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CONSOLIDATED CONSTITUTION

OF

AUSTRALIAN NEWSAGENTS' FEDERATION LIMITED

ACN 008 295 038

Incorporating original replacement of the Constitution adopted at the Special General Meeting on 26 February 2003

Amended (2003, 2005, 2007, 2010)

Current: 4 February 2010

Supersedes: 1 December 2007

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REVISION CONTROL		
Operative Date	Supersedes	Summary of Changes
26 February 2003	N/A	
25 July 2003	26 February 2003	
1 December 2005	25 July 2003	
28 November 2007	1 December 2005	
24 February 2010	28 November 2007	Amendments to clauses 43 and 45.

PRELIMINARY

1. DEFINITIONS

In these clauses:

"**Associate Member**" means a person admitted as an Associate Member under Clause 9.5;

"**Annual Subscription Fee**" means the annual financial yearly fee payable by Individual Members to the Company (such fee being determined from time to time in respect of all Members or particular categories of Member by the Board);

"**Auditor**" means the auditor of the Company;

"**Board**" means:

- (a) the board of Directors of the Company; or
- (b) one or more Directors with authority to act for the Company;

"**Chairperson**" means the Director elected by the Board to chair Board meetings and General Meetings under Clause 42;

"**Branch**" means a sub-committee of the Board at a State or Territory level;

"**Company**" means Australian Newsagents' Federation Limited;

"**Corporation**" means a corporation wherever incorporated or resident and includes a company wherever incorporated or resident;

"**Delegate**" in relation to a Member means a representative, proxy or attorney of that Member;

"**Deputy Chairperson**" means the Director elected by the Board as deputy chairperson of the Company under Clause 42;

"**Director**" means a director of the Company and includes an alternate director properly acting as a director;

"**General Meeting**" means any meeting of the Members convened and held according to these clauses and includes every Annual General Meeting;

"**Honorary Life Member**" means an Honorary Life Member of the Company in accordance with Clause 9A;

"**Independent Returning Officer**" means an independent and appropriately experienced returning officer appointed by the Board from time to time to administer and oversee elections to the Company's Board in accordance with this Constitution;

"**Individual Member**" means a Member of the Company in accordance with Clause 7;

"**Individual Financial Member**" means an Individual Member who has paid the most recent Annual Subscription Fee;

"**Member**" means an Individual Member, an Individual Financial Member, a State Association Member or an Associate Member except where otherwise expressly stated.

"**Month**" means calendar month;

"**Newsagency Industry**" means the business and trade run by Newsagents in Australia and described on a collective basis.

"**Newsagent**" means any person who, in the Board's sole discretion, is a participant as a newsagent in the Newsagency Industry.

"**Office**" means the registered office for the time being of the Company;

"**Resident Newsagent**" in relation to a State or Territory means:

- (a) subject to paragraph (b), a person who owns or controls a business of a Newsagent in the State or Territory. A person owns or controls a business for the purposes of this definition if any of the following apply:
 - (i) the person owns (legally or beneficially) the business either individually or as a joint tenant;
 - (ii) the person holds not less than a 50% interest in the business as a tenant in common;
 - (iii) the person is a partner in a partnership which owns the business;
 - (iv) the person has control over the following in relation to a company which owns the business:
 - (A) not less than 50% of the voting shares or issued share capital; or
 - (B) the power to appoint not less than 50% of the directors; or
 - (v) the person is a beneficiary or appointor of a trust, the trustee of which owns the business;
- (b) where more than one person (including, the case of a partnership, the partners, or in the case of a company, the company itself and its majority owner, and, in the case of a trust the trustee and an appointor or beneficiary) owns or controls a business of a Newsagent in the State or Territory within the meaning of paragraph (a), only one person may be accepted as the Member in respect of that business and if more than one such person applies for membership in respect of that business, the Board may in its absolute discretion decide who is the Resident Newsagent in respect of the business;

"**Secretary**" means any person or any one of the persons appointed by the Board to perform the duties of a secretary of the Company;

"**Special Resolution**" has the meaning given by Section 9 of the Corporations Act 2001 namely, a resolution:

- (a) of which notice as set out in paragraph 249L (c) has been given; and
- (b) that has been passed by at least 75% of the votes cast by Members present in person or by Delegate entitled to vote on the resolution.

Note: Section 249L relevantly provides:

"A notice of a meeting of a company's members must:

...

(c) if a special resolution is to be proposed at the meeting – set out an intention to propose the special resolution and state the resolution;"

"**State Association Member**" means any State or Territory association of Newsagents which is at the time of adoption of this Constitution a Member, or an entity admitted as a State Association Member in accordance with Clause 8.4;

"**Trade Mark**" means trade mark No 1002272, more commonly known as the "N" trade mark.

2. INTERPRETATION

In these clauses, unless the contrary intention appears,:

- 2.1 subject to Clause 1, a word has the same meaning as the definition of the word in the Corporations Act 2001;
- 2.2 a reference to a section is to a section of the Corporations Act 2001, and includes any substituted statutory provision;
- 2.3 neuter includes masculine and feminine;
- 2.4 singular includes plural and vice versa;
- 2.5 reference to a person includes corporations and natural persons;
- 2.6 headings do not affect interpretation;
- 2.7 where an expression is defined, another grammatical form of that expression has a corresponding meaning;
- 2.8 all replaceable rules are displaced by this Constitution.

3. CHANGE TO CONSTITUTION

This Constitution may only be changed, amended or replaced by a special resolution of the Individual Financial Members.

4. COMPANY LIMITED BY GUARANTEE

The Company is a company limited by guarantee.

5. OBJECTS OF THE COMPANY

- 5.1 The objects of the Company are:
 - 5.1.1 to foster and promote the Newsagency Industry throughout Australia;
 - 5.1.2 to unify the Newsagency Industry in Australia under the direction and management of the Company, so that there is a national focus for its activities;
 - 5.1.3 to represent the interests of the Newsagency Industry on external bodies and to government;
 - 5.1.4 to actively pursue initiatives for the benefit of the Newsagency Industry through the Company's subsidiary, ANF Commercial Limited;
 - 5.1.5 to operate in a fair and democratic manner based on the principle of balancing the competing interests of all Members;
 - 5.1.6 to operate in an open and transparent manner, and to be accountable to all Members;
 - 5.1.7 to liaise with, represent, manage and consult with the Branches in the creation, dissemination and application of policy initiatives;
 - 5.1.8 to be an inclusive organisation, such that any Newsagent in Australia is eligible to become an Individual Member;
 - 5.1.9 to ensure, as far as practicable, that no Member is financially disadvantaged, as compared to the remaining Members, by the activities of the Company;

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- 5.1.10 all objects incidental to the above; and
- 5.1.11 such other objects as determined by ordinary resolution of the Company.

6. LIABILITY OF MEMBERS

- 6.1 The liability of the Members is limited.
- 6.2 Every Member of the Company undertakes to contribute the sum of \$100 to the property of the Company if the Company is wound up while the Member is a Member, or within one year after the Member ceases to be a Member, for payment of the debts and liabilities of the Company (contracted before the Member ceases to be a Member) and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves.
- 6.3 Subject to the Corporations Act 2001, Affiliate Members shall have no liability to contribute to the Company in the case of the Company being wound up.
- 6.4 With effect from 1 July in each year, the Board may increase the Annual Subscription Fee in its absolute discretion.
- 6.5 Each Individual Member must pay the Annual Subscription Fee for that Member in respect of a financial year within 90 days of the later of:
 - 6.5.1 the beginning of the financial year; and
 - 6.5.2 the issue of an invoice to the Member.
- 6.6 The Board may impose one-off levies on all Members for particular projects or to take account of particular circumstances provided that:
 - 6.6.1 the levy does not exceed \$100 per Member; and
 - 6.6.2 such levy, together with all other levies made pursuant to this sub-clause in the previous 12 months does not exceed \$200; and
 - 6.6.3 the levy is approved by resolution of the Board; and
 - 6.6.4 a person is not liable to pay the levy if that person resigns as a Member by notice in writing to the Company within 14 days of being notified of the levy (notification may be made by newsletter or by advertisement in a daily newspaper circulating within the Member's State or Territory).

7. INDIVIDUAL MEMBERS

- 7.1 An Individual Financial Member is entitled to received notices of, to attend, to speak at, and to vote at General Meetings of the Company. An Individual Member who has not paid the most recent Annual Subscription Fee is not so entitled.
- 7.2 The Board may admit a person as an Individual Member if:
 - 7.2.1 the person is a Resident Newsagent in the State or Territory in respect of which the person applies for membership; and
 - 7.2.2 the person pays the Annual Subscription Fee for the financial year in which the application is made (or such pro rata part of it as determined by the Board); and
 - 7.2.3 the person complies with any other reasonable conditions imposed by the Board.
- 7.3 An Individual Member may resign as a Member of the Company by notice in writing given to the Company.

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- 7.4 A resigning Individual Member may receive a refund, on a pro rata basis, of the Annual Subscription Fee paid by that Individual Member.
- 7.5 The Board may expel any Individual Member who fails to pay the Annual Subscription Fee to the Company when due where that failure continues for a period of 90 days after notice is given by the Secretary to the Individual Member that the Individual Member will be expelled if the Annual Subscription Fee is not paid within that period.
- 7.6 The Board may also expel a Member where, in the Board's reasonable opinion, the Member has engaged in conduct which affects in a materially adverse way the interests of the Company or has otherwise brought, or is likely to bring, the Company into disrepute. However, the Board must not expel a member unless:
- 7.6.1 the Board has notified the Member in writing that it proposes to expel the Member and the grounds for so doing;
 - 7.6.2 the Board has given the Member a reasonable opportunity to make submissions to the Board either in writing or in person (at which the Member may be legally represented) on the proposal to expel the Member;
 - 7.6.3 the Board has given reasonable consideration to those submissions; and
 - 7.6.4 a general meeting of members ratifies, by majority vote of those Members attending and entitled to vote, the decision to remove the Member (but only if the Member provides to the Secretary evidence in writing that no less than 100 Members support the matter being put to a general meeting for such ratification).

8. STATE ASSOCIATION MEMBERS

- 8.1 A State Association Member is entitled to receive notices of, to attend, and to speak at, but is not, subject to Clause 8.3, entitled to vote at, General Meetings of the Company.
- 8.2 A State Association Member is entitled to appoint one Delegate to attend and to speak at General Meetings of the Company.
- 8.3 A State Association Member may itself be appointed as a Delegate by an Individual Financial Member and may exercise the vote of the Individual Financial Member in accordance with Clauses 25.4 and 25.5.
- 8.4 A State Association Member may be expelled, suspended or disaffiliated by a resolution passed at a General Meeting of the Company by a majority of Individual Financial Members in a majority of States and Territories. At least 21 days' notice must be given to all Individual Financial Members for consideration of a resolution under this clause.
- 8.5 The Company may, by special resolution, admit a new association of newsagents or other body having a close connection with the Newsagency Industry in Australia as a State Association Member on such conditions as are set out in the special resolution, provided that there be no more than one State Association Member per State or Territory at any time.
- 8.6 A State Association Member may resign as a member of the Company by giving at least 3 months' notice in writing to the Company.

9. ASSOCIATE MEMBERS

- 9.1 An Associate Member is entitled to receive notices of, to attend, and to speak at, but is not entitled to vote at, Annual General Meetings of the Company.
- 9.2 An Associate Member is entitled to appoint one Delegate to attend and to speak at Annual General Meetings of the Company.

- 9.3 An Associate Member is not entitled to attend any other General Meetings of the Company unless the Board directs otherwise.
- 9.4 The Company may, by special resolution, expel or suspend an Associate Member.
- 9.5 The Board may admit a body as an Associate Member to the membership of the Company, on such conditions as the Board sees fit (but subject always to this Clause 9).

9A. HONORARY LIFE MEMBERS

- 9A.1 The Board may appoint a person as an Honorary Life Member if the Board considers that the person has made an outstanding contribution to the Company or the newsagency industry.
- 9A.2 An Honorary Life Member is entitled to receive notices of and to speak at General Meetings of the Company. An Honorary Life Member will also have such other rights as the Board may determine from time to time including, if determined by the Board, voting rights. If the Board determines to confer voting rights on Honorary Life Members, then Honorary Life Members will be deemed to be Individual Financial Members for the purposes of the provisions of this Constitution dealing with voting.

10. BRANCHES

- 10.1 In each State and Territory the Board may establish a Branch, regardless of whether or not there is also a State Association Member. If the Board does so in respect of a State or Territory, the following provisions of this clause 10 apply.
- 10.2 The Branches are not Members of the Company and have no separate legal identity.
- 10.3 A Branch shall operate as a sub-committee of the Board, the members of which will comprise Individual Financial Members elected in accordance with Clause 10.5.
- 10.4 From the members elected under clause 10.5, a majority of the Branch committee members in that particular State or Territory may recommend to the Board the appointment of:
 - 10.4.1 a Branch Chairperson;
 - 10.4.2 a Branch Deputy Chairperson,

and the Board shall make such appointments in accordance with such recommendation unless, acting reasonably, it considers that the appointment or appointments are not consistent with the interests of the Company. If so, the Board may make its own appointments from the Members elected under clause 10.5. .
- 10.5 The Branch committee members, the number of which may be determined in the Board's discretion (but in no case being less than 3), shall be elected in the following manner:
 - 10.5.1 the Branch committee members shall be elected by the Individual Financial Members in that particular State or Territory.
 - 10.5.2 the conduct of the elections shall be in a manner approved in advance by the Board.
 - 10.5.3 the first elections shall be held as soon as practicable after the adoption of this Constitution.
 - 10.5.4 subsequent elections for Branch committee members will be held, as far as practicable, every 2 years to coincide with election of Directors.

- 10.5.5 the Branch committee members will hold office for a term commencing on the first Annual General Meeting of the Company following their election and ending (subject to re-election) at the commencement of the third Annual General Meeting of the Company following their election.
- 10.5.6 the Board may fill casual vacancies on Branch committees (the appointee being from the same State or Territory as the original committee member) and such appointee will hold office until the next elections of Branch committee members. In filling a casual vacancy the Board shall consider in good faith and, where consistent with the interests of the Company, accept any recommendation expressed by a majority of the Branch committee members in that particular State or Territory.
- 10.6 The role of a Branch is to:
- 10.6.1 receive proposals and suggestions from the Individual Members in the State or Territory and put such proposals to the Board for its consideration.
- 10.6.2 implement the initiatives of the Board for the Individual Members in that State or Territory.
- 10.6.3 operate as the conduit between the Board and the Individual Members in that State or Territory in relation to the channelling of information and resources.
- 10.6.4 undertake functions and roles ancillary to the above.
- 10.6.5 any other role deemed necessary by the Board.

11. MEMBERSHIP NOT TRANSFERABLE

Membership of the Company is personal to the Member and is not transferable.

12. CONVENING GENERAL MEETINGS

- 12.1 The Board may convene a General Meeting when and where the Board decides.
- 12.2 If there are not enough Directors capable of acting to form a quorum of the Board, any 3 Directors may convene a General Meeting.
- 12.3 Unless convened on the requisition of Members under section 249D, the Board may cancel or postpone a General Meeting by notice to the Members specifying the place, day and time for holding the postponed General Meeting.

Note: Section 249D relevantly provides:

"Calling of general meeting by directors when requested by members:

- (1) *The directors of a company must call and arrange to hold a general meeting on the request of:*
- (a) *members with at least 5% of the votes that may be cast at the general; or*
- (b) *at least 100 members who are entitled to vote at the general meeting.*
- ...
- (2) *The request must:*
- (a) *be in writing; and*
- (b) *state any resolution to be proposed at the meeting; and*

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(c) *be signed by the members making the request; and*

(d) *be given to the company.*

(3) *Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.*

(4) *The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.*

(5) *The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company."*

13. NOTICE OF MEETING

13.1 The Company must give notice of every General Meeting to:

13.1.1 each Member (but in the case of Associate Members, this Clause 13 only applies to Annual General Meetings);

13.1.2 each Delegate (if already appointed at the time the notice is given);

13.1.3 each Director; and

13.1.4 the Auditor;

in the manner and time required by the Corporations Act 2001 and this Constitution.

Note: The Corporations Act 2001, in general, requires 21 days written notice to be given for each General Meeting.

14. CONTENT OF NOTICE

A notice of General Meeting must at least specify the place, day and time of the meeting and the general nature of the business.

15. QUORUM OF GENERAL MEETING

A quorum at a General Meeting is a combined total of at least 20 of the Individual Financial Members represented:

15.1 in person; or

15.2 by Delegates (including proxies, as per the Clause 1 definition),

with representation from at least 5 States or Territories.

16. NO QUORUM AT GENERAL MEETING

16.1 If a quorum is not present within 15 minutes after the time appointed for a General Meeting:

16.1.1 the meeting, if convened upon the requisition of Members, is dissolved; and

16.1.2 any other meeting is adjourned to the same day in the next week at the same time and place or to such other day, time and place as the Board may specify by notice to the Members.

16.2 If a quorum is not present within 15 minutes after the time appointed for an adjourned General Meeting, the meeting is dissolved.

17. CHAIRPERSON AT GENERAL MEETING

- 17.1 The person elected under Clause 42 as Chairperson will preside at all General Meetings.
- 17.2 If there is no such Chairperson, or if the Chairperson is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the Deputy Chairperson (as elected under Clause 42) will act as Chairperson of the meeting. If the Deputy Chairperson is not present within 15 minutes after the time appointed for the meeting or is unable or unwilling to act; the Directors present must elect one of themselves as Chairperson of the meeting. If they do not do so, the Members present and entitled to vote at the meeting must elect one of themselves as Chairperson of the meeting.
- 17.3 The Chairperson of a meeting of Members has general conduct of the meeting and may determine the procedures to be followed, subject to the general law and the requirements of the Act. Without limiting those powers, the Chairperson may refuse a person admission to, or require the person to leave and not return to, a meeting if the person:
- 17.3.1 refuses to permit reasonable examination of any article in his or her possession; or
- 17.3.2 is in possession of any:
- (a) electronic or recording device;
- (b) placard or banner; or
- (c) other article;

which the Chairperson considers to be dangerous, offensive or liable to cause disruption.

18. ADJOURNMENT

- 18.1 The Chairperson may with the consent of a General Meeting at which a quorum is present (and must if so directed by the meeting) adjourn the meeting from time to time and from place to place.
- 18.2 No business may be transacted at an adjourned meeting other than the business left unfinished at the original meeting.
- 18.3 If a General Meeting is adjourned for 30 days or more, the Company must give notice of the adjourned meeting to all persons as if an original meeting. Otherwise it is not necessary for the Company to give notice of an adjournment or of the business to be transacted at an adjourned meeting.

19. MANNER OF VOTING

A question put to the General Meeting must be decided:

- 19.1 on a show of hands of the Individual Financial Members; or
- 19.2 by poll (in accordance with Clause 20) of the Individual Financial Members if demanded (before or on the declaration of the show of hands) by:
- 19.2.1 the Chairperson of the meeting;
- 19.2.2 At least five (5) Individual Financial Members entitled to vote on the resolution; or
- 19.2.3 Individual Financial Members with at least 5% of the votes that may be cast on the resolution on the poll.
- 19.3 Each Individual Financial Member (in person or represented by Delegate) has one vote on a show of hands and on a poll.

19.4 The Chairperson shall keep a register of Delegates for each General Meeting, which shows the number of Individual Financial Members each Delegate represents, and hence the number of votes a Delegate may exercise on a poll in accordance with Clause 20. The Chairperson will, at the commencement of each General Meeting, announce, or distribute a notice specifying, the number of Delegates attending the Meeting and the total number of votes each Delegate has on a poll.

20. POLL – GENERAL MEETINGS

20.1 No poll may be demanded on the election of a Chairperson of a meeting.

20.2 If a poll is demanded, it must be taken as and when the Chairperson directs except that a poll demanded on a question of adjournment of the meeting must be taken at the meeting and without adjournment.

20.3 If on a poll any question arises as to the number of votes to which any person is entitled the Chairperson must decide the matter, with reference to the register of Delegates under Clause 19.4, and such decision made in good faith is final.

20.4 The demand for a poll does not prevent the meeting dealing with other business.

20.5 The result of the poll is the resolution of the meeting.

20.6 The demand for a poll may be withdrawn.

21. CHAIRPERSON HAS CASTING VOTE

The Chairperson of a General Meeting has a casting vote.

22. DECLARATION OF A RESULT

Unless a poll is demanded, a declaration by the Chairperson that a resolution has been carried, or carried by a particular majority or lost, and an entry to that effect in the minutes, is conclusive evidence of the fact.

23. MEMBERS' VOTING RIGHTS

An Individual Financial Member has one vote which may be exercised at General Meetings of the Company in person or by a Delegate appointed in writing by the Individual Financial Member under Clause 25.4.

24. OBJECTION TO A VOTER'S QUALIFICATION

24.1 A person may object to a voter's qualification only at the meeting at which the vote is given.

24.2 The Chairperson's decision on the objection is final.

25. REPRESENTATION AT GENERAL MEETINGS

25.1 Each Individual Financial Member may attend, speak and vote at General Meetings in accordance with Clause 23 and with this Clause 25.

25.2 A State Association Member may attend and speak at General Meetings in accordance with Clause 8.1. A State Association Member may only exercise a vote in its capacity as a Delegate of an Individual Financial Member in accordance with Clauses 8.3 and 25.4.

25.3 An Associate Member may attend and speak at an Annual General Meeting in accordance with Clause 9.1.

25.4 A Delegate may be appointed for all General Meetings, or for any number of General Meetings, or for a particular General Meeting, by notice in writing executed by the relevant Member and lodged with the Secretary of the Company in accordance with Clause 25.8

("Notice of Appointment"). A Member may change its Delegate by notice in writing to the Secretary.

- 25.5 Unless otherwise provided in a Notice of Appointment, a Delegate will be taken to have authority:
- 25.5.1 to speak to any proposed resolution;
- 25.5.2 in the case of a Delegate of an Individual Financial Member:
- (a) to agree to a General Meeting being convened by shorter notice than is otherwise required by the Corporations Act 2001 or by this Constitution;
- (b) to agree to a resolution being proposed and passed as a special resolution at a General Meeting of which less than 21 days notice has been given;
- (c) to demand or join in demanding a poll on any resolution on which the Delegate may vote;
- 25.5.3 in the case of a Delegate of an Individual Financial Member, even though the Notice of Appointment may refer to specific resolutions and may direct the Delegate how to vote on those resolutions:
- (a) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
- (b) to vote on any procedural motion, including any motion to elect the Chairperson; and
- (c) to act generally at the Meeting
- 25.5.4 even though the Notice of Appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at or to attend (as the case may be), the rescheduled or adjourned meeting or at the new venue.
- 25.6 A Notice of Appointment may direct the manner in which the Delegate is to vote in respect of a particular resolution and, where a certificate or instrument so provides, the Delegate is not entitled to vote on the proposed resolution except as directed in the Notice of Appointment.
- 25.7 Subject to Clause 25.9, a Notice of Appointment need not be in any particular form provided it is in writing, legally valid and:
- 25.7.1 signed by the Member; or
- 25.7.2 if the Member is a body corporate:
- (a) signed by a person duly authorised by the governing body of the Member; or
- (b) executed in accordance with the Corporations Act 2001,
- (as the case may be).
- 25.8 Subject to Clause 25.9, a Delegate may not attend, and, if a Delegate of an Individual Financial Member, may not attend or vote (as the case may be) at a General Meeting or adjourned meeting or on a poll, unless the Notice of Appointment of the Delegate has been:

- 25.8.1 deposited at the registered office of the Company or at such other place specified for that purpose in the notice convening the meeting at least 24 hours before the time for holding the meeting or adjourned meeting or taking the poll (as the case may be);
 - 25.8.2 in the case of a meeting or an adjourned meeting, tabled at the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
 - 25.8.3 in the case of a poll, produced when the poll is taken.
- 25.9 The Directors may, by simple majority at a Board meeting, waive all or any of the requirements of Clauses 25.7 and 25.8 and in particular may, upon the production of such other evidence as the Directors require to prove the validity of the appointment of a Delegate, accept:
- 25.9.1 an oral appointment of a Delegate;
 - 25.9.2 an appointment of a Delegate which is not signed or executed in the manner required by Clause 25.7; and
 - 25.9.3 the deposit, tabling or production of a copy (including a copy sent by facsimile) of a Notice of Appointment.
- 25.10 A vote given in accordance with the terms of a Notice of Appointment is valid despite the revocation of the Notice of Appointment, if no notice in writing of the revocation has been received by the Company by the time and at one of the places at which the Notice of Appointment is required to be deposited, tabled or produced under Clause 25.8.

26. APPOINTMENT AND REMOVAL OF DIRECTORS

- 26.1 Except for the transitional period between the adoption of this Constitution and the first Annual General Meeting thereafter, there shall be one Director elected in respect of each State and Territory by the Individual Financial Members of the relevant State or Territory so that the total number of Directors of the Company shall be 8.
- 26.2 A person may not be elected as a Director in respect of a State or Territory unless the person is a Resident Newsagent of such State or Territory and an Individual Financial Member. A person cannot act as a Director in respect of more than one State or Territory at the same time.
- 26.3 Notwithstanding that the Directors shall be elected from a particular State or Territory, each Director must act in the best interests of the Company as a whole at all times, whether or not doing so may cause some ancillary and unintended advantage or disadvantage to that State or Territory. Subject to such requirement, a Director may have regard to the interests of that State or Territory.
- 26.4 Subject to clause 27 and to clause 29, Directors shall be elected for a term of 2 years and, may re-nominate for re-election after that term.
- 26.5 The Directors of the Company under this Constitution will initially comprise the same Directors who hold office at the date of the adoption of this Constitution by the Company but such Directors (subject to renomination and election) will be taken to retire with effect from the first Annual General Meeting after the adoption of this Constitution.
- 26.6 The nomination and election process described in Clauses 26.7 and 26.8 shall be known as "**The Initial Elections**".
- 26.7 Six weeks (or such longer period determined by the Board but in any case not exceeding 12 weeks) before the term of office of the current Directors expires at the first Annual General Meeting after the adoption of this Constitution, the Board must procure a nomination process for the election of a replacement Director to take place in each State and Territory in the following manner:

- 26.7.1 the nomination and election process shall be conducted by the Board in such manner as the Board determines;
- 26.7.2 the Board may receive nominations for the office of Director from the Individual Financial Members of that State or Territory;
- 26.7.3 a nominee must be:
- (a) a natural person; and
 - (b) a Resident Newsagent in the State or Territory which they seek to represent in terms of a Directorship; and
 - (c) an Individual Financial Member.
- 26.7.4 a person may nominate himself or herself, or may be nominated by an Individual Financial Member (with the person's consent) resident in the same State or Territory;
- 26.7.5 a retiring Director may be nominated, or where there is more than one retiring Director per State or Territory then both retiring Directors may be nominated, but subject always to the proviso that only one of them may be elected;
- 26.7.6 the elections shall be conducted prior to the Annual General Meeting by postal ballot or otherwise in a manner approved by the Board;
- 26.7.7 each Individual Financial Member from a State or Territory shall have one vote to decide their preferred candidate for Director in respect of that State or Territory;
- 26.7.8 the nominee in a State or Territory with the most votes shall be the Director-elect for that State.
- 26.8 At the first Annual General Meeting after the adoption of this Constitution:
- 26.8.1 the retiring Directors under Clause 26.7 are taken to retire with effect from the start of such meeting; and
 - 26.8.2 the Directors-elect who are elected as the replacement Directors under Clause 26.7 are appointed as the new Directors with effect from the start of such meeting.
- 26.9 The process for electing Directors after the Initial Elections shall be known as "**The Ordinary Elections**" and shall be in accordance with clause 26.10 and clause 27.
- 26.10 The Ordinary Elections shall take place in the following manner:
- 26.10.1 the nomination and election process, including the counting of votes, shall be conducted by the Independent Returning Officer in such manner as he or she determines, subject to this Clause 26.10;
 - 26.10.2 not less than 60 days before the expiration of the Director's term, the Board shall give notice of such expiration to the Individual Financial Members in that Director's State or Territory, and call for nominations for Director in that State or Territory. Nominations must be made to the Independent Returning Officer;
 - 26.10.3 a nominee for a new Director must be:
 - (a) a natural person; and
 - (b) a Resident Newsagent in the State or Territory which they seek to represent in terms of a Directorship; and

- (c) an Individual Financial Member;
- 26.10.4 a person may nominate himself or herself, or may be nominated by an Individual Financial Member (with the person's consent) resident in the same State or Territory;
 - 26.10.5 a retiring Director may be nominated;
 - 26.10.6 the election may be conducted by the Independent Returning Officer by postal ballot or otherwise in a manner approved by the Board;
 - 26.10.7 each Individual Financial Member from a State or Territory shall have one vote to decide their preferred candidate for Director in respect of that State or Territory; and
 - 26.10.8 the nominee in respect of each State or Territory with the most votes in the State or Territory shall replace the sitting Director at the expiry of the sitting Director's term of office.
- 26.11 A Director may resign from office by giving 6 weeks' written notice to the Company.
 - 26.12 A Director may be removed from office in accordance with the following process:
 - 26.12.1 The Company may, by ordinary resolution ("the Resolution"), remove a Director from office.
 - 26.12.2 When the removal of the Director takes effect, the Director's office is taken to be vacated under Clause 29.
 - 26.12.3 The Resolution does not take effect until a Director ("appointee") is appointed, pursuant to clause 29.2, to represent the interests of the Individual Financial Members who reside in the State or Territory of the removed Director.
 - 26.12.4 Notice of intention to move the Resolution must be given to the Company at least 2 months before the General Meeting is to be held. However, if the Company calls a General Meeting after the notice of intention is given under this Clause 26.12.4, then the Members in General Meeting may pass the Resolution even though the General Meeting is held less than 2 months after the notice of intention is given.
 - 26.12.5 The Company must give the Director the subject of the Resolution a copy of the notice referred to in Clause 26.12.4 as soon as practicable after it is received.
 - 26.12.6 The Director the subject of the Resolution is entitled to put his or her case to the Members by:
 - (a) giving the Company a written statement for circulation to Members, under Clauses 26.12.7 and 26.12.8; and
 - (b) speaking to the motion at the General Meeting.
 - 26.12.7 The written statement under Clause 26.12.6(a) is to be circulated by the Company to Members by:
 - (a) sending a copy to everyone to whom notice of the General Meeting is sent if there is time to do so; or
 - (b) if there is not time to comply with paragraph (a) – having the statement distributed to Members and Delegates attending the General Meeting and read out at the Meeting before the Resolution is voted on.

- 26.12.8 The written statement under Clause 26.12.6(a) does not have to be circulated to Members if it is more than 1000 words long or defamatory.
- 26.12.9 A Director cannot be removed by the other Directors, so that any Resolution, request or notice of any or all of the Directors is void to the extent that it purports to:
- (a) remove a Director from office; or
 - (b) require a Director to retire or vacate office.

27. ROTATION OF RETIREMENT OF DIRECTORS

- 27.1 In this Clause “**Ordinary Directors**” means any Directors who are not Alternate Directors appointed under Clause 28.
- 27.2 At the second Annual General Meeting after the adoption of this Constitution, one half of the Ordinary Directors must retire from office. If the number of Ordinary Directors is not divisible by 2, then the number of Ordinary Directors nearest to but not exceeding one half must retire from office.
- 27.3 The Ordinary Directors to retire at such second Annual General Meeting must be those Directors who were elected by the narrowest percentage margins in the elections held prior to the first Annual General Meeting after adoption of this Constitution. As between Directors who were elected by the same margin in their respective States or Territories, those to retire must (in absence of agreement between them) be determined by lot.
- 27.4 The balance of the Ordinary Directors must retire at the third Annual General Meeting after adoption of this Constitution.
- 27.5 At the fourth Annual General Meeting and all Annual General Meetings thereafter, the Ordinary Directors who were elected 2 years earlier shall retire.
- 27.6 An Ordinary Election under Clause 26.10 shall be held to replace each Ordinary Director who retires under this Clause.

28. ALTERNATE DIRECTORS

A Director (“principal Director”) may by notice in writing delivered to the Secretary of the Company appoint an alternate Director approved by the Board to act for the principal Director during his or her inability for any time to act as Director. An alternate Director:

- 28.1 may be removed by notice in writing by the principal Director delivered to the Secretary of the Company;
- 28.2 is entitled to notice of Board meetings;
- 28.3 if the principal Director is not present, is entitled to attend Board meetings, count towards a quorum, speak, and vote on all resolutions on which the principal Director could vote. If already a Director, the alternate Director has a separate vote on behalf of the principal Director in addition to his or her own vote;
- 28.4 may exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director in so far as the principal Director had not exercised or performed them;
- 28.5 must be an Individual Financial Member;
- 28.6 is not entitled to remuneration from the Company but is entitled to all expenses reasonably incurred on the Company's business;
- 28.7 is not taken into account in determining any maximum number of Directors;

- 28.8 vacates office if the principal Director ceases to be a Director;
- 28.9 while acting as a Director, is an officer of the Company and not the agent of the principal Director; and
- 28.10 may not act as an alternate for more than one Director;

29. CASUAL VACATION OF DIRECTOR'S OFFICE

- 29.1 A Director vacates office if:
- 29.1.1 the Corporations Act 2001 or these clauses so provide; or
- 29.1.2 the Director becomes of unsound mind or his or her person or estate comes under a law about mental health, old age or infirmity;
- 29.1.3 the Director resigns by notice to the Company in accordance with Clause 26.11; or
- 29.1.4 (a) the Company and the State Association Member, in the State in respect of which the Director was elected, agree in writing ("**Co-operation Agreement**") that the State Association Member will cease to offer general member services to its members and that, subject to the members of the State Association Member joining the Company, the Company will provide general member services to those members as members of the Company; and
- (b) at the time of execution of the Co-operation Agreement, the Director has more than 6 months of his or her 2 year term still to run;
- such vacancy to occur upon the execution of the Co-operation Agreement.
- 29.2 Upon a Director's office becoming vacant (otherwise than by expiry of his or her 2 year term or pursuant to clause 29.1.4), that vacancy shall be filled by the Board by appointing as a Director an Individual Financial Member who is a Resident Newsagent in the State or Territory in respect of which the vacancy arose. The newly appointed Director holds office:
- 29.2.1 If the Ordinary Election process has already commenced in relation to that Annual General meeting at the time of the vacancy, until the next following Annual General meeting after that meeting before which an Ordinary Election must be held to fill the vacancy in accordance with clause 26; and
- 29.2.2 Otherwise until the next Annual General meeting after the vacancy arises, before which an Ordinary Election must be held to fill the vacancy in accordance with clause 26.
- 29.3 If there is no nomination for election to the Board for any State or Territory in accordance with clause 26, the Board may appoint as a Director an Individual Financial Member who is a Resident Newsagent in the State or Territory in respect of which the vacancy arose. The newly appointed Director holds office only until the next Annual General Meeting, before which an Ordinary Election must be held to fill the vacancy in accordance with clause 26.
- 29.4 If a Director's office becomes vacant by virtue of the operation of clause 29.1.4, then an Ordinary Election must be held to fill the vacancy and the Director so elected will hold office for the balance of the term of the Director whose office became vacant under clause 29.1.4 (had that Director not ceased to hold office). The Ordinary Election must be held in accordance with clause 26.10 except that clause 26.10.2 shall apply to such Ordinary Election as if it was modified to read:

"Within 14 days of the execution of the Co-operation Agreement, the Board must give notice of the Director vacancy arising to the Individual Financial Members in the Director's

State and call for nominations for Director in that State. Nominations must be made to the Independent Returning Officer."

30. **DIRECTOR'S INTERESTS AND OFFICES**

- 30.1 Subject to the Corporations Act 2001, a Director may:
- 30.1.1 contract or make an arrangement with the Company as buyer, seller, lender, underwriter, surety or otherwise;
 - 30.1.2 hold an office or place of profit (except as Auditor) under the Company, a related body corporate or other body corporate in which the Company is interested; and
 - 30.1.3 keep for his or her own benefit any profit from that contract, arrangement, office or place of profit.
- 30.2 Any such contract or arrangement is not void or voidable just because a Director was directly or indirectly interested in it.
- 30.3 Subject to Clause 30.4, a Director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
- 30.3.1 be counted in determining whether or nor a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
 - 30.3.2 sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the Company is an executing party,
- however, he or she may not vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 30.4 Clause 30.3 does not apply if, and to the extent that, it would be contrary to the Corporations Act 2001.
- 30.5 The Board may make regulations requiring the disclosure of interests that a Director, and any person deemed by the Board to be related to or associated with the Director, may have in any matter concerning the Company or a related body corporate, and any regulations made under this clause will bind all Directors.

31. **DIRECTORS' EXPENSES**

The Company may pay a Director all expenses reasonably incurred by the Director on the Company's business.

32. **DIRECTORS' REMUNERATION**

- 32.1 The Directors' remuneration (if any) shall be determined by the Individual Financial Members at each Annual General Meeting in the following manner:
- 32.1.1 the Board may recommend an appropriate level of remuneration to the Individual Financial Members for their consideration; and
 - 32.1.2 such recommendation shall be passed or rejected by a resolution of the Individual Financial Members.
- 32.2 If the Individual Financial Members vote to reject the recommendation from the Board, then the Board may formulate a new recommendation for the Individual Financial Members' consideration.

33. **POWERS OF DIRECTORS**

The Board manages the Company's business and may exercise all the Company's powers, unless and to the extent the Corporations Act 2001 or other law or these clauses requires the Company in General Meeting to do so.

34. **NEGOTIABLE INSTRUMENTS**

Negotiable instruments (including cheques) may be signed, drawn, accepted, endorsed or otherwise executed by any two Directors, or as the Board decides.

35. **VACANCY IN BOARD**

If there is a vacancy in the Board:

35.1 if there is still a quorum, the Board may act; or

35.2 if there is not a quorum, the Board may only act in an emergency or for convening a General Meeting but not otherwise.

36. **ATTORNEY OF THE COMPANY**

In addition to the power under section 126(1), the Board may appoint any person or persons to be the attorney of the Company for any purpose, with any powers (not exceeding the powers of the Board), for any period and on any terms, including a power of delegation, not inconsistent with this Constitution.

Note Section 126 relevantly provides:

"126 Agent exercising a company's power to make contracts

(1) A company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. The power may be exercised without using a common seal. (2) This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract."

37. **CONVENING BOARD MEETINGS**

Any 3 Directors may, and the Secretary must at the request in writing of 3 Directors, convene a Board meeting.

38. **NOTICE OF BOARD MEETINGS**

At least 48 hours' notice of any meeting of the Board and the agenda and relevant papers must be given to all Directors in office, unless all Directors in office waive that requirement.

39. **TYPES OF BOARD MEETINGS**

39.1 Subject to these clauses, the Board may meet, adjourn and otherwise regulate its meetings as it decides.

39.2 The Board may meet by telephone link up or other contemporaneous audio (or audio and visual) communication. At each such meeting:

39.2.1 all clauses about Board meetings apply;

39.2.2 at the start of the Board meeting, each Director must acknowledge his or her presence to the other Directors taking part;

39.2.3 no Director may disconnect his or her telephone or other means of contemporaneous communication without the prior express consent of the Chairperson of the meeting;

39.2.4 the Directors must cause all resolutions to be recorded in the minutes of the meeting and to be subsequently confirmed in writing by the Directors taking part;

39.2.5 a resolution comes into effect (subject to its terms) when it is passed.

40. **QUORUM AT BOARD MEETINGS**

Unless the Board otherwise decides, 5 Directors in office and present is a quorum at a Board meeting.

41. **EXERCISING POWERS**

A Board meeting with a quorum may exercise any of the Directors' duties and powers.

42. **CHAIRPERSON AND DEPUTY CHAIRPERSON**

42.1 The Directors must elect a Director as Chairperson and may remove the Chairperson.

42.2 The Directors may elect a Deputy Chairperson and may remove the Deputy Chairperson.

42.3 The Chairperson and Deputy Chairperson shall hold those positions for Board meetings and General Meetings of the Company.

42.4 If there is no Chairperson or if the Chairperson is not present 15 minutes after the time appointed for the meeting or is unable or unwilling to act, the Deputy Chairperson shall act as the Chairperson. If the Deputy Chairperson is also unable or unwilling to act, the Directors present must elect one of themselves as Chairperson of that meeting.

43. **VOTING AT BOARD MEETINGS** [AMENDED BY SPECIAL RESOLUTION 24 FEBRUARY 2010]

43.1 The Board must not vote upon any matter not listed on the agenda accompanying the notice of meeting, unless all Directors in office waive that requirement.

43.2 Each Director has one vote to be exercised by a show of hands.

43.3 A resolution of a Board meeting is carried by a majority of votes.

43.4 The Chairperson has a casting vote, in addition to a deliberative vote.

43.5 *Clause removed.* [Removed by special resolution 24 February 2010]

43.6 *Clause removed.* [Removed by special resolution 24 February 2010]

44. **DELEGATION BY BOARD TO ONE OR MORE DIRECTORS**

44.1 Subject to law, the Board may delegate any of its duties or powers to one or more Directors and may revoke or vary that delegation.

44.2 A delegate so appointed must act within any restrictions imposed by the Board.

44.3 Duties or powers so exercised by a delegate are deemed to be exercised by the Board.

44.4 Unless the Board otherwise decides, this part governs the meetings of a committee of two or more delegates.

45. **WRITTEN RESOLUTION**

45.1 A written resolution signed by a majority of Directors competent to vote on the matter in agreement with the resolution, is deemed to be passed at a properly convened Board meeting, held when the resolution was last signed by a Director. [Amended by special resolution 24 February 2010]

45.2 A written resolution may consist of several documents in the same form, each signed by one or more Directors. A facsimile purporting to be signed by a Director is deemed a document signed by that Director.

45.3 An alternate Director may sign the resolution instead of the principal Director.

46. **MEMBER'S ATTORNEY**

46.1 To act by an attorney in relation to the Company, the Individual Financial Member or the attorney must:

46.1.1 produce to the Company for noting, the instrument appointing the attorney or a certified copy of that instrument;

46.1.2 pay any fee set by the Company for noting;

46.1.3 if required at any time, produce to the Company any other evidence the Company thinks appropriate that the instrument is effective and continues to be in force.

46.2 A power of attorney granted by an Individual Financial Member will, as between the Company and that Member:

46.2.1 continue in force; and

46.2.2 may be acted on;

unless the Company has received written notice of its revocation or of the death or dissolution of that Member.

47. **SECRETARIES**

47.1 The Directors must appoint at least 1 Secretary and may appoint additional secretaries.

47.2 The Directors may appoint 1 or more assistant Secretaries.

48. **SEALS**

48.1 The Company may but is not required to have a common seal.

48.2 The common seal and any official seal may be used only by the authority of the Board or of a committee of Directors so authorised by the Board.

48.3 The sealing of a document with the common seal must be witnessed by two persons being:

48.3.1 a Director; and

48.3.2 a Secretary or another Director or other person appointed by the Board for that purpose.

48.4 The Board may decide that any such signature need not be hand-written. Then the Board must specify in which cases and how the signature must be affixed and how the signature must be verified by a person appointed for that purpose by the Board.

49. **INSPECTION**

Unless authorised by the Board or the Company in General Meeting or the Corporations Act 2001, a Member (not being a Director) is not entitled:

49.1 to inspect the Company's books; nor

49.2 to information about the Company's operations;

if the Board thinks it contrary to the Company's interests.

50. NOTICES

- 50.1 The Company may give to a Member or former Member a notice required under this Constitution or the Act:
- 50.1.1 personally; or
 - 50.1.2 by sending it by post to the address for the person in the register of Members or an alternative address (if any) nominated by the person; or
 - 50.1.3 by sending it to the fax number or electronic address (if any) nominated by the person; or
 - 50.1.4 by any other means the Act permits.
- 50.2 A notice sent by post is taken to be given 3 days after it is posted. A notice sent by fax, or other electronic means, is taken to be given on the business day after it is sent.
- 50.3 A certificate in writing signed by a Director or Secretary that a notice or its envelope or wrapper was addressed and stamped and was posted is sufficient evidence of posting.

51. INDEMNITY OF OFFICERS AND EMPLOYEES

The Company indemnifies an officer or employee of the Company against any liability incurred by that officer or employee (in that capacity):

- 51.1 to another person, except:
- 51.1.1 in the case of an officer, the Company or a related body corporate;
 - 51.1.2 for liability arising from bad faith;
- 51.2 for costs and expenses of:
- 51.2.1 defending proceedings (civil or criminal) in which judgment is given in favour of the officer or employee or in which the officer or employee is acquitted;
 - 51.2.2 an application in relation to proceedings (civil or criminal) in which the court grants relief to the officer or employee under the Corporations 2001.

In this clause, words have the same meaning as in section 241.

52. CALCULATING TIME

- 52.1 Any period of time specified in these clauses is to be calculated as under section 105.
- 52.2 If these clauses do not specify the time for giving notice or serving a document, the Board may specify the time.

Note: Section 105 relevantly provides:

"in calculating how many days a particular day, act or event is before or after another day, act or event, the first mentioned day, or the day of the first-mentioned act or event, is to be counted but not the other day, or the day of the other act or event."

53. COMMITTEES

- 53.1 In addition to the Branches, the Board may establish other Committees to advise the Board on any matters relevant to the operations or objectives of the Company or the conduct of the Newsagency Industry in Australia.

- 53.2 The Board may specify the role and duties of such committees and procedures relating to:
- 53.2.1 the appointment or election of committee members;
 - 53.2.2 eligibility for membership of committees;
 - 53.2.3 meeting procedures;
 - 53.2.4 reporting procedures;
 - 53.2.5 any other matter relating to the operation of such committees.
- 53.3 The Chairperson is an ex-officio member of all the Committees.
- 53.4 Without limiting clause 53.2, the Board may replace the membership of a committee in a State or Territory or remove the committee in that State or Territory and arrange for the election of a new committee if the Director's office in that State or Territory becomes vacant pursuant to clause 29.1.4.

54. **WINDING UP**

If upon the winding up or dissolution of the Company, there remains, after satisfaction of all its debts and liabilities, any property whatsoever, that property may be given or transferred to some other institution or institutions having objects similar to the objects of the Company, such institution or institutions to be determined by the Individual Financial Members of the Company in general meeting.

55. **TRADEMARK LICENCE**

- 55.1 The Company grants to an Individual Member a royalty-free, non-exclusive, non-assignable licence to use the Trade Mark on the terms specified in this clause 55 as amended by the Board from time to time ("**Licence**").
- 55.2 The Company may require the Individual Member to enter into a separate agreement, or any other document, in relation to the use of the Trade Mark and/or the grant of the Licence, including for the purposes of varying the terms of this Clause 55.
- 55.3 The term of the Licence terminates:
- 55.3.1 on the cessation of the membership of the Member for any reason; or
 - 55.3.2 as otherwise determined from time to time by the Board.
- 55.4 The Company retains all right, title and interest in, and to, the Trade Mark. For the avoidance of doubt, the grant of a Licence by the Company does not confer any proprietary or security interest in the Trade Mark.
- 55.5 An Individual Member must only use the Trade Mark in connection with its Newsagent business and must not use the Trade Mark for any other purpose with the prior written consent of the Company. The Board may, from time to time, specify additional conditions and restrictions on the use of the Trade Mark.
- 55.6 Unauthorised modification of the Trade Mark invalidates the Licence.
- 55.7 An Individual Member must not do or permit any thing that might prejudice the Company's title to the Trade Mark or the value of the Trade Mark.