

# Medical Indemnity Protection Society **Constitution**

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**Medical Indemnity Protection Society**

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## **1. PRELIMINARY**

### **1.1 Company limited by shares and guarantee**

The Company is limited by shares and guarantee.

### **1.2 Objects of the Company**

The Company is formed with the following objects:

- (a) to support and protect the character and interests of legally qualified health care practitioners and of persons legally entitled to practice medicine, surgery or a related health care discipline;
- (b) to support and protect the character and interests of Members;
- (c) to promote honourable and to discourage irregular practice;
- (d) to, in accordance with the terms of this Constitution and always at the discretion of the Board:
  - (i) grant indemnities to members in respect of claims or demands;
  - (ii) advise and defend or assist in defending any Member in any case arising out of the clinical practice of the Member which may affect the Member's professional character or interests;
  - (iii) institute any legal or other proceedings for the protection or vindication of the character of any Member;
  - (iv) provide and obtain advice and opinions on any legal or other matter; and
- (e) to consider, originate, promote and support, or oppose legislative or other measures affecting Members.

### **1.3 Application of income and property**

The Company must apply its income and property solely towards promoting the objects of the Company as stated in rule 1.2. No part of the Company's income or property may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to Members or Shareholders, except on a winding up.

### **1.4 Limited liability of Members on winding up**

If the Company is wound up each Member (other than a Member who has been a Former Member for more than one year or an Honorary Member) of the Company under takes to contribute to the assets of the Company up to an amount not exceeding \$5 for payment of the debts and liabilities of the Company including the costs of the winding up.

### **1.5 Allocation of surplus on winding up**

If the Company is wound up, any surplus assets must be paid to the Members, subject to a return of capital to the Shareholders (who are not entitled, in their capacity as Shareholders, to participate in the surplus), in accordance with the following:

- (a) only General Members, and Members who have been Former Members for one year or less, are entitled to share in any surplus; and
- (b) each entitled Member is to receive a share of the surplus in proportion to their contribution to the Company by way of Subscription Fees, which will be on an equitable basis to be determined by the Board.

### **1.6 Replaceable rules**

The replaceable rules referred to in section 141 of the Corporation's Law do not apply to the Company and are replaced by the rules set out in this document.

## 1.7 Definitions

The following definitions apply in this document.

**“Board”** means the Directors acting collectively under this document.

**“Company”** means the company named at the beginning of this document whatever its name is for the time being.

**“Director”** means a person who is, for the time being, a director of the Company.

**“Former Member”** means a person:

- (a) who was once, but is no longer (through non-renewal, resignation, expulsion or otherwise) a Member of the Company; and
- (b) who either:
  - (i) did not owe any Subscription Fees or other liabilities to the Company on the date they became a Former Member; or
  - (ii) within one month of becoming a Former Member, paid in full all Subscription Fees and other liabilities owed by the Member to the Company and the Board agreed to accept the payment of any overdue amounts.

**“General Member”** means a current Member of the Company who holds a qualification or entitlement approved by the Board, and who is not a Non-Financial Member.

**“Honorary Member”** means a current Member of the Company admitted to the membership of the Company at the sole discretion of the Board.

**“Law”** means the Corporations Law.

**“Member”** means a person whose name is entered in the Members’ Register as a member of the Company, but not a Shareholder.

**“Members’ Register”** means the register of Members to be kept and maintained in accordance with rule 2.3.

**“Non-Financial Member”** means a current Member of the Company whose Subscription Fees or other liabilities to the Company are in arrears for one month or more. Such a Member will, subject to the Board agreeing to accept payment of any overdue amounts, resume status as a General Member on the date on which all Subscription Fees and other liabilities are paid in full to the Company.

**“ordinary resolution”** means a resolution of Shareholders other than a special resolution.

**“Secretary”** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

**“Shareholder”** means a person who holds one or more shares in the capital of the Company.

**“Shareholders’ Register”** means the register of Shareholders to be kept in accordance with rule 5.3.

**“special resolution”** has the meaning given by section 9.

**“Subscription Fees”** means the fees payable by the Members to the Company.

**“Subscription Fees Notice”** means a notice issued by the Board requiring Members to pay Subscription Fees.

## 1.8 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word “**agreement**” includes an under taking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being “**written**” or “**in writing**” includes that thing being represented or reproduced in any mode in a visible form.
- (j) Words (other than those defined in rule 1.7) which are defined by the Law have the same meaning in this document.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Law.



## 2. MEMBERS

### 2.1 Rights of Members

The rights and privileges of each Member are personal to that Member and are not transferable.

### 2.2 Classes of Members

Subject to the Board creating new classes of Members, the Members will be divided into the following classes:

- (a) General Members;
- (b) Former Members;
- (c) Non-Financial Members; and
- (d) Honorary Members.

### 2.3 Members' Register

- (a) The Secretary must keep a Members' Register which complies with section 168 and 169 and which shows in respect of each Member, that Member's full name, address, date of birth, qualifications, class of membership, date of admission to membership, details of Subscription Fees paid and such other matters as the Board from time to time prescribes.
- (b) Every Member must supply to the Secretary all information required to complete that Member's entry in the Members' Register.

### 2.4 Admission

- (a) A person may only apply for admission to membership of the Company as a General Member or Honorary Member.
- (b) All applications for membership must be in the form prescribed by the Board.
- (c) The Board may, in its absolute discretion, admit or refuse to admit any eligible person to membership of the Company.

### 2.5 Eligibility

No person is eligible for admission as a General Member unless that person holds a qualification or entitlement approved by the Board.

### 2.6 Renewal of membership

- (a) Each year, on a date to be prescribed by the Board, every Member (other than a Former Member or Honorary Member) must apply to the Board to have their membership renewed.
- (b) All applications for renewal must be in the form prescribed by the Board.
- (c) The Board may, in its absolute discretion, renew or refuse to renew the membership of any Member.

### 2.7 Subscription Fees

A Member, other than a Former Member or Honorary Member, must pay Subscription Fees in accordance with any Subscription Fees Notices issued by the Board. A Subscription Fees Notice must specify:

- (a) the amount of Subscription Fees to be paid by the Member;
- (b) the period for which the Subscription Fees are to be paid; and
- (c) the date on which the Subscription Fees are due.

## 2.8 Calls

From time to time, the Board may call upon the Members (other than Former Members and Honorary Members) to contribute funds to the Company, in addition to any Subscription Fees, subject to the following:

- (a) the amount of the call will not exceed the amount of a Member's total Subscription Fees for the membership year during which the call is made;
- (b) the liability of the Member to pay the call will be fixed on the day that the notice of the call is given;
- (c) payment of the call will not be required until at least one month has passed after the date on which notice of the call is given; and
- (d) the call may be paid by instalments in a manner set out in the notice of the call.

## 2.9 Resignation

A Member may resign from the Company by giving one month's written notice to the Board.

## 2.10 Cancellation of Membership

- (a) The Board may, by resolution, cancel the membership of a Member of the Company:
  - (i) who does not comply with this document or any by-laws, rules or regulations of the Company;
  - (ii) who has been a Non-Financial Member for at least one month; or
  - (iii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company.
- (b) At least 21 days before the Board holds a meeting to cancel a Member's membership of the Company, the Board must send a notice to the Member which states:
  - (i) the reasons or grounds for proposing cancellation of membership;
  - (ii) the proposed resolution for the cancellation of the Member's membership of the Company; and
  - (iii) that the Member has an opportunity at the meeting to address the reasons or grounds either orally or in writing.

## 2.11 Indemnity and assistance

- (a) A Member (other than a Non-Financial Member) has the right to apply to the Board to request assistance and indemnity.
- (b) The Board may, in its absolute discretion, accept, partly accept or reject applications by Members for assistance and indemnity, and may review or vary the terms on which assistance and indemnity is given, or withdraw the assistance and indemnity, at any time.

### 3. MEETINGS OF GENERAL MEMBERS

#### 3.1 Calling meetings of General Members

- (a) The Board or a Director may at any time; and
- (b) the Board must when requested by General Members under section 249D or when ordered by the Court under section 249G, convene a meeting of General Members.

#### 3.2 Notice of meeting

Subject to rule 3.3, at least 21 days' written notice of a meeting of General Members must be given individually to:

- (a) each General Member; and
- (b) each Director.

The notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

#### 3.3 Short notice

Subject to sections 249H(3) and (4) if General Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree, a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

#### 3.4 Postponement or cancellation

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of General Members;
- (b) cancel a meeting of General Members; or
- (c) change the place for a general meeting by written notice given individually to each person entitled to be given notice of the meeting.

#### 3.5 Fresh notice

If a meeting of General Members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

#### 3.6 Technology

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

#### 3.7 Accidental omission

The accidental omission to give notice to, or the nonreceipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of General Members.

## **4. PROCEEDINGS AT MEETINGS OF GENERAL MEMBERS**

### **4.1 Quorum**

The quorum for a meeting of General Members is three. Each individual present may only be counted once toward a quorum.

### **4.2 Quorum not present**

If a quorum is not present within 15 minutes after the time for which a meeting of General Members is called:

- (a) if called as a result of a request of General Members under section 249D, the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to General Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

### **4.3 Chairing meetings of General Members**

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of General Members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of General Members is called or is not willing to chair the meeting, the General Members present must elect a General Member or Director present to chair the meeting.

### **4.4 Attendance at general meetings**

- (a) Every General Member has the right to attend all meetings of General Members.
- (b) Every Director has the right to attend and speak at all meetings of the Company.
- (c) The auditor has the right to attend any meeting of General Members of the Company and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

### **4.5 Adjournment**

The chairman of a meeting of General Members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

### **4.6 Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

## 4.7 Voting

### (a) Entitlement to Vote

- (i) Each General Member has one vote.
- (ii) The chairman of a meeting of General Members does not have a casting vote. If an equal number of votes is cast for and against a resolution the matter is decided in the negative.
- (iii) A General Member or Director may challenge a person's right to vote at a meeting of General Members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

### (b) Method of voting

A resolution put to the vote at a meeting of General Members must be decided on a show of hands unless a poll is demanded under rule 4.7(c) either before or on declaration of the result of the vote on a show of hands. Unless poll is demanded, the chairman's declaration decision on a show of hands is final.

### (c) Demands for a poll

A poll may be demanded on any resolution except a resolution concerning the election of chairman of a meeting by:

- (i) at least two General Members entitled to vote on the resolution; or
- (ii) the chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

### (d) When and how polls must be taken If a poll is demanded:

- (i) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and in the manner that the chairman of the meeting directs;
- (ii) in all other cases, the poll must be taken at the time and place and in the manner that the chairman of the meeting directs;
- (iii) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (iv) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (v) the result of the poll is the resolution of the meeting at which the poll was demanded.

## 5. SHAREHOLDERS AND SHARES

### 5.1 Issue of Shares

Subject to section 259C, the Board may, on behalf of the Company, issue, grant options over or otherwise dispose of unissued shares to any person on the terms, with the rights, and at the times that the Board decides.

### 5.2 Certificates

The Company must issue a certificate of title to shares that complies with section 1087 and deliver it to the holder of those shares in accordance with section 1096.

### 5.3 Shareholders' Register

The Secretary must keep a Shareholders' Register which complies with sections 168 and 169 and which shows, in respect of each Shareholder, that Shareholder's full name, the number of shares held and the date on that person became a Shareholder.

### 5.4 Rights of Shareholders

The rights and privileges of each Shareholder attach to the shares and are transferable.

### 5.5 Transfer of Shares

#### (a) Instrument of transfer

Subject to rule 5.5(c), a Shareholder may transfer a share by a written document which:

- (i) shows the jurisdiction of registration of the Company;
- (ii) relates only to shares of one class;
- (iii) is executed both by the transferor and the transferee; and
- (iv) is a sufficient instrument of transfer of marketable securities under section 1101 or in any other form approved by the Board.

The Company must not register a transfer that does not comply with this rule.

#### (b) Delivery of transfer and certificate

A document of transfer must be:

- (i) delivered to the registered office of the Company or the address of the Shareholders' Register last notified to Shareholders by the Company;
- (ii) accompanied by the certificate for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and
- (iii) marked with payment of any stamp duty payable.

Property in and title to a document of transfer that is delivered to the Company (but not the shares to which it relates) passes to the Company on delivery.

#### (c) Refusal to register transfer

The Board, without giving any reason, may refuse to register a transfer of shares and, subject to section 259C, must not register a transfer to a subsidiary of the Company. If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within two months after the date on which the transfer was delivered to it.

#### (d) Transferor remains holder until transfer registered

The transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Shareholders' Register in respect of it.

## 5.6 Transmission of Shares

Subject to the *Bankruptcy Act 1966*, if a person entitled to shares because of the insolvency, mental incapacity or death of a Shareholder gives the Board the information it reasonably requires to establish the person's entitlement to be registered as holder of the shares:

- (a) subject to rule 5.5(c) the Company must register that person as the holder of the shares as soon as practical after receipt of a written and signed notice to the Company from that person requiring it to do so; and
- (b) whether or not registered as the holder of the shares, that person:
  - (i) may, subject to rule 5.5, transfer the shares to another person; and
  - (ii) has the same rights as the insolvent or incapable Shareholder.

If section 1091A applies, this rule is supplemental to it.

## 5.7 Share Capital

### (a) Conversion of shares

Subject to sections 246A to 254H, the Company may convert:

- (i) shares into a larger or smaller number of shares;
- (ii) an ordinary share into a preference share; and
- (iii) a preference share into an ordinary share, by resolution passed at a meeting of Shareholders.

### (b) Reduction of capital

The Company may reduce its share capital:

- (i) by reduction of capital in accordance with Division 1 of Part 2J.1;
- (ii) by buying back shares in accordance with Division 2 of Part 2J.1;
- (iii) in the ways permitted by sections 258E and 258F; or
- (iv) in any other way for the time being permitted by the Law.

### (c) Variation of rights

If the Company issues different classes of shares, or divides issued shares into different classes, the rights attached to shares in any class may (subject to sections 246C and 246D) be varied or cancelled only:

- (i) with the written consent of the holders of 75% of the issued shares of the affected class; or
- (ii) by special resolution passed at a separate meeting of the holders of the issued shares of the affected class.

Subject to the terms of issue of shares, the rights attached to a class of shares are not treated as varied by the issue of further shares of that class.

## **6. SHAREHOLDER MEETINGS**

### **6.1 Annual general meeting**

The Company must hold an annual general meeting of Shareholders at least once in each calendar year and within five months after the end of its financial year as required by section 250N.

### **6.2 Calling meetings of Shareholders**

- (a) The Board or a Director may at any time; and
- (b) the Board must when requested by Shareholders under section 249D or when ordered by the Court under section 249G, convene a meeting of Shareholders.

### **6.3 Notice of meeting**

Subject to rule 6.4, at least 21 days' written notice of a meeting of Shareholders must be given individually to:

- (a) each Shareholder (whether or not the Shareholder is entitled to vote at the meeting);
- (b) each Director; and
- (c) the auditor.

The notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

### **6.4 Short notice**

Subject to sections 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of Shareholders as the annual general meeting, if all the Shareholders entitled to attend and vote agree; or
- (b) otherwise, if Shareholders who together have power to cast at least 95% of the votes that may be cast at the meeting agree, a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

### **6.5 Postponement or cancellation**

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of Shareholders;
- (b) cancel a meeting of Shareholders; or
- (c) change the place for a general meeting by written notice given individually to each person entitled to be given notice of the meeting.

### **6.6 Fresh notice**

If a meeting of Shareholders is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

### **6.7 Technology**

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

### **6.8 Accidental omission**

The accidental omission to give notice to, or the nonreceipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of Shareholders.



## 7. PROCEEDINGS AT MEETINGS OF SHAREHOLDERS

### 7.1 Quorum

The quorum for a meeting of Shareholders is one Shareholder.

### 7.2 Quorum not present

If a quorum is not present within 15 minutes after the time for which a meeting of Shareholders is called:

- (a) if called as a result of a request of Shareholders under section 249D, the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Shareholders, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

### 7.3 Chairing meetings of Shareholders

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of Shareholders. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of Shareholders is called or is not willing to chair the meeting, the Shareholders present must elect a Shareholder or Director present to chair the meeting.

### 7.4 Attendance at general meetings

- (a) Every Shareholder has the right to attend all meetings of Shareholders.
- (b) Every Director has the right to attend and speak at all meetings of Shareholders of the Company.
- (c) The auditor has the right to attend any meeting of Shareholders of the Company and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

### 7.5 Adjournment

The chairman of a meeting of Shareholders at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

### 7.6 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

## 7.7 Voting

### (a) Entitlement to Vote

- (i) Each Shareholder has one vote per share.
- (ii) The chairman of a meeting of Shareholders does not have a casting vote. If an equal number of votes is cast for and against a resolution the matter is decided in the negative.
- (iii) A Shareholder or Director may challenge a person's right to vote at a meeting of Shareholders. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

### (b) Method of voting

A resolution put to the vote at a meeting of Shareholders must be decided on a show of hands unless a poll is demanded under rule 7.7(c) either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

### (c) Demands for a poll

A poll may be demanded on any resolution except a resolution concerning the election of the chairman of a meeting by:

- (i) at least two Shareholders entitled to vote on the resolution; or
- (ii) the chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

### (d) When and how polls must be taken

If a poll is demanded:

- (i) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and in the manner that the chairman of the meeting directs;
- (ii) in all other cases, the poll must be taken at the time and place and in the manner that the chairman of the meeting directs;
- (iii) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (iv) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (v) the result of the poll is the resolution of the meeting at which the poll was demanded.

## 8. PROXIES, ATTORNEYS AND REPRESENTATIVES

### 8.1 Appointment of proxies

A General Member may appoint a proxy to attend and act for the General Member at a meeting of General Members, and a Shareholder may appoint a proxy to attend and act for the Shareholder at a meeting of Shareholders. An appointment of proxy must be made by written notice to the Company that complies with section 250A(1) or in any other form and mode that is, and is signed or acknowledged by the General Member or Shareholder (as appropriate) in a manner, satisfactory to the Board.

### 8.2 Attorney

A General Member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of General Members and a Shareholder may appoint an attorney to act, or to appoint a proxy to act, at a meeting of Shareholders. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

### 8.3 Deposit of proxy forms and powers of attorney

An appointment of a proxy or an attorney is not effective for a particular meeting of General Members unless:

- (a) in the case of a proxy, the proxy form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it, is received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

### 8.4 Corporate representatives

A General Member or Shareholder that is a body corporate may appoint an individual to act as its representative at meetings of General Members or Shareholders (as appropriate) as permitted by section 250D.

### 8.5 Standing appointments

A General Member or Shareholder may appoint a proxy, attorney or representative to act at a particular meeting of General Members or Shareholders (as appropriate) or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a General Member or Shareholder.

### 8.6 Suspension of proxy or attorney's powers if appointed or present

A proxy or attorney has no power to act for a General Member or a shareholder at a meeting at which the General Member or Shareholder (as appropriate) is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a General Member or Shareholder at a meeting at which the General Member or Shareholder is present by attorney.

### 8.7 Priority of conflicting appointments of attorney or representative

If more than one attorney or representative appointed by a General Member or Shareholder is present at a meeting of General Members or Shareholders (as appropriate) and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 8.7 (a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

## 8.8 More than one current proxy appointments

An appointment of proxy by a General Member or Shareholder is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that General Member or Shareholder which would result in there being more than one proxy of that General Member or Shareholder entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

## 8.9 Continuing authority

An act done at a meeting of General Members or Shareholders by a proxy, attorney or representative is valid even if, before the act is done, the appointing General Member or Shareholder:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up;
- (c) revokes the appointment of the authority under which the appointment was made by a third party; or
- (d) transfers the share to which the appointment relates, unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

# 9. DIRECTORS

## 9.1 Number of Directors

The Company must have at least five Directors and, until otherwise decided by ordinary resolution, not more than eight Directors.

## 9.2 No membership qualification

A Director need not be a Member or Shareholder of the Company.

## 9.3 Appointment by the Shareholders

The Shareholders, in general meeting, may appoint Directors for such period and on such terms as thought appropriate.

## 9.4 Cessation of Director's appointment

The office of a Director automatically becomes vacant if the person who holds the office:

- (a) becomes an insolvent under administration;
- (b) is not permitted by the Law (or an order made under the Law) to be a director or vacates office by force of section 224;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings (either personally or by an Alternate) for a continuous period of three months without leave of absence from the Board;
- (e) resigns by notice in writing to the Company; or
- (f) is removed from office under rule 9.5.

## 9.5 Removal from office

Whether or not a Director's appointment was expressed to be for a specified period, subject to section 227 Shareholders by ordinary resolution may remove a Director from office.

**9.6 Too few Directors**

If the number of Directors is reduced below the minimum required by rule 9.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of Shareholders; and
- (c) in emergencies.

**9.7 Directors entitled to receive remuneration**

The Company may pay or give a Director remuneration or other benefit in money or money's worth, with the approval of the Board, including repayment of out-of-pocket expenses and reasonable interest on money lent or reasonable rent for premises leased to the Company.

**10. DIRECTORS' DUTIES AND INTERESTS****10.1 Compliance with Law**

Each Director must comply with sections 232 and 236.

**10.2 Scope of Directors' duties**

A Director is not disqualified by reason only of being a Director from:

- (a) holding any office or place of profit or employment other than that of the Company's auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor; or
- (b) entering into any agreement with the Company, unless it means that the Director has an actual conflict of interest with the objects of the Company.

**10.3 Declaration of interests**

A Director who:

- (a) is in any way, interested in a contract or proposed contract with the Company; or
- (b) holds any office or possesses any property as a result of which duties or interests might be created which are directly or indirectly in conflict with that Director's duties or interests as a Director, must declare the fact and the nature of the interest, or nature, character and extent of the conflict at the first Board meeting held after the relevant facts come to the Director's knowledge or after appointment as a Director (whichever is later).

**10.4 Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure required by rule 10.3; or
- (b) is present at, or counted in the quorum for, a meeting that considers, votes on, or participates in the execution of, that agreement in breach of section 232A.

**10.5 Obligation of secrecy**

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its accounts confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

## 11. OFFICERS' INDEMNITY AND INSURANCE

### 11.1 Indemnity

Subject to section 241, the Company must, to the extent the person is not otherwise indemnified, indemnify every officer (as defined in section 241(4)) of the Company and its wholly owned subsidiaries and may indemnify its auditor against a liability:

- (a) incurred as officer or auditor to a person other than the Company or a related body corporate (including a liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation) unless the liability arises out of conduct involving a lack of good faith; and
- (b) for costs and expenses incurred in defending civil or criminal proceedings in which judgement is given in favour of that person or in which that person is acquitted, or in connection with an application in relation to those proceedings in which the court grants relief to that person under the Law.

### 11.2 Insurance

Subject to section 241A, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

### 11.3 Former officers

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or a wholly owned subsidiary of the Company even though the person is not an officer at the time the claim is made.

## 12. POWERS OF THE BOARD

### 12.1 Powers generally

Except as otherwise required by the Law, any other applicable law or this document, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Shareholders in general meeting and the General Members in general meeting.

### 12.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 15; or
- (b) in accordance with a delegation of the power under rule 14.

## 13. EXECUTING NEGOTIABLE INSTRUMENTS

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

## 14. DELEGATION OF BOARD POWERS

### 14.1 Delegation to committee or attorney

The Board may delegate any of its powers:

- (a) to any committee which may comprise or include people who are not Directors; or
- (b) to an attorney; and may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period. This rule is supplemental to section 126(1).

### 14.2 Terms of delegation

A delegation of powers under rule 14.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides. Power exercised in accordance with a delegation of the Board is treated as exercised by the Board.

### 14.3 Powers of attorney

A power of attorney under rule 14.1 may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

### 14.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

## 15. BOARD MEETINGS

### 15.1 Convening Board meetings

A Director may at any time, and the Secretary must on request from a Director, convene a Board meeting.

### 15.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director.
- (b) may give that notice orally (including by telephone) or in writing, but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### 15.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

### 15.4 Chairing Board meetings

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairman of Directors or the chairman is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

### **15.5 Quorum**

Unless the Board decides otherwise, the quorum for a Board meeting is four Directors and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

### **15.6 Majority decisions**

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The chairman of the Board does have a second or casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

### **15.7 Procedural rules**

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

### **15.8 Written resolution**

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

### **15.9 Additional provisions concerning written resolutions**

For the purpose of rule 15.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

### **15.10 Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.



## 16. SECRETARY

### 16.1 Appointment and removal of secretary

The Board may appoint one or more individuals to be a Secretary of the Company either for a specified term or without specifying a term.

### 16.2 Terms and conditions of office

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

### 16.3 Removal from office

Subject to any contract between the Company and the Secretary, the Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## 17. MINUTES

### 17.1 Minutes must be kept

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Shareholders and General Members;
- (b) proceedings and resolutions of Board meetings;
- (c) proceedings and resolutions of meetings of any committee established under rule 13; and
- (d) resolutions passed by Directors without a meeting, to be kept in accordance with sections 232A(7) and 251A.

### 17.2 Minutes as evidence

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

### 17.3 Inspection of minute books

The Company must allow Members to inspect, and provide copies of the minute books for the meetings of Members in accordance with section 251B.

## 18. COMPANY SEALS

### 18.1 Common seal

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

### 18.2 Use of seals

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

### 18.3 Fixing seals to documents

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by two Directors;
- (b) by one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

## 19. ACCOUNTS AND AUDIT

### 19.1 Company must keep accounts

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited, and must allow a Director and the auditor to inspect those records at all reasonable times.

### 19.2 Financial reporting

The Board must cause the Company to prepare a financial report and a Directors' report that comply with Part 2M.3 and must report to Shareholders in accordance with section 314 no later than the deadline set by section 315.

### 19.3 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by sections 324 to 334 inclusive and 1278, 1280 and 1289.

### 19.4 Conclusive reports

Audited financial reports laid before the Company in general meetings of Shareholders are conclusive except as regards errors notified to the Company within three months after the relevant general meeting. If the Company receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

### 19.5 Inspection of financial records and books

Subject to section 247A, a Shareholder or Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

## 20. AMENDING THE CONSTITUTION

### 20.1 Generally

Subject to rule 20.2 and section 136, this Constitution, and each of its provisions, can only be amended, modified, repealed or replaced by a special resolution of the Shareholders.

### 20.2 Members' Rights

In addition to the requirements of rule 20.1, the following rules can only be amended, modified, repealed or replaced by a special resolution of the General Members:

- (a) Rule 1;
- (b) Rule 2;
- (c) Rule 3;
- (d) Rule 4; and
- (e) Rule 20.

## 21. NOTICES

### 21.1 Notices by Company

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either
  - (i) delivered personally;
  - (ii) sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;
  - (iii) sent by fax to the fax number (if any) nominated by that person; or
  - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

### 21.2 Overseas Shareholders and Members

A Shareholder or Member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

### 21.3 When notice is given

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
  - (i) by 5pm (local time in the place of receipt) on a business day – on that day; or
  - (ii) after 5pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day; and
- (b) if it is sent by mail:
  - (i) within Australia – three business days after posting; or
  - (ii) to a place outside Australia – 10 business days after posting.

A certificate in writing signed by a Director or Secretary of the Company stating that a notice was sent is conclusive evidence of service.

### 21.4 Business days

For the purposes of rule 21.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

### 21.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

### 21.6 Notices to "lost" Shareholders and Members

If:

- (a) on two or more consecutive occasions a notice served on a Member or Shareholder in accordance with this rule is returned unclaimed or with an indication that the Member or Shareholder is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a Member or Shareholder is not at the address shown in the Members' Register or Shareholders' Register, the Company may give effective notice to that person by exhibiting the notice at the Company's registered office for at least 48 hours.

This rule ceases to apply if the Member or Shareholder gives the Company notice of a new address.

