied, as the case may be; and
 - Review the amount of Membership fee to be paid and to set a new Membership fee, as the case may be.

8 Board to Waive fees in Certain Circumstances

- 8.1 When in the opinion of the Board, any membership fee charged by the Company may cause hardship to a potential Member, or current Member, the Board has the discretion absolutely, to waive all or any part of those fees.
- 8.2 Where a decision by the Board to waive all or part of the membership fees has been made, the matter shall remain confidential between the Board and the relevant party.

9 Power of Board to accept donations etc.

- 9.1 The Board has the power to accept all donations, whether such donations be of real or personal estate including any financial or other bequests.
- 9.2 Any such donations or bequests must be used for the furtherance of the Company's Objectives and Activities, including acting for a charitable purpose.

10 Associate Membership

- 10.1 Subject to Rule 5.4, the Board may award Associate Membership to:
- (i) entities who, whether or not they are Members of the Company, are in a position to assist the Company in carrying out one or more of its Objectives and Activities and who provide such assistance; or
 - (ii) such other entities for such period as the Board sees fit.
- 10.2 An entity admitted to Associate Membership of the Company:
- (i) shall be bound by all laws and by-laws of this Constitution as if full Members;
 - (ii) cannot hold or be nominated for the position of President, Secretary, or Treasurer; and
 - (iii) cannot vote, propose or second motions at Meetings.
- 10.3 Where admission as an Associate Member is found to be inconsistent with paragraph 8.1(i), Associate Membership shall not be granted.
- 10.4 The Board has the discretion absolutely to accept or refuse an application for Associate Membership of the Company

11 Refusal of Membership

- 1.1 The Board may only refuse an application for Membership, foundation Membership or associate Membership if it is satisfied an applicant:
- i. is not eligible;
 - ii. is not a fit and proper applicant to be admitted as a Member; or
 - iii. it is not in the interests of the Company

for an applicant to be admitted to Membership, however defined, of the Company.

- 11.2 A decision of the Board to refuse an application for Membership as a Member, or Associate Membership shall be recorded in the minutes of the meeting at which the decision was made. The applicant must be notified in writing of the decision and the grounds upon which the decision was made, within 21 days of the Board meeting.
- 11.3 A decision of the Board to refuse an application for Membership however prescribed, of the Company, shall be final and binding on all parties.

12 Ex Officio Members (Advisory Committees or Sub-Committees)

- 12.1 Subject to Rule 13, the Board or Council may, from time to time and as the case may be, appoint any **Member** of the Company as *ex officio* Members of the Board to assist the Board or Council to do all such things as appear to the Board or Council, to be necessary or reasonable for the proper management of the affairs of the Company.
- 12.2 The Board or Council may, from time to time and as the case may be, appoint any **Associate Member** of the Company as *ex officio* Members of the Board or Council to assist the Board or Council to do all such things as appear to the Board or Council to be necessary or reasonable for the proper management of the affairs of the Company.

BY-LAW 7 RESIGNATION (RULE 8 REFERS)

1 Resignation of Directors

- 1.1 A Director who wishes to resign from the Company:
- (i) must do so by notice in writing and properly signed.
 - (ii) such notice must be forwarded to the Secretary of the Company.
- 1.2 A Director who resigns Membership of the Company is also taken to have resigned from the Board.
- 1.3 A Director who dies shall be taken *ipso facto* to have resigned.

2 Resignations (General)

- 2.1 Where a Member or Associate Member ceases to be a Member of the Company, the Member or Associate Member shall cease to be entitled to or have any interest in any of the property or assets of the Company but shall still be liable to pay to the Company all amounts owing to it at the date of ceasing to be a Member.

BY-LAW 8 ELECTION OF BOARD (RULE 8 REFERS)

1 Number of Directors Not to Exceed 12

- 1.1 The number of Directors eligible for election to the Board shall not be less than three (3) and shall not exceed twelve (12) Directors.
- 1.2 A maximum of one-third of Directors must retire at each Annual General Meeting however, if they are eligible, may offer themselves as candidates for re-election.

1.3 The Company may appoint a person as a Director by resolution passed in General Meeting.¹³

2 Discretion to Cap Board Numbers

2.1 The Board has the discretion absolutely to limit the maximum number of Directors to any number less than the maximum provided for in this By-law.

3 Secretary to call for nominations

3.1 The Secretary of the Company shall call for nominations for election of Members to the Board.

3.2 Such nominations must be called not less than four (4) months prior to the Annual General Meeting.

3.3 Nominations for election to the Board must be received only for Members who are at all material times, **Financial Members** of the Company

4 Validation of Eligibility for Nomination

4.1 Where the Board is reasonably satisfied that a person nominated for election to the Board (the Nominee), the Board must:

- (i) cause to be circulated to all Members a list of all eligible nominees to all Members; and
- (ii) shall invite the Members to elect such number of Directors to the Board as the Directors deem appropriate.

4.2 An eligible nominee is a nominee who is deemed to be eligible pursuant to paragraph 3.3 of this By-law.

5 Election not to be by ballot unless specifically requested

5.1 An election of Directors by ballot is not required unless a Member so demands at a meeting and before voting commences.

6 Participation in voting

6.1 A Member may take part and vote in person, or by proxy or by ballot.

6.2 On any question arising at a meeting of the Company a Member has one vote only.

6.3 All votes must be given personally or by proxy but no Member may hold more than one (1) proxy.

6.4 In the case of an equality of votes on a question at a Council Meeting or AGM, the Chairperson of the meeting is entitled to exercise a second or casting vote.

7 Proxies

¹³ Above, n6, s.201G.

- 7.1 Every Member of the Company entitled to vote may authorise another Member to act by proxy with respect to voting by completing and filing with the Secretary of the Company a signed and dated proxy written by such Member.
- 7.2 Such notice must be given to the Secretary no later than seven (7) days before the date of the meeting in respect of which the proxy is appointed.
- 7.3 The notice appointing the proxy is to be in the form set out in **ANNEX A** to these By-laws.
- 7.4 A proxy must be a Member of the Company.
- 7.5 The instrument appointing a proxy is taken to confer authority to demand or join in demanding a secret ballot.
- 7.6 Nothing in this By-law shall operate to prevent the Board from amending the Proxy Form, from time to time, as the case may be.

8 Proxy vote valid even if Member dies, revokes appointment etc¹⁴

- 8.1 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing Member dies; or
 - (ii) the Member is mentally incapacitated; or
 - (iii) the Member revokes the proxy's appointment; or
 - (iv) the Member revokes the authority under which the proxy was appointed by a third party; or
 - (v) the Member transfers the shares in respect of which the proxy was given.
- 8.2 A proxy's authority to vote is suspended while the Member is present at the meeting.¹⁵

¹⁴ Above, n6, s.250(c)(2).

¹⁵ Above, n6, s.249(Y)(3)

9 Objection to right to vote¹⁶

- 9.1 A challenge to a right to vote at a meeting of the Company's Members may only be made at the meeting and must be determined by the chair, whose decision is final

10 How voting is carried out¹⁷

- 10.1 A resolution put to the vote at a meeting of the Company's Members must be decided on a show of hands unless a poll is demanded. Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy vote must be cast

11 Declaration by Chair¹⁸

- 11.1 On a show of hands, a declaration by the chair is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes the proxies received. Neither the Chair nor the Minutes need to state the number or proportion of the votes recorded in favour or against.

BY-LAW 9 DIRECTORS' MEETINGS (RULE 9 REFERS)

1 Circulating copies of resolutions of companies with more than 1 Director¹⁹

- 1.1 The Directors of the Company may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 1.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 1.3 The resolution is passed when the last Director signs.

2 Calling Directors' meetings²⁰

- 2.1 A Directors' meeting may be called by a Director giving reasonable notice individually to every other Director. A Director who has appointed an Alternative Director may ask for the notice to be sent to the Alternative Director.

¹⁶ Above, n6, s.250G.

¹⁷ Above, n6, s.250J.

¹⁸ Above, n6, s.250J..

¹⁹ Above, n6, s 248A.

²⁰ Above, n.6, s.248C.

3 Chairing Directors' meetings²¹

- 3.1 The Directors may elect a Director to chair their meetings. The Directors may determine the period for which the Director is to be the Chair. The Directors must elect a Director present to chair a meeting, or part of it, if:
- (i) a Director has not already been elected to chair the meetings; and
 - (ii) a previously elected Chair is not available or declines to act, for the meeting or the part of the meeting.

4 Quorum at Directors' meetings²²

- 4.1 Unless the Directors determine otherwise, the quorum for a Directors' meeting is two (2) Directors and the quorum must be present at all times.

5 Passing of Directors' resolutions²³

- 5.1 A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The Chair has a casting vote, if necessary, in addition to any vote they have in their capacity as a Director.

BY-LAW 10 MEETINGS OF MEMBERS (RULE 12 REFERS)

1 Secretary to call Council meetings²⁴

- 1.1 The Secretary may, subject to the approval of the Board, call a Council meeting of Members but shall not call a meeting of Directors.
- 1.2 Nothing in this By-law shall operate to disturb the authority of a Director to call a meeting of the Members.

2 Chairing of meetings

- 2.1 The Chairman shall chair all meetings at which the Chairman is present.
- 2.2 Where the Chairman is unable to chair or declines to chair a meeting, the Directors may elect an individual to chair meetings of the Company's Members.²⁵

3 Quorum for meeting of Members²⁶

²¹ Above, n.6, s.248E.

²² Above, n.6, s.248F.

²³ Above, n.6, s.248G.

²⁴ Above, n.6, s 249C.

²⁵ Above, n.6, s.249U(1).

3.1 The quorum for a meeting of the Company's Members is five (5) Members and the quorum must be present at all times during the meeting.

4 Voting at meetings

4.1 At a general meeting, each question, matter or resolution, other than a Special Resolution, must be decided by a majority of votes of the Members present.

4.2 Each Member present and eligible to vote is entitled to **one (1) vote only** and, if the votes are equal, the Chairperson has a casting vote as well as a primary vote.

4.3 On a show of hands, each Member has one (1) vote.

4.4 A resolution put to the vote at a meeting of a Company's Members must be decided on a show of hands unless a poll is demanded. Before a vote is taken the Chair must inform the meeting whether any proxy votes have been received and how the proxy vote must be cast.

5 Poll not to be taken in certain circumstances

5.1 A poll cannot be taken or demanded on any resolution concerning:

(i) the election of the Chair of a meeting; or

(ii) the adjournment of a meeting.

6 When and how poll must be taken²⁷

6.1 A poll demanded on a matter other than the election of a Chair or the question of an adjournment must be taken when and in the manner the chair directs.

6.2 A poll on the election of a Chair or on the question of an adjournment must be taken immediately

7 Declaration by Chair

7.1 On a show of hands, a declaration by the Chair is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes the proxies received. Neither the Chair nor the Minutes need to state the number or proportion of the votes recorded in favour or against.

²⁶ Above, n.6, s.249T.

²⁷ Above, n.6, s.250M.

BY-LAW 11
DIRECTORS' FEES AND DIVIDENDS
(RULE 8 REFERS)

1 Directors' fees and Dividends not to be paid

- 1.1 The Company shall not pay fees to its Directors.
- 1.2 The Company shall not pay dividends to its Directors but shall apply all its property to its purpose.

2 Payments to Directors Other Than Remuneration - Reimbursement of Expenditure Incurred by Directors

- 1.1 Subject to the provisions of Rule 8.1, the Board may as the Board sees fit, authorise the reimbursement of expenditure reasonably and necessarily incurred by a Director on behalf of the Company.
- 1.2 The nature of the expenditure required to be reimbursed shall be conveyed by the relevant Director incurring the expenditure to the Board and shall be recorded by the Treasurer.

BY-LAW 12
SURPLUS ASSETS ON WINDING UP
(RULE 22 REFERS)

- 1.1 Should the Company have a surplus of assets upon a winding up, those assets shall not be distributed to Members but shall be donated to an entity that has a similar purpose to the Company.

BY-LAW 13
ACHIEVEMENT OF THE OBJECTS AND ACTIVITIES OF THE COMPANY
(RULE 4 REFERS)

1 Company May Set up Associated entities

- 1.1 Nothing in the Rules or these By-laws shall prevent the Company from setting up and operating associated entities where the Company is the sole shareholder in the associated entity.

2 Company to make Rules for Associated entities

- 2.1 Where the Company sets up an associated entity for the purpose of achieving its purpose, the Company may make Rules for that associated entity that allow it to operate as if persons desirous of using the associated entity were Members of the associated entity, and the associated entity was a propriety limited Company with those using the associated entity being Members of the associated entity, but at all times the associated entity remains the associated entity of The Company, with The Company as the sole shareholder.

BY-LAW 14
COMPANY MAY MAKE INVESTMENTS

(RULE 5 REFERS)

1 Company may make investments, etc.

- 1.1 The Company may make such investments, as the Company deems desirable.
- 1.2 Consistent with the provisions of Rule 5 - Company Powers, the Company may do all things reasonable and necessary to ensure it operates in an efficient and effective manner to advance the purposes of the Company.

**BY-LAW 15
MEMBERS TO UPHOLD THE COMPANY'S PURPOSES
(RULE 2 REFERS)**

- 1.1 Pursuant to By-law 1 paragraph 1.2, a Director, Member or an Associate Member is a party bound by the Rules and these By-laws.
- 1.2 A Director, Member or Associate Member must undertake to uphold the purposes of the Company and must not advocate any matter contrary to the purposes of the Company.

**BY-LAW 16
MEMBERS TO COMPLY WITH RULES AND BY-LAWS
(RULE 6 REFERS)**

- 1.1 A Member however prescribed, must comply with the Rules and these By-laws.
- 1.2 A Member however prescribed who, without reasonable and lawful excuse, fails to comply with these By-laws or any other By-laws made in accordance with the Rules, commits a breach of these By-laws and may be liable to disciplinary action being taken by the Board against the Member however prescribed, as the circumstances require.
- 1.3 The Company shall have the power from time to time, to make such By-laws as are in its opinion necessary and desirable for the management of any breaches of Rule 6.

BY-LAW 17
CONFLICT OF INTEREST
(RULE 8 REFERS)

Definition: For the purposes of this Rule 17, The term “**Member however prescribed**” refers to Members and Associate Members of the Company.

1 Member to declare interest

1.1 A Director, or Member however prescribed, shall declare to the Board, their interest in any:

- (i) contractual matter;
- (ii) selection matter;
- (iii) disciplinary matter;
- (iv) financial matter; or
- (v) any other matter

in which a conflict of interest arises or may arise and shall, unless otherwise determined by the Board or in Council, absent himself or herself from discussion of such matter and shall not be entitled to vote in respect of such matter.

1.2 In the event of any uncertainty as to whether it is necessary for a Member however prescribed to absent himself or herself from discussions and refrain from voting, the issue should be immediately determined by vote of the Board or Members in Council, or if this is not possible, the matter shall be adjourned or deferred.

1.3 The Secretary shall maintain a Register of Declared Interests.

2 Members to avoid conflict of interest

2.1 A Director, Council Member or Member however prescribed, must take all reasonable steps to avoid any conflict of interest, be it real or perceived.

2.2 The mere appearance of a conflict of interest is sufficient to warrant avoidance of that conflict.

3 Disclosure of Interest by Directors

3.1 Where a Director or a Member however prescribed, has a material personal or pecuniary or any other interest in a matter relating to the affairs of the Company, the Director or Council Member must declare any such interest.

4 Directors to avoid conflict of interest

4.1 A Director or Member however prescribed, must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their duties as Directors or Members however prescribed, of the Company.

5 Failure to disclose a conflict of interest

- 5.1 Where a Director or Member however prescribed in this By-law, fails without lawful and reasonable excuse, to disclose a pecuniary interest in a contract before the Board, that Director or other Member however prescribed, is liable to the Company for any profit made directly or indirectly, and any damage or loss suffered by the Company as a result of that failure to disclose.

BY-LAW 18 DELEGATED AUTHORITY (RULE 8 REFERS)

Definition: In this Rule, the term “**Alternate Director**” means a Director who is appointed by a director to exercise some or all of the **Appointing Director's** (the Appointor) powers for a specified period.²⁸

1 Authority to delegate

Subject to the provisions of Rule 8.12(f), the Board may delegate any of its powers conferred on it by the Rules, except the power of delegation, to such person or persons, for such period under such terms, as it in its absolute discretion it deems fit.

2 Acting Arrangements in the Absence of the Chairman

- 2.1 In the event the Chairman is unable to effectively perform the functions of his office due to illness, absence on leave or for any other reason requiring a temporary absence, the Chairman may authorise any other Director to perform the role of Acting Chairman to enable the Board and the Company to continue to function.
- 2.2 The powers and functions delegated to an Acting Chairman shall only operate to the extent of the duration of the Chairman’s temporary absence.

3 Leave of Absence of Board Member

- 3.1 Where the Board grants leave of absence to a Director, the board may appoint Member of the Company to the Board to be Alternate Director during the absence of the Director so given leave.
- 3.2 The Alternate Director shall be entitled to all notices of meetings as a director whilst so appointed.
- 3.3 The Alternate Director shall exercise the powers and functions of a Director for the time he performs the duties of Alternative Director.

²⁸ Above, n6, s.201K.

4 Discretionary Powers of Chairman

- 4.1 Nothing in this By-law shall prevent the Chairman of the Board from exercising a discretion to delegate to another Board Member involved in the day-to-day operation of the Company, the authority to do all things reasonable and necessary to ensure the Board operates in an efficient and effective manner to advance the purposes of the Company.

BY-LAW 19 INSPECTION OF COMPANY BOOKS (RULE 18 REFERS)

- 1.1 The Board of Directors of the Company may authorise a Member however prescribed, to inspect the books of the Company.

BY-LAW 20 NOTICE OF MEETINGS (RULE 19 REFERS)

1 Reasonable notice to be given

- 1.1 Where a Director's meeting has been called, the Secretary shall give each individual Director reasonable notice of such meeting.

2 Reasonable notice defined

- 2.1 For the purpose of this By-law, reasonable notice is defined as being not less than twenty-eight (28) days notice of such meeting.

3 Notice by fax, post or other means²⁹

- 3.1 A notice of meeting sent by post is taken to be given three (3) days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

BY-LAW 21 APPOINTMENT OF ALTERNATE BOARD CHAIRMAN³⁰ (RULE 9 REFERS)

- 1.1 The Directors may elect a Director to chair their meetings. The Directors may determine the period for which the Director is to be the chair. The Directors must elect a Director present, to chair a meeting, or part of it, if:
- (i) a Director has not already been elected to chair the meetings; and
 - (ii) the Chair is not present ten (10) minutes after the time specified for the meeting; and

²⁹ Above, n.6, s.249J(4).

³⁰ Above, n.5, s 248E.

- (iii) a previously elected Chair is not available or declines to act, for the meeting or the part of the meeting

BY-LAW 22
SECRETARY TO CALL MEETINGS
(Rule 12 refers)

1 General

- 1.1 Pursuant to Rule 12.3, the Secretary as authorised by the Board shall call a meeting of the Company's Members, however prescribed.

2 Notices of Motion and other business

- 2.1 All Notices of Motion and other business to be submitted to a General Meeting or an Annual General meeting (AGM), must be forwarded to reach the Secretary not less than 35 Calendar Days prior to the AGM.

3 Secretary to forward relevant documents

- 3.1 The Secretary shall, not less than 21 days prior to a General Meeting or AGM, forward to all Members and Associate Members, copies of business to be addressed at a general Meeting or AGM including the Annual Report, Annual Balance Sheet and Financial Statement.

BY-LAW 23
VOTING AT MEETINGS
(RULES 6, 11 and 12 REFER)

1 Member to have one vote

- 1.1 A Member shall have one vote at a General Meeting or AGM.
- 1.2 The procedure for voting shall follow the same format as for the election of Directors.

2 Participation in voting

- 2.1 A member may take part and vote in person, or by proxy or by ballot.
- 6.2 On any question arising at a meeting of the Company, a Member has one vote only.
- 2.3 All votes must be given personally or by proxy but no member may hold more than one (1) proxy.
- 2.4 In the case of an equality of votes on a question at a Council Meeting or AGM, the Chairperson of the meeting is entitled to exercise a second or casting vote.

3 Proxies

- 3.1 Subject to Rule 12.8, every Member of the Company entitled to vote may authorise another member to act by proxy with respect to voting by completing and filing with the Secretary of the Company a signed and dated proxy written by such member.
- 3.2 Such notice must be given to the Secretary no later than seven (7) days before the date of the meeting in respect of which the proxy is appointed.
- 3.3 The notice appointing the proxy is to be in the form set out in **ANNEX A** to these By-laws.
- 3.4 A proxy must be a Financial Member of the Company.
- 3.5 The instrument appointing a proxy is taken to confer authority to demand or join in demanding a secret ballot.

4 Proxy vote valid even if member dies, revokes appointment etc

- 4.1 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:
 - (i) the appointing member dies; or
 - (ii) the member is mentally incapacitated; or
 - (iii) the member revokes the proxy's appointment; or
 - (iv) the member revokes the authority under which the proxy was appointed by a third party; or
 - (v) the member transfers the shares in respect of which the proxy was given.
- 4.2 A proxy's authority to vote is suspended while the member is present at the meeting.

5 Objection to right to vote

- 5.1 A challenge to a right to vote at a meeting of the Company's Members may only be made at the meeting and must be determined by the Chair, whose decision is final

6 How voting is carried out

- 6.1 A resolution put to the vote at a meeting of the Company's Members must be decided on a show of hands unless a poll is demanded. Before a vote is taken the Chair must inform the meeting whether any proxy votes have been received and how the proxy vote must be cast.

7 Declaration by Chair

- 7.1 On a show of hands, a declaration by the chair is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes the proxies received. Neither the Chair nor the Minutes need to state the number or proportion of the votes recorded in favour or against.

BY-LAW 24
POLL NOT PERMITTED IN CERTAIN CIRCUMSTANCES

- 1.1 A poll cannot be demanded on any resolution concerning:
- (i) the election of the Chair of a meeting; or
 - (ii) the adjournment of a meeting.

BY-LAW 25
LIMITATION OF GUARANTEE
(RULE 6 REFERS)

- 1.1 In the event of the Company being found to be insolvent upon winding up, the Members of the Company which is a Company limited by Guarantee, guarantee to contribute up to ten (10) dollars in Australian currency, to the winding up of the Company.

BY-LAW 26
MISCONDUCT COMMITTED BY MEMBERS OF THE COMPANY
(RULES 6.2 and 6.12 REFER)

1 Interpretation

- (i) In this By-law, subject to Rule 22, misconduct occurs when a Member Association, an Affiliate Member Association, a member of the Board or Council fails to fulfil his or her obligations (or duty) as a member of the Company under the Company's Rules.
- (ii) The term "**member**" or "**member of the Company**" in this By-law means a Member or, Affiliate Member of the Company.
- (iii) A failure to fulfil that obligation (or duty) occurs when a Member so prescribed, commits a breach of the relevant Rule or Rules.
- (iv) Associate Members shall be subject to the provisions of Rule 6 and this By-law in respect of committing misconduct.

- 1.1 A member of the Company, who without reasonable or lawful excuse:
- (a) wilfully refuses or neglects to comply with the provisions of this Constitution or the By-laws;
 - (d) commits any act or omission that brings the Company into disrepute;
 - (e) fails to disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with their duties as a member of the Company;
 - (f) engages in conduct unbecoming a member of the Company; or
 - (g) engages in conduct detrimental to the interests of the Company;

commits misconduct and may be liable to formal disciplinary action.

2 Criminal convictions

2.1 A member of the Company who has been convicted of any indictable offence shall be liable to be dealt with under the provisions of Rule 6.12.

2.2 A member of the Company however prescribed, who has been convicted of an indictable offence must be given the opportunity to show cause in writing as to why he or she should not:

- i. be expelled from the Company's Board or the Company.

2.3 A member of the Company however prescribed, who has been convicted of any indictable offence must not be asked to show cause in circumstances where:

- i. an appeal against the conviction has been lodged; and
- ii. the appeal is upheld and the criminal conviction is quashed.

2.4 The Company has the discretion absolutely to initiate action requiring a member to show cause where:

- i. the Member or Associate Member concerned elects not to lodge an appeal against his or her conviction; or
- ii. the appeal is dismissed.

3 Discipline Principles

3.1 Subject to the provisions of Rule 6.12(6) a **Special General Meeting** of the members in Council must, in adjudicating the appeal, have regard to the following Discipline Principles:

- (1) The nature of the misconduct;
- (2) The circumstances in which the misconduct occurred;
- (3) The seriousness of the misconduct;
- (4) The degree of relevance to the Member's or Associate Member's duties or to the reputation of the Company;
- (5) The circumstances of the misconduct; and
- (6) Mitigating factors:
 - Age, experience and length of membership of the Company; and
 - Cultural background and language difficulties.

3.2 The Discipline Principles must also be applied in circumstances where a member of the Company however prescribed, is required to show cause having been convicted of an indictable offence.

4 Adjudication of Disciplinary Matters

4.1 The adjudication of a breach of discipline shall be conducted by a Special General Meeting (Disciplinary Appeal) comprising the members sitting in Council and voting on a Special Resolution.

4.2 A Member however prescribed, may elect to be represented at a Disciplinary Appeal by a non-legal representative.

5 Penalties

5.1 Where misconduct has been proved, the Members may consistent with Rule 6.12(1), impose one of the following penalties:

- (i) Suspension; or
- (ii) Termination of membership of the Company.

5.2 The Company may use whatever technology is reasonably required to conduct the hearing.

6 Appealable Decisions

6.1 Where a Member so described in paragraph 5.1 of this By-law has been found guilty of misconduct and where the penalty to be imposed is:

- (i) Suspension for a period of not less than three (3) months; or
- (ii) Expulsion.

from the Board or Company, the relevant Member or Associate member shall be entitled to appeal the decision.

7 Non-appealable decisions

7.1 Where a Disciplinary Tribunal imposes the following penalty:

- (i) Suspension not exceeding three (3) months,

That penalty shall not be appealable.

8 Termination or Suspension of Membership

8.1 The Tribunal may terminate or suspend a Member's or Associate Member's membership of the Company if the Member however prescribed:

- (a) is convicted of an indictable offence; or
- (b) fails without reasonable excuse to comply with any of the provisions of these rules; or
- (c) conducts himself or herself in a way considered to be injurious to or prejudicial to the character or interests of the Company; or
- (d) engages in conduct likely to bring the reputation of the Company and its members into disrepute.

- 8.2 Before a decision to suspend or expel a Member however prescribed, the Board must give the Member however prescribed, a full and fair opportunity to show why the Member however prescribed should not be suspended or expelled.
- 8.3 If, after considering all representations made by the Member however prescribed and the decision of the Tribunal is to suspend or expel the Member or Associate Member from the Company, the Secretary must give the Member or Associate Member a written notice of the decision.

9 Appeal against suspension or termination of membership

- 9.1 A Member whose membership has been suspended terminated, may give the Secretary written notice of the Member's intention to appeal against the decision.
- 9.2 A notice of intention to appeal in writing must be given to the Secretary within one (1) month after the Member receives written notice of the decision.
- 9.3 Where the Secretary receives a notice of intention to appeal, the Secretary must, within one (1) month after receiving the notice, notify the Chair to convene an Special General Meeting.
- 9.4 The Patron is precluded from sitting on any appeal Tribunal.
- 9.5 The Special general meeting may use whatever technology is reasonably required to conduct the appeal.
- 9.6 An appeal must be held within three (3) months after the Secretary receives the notice of intention to appeal.
- 9.7 At the meeting, the appellant must be given a full and fair opportunity to show why the membership should not be suspended or terminated.
- 9.8 A Member or Associate Member, may elect to be represented at a Disciplinary Appeal by a non-legal representative.
- 9.9 An appeal must be decided by a majority vote of the Tribunal members present.
- 9.10 The Tribunal may either:
- (i) Affirm the decision under review; or
 - (ii) Substitute the decision under review with a decision of its own.
- 9.11 Where a Member or Associate Member does not appeal against the decision within one (1) month after receiving written notice of the decision, or the Member or Associate Member appeals but the appeal is unsuccessful, the relevant decision takes effect:
- (i) where no appeal is lodged, 1 month from the date of the written decision; or
 - (ii) where the Special general meeting affirms the decision under review, immediately.
- 9.12 A decision of the Special General Meeting is final and shall be binding on all parties.

BY-LAW 27 VEXATIOUS OR FRIVOLOUS COMPLAINTS OR APPEALS

Where a member lodges a complaint alleging misconduct or lodges an appeal³¹, Board or Special General meeting may, having regard to the following Common Law Tests:

- (i) Proceedings are vexatious if they are instituted with the intention of annoying or embarrassing the person against whom they are brought;
- (ii) They are vexatious if they are brought for collateral purposes, and not for the purpose of having the Company adjudicate on the issues to which they give rise; and
- (iii) They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless,

dismiss a complaint or appeal on the grounds the matter is vexatious or frivolous.

A decision of the Board or Special General Meeting exercising its powers and functions under this By-law is final and binding on all parties.

³¹ *Attorney General (Vic) v Wentworth* (1988) 14 NSWLR 481 at 191 per Roden J, sets out the tests to be applied in determining what constitutes a frivolous or vexatious complaint or appeal.

**ANNEX A TO BY-LAW 7 (Paragraph 7.3)
ADSO LIMITED**

FORM OF APPOINTMENT OF PROXY

Note: A proxy vote may not be given to a person who is not a Member of the Company.

I, (full name):

.....

Of (full address):

.....

Being a Member of the Alliance of defence Service organisations Limited, hereinafter referred to as the Company

hereby appoint:

(Full name of proxy):

.....

Of (Full address):

.....

being a **Member or Guarantee Member** of the Company, as my proxy to vote for me on my behalf at the Council Meeting³² of the Company/Annual General Meeting as the case may be, to be held on the

.....day of,, 20

and at any adjournment of that meeting.

*My proxy is authorised to vote in favour of/against (delete as appropriate) the resolution (insert details). **Note: * To be inserted if desired.**

Signature of Member or Foundation Member appointing proxy:

..... Date

³² **“Council Meeting”** means General Meeting or Annual General Meeting. These terms are interchangeable.