

Open Source Industry Australia Ltd  
A.C.N. 109 097 234



Minutes of the annual general meeting

held on Monday 27 November 2017  
in the Sue Healy Room, Ross House,  
247 Flinders Lane, Melbourne Vic. 3000.

The Company Secretary, Mr Daniel Jitnah, opened the meeting at 6:25 p.m..

There was a preliminary discussion about the validity of the meeting itself and of those proxies lodged after the deadline for lodging proxies. Due to an irregularity in serving the notice of meeting, a substantial proportion of the financial members were not aware of the AGM until after the deadline for lodging proxies had already expired. It was noted that most financial members were either present themselves or had been in direct contact with one or other of those present at the meeting during the course of the day. Accordingly it was agreed to consider the meeting validly convened and to accept the late proxies, in order to avoid the time, cost and inconvenience of adjourning the meeting (the only other course of action considered).

## 1 Attendance

The following members were present in person or by authorised representative:

- Greenware IT (Vic.) – Daniel Jitnah, OSIA Director & Company Secretary
- Mnemote Pty Ltd (Vic.) – Nick Moore, OSIA Director
- Gregory Jones (Vic.), OSIA Director
- Coherent Software Australia Pty Ltd – Paul Foxworthy
- Saosce Pty Ltd (SA) – Jack Burton, also authorised representative for:
  - Holden Dynamics Pty Ltd (NSW); and
  - Adaxa Pty Ltd (Vic.)

Mr Burton advised (and Mr Jitnah confirmed) that he held proxies in his favour from:

- Calyx Group Pty Ltd (NSW) – Bob Birchall;
- Muli Management Pty Ltd (NSW) – Ron Skeoch; and
- Grant Petch T/A GP Computer Services (SA).

The following observers were also in attendance:

- Alexar Pendashteh;
- Daniel Benporath;
- Elmer Bool; and
- Ben Minerds.

## 2 Apologies

It was noted that apologies had been received from:

- Aimee Maree Forsstrom (NSW), OSIA Director;
- Inforg Information Governance Pty Ltd (SA) – Anastasia Kuusk; and
- Creative Contingencies Pty Ltd (Vic.) – Donna Benjamin.

## 3 Chairman & minute secretary

As there was no Chairman of Directors, those present were required to elect a Chairman of the Meeting.

It was resolved (Mr Moore moved; Mr Burton seconded) to elect Mr Foxworthy as Chairman of the Meeting.

As the Company Secretary was expecting several questions from the floor, Mr Moore kindly agreed to act as minute secretary for the meeting. There were no objections.

## 4 Minutes of the Annual General Meeting held on 18 November 2016 in Sydney, NSW

The draft minutes of the last AGM as circulated with the agenda were considered.

It was resolved (Mr Foxworthy moved; Mr Jitnah seconded) unanimously to adopt the minutes without change.

## 5 Annual accounts and Directors' report

The annual report (including the company accounts and Directors' report), as circulated by the Company Secretary, Mr Daniel Jitnah, was considered for approval.

Mr Burton brought the meeting's attention to seven errors or omissions in the content of the annual report, one of which (relating to the presentation of the annual accounts) had also been raised earlier by Mr Foxworthy.

Mr Jitnah accepted the flaws in the report as noted, immediately tendered his resignation as Company Secretary and withdrew his nomination for re-election as a director.

The motion to adopt the annual accounts & Directors' report was defeated on a show of hands (nil in favour; 3 against).

## 6 Appointment of Auditor

The Chairman then drew the attention of members to the need to resolve whether an auditor should be appointed for the current financial year. He explained that the Constitution of the Company at Clause 61 requires that an auditor be appointed as provided in the Corporations Law. Clause 71 provides that the accounts should be audited in accordance with the provisions of the Corporations Law. Presently the Company is of a type and scale that is not required by the Corporations Law to be audited. The Directors have continued the practice of prior financial years by adopting the view that an audit is not required but ask the Members for their confirmation.

The motion to appoint an auditor was defeated on a show of hands (nil in favour; 4 against). None of those present raised any concerns with this.

## 7 Election of Directors

The Chairman noted that, following Mr Jitnah's withdrawal of his nomination, only one candidate remained: Mr Gregory Jones (Vic.).

There was a brief discussion, initiated by Mr Burton, of the results achieved during the term just ended and of the direction OSIA needed to take to restore confidence, credibility & relevance in the marketplace, with respect to its core mission, which he saw as influencing public policy relevant to the Australian free & open source software industry.

Mr Jones then withdrew his nomination for re-election.

The Chairman noted that the absence of any candidates for election gave rise to a constitutional crisis, which would be addressed under General Business.

## 8 Proposed amendment to the Constitution

Mr Jitnah spoke to the proposal; Mr Burton spoke against it.

The motion was defeated on a show of hands (2 for; 2 against — noting that a motion to amend the Company Constitution is special business within the meaning of s. 9 of the *Corporations Act 2001* (C'th) so requires a majority of more than 75% to pass).

Mr Jones pointed out that there was clearly broad support for the intent behind the proposal, but it had been defeated solely on the basis of its specific wording and its timing (right in the middle of a constitutional crisis).

Mr Burton reminded those present that two substantive (as opposed to merely symbolic) issues with the present Constitution had been raised at the 2016 AGM and suggested that those be addressed at the same time, after the present constitutional crisis is over and after Company returns to delivering an acceptable level of results. He also suggested that the portion of the new amendment giving effect to the original intent of Mr Jitnah's amendment should be recast in terms that would also reflect the OSIA board's additional role as an executive committee (necessary in the absence of any full-time staff) and in terms that would not have the potential to offend or alienate sections of the membership.

Mr Jitnah suggested that the provisions of the Company Constitution dealing with service of notice could also benefit from some modernisation, so perhaps that could also be dealt with in the new amendment.

Those present were generally supportive of the suggestions of Mr Jones, Mr Burton & Mr Jitnah regarding future constitutional change.

The Chairman asked Mr Burton if he would be prepared to advise the new board on drafting a revised amendment and he agreed to do so (if the new board desires such advice).

## 9 General business

### 9.1 Addressing the constitutional crisis

The Chairman returned the attention of those present to the constitutional crisis that had arisen following Mr Jitnah's resignation as Company Secretary and the withdrawal of both nominations for election as director. He raised the possibility of calling for nominations from the floor but the issue turned out to be academic as none present in person were willing to put themselves forward.

Mr Burton proposed an alternative approach, that the Company should convene a Special General Meeting (SGM) within 30 days with a motion to dissolve the Company, as had been done by former Company Secretary Mr Andrew Yager in 2010. This will also make nominations open to all members with the hopes that the motion to dissolve will be defeated and an energetic new board elected at the SGM.

All present agreed that calling such an SGM was the most appropriate course of action, but there was considerable discussion about the best date on which & venue in which to convene such a meeting. Mr Burton's first proposal of a 27 December 2017 SGM (30 days hence) was rejected, because the proximity to Christmas would make it difficult for many members to attend.

An alternative proposal from the floor, to hold the SGM in Sydney during the week of LCA2018 (22–26 January 2018) on the basis that many OSIA members & their staff generally attend LCA, received broad agreement. The exact date within that range will depend on availability of a venue (preferably at the same venue as LCA2018, or at least within walking distance) and how best the SGM can be scheduled to fit in with LCA2018 without clashing with the LCA2018 programme.

It was resolved (moved Mr Burton; seconded Mr Moore) unanimously that the SGM be held in Sydney during the week 22–26 January 2018 at or sufficiently close to the LCA2018 venue.

Somebody of course would need to convene the SGM once the date & venue had been finalised and since at this point in the meeting the board was completely vacant, it was decided to appoint an interim Company Secretary.

The Chairman called for nominations from the floor. Three nominations were forthcoming (Mr Foxworthy, Mr Burton & Mr Moore), but all three nominees declined to accept.

After it became clear that none of those present in person would actively seek appointment as Company Secretary, Mr Jitnah & Mr Burton each volunteered to accept appointment to the role if the meeting saw fit to appoint them.

It was resolved (unanimously, bar two abstentions) to appoint Mr Burton as Company Secretary, effective immediately and to direct him to convene an SGM pursuant to the previous motion.

Mr Pendashteh volunteered to assist Mr Burton in convening the SGM and related matters, principally by liaising with Linux Australia and the LCA organising team. All present agreed, and Mr Pendashteh was tasked with doing so.

## 9.2 Addressing the annual report issues

The Chairman then drew the meeting's attention to the need to revise the annual report, following the decision to reject the draft report at the beginning of this meeting.

Mr Jitnah agreed to rectify the one issue that related to the annual accounts and Mr Burton agreed to rectify the remaining 6 issues and to circulate a revised annual report for consideration at the SGM.

## 9.3 Votes of thanks

Mr Burton proposed formal votes of thanks to:

- Miss Forsstrom (who had retired as a director at the meeting) for her substantial contribution to OSIA's success over the years, including: as an early member of the OSIA TPP Committee (from 2012); three years service on the OSIA board (Director of Public Policy (Commonwealth), 2015/16; director without portfolio, 2014/15 & 2016/17); leadership of the OSIA web refresh project during its final term (2014/15); principal author of OSIA's initial submission to the Productivity Commission's Inquiry into Intellectual Property Arrangements (Nov 2015) and subsequent key role in meeting with the Productivity Commission's economists; principal author of OSIA's submission to the Commonwealth whole-of-government shared & common services programme (Feb 2016); key role in initial meeting with representatives of the Department of Prime Minister & Cabinet's ICT Procurement Task Force (Oct 2016); and representing OSIA at the Task Force's Canberra Round Table (Dec 2016);
- Mr Jitnah (who had retired as a director and resigned as a secretary at the meeting) for his long-standing service on the OSIA board, including: being the second longest-serving OSIA director ever and indeed the OSIA director who had served the longest consecutive term (7 years) ever as Director, Events 2010/11, Director, Infrastructure 2011/12 & 2013/14, Director, Education 2012/13, Director without portfolio 2014/15 & 2016/17, Director, Public Policy (Regional) 2015/16, Treasurer (2nd half of 2015/16) & Company Secretary (2016/17); principal author of OSIA's submission on the ACARA consultation draft Australian Curriculum: Technologies document (May 2013); and contributing author on OSIA's submission to the ACIP Review of the Innovation Patent System (Oct 2013); and
- Mr Moore (who had retired as a director at the meeting) for his service as a director over the last year and his key role in averting the previous constitutional crisis in December 2016.

Mr Burton also suggested that a vote of thanks to Mr Jones (who had also retired as a director at the meeting) was in order, but as he was not personally familiar with the details of Mr Jones' service, having been absent from the board throughout Mr Jones' tenure, invited those present who had served alongside Mr Jones to put such a motion. Mr Moore then proposed a formal vote of thanks to Mr Jones for his service on the board during the term just ended, noting that Mr Jones had also contributed to averting the previous constitutional crisis.

All four formal votes of thanks were passed unanimously.

There being no further business, the Chairman closed the meeting at 7:30 p.m..

Signed in accordance with a resolution of the Special General Meeting as being a complete and accurate record of the proceedings of the meeting.

---

Chairman

Date: