Constitution of **Manufacturing Industry Skills Alliance Ltd**

ABN 74 109 600 302

Adopted December 2022

CONSTITUTION OF MANUFACTURING INDUSTRY SKILLS ALLIANCE LTD

1. PRELIMINARY

1.1 Company limited by guarantee

Director means a person who is, for the time being, a director of the Company.

Employee Organisation means an organisation or association of employees registered under the *Fair Work (Registered Organisations) Act 2009*, or as determined by the Board from time to time, and includes Australian Manufacturing Workers' Union (ABN 59 459 725 116) and Australian Council of Trade Unions (ABN 67 175 982 800).

Employer Organisation means an organisation or association of employers registered under the Fair Work (Registered Organisations) Act 2009, or as determined by the Board from time to time, and includes The Australian Industry Group (ABN 76 369 958 788) and Australian Chamber of Commerce and Industry (ABN 85 008 391 795).

Employment Service Provider means an organisation that is funded by the Commonwealth of Australia as part of a program for the provision of employment services.

Foundation Member Directors has the meaning provided at rule 4.3(a)(i).

Foundation Members means each of the following whilst it is a Member:

(a) The Australian Industry Group (ABN 76 369 958 788);

(b)

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(a) require the Industry Cluster Organisation to pursue objects similar to those of the Company in respect of the VET sector and to apply its income solely towards promoting those objects; and

(b)

(iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

(iv) anything (including a right, obligation or concept) includes each part of it;

(c) a singular word includes the plural, and vice versa;

(d) a word that suggests one gender includes the other genders;

(e) the word **includes** in any form is not a word of limitation;

(f) if a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning. The meaning of general words is not limited by specific examples;

(g) the word

(vi) providing industry stewardship and oversight in respect of education, training and skills development programs, delivery, assessment, accountability and planning for future needs; as well as

(vii) undertaking any other activities in the furtherance of its objects.

(c) The Company may do all things that are necessary, convenient or incidental to carrying out, or for the attainment of, its objects.

2.2 **Objects do not limit powers**

The objects in rule 2.1 do not limit the powers of the Company under the Corporations Act or otherwise.

2.3 **Application of income and property**

(a)

(b) At least 21 days before the Board holds a meeting to expel a Member, the Board must give a written notice to the Member which states:

(i) the allegations against the Member;

(ii) the proposed resolution for the Member's expulsion;

(iii) that the Member has an opportunity at the meeting to address the allegations either orally or in writing; and

(iv) that, if the Member notifies the Secretary in writing at least 48 hours before the meeting, the Member may elect to have the question of that Member's expulsion dealt with by the Company in general meeting.

(c) The Company must expel a Member and remove the Member's name from the Register where:

(i) a general meeting is held to expel a Member; and

(ii) a Special Resolution is passed by those present at the meeting and voting for the Member to be expelled. The vote must be taken by ballot.

(d) A Member expelled from the Company does not have any claim on the Company, its funds or its property.

3.8 Membership not transferrable

A right, privilege, or obligation which a person has by reason of being a Member:

(a) is not capable of being transferred or transmitted to another person;

(b) remains with that person; and

(c) expires upon cessation of their membership.

4. DIRECTORS

4.1 Number of Directors

The Company must have at least three Directors and not more than nine Directors.

4.2 Eligibility of Directors

(a) In accordance with section 201B of the Corporations Act a Director must be an individual who is at least 18 years of age.

(b) A Director need not be a Member.

(c) A person is not eligible to serve as a Director unless they are capable of demonstrating:

(i) practical experience in, or a strong connection to, an Industry sector;

(ii) experience or expertise in one of the following fields: accounting, finance, marketing, law, corporate governance, vocational education and training or technology; or

(iii) that they meet any other eligibility category that the Board determines is necessary to ensure the Board has a broad skillset and provides for a diverse range of backgrounds.

(d) A person is not eligible to serve as a Director if the person is also an Officer of:

(i) a Commonwealth, State, Territory or local government agency or body (including government business enterprises);

(ii) an Registered Training Organisation;

(iii) a Group Training Organisation;

(iv) an Employment Service Provider; or

(v) AASN Provider.

(e) Neither the auditor of the Company nor any partner, employee or [illegible] of the auditor is a Director.

(ii) identify those Directors who the Board considers to be Independent Directors; and

(iii) identify which position under rule 4.3(a) each Director fills.

4.4 **Term of Initial Directors**

(a) In order to facilitate transition, and implement a system of rotation the B78yst2.56 T(024 Tw 3.467

(i) a nomination of the person from a party which is entitled to nominate that person for the position under rule 4.3(a); and

(ii) a consent to act as a Director signed by the person.

(b) A nomination provided under rule 4.6(a)(i) must identify:

(i) the position for which the person is nominated;

(ii) whether the person and nominating party considers they meet all requirements for the position including (if applicable) whether they are capable of meeting the requirements of being an Independent Director.

(c) The Company must:

(i) notify Members of every candidate for election as a Director at least 21 days before the relevant Annual General Meeting, including the position(s) for which they are nominated; and

(ii) identify whether each candidate is considered by the Company to be capable of meeting the requirements of being an Independent Director.

If the number of Directors is reduced below three, the continuing Directors may act as the Board only:

(a) to appoint additional Directors in accordance with rule 4.12;

(b) to convene a meeting of the Members; and

(c) in emergencies.

4.12 **Board vacancies**

(a) The Board may act despite a vacancy occurring in any position on the Board.

(b) The Board may appoint any person who is eligible and nominated by a relevant party under rules 4.2 and 4.3 to fill a position on the Board that:

(i) has become vacant under rule 4.8; or

(ii) that remains vacant following an Annual General Meeting,

and that person holds office for the remainder of the term which the Director they replaced would have served.

5. **POWERS OF THE BOARD**

5.1 **Powers generally**

Except as otherwise required by the Corporations Act, any other applicable law or this Constitution, the Board:

(a) has power to manage the business of the Company;

(b) may engage and determine the remuneration and entitlements of the employees of the Company; and

(c) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the Members.

5.2 **Exercise of powers**

A power of the Board can be exercised only:

(a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 13; or

(b) in accordance with a delegation of the power under rules 7 or 8.

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(b) entry into any agreement which exceed limits set by the Board from time to time or which pose a significant reputational risk to the Company; and

(c) the appointment, reappointment or replacement of the:

(i) Chief Executive Officer; and

(ii) Secretary.

8.3 **Power to revoke delegation**

(i) amend the terms of reference of;

(ii) revoke any delegations to (in respect of a Board Committee); or

(iii) otherwise abolish,

any Committee previously established.

(f) Committee members are required to:

(i) disclose any actual, potential or perceived conflicts of interest they have in relation to affairs of the Committee to the other members of the Committee; and

(ii) must not:

(A) be present while any matter which relates to their conflict of interest is being considered at the meeting; or

(B) vote on the matter,

unless those Committee members who do not have a conflict of interest in the matter have passed a resolution that:

(C) identifies the Committee member;

(D) the nature and extent of their conflict of interest; and

(E) states that those Committee members are satisfied that the interest should not disqualify the Committee member from voting or being present.

(g) The Board must document the formation of any Committee in the minutes of the Board.

9.2 **Board Committees**

(a) All members of a Board Committee must be Directors.

(b) Subject to the restrictions applying to the delegation of Board powers and functions under rule 8 and as otherwise permitted under section 198D of the Corporations Act, the Board may delegate any of its powers and functions to a Board Committee.

(c) If the Board delegates any of its powers and functions to a Board Committee under rule 9.2:

(i) the Board may impose any restrictions or duties on the exercise of those delegated powers and functions (including by specifying those matters reserved for the Board);

(ii) the relevant Board Committee must comply with any restrictions or duties imposed in accordance with rule 9.2(c)(i); and

(iii) the delegation must be recorded in the minutes of the Board.

(d) A Board Committee which is delegated the

9.3 **Audit and Risk Committee**

(a) The Board is to:

(i) establish and maintain an Audit and Risk Committee;

(ii) develop and make publicly available to the Members a copy of the charter for the Audit and Risk Committee; and

(iii) publicly disclose to the Members of the Company the relevant qualifications and experience of the members of the Audit and Risk Committee.

(b) The Audit and Risk Committee's functions must include reviewing the appropriateness of the Company's:

(i) financial reporting; and

(ii) performance reporting; and

(iii) system of risk oversight and management; and

(iv) system of internal controls,

for the Company.

(c) The Audit and Risk Committee must:

(i) be a Board Committee;

(ii) have at least three members, all of whom are Independent Directors, and otherwise be comprised of a majority of Independent Directors; and

(iii) be chaired by an Independent Director, who is not the Chair of the Board.

(d) At the end of each reporting period, the Company must disclose to the Members the number of times the Audit and Risk Committee met throughout the reporting period and the individual attendances of the members at those meetings.

9.4 **Nominations Committee**

(a) The Board is to:

(i) establish and maintain a Nominations Committee;

(ii) develop and make publicly available to the Members a copy of the charter for the Nominations Committee.

(b) The Nominations Committee will be responsible for seeking nominations for Director

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9.5 **Advisory Committees**

(a) Subject to rule 9.5(b), each Advisory Committee may comprise such persons as the Board thinks fit and a member of an Advisory Committee does not need to be a Director or Member.

(b) At least one member of any Advisory Committee established must be a Director.

9.6 **Reimbursement of Advisory Committee members**

(a) Subject to rule 9.6(b), the Company may reimburse an Advisory Committee member for any reasonable expenses (including travelling and accommodation expenses) incurred by the Advisory Committee member:

(i) in attending Advisory Committee meetings;

(ii) on the business of the Company; or

(iii) in carrying out duties as an Advisory Committee member,

upon the receipt of a valid itemised invoice in respect of such expenses.

(b) For the purposes of rule 9.6(a), the Board may by resolution:

(i) determine what constitute reasonable expenses; and

(ii) stipulate any additional procedures to be complied with in relation to the reimbursement of expenses.

10. DIRECTORS' DUTIES AND INTERESTS

10.1 **Compliance with duties under the Corporations Act and general law**

Each Director must comply with their respective duties under the Corporations Act and under the general law. Without limitation, these duties require that Directors:

(a) exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;

(b) act for a proper purpose and in good faith in the best interests of the company;

(c) not misuse their position as a Director;

(d) not misuse information they gain in their role as a Director;

(e) disclose any actual, potential or perceived material conflicts of interest; and

(f) not allow the Company to trade while it is insolvent.

10.2 **Director can hold other offices**

Subject to the restriction at rule 4.2(d), a Director may:

(a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;

(b) be a member of any corporation (including the Company) or partnership, other than the Company's auditor; or

(c) be a creditor of any corporation (including the Company) or partnership; or

(d) enter into any agreement with the Company.

10.3 **Disclosure of interests**

(a) Each Director must comply with the general law in respect of disclosure of conflicts of interest or duty, and with section 191 of the Corporations Act in respect of disclosure of material personal interests.

(b) The Board must agree in writing on its policy for the regulation of conflicts of interest, which must, amo(ic)7 (h)-1.b-.96 (m)5.7 (a10 ( )0.7 (e(.3 (e)25.4 (c)61949 Sub (a)6.9 (m be9a9suitable person to provide,9such goods9or services;

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(b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

10.6 **Obligation of secrecy**

(a) Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

(i) in the course of their duties as an Officer of the Company;

(ii) by a decision of either the Board or the Company in general meeting; or

(iii) by law (including as a result of any contractual obligations of the Company) or for public accountability reasons (including following a request by either House of Parliament).

(b) The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

11. **DIRECTORS' REMUNERATION**

11.1 **Directors' remuneration and expenses**

(a) Subject to this rule 11.1, the Directors are to be remunerated for their services as Directors at a daily fee to be determined and payable in the manner agreed by the Board.

(b) The maximum fee payable to a Director for any one day is one daily fee.

(c) The limit on the total amount of remuneration payable via a daily fee to each Director is fixed at an amount not exceeding:

(i) $800 per day for a Director;

(ii) $12,000 in total per annum for a Director other than the chair of the Audit and Risk Committee;

(iii) $18,000 in total per annum for the chair of the Audit and Risk Committee;

(iv) $1,000 per day for the Chair; and

(v) $30,000 in total per annum for the Chair.

(d) The amount of a daily fee paid to an office holder for a meeting day is:

(i) if the Director's qualifying meeting day time is less than 2 hours— 40% of the daily fee;

(ii) if the Director's qualifying meeting day time is at least 2 hours and less than 3 hours—60% of the daily fee; or

(iii) otherwise—100% of the daily fee.

(e) Subject to rule 11.1(f), the Company may pay a Director (in addition to any remuneration) all(1()4.7 qTw 5.53 (f)9.3 (Tf0.)CID 25 >(a)5 (l4-2.5n)12.3 ( )]TJ0.007 Tc -0

12.2 **Insurance**

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

12.3 **Former Officers and auditors**

The indemnity in favour of Officers under rule 12.1 is a continuing indemnity. The indemnity applies in respect of all acts done by a person while an Officer or auditor of the Company even though the person may not be an Officer or auditor of the Company at the time the claim is made.

12.4 **Director's Access, Indemnity and Insurance Deed**

Subject to the Corporations Act, the Competition and Consumer Act and any other applicable law, the Company may, without limiting a person's rights under this rule 12:

(a) enter into an agreement with; or

(b) execute a deed in favour of,

a person who is or has been an Officer of the Company to give effect to the rights of the person under this rule 12 on any terms and conditions that the Board thinks fit.

13. **BOARD MEETINGS**

13.1 **Convening Board meetings**

The Board or a Director may at any time, and a Secretary must on request from the Board or any Director, convene a Board meeting.

13.2 **Minimum number of Board meetings**

The Board must convene, as a minimum, at least four times annually.

13.3 **Notice of Board meeting**

The convenor of each Board meeting:

(a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director; and

(b) may give that notice orally (including by telephone) or in writing,

13.5 **Chairing Board meetings**

(a) The Chair will chair Board meetings.

(b) If there is no Chair or the Chair is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

13.6 **Quorum of Board meetings**

(a) Unless the Board decides otherwise, the quorum for a Board meeting is a majority of current Directors, and a quorum must be present for the whole meeting.

(b) A Director is treated as present at a meeting held by audio or audio-

13.11 **Valid proceedings of the Board**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a Board Committee is valid even if it is later discovered that:

(a) there was a defect in the appointment of the person; or

(b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

13.12 **Observers**

(a) The Board may, at its discretion, permit observers to attend and speak at meetings of the Board.

(b) In no circumstance will an observer be counted in constituting a quorum or be permitted to vote on any decision of the Board.

(c) The Board may revoke it permission granted under rule 13.12(a) at any time.

14. **MEETINGS OF MEMBERS**

14.1 **Annual General Meeting**

The Company must hold an Annual General Meeting in accordance with the requirements of section 250N of the Corporations Act.

14.2 **Calling meetings of Members**

A meeting of Members:

(a) may be convened at any time by the Board or any Director; and

(b) must be convened by the Board when required by section 249D or 250N of the Corporations Act or by order made under section 249G of the Corporations Act.

14.3 **Notice of meeting**

(a) Subject to rule 14.4, at least 21 days'

a resolution may be proposed and passed at a meeting of which less than 21 days' notice

16.5 **Appointment for particular meeting, standing appointment and revocation**

(a) A Member may appoint a proxy, attorney or representative to act at a particular meeting of Members or make a standing appointment and may revoke any appointment.

(b) A proxy, attorney or representative may, but need not, be a Member.

16.6 **Position of proxy or attorney if Member present**

17. **ENTITLEMENT TO VOTE**

17.1 **Number of votes**

Subject to sections 250BB(1) and 250BC of the Corporations Act:

(a) each Member has one vote on a show of hands or a poll; and

(b) a Member who is present and entitled to vote and is also a proxy, attorney or representative of another Member has one vote on a show of hands.

17.2 **Casting vote of Ch-2(a)-48otot3Td()TjEMC /H3MCID 6>>BDJ00ember whttorn antow 2(p)-26g 1()Tj-0TIJ0Tw [(**

18.2 **Demand for a poll**

19.3 **Cessation of Secretary's appointment**

The person automatically ceases to be a Secretary if the person:

(a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a secretary of a company;

(b) becomes disqualified from managing corporations under Part 2D.6 of the Corporations Act and is not given permission or leave to manage the Company under sections 206GAB or 206G of the Corporations Act;

(c) is deceased, or becomes of unsound mind or physically or mentally incapable of performing the functions of that office;

(d) resigns by notice in writing to the Company; or

(e) is removed from office under rule 19.4.

19.4 **Removal from office**

Subject to any agreement between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

20. **MINUTES**

20.1 **Minutes must be kept**

The Board must cause minutes of:

(a) proceedings and resolutions of meetings of the Members;

(b) the names of Directors present at each Board meeting and the names of those present at any Committee meeting;

(c) proceedings and resolutions of Board meetings and any Committee meetings;

(d) resolutions passed by Directors without a meeting; and

(e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A of the Corporations Act.

20.2 **Minutes as evidence**

A minute recorded and signed in accordance with section 251A of the Corporations Act is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

20.3 **Inspection of minute books**

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members in accordance with section 251B of the Corporations Act.

21. COMPANY SEALS

21.1 Common seal

The Board:

(a) may decide whether or not the Company has a common seal; and

(b)

22.3 **Audit or review**

If required by Part 2M.3 of the Corporations Act, the Board must cause the Company's financial report for each financial year to be audited or reviewed, and obtain an auditor's report.

22.4 **Inspection of financial records and books**

Subject to rule 20.3 and section 247A of the Corporations Act, a Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

22.5 **Register of Members**

(a) The Company must establish and maintain the Register.

(b) In accordance with section 169 of the Corporations Act, the Register must contain the following information:

(i) the name and address of each Member;

(ii) the date on which the entry of the Member's name in the Register is made;

(iii) the name and details of each person who stopped being a Member within the last seven years;

(iv) the date on which the person stopped being a Member; and

(v) an index of Members' names if the Company has more than 50 Members and the Register itself is not kept in a form that operates effectively as an index.

23. **NOTICES**

23.1 **Notices by Company**

A notice is properly given by the Company to a Member if it is:

(a) in writing and signed on behalf of the Company (by original or printed signature);

(b) addressed to the Member

23.3 **When notice is given**

(a) A notice to a Member by the Company is regarded as given and received:

(i) if it is delivered personally:

(A) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or

(B) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day;

(ii) if it is sent by fax or electronic message or given under section 249J(3)(cb) of the Corporations Act:

(A) by 5.00 pm (local time in the place from which it is sent or given) on a Business Day – on that day; or

(B) after 5.00 pm (local time in the place from which it is sent or given) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and

(iii) if it is sent by mail:en(.3 1 Ts3)-0.ef

(e) unless a contrary intention appears, all persons, things and circumstances appointed or created by or under the constitution of the Company in force before the Transition Time shall continue to have the same status, operation and effect after the Transition Time.