

**Internet Society of Australia
A Chapter of the Internet Society
ACN 076 406 801**

**Annual General Meeting – 2018
Explanatory Memorandum**

An annual general meeting is required to be held under the Corporations Act 2001, and certain items of business must be transacted at the meeting. This Explanatory Memorandum supplements the formal Agenda and explains the background to the items of business.

1. Approval of Minutes of Previous AGM

Members are asked to approve online the Minutes of the previous Annual General Meeting:

- <https://www.internet.org.au/files/121/AGM-2018/501/AGM17-Minutes.pdf>

2. Noting of Financial Statements and Reports

The Chair's Report will be presented.

Members are asked to note the Financial Statements, Directors' Report and Auditor's Report:

- <https://www.internet.org.au/files/121/AGM-2018/501/AGM18-FinStmnt.pdf>
- <https://www.internet.org.au/files/121/AGM-2018/501/AGM18-DirRpt.pdf>
- <https://www.internet.org.au/files/121/AGM-2018/501/AGM18-AudRpt.pdf>

3. Amendments to the Constitution

The Constitution was approved by members at the AGM in 2015, replacing the original Articles. After 3 years' experience with the new format, the Directors recommend a number of adjustments.

3.1 The Form of the Directors' Report

Background

1. The Constitution at 10.1.1 obliges the Board to present to each AGM "the directors' report".
2. This is easily construed to mean the formal document prescribed in s.300B of the Corporations Act. This is intended for large corporations, and is mostly unchanging from year to year.
3. We have no requirement to file a s.300B document with ASIC, and we do not do so. This is because we are a "small company limited by guarantee" (ss.45B, 292).
4. By amending cl.10.1.1 to refer to "a" directors' report rather than "the" directors' report, the document provided to members can be in a form that suits members' needs.

Purpose

To enable members to be provided with a useful form of Directors' Report.

Rationale

The current wording of the Constitution requires that the company prepare each year an inappropriate standard-form document designed for large corporations, which contains material of limited use to members. By approving the proposed change, the report can omit that material.

Proposal for Changes to the Constitution

AMEND 10.1 AS FOLLOWS:

10. Proceedings at General Meetings

10.1 Business

The ordinary business of an Annual General Meeting includes:

10.1.1 the consideration of the annual financial report, [~~DELETE: the~~] [INSERT: a] directors' report and the Auditor's report;

3.2 Appointment of an Auditor

Background

- (1) The Corporations Act does not place any requirement on a "small company limited by guarantee" to have its financial statements subjected to a full audit, nor to the lesser standard of a review by an accountant. That leaves the company free to require audit or review, or not. See Corporations Act ss.9, 301(4), 308, 308(3AA).
- (2) The Constitution currently requires an auditor's report to be presented to members (cl.10.1.1).
- (3) An audit is costly, with current prices \$1300-\$1800 for a review, or \$3500-\$5000 for an audit. At \$15,000 turnover, that's c.10% or 30% of income, and even at \$50,000 it's c.3% or 9%.
- (4) In addition, either audit or review involves effort and delays, and difficulties have frequently been encountered in having it completed before the AGM – in which case the company would be in breach of its Constitution.
- (5) When material amounts of money are involved, an audit is very appropriate.
- (6) In low-revenue years, on the other hand, an audit delivers no value for the expense and effort, because the conventional accounting controls that are in place provide sufficient assurance of probity.

The Directors accordingly propose to the members that we amend the Constitution to set a threshold below which no audit is required.

The Directors propose a threshold of \$30,000, well below the \$250,000 set by the Corporations Act.

Note that, in any year in which sufficient reason exists, the Directors can nonetheless commission a review or audit.

Purpose

To replace the unqualified requirement for an audit with a requirement that an audit be performed when the turnover for the year exceeds the threshold figure of \$30,000.

Rationale

Audit costs money and time, and is of limited benefit when turnover is low. The Executive Committee in any case exercises financial controls, on an ongoing basis.

Proposal for Changes to the Constitution

REPLACE

17. Auditor

The Company is to observe the provisions of the Act in relation to the appointment, removal and resignation of an Auditor.

WITH

17. Auditor

17.1 In any year in which the company's revenue exceeds \$30,000, an Auditor is to be appointed.

17.2 If an Auditor is appointed, the Company is to observe the provisions of the Act in relation to the appointment, removal and resignation of an Auditor.

CONSEQUENTIAL AMENDMENTS

10. Proceedings at General Meetings

10.1.1 the consideration of the annual financial report, the directors' report and the [DELETE: Auditor's report] [INSERT: auditor's or reviewer's report, if any];

10.1.3 the appointment of the Auditors [APPEND: if any] [DELETE: and the fixing of the Auditor's remuneration]

10.11 Auditor

The Auditor [INSERT: , if any,] is entitled: ...

3.3 Membership Acceptance Process

Background

- (1) The Constitution has an unconstrained process for the admission of new members, without an approval or acceptance step. A prospective new member must only apply, confirm they support the Objectives of the Company, and pay the appropriate membership fee (clause 5.1.3).
- (2) Clause 5.7 obliges the Board to admit a new member that satisfies these three requirements, without any discretion to assess an application for membership. The Board has no constitutional power to reject an application, nor cancel a membership, even if information in the application form is false or it can't verify the application is from a natural person or company entity that is not already a member (clause 5.1.3).
- (3) Other membership-based organisations recently have found an acceptance process helpful in dealing with questions regarding validity of new member applications, and confirming or denying that a new application is from an appropriate person.
- (4) The Board has become concerned that the Company is vulnerable to bad-faith membership register manipulation, facilitated by a fully online application process and likely increased use of electronic voting. For example, a natural person could register multiple identities as multiple memberships, and manipulate voting at general meetings, and the Board would be bound to accept the applications and admit the applicants to the Membership Register unconditionally.
- (5) Clause 7 provides for a detailed disciplinary process whereby the Board can take disciplinary action against members, including expulsion, following a 'show cause' process of at least 28 days. However once expelled, the Board cannot prevent the individual re-joining as a new member again and continuing the conduct that led to the disciplinary action.
- (6) The current Constitution was adopted at the 2015 AGM. Prior to this, the Company was governed by the Memorandum and Articles of Association. Both are available at <https://www.internet.org.au/about#constitution>
- (7) Clause 6.3 of the previous Articles of Association provided that "an application by any person or organisation who or which has previously been expelled from membership of the Society may be allowed by the directors on and subject to any terms and conditions they see fit.". However, this power to allow or disallow or apply terms and conditions to previously expelled members was not carried over to the new Constitution.

Proposition

The Directors accordingly propose to the members that the Constitution be amended to:

- a) Create the power for the company to assess and, if necessary, to not accept an application for new membership; and
- b) Enable the Membership to determine the assessment process and criteria.

Detailed Explanation

- (1) Clause 5.6:
The purpose of the changes to clause 5.6 is to establish the ability to create and modify administrative assessment criteria, subject to the Constitution, but published outside it and hence modified more readily than within the Constitution. It is anticipated that the assessment process will be publicly available.
The Directors anticipate convening a consultation group from within the Membership to draft assessment processes and criteria, to be approved by the Membership at a General Meeting.
- (2) Clause 5.7:
The purposes of the changes to clause 5.7 are to enable the assessment process and criteria to be applied by the Board, and to ensure procedural fairness by requiring written notice to the applicant providing the reasons for the decision.

Proposal for Changes to the Constitution

(1) In *Clause 5.6 Application and Assessment*:

Number the existing clause 5.6.1.

Insert a new clause "5.6.2 The Membership may by resolution at a general meeting approve an assessment process and criteria, to be implemented by the Board".

(2) In *Clause 5.7 Admission*:

Number the existing clause 5.7.1; and

amend the clause by deleting "only"; and

append "and any assessment process duly established under clause 5.6."

Insert a new clause "5.7.2 If the Board determines to not admit an applicant, the applicant is to be provided a written notice including the reasons for non-admittance."

4. Resignations of Directors

The Constitution stipulates that Directors' terms are 3 years. The retiring directors are:

- Keith Besgrove
- Paul Brooks
- Craig O'Toole
- Holly Raiche

There is no barrier to retiring directors standing for re-election.

5. Appointment of Directors

A call for Nominations for 4 vacant positions was sent to members. Nominations were received and accepted until 5pm AEST on 31 August 2018.

The following candidates were nominated. In accordance with cl. 12.3.5 of the Constitution, they are listed in alphabetical order, together with the names of their proposers and seconders:

<u>Candidate</u>	<u>Proposer</u>	<u>Seconders</u>
Keith BESGROVE	Holly Raiche	Roger Clarke
Paul BROOKS	Paul Brooks	Gary Parker
Todd HUBERS	Todd Hubers	Roger Clarke
Geoffrey HUSTON	Geoffrey Huston	Roger Clarke
Craig O'TOOLE	Sae Ra Germaine	Roger Clarke
Holly RAICHE	Roger Clarke	Keith Besgrove

The nominees' information is at: <https://internet.org.au/files/121/AGM-2018/501/IA-Nominees-2018.pdf>

In accordance with cl. 12.3.7, because the number of candidates for election as directors is greater than the number of vacancies, a ballot was required to be held.

The ballot was run online, and was scheduled to close at 5pm on the day preceding the AGM, with the intention that the results be announced during the AGM.

6. Other Business

Under the Corporations Act, no substantive motion can be put to a General Meeting unless notice has been given in advance. Other business items may, however, be raised – preferably with advance notice, to enable the Board to prepare for discussion on each matter. The Meeting Chair may invite such additional items to be addressed and may invite discussion.