

Rules of Property Law Reform Alliance

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Property Law Reform Alliance

Rules

1. Preliminary

1.1 Definitions

In these Rules:

"Alliance" means the Property Law Reform Alliance.

"Attending Member" means, in relation to a meeting of Members, the Member Representative present at the place of the meeting, in person or by proxy or by teleconference or otherwise.

"Business Day" means a day except a Saturday, Sunday or public holiday in a State or Territory of Australia.

"Chairperson" means the chairperson elected in accordance with Rule 8.2(a).

"Deputy Chairperson" means the deputy chairperson elected in accordance with Rule 8.2(a).

"Government Authority" means a government or a governmental, semi-governmental or judicial entity or authority, and includes a self-regulatory organisation established under statute.

"Industry Sector" means the group of Members whose names are entered in the Register from time to time as Industry Sector Members.

"Industry Sector Member" means an industry sector member whose name is entered into the Register, which at the commencement of these Rules includes:

- (a) Australian Finance Conference;
- (b) Australian Institute of Quantity Surveyors;
- (c) Australian Property Institute;
- (d) Australian Spatial Information Business Association (ASIBA);
- (e) Master Builders Australia;
- (f) Mortgage Industry Association of Australia;
- (g) Property Council of Australia (including the Shopping Centre Council of Australia);
- (h) Real Estate Institute of Australia;
- (i) RICS Oceania;
- (j) Urban Development Institute of Australia; and
- (k) any other organisation which is designated as an Industry Sector Member when its application for Membership is accepted.

"Law" means the common law and the principles and doctrines of equity, any constitution or legislation in force from time to time within the Commonwealth of Australia or any State or Territory of the same, any rule, regulation, ordinance, by-law, ruling, guideline, statutory

instrument, decree, order, direction or notice made and in force from time to time under any such legislation, and any other similar measure (and the expressions "lawful" and "unlawful" shall be construed accordingly).

"Legal Costs" of a person means legal costs incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, Government Authority or agency, other body or commission, where that proceeding, appearance or response relates to a Liability of that person.

"Legal Sector" means the group of Members whose names are entered in the Register from time to time as Legal Sector Members.

"Legal Sector Member" means a legal sector member whose name is entered into the Register which at the commencement of these Rules includes:

- (a) Australian Institute of Conveyancers;
- (b) Australian Property Law Group of the Law Council of Australia;
- (c) Law Society of the Australian Capital Territory;
- (d) Law Society of New South Wales;
- (e) Law Society of South Australia;
- (f) Law Institute of Victoria;
- (g) Law Society of the Northern Territory; and
- (h) any other organisation which is designated as a Legal Sector Member when its application for Membership is accepted.

"Liability" of a person means any liability (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an office holder of the Alliance or in or arising out of the conduct of the business of the Alliance, including as result of appointment or nomination by the Alliance as a trustee or as a director, officer or employee of another body corporate.

"Management Committee" means the management committee comprising the Chairperson, Deputy Chairperson and the Secretariat, as appointed from time to time in accordance with Rule 8.1(b).

"Member" means an Industry Sector Member or a Legal Sector Member whose name is entered in the Register as a member of the Alliance.

"Member Representative" means the person nominated by each Member from time to time to represent that Member on the Alliance.

"Register" means the register of Members and Member Representatives, held by the Secretariat.

"Rules" means the rules of the Property Law Reform Alliance.

"Secretariat" means the body comprising a representative from the Australian Property Law Group and the Property Council of Australia.

"Sector" means the Industry Sector or the Legal Sector.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in these Rules:

- (a) a word importing the singular includes the plural (and vice versa);
- (b) a word indicating a gender includes every other gender;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) the word "**includes**" in any form is not a word of limitation;
- (e) a reference to something being "**written**" or "**in writing**" includes that thing being represented or reproduced in any mode in a visible form;
- (f) a notice or document required by these Rules to be signed may be authenticated by any other manner permitted by Law; and
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements.

1.3 The Alliance

The Alliance was formed following discussions between the Property Council of Australia and the Australian Property Law Group of the Law Council of Australia about the need for uniform real property legislation.

The Alliance comprises various organisations, all of which have an interest in property law and reform.

2. Objects

2.1 Objects of the Alliance

- (a) The main object of the Alliance is to encourage nationally consistent best practice property Law, practices, procedures and compliance requirements throughout Australia in order to facilitate cross-border transactions and increase the inclusiveness of property related regulation.
- (b) The other objects of the Alliance are as follows:
 - (i) encourage agreement between the Members on issues of property law;
 - (ii) consider and formulate national model real property legislation;
 - (iii) develop an advocacy campaign to promote the benefits of property law reform to Commonwealth, State and Territory governments;
 - (iv) develop and implement a communications strategy which highlights the benefit of property law reform; and
 - (v) encourage alliances between the Alliance and organisations with similar objectives.

3. Income and property

3.1 Resourcing

- (a) Travel and accommodation costs of Member Representatives in relation to Alliance matters are the responsibility of the Members they represent.
- (b) Secretariat costs will be borne by the Property Council of Australia and the Australian Property Law Group.
- (c) All funding for Alliance initiatives including, but not limited to, meetings and projects will be sourced from both Members and appropriate grants.

3.2 Application of income and property

- (a) The Alliance must apply the profits (if any) or other income and property of the Alliance solely towards the promotion of the objects of the Alliance set out in Rule 2.1 and no portion of it may be paid or transferred, directly or indirectly, to any Member or Member Representative.
- (b) Notwithstanding the provisions of Rule 3.2(a), the Alliance may reimburse a Member or Member Representative for the reasonable costs incurred in relation to Alliance matters.

4. Membership

4.1 Applications

- (a) Any organisation, other than a Government Authority or a representative of a Government Authority, is eligible to apply to become a Member of the Alliance.
- (b) Member Representatives determine in their absolute discretion whether an applicant may become a Member (and whether that applicant will be an Industry Sector Member or a Legal Sector Member). The Member Representatives are not required to give any reason for the rejection of any such application. An application for membership is successful if supported by a two-thirds (2/3) majority of Member Representatives.
- (c) A Member Representative is taken to have obtained authority from the body it represents to actively participate in Alliance matters including, but not limited to, negotiations with respect to property reform matters. Member Representatives will be provided with reasonable opportunity to confer with the bodies they represent in respect of Alliance matters.

4.2 No transfers

The rights of being a Member or Member Representative are not transferable whether by operation of Law or otherwise.

5. Cessation of membership

5.1 Resignation of a Member

- (a) A Member or Member Representative may at any time resign as a member of the Alliance by giving the Alliance notice in writing. Unless the notice provides otherwise, a resignation by a Member or Member Representative takes effect immediately on the giving of that notice to the Alliance.

- (b) If a Member or Member Representative resigns, the Alliance must remove the Member or Member Representative's name from the Register.
- (c) A Member Representative who resigns may nominate another person from the body they represent to carry on the role of Member Representative and the Alliance will determine in its absolute discretion whether the person nominated is eligible to become a Member Representative.

5.2 Removal of a Member or Member Representative

If:

- (a) a Member or Member Representative is in breach of a provision of these Rules; or
- (b) any act or omission of a Member or Member Representative is, in the opinion of a majority of Members, unbecoming of a Member or Member Representative, or prejudicial to the interests or reputation of the Alliance,

the Alliance may expel the Member or Member Representative by a two-thirds(2/3) majority resolution of Member Representatives and remove the Member or Member Representative's name from the Register.

5.3 Other cessation events

If a Member or Member Representative:

- (a) being an individual, dies or becomes bankrupt, becomes of unsound mind or a person whose property is liable to be dealt with under a Law about mental health; or
- (b) being a body corporate, is deregistered under the Laws of the jurisdiction in which the Member is incorporated, or
- (c) being any other entity, ceases to exist under its constituent documents or statute,

the Member or Member Representative ceases to be a member of the Alliance and the Alliance may remove the Member or Member Representative's name from the Register.

6. Proceedings of Members

6.1 Written resolutions of Members

While the Alliance has only one (1) Member, the Alliance may pass a resolution by that Member signing a record in writing of that resolution.

6.2 Calling meetings of Members

- (a) The Alliance may by resolution of the Secretariat call a meeting of Members to be held at the time and place (including one (1) or more venues using technology which gives Attending Members as a whole a reasonable opportunity to participate) and in the manner the Secretariat resolves.
- (b) Member meetings will be convened quarterly. Additional Member meetings may be called at the discretion of the Secretariat.

6.3 Notice of meetings of Members

- (a) Where the Alliance has called a meeting of Members, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Secretariat resolves.

- (b) A Member Representative may waive its entitlement to receive notice of any meeting of Members by written notice to the Alliance.
- (c) A Member Representative who has not duly received notice of a meeting of Members may, before or after the meeting, notify the Alliance of the Member Representative's agreement to anything done or resolution passed at the meeting.
- (d) A Member Representative's attendance at a meeting of Members waives any objection that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.
- (e) Anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a Member Representative does not receive notice of the meeting or a proxy form, or the Alliance accidentally does not give notice of the meeting or a proxy form to a Member Representative.

6.4 Business of meetings

Except with the approval of the Secretariat or with the permission of the Chairperson or Deputy Chairperson, no Member Representative may move at any meeting of Members:

- (a) any resolution (except in the form set out in the notice of meeting given under Rule 6.3(a)); or
- (b) any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Members to inspect or obtain.

6.5 Quorum

- (a) No business may be transacted at a meeting of Members unless a quorum for a meeting of Members is present at the time when the meeting commences.
- (b) A quorum for a meeting of Members is three (3) Attending Members entitled to vote on a resolution at that meeting. Each individual present may only be counted once towards a quorum. If a Member has appointed more than one (1) proxy, only one (1) of them may be counted towards a quorum.
- (c) If a quorum is not present within thirty (30) minutes after the time appointed for the commencement of a meeting of Members, the meeting is dissolved unless the chairperson of the meeting adjourns the meeting to a date, time and place determined by the Chairperson or Deputy Chairperson.
- (d) If a quorum is not present within thirty (30) minutes after the time appointed for the commencement of an adjourned meeting of Members, the meeting is dissolved.

6.6 Chairperson of meetings of Members

- (a) Subject to Rules 6.6(b) and 6.6(c), the Chairperson must chair each meeting of Members.
- (b) If at a meeting of Members:
 - (i) there is no Chairperson; or
 - (ii) the Chairperson is not present within fifteen (15) minutes after the time appointed for the commencement of a meeting of Members or is not willing to chair all or part of the meeting,

the Deputy Chairperson, or in that person's absence or if that person is not willing to act, the Attending Members may elect one (1) of their number to chair that meeting.

- (c) The Chairperson may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her.

6.7 Conduct of meetings of Members

- (a) The Chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The Chairperson of a meeting of Members may
 - (i) make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting;
 - (ii) determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting;
 - (iii) determine any dispute concerning the admission, validity or rejection of a vote at the meeting;
 - (iv) at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote;
 - (v) refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting without being referred to in the notice of meeting;
 - (vi) refuse any person admission to, or require a person to leave and remain out of, the meeting if that person in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson; and
 - (vii) delegate any power conferred by this Rule 6.7 to any person.
- (c) Nothing contained in this Rule 6.7 limits the powers conferred by Law on the chairperson of a meeting of Members.

6.8 Attendance at meeting of Members

- (a) Subject to these Rules, a Member Representative who is entitled to attend and cast a vote at a meeting of Members, may attend and vote in person or by proxy.
- (b) The Chairperson of a meeting of Members may require a person acting as a proxy, to establish to the Chairperson's satisfaction that the person is the person duly appointed to act. If the person fails to satisfy this requirement, the Chairperson may exclude the person from attending or voting at the meeting.
- (c) A Member Representative is entitled to receive notice of and to attend all meetings of Members and is entitled to speak at those meetings.
- (d) A person, whether a Member Representative or not, requested by the Alliance to attend a meeting of Members is entitled to attend that meeting and, at the request of the Chairperson of the meeting, is entitled to speak at that meeting.

6.9 Authority of Attending Members

- (a) Unless otherwise provided in the document or resolution appointing a person as

proxy of a Member, the person has the same rights to speak or act generally at a meeting of Members to which the appointment relates, as the appointing Member Representative would have had if that Member Representative was present at the meeting.

- (b) Unless otherwise provided in the document or resolution appointing a person as proxy of a Member Representative, the appointment is taken to confer authority to:
 - (i) vote on any amendment moved to a proposed resolution and on any motion that a proposed resolution not be put or any similar motion; and
 - (ii) vote on any procedural motion, including any motion to adjourn the meeting,

even though the appointment may refer to specific resolutions and may direct the proxy how to vote on particular resolutions.

- (c) Unless otherwise provided in the document or resolution appointing a person as proxy of a Member Representative, the appointment is taken to confer authority to attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.

6.10 Voting at meetings of Members

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands or any other means determined by the Alliance (including electronic) permitted by Law.
- (b) The Alliance may determine that Member Representatives entitled to attend and vote at a meeting of Members or at a meeting of a class of Members may vote at that meeting without an Attending Member in respect of that person being present at that meeting (and voting in this manner is referred to in this Rule as direct voting).
- (c) The Alliance may determine rules and procedures in relation to direct voting, the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Member Representative casting both a direct vote and a vote in any other manner.
- (d) Where a notice of meeting specifies that direct voting may occur by eligible Member Representatives, a direct vote cast by an eligible Member Representative is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Alliance (whether set out in the notice of meeting or otherwise) are complied with.
- (e) Subject to these Rules, on a show of hands or any other means determined by the Alliance (including electronic) permitted by Law at a meeting of Members, each Attending Member having the right to vote on the resolution has one (1) vote, provided that where a person is entitled to vote in more than one (1) capacity, that person is entitled only to one (1) vote.
- (f) Subject to these Rules, where the Alliance has determined other means (including electronic) permitted by Law for the casting and recording of votes by Member Representatives on any resolution to be put at a meeting of Members, each Member Representative having a right to vote on the resolution has one (1) vote.

- (g) An objection to a right to vote at a meeting of Members or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection under this Rule must be decided by the chairperson of the meeting of Members, whose decision, made in good faith, is final and conclusive.
- (h) Unless these Rules require a resolution to be passed by a particular majority, a resolution is passed if more votes are cast by Member Representatives entitled to vote in favour on the resolution than against it.
- (i) In the case of an equality of votes on a resolution at a meeting of Members, the chairperson of that meeting does not have a casting vote on that resolution.
- (j) A determination by the chairperson of a meeting of Members following a vote in accordance with clause 6.10(a), that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

6.11 Voting by representatives

- (a) The validity of any resolution passed at a meeting of Members is not affected by the failure of any proxy to vote in accordance with directions (if any) of the appointing Member.
- (b) Subject to these Rules, a vote cast at a meeting of Members by a person appointed by a Member Representative as a proxy is valid despite the revocation of the appointment (or the authority under which the appointment was executed), if no notice in writing of that matter has been received by the Alliance before the commencement of that meeting.

6.12 Restrictions on voting rights

The authority of proxy for a Member Representative to speak or vote at a meeting of Members to which the authority relates is suspended while the Member Representative is present in person at that meeting.

6.13 Proxies

- (a) A Member Representative who is entitled to attend and vote at a meeting of Members may appoint a person as proxy to attend and vote for the Member Representative.
- (b) A form of appointment of proxy is valid if it is in accordance with the form (including electronic) which the Alliance may determine or accept.
- (c) If the name of the proxy or the name of the office of the proxy in a proxy appointment of a Member Representative is not filled in, the proxy of that Member Representative is:
 - (i) the person specified by the Alliance in the form of proxy in the case the Member Representative does not choose; or
 - (ii) if no person is so specified, the Chairperson of that meeting.

6.14 Adjournments

- (a) The Chairperson of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or

debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place reasonably determined by the chairperson.

- (b) If the Chairperson of a meeting of Members exercises the right to adjourn that meeting under Rule 6.14(a), the Chairperson may (but is not obliged to) obtain the approval of Attending Members to the adjournment.
- (c) No person other than the Chairperson of a meeting of Members may adjourn that meeting.
- (d) The Alliance may give notice of a meeting of Members resumed from an adjourned meeting as the Alliance resolves. Failure to give notice of an adjournment of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a meeting of Members resumed after an adjournment.

6.15 Cancellations and postponements

- (a) The Alliance may by resolution cancel or postpone a meeting of Members or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) The Alliance may give notice of a cancellation or postponement or change of place of a meeting of Members. Failure to give notice of a cancellation or postponement or change of place of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.
- (c) The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the original notice calling the meeting.

7. Indemnity and insurance

- (a) To the extent permitted by Law, each Member may indemnify each Member Representative against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity under Rule 7(a):
 - (i) is enforceable without the Member Representative having first to incur any expense or make any payment;
 - (ii) is a continuing obligation and is enforceable by the Member Representative even though the Member Representative may have ceased to be an officer of the Alliance; and
 - (iii) applies to Liabilities and Legal Costs incurred both before and after this Rule became effective.
- (c) To the extent permitted by Law, each Member may make a payment (whether by way of advance, loan or otherwise) to a Member Representative in respect of Legal Costs of that person.
- (d) To the extent permitted by Law, each Member may:

- (i) enter into, or agree to enter into; or
- (ii) pay, or agree to pay, a premium for,

a contract insuring a Member Representative against a Liability of that person and the Legal Costs of that person.

- (e) For the avoidance of doubt, each Member and Member Representative acknowledges and agrees that the Alliance is not liable for and will not indemnify a Member or Member Representative against any Liability of that person and the Legal Costs of that person, and any claim that the Member or Member Representative may have or may claim to have against the Alliance.

8. Management Committee

8.1 Management of Alliance

- (a) The Management Committee will be responsible for the day to day running and management of the Alliance.
- (b) The Management Committee will be appointed by the Alliance and will be appointed for a term of two (2) years.

8.2 Chairperson and Deputy Chairperson

- (a) The Alliance is to be represented by a chairperson and deputy chairperson elected in accordance with this Rule 8.2.
- (b) The first Chairperson is to be elected by the Industry Sectors Members. The first Deputy Chairperson is to be elected by the Legal Sector Members.
- (c) The Chairperson and Deputy Chairperson will hold office for a term of two (2) years. At the commencement of the following term of office, the incumbent Deputy Chairperson will be promoted to the position of Chairperson and fresh elections will be held for the position of Deputy Chairperson.
- (d) The position of Deputy Chairperson is to be elected alternately from candidates representing the Industry Sector Members and the Legal Sector Members respectively. A candidate for Deputy Chairperson will be successful if supported by a majority of Members from the relevant sector.
- (e) In circumstances where the incumbent Deputy Chairperson or Chairperson is unable to fulfil their term of office, the position will continue to be filled by the Sector they represent until the position is filled by another candidate from the same Sector. The selection of an alternate candidate is at the absolute discretion of the Sector whom they represent.

8.3 Secretariat

The Alliance is to be supported by a Secretariat which will comprise of a representative of both the Australian Law Property Group and the Property Council of Australia (for so long as they are Members).