

Constitution

Constitution for Australian Unity Limited



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Australian Unity Limited ACN 087 648 888

A public company limited by shares and by guarantee

1 General

1.1 Replaceable Rules

The replaceable rules contained in the Act which would otherwise apply to the Company are displaced entirely by the Rules contained in this document which is the Constitution of the Company.

1.2 Definitions

In this Constitution, unless the context otherwise requires, words and expressions used shall have the same meanings as those ascribed to them by the Act and the following terms unless already so defined shall have the following meanings:

Term	Meaning
Act	the Corporations Act 2001 (Cth).
AGM	the Annual General Meeting of the Company.
Alternate Director	a person appointed as an Alternate Director under Rule 4.11.
AUH	Australian Unity Health Limited, ACN 078 722 568 a wholly owned subsidiary of the Company.
Board or Board of Directors	the Directors for the time being.
Company	Australian Unity Limited ACN 087 648 888.
Constitution	Rules of the Company as amended from time to time.
Continuing Members	has the meaning in Rule 3.1(a)

Term	Meaning
Director	a director of the Company.
Exchange	the Australian Securities Exchange or such other body corporate that is declared by the Board to be the Company's primary stock exchange for the purposes of this definition.
Financial Member	has the meaning in Rule 1.3(a).
Member	person entered in the register of members as a member for the time being of the Company.
Non Shareholder Members	a Member of the Company who is a Member by virtue of Rule 3.1(a).
Returning Officer	the person appointed under Rule 6.1.
Rule	a rule of the Company as set out in this constitution.
Secretary	a person appointed by the Board under Rule 4.6(d).
Shareholder Member	a Member of the Company by virtue of the holding of shares in the capital of the Company.
subsidiary	has the meaning it is given in section 9 of the Act.
Unfinancial Member	has the meaning in Rule 1.3(a).

1.3 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) a Member is unfinancial where the Member fails to pay in full all contributions due to be paid by the Member to a benefit fund under this Constitution or under the Rules of AUH or in respect of any other requirements for membership set by the Directors under this Constitution by the due date or such later date as the Company may allow (Unfinancial Member). 'Financial' Member has a corresponding opposite meaning;
- (b) the singular includes the plural and the plural includes the singular;
- (c) words that refer to any gender include all genders;

- (d) words used to refer to persons generally or to refer to a natural person include a body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
- (e) a reference to a person includes that person's successors and legal personal representatives;
- (f) a reference to a statute or regulation, or a provision of any of them includes all statutes, regulations or provisions amending, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (g) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (h) headings and bold type are only for convenience and do not affect the meaning of this Constitution;
- (i) a reference in this Constitution to a Member present at a general meeting is a reference to:
 - (1) a Member present in person; or
 - (2) a Member present by proxy, attorney or representative; or
 - (3) except in any rule which specifies a quorum, a Member who has duly lodged a valid direct vote in relation to the general meeting under Rule 5.6(d)(10).

1.4 Inconsistency

In the event of any inconsistency between this Constitution and any Schedule hereto, the provisions of this Constitution shall prevail.

1.5 Exercising powers

- (a) The Company may, in any way the Act permits:
 - (1) exercise any power;
 - (2) take any action; or
 - (3) engage in any conduct or procedure,
 which, under the Act a company limited by guarantee (and a company limited by shares, if the Company issues a share capital in accordance with this Constitution) may exercise, take or engage in.
- (b) Where this Constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the same way and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (c) Where this Constitution confers a power to do a particular act or thing, the power may be exercised from time to time and may be exercised subject to conditions.
- (d) Where this Constitution confers a power to do a particular act or thing concerning particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing as to only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (e) Where this Constitution confers a power to make appointments to an office or position (except the power to appoint a Director under Rule 4.5), the power is, unless the contrary intention appears, to be taken to include a power:

- (1) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (2) to remove or suspend any person appointed (without prejudice to any rights or obligations under any contract between the person and the Company); and
 - (3) to appoint another person temporarily in the place of any person removed or suspended or in the place of any sick or absent holder of the office or position.
- (f) Where this Constitution gives power to a person to delegate a function or power:
- (1) the delegation may be concurrent with, or (except in the case of a delegation by the Directors) to the exclusion of, the performance or exercise of that function or power by the person;
 - (2) the delegation may be either general or limited in any way provided in the terms of delegation;
 - (3) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
 - (4) the delegation may include the power to delegate; and
 - (5) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

1.6 Transitional provisions

This Constitution must be interpreted in such a way that:

- (a) every Director, executive Director (including a Managing Director) and Secretary in office in that capacity immediately before this Constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this Constitution;
- (b) any register maintained by the Company immediately before this Constitution is adopted is taken to be a register maintained under this Constitution;
- (c) any Seal adopted by the Company as a Seal immediately before this Constitution is adopted is taken to be a Seal which the Company has under a relevant authority given by this Constitution; and
- (d) unless a contrary intention appears in this Constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the Constitution of the Company in force before this Constitution is adopted continue to have the same status, operation and effect after this Constitution is adopted.

2 Corporate

2.1 Name of Company

The name of the Company is Australian Unity Limited, or such other name as is adopted from time to time.

2.2 Member's Guarantee

Each Non Shareholder Member undertakes to contribute an amount not exceeding \$1 to the property of the Company in the event of the Company being wound up while they are a Member or within 1 year afterwards for:

- (a) payment of the debts and liabilities of the Company contracted before the time when they ceased to be a Member;
- (b) the costs, charges and expenses of winding up; and
- (c) for an adjustment of the rights of contributories amongst themselves.

2.3 Liability of Members

The liability of the Non Shareholder Members is limited to the amount of the guarantee given in Rule 2.2. Except as provided in Rule 2.2, a Non Shareholder Member of the Company is under no personal liability as a Member to any creditor of the Company.

3 Members

3.1 Admission to Membership

(a) Non Shareholder Members

- (1) The Non Shareholder Members are the Members as at 27 October 2009 (Continuing Members) and any other persons the Directors admit to membership, and such person is a Member of the Company other than by virtue of holding shares in the capital of the Company.
- (2) Every applicant for membership of the Company (except the Continuing Members) must apply in the form and manner decided by the Directors (or their delegate).
- (3) The Directors (or their delegate) may decide to create eligibility criteria and categories of membership with the same or differing rights or privileges.
- (4) After the receipt of an application for membership, the Directors (or their delegate) must consider the application and decide whether to admit or reject the admission of the applicant. The Directors need not give any reason for rejecting an application.

(b) Shareholder Members

Subject to the approval of a special resolution of Members at a general meeting of the Company, the Company may establish a share capital and issue shares in accordance with the following provisions. The terms and conditions relating to such shares shall be set out in the Rules and shall cover such matters as:

- (1) the rights of the holders of the shares to participate in the profits and assets of the Company;
- (2) the rights to receive notices of meetings of Members and to attend such meetings;
- (3) the voting rights attaching to shares;
- (4) the authority on which shares can be issued and the procedures to apply on application for shares; and
- (5) the transferability of shares.

3.2 Cessation of Membership

- (a) A person (other than a Shareholder Member) shall cease to be a Member in any of the following circumstances:
- (1) on death; or
 - (2) where the contract of membership is rescinded on the grounds of misrepresentation or mistake; or
 - (3) where the person ceases to satisfy the eligibility requirements for membership under this Constitution or, where the Board has power to impose eligibility requirements, ceases to satisfy the eligibility requirements for membership determined by the Board,

PROVIDED THAT where a Member satisfies more than one of the eligibility requirements contained in Rule 3.1(a), then they shall not cease to be a Member of the Company unless they cease to satisfy each of those requirements.

- (b) A person being a Shareholder Member ceases to be a Member when they cease to be registered as the holder of shares in the Company.

3.3 Demutualisations

- (a) No Demutualisation may be entered into, implemented or carried out except with the prior authority of a special resolution of the Members that complies with the terms of this Rule 3.3.
- (b) An authorisation of the entry into, implementation or carrying out of a Demutualisation under Rule 3.3(a) may only be given by a special resolution of the Members passed at a general meeting where (in addition to the quorum of 50 Members required by Rule 5.6(b)) there is throughout the time the meeting debates and casts votes on the special resolution, a quorum (calculated in the manner prescribed by Rule 5.6(b)) equal to 15% of the Members of the Company.
- (c) A special resolution of the Members passed in accordance with Rule 3.3(b) does not validly authorise the entry into, implementation or carrying out of any Demutualisation unless the notice for the meeting at which that special resolution is to be considered and voted on sets out:
- (1) what financial benefits (if any) Members will be offered if the proposed Demutualisation occurs;
 - (2) why the financial benefits (if any) Members will be offered in that case are considered to be appropriate;
 - (3) the basis on which each Member's entitlement to those financial benefits will be determined including:
 - (A) any minimum period of membership that a Member must satisfy to receive benefits; and
 - (B) whether a Member must pay an amount or provide other consideration to receive benefits;
 - (4) why the basis for that determination of each Member's entitlement to those financial benefits (if any) is considered to be appropriate;
 - (5) any preferential allocation of those benefits to Members, or a group of Members, and how that allocation is to be determined;
 - (6) why any preferential allocation of those benefits to Members and the process for that allocation is considered to be appropriate;

- (7) the expected impact of the Demutualisation on the conduct of the businesses of the Company and its subsidiaries; and
 - (8) the expected impact of the Demutualisation on the provision (including the terms of provision) to Members of products and services by the Company and its subsidiaries.
- (d) To the extent that a Demutualisation involves or requires a modification or repeal of this Constitution or a provision of this Constitution, the requirements of this Rule 3.3 are a further requirement of the kind specified in subsection 136(3) of the Corporations Act 2001.
- (e) For the purpose of this Rule 3.3:

Demutualisation:

- (1) means any arrangement which would have the purpose or effect of:
- (A) creating or issuing shares in the Company; or
 - (B) the Company agreeing to create or issue shares in it; or
 - (C) varying the rights of Members, or a class of Members, to:
 - (i) the reserves of the Company;
 - (ii) the assets of the Company on a winding up; or
 - (iii) vote on any kind of resolution of Members or a class of Members; or
 - (D) transferring, exhausting, surrendering, cancelling or terminating some or all rights of Members (including the complete resignation of membership, whether in exchange for value or not); and
- (2) includes:
- (A) any arrangement that would have the purpose or effect of authorising any of the matters set out in paragraph (a); and
 - (B) any proposed modification or repeal of any part of this Rule 3.3; but
- (3) excludes an agreement for a Demutualisation entered into by the Company and authorised by the Board, provided that the agreement is conditional upon, and that the Demutualisation may only be carried out with, authorisation under this Rule.

Members of the Company means those persons who were Members of the Company as at the last time for receipt of proxies in respect of the general meeting at which the special resolution is to be considered.

4 Directors and officers

4.1 Board of Directors

- (a) The minimum number of Directors is five. The maximum number of Directors is nine, unless the Company resolves otherwise at a general meeting.
- (b) Subject to Rules 4.2(d) and 4.2(e), the Directors may appoint any individual to be a Director, either as an additional to the existing Directors or to fill a casual vacancy, but so that the total number of Directors does not exceed the number fixed under this Constitution or as otherwise resolved at a general meeting.

- (c) Subject to Rule 4.5, the Directors will be elected or appointed at the AGM of the Company, and will hold and vacate office and retire or be removed from office as prescribed by this Constitution.

4.2 Eligibility

- (a) Subject to this Rule, except where the nomination is made by a Director, a person shall not be eligible to be elected as a Director pursuant to Rule 4.3 unless that person has:
 - (1) been a Member of the Company for at least 3 years at the time of election; and
 - (2) met the nomination notice requirements as outlined in Rule 6.2(b).
- (b) The eligibility requirement contained in Rule 4.2(a) shall not apply:
 - (1) to any Director; or
 - (2) to a person appointed as a Director by the Board pursuant to Rule 4.5;and any Director retiring as provided in Rule 4.3 or Rule 4.5(b) shall be eligible for re-election notwithstanding that they are not a Member.
- (c) A Director of the Company shall be at least eighteen years of age.
- (d) A person shall not be eligible to be appointed or elected as a Director unless they are 'fit and proper' within the meaning of any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the Company or its subsidiaries.
- (e) A person shall not be eligible to be appointed or elected as a Director if they are a partner, employer or employee of an auditor of the Company.

4.3 Term of Office of Directors

- (a) Subject to this Constitution, Directors shall be elected for a term of three (3) years and shall hold office from the conclusion of the AGM at which they are elected until the conclusion of the AGM at which they are subject to retirement.
- (b) The Company must hold an election of Directors each year.
- (c) No Director shall retain office (without re-election) past the third AGM following the Director's appointment.
- (d) If no Director would otherwise be required (by Rules 4.3(a) or 4.5(b)) to submit for election or re-election, the Director to retire at the AGM is
 - (1) first, any Director who agrees to retire at the AGM; and
 - (2) second, the Director who has been in office longest since their last election.As between Directors who were last elected on the same day, the one to retire must, unless they can agree among themselves, be decided by lot.
- (e) A retiring Director shall be eligible for re-election and will act as a Director throughout the meeting at which they retire.
- (f) Despite anything else contained in this Constitution, in determining the number of Directors to retire at an AGM under Rule 4.3 no account is to be taken of the Managing Director who is exempted from retirement by rotation.

4.4 Vacation of Office

The office of a Director becomes vacant if:

- (a) the Director becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally; or
- (b) the Director is convicted on indictment of an offence and the Directors do not within one month after that conviction resolve to confirm the Director's appointment or election (as the case may be) to the office of Director; or
- (c) the Director is disqualified from acting or removed as a Director under the Act; or
- (d) the Director is absent from three consecutive ordinary meetings of the Board of Directors without the permission of the Board and a majority of the other Directors have not, within 14 days of having been given a notice by the secretary giving details of the absence, resolved that leave of absence be granted; or
- (e) the Director resigns in writing; or
- (f) the Director becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; or
- (g) the Director is disqualified from holding office as a director of the Company on the grounds of not being 'fit and proper' within the meaning of any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the Company.

4.5 Casual Vacancies and Additional Directors

- (a) Subject to the Rules, the Board may at any time appoint any person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors.
- (b) Any Director appointed under this Rule to fill a casual vacancy or as an addition to the existing Directors shall hold office only until the next AGM and is then eligible for re-election for a term of three (3) years.

4.6 Duties and Powers of the Board

(a) General Powers

The business of the Company is to be managed by or under the direction of the Directors and the Directors may exercise all powers and do all things that are within the Company's power and are not expressly required by the Act or this Constitution to be exercised by the Company in a general meeting.

(b) Specific Powers

Without limiting the generality of Rule 4.6(a), the Board:

- (1) may appoint or employ any person as an officer, agent or attorney of the Company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors), for any period and on any other conditions they decide;
- (2) may authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney;
- (3) may remove or dismiss any officer, agent or attorney of the Company at any time, with or without cause;
- (4) may overturn the decision of any committee established and any officer, agent or attorney of the Company;
- (5) may suspend or remove any committee established and any officer, agent or attorney of the Company;

- (6) may make by-laws prescribing any matter which is required or permitted by this Constitution to be prescribed; and
- (7) shall have such other functions and powers as are set out in this Constitution.
- (c) **By-laws**
The Board shall have power to make, amend or revoke by-laws for fraternal and other matters related to the Company, being matters which are not otherwise provided for by law or this Constitution.
- (d) **Secretary**
The Board must appoint a Director or Member or other suitable person (or two or more such people) to the office of Secretary of the Company. The Board may appoint one or more assistant Secretaries to act in a Secretary's place.

4.7 Proceedings of the Board of Directors

- (a) **Procedure**
The Board shall meet together for the dispatch of business, adjourn, and otherwise regulate its meetings, as it thinks fit.
- (b) **Voting**
Subject to this Constitution, questions arising at any Board meeting shall be decided by a majority of votes of the Directors present and voting. Each Director shall be entitled to one vote.
- (c) **Casting Vote**
In the case of an equality of votes, the Chairman shall have a second or casting vote.
- (d) **Convening meetings**
- (1) A Director may, whenever the Director thinks fit, call a meeting of the Directors.
 - (2) A Secretary must, if requested by a Director, call a meeting of the Directors.
 - (3) The Secretary must provide at least 48 hours' notice of the meeting unless all Directors otherwise agree.
- (da) **Notice of meetings of the Board**
- (1) Notice of a meeting of the Board must be given to each person who is, at the time the notice is given, a Director, except a Director on leave of absence approved by the Board.
 - (2) A notice of meeting of the Board:
 - must specify the time and place of the meeting;
 - need not state the nature of the business to be transacted at the meeting;
 - may, if necessary, be given immediately before the meeting; and
 - may be given in person or by post or by telephone, fax or other electronic means, or in any other way consented to by the Directors from time to time.

- (3) A Director may waive notice of a meeting of the Board by giving notice to that effect in person or by post or by telephone, fax or other electronic means.
- (4) Failure to give a Director notice of a meeting of the Board does not invalidate anything done or any resolution passed at the meeting if:
- the failure occurred by accident or inadvertent error; or
 - the Director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (5) A person who attends a meeting of the Board waives any objection that person may have to a failure to give notice of the meeting.
- (e) Quorum
- At a meeting of the Board, the number of Directors whose presence is necessary to constitute a quorum is 3 Directors unless the Directors determine otherwise.
- (f) Action during Vacancies
- The continuing Directors may act notwithstanding any vacancy in their number but, if and so long as their number is reduced below the number fixed by or pursuant to this Constitution as the necessary quorum of Directors, the continuing Directors may act only for the purpose of increasing the number of Directors to that number, or of summoning a special general meeting of the Company, but not for any other purpose.
- (g) Meetings by Electronic Transmission
- (1) Board meetings may be held by some or all of the Directors communicating with each other by any technological means including video conferencing, telephone and electronic mail. All the provisions of this Constitution relating to meetings of the Directors apply, as far as they can and with any necessary changes, to Board meetings by technological means.
- (2) The Directors need not all be physically present in the same place for a Board meeting. A Director who participates in a Board meeting held in accordance with this Rule is deemed to be present and entitled to vote at the meeting.
- (3) A Board meeting by technological means is to be taken to be held at the place where the Chairman of the meeting is or at such other place the Chairman of the meeting decides on, as long as at least one of the Directors involved was at that place for the duration of the meeting.
- (4) If, before or during the Board meeting, any technical difficulty occurs where one or more Directors cease to participate, the Chairman may adjourn the meeting until the difficulty is remedied or may, where a quorum of Directors remains present, continue with the meeting.
- (h) If:
- (1) 50% of all of the Directors (other than any Director on leave of absence approved by the Directors, any Director who disqualifies himself or herself from considering the resolution in question and any Director who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and
- (2) the Directors who sign or consent to the resolution would have constituted a quorum at a meeting of Directors held to consider that resolution,

- (3) then the resolution is taken to have been passed by a meeting of the Directors.
- (i) A Director may consent to a resolution by:
 - (1) signing the document containing the resolution (or a copy of that document);
 - (2) giving to the Company at its registered office a written notice (including by fax or other electronic means) addressed to the Secretary or to the Chairman of Directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (3) telephoning the Secretary or the Chairman of Directors and signifying assent to the resolution and clearly identifying its terms.
- (j) Validity of acts of Directors

If it is discovered that:

 - (1) there was a defect in the appointment or election of a person as a Director or member of a Directors' committee; or
 - (2) a person appointed or elected to one of those positions was disqualified or not entitled to vote,

all acts of the Directors or the Directors' committee before the discovery was made are as valid as if the person had been duly appointed or elected and was not disqualified or not entitled to vote.

4.8 Committees of the Board

- (a) Committees

The Board may delegate any of its powers to committees as the Board thinks fit and may from time to time revoke such delegation. Any committee so formed will in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed on it by the Board.
- (b) Committee Meetings
 - (1) Where not otherwise provided by the Board, the meetings and proceedings of any such committee will be governed by the provisions of this Constitution for regulating the meetings and proceedings of the Board so far as the same are applicable.

4.9 Election of Chairman

- (a) Election and Term of Office

At the first meeting of the Board, and thereafter at the first meeting of the Board following an AGM, the Directors shall elect a Director to the office of Chairman and, subject to Rule 4.9(b), this officer shall hold office from the declaration of their election until the next election of such office.
- (b) Removal from Office

The Chairman shall cease to hold that office if they:

 - (1) cease to be a Director of the Company;
 - (2) resign from that office; or
 - (3) are removed from that office by resolution of the Board of which not less than 14 days' notice has been given to all Directors.

- (c) Where a vacancy occurs during the term of office of the Chairman, the Directors may appoint one of their number (but excluding any Director who is also an executive Director) to fill the vacancy. A Director so appointed will (subject to Rule 4.9(b)) hold office until the next declaration of election to this office under Rule 4.9(a).
- (d) Eligibility for Re-Election
The person holding the office of Chairman shall be eligible for re-election to this office.

4.10 Duties and Powers of Chairman

- (a) The Chairman shall chair meetings of the Board, general meetings and conferences and, if at any time the Chairman is unable or unwilling to act, any other Director as the Board may appoint from time to time, shall act in the place of the Chairman. In addition, the Chairman shall undertake such other functions as may be determined from time to time by the Board.
- (b) If the Directors do not choose a Chairman under Rule 4.10(a), the Members present at a general meeting must elect as Chairman of the meeting:
 - (1) another Director who is present and willing to act; or
 - (2) if no other Director willing to act is present at the meeting, a Member who is present and willing to act.

4.11 Alternate Directors

- (a) The Managing Director or an executive Director may, with the approval of a majority of the other Directors, appoint a person to be the Managing Director or executive Director's (as applicable) Alternate Director for such period as the Managing Director or executive Director (as applicable) decides.
- (b) An Alternate Director may, but need not, be a Director of the Company.
- (c) One person may act as Alternate Director to more than one of the Managing Director or an executive Director (as applicable).
- (d) In the absence of the appointor, an Alternate Director may exercise any powers (except the power to appoint an Alternate Director) that the appointor may exercise.
- (e) An Alternate Director is entitled, if the appointor does not attend a meeting of Directors, to attend and vote in place of and on behalf of the appointor.
- (f) An Alternate Director is entitled to a separate vote for each Managing Director or executive Director (as applicable) the Alternate Director represents in addition to any vote the Alternate Director may have as a Director in his or her own right.
- (g) An Alternate Director, when acting as a Director, is responsible to the Company for his or her own acts and defaults and is not to be taken to be the agent of the Managing Director or executive Director (as applicable) by whom he or she was appointed.
- (h) The office of an Alternate Director is vacated if and when the appointor vacates office as a Director.
- (i) The appointment of an Alternate Director may be terminated or suspended at any time by the appointor or by a majority of the other Directors.
- (j) The terms of the appointment, or the termination or suspension of an appointment of an Alternate Director, must be in writing and signed and takes

effect only when the Company has received notice in writing of the appointment, termination or suspension.

- (k) In determining whether a quorum is present at a meeting of Directors, an Alternate Director who attends the meeting is to be counted as a Director for each Managing Director or executive Director (as applicable) on whose behalf the Alternate Director is attending the meeting.
- (l) An Alternate Director is not entitled to receive any remuneration as a Director from the Company apart from out of the remuneration of the Managing Director or executive Director (as applicable) appointing the Alternate Director but is entitled to travelling, hotel and other expenses reasonably incurred for the purpose of attending any meeting of Directors at which the appointor is not present.

4.12 Executive Directors (including Managing Director)

- (a) Appointment and Removal
 - (1) The Directors may appoint one or more persons to the office of Managing Director or other executive Director.
 - (2) A Managing Director's or other executive Director's appointment as an employee automatically terminates if the Managing Director or other executive Director ceases to be a Director unless otherwise determined by the Directors.
- (b) Remuneration

The remuneration of an executive Director is to be fixed by the Board from time to time and may be by way of fixed salary or an incentive scheme or by way of the provision of other benefits determined by the Board or by any or all of those means.
- (c) Powers

The Board may from time to time entrust to and confer on an executive Director such powers, discretions and duties, with such restrictions, as the Board thinks fit and may from time to time revoke, alter or vary any of the powers so conferred. The Board may authorise an executive Director to delegate any of the powers, discretions and duties given to the executive Director. An executive Director is at all times subject to the control of the Board.
- (d) Validity of acts

An act done by a person acting as an executive Director is not invalidated by:

 - (1) a defect in the person's appointment as an Executive Director;
 - (2) the person being disqualified to be an executive Director; or
 - (3) the person having vacated office,

if the person did not know that circumstance when the act was done.

4.13 Indemnity of Officers

- (a) The Company will indemnify each Officer on a full indemnity basis and to the full extent permitted by law against any Liability incurred by the Officer as an officer of the Company.
- (b) In addition to Rule 4.13(a), an Officer of a subsidiary of the Company will be indemnified on a full indemnity basis and to the full extent permitted by law against any Liability incurred by the Officer as an officer of a subsidiary of the Company.

- (c) The Company may, to the extent permitted by law:
- (1) purchase and maintain insurance; or
 - (2) pay or agree to pay a premium for insurance,
- for each Officer against any Liability incurred by the Officer as an officer of the Company or of a subsidiary of the Company including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending or responding to proceedings, whether civil or criminal and whatever their outcome.
- (d) In this Rule:
- (1) **'Officer'** has the meaning given to it in the Act and includes a former officer; and
 - (2) **'Liability'** means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or otherwise.

4.14 Remuneration of Directors

- (a) The non-executive Directors shall be paid fees as remuneration for their services as Directors, subject to the fees not exceeding the annual sum last approved at a general meeting. In the absence of apportionment determined by the meeting, the Board shall determine the division of the fees between the non-executive Directors from time to time. Any remuneration paid under Rule 4.12(b) will not form part of the aggregate remuneration permitted under this Rule.
- (b) Remuneration under Rule 4.14(a) may be provided in such manner that the Directors decide, including by way of non cash benefit, such as a contribution to a superannuation fund.
- (c) The remuneration is taken to accrue from day to day.
- (d) The remuneration of a Director (including an executive Director) must not include a commission on, or a percentage of, profits or operating revenue.
- (e) In addition to remuneration under Rule 4.14(a), the Directors are entitled to be paid all travelling and other expenses they incur in attending to the Company's affairs, including attending and returning from general meetings of the Company or meetings of the Directors or of committees of the Directors.

5 General Meetings

5.1 Attendance at General Meetings

All Financial Members of the Company shall be entitled to attend and to speak at the AGM and Special General Meetings.

5.2 Time and Place

- (a) The Board shall in each calendar year convene an AGM of the Company to be held on a day or days and at a place appointed by the Board.
- (b) The Board may, by notice to the Exchange, change the venue for, postpone or cancel a general meeting, but:

- (1) a meeting that is called in accordance with a members' requisition under the Act; and
- (2) any other meeting that is not called by a Board resolution, may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

5.3 Special General Meetings

- (a) Definition
All general meetings other than the AGM shall be called 'Special General Meetings'.
- (b) Convening a Special General Meeting
The Board may convene a Special General Meeting whenever it thinks fit.
- (c) Requisitioning a Special General Meeting
The Board shall convene a Special General Meeting on the requisition of Members in accordance with the Act.

5.4 Notice of General Meeting

- (a) Notice Period
The Secretary will at least twenty eight (28) days before the date of a general meeting give notice of a general meeting to Members, Directors and auditors of the Company in accordance with the Act and this Constitution. The content of a notice of general meeting called by the Directors is to be decided by the Directors, but it must state the general nature of the business to be transacted at the meeting and any other matters required by the Act.
- (b) Member's Resolutions
Members may give the Company notice of a resolution that they propose to move at a general meeting in accordance with the Act.
- (c) Business must be contained in the notice
Unless the Act provides otherwise:
 - (1) no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting; and
 - (2) no person may move any amendment to a proposed resolution the terms of which are set out in the notice calling the meeting or to a document which relates to such a resolution and a copy of which has been made available to Members to inspect or obtain, without the approval of the Directors or the Chairman.
- (d) Other matters
 - (1) A person may waive notice of any general meeting by written notice to the Company.
 - (2) Failure to give a Member or any other person notice of a general meeting or a proxy form, does not invalidate anything done or resolution passed at the general meeting if:
 - (A) the failure occurred by accident or inadvertent error; or
 - (B) before or after the meeting, the person notifies the Company of the person's agreement to that thing or resolution.

- (3) A person's attendance at a general meeting waives any objection that person may have to:
 - (A) a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
 - (B) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

5.5 Admission to general meetings

- (a) The Chairman of a general meeting may take any action he or she considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:
 - (1) in possession of a pictorial recording or sound recording device;
 - (2) in possession of a placard or banner;
 - (3) in possession of an article considered by the Chairman to be dangerous, offensive or liable to cause disruption;
 - (4) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;
 - (5) who behaves or threatens to behave in a dangerous, offensive or disruptive way; or
 - (6) who is not entitled to receive notice of the meeting.

The Chairman may delegate the powers conferred by this Rule to any person he or she thinks fit.
- (b) A person, whether a Member or not, requested by the Directors or the Chairman to attend a general meeting is entitled to be present and, at the request of the Chairman, to speak at the meeting.
- (c) If the Chairman of a general meeting considers that there is not enough room for the Members who wish to attend the meeting, he or she may arrange for any person whom he or she considers cannot be seated in the main meeting room to observe or attend the general meeting in a separate room.
- (d) If a separate meeting place is linked to the main place of a general meeting by an instantaneous audio visual communication device which, by itself or in conjunction with other arrangements:
 - (1) gives the general body of Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place;
 - (2) enables the Chairman to be aware of proceedings in the other place; and
 - (3) enables the Members in the separate meeting place to vote on a show of hands or on a poll,

a Member present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main place.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more of the matters set out in Rule 5.5(d) is not satisfied, the Chairman may:
 - (1) adjourn the meeting until the difficulty is remedied; or

- (2) continue to hold the meeting in the main place (and any other place which is linked under Rule 5.5(d) and transact business, and no Member may object to the meeting being held or continuing.
- (f) Nothing in this Rule 5.5 or in Rule 5.6 is to be taken to limit the powers conferred on the Chairman by law.

5.6 Proceedings at General Meetings

- (a) Entitlement to Vote
 - (1) Each Member entitled to vote at any general meeting shall have one vote only.
 - (2) A Member may only vote in person or by proxy or by direct vote in accordance with Rule 5.6(d)(10).
 - (3) A Member may not vote unless they are a Financial Member of the Company as at the date which is seven (7) days prior to the last date upon which notice of a general meeting must be received by members pursuant to Rule 5.4(a).
- (b) Quorum
 - (1) The quorum for a general meeting shall be fifty (50) Members present in person or by proxy and entitled to vote.
 - (2) No motion shall be put to the vote at a general meeting unless there is a quorum present at the time the meeting commences business.
 - (3)
 - (A) If there is no quorum within half an hour after the time determined for the commencement of a general meeting the meeting, if convened on the requisition of Members, shall be dissolved; or
 - (B) In any other case, the meeting shall stand adjourned to a time, date and place specified by the Directors present at the time of the adjournment or, if they do not make a decision, to the same day in the next week at the same time and place and if a quorum is not present at the adjourned meeting within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.
- (c) Conduct at general meetings
 - (1) Subject to the provisions of the Act, the Chairman of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting.
 - (2) The Chairman may, at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting:
 - (A) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present; and
 - (B) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or on a poll, including the appointment of scrutineers.
 - (3) A decision by a Chairman under Rules 5.6(c)(1) or 5.6(c)(2) is final.

- (4) The Chairman may postpone the meeting before it has started, whether or not a quorum is present, if, at the time and place appointed for the meeting, he or she considers that:
- (A) there is not enough room for the number of Members who wish to attend the meeting; or
 - (B) a postponement is necessary in light of the behaviour of persons present or for any other reason so that the business of the meeting can be properly carried out.
- (5) A postponement under Rule 5.6(c)(4) will be to another time, which may be on the same day as the meeting, and may be to another place (and the new time and place will be taken to be the time and place for the meeting as if specified in the notice which called the meeting originally).
- (6) The Chairman may at any time during the course of the meeting:
- (A) adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting; and
 - (B) for the purpose of allowing any poll to be taken or determined, suspend the proceedings of the meeting for such period/s as he or she decides without effecting an adjournment. No business may be transacted and no discussion may take place during any suspension of proceedings unless the Chairman otherwise allows.
- (7) The Chairman's rights under Rules 5.6(c)(4) and 5.6(c)(6) are exclusive and, unless the Chairman requires otherwise, no vote may be taken or demanded by the Members present about any postponement, adjournment or suspension of proceedings.
- (8) Only unfinished business may be transacted at a meeting resumed after an adjournment.
- (9) Where a meeting is postponed or adjourned under this Rule 5.6(c), notice of the postponed or adjourned meeting need not be given to any other person.
- (d) Decisions at general meetings
- (1) Except where a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the Members present at the meeting. A decision made in this way is for all purposes a decision of the Members.
 - (2) If the votes are equal on a proposed resolution, the Chairman of the meeting has a casting vote, in addition to any deliberative vote.
 - (3) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded:
 - (A) before the show of hands is taken;
 - (B) before the result of the show of hands is declared; or
 - (C) immediately after the result of the show of hands is declared.
 - (4) A poll may be demanded by:
 - (A) the Chairman of the meeting;
 - (B) at least 5 Members entitled to vote on the resolution; or

- (C) Members with at least 5% of the votes that may be cast on the resolution on a poll.
- (5) A demand for a poll does not prevent a general meeting continuing to transact any business except the question on which the poll is demanded.
- (6) Unless a poll is duly demanded, a declaration by the Chairman of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the Company's minute book is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.
- (7) If a poll is duly demanded at a general meeting, it must be taken in the way and either at once or after an interval or adjournment as the Chairman of the meeting directs. The result of the poll as declared by the Chairman is the resolution of the meeting at which the poll was demanded.
- (8) A poll cannot be demanded at a general meeting on the election of a Chairman of the meeting.
- (9) The demand for a poll may be withdrawn with the Chairman's consent.
- (10) Despite anything to the contrary in this Constitution, the Directors may decide that, at any general meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A 'direct vote' includes a vote delivered to the Company by post, fax or other electronic means approved by the Directors. The Directors may prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting for the vote to be valid.
- (e) Proxy Voting
- (1) Any Member may appoint a proxy to vote on their behalf.
- (2) A proxy need not be a Member of the Company.
- (3) A vote given or act done in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death of the principal or revocation of the proxy in respect to which the vote is given or act done providing no duly authenticated information in writing of the death or revocation has been received by the Company before the vote is given or act done.
- (f) Instrument Appointing a Proxy
- (1) The instrument appointing a proxy (and the power of attorney (if any) under which it is signed or proof thereof to the satisfaction of the Board) shall be received at the registered office of the Company or any other place notified in the notice of meeting not less than 48 hours' before the meeting or adjourned meeting (as the case may be) at which the person named in the instrument proposes to vote.
- (2) An instrument appointing a proxy shall be in writing under the hand of the appointor or their attorney duly authorised in writing or if such appointor is a corporation executed in accordance with that corporation's constitution or as authorised by the Act.
- (3) A proxy shall not be entitled to vote on a show of hands.

- (4) A proxy may only be for a single meeting and any postponement or adjournment of that meeting and each proxy shall specify the day upon which the meeting at which it is intended to be used is to be held and may be available only at the meeting so specified or any postponement and adjournment of that meeting.
- (5) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (6) Every instrument of proxy shall be in the form determined by the Board (or their delegate) from time to time or as otherwise permitted under the Act and may make provision for the Chairman of the meeting to act as proxy in the absence of any other appointment or if the person or persons nominated fails or all fail to attend.

6 Election of Directors

6.1 Returning Officer

The Returning Officer of the Company shall be an independent person of suitable standing and experience appointed by the Board or failing such appointment, the Secretary.

6.2 Nominations

- (a) Each Director retiring at the AGM is not subject to Rule 6.4 and shall be deemed to have nominated for re-election unless they notify the Returning Officer to the contrary.
- (b) Nominations shall close with the Returning Officer fifty-six (56) days before the date of the AGM.

6.3 Form of Nominations

The Board may from time to time prescribe a form of nomination specifying, amongst other things, the information to be supplied by the nominee and the format of such information.

6.4 Eligibility to Nominate

Nominations will only be accepted by the Returning Officer from Financial Members and where the Member:

- (a) has completed in full the prescribed nomination form; and
- (b) if such Member is an employee of the Company, has the permission of the Board so to nominate.

Nominations will not be accepted by the Returning Officer in respect of nominees where the Member nominated is precluded from being a Director by Rule 4.2.

6.5 Appeal on Eligibility to Nominate

Where the Returning Officer pursuant to Rule 6.4 rejects a nomination for any reason, the rejected nominee may appeal to an independent arbitrator appointed by the Board. The decision of such arbitrator will be final.

7 Audit

An auditor (who may be an individual or a firm) of the Company shall be appointed and be subject to removal in accordance with the provisions of the Act, and any other applicable law and shall have the duties and obligations imposed by the Act, and any other applicable law.

7A Inspection of and access to records

- (a) A person who is not a Director does not have the right to inspect any of the board papers, books, records or documents of the Company, except as provided by law, or this Constitution, or as authorised by the Board, or by resolution of the Members.
- (b) The Company may enter into contracts with its Directors or former Directors agreeing to provide continuing access for a specified period after the Director ceases to be a Director to board papers, books, records and documents of the Company which relate to the period during which the Director or former Director was a Director on such terms and conditions as the Board thinks fit and which are not inconsistent with this rule 7A.
- (c) The Company may procure that its subsidiaries provide similar access to board papers, books, records or documents as that set out in rules 7A(a) and 7A(b).
- (d) This rule 7A does not limit any right the Directors or former Directors otherwise have.

8 Investment of Funds

The Company is authorised by this Constitution to invest its funds in all the ways permitted by law.

9 Seal

Until otherwise resolved by the Board the Company shall have a seal. The Board must provide for the safe custody of the seal which may only be used by the authority of the Board or of a committee appointed by the Board. Every instrument to which the Seal is affixed must be signed by a Director and countersigned by the Secretary or by a second Director or by some other person appointed by the Board for that purpose.

10 Borrowing and Related Powers

- (a) Subject to law, the Company may borrow, and secure the repayment of, any sum of money and obtain any other financial accommodation in such manner and upon such terms and conditions as it thinks fit and in particular by any charge or other security on the whole or any part of the property or business of the Company, both present and future.

- (b) The Directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the Company.

11 Funds

The Company shall establish and maintain management and other non-benefit funds ('management funds') under the control and management of the Board. Management funds shall be kept separate and distinct from all benefit funds. Management allowances authorised under the law and by this Constitution, and all interest derived from the investment of the management funds, shall be credited to the management funds. Payments shall be made from the management funds on the authority of the Board for the cost of providing the benefits, management, administration and other expenses of the Company.

12 Operation

12.1 Notices

- (a) To Members

Without limiting any other provisions of this Constitution with respect to the giving of notice to Members, and without limiting any other means of giving notice, a notice may be sent by the Company to any Member either:

- (1) personally;
- (2) by sending it by post to the Member at the address shown as the Member's address in the register of Members (hereinafter called their 'registered address'); or
- (3) where permitted by law, by facsimile transmission or by electronic mail or by any other means.

- (b) To Directors

Without limiting any other provisions of this Constitution with respect of the giving of notice to Directors, and without limiting any other means of giving notice, a notice may be sent by the Company to any Director either personally, by facsimile, by post, by electronic mail or by courier to the Director at the address or to the facsimile number or to the electronic mail address (as the case may be) in Australia given by the Director to the Secretary from time to time for service of notices.

- (c) Service by Post

Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and is taken to be served

- (1) if it is a notice concerning a general meeting, at 10.00am on the day after the date it is posted; or
- (2) in any other case, at 10.00am on the day that is 3 days after the date it is posted.

- (d) Service by Advertisement

A notice given by means of an advertisement in a daily newspaper will be deemed to be served on the day it is published in the relevant newspaper.

(e) Service by Facsimile

A notice sent by facsimile will be deemed to be served at the time the facsimile is sent if the correct facsimile number appears on the transmission report produced by the sender's facsimile machine.

(f) Service by Electronic Mail

A notice given by electronic mail will be deemed to be effected by sending the notice by electronic mail to the electronic mail address supplied by the recipient for the purpose of receiving notices and shall be deemed to have been effected at the time the electronic mail is sent.

(g) Calculation of notice period

Where a given number of days' notice or notice extending over any other period must be given, the day of service is not to be counted in the number of days or other period.

12.2 Change of Address

Where any Director or Member changes their address they shall send written notice of such change to the registered office of the Company within seven days and the new address shall be entered in the appropriate register forthwith.