



**CORPORATIONS ACT**  
**Company Limited by Guarantee**

# **CONSTITUTION**

of

**MBF AUSTRALIA LIMITED**

ABN 81 000 057 590

**Approved**

**8 February 2008**

## **Table of Contents**

1.	Preliminary	1
2.	Operation of the Company	4
3.	Membership	5
4.	Governors	8
5.	Council	9
6.	General meetings	12
7.	Proceedings at general meetings	14
8.	Votes of Members	18
9.	Directors	20
10.	Powers of Directors	26
11.	Proceedings of Directors	26
12.	Powers of attorney	30
13.	Secretary	30
14.	Authentication of documents	30
15.	Inspection of books	32
16.	Service of documents	32
17.	By-laws	33
18.	Indemnity and Insurance	34
19.	Winding up	36
20.	Implementation of Merger Transaction	36

# 1. Preliminary

## Replaceable Rules Excluded

- 1.1 The replaceable rules contained in the Corporations Act do not apply to the Company.

## Definitions

- 1.2 The following words have these meanings in this constitution unless the contrary intention appears:

**"Alternate Director"** means a person appointed by a Director in accordance with rule 9.35.

**"Appointed Contributor Representative"** means a person appointed to the Council by the Directors under rule 5, with the approval of the Governors, and a Former State Board of Advice Member.

**"Auditors"** means the auditors for the time being of the Company.

**"Board of Directors"** means all or some of the Directors acting as a board.

**"By-Laws"** means the By-Laws of the Company passed pursuant to rule 17.

**"Chairman"** means the chairman of the Board of Directors of the Company and **"Deputy Chairman"** means the deputy chairman of the Board of Directors of the Company.

**"Committee"** and **"Committee of Directors"** means any Director or Directors acting as a committee of Directors.

**"Company"** means MBF Australia Limited.

**"Contributor"** means:

- (a) a contributor to the health fund registered in the name of the Company; and
- (b) for the purpose only of determining eligibility as a Contributor Member or a Medical Member, the Spouse of a person mentioned in (a) above.

**"Contributor Member"** means:

- (a) a Contributor who has applied and been accepted as a Contributor Member under the provisions of rule 3.5; or
- (b) a company who has applied and been accepted as a Contributor Member under the provisions of rule 3.5A; or
- (c) a Holding Company which has applied and been accepted as a Contributor Member under the provisions of rule 3.5B.

**"Corporations Act"** means the Corporations Act 2001 (Commonwealth).

**"Council"** means the Council of the Company comprising Appointed Contributor Representatives and the Directors.

**"Council Member"** means a member of the Council.

**"Director"** means a director of the Company, and where appropriate includes an Alternate Director.

**"Directors"** means all or some of the Directors acting as a board.

**"Executive Director"** means a person appointed as Executive Director under rule 9.5.

**"Former State Board of Advice Member"** means a person who immediately prior to the annual general meeting of the Company held on 20 October 1997 (and at any postponement or adjournment thereof) was entitled to hold office in a State Board of Advice as at 21 October 1997.

**"Governors"** means persons appointed as governors under rule 4.

**"Holding Company"** means a company proposed to be the sole remaining member of the Company following a Merger Transaction.

**"Medical Member"** means a person who has applied and been accepted as a Medical Member under the provisions of rule 3.4.

**"Member"** means a member of the Company being Medical Members and Contributor Members.

**"Memorandum"** means the former memorandum of association of the Company.

**"Merger Transaction"** means a transaction implemented by way of a scheme or schemes of arrangement (including associated decisions of Members and Directors) pursuant to which (i) the Company converts from a company limited by guarantee to a company limited by shares; and (ii) the Membership of Members other than the Holding Company is cancelled in consideration for the receipt of a financial benefit, or such similar transaction approved by the Board of Directors.

**"Policyholder"** means a Contributor who is entitled to receive a financial benefit in any Merger Transaction.

**"Nomination Committee"** means the committee established under rule 11.17.

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

“**Seal**” means the common seal, if any, of the Company and any official seal of the Company.

“**Secretary**” means a person appointed as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

“**Spouse**” has the same meaning as within the By-Laws.

“**Sunset Date**” means 16 September 2008 or such later date as the Board may determine prior to that date.

### **Interpretation**

- 1.3 In this constitution unless the contrary intention appears:
- (1) the word person includes a firm, a body corporate, an unincorporated association or an authority;
  - (2) the singular includes the plural and vice versa;
  - (3) 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;
  - (4) a reference to writing includes typewriting, printing, telex, telegram, facsimile, e-mail and other modes of representing or reproducing words in a visible form;
  - (5) a reference to a rule is a reference to one of the rules in this constitution;
  - (6) a reference to a section is a reference to a section of the Corporations Act; and
  - (7) a reference to the Corporations Act or to a provision of the Corporations Act, means the Corporations Act or that provision as amended from time to time, or any statute, code or provision enacted in its place, whether by a state or the Commonwealth of Australia, and includes regulations and other instruments under it.
- 1.4 Headings are inserted for convenience and do not affect the interpretation of this constitution.

## **2. Operation of the Company**

### **Objects**

- 2.1 Without limiting the generality of the Company’s right to conduct business, the Company may become involved in a variety of business activities consistent with the Company’s organisational goal to help Contributors and their dependants to lead healthy lives. Such activities may include operating health funds registered under the Private Health Insurance Act 2007 and owning and operating facilities involved in the provision of health services. The Company may also provide other services for the benefit of Contributors, their dependants and others.

### **Application of Income and Property**

- 2.2 The income and property of the Company, from wherever derived, must be applied solely towards the promotion of the objects of the Company.

### **No Distribution to Members**

- 2.3 No part of the income or property of the Company may be paid or transferred, directly or indirectly by way of dividend, bonus or otherwise by way of profit to Members.
- 2.4 Rule 2.3 does not prevent:
- (1) the payment in good faith of remuneration to any officer, employee or Member for services rendered to the Company, including in the case of Council Members, for acting in that capacity, or for goods supplied in the ordinary way of business;
  - (2) the payment of interest at a rate not exceeding the rate for the time being fixed for the purposes of this rule by the Company in general meeting on money borrowed from a member of the Company or reasonable and proper rent for premises demised or let by a Member to the Company;
  - (3) the payment out of the funds of the Company to or on behalf of any Member, Contributor or the dependants of any of those persons in respect of any medical, surgical, health or other associated services rendered to the person; or
  - (4) the Company making payment to any Member for rendering any of such medical, surgical, health or other associated services.

### 3. Membership

#### Classes of Members

- 3.1 Subject to this constitution and the Corporations Act the Directors may:
- (1) establish any new class of members and prescribe the qualifications, rights, restrictions and obligations of members in that class; and
  - (2) vary or abrogate the qualifications, rights, restrictions or obligations of members in any new or existing class, with the consent in writing of 75% of those members, or with the sanction of a special resolution passed at a separate meeting of those members, and the provisions of this constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every such separate meeting.
- 3.2 As at the date of adoption of this constitution there are 2 classes of Members:
- (1) Medical Members; and
  - (2) Contributor Members.

#### Becoming a Member

- 3.3 Subject to rule 3.1, the members of the Company shall be:
- (1) the subscribers to the Memorandum;
  - (2) other persons as shall be admitted to membership as Medical Members; and
  - (3) such other persons as shall be admitted to membership as Contributor Members. .
- 3.4 Any legally qualified medical practitioners registered in any State or Territory of the Commonwealth of Australia and practising or resident within any such State or Territory and who are Contributors may on application be admitted as Medical Members of the Company by the Directors or by a Committee appointed by the Directors with power in that behalf.
- 3.5 Other Contributors may on application be admitted as Contributor Members of the Company by the Directors or by a Committee appointed by the Directors with power in that behalf.
- 3.5A (1) A company may on application be admitted as a Contributor Member by the Directors or by a Committee appointed by the Directors with power in that behalf where the company holds any membership so granted on trust for the benefit of one or more Policyholders.

- (2) For the avoidance of doubt, a company may hold more than one membership where each such membership is held in trust for a different Policyholder or Policyholders.
  - (3) A Contributor continues to have a right to:
    - (i) receive notices as set out in rule 7.7; and
    - (ii) attend and be heard at the annual general meeting as set out in rule 8.2, whether or not a company has been admitted as a Contributor Member and holds such membership on trust for that Contributor pursuant to this rule 3.5A.
- 3.5B A Holding Company may on application be admitted as a Contributor Member by the Directors or by a Committee appointed by the Directors with power in that behalf.
- 3.6 Each applicant for membership of the Company must sign and deliver to the Secretary an application for membership in a form determined by the Directors. Applicants for Medical Membership must also deliver such evidence as the Directors determine as to their qualification for appointment to Medical Membership.
- 3.7 Each applicant for membership will be submitted for appointment at the next meeting of the Directors or other Committee appointed by the Directors with power of election of Members held after the application is received by the Secretary. The Directors or the Committee appointed by the Directors with power in that behalf may in their absolute discretion refuse any application for membership.
- 3.8 Where an applicant for membership has been duly appointed notice to that effect will be sent to the applicant by the Secretary together with a request for the payment of the membership fee.
- 3.9 Each applicant for membership must within 14 days after receipt of the notification of appointment pay the membership fee.
- 3.10 No person will be deemed to be a Member until the membership fee has been paid.
- 3.11 The Directors will determine the amount of the membership fee from time to time payable by a person who wishes to become a Member.
- 3.12 Subject to rule 3.17, the rights and privileges of every Member will be personal to them and will not be transferable by their own act or by operation of law and will cease on termination of membership.

### **Ceasing to be a Member**

3.13 A Member other than a Member who is admitted under rules 3.5A or 3.5 B ceases to be a Member on:

- (1) resignation;
- (2) death;
- (3) becoming bankrupt or insolvent or making an arrangement or composition with creditors of the person's joint or separate estate generally;
- (4) becoming mentally incapacitated or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (5) the Council terminating the person's membership in accordance with this constitution;
- (6) in the case of Medical Members, on ceasing to be a registered medical practitioner; or
- (7) ceasing to be a Contributor.

3.13A The membership of a Member who is admitted under rules 3.5A or 3.5B, expires on the Sunset Date unless the Member has earlier resigned.

### **Resignation**

3.14 A Member may by notice in writing to the Company resign membership with immediate effect or with effect from a specified date occurring not more than 3 months after the service of the notice.

### **Termination**

3.15 The Council may on the recommendation of a resolution of the Directors terminate the membership of a person on the ground that their conduct is or has been detrimental to the honour or interests of the Company or is or is calculated to bring the Company into disrepute or contempt or on the ground that they have wilfully and persistently refused to comply with or have committed wilful breach of the provisions of this constitution or any of the By-Laws. The person is entitled to 7 clear days' notice of the Council meeting and has the right to attend and be heard by the meeting before the decision to terminate their membership is taken.

### **Guarantee**

3.16 Every Member undertakes to contribute such amount as may be required, not exceeding \$0.50, to the assets of the Company if it is wound-up while the Member is a Member, or within 1 year after the Member ceases to be a Member, for payment:

- (1) of the debts and liabilities of the Company (contracted before the Member ceases to be a Member);
- (2) of the costs, charges and expenses of winding up; and
- (3) for the adjustment of the rights of the contributories among themselves.

### **Membership of a company admitted pursuant to rule 3.5A**

3.17 A company admitted as a Contributor Member pursuant to rule 3.5A may at any time transfer its membership to the Policyholder or Policyholders for whom the company holds such membership on trust upon:

- (1) the Policyholder or Policyholders agreeing to become Contributor Members in their own right; and
- (2) the Directors accepting (in their absolute discretion) the transfer of the membership from the company to the Policyholder or Policyholders.

## **4. Governors**

4.1 There shall be Governors of the Company.

4.2 The number of Governors, all of whom shall be natural persons, shall be 3.

4.3 The Governors will be selected by the Directors from among eminent persons of clear independence from the Directors, including but not limited to, retired Governors-General, Governors, Chancellors, Archbishops, Chief Rabbis and heads of recognised religious denominations.

4.4 Governors will hold office for a term of 3 years.

4.5 The Governors will not receive any remuneration for their services but will be entitled to receive expenses incurred in attending to the business of the Company.

4.6 The role of Governors will be to review the selection process for nominations put forward by the Board of Directors for membership of the Council to ensure the continuing independence and representative nature of the Council and to review and make determinations in respect of nominations for membership of the Board of Directors in conjunction with the Nomination Committee.

4.7 Governors have the right to approve or return nominations for Council membership for further consideration.

4.8 Governors have the right in response to a request from the Board to approve the appointment of additional Council Members pursuant to rule 5.5.

4.9 The Directors must obtain the approval of the Governors to the appointment of:

- (1) Appointed Contributor Representatives appointed under rule 5; and
- (2) appointees to fill casual vacancies under rule 5.10;

by submitting the names of the proposed appointees in writing to the Governors together with such information relating to the proposed appointee as may be required by the Governors to enable the Governors to make their decision.

- 4.10 The Governors must give their response to a request for approval under rule 4.9 to the Directors within 28 days after receiving such a request.

## 5. Council

- 5.1 There will be a Council of the Company consisting of, subject to rule 5.5, not less than 75 and not more than 100 Members, which number shall comprise the Directors and Appointed Contributor Representatives.
- 5.2 The Directors may appoint a person to become an Appointed Contributor Representative, subject to this constitution. All persons formerly appointed to the Council as "Selected Contributor Representatives" shall be deemed for all purposes to be Appointed Representatives under this constitution.
- 5.3 To be eligible for appointment as an Appointed Contributor Representative, a person must be a Member.
- 5.4 The Directors must submit the names of the proposed Appointed Contributor Representatives to the Governors for approval in accordance with rule 4.9.
- 5.5 The Directors may by resolution which has been approved by the Governors increase the number of Council Members to a maximum of 250 Council Members and may also determine in what rotation the increased number is to go out of office.
- 5.6 Persons appearing in the records of the Company as serving Council Members as at 17 August 2007 are hereby deemed for all purposes to have been properly admitted as Contributor Members or Medical Members of the Company and properly appointed as Appointed Contributor Representatives on the Council.
- 5.7 Members of the Council will be entitled to receive notice of general meetings and, except where rule 5.18 applies, to attend and take part in the business discussions and deliberations of general meetings and to vote on all matters before general meetings.
- 5.8 At the annual general meeting in each year 20% of the Council Members who have held office for 5 years or more must retire from office provided that those Council Members who are Directors will continue as Council Members for so long as they

hold office on the Board of Directors and those Council Members who are Former State Board of Advice Members shall, only for the purpose of determining the period they have held office on the Council, be deemed to have first assumed office on 20 October 1997. For the purpose of calculating the number of Council Members who must retire, those Council Members who are Directors shall be disregarded.

- 5.9 Appointed Contributor Representatives will be eligible for re-appointment, and if re-appointed in accordance with this Constitution, the tenure of their office shall recommence from the date of the latest appointment.
- 5.10 The Directors may fill any casual vacancy on the Council with the approval of the Governors. A person appointed to fill a casual vacancy will hold office for 5 years from the date of the next annual general meeting provided that the Directors may decide to make appointments to fill casual vacancies for less than 5 years or more than 5 years but less than 7 years if such terms of appointment are necessary in order to achieve approximate equality in the number of resignations in each year.

### **Powers of the Council**

- 5.11 The Council will have the powers and authorities set out in this constitution including the power and authority to appoint and remove Directors and to vote on all matters before general meetings together with such other powers and authorities as may from time to time be conferred on it by the Directors.

### **Expenses of the Council**

- 5.12 Without limiting rule 2.4, Council Members will be paid out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Council Member may incur when travelling to or from general meetings or in carrying out Council business.

### **Material Personal Interest**

- 5.13 A Council Member who has a material personal interest in a matter that relates to the affairs of the Company must give the Directors and Governors notice of the interest at least seven days prior to a general meeting. The Council Member may provide this notice to the Company Secretary who must then provide the notice to the Directors and Governors.
- 5.14 A notice of a material personal interest under rule 5.13 must disclose all relevant facts to enable the Governors to determine whether a material personal interest does, in fact, exist.
- 5.15 A Council Member does not need to give notice of an interest under rule 5.13 if:

- (1) the interest arises because the Council Member is a Member of the Company and is held in common with the other Members of the Company; or

- (2) the interest arises in relation to the Council Member's right to recover expenses as a Council Member of the Company; or
  - (3) the interest arises because the Council Member or relative of the Council Member provides services for which a reimbursement is obtained from the Company; or
  - (4) the Council Member has given a standing notice of the nature and extent of the interest under rule 5.16 and the notice is still effective in relation to the interest.
- 5.16 A Council Member who has an interest in a matter may give the Company Secretary standing notice of the nature and extent of the interest in the matter in writing. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- 5.17 If standing notice is given in accordance with rule 5.16 to the Company Secretary, it must be provided to the Governors and tabled at the next Directors' meeting after it has been given and recorded in the minutes of that meeting.
- 5.18 A Council Member who has a material personal interest in a matter that is being considered at a general meeting of the Company must not vote on the matter.
- 5.19 Rule 5.18 does not apply if :
- (1) At least two of the three Governors confirm in writing that the interest should not disqualify the Council Member from voting; or
  - (2) the interest does not need to be disclosed under Rule 5.13.
- 5.20 If a Council Member has a material personal interest in a matter and votes in circumstances other than those provided for in rule 5.19, the vote of that Council Member shall be disregarded in determining whether the relevant resolution has been passed.
- 5.21 The Company Secretary may, at any time, request each Council Member who voted at the general meeting to confirm in writing that the Council Member did not have, and does not currently have, a material personal interest of a kind that needed or needs to be disclosed under rule 5.13.
- 5.22 If a request is made under rule 5.21, the Council Member will disclose all relevant facts to the Company Secretary within 14 days of the request.

## 6. General Meetings

### **Power to convene general meeting**

- 6.1 Members with at least 5% of the votes that may be cast at the general meeting may:
- (1) request the Directors to arrange to hold a general meeting of the Company, in accordance with section 249D; or
  - (2) call and arrange to hold a general meeting, in accordance with section 249F;
- but otherwise no Member or Members has the power to call a meeting of the Company.
- 6.2 A Director may convene a general meeting whenever the Director thinks fit.
- 6.3 If at any time there are not sufficient Directors capable of acting to form a quorum, any 2 or more Members may convene a general meeting of the Company at the cost of the Company.

### **Notice of general meeting**

- 6.4 Subject to the provisions of the Corporations Act as to short notice, not less than 21 days' notice of a general meeting must be given in writing to each Member.
- 6.5 A notice of a general meeting of Members or of any class of Members must:
- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
  - (2) state the general nature of the meeting's business;
  - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
  - (4) contain a statement setting out that:
    - (a) a Member entitled to attend and vote is entitled to appoint a proxy; and
    - (b) a proxy need not be a Member.

### **Auditors' and Directors' rights to attend general meetings**

- 6.6 The Company must give its Auditors:
- (1) a notice of a general meeting in the same way that a Member is entitled to receive notice; and

- (2) any other communications relating to the general meeting that a Member is entitled to receive.
- 6.7 The Auditors are entitled to attend any general meeting.
- 6.8 The Auditors are entitled to be heard at the meeting:
- (1) on any part of the business of the meeting that concerns the Auditors in their capacity as auditor; and
  - (2) even if:
    - (a) the Auditors retire at the meeting; or
    - (b) the meeting passes a resolution to remove the Auditors from office.
- 6.9 The Auditors may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.
- 6.10 The Company must give individually to each Director:
- (1) a notice of a general meeting in the same way that a Member is entitled to receive notice; and
  - (2) any other communications relating to the general meeting that a Member is entitled to receive.
- 6.11 Each Director is entitled to attend any general meeting.
- 6.12 Each Director is entitled to be heard at the meeting on any part of the business of the meeting.

#### **Cancellation or postponement of general meeting**

- 6.13 Where a general meeting (including an annual general meeting) is convened by the Directors, they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them. The Directors may at their discretion give notice of cancellation. Not giving notice does not affect the validity of the cancellation.
- 6.14 Written notice of postponement of a general meeting must be given to all persons entitled to receive notices of general meetings from the Company at least 3 days before the date for which the meeting is convened and must specify the reason for postponement.
- 6.15 A notice postponing the holding of a general meeting must specify:
- (1) a date and time for the holding of the meeting; and

- (2) a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice convening the meeting.
- 6.16 The number of days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the meeting may not be less than the number of days' notice of the meeting required to be given by this constitution or the Corporations Act.
- 6.17 The only business that may be transacted at a general meeting which is postponed is the business specified in the notice convening the meeting.
- 6.18 The accidental omission to give notice of the postponement of a meeting to, or the non-receipt of any such notice by, any person entitled to notice does not invalidate that postponement or any resolution passed at a postponed meeting.
- 6.19 If:
- (1) by the terms of an instrument appointing a proxy or attorney, a proxy or attorney is authorised to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
  - (2) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy or power of attorney;
- then, by force of this rule, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or power of attorney unless the Member appointing the proxy or attorney gives to the Secretary at the Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.
- 6.20 Rules 6.13 to 6.19 do not apply to a general meeting convened by the Directors in accordance with a requisition of Members under rule 6.1 or the Corporations Act.

## **7. Proceedings at General Meetings**

#### **Business of annual general meeting**

- 7.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- (1) the consideration of the annual financial report and the reports of the Directors and the Auditors;
  - (2) the election of Directors in place of those retiring;

- (3) the declaration by the Chairman as to the Council Members retiring;
- (4) the appointment of the Auditors; and
- (5) the fixing of the remuneration of the Auditors.

7.2 The business of the annual general meeting also includes any other business which under this constitution or the Corporations Act:

- (1) ought to be transacted at an annual general meeting; and
- (2) may be transacted at a general meeting, in which case it is special business. The chairman of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Company.

7.3 If the Auditors or the auditors' representative is at the meeting, the chairman of an annual general meeting must allow a reasonable opportunity to ask the Auditors or that representative questions relevant to the conduct of the audit and the preparation and content of the Auditors' report.

7.4 The Council Members may resolve at the annual general meeting to require the Directors to obtain an independent report on any aspect of the affairs of the Company.

7.5 A report requested under rule 7.4 shall be tabled at a Council Meeting no later than 3 months after the date of the request or such other time as may be resolved by the Council.

7.6 Notice of the annual general meeting and a copy of the annual report of the Company will be given to all Members.

7.7 Notification of the annual general meeting (not being notice pursuant to rules 6.4 and 6.5) will be given to all Contributors together with advice on how to obtain a copy of the annual report of the Company.

7.8 The requirements of rule 7.7 shall be satisfied by providing prior notice of the annual general meeting and advice of where to obtain a copy of the annual report, either:

- (1) in any magazine for Contributors published by the Company from time to time; or
- (2) on the Company's website and in a newspaper(s) circulated in each State and Territory of Australia.

#### **Members' Resolutions**

7.9 Members with at least 5% of the votes that may be cast on the resolution may:

- (1) give the Company notice of a resolution that they propose to move at a general meeting of the Company, in accordance with section 249N; and
- (2) request the Company to give to all of the members a statement provided by the members making the request, in accordance with section 249P.

#### **Quorum**

7.10 Subject to rule 7.13, 30 Council Members present in person or by proxy or attorney are a quorum at a general meeting.

7.11 An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it, but if a quorum is present at the beginning of a meeting it is to be deemed present throughout the meeting unless the chairman of the meeting on the chairman's own motion or at the instance of a Member, proxy or attorney who is present otherwise declares.

7.12 If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (1) if convened on the requisition of Members under rule 6.1(1) or section 249D, is dissolved;
- (2) if convened by Members under section 249E or rule 6.1(2) or 249F, is dissolved; and
- (3) in any other case stands adjourned to the same day in the next week and at the same time and place, or to such other date, time and place as the Directors appoint by notice to the Members.

7.13 At any such adjourned meeting 10 persons each being a Council Member entitled to vote or their proxy or attorney present at the meeting are a quorum and, if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **Chairman**

7.14 The Chairman is entitled to preside at general meetings, but if the Chairman is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement): the Deputy Chairman, a Director chosen by a majority of the Directors present, the only Director present, a Member, proxy or attorney chosen by a majority of the Members, proxies and attorneys present.

7.15 If there is an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or proxy or attorney of a Member.

### **How questions decided**

7.16 Every question submitted to a meeting is to be decided by a show of hands, unless before the vote is taken, or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:

- (1) the chairman of the meeting;
- (2) not less than 5 Members present in person or by proxy or attorney and having the right to vote at the meeting; or
- (3) a Member or Members so present representing not less than 5% of the total voting rights of all the Members having the right to vote at the meeting;

and the demand for the poll is not withdrawn.

7.17 Unless a poll is so demanded and the demand is not withdrawn, a declaration by the chairman of the meeting that the motion has been carried or carried unanimously or without dissent or by a particular majority or lost is conclusive evidence of that result and it is not necessary to prove the number or proportion of votes cast in favour of or against the motion.

7.18 If a poll is so demanded and the demand is not withdrawn, it must be taken in such manner and at such time and place and at once or after an interval or adjournment or otherwise as the chairman of the meeting then or subsequently determines and the result of the poll is to be deemed the resolution of the meeting at which the poll was demanded.

7.19 A poll may not be demanded on the election of a chairman of a meeting. A poll demanded on a question of adjournment is to be taken at the meeting and without adjournment.

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

### **Objection to voting qualification**

7.21 Objection may not be raised to the right of a person to attend or vote at a meeting or adjourned meeting or to vote on a poll except at that meeting or adjourned meeting or when that poll is taken, and every vote not disallowed at the meeting or adjourned meeting or when the poll is taken is valid.

7.22 If there is a dispute as to the admission or rejection of a vote, the chairman of the meeting must decide it and the chairman's decision made in good faith is final and conclusive.

### **Adjournment**

7.23 The chairman of a meeting may adjourn the meeting from time to time and place to place. A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

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

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

## **8. Votes of Members**

### **Voting rights**

8.1 Subject to the rights and any restrictions attached to or affecting any class of Members and to any other restrictions in this constitution:

- (1) on a show of hands, each Member entitled to vote present in person and each other person present as proxy or attorney of a Member entitled to vote has 1 vote; and
- (2) on a poll, each Member entitled to vote present in person has 1 vote and each person present as proxy or attorney of a Member entitled to vote has 1 vote for each Member that the person represents.

For the avoidance of doubt and in circumstances where a company admitted to membership under rule 3.5A is entitled to vote, it has 1 vote for each individual membership held on trust by it.

### **Rights to vote**

8.2 Subject to rule 3.1(2), the only Members who have a right to vote on any matters before a general meeting are Council Members. All other Members will be entitled to attend and be heard but will not be entitled to vote. Contributors will be entitled to attend and be heard at the annual general meeting but will not be entitled to vote.

### **Right to appoint proxy**

8.3 A Member entitled to attend at a meeting of the Company or of any class of Members is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting and a proxy has the same right as the Member to speak and vote at the meeting.

### **Instrument of proxy**

8.4 An appointment of a proxy is valid if it is:

- (1) signed by the Member making the appointment;
- (2) is either:
  - (a) in the form determined by the Directors; or
  - (b) contains the following information:
    - (i) the Member's name and address;
    - (ii) the name of the Company;
    - (iii) the name of the proxy or the name of the office held by the proxy; and
    - (iv) the meetings at which the appointment may be used.

8.5 Without limiting rule 8.4:

- (1) an appointment of a proxy may be a standing appointment;
- (2) an undated appointment is taken to have been dated on the day it is given to the Company;
- (3) an appointment may specify the way the proxy is to vote on a particular resolution; and
- (4) a later appointment of a proxy revokes an earlier one.

### **Right to appoint attorney**

8.6 A Member may by power of attorney duly executed in the presence of at least 1 witness and (if necessary) duly stamped appoint an attorney to act on the Member's behalf at all or any meetings of the Company or of any class of Members.

### **Receipt of proxy and other instruments**

8.7 For an appointment of a proxy for a meeting of Members or of any class of Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

- (1) the proxy's appointment; and

(2) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.

8.8 If a meeting of Members or of any class of Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

8.9 The Company receives an appointment authority when it is received at any of the following:

- (1) the Registered Office;
- (2) a fax number at the Registered Office; or
- (3) a place, fax number or electronic address specified for that purpose in the notice of meeting.

### **Validity of vote in certain circumstances**

8.10 A vote cast by a proxy or attorney is valid notwithstanding the previous revocation of that person's authority by the death of the principal or otherwise, unless an intimation in writing of the revocation has been received by the Secretary at the Registered Office or by the chairman of the meeting before the vote is cast.

8.11 No Member, proxy or attorney of a Member may vote at any general meeting unless all membership fees due and payable by the Member to the Company have been paid.

## **9. Directors**

### **Number of Directors**

9.1 The Directors may determine the number of Directors from time to time. That number must not be less than 6 nor more than 12 until otherwise determined by the Council in general meeting.

9.2 [not used]

### **Qualification**

9.3 A Director must be a Member.

### **Directors as Council Members**

9.4 A person who is appointed as a Director is automatically appointed to the Council and shall hold office as a Council Member for so long as they are a Director.

### **Appointment and removal of Executive Director**

- 9.5 The Directors may appoint 1 and a maximum of 2 Executive Directors either for a fixed term or without limitation as to period of appointment but not for life, and may remove a person so appointed and appoint another instead.
- 9.6 An Executive Director while continuing to hold that office is not subject to retirement by rotation or to be taken into account in determining the rotation or retirement of Directors or the number of Directors to retire but, subject to the provisions of any contract with the Company, is subject to the same provisions as to resignation and removal as the other Directors and automatically ceases to be a Director on ceasing to be an Executive Director.

### **Remuneration of Executive Director**

- 9.7 The remuneration of an Executive Director shall not be by a commission on, or percentage of, turnover.

### **Powers of Executive Director**

- 9.8 The Directors may confer on an Executive Director such of the powers conferred on the Directors by this constitution, for such time, to be exercised for such purposes, on such terms and with such restrictions as they think fit and all or any of those powers may be conferred collaterally with but not to the exclusion of the powers of the Directors and may be revoked or varied by the Directors.

### **Appointment**

- 9.9 The Directors may appoint or the Council in general meeting may elect a person as a Director either to fill a casual vacancy or as an additional Director, but so that the total number of Directors is not at any time to exceed the maximum fixed by the Directors or by the Council, as the case may be, under rule 9.1.
- 9.10 A Director appointed by the Directors pursuant to rule 9.9 holds office only until the next following annual general meeting but is then eligible for re-election notwithstanding that 45 days notice is not given in accordance with rule 9.11.

### **Nomination and notice of candidature**

- 9.11 No person shall be eligible for election or re-election to the office of Director at any annual general meeting unless they have been nominated by the Council or the Directors by notice in writing ('Nomination Notice') 45 clear days before the annual general meeting. Any nomination by Directors must be made in conjunction with the Nomination Committee.
- 9.12 The Nomination notice must be signed by 10 Council Members for candidates nominated by the Council and by 4 Directors for candidates nominated by the Directors.

- 9.13 The Nomination notice must be signed by the candidate signifying their consent to the nomination.

### **Rotation of Directors**

- 9.14 A Director, other than an Executive Director, may not retain office for more than 3 calendar years or beyond the 3rd annual general meeting following the Director's election (whichever is the longer period) without submitting for re-election.
- 9.15 At the annual general meeting in each year one third of those Directors in office, (not including any Executive Director, a person appointed as a Director by the Directors under rule 9.9) or, if their number is not a multiple of 3, the number nearest to but not less than one third, must retire from office.
- 9.16 A retiring Director may act until the conclusion of the meeting at which the Director retires and is eligible for re-election.
- 9.17 Subject to section 203D(7), the Directors to retire by rotation at each annual general meeting are those who have been longest in office and the length of time a Director has been in office is to be computed from the Director's last election at the annual general meeting or by appointment by the Directors or, in the case of a Director elected by the Council in general meeting under rule 9.9, computed from the date of that election.
- 9.18 As between Directors who have been in office an equal length of time, the Directors to retire are, in default of agreement between them, to be determined by drawing lots in any manner determined by the Chairman or if the Chairman is not able and willing to act by the Deputy Chairman.
- 9.19 Nothing in rules 9.14 to 9.18 inclusive affects the provisions of rule 9.10 as to the date upon which a Director appointed by the Directors under rule 9.9 must retire.
- 9.20 If the Council in general meeting elects a Director under rule 9.9, it may also determine in what order of rotation the Director is to go out of office.
- 9.21 The Council may at a meeting at which Directors retire by rotation fill all or any of the vacant places by electing persons to them.
- 9.22 Subject always to rule 9.23, if the place of a Director retiring by rotation is not so filled, the Director continues in office if willing to do so until the next annual general meeting and so on from annual general meeting to annual general meeting until the Director's place is filled, unless prior to an annual general meeting the Directors determine or at an annual general meeting the Company determines, expressly to reduce the number of Directors in office or a resolution for the re-election of the Director is put to the meeting and lost.
- 9.23 A retiring Director is eligible for re-election.

9.24 The Directors who were in office as at 30 September 1994 shall, only for the purposes of determining the period they have held office as a Director, be deemed to have first assumed office on 30 September 1994.

#### **Remuneration and Expenses**

9.25 The Directors are entitled to be paid out of the funds of the Company as remuneration for their services as Directors such sum not exceeding the amount approved by the Council in general meeting such amount to be divided among them in such proportion and manner as the Directors resolve.

9.26 If a Director, at the request of the Directors, performs additional or special duties for the Company, the Company may remunerate that Director by payment of a fixed sum or salary to be determined by the Directors and that remuneration may be either in addition to or in substitution for that Director's remuneration under rule 9.25.

9.27 A Director is also entitled to be reimbursed out of the funds of the Company such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

#### **Vacation of office**

9.28 The office of a Director is automatically vacated if the Director:

- (1) ceases to be a Director by virtue of, or becomes prohibited from being a Director because of an order made under, the Corporations Act;
- (2) becomes bankrupt or insolvent or makes an arrangement or composition with creditors of the Director's joint or separate estate generally;
- (3) becomes mentally incapacitated or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (4) resigns office by notice in writing to the Company or refuses to act;
- (5) is not present personally or by an Alternate Director or by a proxy appointed under rule 11.8 at the meetings of the Directors for a continuous period of 3 months without leave of absence from the Directors;
- (6) removed from office by a resolution under section 203D; or
- (7) ceases to be a Member.

#### **Director's interests**

9.29 Subject to rule 9.30, a Director who has a material personal interest in a matter that is being considered at a meeting of the Directors may:

- (1) vote on the matter; or
- (2) be present while the matter (or a proposed resolution of that kind) is being considered at the meeting,

only in circumstances specified in sections 195(1A), 195(2), 195(3) or 195(4).

9.30 Directors may vote in respect of a contract for insurance of the Company or its officers against a liability incurred by officers as officers of the Company.

9.31 A Director may, notwithstanding the Director's office and the fiduciary relationship established by it:

- (1) hold an office or place of profit (except that of Auditors) under the Company or under any body corporate in which the Company is a member or otherwise interested;
- (2) enter into a contract with the Company as vendor, purchaser or otherwise and participate in any association, institution, fund, trust or scheme for past or present employees or Directors or any of its predecessors or their dependants or persons connected with them; and
- (3) retain for the Director's own benefit any profit arising from any such office, place of profit or contract and any pension, allowance or other benefit received because of that participation.

9.32 A contract entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.

9.33 An interested Director may attest the affixing of the Seal to a contract or any other document.

9.34 In rule 9, where the context admits, "Contract" includes an arrangement and a proposed contract or arrangement.

## **Alternate Directors**

- 9.35 Subject to the Corporations Act, a Director (“appointor”) may by writing under the appointor's hand or by telex, telegram, facsimile or other form of visible communication, appoint a person approved by a majority of the other Directors to act as an alternate in the appointor's place whether for a stated period or periods or until the happening of a specified event or from time to time.
- 9.36 An Alternate Director:
- (1) may be removed or suspended from office by notice in writing from the appointor or by resolution of a majority of Directors;
  - (2) subject to this constitution is entitled to receive notice of meetings of the Directors and to attend and vote if the appointor is not present and, if also a Director in the Alternate Director's own right or Alternate Director for another Director as well, to have a separate vote on behalf of the appointor in addition to the Alternate Director's own or that other Director's vote;
  - (3) may exercise all the powers except the power to appoint an Alternate Director and, subject to the Corporations Act, perform all the duties of the appointor in so far as the appointor has not exercised or performed them;
  - (4) automatically ceases to be an Alternate Director if the appointor ceases to be a Director;
  - (5) whilst acting as a Director is responsible to the Company for the Alternate Director's own acts and defaults and the appointor is not responsible for them;
  - (6) may not receive any remuneration from the Company as a Director except for any special services which in the opinion of the Directors are outside the scope of the ordinary duties of a Director; and
  - (7) may not be taken into account separately from the appointor in determining the number of Directors or the rotation of Directors.
- 9.37 The appointor shall give a copy of the notice of appointment, renewal or suspension of the Alternate Director to the Company.
- 9.38 If the appointor retires by rotation but is re-elected by the meeting at which the appointor retires or continues in office in accordance with rule 9.22, the appointment of the Alternate Director continues to operate as if the appointor had not retired.

## **10. Powers of Directors**

- 10.1 The business of the Company is to be managed by or under the direction of the Directors.
- 10.2 The Directors may exercise all the powers of the Company except any powers that this constitution or the Corporations Act requires the Company to exercise in general meeting.
- 10.3 Notwithstanding rules 10.1 and 10.2:
- (1) the Directors may not sell or dispose of the Company's main undertaking unless the sale or disposal is subject to ratification by the Company in general meeting;
  - (2) on a sale or disposal of the Company's main undertaking a commission or fee may not be paid to a Director unless the payment has also been so ratified, and prior notice of the amount of the proposed payment has been given to Members in the notice of the meeting at which it is proposed to be ratified.
- 10.4 The Directors may borrow or raise money for the Company and secure the repayment, satisfaction or performance thereof or of any debts, liabilities, contracts or obligations incurred or undertaken by the Company in such manner and on such terms in all respects as they think fit.

## **11. Proceedings of Directors**

### **Meetings**

- 11.1 The Directors may meet for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit.

### **Quorum**

- 11.2 Until otherwise determined by the Directors, 6 Directors present in person or by proxy are a quorum.
- 11.3 Notwithstanding rule 11.2, a quorum is present during the consideration of a matter at a meeting of the Directors, only if at least 3 Directors are present who are entitled to vote on any motion that may be moved at the meeting in relation to that matter.

### **Effect of vacancy**

- 11.4 The continuing Directors may act notwithstanding a vacancy in their number but, if and so long as their number is reduced below the minimum fixed by rule 9.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or of summoning a general meeting.

### **Convening meetings**

- 11.5 A meeting of Directors may be called by a Director or the Secretary giving reasonable notice to every Director.
- 11.6 A meeting of Directors may be called using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw his or her consent within a reasonable period before the meeting.
- 11.7 Every Director must nominate by notice in writing to the Secretary an address for service of notice of a meeting of Directors.

### **Appointment of proxy**

- 11.8 A Director may attend and vote by proxy at a meeting of the Directors if the proxy is a Director and has been appointed by writing under the hand of the appointor or by telegram, facsimile or other form of visible communication from the appointor. Such an appointment may be general or for any particular meeting or meetings.

### **Chairman and Deputy Chairman**

- 11.9 The Directors must elect a Chairman and may elect a Deputy Chairman and may determine the period during which each is to hold office.
- 11.10 The positions of Chief Executive Officer and Chairman may not be held by any 1 Director.
- 11.11 The Chairman or Deputy Chairman may be removed from that office by a resolution of the Directors of which not less than 14 days' notice has been given to all the Directors.
- 11.12 The Chairman is entitled to preside at meetings of the Directors but, if the Chairman is not present and able and willing to act within 15 minutes after the time appointed for a meeting or has signified an intention not to be present and able and willing to act, the following may preside (in order of entitlement): the Deputy Chairman, a Director chosen by a majority of the Directors present.

### **How questions decided**

- 11.13 Questions arising at a meeting of the Directors are to be decided by a majority of votes. The Chairman does not have a casting vote.

### **Committees**

- 11.14 The Directors may delegate any of their powers to Committees consisting of such Director or Directors as they think fit and may revoke that delegation.
- 11.15 A Committee in the exercise of the powers so delegated must conform to any regulations imposed by the Directors.
- 11.16 Subject to rule 11.5, the meetings and proceedings of a Committee consisting of 2 or more Directors are governed by the provisions of this constitution as to the meetings and proceedings of the Directors so far as they are agreed by the Directors to be applicable.

### **Nomination Committee**

- 11.17 The Directors must establish a Nomination Committee.
- 11.18 [not used]
- 11.19 The Nomination Committee will assist the Directors in the development of appropriate selection criteria for casual appointees to the Board of Directors, recruiting new Directors and facilitating the Directors' consideration of a Director's eligibility to stand for a further period of office under rule 9.23.
- 11.20 The Nomination Committee in carrying out its duties under rule 11.19 must review the effectiveness of the Directors as a whole and of each individual Director.
- 11.21 The Nomination Committee will also assist the Directors in their selection of appropriate persons to be appointed as Appointed Contributor Representatives and in doing so shall seek to identify candidates for appointment as Appointed Contributor Representatives who are broadly representative of the Contributors. The Directors may from time to time develop guidelines to assist the Nomination Committee in this process.
- 11.22 In carrying out its duties the Nomination Committee may draw upon such external advice as is necessary to assist it in the effective discharge of its duties.
- 11.23 The Nomination Committee must take minutes of its proceedings and after each meeting must deliver a copy of the minutes to the Directors and the Governors.

### **Written resolution**

- 11.24 Subject to the Corporations Act, a resolution in writing signed by all the Directors who are for the time being in Australia or all the members of a Committee who are for the time being in Australia, in either case being at least a quorum, is as valid and effectual as if it had been passed at a meeting of the Directors or Committee duly called and constituted at the time the resolution was last signed and may consist of several documents in like form each signed by 1 or more of the Directors or members.

### **Telephone meeting**

- 11.25 For the purposes of this constitution the contemporaneous linking together by telephone or other means of instantaneous communication (“**telephone**”) of a number of the Directors, being at least a quorum, whether or not any 1 or more of them is out of Australia, is to be deemed to constitute a meeting of the Directors and all the provisions of this constitution as to meetings of the Directors apply to such a meeting if the following conditions are met:

- (1) all the Directors entitled to notice of a meeting of the Directors received notice of the meeting and for this purpose notice of the meeting may be given on the telephone;
- (2) all the Directors wanting to take part in the meeting are linked by telephone for the purposes of the meeting; and
- (3) at the commencement of the meeting each Director taking part acknowledges the respective Director's presence for the purposes of the meeting to all other Directors taking part and acknowledges that the Director is able to hear each of the other Directors taking part.

- 11.26 A Director may not leave a telephone meeting by disconnecting the telephone without the consent of the chairman of the meeting and a Director is to be deemed to be present and form part of the quorum throughout the meeting unless the Director has obtained the consent of the chairman of the meeting to leave the meeting.

- 11.27 A minute of the proceedings at a telephone meeting is sufficient evidence of the proceedings and the observance of all necessary formalities if it is certified as a correct minute by the chairman of the meeting.

### **Validity of acts of Directors**

- 11.28 All acts of the Directors, a Committee or a person acting as a Director or Committee or member of a Committee are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

## **12. Powers of Attorney**

- 12.1 The Directors may by revocable or irrevocable power of attorney under the common seal of the Company or otherwise, as determined by the Directors, appoint a person to be the attorney of the Company for such purposes and with such powers (not exceeding those conferred on the Directors by this constitution) and for such period and subject to such conditions as the Directors think fit.
- 12.2 Any such appointment may be made in favour of the Members or in favour of a body corporate or of the members, directors, nominees or managers of a body corporate or firm or in favour of a fluctuating body of persons whether nominated directly or indirectly by the Directors and any such power of attorney may contain such provisions for the protection or convenience of persons dealing with the attorney as the Directors think fit.

### **Sub-delegation**

- 12.3 Any such delegate or attorney may be authorised to sub-delegate all or any of the powers vested in that person.

## **13. Secretary**

- 13.1 The Secretary holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

## **14. Authentication of documents**

### **Company seals**

- 14.1 The Company may have a common seal and may have an official seal for use in any place outside New South Wales, which is a facsimile of the common seal with the addition on its face of the name of every place where it may be used.
- 14.2 The Directors must provide for the safe custody of all Seals in such manner as they think fit.

### **Use of common seal**

- 14.3 The common seal may be affixed to a document only by the authority of the Directors or a Committee of Directors authorised by the Directors in that regard.
- 14.4 Every document to which the common seal is affixed must be signed by a Director and countersigned by the Secretary or a second Director or some other person appointed generally or in a particular case by the Directors for that purpose.

### **Use of official seal**

- 14.5 An official seal may be affixed to a document only by the authority of the Directors or a Committee of the Directors in either case authorised by the Directors in that regard.
- 14.6 Every document to which an official seal is affixed must be signed by a person appointed by the Directors to affix that official seal who must in writing under that person's hand certify on the document to which the official seal is affixed the date on which and the place at which it is affixed.

### **Signatures by mechanical means**

- 14.7 The Directors may determine generally or in a particular case that the signature of a Director, Secretary or other person appointed by the Directors for the purpose of signing documents to which a Seal is affixed may be written by a specified mechanical means on such documents.

### **Execution without common seal**

- 14.8 If the Company does not have a common seal or elects to execute instruments without a common seal, the following provisions apply:
- (1) an instrument to which a general authority referred to in rule 14.10 does not apply (“**solemn instrument**”) may be executed by authority of a resolution of the Directors or of a Committee of the Directors duly authorised by the Directors; and
  - (2) a solemn instrument must be signed by at least 1 Director and countersigned by another Director, the Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included, but the same person is unable to sign in the dual capacities of Director and Secretary.
- 14.9 A Director may sign a solemn instrument as director on behalf of the Company although the instrument relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature is effective in regard to compliance with the requirements of this constitution as to execution despite his or her interest.
- 14.10 The Directors may give express or implied general authority for particular types of instruments to be executed on behalf of the Company by officers or employees of the Company, without requiring that a special authority is given to execute a particular document of that type.

### **Negotiable instruments**

- 14.11 Cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, accepted, drawn, made or endorsed on behalf of the Company in such

manner and by such persons (whether Directors or officers of the Company or not) as the Directors determine but not otherwise.

## **15. Inspection of books**

- 15.1 Subject to the Corporations Act and any resolution of the Company in general meeting, the Directors may determine whether and to what extent and at what times and places and under what conditions and regulations the books and documents of the Company or any of them will be open to inspection by the Members and other persons.
- 15.2 A Member or other person, not being a Director, has no right to inspect any of the books or documents of the Company except as conferred by statute or authorised by the Directors or by a resolution of the Company in general meeting and is not entitled to require or receive any information concerning the affairs of the Company.

## **16. Service of documents**

- 16.1 A notice or other document may be delivered or served by the Company either personally or by sending it:
- (1) in the case of a Member who does not have a registered address in Australia, by airmail post; and
  - (2) in any other case, by ordinary post.
- 16.2 A Member whose registered address is not in Australia may specify in writing an address in Australia to be deemed the Member's registered address within the meaning of rule 16.
- 16.3 A document sent by post is to be deemed received or served on the day next following that on which it was posted and in proving delivery or service it is sufficient to prove that the envelope or wrapper containing the document was properly addressed and stamped and was posted.
- 16.4 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was properly addressed and stamped and was posted is conclusive evidence of those facts.
- 16.5 A notice may be served by the Company on a Member or other person receiving notice under this constitution by sending it by facsimile to that person at the facsimile number nominated by the person for this purpose or by e-mail to that person at the e-mail address nominated by the person for this purpose. A notice sent by facsimile is to be deemed served on the day following production of a transmission report by the machine

from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the person's facsimile number. A notice sent by e-mail is to be deemed served on the day that it is sent unless the Company receives an electronic rejection notice.

16.6 Subject to the Corporations Act:

- (1) if a given number of days' notice or notice extending over any other period is required to be given, the day on which the notice is to be deemed served and in case of a notice convening a meeting the day on which the meeting is to be held are to be excluded in calculating the number of days or other period;
- (2) if this constitution requires or permits a notice to be given by the Company, the Directors, a Director or the Secretary, neither accidental omission to give the notice nor non-receipt of the notice invalidates the meeting, resolution, procedure or matter to which the notice relates;
- (3) the signature to a written notice need not be handwritten; and
- (4) all summonses, notices, process, judgments and orders in relation to any legal proceedings by the Company or its liquidator against a Member not in New South Wales may be served by certified or registered post (the foregoing provisions as to notices applying with necessary changes) and that service is to be deemed personal service.

16.7 Nothing in this rule affects the operation of rule 7.6.

## 17. By-Laws

17.1 The Directors shall have power from time to time to make By-Laws and Regulations not being inconsistent with this constitution for the regulation of the Company and the conduct and management of its affairs, activities and business and for the purpose of fulfilling and carrying out the objects for which the Company is established or any of them and may from time to time alter, vary, cancel, repeal or annul any By-Laws or Regulations so made and all By-Laws or Regulations so made will be binding on the Members and the Contributors and will have full effect accordingly and without limiting the generality of the foregoing the following things may be dealt with by By-Laws or Regulations:

- (1) the conditions and circumstances under which persons may become and/or remain Contributors; and
- (2) the nature, extent and manner of granting an amount or value of the rights, benefits or privileges which shall be accorded to Contributors; and

(3) the disposal and application of the funds of the Company; and

- (4) arrangements with other associations, corporations, hospitals or persons; and
- (5) the Committees and the appointment, removal, qualifications, duties, functions, powers and privileges of any such Committees; and
- (6) the duties of officers and servants of the Company; and
- (7) any other matter or thing which by this constitution is required or permitted to be dealt with or prescribed by the By-Laws.

## 18. Indemnity and Insurance

### Indemnity of officers

18.1 To the extent permitted by the Corporations Act, the Company indemnifies:

- (1) every person who is or has been an officer of the Company; and
- (2) where the Board of Directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;
- (3) against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be).

18.2 In accordance with section 199A of the Corporations Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
  - (a) a liability owed to the Company or a related body corporate;
  - (b) a liability for a pecuniary penalty order under section 1317G of the Corporations Act or a compensation order under section 1317H of the Corporations Act; or
  - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith ; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
  - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 18.2(1);

- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
- (d) in connection with proceedings for relief to the person under the Corporations Act in which the Court denies the relief.

18.3 Rule 18.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investment Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

18.4 For the purposes of rule 18.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

#### **Insurance**

18.5 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or 183 of the Act.

18.6 In the case of a Director, any premium paid under rule 18.5 is not remuneration for the purpose of rule 9.25.

18.7 Despite anything in this constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate.

18.8 No officer of the Company is liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

18.9 For the purposes of this rule 18, "officer" means a Director, Secretary or executive officer and a member of a (now defunct) State Board of Advice.

#### **Deeds of Access**

18.10 Where the Directors consider it appropriate, the Company may:

- (1) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
- (2) bind itself in any contract with a Director or former Director to give the access described above.

## **19. Winding up**

19.1 If on the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property whatever, that property may not be paid to or distributed among the members of the Company, but must be given or transferred to another fund or other funds, authorities or institutions approved by the Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of any of the subparagraphs of Division 30 of the *Income Tax Assessment Act 1997* or any amendment or re-enactment of those provisions and which prohibits the distribution of its income and property among its beneficiaries or members to an extent at least as great as is imposed on the Company by rules 2.2, 2.3 and 2.4, the funds, authorities or institutions to be determined by the members of the Company at or before the time of dissolution or, failing such a determination, by a judge who has or acquires jurisdiction in the matter.

## **20. Implementation of Merger Transaction**

20.1 Subject to the Merger Transaction receiving all necessary approvals, then notwithstanding any other rule to the contrary, the Company is entitled and required to take all necessary steps to give effect to the Merger Transaction including, without limitation, to make payments in accordance with the terms of the Merger Transaction, issue shares and make Board appointments.