

allcare BOARD

All Care Health Services Group Pty Ltd  
ACN 620 350 334



# All Care Health Services Group Company Constitution

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## Preliminary

### 1. Name of the company

The name of the company is ALL CARE HEALTH SERVICES GROUP PTY LTD (the company).

### 2. Type of company

The company is an Australian Proprietary Company Limited by Shares.

### 3. Limited liability of members

The liability of the members is limited. All members of the company have liability limited to that amount, if any, that owes on their issued shares. The company shall have a minimum of one member. The company may not have more than 50 members who are not also group employees (where "member" includes joint holders of one share as a single member).

### 4. Definitions

In this constitution, words and phrases have the meaning set out in clauses 77 and 79.

## Purpose and Power

### 5. Objects

The company shall not engage in any activity (other than an offer to existing members of the company or employees of the company or a subsidiary of the company) that will compel disclosure to investors with ASIC under Chapter 6D of the *Corporations Act 2001* (Cth) ("Corporations Act").

### 6. Power

The company possesses all powers of a natural person, subject to any restrictions in the Corporations Act. The powers of the company may be exercised in any manner permitted by the Corporations Act. In particular, the company possesses the following powers:

- (a) the power to distribute property of the company amongst members in kind or otherwise;

- (b) the power to charge uncalled capital assets of the company as a security;
- (c) the power to grant a charge over company property, whether fixed or floating;
- (d) the power to issue and cancel shares, which shall include redeemable or non-redeemable preference shares, partly paid shares and bonus shares;
- (e) the power to grant options over shares that have not been issued;
- (f) the power to issue company debentures; and
- (g) to do any other thing that is permitted by the laws of the relevant jurisdiction or any other law (including the law of a foreign country).

## **7. Amending the constitution**

The members may amend this constitution by passing a special resolution.

## **General Meetings of Members**

### **8. General meetings called by directors**

- 8.1 The directors may call a general meeting.
- 8.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the company for a general meeting to be held, the directors must:
  - (a) within 21 days of the members' request, give all members notice of a general meeting, and
  - (b) hold the general meeting within 2 months of the members' request.
- 8.3 The percentage of votes that members have (in clause 8.2) is to be worked out as at midnight before the members request the meeting.
- 8.4 The members who make the request for a general meeting must:
  - (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the company.
- 8.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

## 9. General meetings called by members

- 9.1 If the directors do not call the meeting within 21 days of being requested under clause 8.2, 50% or more of the members who made the request may call and arrange to hold a general meeting.
- 9.2 To call and hold a meeting under clause 9.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this constitution
  - (b) call the meeting using the list of members on the company's member register, which the company must provide to the members making the request at no cost, and
  - (c) hold the general meeting within three months after the request was given to the company.
- 9.3 The company must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

## 10. Annual general meetings

- 10.1 A general meeting, called the annual general meeting, must be held:
- (a) within 18 months after registration of the company, and
  - (b) after the first annual general meeting, at least once in every calendar year.
- 10.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
- (a) a review of the company's activities
  - (b) a review of the company's finances
  - (c) any auditor's report
  - (d) the election of directors, and
  - (e) the appointment and payment of auditors, if any.
- 10.3 Before or at the annual general meeting, the directors must give information to the members on the company's activities and finances during the period since the last annual general meeting.
- 10.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the company.

## 11. Notice of general meetings

- 11.1 Notice of a general meeting must be given to:
- (a) each member entitled to vote at the meeting
  - (b) each director, and
  - (c) the auditor (if any).
- 11.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 11.3 Subject to clause 11.4, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
  - (b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 11.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
  - (b) appoint a director in order to replace a director who was removed, or
  - (c) remove an auditor.
- 11.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this).
  - (b) the general nature of the meeting's business
  - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - i. the proxy does not need to be a member of the company
    - ii. the proxy form must be delivered to the company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - iii. the proxy form must be delivered to the company at least 48 hours before the meeting.



- 11.6 If a general meeting is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## **12. Quorum at general meetings**

- 12.1 For a general meeting to be held, at least the next whole number above 50% of the member base must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 12.2 No business may be conducted at a general meeting if a quorum is not present.
- 12.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 12.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## **13. Auditor's rights to attend meetings**

- 13.1 The auditor (if any) is entitled to attend any general meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 13.2 The company must give the auditor (if any) any communications relating to the general meeting that a member of the company is entitled to receive.

## **14. Using technology to hold meetings**

- 14.1 The company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 14.2 Anyone using this technology is taken to be present in person at the meeting.

## **15. Chairperson for general meetings**

- 15.1 The elected chairperson is entitled to chair general meetings.

- 15.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
- (a) there is no elected chairperson, or
  - (b) the elected chairperson is not present within 30 minutes after the starting time set for the meeting, or
  - (c) the elected chairperson is present but says they do not wish to act as chairperson of the meeting.

## **16. Role of the Chairperson**

- 16.1 The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 16.2 The chairperson does not have a casting vote.

## **17. Adjournment of meetings**

- 17.1 If a quorum is present, a general meeting must be adjourned if a majority of members present direct the chairperson to adjourn it.
- 18.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## **Members Resolutions and Statements**

### **18. Members resolutions and statements**

- 18.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the company of a resolution they propose to move at a general meeting (members' resolution), and/or
  - (b) a written request to the company that the company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 18.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 18.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 18.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.

- 18.5 The percentage of votes that members have is to be worked out as at midnight before the request or notice is given to the company.
- 18.6 If the company has been given notice of a members' resolution under clause 29.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 18.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

## **19. Company must give notice of proposed resolution or distribute statements**

- 19.1 If the company has been given a notice or request under clause 19:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the company's cost, or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the company will pay these expenses.
- 19.2 The company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
- (a) It is more than 1,000 words long
  - (b) the directors consider it may be defamatory
  - (c) clause 19.1(b) applies, and the members who proposed the resolution or made the request have not paid the company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members, or
  - (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a general meeting or is otherwise not a valid resolution able to be put to the members.

## **20. Circular resolution of members**

- 20.1 Subject to clause 20.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 20.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.

- 20.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director
  - (b) for passing a special resolution, or
  - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 20.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 20.5 or clause 20.6.
- 20.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 20.6 The company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## Voting at General Meetings

### 21. How many votes a member has

At a general meeting:

- (a) each member has one vote on a show of hands; and
- (b) each member has one vote for each share they hold on a poll (unless the shares are of a particular class whose rights supersede this).

### 22. Challenge member's rights to vote

22.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.

22.2 If a challenge is made under clause 22.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### 23. How voting is carried out

23.1 Voting must be conducted and decided by:

- (a) a show of hands

- (b) a vote in writing, or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 23.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 23.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 23.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

## **24. When and how a vote in writing must be held**

- 24.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five members present
  - (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
  - (c) the chairperson.
- 24.2 A vote in writing must be taken when and how the chairperson directs, unless clause 24.3 applies.
- 24.3 A vote in writing must be held immediately if it is demanded under clause 24.1:
- (a) for the election of a chairperson under clause 15.2, or
  - (b) to decide whether to adjourn the meeting.
- 24.4 A demand for a vote in writing may be withdrawn.

## **25. Appointment of proxy**

- 25.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 25.2 A proxy does not need to be a member.
- 25.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
  - (c) join in to demand a vote in writing under clause 23.1.
- 25.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (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 meeting(s) at which the appointment may be used.

- 25.5 A proxy appointment may be standing (ongoing).
- 25.6 Proxy forms must be received by the company at the address stated in the notice under clause 11 or at the company's registered address at least 48 hours before a meeting.
- 25.7 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 25.8 Unless the company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
  - (b) is mentally incapacitated
  - (c) revokes the proxy's appointment, or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 25.9 A proxy appointment may specify the way the proxy must vote on a particular resolution.

## **26. Voting by proxy**

- 26.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 26.2 When a vote in writing is held, a proxy:
- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
  - (b) if the way they must vote is specified on the proxy form, must vote that way, and
  - (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways

## **Directors**

### **27. Number of directors**

The company must have at least three and no more than nine directors.

### **28. Election and appointment of directors**

- 28.1 The initial directors are the people who have agreed to act as directors and who are

named as proposed directors in the application for registration of the company.

- 28.2 Apart from the initial directors and directors appointed under clause 28.5, the members may elect a director by a resolution passed in a general meeting.
- 28.3 Each of the directors must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together, and
  - (b) no votes were cast against that resolution.
- 28.4 A person is eligible for election as a director of the company if they:
- (a) are a member of the company
  - (b) are nominated by two members or representatives of members entitled to vote (unless the person was previously elected as a director at a general meeting and has been a director since that meeting),
  - (c) give the company their signed consent to act as a director of the company, and
  - (d) are not ineligible to be a director under the Corporations Act.
- 28.5 The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person:
- (a) is a member of the company
  - (b) gives the company their signed consent to act as a director of the company, and
  - (c) is not ineligible to be a director under the Corporations Act.
- 28.6 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

## **29. Election of Chairperson**

The directors may elect a director as the company's elected chairperson

## **30. Term of office**

- 30.1 At each annual general meeting:
- (a) any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and



- (b) at least one-third of the remaining directors must retire.
- 30.2 The directors who must retire at each annual general meeting under clause 30.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 30.3 Other than a director appointed under clause 28.5, a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 30.4 Each director must retire at least once every three years.
- 30.5 A director who retires under clause 30.1(a) may nominate for election or re-election, subject to clause 30.6.
- 30.6 A director who has held office for a continuous period of nine years or more may only be re-appointed or re-elected by a special resolution.

### **31. When a director stops being a director**

A director stops being a director if they:

- (a) give written notice of resignation as a director to the company
- (b) die
- (c) cease to be of sound mind
- (d) are removed as a director by a resolution of the members
- (e) stop being a member of the company
- (f) are a representative of a member, and that member stops being a member
- (g) are a representative of a member, and the member notifies the company that the representative is no longer a representative
- (h) the director enters an arrangement or composition with their creditors or a class thereof or becomes insolvent
- (i) are absent for 3 consecutive directors' meetings without approval from the directors
- (j) become ineligible to be a director of the company under the Corporations Act, or
- (k) the director fails to pay any call on the director's shares until a month or some longer period allowed by the directors has passed since that call

## **Powers of directors**

## **32. Power of directors**

- 32.1 The directors are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in clause 6.
- 32.2 The directors may use all the powers of the company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 32.3 The directors must decide on the responsible financial management of the company including:
- (a) any suitable written delegations of power under clause 33, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 32.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

## **33. Delegation of directors' powers**

- 33.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the company (such as a chief executive officer) or any other person, as they consider appropriate.
- 33.2 The delegation must be recorded in the company's minute book.

## **34. Payments to directors**

- 34.1 Directors of the company shall be paid the remuneration that is decided upon by a resolution of a general meeting of the company, or by resolution of the directors until such time as the general meeting can reasonably pass such a resolution.
- 34.2 The company may pay directors' expenses, including travel and accommodation expenses, where the director incurs such expenses in attending directors' meetings, committee meetings, general meetings, or otherwise in connection with the company's business.
- 34.3 If the directors do not set different fee amounts for different directors, then all the fees must be equal. Directors' fees accrue daily.
- 34.4 Directors are entitled to be remunerated for other work (including professional work) for the company, and are entitled to hold another office with the company. The exception is that no director may hold an office of auditor or do auditing work for the company.

## **35. Execution of documents**

The company may execute a document without using a common seal if the document is signed by:

- (a) two directors of the company, or
- (b) a director and the secretary.

## Duties of directors

### 36. Duties of directors

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in the Corporations Act, which include:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company
- (b) to act in good faith in the best interests of the company and to further the purpose(s) of the company set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 37
- (f) to ensure that the financial affairs of the company are managed responsibly, and
- (g) not to allow the company to operate while it is insolvent.

### 37. Conflicts of interest

37.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- (a) to the other directors, or
- (b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.

37.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

37.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 37.4:

- (a) be present at the meeting while the matter is being discussed, or
- (b) vote on the matter.

37.4 A director may still be present and vote if:

- (a) their interest arises because they are a member of the company, and the other members have the same interest

- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 55)
- (c) their interest relates to a payment by the company under clause 54 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
- (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - i identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
  - ii says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' Meetings

### 38. Scheduling meetings

The directors may decide how often, where and when they meet.

### 39. Calling directors' meetings

39.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.

39.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors

### 40. Chairperson for directors' meetings

410.1 The elected chairperson is entitled to chair directors' meetings.

41.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the elected chairperson is:

- (a) not present within 30 minutes after the starting time set for the meeting, or
- (b) present but does not want to act as chairperson of the meeting.

### 41. Quorum at directors' meetings

41.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a

majority (more than 50%) of directors.

41.2 A quorum must be present for the whole directors' meeting.

## **42. Using technology to hold directors' meetings**

41.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.

41.2 The directors' agreement may be a standing (ongoing) one.

41.3 A director may only withdraw their consent within a reasonable period before the meeting.

## **43. Passing directors' resolutions**

A directors' resolution must be passed by a majority of the votes cast by directors' present and entitled to vote on the resolution.

## **44. Circular resolution of directors**

44.1 The directors may pass a circular resolution without a directors' meeting being held.

44.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 44.3 or clause 44.4.

44.3 Each director may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

44.4 The company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

44.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 44.3 or clause 44.4.

## **Secretary**

### **45. Appointment and role of secretary**

45.1 The company must have at least one secretary, who may also be a director.

- 45.2 A secretary must be appointed by the directors (after giving the company their signed consent to act as secretary of the company) and may be removed by the directors.
- 45.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.

- 45.4 The role of the secretary includes:
- (a) maintaining a register of the company's members, and
  - (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

## Minutes and records

### 46. Minutes and records

- 46.1 The company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings
  - (b) minutes of circular resolutions of members
  - (c) a copy of a notice of each general meeting, and
  - (d) a copy of a members' statement distributed to members under clause 19.
- 46.2 The company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of directors.
- 46.3 To allow members to inspect the company's records:
- (a) the company must give a member access to the records set out in clause 46.1, and
  - (b) the directors may authorise a member to inspect other records of the company, including records referred to in clause 46.2 and clause 47.1.
- 46.4 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 46.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.



## **47. Financial and related records**

- 47.1 The company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 47.2 The company must also keep written records that correctly record its operations.
- 47.3 The company must retain its records for at least 7 years.
- 47.4 The directors must take reasonable steps to ensure that the company's records are kept safe.

## **By-laws and policy**

### **48. By-laws and policy**

- 48.1 The directors may pass a resolution to make by-laws and policy to give effect to this constitution.
- 48.2 Members and directors must comply with by-laws as if they were part of this constitution.

## **Notice**

### **49. What is notice**

- 49.1 Anything written to or from the company under any clause in this constitution is written notice and is subject to clauses 50 to 52, unless specified otherwise.
- 49.2 Clauses 50 to 52 do not apply to a notice of proxy under clause 25.6.

### **50. Notice to the company**

Written notice or any communication under this constitution may be given to the company, the directors or the secretary by:

- (a) delivering it to the company's registered office
- (b) posting it to the company's registered office or to another address chosen by the company for notice to be provided
- (c) sending it to an email address or other electronic address notified by the company to the members as the company's email address or other electronic address, or

- (d) sending it to the fax number notified by the company to the members as the company's fax number.

## **51. Notice to members**

51.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any)
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any), or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

51.2 If the company does not have an address for the member, the company is not required to give notice in person.

## **52. When notice to is taken to be given**

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 51.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## **Managing Director, Executive Director or Chief Executive**

### **53. Appointment of Managing Director, Executive Director or Chief Executive**

53.1 The directors of the company may appoint one or more of their number to the office of managing director (MD), Executive Director (ED) or appoint a Chief Executive

Officer (CEO) of the company (herein referred to collectively as the MD).

- 53.2 The directors of the company are permitted to decide upon the period and terms (including as to remuneration) of the appointment. For so long as MD is the director of the company, he or she will be the chairperson of every meeting of members of the company.
- 53.3 The MD of the directors of the company may confer any powers exercisable by the directors. Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the directors.
- 53.4 Any person may be appointed by the directors as temporary MD upon the MD being unable to act in that office. Multiple MDs shall hold the office jointly.
- 53.5 The resignation, disqualification or removal of an MD shall take place in similar manner as with other directors, with any necessary modifications. Any removal of an MD from office must accord with any employment contract between the company and the MD. The appointment of any MD shall automatically terminate if he or she ceases to be a director of the company.
- 53.6 The powers of the MD shall be those powers entrusted to the MD by the directors of the company. The directors shall not be excluded from exercising any of their powers merely because that power has been entrusted to the MD.
- 53.7 The directors are permitted to revoke or vary the appointment of an MD, at any time, with or without cause.

## Financial Year

### 54. Company's financial year

The company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## Indemnity, insurance and access

### 55. Indemnity

- 55.1 The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.
- 55.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 55.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and

- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

55.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

## **56. Insurance**

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

## **57. Directors' access to documents**

57.1 A director has a right of access to the financial records of the company at all reasonable times.

57.2 If the directors agree, the company must give a director or former director access to:

- (a) certain documents, including documents provided for or available to the directors, and
- (b) any other documents referred to in those documents.

## **Issue of classes of shares to members**

### **58. Issue of classes of shares to members**

At any time, the directors may allot and issue unissued shares subject to clause 7, or grant options over unissued shares, on any condition and at any time they see fit, taking care to preserve any special rights conferred on existing shareholders. Consideration for such shares shall be as resolved by the directors. No director may issue bearer shares or stock. No director may convert shares to stock. Such share issues or allotments by the directors may be as fully or partly paid or as payment. The amount of calls or timing of calls to be paid may be differentiated as between individual shareholders. Conditions as to any special rights privileges, conditions, restrictions or limitations in regard to distributions, dividends, capital returns or voting, whether deferred, qualified, preferred, or guaranteed, may be imposed by the directors.

#### **59. Ordinary “A” and “B” class shares**

The rights, privileges and conditions attaching to Ordinary, “A” and “B” Class shares are as follows:

- (a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

#### **60. Ordinary “C” class shares**

The rights, privileges and conditions attaching to “C” Class shares are as follows:

- (a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall not confer the right to attend any meeting of Members and to exercise one vote for every share held.
- (c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

#### **61. Ordinary “D” class shares**

The rights, privileges and conditions attaching to “D” Class shares are as follows:

- (a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

#### **62. Ordinary “E” class shares**

The rights, privileges and conditions attaching to “E” Class shares are as follows:

- (a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

### **63. Ordinary “F” class shares**

The rights, privileges and conditions attaching to “F” Class shares are as follows:

- (a) They shall confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall confer the right to attend any meeting of Members and to exercise one vote for every share held.
- (c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

### **64. Ordinary “G” class shares**

The rights, privileges and conditions attaching to “G” Class shares are as follows:

- (a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

### **65. Ordinary “H” class shares**

The rights, privileges and conditions attaching to “H” Class shares are as follows:

- (a) They shall not confer to the holders thereof the right to receive notice of and to attend

any meeting of the company's members.

- (b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

#### **66. Ordinary "I" class shares**

The rights, privileges and conditions attaching to "I" Class shares are as follows:

- (a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

#### **67. Ordinary "J" class shares**

The rights, privileges and conditions attaching to "J" Class shares are as follows:

- (a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

#### **68. Ordinary "K" class shares**

The rights, privileges and conditions attaching to "K" Class shares are as follows:

- (a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall not confer the right to attend any meeting of members and to exercise one



vote for every share held.

- (c) They shall confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

**69. Ordinary “L” class shares**

The rights, privileges and conditions attaching to “L” Class shares are as follows:

- (a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall not confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

**70. Ordinary “M” class shares**

The rights, privileges and conditions attaching to “M” Class shares are as follows:

- (a) They shall not confer to the holders thereof the right to receive notice of and to attend any meeting of the company's members.
- (b) They shall not confer the right to attend any meeting of members and to exercise one vote for every share held.
- (c) They shall not confer to the holders thereof the right to participate in any dividends declared and payable by the company on the class of share held.
- (d) Upon a winding up of the company they shall confer to the holders thereof the right to participate in any distribution of surplus assets or profits of the company.

## **71. Rights, privileges and, conditions attached to redeemable preference shares**

- 71.1 The rights, privileges and conditions attaching to the redeemable preference shares are as follows:
- (a) They shall entitle the holders thereof to receive notice of and to attend any meeting of the company's members but shall not confer any right to vote at such meetings except in one or more of the following circumstances:
    - i on a proposal to reduce the share capital of the company;
    - ii on a proposal that affects rights attached to the redeemable preference shares;
    - iii on a proposal for the disposal of the whole property, business and undertaking of the company;
    - iv during the winding up of the company.
  - (b) They shall confer to the holders thereof the right to receive from the profits of the company a non-cumulative preferential dividend at the rate of 5% per annum on the capital for the time being paid up thereon in priority to the payment of any dividend on any other share in the company.
  - (c) Upon a reduction of capital or winding up of the company they shall as regards to return of paid up capital rank in priority to all other shares in the company, but they shall not confer any right to participate in any distribution of surplus assets or profits of the company.
  - (d) Subject to Sections 254J and 254K of the Law they shall, at the option of the company, be liable to be redeemed at the consideration paid for the redeemable preference share on or before 30 June 2050, by giving written notice to the holders at their respective registered addresses and each such notice shall be accompanied by the company's cheque for the amount payable to the holder to whom such notice is sent. The redemption shall take place on the seventh day after the date of posting such notice, and any redeemable preference shares not so redeemed on 30 June 2050 shall not thereafter be capable of being redeemed.

## **72. Other matters related to shares**

- 72.1 No share may be issued unless the directors first offer them to the existing holders of shares of that class. The company may pass a resolution at a general meeting authorising the directors to issue shares without complying with this rule.
- (a) To the extent that is reasonably practicable, such an offer to a shareholder ought to be of a number of shares that is proportionate to the number of shares of that class already held.
  - (b) The offer must give the shareholders a statement setting out terms of the offer, including the number of shares being offered and the period for which the offer shall remain open.

- (c) Shares not accepted within 21 days of the receipt of the offer shall then be issued to members wanting a number of shares exceeding their offer. If the number of shares is too small to cover the desired additional shares, then they shall be distributed as nearly as possible to the proportional numbers of additional shares demanded.
- (d) If the number of shares exceeds the desired additional shares, then the excess may be distributed to members or non-members as the directors see fit, insofar as the person is willing to meet the issue price.
- (e) Any shares so offered and not taken up may then be issued by the directors as they see fit. The price of issued shares shall be determined by the directors.

72.2 The directors may allot and issue redeemable or non-redeemable preference shares in accordance with the Corporations Act. The directors may convert preference shares into ordinary shares. The directors may issue preference shares that are liable to be redeemed, whether at the option of the company or not. No non-redeemable share may be converted to a redeemable share. All rights attached to the preference shares must be set out in this constitution or approved by special resolution if the rights deal with the following:

- (a) voting;
- (b) capital repayment;
- (c) priority of payment of dividends and capital in relation to company property or other shares;
- (d) dividends, whether cumulative or non-cumulative; and
- (e) participation in surplus profits and assets.

73.3 A general meeting of shareholders may pass an ordinary resolution converting any of the company's shares to a larger or smaller number of shares and cancel the shares that have been forfeited under the terms on which the shares are on issue. The company, subject to the law may reduce its share capital in any manner and / or buy back its own shares.

72.4 No rights of holders of shares of classes with special rights are varied or cancelled by the mere creation of more shares that are equivalent to the shares of that class. No such rights of such holders may be varied or cancelled except by special resolution of the company and either the written consent of members holding at least 75% of that class of shares, or a special resolution at a general meeting of members holding that class of shares.

72.5 Commission and brokerage may be paid by the company by paying shares and/or allotting shares in accordance with the Corporations Act.

72.6 All shareholders must be issued one share certificate, free of charge, for all the shares registered in their name and in the form stipulated by directors in accordance with the Corporations Act. Joint shareholders are entitled to only one share certificate between them, and delivery of the certificate to one of them counts as delivery to all of them.

- 72.7 Subject to the Corporations Act, directors may cancel and replace for a fee any share certificate that has become illegible, and must replace for a fee any destroyed or missing share certificate. The directors must also issue a replacement certificate for any share certificate that the company receives and cancels.
- 72.8 The company shall not recognise a person holding a share upon any trust except as provided by this constitution or by law. The company is not bound in any way to recognize any equitable, or any interest in any share except as a right of ownership of the registered holder.

## Calls, Lien and forfeiture of shares

### 73. Calls, lien and forfeiture of shares

- 73.1 Subject to the Corporations Act, amounts remaining unpaid on shares of the company may be called, whether by instalment or otherwise, by the directors at any time, unless a term of the issue stipulates the earliest permissible date for a call. Calls may be revoked or adjourned by the directors who made it.
- 73.2 Calls on unpaid amounts shall be made by the directors passing a resolution.
- 73.3 Members must comply with calls by paying the amount called, at the time and place specified. If the payments must be made at particular dates and in particular amounts, these conditions must be complied with. Joint holders are jointly and severally liable.
- 73.4 At least 10 business days' written notice of a call must be given to the relevant shareholder, unless the failure to give notice is accidental. Such written notice must specify the amount being called, and the time and place of the call. The mere fact that a member does not receive such notice of a call does not itself make the call invalid.
- 73.5 If an issue is subject to the condition that any amount is payable at allotment or a later defined time, then the amount is called without notice being required. In case of non-payment all the relevant provisions of this constitution as to payment of interest and expenses. Forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.
- 73.6 If a call is not paid at the stipulated time, then the member must pay expenses incurred because of this failure, and interest compounded daily at the annual rate set by directors (or if no such rate has been set, then at the Reserve Bank rate as published in the Australian Financial Review) until the date of actual payment. The directors have the right to waive interest.
- 73.7 The directors may commence legal action against any member to recover unpaid called amounts. Proceedings do not affect the company's right to forfeit shares. The only facts that have to be proven at the proceedings are:
- (a) the defendant is entered as holder of the relevant shares in the share register;
  - (b) the minutes of the company record the resolution making the call; and

- (c) the relevant member received notice of the call, or the shares were issued subject to the condition that payment was required on or after a defined time.
- 73.8 Payments made on a share before a call is made may be accepted by the directors. The directors may authorise the company to pay interest calculated as under clause 73.6 from the date at which the amount is paid until and including the date it would have been due under a call. The directors may repay any part of a prepaid amount, provided the member in question is given at least one months' notice of this intention.
- 73.9 The directors may serve a notice of forfeiture on any member who does not pay a call on time, requiring payment of the amount, interest and expenses. The directors may then resolve that the shares are forfeited if the notice is not complied with, along with any unpaid declared dividends in respect of those shares. The directors may annul such a forfeiture at any time. A notice of forfeiture must state the following:
- (a) a date and time no earlier than 10 working days after the service of the notice on or before which the payment is required, and the place where the payment must be made; and
  - (b) the fact that the shares will be liable to be forfeited if the amount is not paid as required.
- 73.10 Upon forfeiture, the directors must enter it and its date in the share register. The company must give notice in writing to members holding forfeited shares. The mere failure to do so does not in itself affect the validity of the forfeiture. Such forfeiture shall include all dividends.
- 73.11 Forfeiture extinguishes all interests in the shares of the former member. The member has no claim against the company in respect of the shares. The member remains liable to pay the outstanding amount, as well as all calls, instalments, interest and expenses in respect of the forfeited share as of the time of forfeiture; and is also liable to pay interest commencing at the time of forfeiture until and inclusive of the date of payment of the amounts, calculated as in clause 73.6, if the directors see fit. The directors themselves have no obligation to enforce the repayment.
- 73.12 Sufficient evidence of forfeiture is the right and title of the company to sell, dispose and reissue the shares is provided by a certificate in writing issued by the company and signed by an officer stating that the share is forfeited and providing the date on which it was forfeited.
- 73.13 Forfeited shares may be sold or disposed of or reissued by the company in any way and by any means the directors see fit. The company may transfer the forfeited share to a person on receipt of consideration for it. The person becomes registered as the holder of that share, but has no responsibility over what is done with the consideration. Irregularities or invalidities in the initial forfeiture or the disposal procedure shall not affect such later entitlement to the share.
- 73.14 The person who lost the forfeited share shall be entitled to the balance of the proceeds of sale over the amount outstanding on the share if the share is disposed of under clause 73.13.

- 73.15 On each share registered to a member, the proceeds of sale of such a share, all dividends payable in respect of the share, unpaid due calls or instalments on the share, all amounts the company has paid under requirements of law in respect of the share or its forfeiture or sale, and all interest and expenses due and payable to the company in respect of the share, the company has a first and paramount lien. The directors may exempt a share from such a lien; and any registration of transfer of such a share waives the company's lien in respect of that share unless the directors decide otherwise.
- 73.16 If, under Australian or other law, the company becomes subject to any liability or requirement to make payment in respect of registered shares or amounts payable to members in respect of those shares (whether held solely or jointly), including payment of tax, then the company is entitled to an indemnity against it by the relevant members. This shall not affect any other rights the company has in respect of the liability or requirement.
- 73.17 The company shall have a lien on any such shares or amount of money for the amount of the liability or requirement, plus any interest calculated as per clause 26 from the time the company pays the liability or requirement until the member indemnifies the company. The directors may waive payment of interest under clause 73.6. The company may deduct any amount it owes to a member to the extent the member owes an amount due under such an indemnity.
- 73.18 Holders of shares over which the company holds a lien may not exercise any rights the holders have in respect of those shares.
- 73.19 The company may sell shares to enforce a lien in any way the directors see fit. Ten days' written notice must first be given to the relevant persons demanding payment of the amount due.
- 73.20 If shares are sold under lien, the directors may authorise a person to affect the transfer. The purchaser becomes registered as the holder of that share, but has no responsibility over what is done with the consideration. Irregularities or invalidities in the disposal procedure shall not affect entitlement to the share, nor is the purchaser under any obligation to pay an amount exceeding the amount agreed.
- 73.21 The balance of any proceeds under clause 73.20 over the amount in respect of which the lien was enforced (including expenses, and amounts that have become payable since the sale in relation to an event that occurred before the sale) must be paid to the person who was entitled to the shares before sale.

## Transfer and transmission of shares

### 74. Transfer and transmission of shares

- 74.1 Transfers of shares by a member may be by means of a written instrument of transfer in any usual form or in any other form approved by the directors and permitted by law. Such an instrument should be signed by the transferor and transferee.

- 74.2 A written instrument of transfer must be delivered to the company's registered office for registration accompanied by the certificate of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer and thereupon the company shall, subject to the powers vested in the directors by this Constitution, register the transferee as a Member. If the share certificate is lost or destroyed, evidence of this fact that is satisfactory to the directors should be produced.
- 74.3 If a member intends to transfer shares, he or she must notify the company in writing, along with the member's price for the shares. Parcels of shares to be transferred may be covered by one notice, separate notice then being deemed to have been given for the transfer of each parcel of shares.
- 74.4 Transfer notices may only be withdrawn with the approval of the directors.
- 74.5 The directors in their absolute and uncontrolled discretion may refuse to register a share transfer for any reason. The directors must always refuse registration if such a refusal is required by the Corporations Act or stamp duty or some other law.
- 74.6 The person who lodged the transfer must be given written notice within 30 days after the refusal. The company must return the transfer to that person unless fraud is suspected. The mere failure to give notice of a refusal to register does not invalidate the refusal.
- 74.7 The registration of transfer may be suspended for a period determined by the directors but not longer than 30 days in one calendar year.
- 74.8 If a shareholder dies, and the shareholder does not own shares jointly, the company shall recognise only the legal personal representative of the deceased as entitled to the deceased's interest in the shares. The personal representative is entitled to the same rights as the deceased shareholder, whether or not registered as the holder of the shares.
- 74.9 The personal representative may elect to be registered as the holder of the shares by giving written and signed notice to the company (upon which the company must register the personal representative as the holder of the shares); and may elect to transfer the shares to another person by giving a completed transfer form to the company (such a transfer being subject to the same rules as apply to share transfers generally).
- 74.10 If a shareholder dies, and the shareholder owns shares jointly, only the surviving joint holder of the appropriate shares shall be recognised by the company as being entitled to the deceased's interest in the shares. The estate of the deceased shall not then be released from any liability in respect of the shares.
- 74.11 A person entitled to be registered as shareholder upon the death of the original shareholder shall be entitled to receive payments in respect of the relevant shares, including dividends, to which the original holder would have been entitled had the holder not died. Before this takes place, the person must furnish the directors with any information they properly require. The person shall not be entitled to any of the other rights attached to the shares until registration of that person.



- 74.12 Subject to the *Bankruptcy Act* 1966, if a person becomes entitled to shares because of the shareholder's bankruptcy, and the person gives the directors of the company all information they reasonably require to establish the person's entitlement to be registered as the holder of the shares, that person may elect to be registered as the holder of the shares by giving written and signed notice to the company (upon which the company must register the personal representative as the holder of the shares); and may elect to transfer the shares to another person by giving a completed transfer form to the company (such a transfer being subject to the same rules as apply to share transfers generally).
- 74.12 If a person becomes entitled to shares due to the mental incapacity of a shareholder, that person may elect to be registered as the holder of the shares by giving written and signed notice to the company (upon which the company must register the personal representative as the holder of the shares); and may elect to transfer the shares to another person by giving a completed transfer form to the company (such a transfer being subject to the same rules as apply to share transfers generally), so long as the person gives the directors all reasonably required information for establishing that person's entitlement to be registered as holder of the shares. The person shall be entitled to the same rights as the original shareholder, whether or not registered as the holder of the shares.
- 74.13 The transferor of any shares in the company remains the holder of the shares until the registration of the transfer and the entering of the name of the transferee in the register in respect of the shares.
- 74.14 The directors may not refuse to register any share transfer or transmission of shares if :
- (a) the transfer and share certificate (if any) are lodged at the registered office; and
  - (b) the fee (if any) for registration is paid; and
  - (c) the directors have been given the reasonably required further information (if any) to establish the right of the transferor to make the transfer.
- 74.15 The directors may refuse to register a transfer of shares if:
- (a) the shares are not fully-paid; or
  - (b) the company has a lien on the shares.

## Capital and profits

### 75. Capital and profits

- 75.1 An amount from the company profits may be set aside by the directors as a reserve. This reserve may be used for the same purposes for which profits may be properly used, at the discretion of the directors.
- 75.2 At any time an amount from the company profits may be carried forward rather than reserved or distributed, at the discretion of the directors.
- 75.3 Company profits may be capitalised by the directors or by a general meeting, subject to any special share rights or restrictions, and subject to the Corporations Act. Such capitalisations must be distributed to the members, in proportion to the entitlements of members in the dividends from the profits. If a resolution to capitalise profits is made by general meeting, the directors must do everything necessary to implement it. Actions that may be undertaken to implement capitalisation include:
- (a) where securities then become issuable in fractions, the directors may make cash payments or decide that fractions are to be ignored;
  - (b) vest in trustees any cash or assets on trust for all members entitled to dividends;
  - (c) authorise persons to issue securities as fully paid up to members entitled to further securities; and
  - (d) authorise persons to pay amounts outstanding on the existing shares of members entitled to further securities.
- 75.4 Any agreements made under this clause shall bind all members.
- 75.5 Where share classes exist, the directors have the discretion to distribute capital in different amounts according to class, or to exclude one class from distribution.
- 75.6 Upon the passing of a resolution to that effect in a general meeting, the company may alter its capital in the following ways:
- (a) dividing or combining shares, upon which any amount unpaid on the shares is divided equally among their successor shares;
  - (b) cancelling forfeited shares; and
  - (c) converting shares from one class to another.
- 75.7 The company has the power to reduce share capital in accordance with the Corporations Act. The company has the power to do a share buyback in accordance with the Corporations Act.

- 75.8 The company may pay dividends according to the resolution of the directors. Payments of dividends are subject to share class rights and restrictions and must always be paid in accordance with the Corporations Act. Where share classes exist, the directors have the discretion to distribute dividends in different proportions according to class, or to exclude one class from distribution. The directors of the company may determine that a dividend is payable and fix the amount, time and method of payment.
- 75.9 No interest will be payable to members, if dividend is paid later than the time stipulated in the directors declaration. The directors are permitted to use any part of a dividend to satisfy the debt of that member to the company on account of the relevant shares.
- 75.10 The company must not pay a dividend unless it is paid under circumstances described in section 254T of the *Corporations Act 2001*. These circumstances are:
- (a) the company's assets exceed its liabilities (calculated in accordance with the accounting standards in force at the relevant time) immediately before the dividend is declared and the excess is sufficient for the payment of the dividend; and
  - (b) the payment of the dividend is fair and reasonable to the company's shareholders as a whole; and
  - (c) the payment of the dividend does not materially prejudice the company's ability to pay its creditors, such as, the company becoming insolvent as a result of dividend payment.
- 75.11 A general meeting shall not declare a dividend larger than recommended by the directors. The crediting or payment of partly paid shares with dividends must allow for the amounts unpaid or uncredited, ignoring any amounts paid before a call is made. If, during the relevant period, the amount paid or credited on that share changes, then the dividend is credited or paid to the share allowing for this change. Any share shall rank for dividends on the date, if any, that was relevantly stipulated upon issue.
- 75.12 The method of dividend payment may be by cash, issue of further shares or other securities, the grant of options or the transfer of other assets. Shares in a second company must be fully paid to be used as payments in specie. The difficulties that arise in relation to a payment in specie may be dealt with at the discretion of the directors, including:
- (a) fixing the value of a specific asset;
  - (b) making cash payments on the basis of their valuation; or
  - (c) putting any cash or assets on trust for all relevant members.
- 75.12 Dividends may be distributed by the company paying a cheque to the address of the relevant shareholder as listed in the share register. Where the dividend is paid to joint holders, the address for payment shall be the address listed in the share register for the first named joint holder; unless all the joint holders indicate otherwise in a written request. Joint holders are bound if one of their numbers receives a distribution.

75.13 Dividends that are not yet claimed may be used by the company for its own benefit as stipulated in the Corporations Act.

## Winding up

### 76. Distribution of surplus assets

- 76.1 When a company is wound up and the assets do not equal the amount needed to repay the whole issued capital of the company, then the assets are distributed so that profit or loss is given to the members in proportion to capital they had paid or ought to have paid as of the moment of winding up, ignoring any amount paid in advance of a call.
- 76.2 Upon winding up, the assets may be divided by the liquidator between members, in the following manner:
- (a) the liquidator has the discretion to set what is a fair value for the assets;
  - (b) the liquidator may decide on how to divide the assets between members and classes; and
  - (c) the liquidator may place any assets on trust for members, but not if the member would thereby be forced to accept a security or share on which a liability is owing.
- 76.3 The liquidator may decide problems arising from distributions, including whether or not to round amounts up to the nearest whole number, whether or not fractions should be ignored; and whether any assets should be vested in a trustee of a trust for the members entitled.
- 76.4 Unless a general meeting decides otherwise, no director or liquidator may be remunerated from the proceeds from sale or realisation of company property or undertakings upon winding up.
- 76.5 With a special resolution to that effect, the liquidator may vest the whole or any part of the any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit. No member shall be required to accept any shares or securities or any other property that carries a liability.

## Definitions and interpretations

### 77. Definitions

In this constitution:

Act means the Corporations Act 2001 and expressions defined or used in the Act have the meanings in which they are defined in the Act.

Address of member means the address of a member as stated in the register or if he or she

has given notice in writing to the company of a changed address, the last address of which he or she has given such notice.

Auditor means the auditor for the time being of the company as defined in the Act.

Business day means a day from Monday to Friday excluding public holidays in the jurisdiction where the company is registered.

Company secretary or secretary includes an assistant and an acting company secretary.

Corporations Act means the *Corporations Act 2001* (Cth) and any regulations made under it.

Call (or any amount called in respect of a share) includes any amount that must be paid at a fixed time or fixed times under the terms of issue of the share.

Default loan agreement means the terms set out in Schedule 2.

Directors include if sole director of the company, that director and in the case of there being two or more directors, those directors. The director of the company includes a number of them, as have authority to act for the Company acting as a body and includes an attorney for a director or as an alternative director.

Dividend includes interim dividends and bonus issues.

General meeting or member meeting means a meeting of the members of the company, and includes a meeting of a class of members.

Group employees means an employee of the company or its subsidiaries, if any.

Holder/Shareholder means the person registered as holder of the share.

Legal costs refers to legal costs incurred by a person as an officer of the company or its subsidiaries.

Liability includes an immediate, future or possible liability incurred by a person as an officer of the company or one of its subsidiaries.

Member means a person who is a shareholder.

Member present includes a member present by proxy or attorney – or, in the case of a corporation member, by a representative.

Notice includes a notice given by any means of written communication.

Officer means what it means in Sections 9 and 179(2) of the Corporations Act.

Person includes a legal entity, as well as an entity or group that is not a legal entity.

Personal representative in respect of a deceased person, refers to the executor, administrator or legal personal representative of the estate.

Present means when used in context of a shareholder in relation to a meeting means present in person or represented by a representative appointed pursuant to these terms or by attorney or by proxy.

Related body corporate means what it means in the Corporations Act.

Register refers to the register and any branch register of members under the Corporations Act.

Representative means a person authorised in accordance with Section 250D of the Corporations Act.

Share is a share in the company's issued capital.

Seal means the common seal of the company (if any).

Secretary means any person appointed to perform the duties of a secretary.

Written document includes a document in any form of written communication.

## **78. Reading this constitution with the Corporations Act**

The replaceable rules set out in the Corporations Act do not apply to the company.

## **79. Interpretations**

In this constitution:

- (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).
- (c) Terms mentioned in this constitution in the singular shall include the plural and terms in the plural shall include the singular
- (d) References to one gender shall always include the other gender.
- (e) The word "person" includes corporations.
- (f) References to any officer of the company include any person acting for the time being as such officer.
- (g) The provisions contained in this constitution shall be read and construed subject to the provisions contained in shareholders agreement entered into between each of the members of the company, if any.
- (h) The headings and table of contents of this constitution shall not effect the construction of the terms of the constitution.

