

Electrical and Communications Association of WA Inc (“ECA WA”)

Explanatory Memorandum– Special General Meeting January 2024 Proposals

Members will be aware that resolutions similar to those proposed at this forthcoming Special General Meeting (“SGM”) were proposed at the AGM 2023. However, at that AGM the resolutions narrowly were not passed by the requisite majority as some Members wished to have more time to consider the same with a view to suggesting some modifications to the proposed New Constitution. The Board has actively consulted further with its Members and has agreed to certain suggestions made by those Members who responded to the Board’s invitation to comment. This has resulted in some modest changes to the proposed New Constitution as follows:

- (i) as there appeared to be no material concern as to the proposed new name of the organisation, the proposal at the SGM will be to adopt the name “Electrotechnology Training Institute Limited” upon the transfer of registration to a company limited by guarantee;
- (ii) with respect to the CEO, the provisions of the proposed article 6.2 have been modified firstly to clarify that the CEO cannot be a director of the organisation, and second to assure best practice governance decision making with respect to the appointment of the CEO;
- (iii) with respect to Board appointed Directors, Schedule 2 Item 5(e) now assures that one of the Board appointed Director positions is reserved for the immediate past Chair/President of the organisation;
- (iv) the Transitional Provisions (Schedule 3) and the By-laws (Schedule 4) now ensure that the concept of Life Membership continues to be recognized in the constitution;
- (v) with respect to who may be eligible to act as a “Nominee” of a body corporate Member, those eligible has been clarified to include any “employee or officer” of such a Member (in case the person sought to be appointed as a Nominee may not technically be an employee of the body corporate Member - refer By-law 3.3 and the definition of “Nominee” in Schedule 1).

In all other respects the proposed New Constitution is materially the same as that tabled at the 2023 AGM for consideration by the Members. The Board is grateful to the Members for their further consideration and input on matters.

The below explanations are provided to Members by way of formality but again, in all material respects, they are the same explanations that were provided for the 2023 AGM.

1. Registration of Incorporation under Corporation Act

(a) Proposed transfer of registration

The purpose of the proposed transfer is to support the next step in the organisation’s growth and evolution as well as ensuring ongoing regulatory compliance requirements.

Subject to member approval by special resolution at the January 2024 SGM, and thereafter approval by relevant regulatory authorities, registration of ECA WA will be transferred as a company under the Corporations Act rather than continuing its existing incorporation as an association under the WA Associations Incorporation Act. Subject to the terms of the new proposed constitution, all persons who are

members of ECA WA presently will continue as members, with materially comparable rights following conversion to a company and the adoption of the new constitution.

The Board believes that this change should be undertaken for the reasons explained in paragraph 1(c) below. Of note, the organisation has been advised by its external lawyers that it is possible that the Associations Incorporation Act regulators may insist upon such a change of structure in the future in any event due to ECA WA's relatively large turnover.

The existing Board members of ECA WA will become the Board members of the newly registered entity (subject to the transitional provisions of the proposed new constitution).

The existing Secretary will be transitioned as the Company Secretary only and not as a Director.

Under a public company limited by guarantee, the liability of members will be limited to the amount which members have undertaken to contribute to the company on a winding up of the company. This **does not** mean that members provide a personal guarantee for all of the debts and liabilities of the entity. The proposed new constitution provides for a maximum liability of each member on a winding up of \$1 (one dollar) only.

(b) Reasons for transfer of registration

The Board has resolved, subject to requisite member, constitutional and regulatory approvals that:

- (i) ECA WA should transfer its registration to a public company limited by guarantee under the Corporations Act with the company name to be Electrotechnology Training Institute Limited (though please also refer to paragraph 3 below on this issue); and
- (ii) The existing constitution of ECA WA be replaced with a new constitution (and by-laws) to be approved by ECA WA members at the January 2024 SGM. The new constitution (and by-laws) will take effect from the date of registration as a company under the Corporations Act.

If it is to become a Company Limited by Guarantee, ECA WA must change its legal name as it can no longer be referred to as an Association.

Despite this, all of the existing member services such as the technical hotline, will continue to trade under the "ECA WA" Business Name.

All ECA's business units such as the College of Electrical Training and Electrical Group Training, will continue to trade and be marketed, under their existing names.

(c) Board Recommendations

In resolving to recommend the transfer of registration of ECA WA to a public company limited by guarantee, the Board gave consideration to the following factors:

- (i) As an association incorporated under the Associations Incorporation Act (WA) there are limitations on ECA WA's ability to conduct business outside of

Western Australia. Registration as a company under the Corporations Act makes it easier for ECA WA to pursue future opportunities in other States.

- (ii) There is much greater commercial acceptance and better recognition of the public company structure when dealing with third parties including government and corporate/private business contractors, insurance providers and banks (to mention but some).
- (iii) Under the Corporations Act, there is currently a more robust established statutory framework for governance and accountability of directors and officers for the benefit of the organisation and its members. In turn the Board, directors and officers may have stronger protection against liability when acting in good faith with due care and reasonably in what they rationally believe to be the best interests of the organisation.
- (iv) The organisation would be better positioned to access government and other forms of grant funding with a company structure, if required as part of its future strategic needs.
- (v) **Finally and importantly**, as mentioned above, the organisation has been advised by its external lawyers that it is possible that the Associations Incorporation Act regulators may insist upon such a change of structure in the future in any event due to ECA WA's relatively large turnover.

Members should also be aware that following conversion to a public company limited by guarantee:

- (vi) The organisation, under its new name, will continue to operate its existing business and maintain its existing objects in all material respects.
 - (vii) The Board and governance structure will be modified in accordance with the proposed new constitution which has been developed after expert legal and governance consulting input, and after taking into consideration feedback to be provided by members.
 - (viii) The organisation's operations, focus and services will remain substantially the same, with the only material change being the new name.
 - (ix) The organisation under its new company name will maintain, and continue to operate under, its various existing trading names (e.g. CET and EGT)
 - (x) A new legal entity **is not** created (it remains the same), nor are ECA WA's existing property, rights or obligations affected. This means that all existing contractual and employment arrangements will continue without assignment or amendment (other than to reflect the organisation's new name).
- (d) Process for transfer of registration to a public company limited by guarantee

The following key steps must be followed in order for ECA WA to become registered as a public company limited by guarantee:

- (i) ECA WA's members must resolve by special resolution, being at least 75% of members entitled to vote and voting (in person or by proxy), at the 2023 AGM,

for ECA WA to transfer its registration to the Corporations Act;

- (ii) ECA WA must obtain the approval of the Commissioner for Consumer Protection (WA) to make an application to register as a company under the Corporations Act and to do all things that are reasonably necessary to obtain the registration;
- (iii) ECA WA must apply to the Australian Investments and Securities Commission (**ASIC**) for registration as a public company limited by guarantee;
- (iv) ECA WA must notify the Commissioner for Consumer Protection (WA) of its registration as a public company limited by guarantee within 14 days after the registration occurs; and
- (v) ECA WA must also notify and gain the approval of the ACNC to its new constitution and structure.

If the appropriate Resolution is passed at the January 2024 SGM, the Board will promptly attend to steps (d)(ii)-(v) above with a view to the process being effective from around the beginning of the second quarter of 2024. Regulatory approval of the changes should be expected.

If any of the requirements set out above to convert to a company are not satisfied (including if members do not pass the relevant Resolution), ECA WA will continue as an incorporated association under the Associations Incorporation Act (WA) under its current name and constitution.

2. New Constitution

Upon passing of the Resolution to be proposed at the January 2024 SGM, and upon registration under the Corporations Act, the organisation will be governed by the new proposed constitution (and accompanying by-laws) to be considered and tabled at the General Meeting.

A copy of the proposed new constitution accompanies this Explanatory Memorandum. A copy of ECA WA's existing constitution is available on ECA WA's website, or on request, should any member need a copy.

The material differences within the new constitution that Members need to be aware of are:

- (i) Membership eligibility of the organisation remains open to both individuals and corporate entities with relevant interest in the objects of the organisation;
- (ii) The organisation retains the same objects and charitable purposes under the ACNC;
- (iii) The Board is to comprise a combination of Member Elected Directors (up to 6) and Board Appointed Directors (up to 3, of whom 1 is anticipated to be offered to the immediate past Chair/President of the organisation). Member Elected Directors are to remain in the majority at all times. The concept of Board Appointed Directors is designed to ensure the Board (as a whole) comprises Directors with the array of experience, skills and attributes best able to assist the organisation;

- (iv) Directors will be elected on 3 yearly cycles with a maximum term of office of around 9 years (12 years if the director is appointed as Chair) to encourage board refreshment and succession planning, but also to retain a sound balance of retained corporate experience and knowledge;
- (v) Article 5.10 describes the desired attributes of directors and information sharing processes by which members and the board may be better informed when voting to elect or appoint directors (as applicable);
- (vi) Office bearers (e.g. Chair) are to be determined by the Board;
- (vii) The new Constitution contemplates that a more formal governance charter, to be adopted by the Board as part of the By-Laws and to be consistent with the constitution, will prescribe matters such as:
 - the governance control link between the Constitution, the Board and management;
 - the structure of Board committees (including terms of reference) and other governance related functional instruments:
 - Governance Committee
 - Audit, Finance and Investment Committee
 - Risk and WHS Committee
 - Education and Training Strategic Framework Committee;
 - A number of governance related codes and policies (common for organisations of the organisation's size and needs) including:
 - (i) Conduct/values
 - (ii) Risk Management
 - (iii) Diversity
 - (iv) Communications
 - (v) ESG
 - (vi) WHS
 - (vii) Privacy
 - (viii) Whistleblower
 - (ix) Bribery/corruption
 - (x) Discrimination, bullying, and harassment;
- (viii) Article 15 and Schedule 3 provide for "Transitional Provisions" to ensure as seamless and smooth a process as is reasonably possible upon the members' adoption of the new constitution and the transfer of the organisation's registration;
- (ix) Article 16 is designed to articulate and ensure compliance with ACNC requirements;
- (x) There are a number of more procedural and less material changes as a result of:
 - (A) the Corporations Act (Cwlth) applying, rather than the Associations Incorporation Act (WA);

- (B) the modernization of the language of the old constitution and simplification of some of the existing administrative procedural requirements;
- (C) formalisation of the organisation's continuing charitable status under the ACNC.

However, Members are encouraged to read the new Constitution in full in any event.

3. **New Name**

ECA WA's proposed new name (i.e. Electrotechnology Training Institute Limited) has been chosen including based on the following rationale:

- (i) to better describe the organisation's underlying purpose or reason for being, i.e. training future participants in the electrotechnology industries;
- (ii) to better distinguish it from other entities, although without reducing the continuing symbiotic relationship between these and the organisation in its support for the industry;
- (iii) a name that was suitable yet one that minimized confusion with the names reserved by other entities in the industry.