

HENRY DAVIS YORK

# Constitution

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**The Banking and Financial Services Law Association Limited**

**A company limited by guarantee and not having share capital**

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## CONSTITUTION

### The Banking and Financial Services Law Association Limited (Company)

#### 1 Interpretation

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##### 1.1 Definitions

The following words have the following meanings in this constitution, unless the context requires otherwise.

**Act** means the Corporations Act 2001 (Cth).

**Applicant** means an applicant for membership of the Company.

**ASIC** means the Australian Securities and Investments Commission.

**Board** means the board of Directors.

**Business Day** has the meaning given in the Act.

**Corporate Member** means a person admitted to the membership of the Company as a corporate member under clause 6 and Corporate Membership means the membership held by a Corporate Member.

**Corporate Nominee** has the meaning given to that term in clause 7.3(c).

**Director** means a person appointed as a director of the Company or who is appointed to the position of an alternate director and is acting in that capacity. Each Member of the Board is a director of the Company.

**Honorary Life Member** means a person admitted to the membership of the Company as an honorary life member under clause 6.

**Member** means a member of the Company.

**Office** means the registered office for the time being of the Company.

**Ordinary Member** means a person admitted to the membership of the Company as an ordinary member under clause 6.

**President** means the president of the Company elected under clause 16.9.

**Personal Representative** means, in respect of a Member, a person who becomes entitled to exercise the rights attaching to membership in the Company held by the Member by reason of the death, mental ill health or bankruptcy of the Member.

**Replaceable Rules** has the meaning given in the Act.

**Register** means the register of Members to be kept pursuant to the Act.

**Secretary** means the person appointed as the Company secretary.

**Special Resolution** has the meaning given in the Act.

**Subsidiary** has the meaning given in the Act.

**Treasurer** means the person appointed as the Company treasurer under clause 16.9.

## 1.2 Interpretation

The following apply in the interpretation of this constitution, unless the context requires otherwise.

- (a) A word or an expression which is defined in the Act has the same meaning in this constitution
- (b) A reference to the singular includes the plural number and vice versa.
- (c) A reference to a gender includes a reference to each gender.
- (d) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (e) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (f) A reference to a clause is a reference to a clause of this constitution.
- (g) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it and any regulation or other statutory instrument issued under it.
- (h) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this document, their substitutes and assigns.
- (i) **Includes** means includes but without limitation.

## 1.3 Replaceable Rules

The Replaceable Rules do not apply in respect of the Company except when they are expressly stated to apply.

## 1.4 Determining percentage of votes

Where this constitution requires the percentage of votes a Member has to be worked out, that percentage must be worked out as at midnight before the relevant event.

*(This reflects various sections of the Act including sections 249N(4), 249P(5) and 250L(4).)*

## 1.5 Representatives

A representative appointed by a Member that is a corporation may, unless otherwise specified in the appointment, exercise on that corporation's behalf all of



the powers that the corporation could exercise at a meeting or in voting on a resolution.

*(This reflects section 250D(4) of the Act.)*

## **2 Public company limited by guarantee**

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The Company is a public company limited by guarantee and does not have share capital.

## **3 Objects of the company**

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The objects for which the Company is established are to:

- (i) Foster and encourage the pursuit and dissemination of knowledge of banking and financial services law, usages and practices of:
  - (A) the Commonwealth of Australia;
  - (B) the States and Territories of the Commonwealth of Australia;
  - (C) New Zealand;
  - (D) the Pacific Region; Asia;
  - (E) the United Kingdom; and
  - (F) elsewhere as the members may require from time to time.
- (ii) Enable and encourage members of the commercial community and the legal profession to examine and consider together banking and financial services law usages and practices.
- (iii) Gather, examine, consider and disseminate information concerning new legislation proposed or enacted by the Parliaments of:
  - (A) the Commonwealth of Australia;
  - (B) the States and Territories of Australia;
  - (C) New Zealand;
  - (D) the Pacific Region; Asia;
  - (E) United Kingdom; and
  - (F) elsewhere as the members may require from time to time,
  - (G) relating to banking and financial services law, usages and practices.

- (iv) Acquire and disseminate knowledge of international and comparative law in relation to banking and financial services law, usages and practices.
- (v) Encourage and develop a knowledge and understanding of banking and financial services law, usages and practices in Australia and overseas.
- (vi) Disseminate amongst the commercial community, the banking industry and the legal and accounting professions by means of seminars, conventions, discussions, lectures and other like knowledge of banking and financial services law, usages and practices both local and foreign.
- (vii) Raise money by all lawful means and to solicit, receive and enlist financial and other aid from individuals, trusts, companies, corporations, firms, associations, societies, institutions and other organisations or authorities and from government departments of State and public bodies and to conduct fund-raising campaigns for the purpose of furthering the objects of the Company.
- (viii) Convene and hold seminars, discussions, lectures and conferences and to promote social activities amongst members and persons interested in the objects of the Company.
- (ix) Encourage publication for the dissemination of banking and financial services law usage and practice.
- (x) Establish libraries of banking and financial services law books, documents and forms and to publish and distribute journals, books and papers.
- (xi) Acquire and make available for the use of members information concerning foreign banking and financial services law and practice.
- (xii) Subscribe to, become a member of and co-operate with any other association or organisation, whether incorporated or not, whose objects are altogether or in part similar to those of the Company, provided that the Company must not subscribe to or support with its funds any association or organisation which does not prohibit the distribution of its income and property among its members.
- (xiii) Invest and deal with the money of the Company not immediately required in such manner as may be permitted by law for the investment of trust funds.
- (xiv) Make donations of money, books and equipment, to give subsidies and to endow scholarships and to give prizes or to make grants or give assistance to individuals, trusts, corporations, associations, societies, institutions and other organisations or authorities whether in Australia or elsewhere.
- (xv) Employ and engage officers, employees and contractors whose services the Company deems necessary or desirable for the purpose of effecting the operations of the Company.

- (xvi) Sell, dispose of and transfer and otherwise deal with any property or assets of the Company.
- (xvii) Accept any gift, donation, endowment or bequest made to the Company generally or for the purpose of any specific object and to carry out any trusts or conditions attached to any such gift, donation, endowment or bequest provided that any such trust or condition must not be inconsistent with the objects and powers of the Company and provided further that the Company must only deal with any property which is subject to any trust or condition in such manner as is allowed by law having regard to any such trust or condition.
- (xviii) Encourage and sponsor research in banking and financial services law and regulation including reform.
- (xix) Make representations to government regarding reform of banking and financial services law, usages and practices.
- (xx) Do all such other things as are incidental or conducive to the attainment of the objects of the Company.

## **4 Powers of the Company**

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### **4.1 Legal capacity and powers of the Company**

The Company has the legal capacity and powers of an individual anywhere in the world. The Company also has all the powers of a body corporate, including the power to:

- (i) issue debentures whether irredeemable or redeemable;
- (ii) grant a floating charge over the Company's property;
- (iii) arrange for the Company to be registered or recognised as a body corporate in any place outside the jurisdiction in which the Company is registered; and
- (iv) do anything that it is authorised to do under any law (including a law of a foreign country).

*(This reflects section 124 of the Act.)*

### **4.2 Agent exercising the Company's power to make contracts**

Subject to the operation of a law that requires a particular procedure to be complied with in relation to the contract, the 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.

*(This reflects section 126 of the Act.)*

#### **4.3 Execution of documents by the Company**

The Company may (without limiting other ways in which this may be done) execute a document if the document is signed by:

- (i) 2 Directors; or
- (ii) a Director and Secretary.

### **5 Income and property of the Company**

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#### **5.1 Income and property to be applied towards objects**

All income and property of the Company must be solely applied towards the promotion of the objects of the Company.

#### **5.2 No payments to Members**

Subject to clause 5.3, no part of the income or property of the Company may be paid by way of dividend, bonus or otherwise to the Members.

#### **5.3 Payments in good faith**

Nothing in this constitution prevents the Company from making payment in good faith:

- (i) of reasonable and proper remuneration to any employees of the Company, not being a Director, for any services actually rendered to the Company;
- (ii) to any Member in relation to any contract, right or claim in which that Member is interested or which arises other than by virtue of the Member's membership;
- (iii) of reasonable interest on any money lent to the Company by any Member; or
- (iv) of reasonable or proper rent for premises let by any Member.

#### **5.4 Expenses**

The Directors may resolve to reimburse a Member for reasonable expenditure incurred by way of travelling expenses and for other expenses incurred in the service of the Company.

### **6 Membership**

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#### **6.1 Membership**

##### **(a) Members**

The Members of the Company are such persons who:

- (i) are Members of the Company at the time of adoption of this constitution; or
- (ii) are subsequently admitted to membership of the Company in accordance with clause 6.2.

**(b) Classes of membership**

The membership of the Company consists of the following classes of Members:

- (i) Ordinary Members;
- (ii) Corporate Members; and
- (iii) Honorary Life Members.

**(c) Eligibility criteria for Members**

- (i) Any natural person (whether or not admitted to the practice of law) who in the opinion of the Directors is interested in the objects of the Company, is eligible for membership of the Company as an Ordinary Member.
- (ii) Any company, corporation or other body corporate and any individual persons in their capacity comprising membership of a partnership, unincorporated association or institution whether or not engaged in law or in the banking industry but which, in the opinion of the Directors, is interested in the objects of the Company, is eligible for membership of the Company as a Corporate Member.
- (iii) The Directors may declare as an Honorary Life Member any person who has rendered distinguished service to the Company itself or in relation to any of the objects of the Company.

**6.2 Entry as a Member**

**(a) Application**

An Applicant must:

- (i) make an application in such form and in such manner as the Directors may from time to time decide;
- (ii) sign an undertaking, by electronic means or otherwise, to be bound by the provisions of this constitution; and
- (iii) lodge the application form and undertaking with the Secretary together with the applicable subscription amount. The Secretary must bring the Applicant's application before the Directors.

**(b) Consideration of application by Secretary**

- (i) The Secretary must resolve to admit each Applicant to membership of the Company who meets the eligibility criteria considered in

clause 6.1(c) and successfully undertakes the application process in 6.2(a).

- (ii) The Secretary may require any Applicant to give any other information as the Secretary reasonably desires, before admitting the Applicant to membership of the Company.
- (iii) The Secretary may, in its absolute discretion and without reason, refuse any application for membership of the Company.
- (iv) In accordance with clause 6.3, after an Applicant has become a Member, their name and address must be entered in the Register in the appropriate category of membership.

### 6.3 Maintaining Register

#### (a) Register

The Secretary must prepare and maintain the Register in accordance with the Act. The Register must record such details as the Directors may require including the State, Territory or Country in which each member resides (or if a Corporate Member, its principal place of business) as nominated by such Member to the Secretary.

#### (b) Branch Register

- (i) The Company may keep a branch register of Members at a place outside Australia.
- (ii) If the Company keeps an overseas branch register under clause 6.3(b):
  - (A) the Company must keep the branch register in the same manner as the Act requires the Company to keep the register under the Act (**Principal Register**); and
  - (B) the Company must enter in the Principal Register the details contained in the branch register.

*(This reflects section 178 of the Act.)*

- (iii) Subject to the provisions of the Act and this constitution, any branch Register must be established and kept in the manner the Directors determine.

## 6.4 Expulsion of Members

### (a) Board resolution

The Board may by resolution expel a Member from the Company and otherwise terminate the Member's membership in the Company, without prejudice to the Member's obligations to pay the subscription under clause 8, if:

- (i) the Member wilfully refuses or neglects to comply with the provisions of this constitution;
- (ii) the Member has conducted itself in a way which has brought discredit upon the Company;
- (iii) the subscription of the Member remains unpaid for a period of 3 calendar months after notice of the default has been sent to the Member;
- (iv) the Member ceases to be eligible for membership of the Company;
- (v) the Member, being a company or corporation goes into liquidation (whether voluntary or compulsory) except for the purposes of reconstruction or amalgamation;
- (vi) the Member, being a natural person, dies, becomes bankrupt, makes a composition with or assigns the Member's estate for the benefit of the Member's creditors or becomes a person whose estate or person is liable to be dealt with in any way under the law relating to mental health; or
- (vii) the Board is of the opinion that in the interests of the Company the membership should be cancelled in which event the Board is not required to assign any reason for such cancellation.

### (b) Member's rights

The Member in respect of which a resolution under clause 6.4(a) is proposed, must be given at least 14 days' notice of the Director's meeting at which the resolution is to be considered and must be given an opportunity to:

- (i) attend the meeting; and
- (ii) give a written explanation or defence in relation to the resolution proposed under clause 6.4(a).

### (c) Consequences of expulsion/termination

Upon the expulsion of a Member under this clause 6.4:

- (i) the name of such Member must be removed from the Register;
- (ii) the Member ceases to have the rights and privileges of membership; and

- (iii) any office held by the Member (or in the case of a Corporate Member, any office held by any of its Corporate Nominees) is deemed vacated unless, in the case of a Corporate Nominee, such person becomes an Ordinary Member at the next meeting of the Board.

## 6.5 Resignation of membership

- (i) A Member will cease to be a Member if the Member gives written notice of its resignation to the Company and the resignation is accepted by the Directors.
- (ii) The resignation of a Member under clause 6.5(i) does not prejudice the Member's obligation to pay any moneys which prior to the date of such resignation were owing by the Member to the Company.
- (iii) If a Corporate Member resigns, its Corporate Nominees cease to have any rights and privileges as a Member or under this Constitution. Such Corporate Nominee may apply in the normal course to become an Ordinary Member.

## 7 Rights of Membership

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### 7.1 Membership

The rights and privileges of a Member are personal and cease on the death of the Member or on the cessation of the Member's membership (for whatever reason).

### 7.2 Rights of Ordinary Members

An Ordinary Member is entitled to attend and vote at any general meeting of the Company.

### 7.3 Rights of Corporate Members

#### (a) Corporate Member

An organisation eligible to become a Corporate Member, in accordance with 6.1(c)(ii), may purchase one or more Corporate Memberships.

#### (b) General meetings

A Corporate Member is entitled to attend and vote through its Corporate Nominees at any general meeting of the Company.

#### (c) Corporate Nominee

- (i) Each Corporate Member must nominate in writing at least one person, and may nominate up to five persons, to be its representatives (**Corporate Nominee**) for all matters relating to the Company. A Corporate Nominee must be a partner or employee of the Corporate Member.



- (ii) An organisation that purchases more than one Corporate Membership, will be entitled to nominate up to five Corporate Nominees per Corporate Membership in accordance with 7.3(c)(i).
- (iii) The nomination of a Corporate Nominee may be cancelled by the nominating Corporate Member at any time and the Corporate Member may make a further nomination in the place of any cancelled nomination.
- (iv) A nomination must be in the prescribed form or such other form as the Directors approve and is effective upon receipt by the Secretary.
- (v) A Corporate Nominee is entitled to:
  - (A) receive all communications and notices from the Company to which an Ordinary Member of the Company is entitled;
  - (B) attend and vote at any general meeting of the Company;
  - (C) take part in the activities of the Company on the same terms as an Ordinary Member of the Company; and
  - (D) be elected to the Board and hold office in the same way as an Ordinary Member.
- (vi) Each person nominated in accordance with clause 7.3(c)(i) will remain the representative of the Corporate Member until written notice of the cancellation of such nomination has been received from the Corporate Member by the Secretary.
- (vii) If a Corporate Nominee holds any office or position in the Company or is a member of the Board then upon receipt by the Secretary of notice that such nomination is cancelled that person will be deemed to have vacated his office or position on the Board unless such person becomes an Ordinary Member at the next meeting of the Directors. For the avoidance of doubt, this clause does not require any person nominated in place of the cancelled nomination to assume the office so vacated.
- (viii) A Corporate Member, its partners or employees do not have the right to receive communications and notices to attend or vote at meetings or to become a member of the Board otherwise than by its Corporate Nominees. Subject to these restrictions the employees and partners of a Corporate Member are entitled to attend and take part in all activities and functions of the Company.

#### **7.4 Rights of Honorary Life Members**

An Honorary Life Member:

- (i) is not obliged to pay any subscriptions under clause 8(ii);
- (ii) has no vote at any general meeting; and

- (iii) may attend any general meeting and speak on any issue being debated at that meeting.

## **8 Subscriptions**

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- (i) Each Member (except an Honorary Life Member) must pay an annual subscription.
- (ii) The annual subscription in respect of each class of membership is such sum determined by the Directors. The Board may determine different annual subscription rates for different classes of membership however the same annual subscription rate will apply to each Member within the same class of membership.
- (iii) Annual subscriptions are payable annually in advance and are due on the first day of July each year or on such other date as may be determined by the Directors.
- (iv) An Applicant applying for membership after the end of the month of February in any year is required to pay only one half of the annual subscription for the then current year.

## **9 Circulating resolutions of Members**

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### **9.1 Circulating resolutions when more than 1 Member**

#### **(a) Circulating resolutions**

- (i) Except in the case of a resolution under section 329 of the Act to remove an auditor, or any other resolution which the Act or this constitution requires to be passed at a general meeting, the Company may pass a resolution without a general meeting being held if all the Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (ii) Separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

#### **(b) Satisfaction of requirements of the Act**

- (i) If the Company passes a resolution under this clause, a requirement under the Act:
  - (A) to give Members information or a document relating to the resolution is satisfied by giving the Members that information or document with the document to be signed; and

- (B) to lodge with ASIC a copy of a notice of meeting to consider the resolution, or of a document which accompanied the notice, is satisfied by lodging a copy of the document to be signed by Members or a copy of the information or documents referred to in clause 9.1(b)(i)(A), respectively.
- (ii) The passage of the resolution satisfies any requirement in the Act or this constitution that the resolution be passed at a general meeting.
- (iii) This clause does not affect any rule of law relating to the assent of Members not given at a general meeting.

(c) **Resolution passed**

The resolution is passed when the last Member signs the document.

**9.2 Resolutions of company when 1 Member**

If the Company has only 1 Member, that Member may pass a resolution by the Member recording it and signing the record.

*(This reflects section 249B(1) of the Act.)*

**10 Calling meetings of Members**

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**10.1 Calling of meetings of Members by a Director**

A Director may call a meeting of the members.

**10.2 Calling of general meeting by Directors when requested by Members**

(a) **Members request**

- (i) The Directors of the 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 meeting; or
  - (B) at least 100 Members (or such different number as may be prescribed by the regulations) who are entitled to vote at the general meeting.
- (ii) The request must:
  - (A) be in writing;
  - (B) state any resolution to be proposed at the meeting;
  - (C) be signed by the Members making the request; and
  - (D) be given to the Company.

- (iii) 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.

(b) **Timing of meeting**

The Directors must call the meeting within 21 days after the request is given to the Company under clause 10.2(a). The meeting is to be held not later than 2 months after the request is given to the Company.

*(This reflects section 249D of the Act.)*

**10.3 Failure of Directors to call a general meeting**

(a) **Members calling a meeting**

- (i) Members with more than 50% of the votes of all of the Members who make a request under clause 10.2 may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Company.
- (ii) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called. The meeting must be held not later than 3 months after the request is given to the Company.
- (iii) To call the meeting the Members requesting the meeting may ask the Company for a copy of the Register. The Company must give the Members the copy of the Register within 7 days after request without charge.

(b) **Payment of expenses**

- (i) The Company must pay the reasonable expenses the Members incurred because the Directors failed to call and arrange the meeting.
- (ii) The Company may recover the amount of the expenses under clause 10.3(b)(i) from the Directors. However, a Director is not liable for the amount if that Director proves that all reasonable steps to cause the Directors to comply with clause 10.2 have been taken. The Directors who are liable are jointly and individually liable for the amount. If a Director who is liable for the amount does not reimburse the Company, the Company must deduct the amount from any sum payable as fees to, or remuneration of, the Director.

*(This reflects section 249E of the Act.)*

**10.4 Calling of general meeting by Members**

- (i) Members with at least 5% of the votes that may be cast at a general meeting of the Company may call, and arrange to hold, a general meeting. The Members calling the meeting must pay the expenses of calling and holding the meeting.

- (ii) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called.

*(This reflects section 249F of the Act.)*

## 10.5 Amount of notice of meetings

### (a) 21 days' notice

- (i) Subject to clause 10.5(a)(ii), at least 21 days' notice must be given of a meeting of the Company's Members.
- (ii) The Company may call on shorter notice:
  - (A) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
  - (B) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (iii) The Company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in clause 10.5(b).

### (b) Removal of auditor or Director

At least 21 days' notice must be given of a meeting of the Company at which a resolution will be moved to:

- (i) remove an auditor under section 329 of the Act; or
- (ii) remove a Director under clause 16.2(c) or appoint a Director in place of a Director removed under that clause.

*(This reflects section 249H of the Act.)*

## 10.6 Notice of meetings of Members to Members and Directors

### (a) Written notice

Written notice of a meeting of the Members must be given individually to each Member entitled to vote at the meeting and to each Director.

*(This reflects section 249J(1) of the Act.)*

### (b) How notice given

- (i) The Company may give the notice of a meeting to a Member:
  - (A) personally;
  - (B) by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member;

- (C) by sending it to the fax number or electronic address (if any) nominated by the Member;
- (D) by sending it to the Member by other electronic means (if any) nominated by the Member; or
- (E) by notifying the Member in accordance with clause 28.6.

*(This reflects section 249J(3) of the Act.)*

(ii) If the Member nominates:

- (A) an electronic means (**nominated notification means**) by which the Member may be notified that notices of meeting are available; and
- (B) an electronic means (**nominated access means**) the Member may use to access notices of meeting,

the Company may give the Member notice of the meeting by notifying the Member (using the nominated notification means) that the notice of meeting is available and how the Member may use the nominated access means to access the notice of meeting.

*(This reflects section 249J(3) of the Act.)*

## 10.7 Auditor entitled to notice and other communications

The Company must give the Company's auditor, if any:

- (i) notice of a general meeting in the same way that a Member is entitled to receive notice; and
- (ii) any other communications relating to the general meeting that a Member is entitled to receive.

*(This reflects section 249K of the Act.)*

## 10.8 Notice of meetings of Members

### (a) Contents of a notice of meeting

A notice of a meeting of the Company's Members must:

- (i) set out the place, date and time for the meeting and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
- (ii) state the general nature of the meeting's business;
- (iii) in the case of an election of Directors, set out the names of the candidates for election;
- (iv) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and

- (v) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
  - (A) that the Member has a right to appoint a proxy;
  - (B) whether or not the proxy needs to be a Member; and
  - (C) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.

*(This reflects section 249L of the Act.)*

(b) **Notice of adjourned meetings**

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

*(This reflects section 249M of the Act which is a Replaceable Rule.)*

**10.9 Cancelled general meetings**

When a notice of a meeting has been given, the Board may, by notice given to all persons entitled to be given notice of the meeting, postpone or cancel the meeting. Notice under this clause 10.9 can be given in the same manner as set out in clause 10.5.

**10.10 Accidental omission or non-receipt of notice**

The accidental omission to give notice of a meeting to any person or the non-receipt by any person of notice of the meeting does not invalidate any proceeding at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or ASIC, declares proceedings at the meeting to be void.

*(This reflects section 1322(3) and 1322 (3AA) of the Act.)*

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**11 Members' rights to put resolutions at general meetings**

**11.1 Members' resolutions**

(a) **Members**

The following Members may give the Company notice of a resolution that they propose to move at a general meeting:

- (i) Members with at least 5% of the votes that may be cast on the resolution; or

- (ii) at least 100 Members (or some different number as may be prescribed by the regulations) who are entitled to vote at a general meeting.

(b) **Contents and form of notice**

- (i) The notice must:
  - (A) be in writing;
  - (B) set out the wording of the proposed resolution; and
  - (C) be signed by the Members proposing to move the resolution.
- (ii) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

*(This reflects section 249N(1) and (2) of the Act.)*

**11.2 Company giving notice of Members' resolutions**

(a) **When resolution to be considered**

If the Company has been given notice of a resolution under clause 11.1, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.

(b) **Company to give notice**

- (i) The Company must give all of its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (ii) The Company need not give notice of the resolution if:
  - (A) it is more than 1,000 words long or defamatory; or
  - (B) the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

(c) **Payment of expenses**

- (i) The Company is responsible for the cost of giving Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.
- (ii) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Company does not receive the Members notice in time to send it out with the notice of



meeting. At a general meeting, the Company may resolve to meet the expenses itself.

*(This reflects section 249O of the Act.)*

## **12 Members' statements to be distributed**

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### **12.1 Grounds for statement**

Members may request the Company to give to all of its Members a statement provided by the Members making the request about:

- (i) a resolution that is proposed to be moved at a general meeting; or
- (ii) any other matter that may be properly considered at a general meeting.

### **12.2 Who may request**

The request must be made by:

- (i) Members with at least 5% of the vote that may be cast on the resolution; or
- (ii) at least 100 Members (or a different number as may be prescribed by the regulations) who are entitled to vote at the meeting.

### **12.3 How request to be made**

The request must be:

- (i) in writing;
- (ii) signed by the Members making the request; and
- (iii) given to the Company.

### **12.4 Copies for signing**

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.

### **12.5 Distribution of statement**

After receiving the request, the Company must distribute to all of the Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

### **12.6 When Company bears cost**

The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.

## 12.7 **When Members bear cost**

The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

## 12.8 **When company need not comply with request**

The Company need not comply with the request if:

- (a) the statement is more than 1,000 words long or defamatory; or
- (b) the Members making the request are responsible for the expenses of the distribution, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

*(This reflects section 249P of the Act.)*

## 13 **Holding meetings of Members**

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### 13.1 **Purpose**

A meeting of Members must be held for a proper purpose.

*(This reflects section 249Q of the Act.)*

### 13.2 **Time and place for meetings of Members**

A meeting of Members must be held at a reasonable time and place.

*(This reflects section 249R of the Act.)*

### 13.3 **Technology**

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

*(This reflects section 249S of the Act.)*

### 13.4 **Representation of Member**

A Member may be present and vote in person at any Members' meeting or may be represented by:

- (i) proxy;
- (ii) an attorney; or
- (iii) in the case of a body corporate which is a Member, a representative appointed in accordance with the Act.

### 13.5 Quorum

(a) **Quorum present**

No business may be transacted at any general meeting unless a quorum of Members entitled to vote is present at the time when the meeting proceeds to business. A quorum is constituted by:

- (i) if there is only 1 Member, that Member; and
- (ii) otherwise, 2 Members.

(b) **No quorum**

If within 30 minutes from the time appointed for the meeting, a quorum of Members is not present, the meeting

- (i) is dissolved if convened on the requisition of the Members; and
- (ii) otherwise, is adjourned to the same day in the next week at the same time and place, or to another day, time and place as the Directors decide, and if at the adjourned meeting a quorum of Members is not present within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

(c) **Counting of proxies**

If a person has appointed more than 1 proxy, attorney or representative, only 1 of those proxies, attorneys or representatives is to be counted in deciding whether a quorum of Members is constituted.

*(This substitutes for section 249T of the Act which is a Replaceable Rule.)*

### 13.6 Chairing meetings of Members

(a) **Chairperson**

The chairperson, if any, of the Board is to be the chairperson at every general meeting of the Company.

(b) **Directors or Members to elect alternative Chair**

If the chairperson of the Board cannot or will not chair a general meeting (or part of it) or is not present within 15 minutes after the time appointed for the holding of the meeting, the Directors present may elect one of their number to be the chairperson of the meeting but, if they do not do so, the Members present must elect the chairperson of the meeting.

(c) **Chair to adjourn meeting of Members**

The chairperson must adjourn a meeting of the Members if the Members present with a majority of votes at the meeting agree or direct that the chairperson do so.

*(This substitutes for section 249U of the Act which is a Replaceable Rule.)*

### 13.7 Auditor's right to be heard at Members' meetings

(a) **Auditor's right to attend**

The Company's auditor (if any) is entitled to attend any Members' meeting.

(b) **Auditor's right to be heard**

(i) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.

(ii) The auditor is entitled to be heard even if:

(A) the auditor retires at the meeting; or

(B) the meeting passes a resolution to remove the auditor from office.

(c) **Authorised representative**

The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any Members' meeting.

*(This reflects section 249V of the Act.)*

### 13.8 Adjourned meetings

(a) **Resolutions**

A resolution passed at a Members' meeting resumed after an adjournment is passed on the day it was passed.

*(This reflects section 249W(1) of the Act.)*

(b) **Business of an adjourned meeting**

Only unfinished business is to be transacted at a Members' meeting resumed after an adjournment.

*(This substitutes for section 249W(2) of the Act which is a Replaceable Rule.)*

### 13.9 Annual general meetings

(a) **Holding of annual general meetings**

(i) The Company, if required by the Act, must hold an annual general meeting.

(ii) An annual general meeting must be held no more than 15 months after the last preceding annual general meeting.

*(See the requirements of section 250N of the Act.)*

**(b) Business of annual general meeting**

- (i) The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- (A) the consideration of the annual financial report, Directors' report and auditor's report;
  - (B) the election of Directors;
  - (C) the appointment of the auditor;
  - (D) the fixing of the auditor's remuneration.

*(This reflects section 250R of the Act.)*

**(c) Questions at annual general meetings**

- (i) The chairperson of an annual general meeting must allow a reasonable opportunity for Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- (ii) If the Company's auditor or their representative is at the meeting, the chairperson of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

*(This reflects sections 250S and 250T of the Act.)*

## **14 Voting at Members' meetings**

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### **14.1 Simple resolutions**

Subject to this constitution and the Act, resolutions of Members are to be decided by a simple majority of votes cast in respect of the relevant resolution.

### **14.2 How many votes a Member has**

At a Members' meeting:

- (i) on a show of hands, each Member has 1 vote;
- (ii) on a poll, each Member has 1 vote; and
- (iii) in case of equality of votes, the chairperson has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

*(See section 250E of the Act which is a Replaceable Rule.)*

#### 14.3 **Objections to right to vote at a meeting of the Members**

A challenge to a right to vote at a Members' meeting:

- (i) may only be made at the meeting or an adjourned meeting; and
- (ii) must be determined by the chairperson, whose decision is final.

*(This substitutes for section 250G of the Act which is a Replaceable Rule.)*

#### 14.4 **Votes need not all be cast in the same way**

On a poll, a person voting who is entitled to 2 or more votes:

- (i) need not cast all their votes; and
- (ii) may cast their votes in different ways.

*(This reflects section 250H of the Act.)*

#### 14.5 **How voting is carried out**

##### (a) **Show of hands**

A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded.

##### (b) **Declaration by chairperson**

On a show of hands, a declaration by the chairperson is conclusive evidence of the result. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.

*(This substitutes for section 250J of the Act which is a Replaceable Rule.)*

#### 14.6 **Matters on which a poll may be demanded**

##### (a) **Any resolution**

A poll may be demanded on any resolution.

##### (b) **Specific resolutions**

Without limiting clause 14.6(a), a poll can be demanded on any resolution concerning:

- (i) the election of the chairperson of a meeting; or
- (ii) the adjournment of a meeting.

##### (c) **Demand withdrawn**

A demand for a poll may be withdrawn.

*(This substitutes for section 250K of the Act.)*

#### 14.7 **When a poll is effectively demanded**

(a) **Who may demand a poll**

At a Members' meeting a poll may be demanded by:

- (i) at least 5 Members entitled to vote on the resolution;
- (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (iii) the chairperson.

(b) **When a poll may be demanded**

The poll may be demanded:

- (i) before a vote is taken;
- (ii) before the voting results on a show of hands are declared; or
- (iii) immediately after the voting results are declared.

*(This reflects section 250L of the Act.)*

#### 14.8 **When and how polls must be taken**

(a) **Matters other than election of chairperson or adjournment of meeting**

A poll demanded on a matter other than the election of a chairperson or the question of an adjournment must be taken when and in the manner the chairperson directs.

(b) **Election of chairperson or adjournment of meeting**

A poll on the election of a chairperson or on the question of an adjournment must be taken immediately.

*(This substitutes for section 250M of the Act which is a Replaceable Rule.)*

(c) **Continuance of meeting**

The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

#### 14.9 **Personal Representative's right to vote**

A Personal Representative of a Member may vote at any Members' meeting in the same manner as if the Personal Representative was the Member if:

- (i) at least 48 hours before the time of holding the meeting (or adjourned meeting), at which the Personal Representative proposes to vote, the Personal Representative has satisfied the Directors of the Personal Representative's entitlement; or

- (ii) the Directors have previously admitted the Personal Representative's right to vote at such meeting.

## **15 Proxies**

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### **15.1 Who can appoint a proxy**

Each Member who is entitled to attend and vote at a meeting of Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

*(This reflects section 249X of the Act.)*

### **15.2 Rights of proxies**

A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (i) to speak at the meeting;
- (ii) to vote (but only to the extent allowed by the appointment); and
- (iii) to join in a demand for a poll.

*(This reflects section 249Y(1) of the Act.)*

### **15.3 Company sending appointment forms or lists of proxies must send to all Members**

If the Company sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (i) if the Member requested the form or list, the Company must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (ii) otherwise, the Company must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

*(This reflects section 249Z of the Act.)*

### **15.4 Appointing a proxy**

#### **(a) Valid appointment**

- (i) An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the Corporations Regulations 2001 (Cth), by the Member making the appointment and contains the following information:
  - (A) the Member's name and address;
  - (B) the Company's name;



- (C) the proxy's name or the name of the office held by the proxy; and
- (D) the meetings at which the appointment may be used.
- (ii) An appointment may be a standing one.
- (iii) The chairperson of the Board may determine in the chairperson's absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 15.4(a)(i).
- (iv) An appointment does not have to be witnessed.

(b) **Undated proxy**

An undated appointment is taken to have been dated on the day it is given to the Company.

(c) **How proxy is to vote**

An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
- (iii) if the proxy is the chairperson, the proxy must vote on a poll, and must vote that way; and
- (iv) if the proxy is not the chairperson, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

(d) **Proxy who is a Member**

If a proxy is also a Member, this clause does not affect the way that the person can cast any votes held as a Member.

(e) **Revocation of appointment**

A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

*(This reflects section 250A of the Act, except 250A(5).)*

## 15.5 Proxy documents

(a) **Effective appointment**

- (i) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

- (A) the proxy's appointment; and
  - (B) if the appointment is signed, or otherwise authenticated in a manner prescribed in the Corporations Regulations 2001 (Cth), by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (ii) If a meeting of Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

(b) **When proxy documents are received by the Company**

The Company receives a document referred to in clause 15.5(a) when it is received at any of the following:

- (i) the Company's registered office;
- (ii) a fax number at the Company's registered office; or
- (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting; and

if the notice of the meeting specifies other electronic means by which a Member may give the document, then the Company receives it when the document given by those means is received by the Company as prescribed by the regulations.

(c) **Shorter period**

The Company may specify a shorter period than the 48 hours referred to in this clause in the notice of meeting.

*(This reflects section 250B of the Act.)*

## 15.6 **Validity of proxy vote**

(a) **Proxy who is not entitled to vote on a resolution as a Member**

A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if the proxy's appointment specifies the way the proxy can vote on the resolution and the proxy votes that way.

*(This reflects section 250C(1) of the Act.)*

(b) **Death, revocation etc**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (i) the appointing Member dies;

- (ii) the Member is mentally incapacitated;
- (iii) the Member revokes the proxy's appointment;
- (iv) the Member revokes the authority under which the proxy was appointed by a third party; or
- (v) the Member transfers the share in respect of which the proxy was given.

*(This reflects section 250C(2) of the Act.)*

## **16 Directors**

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### **16.1 Number of Directors**

The Company must have 10 Directors (not counting alternate Directors) of which at least 2 must be ordinarily resident in Australia.

*(This reflects section 201A(2) of the Act.)*

### **16.2 Appointment and removal of Directors**

#### **(a) Persons eligible to be appointed as a Director**

No person is eligible to be appointed or elected as a Director unless they are either an Ordinary Member or a Corporate Nominee.

#### **(b) Appointment**

- (i) The Company may appoint a person as a Director by resolution passed in general meeting.

*(This reflects section 201G of the Act which is a Replaceable Rule.)*

- (ii) A resolution passed by the Company in general meeting appointing or confirming the appointment of 2 or more Directors is void unless:

- (A) a resolution is passed that the appointment or confirmation may be voted on together; and
- (B) no votes are cast against the resolution.

*(This reflects section 201(E) of the Act.)*

- (iii) The Directors may appoint a person as a Director. A person can be appointed as a Director in order to make up a quorum for a Directors meeting even if the total number of Directors of the Company is not enough to make up that quorum.

*(This reflects section 201H of the Act which is a Replaceable Rule.)*

- (iv) If a person is appointed by the other Directors as a Director the appointment must be confirmed at the Company's next annual

general meeting. If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the annual general meeting.

*(This reflects section 201H(3) of the Act which is a Replaceable Rule.)*

**(c) Removal**

The Company may by resolution:

- (i) remove a Director from office despite anything in this constitution, any agreement between the Company and the Director or any agreement between any or all Members and the Director; and

*(This reflects section 203D(1) of the Act.)*

- (ii) appoint a new Director.

*(This substitutes for section 201G of the Act which is a Replaceable Rule.)*

*(As to further provisions regarding removal see sections 203D(2) to (7) and section 203E) of the Act.)*

**16.3 Ceasing to be a member of the Board**

A person ceases to be a Director of the Company, and the office of the Director automatically becomes vacant, if the person:

- (i) ceases to be a person eligible to be a Director, or otherwise is disqualified from managing corporations, by virtue of the Act;
- (ii) becomes bankrupt or makes any arrangement or composition with the person's creditors generally;
- (iii) becomes a person whose estate or person is liable to be dealt with in any way under the law relating to mental health;
- (iv) resigns their office by notice in writing to the Company;
- (v) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest in the manner required by the Act (or in any event at the meeting of the Board as soon as practicable after the relevant facts have come to the Members knowledge) and the Board resolves that such person should no longer be a member of the Board;
- (vi) ceases to be an Ordinary Member of the Company or being a Corporate Nominee the relevant Corporate Member ceases to be a member of the Company;
- (vii) is guilty of any act proceeding or practice likely to, in the bona fide opinion of the Board, bring discredit to the Company or be inimical

to its objects and the Board resolves that such person should no longer be a member of the Board;

- (viii) is removed pursuant to the provisions of section 203D of the Act; or
- (ix) is removed from office in accordance with this constitution or the Act.

#### 16.4 **Interests of Directors**

##### (a) **Office and position of profit**

Subject to clause 16.5, a Director may not hold any office or position of profit under the Company or under any company promoted by the Company or in which the Company is a shareholder or otherwise interested.

##### (b) **Contract not void**

Notwithstanding any rule of law or equity to the contrary, a Director may contract, transact or enter into an arrangement with the Company and no such contract, transaction or arrangement entered into by or on behalf of the Company or any other contract, transaction or arrangement in which a Director is in any way interested, is avoided or rendered voidable because of that person being a Director.

##### (c) **Material personal interest**

- (i) A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless section 191(2) of the Act says otherwise.

*(This reflects section 191(1) of the Act.)*

- (ii) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:

- (A) be present while the matter is being considered at the meeting; or

- (B) vote on the matter,

unless,

- (C) subclauses 16.4(c)(iii), 16.4(c)(iv) or 16.4(c)(v) allow the Director to be present; or

- (D) the interest does not need to be disclosed under section 192 of the Act.

- (iii) The Director may be present and vote if Directors who do not have a material personal interest in the matter have passed a resolution that:

- (A) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
  - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- (iv) The Director may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Act.
  - (v) If there are not enough Directors to form a quorum for a Directors' meeting because of subclause 16.4(c)(ii)(A) or 16.4(c)(ii)(B), 1 or more of the Directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

*(See the provisions of sections 195 and 196 of the Act.)*

#### **16.5 Remuneration of Directors**

##### **(a) Expenses**

The Directors are entitled to be reimbursed for all expenses properly incurred in attending or in connection with their attendance at any meeting of the Company or of the Board or any committee of Directors.

##### **(b) Special remuneration and expenses**

In addition to the remuneration referred to in clause 16.5(a), a Director may receive a special remuneration and expense reimbursement for performing extra services in and about the Company's business.

*(This substitutes for section 202A of the Act which is a Replaceable Rule.)*

#### **16.6 Financial benefits**

The Company must not provide financial benefits to a Director except as permitted by, and in accordance with, the provisions of the Act.

#### **16.7 Defect in appointment**

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or a member of a committee, or to act as a Director, or that a person so appointed was disqualified, all acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

*(See section 201M of the Act.)*

#### **16.8 Wholly owned subsidiary**

Each Director is expressly authorised to act in the best interests of any holding company of the Company.

## 16.9 Office bearers

### (a) President, Vice President etc

(i) The office bearers of the Company are:

- (A) the President;
- (B) two Vice Presidents;
- (C) the Treasurer; and
- (D) the Secretary.

(ii) An office bearer must be a Director.

### (b) Appointment

(i) The office bearers must be elected by the Directors at the meeting next following the annual general meeting of the Company.

(ii) The President may be re-elected for a second term of office but thereafter must retire from that office although they may be elected to another office on the Board.

### (c) Cessation of appointment

(i) Office bearers (if not re-elected) will cease to hold office at the close of the meeting at which the election of the office bearers takes place and new office bearers will assume office from that time.

(ii) An office bearer who ceases to be a Director will cease to be an office bearer.

(iii) An office bearer may retire by giving notice to the Secretary.

## 17 Powers and discretions of Directors

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### 17.1 Business of the company

(i) The business of the Company must be managed by or under the direction of the Directors.

(ii) The Directors may exercise all the powers of the Company except any powers that the Act or this constitution require to be exercised by the Company in general meeting.

(iii) The Directors must determine, either on the Directors' own motion or at the suggestion of any Member, the objectives of the Company and any subjects that should be the subject of investigation, consideration, discussion and action by the Company.

- (iv) The Directors must study ways and means and take such measures the Directors may deem appropriate to increase the general usefulness of the Company.

#### **17.2 Appointment of attorneys**

The Directors may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors), for the period and subject to the conditions the Directors think fit.

#### **17.3 Directors may execute security over the assets of the Company**

If the Directors or any of them or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of such liability.

#### **17.4 Negotiable instruments**

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time determine.

*(This substitutes for section 198B of the Act which is a Replaceable Rule.)*

#### **17.5 Electronic banking**

Without limiting clause 17.4, the Directors are authorised to make any payments allowed by this constitution through any electronic banking means that the Directors deem appropriate.

#### **17.6 Power to raise capital**

The Directors have full power to borrow and raise money for the purposes of the Company. The money may be borrowed or raised from such sources and at such rates of interest or cost and upon such other terms and conditions and with or without such security as determined by the Directors in their absolute discretion.

#### **17.7 Expenditure**

All appropriation or expenditure of funds of the Company must be made or approved by the Directors or some member or members of the Company designated by the Directors.

#### **17.8 Directors' discretion**

Unless otherwise provided, if the Directors are given a power or discretion under this constitution, then subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, decide.



## 17.9 Delegation

### (a) Authority to delegate

The Directors may delegate any of their powers to:

- (i) a committee of Directors;
- (ii) a Director;
- (iii) an employee of the Company; or
- (iv) any other person (including a committee under clause 23).

*(This reflects sections 198D(1) of the Act.)*

### (b) Exercise of delegated powers

- (i) The delegate must exercise the powers delegated in accordance with any directions of the Directors.

*(This reflects section 198D(2) of the Act.)*

- (ii) The exercise of the power by the delegate is as effective as if the Directors had exercised it.

*(This reflects section 198D(3) of the Act.)*

### (c) Proceedings of meetings

The meetings and proceedings of a committee must be carried out in accordance with the provisions in this constitution relating to the meetings and proceedings of Directors, subject to any necessary changes and any directions made by the Directors.

### (d) Directors responsible

If the Directors delegate a power under clause 17.9(a), the Directors are responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves unless exonerated under section 190(2) of the Act.

*(This reflects section 190(1) of the Act.)*

## 18 Directors resolutions and meetings

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### 18.1 Circulating resolutions

- (i) The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(ii) Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.

(iii) The resolution is passed when the last Director signs.

*(This reflects section 248A of the Act which is a Replaceable Rule.)*

## **18.2 Calling Directors' meetings**

A Directors' meeting may be called by a Director, or the Secretary on the request of a Director, giving reasonable notice individually to every other Director.

*(This adds to section 248C of the Act which is a Replaceable Rule.)*

## **18.3 Use of technology**

A Directors' meeting may be called or held by any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

*(This reflects section 248D of the Act.)*

## **18.4 Chairing Directors' meetings**

The Directors may elect a Director to chair their meetings and determine the period for which the Director is to be the chairperson. If no chairperson is elected, or a previously elected chairperson is not available, or declines to act for the meeting or part of the meeting, the Directors must elect one of their number present to chair the meeting or part of the meeting.

*(This substitutes for section 248E of the Act which is a Replaceable Rule.)*

## **18.5 Quorum at Directors' meetings**

(a) A quorum for a meeting of the Board is constituted by 2 Directors or such other number determined by the Board.

(b) The quorum must be present at all times during the meeting.

*(This substitutes for section 248F of the Act which is a Replaceable Rule.)*

## **18.6 Passing of Directors' resolutions**

Resolutions of the Directors must be passed by a majority of votes cast by Directors entitled to vote on the resolution. Each Director present at a Board meeting has 1 vote on each resolution of the Board upon which it is entitled to vote. In the case of an equality of votes, the chairperson does not have a second or casting vote.

*(This substitutes for section 248G of the Act which is a Replaceable Rule.)*

## **19 Alternate directors**

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### **19.1 Appointment**

A Director may appoint an alternate director to exercise some or all of the Director's powers for a specified period.

### **19.2 Notice of Directors' meetings**

If the appointing Director requests the Company to give the alternate director notice of Directors' meetings, the Company must give reasonable notice to the alternate director.

### **19.3 Exercise of powers by alternate director**

The exercise of a Director's power by an alternate director has the same effect as would the exercise of the power by the Director.

### **19.4 Termination of appointment**

The appointing Director may terminate the alternate director's appointment at any time.

### **19.5 Procedures for appointment and termination**

An appointment or termination of the alternate director must be in writing. A copy must be given to the Company at its registered office.

### **19.6 Automatic vacation of office**

The appointment of an alternate director terminates:

- (a) if the appointing Director terminates it; or
- (b) automatically if the appointing Director ceases to be a Director.

### **19.7 Entitlements**

An alternate director is entitled to be paid the expenses payable to a Director for acting as a Director provided for in this constitution but is not entitled to receive Directors' fees.

*(This adds to section 201K of the Act which is a Replaceable Rule.)*

## **20 President / Vice President**

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### **20.1 Supervision of affairs**

The President must, subject to this constitution, supervise the affairs generally of the Company.

## 20.2 Representing the association

- (a) The President or the Board may authorise any committee or individual to represent the Company before any government or governmental body or committee or to make statements or express views on behalf of the Company. Such representatives in the course of their representation shall not express any views on behalf of the Company other than those authorised by the President or Board.
- (b) Except as referred to in 20.2(a), no member of the Company or any representative of a Member shall make any statement or express any view which purports to be a statement or view of the Company or having been made on behalf of or with the concurrence of the Company.

## 20.3 Vice president

In the Presidents' absence or inability to act, either Vice President must discharge the duties of the President.

## 21 Secretary

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### 21.1 Requirement for Secretary

The Company must have at least 1 Secretary. At least 1 of them must ordinarily reside in Australia.

*(This reflects section 204A(2) of the Act.)*

### 21.2 Appointment of Secretary

A Secretary must be appointed by the Directors.

*(This reflects section 204D of the Act.)*

### 21.3 Natural person not a minor as Secretary

Only an individual who is at least 18 may be appointed as a Secretary.

*(This reflects section 204B(1) of the Act.)*

### 21.4 Defect in appointment

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person as a Secretary, an act done by the person as Secretary is valid as if the person had been duly appointed and was qualified to be a Secretary.

*(This is based on section 204E(1) of the Act.)*

### 21.5 Acting Secretary

- (a) If there is no Secretary, or no Secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the Secretary may be done by or in relation to any assistant or deputy Secretary.

- (b) If there is no assistant or deputy Secretary, or no assistant or deputy Secretary is capable of acting, by or in relation to any act or thing required or authorised to be done by, or in relation to, the Secretary, an officer of the Company may be authorised by the Directors to act as Secretary, either generally or in relation to the doing of that act or thing.

## 21.6 Terms and conditions of office of Secretary

### (a) Terms and conditions

A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.

*(This reflects section 204(F) of the Act which is a Replaceable Rule.)*

### (b) Termination or suspension of appointment

The Directors may vary, terminate or suspend any appointment of a person as a Secretary.

## 21.7 Role of Secretary

The Secretary must:

- (i) keep a record of the proceedings of all meetings of the Company and of the Directors;
- (ii) notify the officers and all members of their election or appointment and issue notices of all meetings; and
- (iii) perform such other duties as may be assigned by the Directors.

## 22 Treasurer

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The Treasurer must manage the finances of the Company including collecting and disbursing all funds of the Company. At the annual general meeting of the Company and at meetings of the Directors the Treasurer must report in writing the balance of money on hand and any existing appropriations which may affect the balance of money on hand.

## 23 Committees

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### 23.1 Authority to appoint

The Board has authority to appoint such committees as the Board may deem necessary and consisting of such persons as the Board thinks fit to facilitate the business of the Company.

### 23.2 Powers of committees

The Board may delegate any of its powers (other than that of delegation) to a committee established under this constitution and may revoke any such delegation.

Subject to this constitution, any committee must in the exercise of the powers and authorities and discretions so delegated conform to any conditions that may be imposed on it by the Board.

### 23.3 **Conduct of committees**

- (i) The meetings and proceedings of a committee must be carried out in accordance with the provisions of this constitution relating to the meetings and proceedings of Directors, subject to any necessary changes and any directions made by the Directors.
- (ii) A committee appointed under clause 23.1 must report in writing to the Board.

### 23.4 **Term**

The terms of office of a committee appointed under clause 23.1 expire at the next annual general meeting of the Company following its appointment or as the Board otherwise determines.

## 24 **Appointment of auditor**

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The Directors must appoint an auditor of the Company if an auditor has not been appointed by the Company in general meeting within 1 month after the day on which the Company was incorporated.

*(This reflects section 327A(1) of the Act. For other requirements see sections 327A-I, 328A-B and 329 of the Act.)*

## 25 **Minutes**

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### 25.1 **Company must keep minute books of resolutions**

The Company must keep minute books in which it records within 1 month:

- (i) proceedings and resolutions of meetings of the Members;
- (ii) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (iii) resolutions passed by Members without a meeting; and
- (iv) resolutions passed by Directors without a meeting.

### 25.2 **Minutes to be signed**

The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

- (a) the chairperson of the meeting; or
- (b) the chairperson of the next meeting.

### 25.3 **Resolution without meeting**

The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

### 25.4 **Publishing of Minutes**

The Company may publish the minutes of a Member's meeting, and such other meetings as the Board may determine from time to time, on the Company's internet site.

### 25.5 **Location of minute books**

The Company must keep the minute books of the Company at:

- (i) the Company's registered office;
- (ii) the Company's principal place of business in Australia; or
- (iii) another place approved by ASIC.

(This reflects section 251A of the Act.)

### 25.6 **Inspection by Members**

The Company must ensure that the minute books for the meetings of its Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

*(This reflects section 251B(1) of the Act.)*

### 25.7 **Requests by Members**

#### (a) **Request to be in writing**

A Member may ask the Company in writing for a copy of:

- (i) any minutes of a meeting of the Members or an extract of the minutes; or
- (ii) any minutes of a resolution passed by Members without a meeting.

#### (b) **Payment for copy not required**

If the Company does not require the Member to pay for the copy, the Company must send it within:

- (i) 14 days after the Member asks for it; or
- (ii) any longer period that ASIC approves.

#### (c) **Payment for copy required**

If the Company requires payment for the copy, the Company must send it within:

- (i) 14 days after the Company receives the payment; or
- (ii) any longer period that ASIC approves.

*(This reflects section 251B of the Act.)*

## **26 Inspection of books**

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The Directors may but are not required to authorise a Member to inspect books of the Company.

*(This substitutes for section 247D of the Act which is a Replaceable Rule.)*

## **27 Accounts**

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### **(a) Proper books of account and records**

- (i) The Directors must cause proper books of account to be kept with respect to:
  - (A) all sums of money received and expended or otherwise dealt with by the Company and the matters in respect of which the receipts and expenditure take place;
  - (B) all sales and purchases of goods by the Company; and
  - (C) the assets and liabilities of the Company.
- (ii) The Directors must in accordance with the Act cause to be prepared and to be laid before the Company in general meeting such income and expenditure accounts, balance sheets, group accounts (if any) and reports as are referred to in such accounts and sheets.

### **(b) Location of books of account**

Subject to the Act, the books of account must be kept at the Office or at such other place or places as the Board thinks fit. The books of account must always be open to the inspection of the Directors.

### **(c) Inspection by Members**

Subject to the Act the Directors may determine at what times and places and under what conditions or regulations the accounts and books of the Company or any of them are open for the inspection of Members not being a Director.



## **28 Notices**

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### **28.1 Requirements**

Any notice or other communication required to be given by this constitution must be in writing.

### **28.2 When notice is given**

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in calculating the period.

### **28.3 Notice by Members of address for service**

Each Member must notify the Company in writing of as many as possible of the following addresses for the purpose of notices:

- (i) postal address;
- (ii) email address; and
- (iii) fax number.

These addresses and details must be recorded in the Register.

### **28.4 How notices are given to Members**

Subject to the Act and this constitution, the Company may give notice to a Member:

- (i) by serving it on the Member personally;
- (ii) by post or delivery to the postal address of the Member as recorded in the Register;
- (iii) by sending it to the fax or email address of the Member as recorded in the Register; or
- (iv) by any other means consented to by the Member.

### **28.5 How notices are given to the Company**

Notices are to be given to the Company by post or delivery to the registered office of the Company.

### **28.6 When notices are taken to be given**

#### **(a) Notice given**

Notices are taken to be given:

- (i) in the case of delivery by hand, when delivered;
- (ii) in the case of delivery by post, on the third (seventh, if sent to an address in another country) day after the date of posting;

- (iii) in the case of delivery by fax, at the time shown on a transmission report by the machine from which the fax was sent which indicates that the fax communication was sent at that time, in its entirety and without error to the fax number of the recipient; and
- (iv) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

(b) **Fax or email**

For the purposes of 28.6(a)(iii) and 28.6(a)(iv) if a notice by fax or email is given:

- (i) on a day in which business is not generally carried on in the place in which the fax or email is received, or
- (ii) after 4.00 pm (local time) on a day in which business is generally carried on in the place in which the fax or email is received,

the notice will be taken to have been given at the commencement of business on the next day in which business is generally carried on in the place in which the fax or email is received.

**28.7 Notice to Members' attorney**

A Member may, by written notice to the Company, request that all notices to be given by the Company or the Directors to the Member be served on the Member's attorney at an address specified in the notice.

**29 Liability of Members**

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The liability of the Members of the Company is limited.

**30 Winding up**

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**30.1 Member contribution to assets**

If the Company is wound up during the time of a Member's membership or within 1 year afterwards, each Member undertakes to contribute to the assets of the Company for payment of:

- (i) debts and liabilities of the Company contracted before the Member's membership ceases;
- (ii) costs, charges and expenses of the winding up of the Company; and
- (iii) adjustment of the rights of the contributories amongst themselves,

such amount as may be required but not exceeding \$20.00.

### **30.2 No distribution of remaining property**

If upon the winding up or dissolution of the Company, there remains after the satisfaction of all its debts and liabilities any property whatsoever, that property must not be paid or distributed among the Members of the Company.

### **30.3 Remaining property to be applied to particular institutions**

All remaining property of the Company under clause 30.2 must be paid and applied by the Company to any entity or organisation which has rules prohibiting the distribution of its assets and income to its Members.

### **30.4 Directors to select institution**

The Directors must before or at the time of dissolution or winding up of the Company select the institution or institutions to which property will be transferred under clause 30.3.

### **30.5 Institution chosen by independent third person**

If after the dissolution or winding up of the Company the Members of the Company have not made a selection under clause 30.4, the selection will be determined by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may handle or acquire jurisdiction in the matter.

### **30.6 Remaining property for charitable purpose**

If effect cannot be given to clauses 30.3 to 30.5 the property under clause 30.2 must be given to a charitable purpose.

## **31 Indemnity**

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### **31.1 Indemnity against proceedings**

Subject to clause 31.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:

- (i) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
- (ii) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the Act by the court.

*(See section 199A(3) of the Act.)*

### 31.2 Indemnity against liabilities

Subject to clause 31.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability incurred by the person as such a Director, Secretary or executive officer to another person (other than the Company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

*(See sections 199A(1) and (2) of the Act.)*

### 31.3 Insuring officers of the company

The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate against:

- (i) any liability incurred by that person as such a Director, Secretary or executive officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of section 182 or 183 of the Act; and
- (ii) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever the outcome.

*(See section 199B of the Act.)*

### 31.4 Company may make separate contracts and bring separate actions

#### (a) Separate contracts

The Company may confirm the indemnities in clauses 31.1 and 31.2 by separate contract with, or on behalf of, 1 or more of the persons indemnified.

#### (b) Separate actions

The indemnities given by the Company in clauses 31.1 and 31.2 do not affect the right of the Company to bring any demand or action against any Director, Secretary or executive officer of the Company or its related bodies corporate, including any demand or action arising out of the negligence of that person.

### 31.5 Directors may resolve to not indemnify

The Directors may resolve that the indemnities in clauses 31.1 and 31.2 :

- (i) are not to apply to a specified person or class of persons; or
- (ii) will not apply unless the Company has confirmed the indemnity under clause 31.4(a) by a contract which is in force.

### **31.6 Interpretation**

Nothing in clauses 31.1 to 31.4 is to be taken to limit the power of the Company, as permitted by the Act, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the Company or its related bodies corporate.

### **31.7 Payments not remuneration**

Any payment made by the Company under clauses 31.1 to 31.3 does not constitute remuneration for the purposes of this constitution.

## **32 Amending this constitution**

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### **32.1 By Special Resolution**

Subject to the Act, the Company may modify or repeal this constitution or a provision of this constitution by Special Resolution.

*(This reflects section 136(2) of the Act.)*

### **32.2 Date effective**

A Special Resolution modifying or repealing this constitution takes effect:

- (a) if no later date is specified in the resolution, the date on which the resolution is passed; or
- (b) on a later date specified in or determined in accordance with the resolution.

*(This reflects section 137 of the Act.)*