

Dated 20<sup>th</sup> November 2015

# **Constitution of Astronomy Australia Ltd**

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*Corporations Act 2001*

Company limited by guarantee

## **Constitution**

of

## **Astronomy Australia Ltd**

### **Introduction**

#### **1. Replaceable clauses excluded**

- 1.1 The replaceable clauses contained in the Act do not apply to the Company.

#### **2. Definitions and interpretation**

##### **2.1 Definitions**

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **Board** means Board of Directors of the Company and includes the initial Board referred to in clause 22.1;
- (3) **Business Day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (4) **Company** means Astronomy Australia Ltd;
- (5) **Decadal Plan** means a 10 year plan for astronomical research in Australia published by the Australian Academy of Science;
- (6) **Member** means a member of the Company; and
- (7) **Secretary** means the Secretary referred to in clause 43 and any other person appointed to perform the duties of a Secretary of the Company.

## 2.2 Interpretation

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

## 3. Objects

- 3.1 The Company is established for the principal object of advancing the science of astronomy.
- 3.2 The particular objects for which the Company is established are:
  - (1) to maximise the use of national astronomy research and development infrastructure in the conduct of world class research consistent with the principles underpinning the National Collaborative Research Infrastructure Strategy (NCRIS);
  - (2) to allocate, contract with and supply funds to organisations for the establishment, development, enhancement or operation of, or for access to, astronomy research infrastructure (including under the NCRIS);
  - (3) to receive and manage funds from the Commonwealth Government, other governments and other organisations for the purpose of advancing the science of astronomy;

- (4) Without usurping the role of existing owners and operators of current astronomy research infrastructure (including NCRIS infrastructure):
- (a) to plan, develop and manage investment in national collaborative research infrastructure for astronomy (Astronomy NCRI);
  - (b) to define and identify assets that could be included in Astronomy NCRI;
  - (c) to facilitate access for the research community to Astronomy NCRI;
  - (d) to develop and implement policies for access, access charges and cooperation in the use of Astronomy NCRI;
  - (e) to maintain the ability for astronomers to access Astronomy NCRI based upon merit, without paying the Company for the use of the core scientific facility;
  - (f) to develop strategic and operational plans for the use and development of Astronomy NCRI; and
- (5) to ensure provision of a coherent, collaborative approach to funding Astronomy NCRI, consistent with the principles underpinning the NCRIS and for the benefit of the astronomical community as a whole.

#### **4. Powers**

- 4.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 4.2 Despite clause 4.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in clause 3.

#### **5. Application of income and property**

- 5.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in clause 3.

#### **6. No distribution to Members**

- 6.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Members of the Company.

6.2 Clause 6.1 does not prevent:

- (1) the payment in good faith of remuneration to any officer, servant or Member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
- (2) the payment in good faith of remuneration to any Member of the Company for the development, improvement, maintenance or operation of Astronomy NCRI in return for the Company's right to facilitate access to that Astronomy NCRI by the research community;
- (3) the payment of interest at a rate not exceeding the rate charged by the Company's bankers from time to time on overdraft accounts of under \$100,000 plus 2% on money borrowed from any Member of the Company;
- (4) the payment of reasonable and proper rent by the Company to a Member of the Company for premises leased by the Member to the Company;
- (5) the reimbursement of expenses incurred by any Member on behalf of the Company; or
- (6) payment of any monies by the Company to any grantor under the terms of any relevant funding agreement or any other contractual arrangements.

**7. Limited liability**

7.1 The liability of the Members is limited.

**8. Guarantee**

8.1 Every Member of the Company undertakes to contribute an amount not exceeding \$10 to the property of the Company if it is wound up while the Member is a Member or within 1 year after the Member ceases to be a Member, if required for payment:

- (1) of the debts and liabilities of the Company (contracted before the Member ceases to be a Member);
- (2) of the costs, charges and expenses of winding up; and
- (3) for the adjustment of the rights of the contributories among themselves.

## Membership

### 9. Number and identity of Members

- 9.1 The number of Members for which the Company proposes to be registered is unlimited.
- 9.2 Subject to cessation of membership, the members of the Company are:
- (1) the subscribers to this Constitution; and
  - (2) any other persons admitted to membership under clause 13.

### 10. Categories of membership

- 10.1 There are two classes of Members of the Company, namely:
- (1) Level 1 Members; and
  - (2) Level 2 Members.
- 10.2 Additional categories of Members, if recommended by the Board, may be created from time to time by the Members in general meeting.

### 11. Membership

- 11.1 Any institution that can satisfy the Board that it has an ongoing commitment to Australian astronomy research and who pays the Level 1 subscription fees may apply for Level 1 membership of the Company.
- 11.2 Only an Australian university other than the Group of Eight universities (The University of Adelaide, The Australian National University, The University of Melbourne, Monash University, The University of New South Wales, The University of Queensland, The University of Sydney, The University of Western Australia) that can satisfy the Board that it has an ongoing commitment to Australian astronomy infrastructure and who pays the Level 2 subscription fees is eligible to apply for Level 2 membership of the Company.
- 11.3 The initial Members and their categories are set out in Annexure A.
- 11.4 Each Member that is a body corporate must within 30 days after incorporation of the Company or after being admitted as a Member, as the case may be, nominate 1 person (**nominated representative**) to represent it in the Company. The nomination must:
- (1) state the name and address of the nominated representative; and

(2) be signed by the nominated representative.

11.5 All Members have the same rights regardless of their level of membership, including the right to receive notices of and to attend and be heard at any general meeting and to vote at any general meeting. Votes can be made in person or by proxy in the case of individuals and by nominated representative or proxy in the case of bodies corporate.

## **12. Form of application**

12.1 An application for membership must be:

- (1) in writing in a form approved by the Board;
- (2) signed by the applicant;
- (3) signed by the proposer, who must be a financial Member; and
- (4) lodged with the Company at its registered office for consideration by the Board.

12.2 If the applicant is a body corporate it must nominate 1 person (**nominated representative**) to represent it in the Company. The application form must:

- (1) state the name and address of the nominated representative; and
- (2) be signed by the nominated representative.

12.3 An application form must be accompanied by the annual subscription, determined in accordance with clause 16.

## **13. Admission to membership**

13.1 The Board is responsible for any decision as to whether to admit the applicant to membership.

13.2 The Board need give no reason for the rejection of an application.

13.3 If an application for membership is rejected the annual subscription must be refunded to the applicant.

13.4 If an applicant is accepted for membership:

- (1) the Secretary must notify the applicant of admission in the form of a receipt for the annual subscription or in any other form the Board determines; and

- (2) the name and details of the Member must be entered in the register of Members.

#### **14. Notification by Members**

- 14.1 Each Member must promptly notify the Company at its registered office in writing of any change in its qualification to be a Member of the Company.
- 14.2 A person nominated as a representative must consent to the nomination in writing.

#### **15. Register of Members**

- 15.1 A register of Members of the Company must be kept in accordance with the Act.
- 15.2 Each Member and nominated representative must promptly notify the Company at its registered office in writing of any change of a nominated representative, or any change in a nominated representative's name, address, facsimile number or electronic mail address.

### **Annual subscription**

#### **16. Annual subscription**

- 16.1 The annual subscription payable by a Member of the Company is:
  - (1) in the case of Level 1 Members \$15,000 for the 2006/07 financial year; and
  - (2) in the case of level 2 Members \$5,000 for the 2006/07 financial year.
- 16.2 The annual subscription may be set annually at a rate determined by the Members.
- 16.3 All annual subscriptions are due and payable in advance on 1 July in each year or on such other date as may be set by the Board.
- 16.4 If a person is admitted to membership of the Company during the months of January to June inclusive the Board may reduce the annual subscription payable by the applicant in any manner it sees fit.

## **17. Unpaid annual subscriptions**

17.1 If:

- (1) the annual subscription of a Member remains unpaid for 2 months after it becomes payable; and
- (2) a notice of default is given to the Member following a resolution of the Board to do this;

the Member ceases to be entitled to any of the rights or privileges of membership but, except where clause 19 applies, these may be reinstated on payment of all arrears if the Board sees fit.

## **Cessation of membership**

### **18. Resignation**

18.1 A Member may resign from membership of the Company by giving written notice to the Company at its registered office.

18.2 The resignation of a Member:

- (1) takes effect on the date of receipt of the notice of resignation or any later date provided in the notice; and
- (2) does not affect any contracts that the Member may have with the Company.

### **19. Failure to pay**

19.1 Membership may be terminated and the Member's name will be removed from the register of Members by the Board if:

- (1) a Member has not paid all arrears of annual subscriptions under clause 16 for a period of six months;
- (2) in the case of a Member that is a body corporate, the Member dissolves or ceases to exist; and
- (3) in the case of a Member that is an individual, that Member dies.

19.2 A person whose membership is so terminated may reapply for membership at any time but the Member must have paid all outstanding arrears of subscription moneys.

## **20. Expulsion of Members**

20.1 If any Member:

- (1) wilfully refuses or neglects to comply with the provisions of this constitution; or
- (2) is guilty of any conduct which, in the opinion of the Board, is unbecoming of a Member or prejudicial to the interests of the Company;

the Board may resolve by a majority of at least two thirds to expel the Member from the Company and remove the Member's name from the register of Members.

20.2 At least 1 week before the meeting of the Board at which a resolution of the nature referred to in clause 20.1 is proposed the Board must give to the Member notice of:

- (1) the meeting;
- (2) what is alleged against the Member; and
- (3) the intended resolution.

20.3 At the meeting and before the passing of the resolution, the Member must have an opportunity of giving orally or in writing any explanation or defence the Member sees fit.

20.4 A Member may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Board, elect to have the question dealt with by the Company in general meeting and in that event, a general meeting of the Company must be called for that purpose.

20.5 If at the meeting a resolution to the same effect as the resolution which was to be considered by the Board is passed by a majority of two thirds of those present and voting (and the vote must be taken by secret ballot), the Member concerned is expelled and the Member's name must be removed from the register of Members.

## **21. Effect of cessation of membership**

21.1 If any Member ceases to be a Member under this constitution, the Member remains liable to pay to the Company any money which, at the time of the Member ceasing to be a Member, the Member owes to the Company on any account and for any sum not exceeding \$10 for which the Member is liable under clause 8 of this constitution.

## **Appointment of Directors**

### **22. Composition of the Board**

- 22.1 The initial Board will comprise 5 non-executive directors.
- 22.2 The term of each initial Director will be until the first annual general meeting of the Company, which the Members intend to hold within 3 months after the date of incorporation.
- 22.3 Subject to clause 22.5, following the first annual general meeting, the Board will comprise 7 non-executive Directors.
- 22.4 The membership of the Board will be constituted with the aim of reaching a position where at any time the following skills and or experience are represented on the Board by one or more Directors:
- (1) Astronomical research broadly consistent with the current version of the Decadal Plan;
  - (2) Research collaboration at the national and international level;
  - (3) National research policy and priorities;
  - (4) Business administration and finance;
  - (5) Corporate governance and legal matters; and
  - (6) Strategy formulation and implementation
- with the majority of the Board having conducted research in astronomy or a related field.
- 22.5 The Company in general meeting may by resolution increase or reduce the number of Directors referred to in clause 22.3 but the number may not be reduced below 5.

### **23. First Directors**

- 23.1 The first Directors are those named in the application for registration of the Company.

### **24. Retirement and election of Directors**

- 24.1 The initial Directors, including the Chair, must retire at the first annual general meeting of the Company.

- 24.2 Subject to clause 24.4, a Director other than an initial Director must retire from office at the conclusion of the third annual general meeting after the Director was last appointed.
- 24.3 A Director is eligible to be reappointed.
- 24.4 At the second and third annual general meeting one third of Directors (or rounded down to the nearest integer) must retire. The Directors must agree among themselves or determine by lot which of them must retire. The Chair appointed at the first annual general meeting will hold office for the term set out in clause 49.2.

## **25. Nomination for election**

- 25.1 The Nomination Committee is responsible for identifying candidates for election to the Board in accordance with clause 34. Each candidate for election as a Director must be endorsed by the Nomination Committee.
- 25.2 A nomination of a candidate for election must be:
- (1) in writing;
  - (2) signed by the candidate; and
  - (3) signed by the chair of the Nomination Committee.
- 25.3 A nomination of a candidate for election must be lodged with the Company at its registered office at least 30 days before the annual general meeting of the Company.

## **26. Election procedure – Directors**

- 26.1 If the number of candidates for election as Directors is equal to or less than the number of vacancies on the Board, the Chair of the annual general meeting must declare those candidates to be duly elected as Directors.
- 26.2 If the number of candidates for election as Directors is greater than the number of vacancies on the Board, a ballot must be held for the election of the candidates.
- 26.3 If a ballot is required, balloting lists must be prepared listing the names of the candidates only in alphabetical order.
- 26.4 At the annual general meeting each person entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.

- 26.5 The candidates receiving the greatest number of votes cast in their favour must be declared by the Chair of the meeting to be elected as Directors.
- 26.6 If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the Chair, prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the Chair:
- (1) does not exercise a casting vote; or
  - (2) is one of the candidates who received the same number of votes;
- then the names of the candidates who received the same number of votes must be put to a further ballot immediately.

**27. Time appointment or retirement takes effect**

- 27.1 Subject to the election result being declared by the Chair of the annual general meeting, the elected Directors will take office and the retiring Directors will retire at the conclusion of that meeting.

## **Appointment of Directors of the Board between Annual General Meetings**

**28. Casual vacancies**

- 28.1 If the office of a Director of the Board is vacant as a consequence of clauses 36, 37, or 38, the Members of the Company may by resolution appoint another person to hold office as a Director of the Board in the place of the Director no longer holding office. The person appointed will hold office only until the time when the person removed would have retired. Approval of the Nomination Committee is not required for appointment to a casual vacancy.

**29. Insufficient Directors**

- 29.1 If there is a vacancy in the office of a Director, 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 a quorum or convening a general meeting of the Company.

## **Powers of Board**

### **30. Validation of acts of Board**

- 30.1 The acts of the Board or a Director or Secretary of the Company are valid despite any defect that may afterwards be discovered in appointment or qualification.

### **31. General business management**

- 31.1 The business of the Company is to be managed by or under the direction of the Board.
- 31.2 The Board will in the course of managing the business of the Company consult with the Australian astronomical community.
- 31.3 The Board may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 31.4 A clause made or resolution passed by the Company in general meeting does not invalidate any prior act of the Board which would have been valid if that clause or resolution had not been made or passed.
- 31.5 The Board may engage all such officers and employees as it may consider necessary and regulate their duties and fix their salaries.

### **32. Negotiable instruments**

- 32.1 Any 2 Directors of the Board may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 32.2 If a second Director of the Board is unavailable at any time to act as co-signatory for the purposes of clause 32.1, the representative of a Member of the Company, who has been co-opted by the Board for the purposes of clause 32, may act as co-signatory.

### **33. Establishment of branches of the Company**

- 33.1 The Board may establish such local branches of the Company as it determines from time to time and provide for the establishment and control of such branches in regulations.

## **Committees**

### **34. Nomination Committee**

- 34.1 There will be a Nomination Committee of the Members made up of at least five people, chaired by a Director and made up of representatives of a subset of the Members and any external people nominated by the Board whose role will be to identify appropriate candidates to stand for election to the Board. The majority of the Nomination Committee will be representatives of Members.
- 34.2 The Nomination Committee will meet at least annually to consider potential candidates to fill Board vacancies, taking into account the requirements of clause 22.4 and the skills present on the then current Board.
- 34.3 In order to identify appropriate candidates the Nomination Committee must ensure that Board vacancies are advertised nationally. Each Member has the right to inspect all applications on request, but it is the role of the Nomination Committee to shortlist candidates who may stand for election to the Board.
- 34.4 Persons recommended by the Nomination Committee are eligible to stand for election to the Board at the next annual general meeting following recommendation.
- 34.5 Except in the case of Directors appointed at the first annual general meeting of the Company, any Director that is a member of the Nomination Committee at the end of his or her term is not eligible to stand for reappointment.
- 34.6 The terms of reference of the Nominations Committee are to ensure there are enough suitable candidates for the Members to have choice when electing new Directors, and to filter the applications for suitability as defined by clause 22.4.

### **35. Other committees**

- 35.1 The Board may set up other committees and delegate any of its powers and duties to those committees as it thinks fit from time to time.
- 35.2 Any other committee must consist of at least one Director of the Board and such other persons as the Board may determine.
- 35.3 The powers and duties delegated to a committee will be upon any terms and conditions as the Board may determine, including the fixing of a quorum for a meeting.

## **Removal and resignation of Directors of the Board**

### **36. Removal of Directors of the Board**

- 36.1 Subject to the Act, the Members of the Company may by resolution of a majority of Members (of which special notice will be given) remove any Director of the Board from office.

### **37. Resignation of a Director of the Board**

- 37.1 A Director of the Board may resign as a Director of the Board of the Company by giving a written notice of resignation to the Company at its registered office.

### **38. Vacation of office of Director of the Board**

- 38.1 In addition to any other circumstances in which the office of a Director of the Board becomes vacant under the Act, the office of a Director of the Board becomes vacant if that Director of the Board:
- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
  - (2) 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;
  - (3) is not present at 2 consecutive meetings of Directors without special leave of absence from the Directors and the Directors declare his or her seat to be vacant;
  - (4) becomes disqualified from being a Director under the Act or any order made under the Act;
  - (5) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his interest in the manner required by the Act;
  - (6) is removed from office in accordance with clause 36; or
  - (7) resigns from office in accordance with clause 37.
- 38.2 A vacancy occurring on the Board pursuant to clause 38.1 will be filled by a person elected by the Board, and that person will hold office only until the time when the person in whose stead he is elected would have retired from office or until the Members elect a replacement Director pursuant to clause 28.

- 38.3 The vacancies on the Board created by the retirement of Directors pursuant to clause 24.1 will be filled by persons elected by the Members, subject to the provisions of clause 22.4.

## **Directors' interests**

### **39. Prohibition on being present or voting**

- 39.1 Except where permitted by the Act a Director who has a material personal interest in a matter that is being considered at a meeting of the Board:
- (1) must not be counted in a quorum;
  - (2) must not vote on the matter; and
  - (3) must not be present while the matter is being considered at the meeting.

### **40. Conflict**

- 40.1 A Director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as Director must declare at a meeting of the Board of the Company or by written notice to the Secretary of the Company the fact and the nature, character and extent of the conflict.

## **Remuneration of Directors**

### **41. Directors' remuneration**

- 41.1 The Directors may be paid or provided remuneration for their services as Directors, provided that the total amount or value of remuneration to all Directors must not exceed an aggregate maximum amount of \$110,000 per annum or any greater amount determined by the Company in general meeting.

### **42. Directors' expenses**

- 42.1 The Company may pay the Directors' travelling and other expenses that they properly and reasonably incur:
- (1) in attending Board meetings or any meetings of committees of Directors;

- (2) in attending any general meetings of the Company; and
- (3) in connection with the Company's business.

## **Secretary**

### **43. Terms of office of Secretary**

- 43.1 A Secretary of the Company holds office on the terms and conditions (including as to remuneration) that the Board determines.

## **Indemnity and insurance**

### **44. Indemnity**

- 44.1 To the extent permitted by the Act, the Company indemnifies every person who is or has been a Director or officer of the Company against any liability incurred by that person in his or her capacity as a Director or officer of the Company or of the related body corporate (as the case may be).

## **Board meetings**

### **45. Meetings of the Board**

- 45.1 The Board will meet at such times and places as may be determined from time to time by it, but must meet at least once in every financial year of the Company.

### **46. Calling Board meetings**

- 46.1 A Director may at any time call a meeting of the Board.

### **47. Notice of meeting**

- 47.1 At least 7 days notice must be given to every Director of the Board of any meeting specifying the time, place and general nature of the business of such meeting, but where the Chair considers an emergency exists he or she may take such steps as he considers necessary to notify Directors of the Board of the proposed meeting despite 7 days notice not having been given.

#### **48. Technology meeting of Board**

48.1 A Board meeting may be held using telephone or by any other technology provided that:

- (1) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
- (2) at the commencement of the meeting each Director must announce his or her presence to all the other Directors taking part in the meeting.

48.2 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the Chair to leave the meeting.

#### **49. Appointment of Chair**

49.1 The Directors will elect from among the Directors a Chair.

49.2 Subject to clause 24.1, the Chair's term of office as Chair expires on the earlier to occur of the expiry of the Chair's term of office as a Director or the resolution of the other Directors.

49.3 A Chair that retires as a result of the expiry of the Chair's term of office as a Director, and is reappointed as a Director in accordance with this Constitution, is eligible for re-election as Chair.

49.4 The Directors may elect a Director as Deputy Chair to act as Chair in the Chair's absence.

49.5 The Directors present may elect a Chair of a Directors' meeting if:

- (1) there is no Chair or Deputy Chair; or
- (2) neither the Chair nor Deputy Chair is present within 15 minutes after the time appointed for holding the Directors' meeting; or
- (3) the Chair and Deputy Chair are unwilling to act as Chair of the Directors' meeting.

## **50. Quorum**

- 50.1 A quorum for a meeting of the Board is more than half of the serving Directors.
- 50.2 Subject to clause 50.1, the Directors of the Board may act notwithstanding any vacancy in their body.

## **51. Passing of Board resolutions**

- 51.1 A resolution of the Board must be passed by a majority of the votes cast by Directors of the Board entitled to vote on the resolution.
- 51.2 Every Director of the Board is entitled to one vote.
- 51.3 The Chair has a casting vote if necessary in addition to any vote he or she has as a Director of the Board.

## **52. Circulating resolutions**

- 52.1 The Board may pass a resolution without a Board meeting being held if all the Directors of the Board entitled to receive notice of a meeting of the Board sign a document containing a statement that he or she is in favour of the resolution set out in the document.
- 52.2 Separate copies of a document may be used for signing by Directors of the Board if the wording of the resolution and statement is identical in each copy.
- 52.3 The resolution is passed when the last Director signs.

## **53. Observers**

- 53.1 The Board may invite observers to attend Board meetings, in particular where it requires access to any of the skills described in clause 22 which are not available on the current Board.

## **Meetings of Members**

### **54. Circulating resolutions**

- 54.1 This clause 54 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.

- 54.2 The Company may pass a resolution without a general meeting being held if all the Members 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.
- 54.3 Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- 54.4 The resolution is passed when the last Member signs.

## **55. Calling of general meeting**

- 55.1 The Board may call a general meeting whenever it sees fit.
- 55.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.
- 55.3 The Board:
- (1) may convene an extraordinary general meeting at any time; and
  - (2) must, on the requisition of 25% of Members, or 5 Members (whichever is the fewer) convene an extraordinary general meeting of Members to be held in accordance with the provisions of the Act but, in any case, not later than 2 months after the receipt by the Company of the requisition.
- 55.4 The requisition for an extraordinary general meeting must state the objects of the meeting and be signed by the requisitionists and deposited at the registered office of the Company and may consist of several documents in like form each signed by one or more requisitionists.
- 55.5 If the Board does not within 21 days after the deposit of a requisition proceed to convene an extraordinary general meeting of Members, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves in the same manner as nearly as possible as that in which meetings are to be convened by the Board, call a meeting, but a meeting so convened shall not be held after the expiration of 3 months from the said date of the deposit of the requisition.
- 55.6 Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board to convene an extraordinary general meeting, will be paid to the requisitionists by the Company.

## **56. Amount of notice of meeting**

- 56.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

## **57. Persons entitled to notice of general meeting**

57.1 Written notice of a meeting of the Company's Members must be given individually to:

- (1) each Member entitled to vote at the meeting;
- (2) each Director of the Board; and
- (3) the Company's auditor.

57.2 No other person is entitled to receive notice of general meetings.

## **58. How notice is given**

58.1 The Company may give the notice of meeting to a Member:

- (1) personally;
- (2) by sending it by post to the address for the Member in the register of Members or the alternative address (if any) nominated by the Member;
- (3) by sending it to the facsimile number or electronic address (if any) nominated by the Member;
- (4) by sending it by other electronic means (if any) nominated by the Member; or
- (5) by notifying the Member in accordance with clause 58.2.

58.2 If the Member nominates:

- (1) an electronic means (**nominated notification means**) by which the Member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the Member may use to access notices of meeting;

the Company may give the Member notice of the meeting by notifying the Member (using the nominated notification means):

- (3) that the notice of meeting is available; and
- (4) how the Member may use the nominated access means to access the notice of meeting.

## **59. When notice is given**

- 59.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.
- 59.2 Except as provided by clause 59.3, a notice of meeting given to a Member under clause 58.1(3) is taken to be given on the Business Day after it is sent.
- 59.3 A notice of meeting given to a Member under clause 58.1(3) is not effective if:
- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
  - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
  - (3) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- 59.4 A notice of meeting given to a Member under clause 58.1(5) is taken to be given on the Business Day after the day on which the Member is notified that the notice of meeting is available.
- 59.5 A certificate signed by a manager, Secretary or other officer of the Company that the notice was posted or given in accordance with this clause 59 is conclusive evidence of the matter.

## **60. Period of notice**

- 60.1 Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

## **61. Contents of notice**

- 61.1 A notice of a general meeting must:
- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
  - (2) state the general nature of the meeting's business;
  - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;

- (4) be worded and presented in a clear, concise and effective manner; and
- (5) contain a statement setting out the following information:
  - (a) that the Member has a right to appoint a proxy; and
  - (b) that the proxy need not be a Member of the Company.

## **62. Notice of adjourned meeting**

- 62.1 When a meeting is adjourned for 10 days or more, notice of the adjourned meeting must be given as in the case of an original meeting, except that it will not be necessary to give any notice of adjournment or of the business to be transacted at an adjourned meeting.

## **63. Failure to give notice**

- 63.1 Any general meeting will be deemed not to be duly convened if the Board or the requisitionists fail to give notice of any general meeting in accordance with this constitution.

## **64. Technology**

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

## **65. Quorum**

- 65.1 A quorum constitutes more than half of the Members present in person or by duly appointed proxy, attorney or representative.
- 65.2 No business may be transacted at any general meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- 65.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
  - (1) where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or
  - (2) in any other case, the meeting is adjourned to the date, time and place the Board specifies. If the Board does not specify 1 or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week;
  - (b) if the time is not specified – the same time; and
  - (c) if the place is not specified – the same place.
- 65.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the Members present will constitute a quorum.

## **66. Chair at general meetings**

- 66.1 The Chair of the Board, if present, presides as Chair at every general meeting.
- 66.2 Where a general meeting is held and the Chair of the Board is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Deputy Chair of the Board if present presides as Chair of the meeting or, if the Deputy Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Members present may appoint any 1 of their number to be Chair of the meeting.
- 66.3 The Chair may with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting.

## **67. Business at adjourned meetings**

- 67.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

## **Proxies and body corporate representatives**

### **68. Who can appoint a proxy**

- 68.1 A Member who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint an individual or a body corporate as the Member's proxy to attend and vote for the Member at the meeting. The proxy need not be a Member.

### **69. Votes by proxy**

- 69.1 A proxy appointed to attend and vote for a Member has the same rights as the Member
- 69.2 A proxy:

- (1) may demand or join in demanding a poll; and
- (2) may vote on a poll.

69.3 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

## **70. Document appointing proxy**

70.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Act.

70.2 A proxy's appointment is valid at an adjourned general meeting.

70.3 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.

70.4 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:

- (1) to vote on:
  - (a) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
  - (b) any procedural motion, including any motion to elect the Chair of the meeting, to vacate the Chair of the meeting or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and

- (2) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

70.5 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the Chair may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.

## **71. Lodgement of proxy**

71.1 The written appointment of a proxy must be received by the Company, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

- (1) the time for holding the general meeting or adjourned general meeting at which the appointee is intended to vote; or
- (2) the taking of a poll on which the appointee is intended to vote.

71.2 The Company receives an appointment of a proxy or attorney and any power of attorney or other authority under which the appointment was executed when they are received at:

- (1) the national office;
- (2) a facsimile number at the national office; or
- (3) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

71.3 An instrument appointing a proxy may be in the form set out in Annexure B or in a form that is as similar to that form as the circumstances allow.

## **72. Validity of proxy vote**

72.1 A vote cast by a proxy is valid although, before the proxy votes:

- (1) the appointing Member dies;
- (2) the Member is mentally incapacitated;
- (3) the Member revokes the proxy's appointment; or
- (4) the Member revokes the authority under which the proxy was appointed by a 3<sup>rd</sup> party;

unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

## **73. Attorney of Member**

73.1 An attorney for a Member may do whatever the Member could do personally as a Member, but if the attorney is to vote at a meeting of Members or a class of Members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least

15 minutes before the meeting or the taking of a poll, in the same way as the appointment of a proxy.

## **Voting at meetings of Members**

### **74. How vote may be exercised**

- 74.1 Subject to clauses 75 and 76 at any general meeting of Members, each Member has 1 vote on a show of hands and on a poll.
- 74.2 The vote may be exercised in person or by proxy or attorney.

### **75. Voting disqualification**

- 75.1 A Member is not entitled to vote at a general meeting if the annual subscription of the Member is more than 2 months in arrears at the date of the meeting or the postponed or adjourned meeting.

### **76. Objections to right to vote**

- 76.1 A challenge to a right to vote at a meeting of Members:
  - (1) may only be made at the meeting; and
  - (2) must be determined by the Chair, whose decision is final.
- 76.2 A vote not disallowed following the challenge is valid for all purposes.

### **77. How voting is carried out**

- 77.1 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.
- 77.2 On a show of hands, a declaration by the Chair is conclusive evidence of the result. Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 77.3 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by Members entitled to vote on the resolutions.

### **78. Matters on which a poll may be demanded**

- 78.1 A poll may be demanded on any resolution.

78.2 A demand for a poll may be withdrawn.

**79. When a poll is effectively demanded**

79.1 At a meeting of the Company's Members, a poll may be demanded by:

- (1) at least 3 Members entitled to vote on the resolution; or
- (2) the Chair.

79.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or
- (3) immediately after the voting results on a show of hands are declared.

**80. When and how polls must be taken**

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

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

80.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

80.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

**81. Chair's casting vote**

81.1 In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a Member or proxy.

81.2 The Chair has a discretion both as to use of the casting vote and as to the way in which it is used.

## **Annual general meeting**

### **82. Business of an annual general meeting**

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

- (1) the consideration of accounts, balance sheets, the Board's report and auditor's report; and
- (2) the fixing of the auditor's remuneration.

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

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

82.3 The Chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

82.4 If the Company's auditor or the auditor's representative is at the meeting, the Chair of an annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

## **Minutes**

### **83. Minutes to be kept**

83.1 The Board must keep minute books in which they record within 1 month:

- (1) proceedings and resolutions of meetings of the Company's Members;
- (2) proceedings and resolutions of Board meetings;
- (3) resolutions passed by Members without a meeting; and
- (4) resolutions passed by Board without a meeting.

83.2 The Directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:

- (1) the Chair of the meeting; or
  - (2) the Chair of the next meeting.
- 83.3 The Board must ensure that minutes of the passing of a resolution without a meeting are signed by a Director of the Board within a reasonable time after the resolution is passed.
- 83.4 Without limiting clause 83.1 the Board must record in the minute books:
- (1) all appointments of officers;
  - (2) the names of the Directors of the Board present at all meetings of Board and the Company;
  - (3) the names of all representative of Members present at all meetings of the Company; and
  - (4) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a Director of a material personal interest.

## **Accounts, audit and records**

### **84. Accounts**

- 84.1 The Board must cause proper accounting and other records to be kept in accordance with the Act, including with respect to:
- (1) all sums of money received and expended by the Company and the matter in respect of which the receipt and expenditure takes place;
  - (2) all sales and purchases of real and personal property by the Company; and
  - (3) the assets and liabilities of the Company.
- 84.2 The accounts of the Company will be kept at the registered office of the Company or, subject to the Act, at such other place as the Board thinks fit, and will always be open to inspection by Directors of the Board.
- 84.3 The financial year of the Company will close on 30 June each year.
- 84.4 The Board must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.

## **85. Audit**

- 85.1 A registered company auditor must be appointed.
- 85.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.
- 85.3 Where the incorporating legislation or other establishment documents of any Member so requires, the Company must, where its total income exceeds or may reasonably be expected to exceed \$100,000 or any higher amount notified to the Company by that Member from time to time, cause a report by a registered company auditor on the accounts of the Company to be made every financial year and to be submitted to the council, board or other similar body of that Member within three months after the end of the financial year to which that report relates.

## **86. Inspection of records**

- 86.1 The Directors or the Company by resolution passed at a general meeting may authorise a Member to inspect books of the Company.

## **Execution of documents**

### **87. Execution of documents**

- 87.1 The Company may execute a document if the document is signed by:
  - (1) 2 Directors of the Board of the Company; or
  - (2) a Director of the Board of the Company and the Secretary or another person duly appointed by the Board for that purpose.
- 87.2 The same person may not sign in the dual capacities of Director and Secretary.
- 87.3 A Director may sign any document as Director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.

### **88. Execution of document as a deed**

- 88.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with clause 87.

## Inadvertent omissions

### 89. Formalities omitted

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

## Alterations to Constitution

### 90. Alterations

- 90.1 Subject to clauses 90.2 and 90.3, any amendments to the Constitution will be made in accordance with the Act, which at the date of this Constitution provides that, as long as notice has been given in accordance with the Act, amendments may be made by a resolution of at least 75% of Members entitled to vote.
- 90.2 Despite any provision of the Act to the contrary, subject to clause 90.3 the Company must not amend this Constitution unless in the case of any Member whose incorporating legislation so requires (**Constrained Member**), the Council or other similar body of the member has by resolution authorised the alterations.
- 90.3 If the Council or other similar body of a Constrained Member has not authorised any amendment resolved by the Members in accordance with clause 90.1 within 3 calendar months after the date of the Members' resolution (**Due Date**) then with effect from the next Business Day after the Due Date:
- (1) that Constrained Member is deemed to have resigned pursuant to clause 18.1, and will be entitled to a pro-rata refund of subscription fees paid for the balance of the year during which the resignation took effect; and
  - (2) the amendment resolved pursuant to clause 90.1 takes effect.

## **Winding up**

### **91. Winding up**

- 91.1 If upon the winding up or dissolution of the Company any property remains, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the Members of the Company but must be given or transferred to some other institution or institutions determined by the Members of the Company at or before the time of dissolution which has similar objects to the Company and which is approved by the Commissioner of Taxation as an income tax exempt charitable institution for the purposes of any Commonwealth Taxation Act.
- 91.2 If the Members do not make the necessary determination under clause 91.1, the Company may apply to the Supreme Court to determine the institution or institutions.

## **Annexure A Initial Members**

### **Level 1**

Anglo-Australian Telescope Board

Australian National University

Monash University

Swinburne University of Technology

The University of Queensland

The University of Sydney

The University of Western Australia

### **Level 2**

Curtin University of Technology

James Cook University

Macquarie University

The University of Southern Queensland

The University of Tasmania

## Annexure B Form of Proxy

### Astronomy Australia Limited

I, \_\_\_\_\_ of \_\_\_\_\_, being a Member of the above named company, appoint \_\_\_\_\_ of \_\_\_\_\_ or, in his or her absence, \_\_\_\_\_ of \_\_\_\_\_ as my proxy to vote for me on my behalf at the \*annual general/\*extraordinary/\*general meeting of the company to be held on \_\_\_\_\_ and at any adjournment of that meeting.

† This form is to be used \*in favour of/\*against the resolution.

Signed on \_\_\_\_\_ .

\* Strike out whichever is not desired.

† To be inserted if desired.