

Dated

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Constitution of Redundancy Payment Central Fund Limited

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Corporations Act 2001

Company limited by guarantee

Constitution

of

Redundancy Payment Central Fund Limited

Introduction

1 Replaceable rules excluded

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

2 Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **appointed director** means any person holding office as a director as a result of appointment by a member, a group or category of members of the Company;
- (3) **auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (4) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (5) **Company** means Redundancy Payment Central Fund Limited ACN 007 133 833;
- (6) **corporate member** means a member which is a body corporate;
- (7) **directors** means the directors for the time being of the Company or the directors assembled as a board and includes alternate directors and, unless the context otherwise dictates, the Independent Non-executive Director;
- (8) **Employer Members** means the MBAV, its successors and any assignee thereof, and any other person or entity as the MBAV shall admit to that category;
- (9) **Independent Non-executive Director** means the director for the time being of the Company appointed in accordance with rule 49;
- (10) **Incolink Members Insurance Program** (also known as the *Incolink Accident & Illness Benefits Program*) means the insurance and discretionary covers provided to Incolink Members (and where relevant their families) and administered by Incolink.

The insurance covers are underwritten, for the time being, by QBE Insurance (Australia) Ltd ABN 78 003 191 035 AFSL No. 239545 and under the name of Incolink for Workers (and where relevant their families), which include for the time being, without limitation:

- (a) Personal Accident Leisure Time Insurance:
 - (i) Leisure Time Injury – Weekly Benefits and Bill Payer
 - (ii) Broken Bones
 - (iii) Capital Benefits
 - (iv) Journey Cover – Weekly Benefits and Bill Payer
 - (v) Journey Cover – Capital Benefits
- (b) IPT Insurance:
 - (i) Leisure Time Illness – Weekly Benefits and Bill Payer
 - (ii) WorkerCover Top-Up
 - (iii) TAC Top-Up
 - (iv) Workplace Death & Capital Benefits
- (c) Portable Sick Leave Insurance (including Carer's Leave); and

The discretionary covers funded solely by Incolink in its absolute discretion to provide:

- (a) Accidental Dental Cover;
- (b) Emergency Transport Cover; and
- (c) Funeral Cover

for workers and where relevant their families.

- (11) **MBAV** means the Master Builders Association of Victoria Limited;
- (12) **Register** means the register of members to be kept pursuant to the Act;
- (13) **representative** means a person authorised to act as a representative of a body corporate pursuant to section 250D of the Act;
- (14) **secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary;
- (15) **Unions** means each of the following trade union organisations:
 - (a) Construction Forestry Mining and Energy Union of 500 Swanston Street, Carlton, Victoria (**CFMEU**); and
 - (b) Communications Electrical and Plumbing Union of 52 Victoria Street, Carlton South (**CEPU**);
- (16) **Union Member** means each of the Unions, its successors and any assignee thereof, and any other person or entity as the Unions shall collectively admit to that category.

2.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
 - (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) “Including” and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

3 Objects

- 3.1 The objects for which the Company is established are to administer industry funds that provide a range of entitlements, benefits, assistance and services to participants of the building, construction, contracting, engineering, metal construction and civil allied industries. The Company:
- (1) acts as trustee of the following funds:
 - (a) Redundancy Payment Central Fund;
 - (b) Redundancy Payment Central Fund No.2;
 - (c) Redundancy Payment Approved Worker Entitlement Fund 1;
 - (d) Redundancy Payment Approved Worker Entitlement Fund 2; and
 - (e) any other funds the Company deems appropriate for it to act as trustee of; and
 - (2) provides a range of benefits and services, including without limitation:
 - (a) Incolink Members Insurance Program; and
 - (b) Services and programs for the betterment of the industry and its participants.

4 Powers

[compare section 124]

- 4.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.

- 4.2 Despite rule 4.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in rule 3.

5 Application of income and property

[compare sections 125 and 150]

- 5.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in rule 3.

6 No distribution to members

[compare sections 150 and 254SA]

- 6.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company.

7 Limited liability

- 7.1 The liability of the members is limited.

8 Guarantee

- 8.1 Every member of the Company undertakes to contribute an amount not exceeding \$100 to the property of the Company in the event of its being wound up while the member is a member or within 1 year after the member ceases to be a member, if required 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

9 Membership

- 9.1 The number of members for which the Company proposes to be registered is unlimited.
- 9.2 The categories of membership of the Company are:
- (1) the Employer Members; and
 - (2) the Union Members.
- 9.3 Additional categories of members, if recommended by the directors, may be created from time to time by the members in general meeting.

10 Notification by members

- 10.1 Each member must promptly notify the secretary in writing of any change in their qualification to be a member of the Company.

- 10.2 Each corporate member must promptly notify the secretary in writing of any change in the person nominated as its nominated representative under rule 37.
- 10.3 A person nominated as a nominated representative must consent to the nomination in writing.

11 Register of members

[compare sections 168 and 169]

- 11.1 The Company must keep a Register in accordance with the Act.
- 11.2 The following must be entered in the Register in respect of each member:
- (1) the full name of the member;
 - (2) the residential address, facsimile number and electronic mail address, if any, of the member;
 - (3) the category of membership;
 - (4) the date of admission to and cessation of membership;
 - (5) in the case of a corporate member, the full name, address, facsimile number and electronic mail address, if any, of its nominated representative; and
 - (6) such other information as the directors require.
- 11.3 Each member and nominated representative must notify the secretary in writing of any change in that person's name, address, facsimile number or electronic mail address within 1 month after the change.

Cessation of membership

12 Resignation

- 12.1 A member may resign from membership of the Company by giving written notice to the secretary.
- 12.2 The resignation of a member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

13 Cessation of membership

- 13.1 A member ceases to be a member:
- (1) if the member resigns from membership;
 - (2) on the death of the member;
 - (3) if it is wound up or is otherwise dissolved or deregistered;
 - (4) if the member ceases to be a legal entity otherwise than by amalgamation, merger or other form of combination with another legal entity in which case the subsequent legal entity shall be a member of the Company in place of the member which would otherwise cease; or

- (5) if the member, being a director, ceases to be a director.

14 Effect of cessation of membership

- 14.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Company for any money which, at the time of the member ceasing to be a member, the member owes to the Company on any account and for any sum not exceeding \$100 for which the member is liable under rule 8 of this constitution.
- 14.2 Subject to clause 14.1, the cessation of a member's membership shall not in any way prejudice, lessen or affect the rights, duties, liabilities and obligations of a member whether they:
- (1) arise under this Constitution or otherwise; and
 - (2) are existing at the date of cessation or may arise or crystallise after that date out of or by reason of facts or circumstances occurring or in existence at or before that date.

Meetings of members

15 Circulating resolutions

[compare section 249A]

- 15.1 This rule 15 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 15.2 The Company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 15.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- 15.4 The resolution is passed when the last member signs.
- 15.5 If the Company receives by facsimile transmission or by other electronic means a copy of a document referred to in this rule 15 it is entitled to assume that the copy is a true copy.

16 Calling of general meeting

[compare sections 250N, replaceable rule 249C and section 249D]

- 16.1 A majority of directors may call a general meeting whenever they see fit.
- 16.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year and within the period of 5 months after the end of every financial year of the Company.
- 16.3 Except as provided in the Act, no member or members may call a general meeting.

17 Amount of notice of meeting

[compare section 249H]

- 17.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

18 Persons entitled to notice of general meeting

[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]

- 18.1 Written notice of a meeting of the Company's members must be given individually to:

- (1) each member entitled to vote at the meeting;
- (2) each director; and
- (3) the Company's auditor.

- 18.2 The Company is only required to give notice of general meetings to those persons entitled to receive notice under this constitution and the Act.

19 How notice is given

[compare sections 249J(3) and 249J(3A)]

- 19.1 The Company may give the notice of meeting to a member:

- (1) personally;
- (2) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member;
- (3) by sending it to the facsimile number or electronic address (if any) nominated by the member;
- (4) by sending it by other electronic means (if any) nominated by the member; or
- (5) by notifying the member in accordance with rule 19.2.

- 19.2 If the member nominates:

- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

the Company may give the member notice of the meeting by notifying the member (using the nominated notification means):

- (3) that the notice of meeting is available; and
- (4) how the member may use the nominated access means to access the notice of meeting.

20 When notice is given

[compare replaceable rules 249J(4) and 249J(5)]

- 20.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.
- 20.2 Except as provided by rule 20.3, a notice of meeting given to a member under rule 19.1(3) is taken to be given on the business day after it is sent.
- 20.3 A notice of meeting given to a member under rule 19.1(3) is not effective if:
- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
 - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
 - (3) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- 20.4 A notice of meeting given to a member under rule 19.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.
- 20.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 20 is conclusive evidence of the matter.

21 Period of notice

- 21.1 Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

22 Contents of notice

[compare replaceable rule 249L]

- 22.1 A notice of a general meeting 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);
 - (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;
 - (4) be worded and presented in a clear, concise and effective manner; and
 - (5) contain a statement setting out the following information:
 - (a) that the member has a right to appoint a proxy; and
 - (b) that the proxy need not be a member of the Company.

23 Notice of adjourned meeting

[replaceable rule 249M]

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

24 Accidental omission to give notice

[compare section 1322(3)]

- 24.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not invalidate the proceedings at or any resolution passed at the meeting.

25 Postponement of general meeting

- 25.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 25.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 27.3 or rule 28.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

26 Technology

[section 249S]

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

27 Quorum

[compare replaceable rule 249T]

- 27.1 The quorum for a meeting of the Company's members is all members present in person, by proxy, attorney or representative and the quorum must be present at all times during the meeting.
- 27.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. However, if a member has appointed more than 1 proxy, attorney or representative, only 1 of them is counted. If an individual is attending both as a member and as a proxy, attorney or body corporate representative, the individual is counted only once.
- 27.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and

- (c) if the place is not specified – the same place.

- 27.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, then provided there is representative of each category of members present in person, by proxy, attorney or representative, then those present shall be a quorum.

28 Chair at general meetings

[compare replaceable rule 249U]

- 28.1 The president of the Company, elected in accordance with rule 51, if present, presides as chair at every general meeting.

- 28.2 Where a general meeting is held and:

- (1) there is no president of the Company; or
- (2) the president is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the deputy president of the Company if present presides as chair of the meeting or, if the deputy president is not present or is unwilling to act, the directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the members present may appoint any 1 of their number to be chair of the meeting.

- 28.3 The chair may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place. In exercising this discretion, the chair may, but need not, seek the approval of the members present. Unless required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.

- 28.4 The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.

- 28.5 The chair of the meeting may in his or her absolute discretion refuse admission to, or require to leave and remain out of the meeting, any person who is not a member, director or auditor of the Company.

- 28.6
- (1) A director who is not a member is entitled to be present and to speak to any general meeting.
 - (2) A secretary who is not a member is entitled to be present and to speak at any general meeting.
 - (3) The auditor of the Company from time to time and any assistant of the auditor who is not a member is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company.
 - (4) Any professional adviser of the Company (including, without limitation, a solicitor or financial adviser), at the request of any director, is entitled to be present and, at the request of the chair, to speak at any general meeting. However, subject to the Act and this constitution, the Company is not obliged to send a notice of meeting to any professional adviser.

29 Business at adjourned meetings

[replaceable rule 249W(2)]

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

Proxies and body corporate representatives

30 Who can appoint a proxy

[compare mandatory rule 249X]

- 30.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint an individual or a body corporate as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.

31 Rights of proxies

[compare section 249Y]

- 31.1 A proxy appointed to attend and vote for a member has the same rights as the member:
- (1) to speak at the meeting;
 - (2) to vote (but only to the extent allowed by the appointment); and
 - (3) to join in a demand for a poll.
- 31.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.
- 31.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
- 31.4 A proxy may be revoked at any time by notice in writing to the Company.

32 When proxy form must be sent to all members

[section 249Z]

- 32.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
- (1) if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
 - (2) otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

33 Appointing a proxy

[compare section 250A and Corporations Regulations 2001 reg 2G.2.01]

- 33.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001* and in rules 33.2 and 33.3) by the member making the appointment and contains the following information:
- (1) the member's name and address;

- (2) the Company's name;
- (3) the proxy's name or the name of the office held by the proxy; and
- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

33.2 An electronically authenticated appointment of a proxy must in addition to rule 37.1:

- (1) include a method of identifying the member; and
- (2) include an indication of the member's approval of the information communicated.

33.3 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:

- (1) the member must be identified by personal details such as the member's name, personal address and date of birth; and
- (2) the member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

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

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

- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
- (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
- (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this rule 33.5 does not affect the way that the person can cast any votes the person holds as a member.

33.6 An appointment does not have to be witnessed.

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

34 Form of proxy sent out by Company

34.1 A form of proxy sent out by the Company may be in a form determined by the directors but must:

- (1) enable the member to specify the manner in which the proxy must vote in respect of a particular resolution; and

- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.
- 34.2 The form may provide that if the member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.
- 34.3 Despite rule 34.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

Redundancy Payment Central Fund Limited
ACN 007 133 833 (**Company**)

I/We, _____ of _____, being a member/members of the Company, appoint _____ of _____ or, in his or her absence, _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the *annual general/*general meeting of the Company to be held on _____ and at any adjournment of that meeting.

† This form is to be used *in favour of/*against the resolution.

Signed on _____.

* Strike out whichever is not desired.

† To be inserted if desired. Unless otherwise instructed, the proxy may vote as the proxy thinks fit.

35 Receipt of proxy documents

[compare section 250B]

- 35.1 For an appointment of a proxy for a meeting of the Company's 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 or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- 35.2 If a meeting of the Company's 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.
- 35.3 The Company receives an appointment or authority:
- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic mail address specified for the purpose in the notice of meeting; or

- (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with rules 33.2 and 33.3.

35.4 An appointment of a proxy is ineffective if:

- (1) the Company receives either or both the appointment or authority at a fax number or electronic address; and
- (2) a requirement (if any) in the notice of meeting that:
 - (a) the transmission be verified in a way specified in the notice; or
 - (b) the proxy produce the appointment and authority (if any) at the meeting;is not complied with.

36 Validity of proxy vote

[section 250C(1) and compare replaceable rule 250C(2)]

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

36.2 Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the proxy votes, a vote cast by the proxy will be valid even if:

- (1) the appointing member dies;
- (2) the member is mentally incapacitated;
- (3) the member revokes the proxy's appointment; or
- (4) the member revokes the authority under which the proxy was appointed by a third party;

before the proxy votes.

36.3 A proxy is not revoked by the member attending and taking part in the meeting unless the member actually votes at the meeting on a resolution for which the proxy is proposed to be used.

37 Body corporate representative

[section 250D]

37.1 A member which is a body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (1) at meetings of the Company's members;
- (2) at meetings of creditors or debenture holders;
- (3) relating to resolutions to be passed without meetings; or

(4) in the capacity of a member's proxy appointed under rule 30.

The instrument appointing the representative may be in the following form or in a form that is as similar to the following form as the circumstances allow. The appointment may be a standing one.

..... ACN appoints
..... as its representative to exercise all or any
of the powers it may exercise at meetings of members of Redundancy
Payment Central Fund Limited ACN 007 133 833 (**Company**) and relating
to resolutions to be passed without meetings.

*This appointment is a standing one.

Date:

Executed by in
accordance with section 127 of the
Corporations Act 2001:

.....
Director/company secretary

.....
Director

.....
Name of director/company secretary
(BLOCK LETTERS)

.....
Name of director
(BLOCK LETTERS)

* Strike out whichever is not desired.

- 37.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 37.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- 37.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

38 Attorney of member

- 38.1 An attorney for a member may do whatever the member could do personally as a member, but if the attorney is to vote at a meeting of members or a class of members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.
- 38.2 Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the attorney votes, a vote cast by the attorney will be valid even if:
- (5) the appointing member dies;
- (6) the member is mentally incapacitated;

- (7) the member revokes the attorney's appointment; or
- (8) the member revokes the authority under which the attorney was appointed by a third party;

before the attorney votes.

Voting at meetings of members

39 How vote may be exercised

- 39.1 Subject to rule 40, at any general meeting of members, each category of membership has 4 votes on a show of hands and on a poll.
- 39.2 Subject to rule 39.3, where only one representative of a membership category is present at a general meeting, he or she may cast all such votes and where more than one representative of a membership category attends a general meeting they may cast the votes of the category in such numbers as they may agree or as may have been previously determined by the members of that category of membership and communicated by the terms of the authorisations to attend and vote at that meeting.
- 39.3 So long as the Union Members category of membership consists only of the CFMEU and the CEPU, the representative of CFMEU may cast 3 votes and the representative of the CEPU may cast 1 vote at a general meeting. Where more than one representative of the CFMEU or CEPU attends a general meeting, each representative may cast the votes that the CFMEU or the CEPU (as relevant) are entitled to cast in such numbers as the CFMEU or the CEPU (as relevant) may agree or as may have been previously determined by the CFMEU or the CEPU (as relevant) and communicated by the terms of the authorisations to attend and vote at that meeting.
- 39.4 A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by his committee or by the Public Trustee or by such other person as properly has the management of the member's estate, and any such committee, Public Trustee or other person may vote by proxy or attorney.
- 39.5 The vote may be exercised in person or by proxy, body corporate representative or attorney.

40 Objections to right to vote

[compare replaceable rule 250G]

- 40.1 A challenge to a right to vote at a meeting of members:
 - (1) may only be made at the meeting; and
 - (2) must be determined by the chair, whose decision is final.
- 40.2 A vote not disallowed following the challenge is valid for all purposes.

41 How voting is carried out

[compare replaceable rule 250J]

- 41.1 A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.

- 41.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 41.3 Unless otherwise required by this constitution or the Act and except for rule 117, all resolutions of the Company are ordinary resolutions which are resolutions passed by a majority of eighty three and one third per centum (83.33%) of the votes cast by members, present in person, by proxy, attorney or representative, entitled to vote on the resolutions.

42 Matters on which a poll may be demanded

[compare section 250K]

- 42.1 A poll may be demanded on any resolution.
- 42.2 A demand for a poll may be withdrawn.

43 When a poll is effectively demanded

[compare section 250L]

- 43.1 At a meeting of the Company's members, a poll may be demanded by:
- (1) at least 2 members entitled to vote on the resolution present in person, by proxy or attorney or representative; or
 - (2) the chair.
- 43.2 The poll may be demanded:
- (1) before a vote is taken;
 - (2) before the voting results on a show of hands are declared; or
 - (3) immediately after the voting results on a show of hands are declared.

44 When and how polls must be taken

[compare replaceable rule 250M]

- 44.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- 44.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 44.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 44.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

45 Chair's casting vote

[compare replaceable rule 250E(3)]

- 45.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting does not have a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.

Annual general meeting

[compare section 250N]

46 Business of an annual general meeting

[compare sections 250R, 250S and 250T]

46.1 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, directors' report and auditor's report;
- (2) the appointment of the auditor; and
- (3) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

46.2 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.

46.3 The chair 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.

46.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must:

- (1) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit, the preparation and content of the auditor's report, the accounting policies adopted by the Company in relation to the preparation of the financial statements and the independence of the auditor in relation to the conduct of the audit; and
- (2) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA of the Act.

47 Resolutions proposed by members

[compare sections 249N and 249O]

47.1 A member may not at any meeting move any resolution relating to special business unless:

- (1) members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months' notice has elapsed since the notice was given; or
- (2) the resolution has previously been approved by the directors.

Appointment of directors

48 Number of directors

[compare section 201A]

- 48.1 The number of the directors must be 9.
- 48.2 The Company in general meeting may by resolution increase or reduce the number of directors referred to in rule 48.1 but the number may not be reduced below 3.

49 Independent Non-executive Director

- 49.1 The Employer Members and the Union Members may from time to time jointly appoint, and jointly remove or replace at will, a person with specialist expertise to be a director (the **Independent Non-executive Director**).
- 49.2 The Independent Non-executive Director shall have the right to attend all meeting of directors but shall have no right to vote.
- 49.3 Appointment, removal and replacement of the Independent Non-executive Director shall be by written notice to the chief executive officer of the Company signed by all of the Employer Members and the Union Members.

50 NOT USED

50.1

51 President of the board

- 51.1 The process set out in this rule 51 will apply to the appointment of any president.
- 51.2 The Union Members and the Employer Members will be entitled to nominate suitable candidates for the position of president of the Company (Nominee) on a rotating basis in accordance with this rule 51.
- 51.3 The Employer Members will first be entitled to nominate one or more candidates for the position of president of the Company (Nominee) after the adoption of this rule 51. The right to nominate one or more candidates for the position of the president of the Company will rotate from the Employer Members to the Union Members (or vice versa) once a Nominee of the members then holding the nomination right (Nominating Members) have had one of their Nominees appointed.
- 51.4 The Employer Members and the Union Members must meet at least 3 months prior to the expiry of the current president's term and agree on the suitable Nominee having regard to the ability of the Nominee to be an independent person having the directors' confidence to act as president in an impartial way as between the Employer Members and the Union Members of the Company and having regard always to the obligations of the Company as trustee of funds referred to in rule 3.1(1).
- 51.5 The directors must hold a directors meeting and must appoint the Nominee to the position of president of the Company.
- 51.6 Subject to 51.8, the president shall have no right to vote.

- 51.7 The directors may from time to time appoint a deputy president from among their number, on such terms and at such times as they think fit. The deputy president shall not have any second or casting vote.
- 51.8 If no president is appointed pursuant to rule 51.5 above on such terms as they think fit, the directors may choose one of their number to be president from time to time, but such person shall retain his or her right to vote while holding the office as president, but shall not have any second or casting vote.
- 51.9 No person appointed as president may hold office for a continuous period in excess of three years without retiring and making himself or herself available for re-appointment.

52 Maximum term in office

- 52.1 No director may hold office for a continuous period in excess of two years without retiring and making himself or herself available for re-appointment.

53 Appointment by members

- 53.1 The Employer Members may appoint four directors and may remove and replace such appointee or appointees at will, by written notice to the secretary.
- 53.2 Subject to rules 53.3 and 53.5, the Union Members may appoint four directors and may remove and replace such appointee or appointees at will, by written notice to the secretary.
- 53.3 So long as the Union Members category of membership consists only of the CFMEU and the CEPU:
- (1) the CFMEU may appoint three directors and may remove and replace each appointee;
 - (2) the CEPU may appoint one director and may remove and replace such appointee, as a director at will, by notice in writing to the secretary.
- 53.4 The right (if any) of an Employer Member or a Union Member other than those named in rules 2.1(8) and 2.1(15) to appoint, remove or replace a director will be as determined by the Employer Members or Union Members (as relevant) at the time of the admission of that person or entity to that category of membership and as advised by written notice to the secretary, provided that:
- (1) in respect of the Employer Members, in no circumstances shall the Employer Members be entitled to appoint more than 4 directors; and
 - (2) in respect of the Union Members, in no circumstances shall the Union Members be entitled to appoint more than 4 directors.
- 53.5 Any Union Member appointed director may be removed and replaced at will by written notice to the secretary given by all of the Union Members for the time being entitled to appoint, remove and replace directors (other than the director being removed or replaced).
- 53.6 Appointments, removal and replacement of Employer Member appointed directors shall be by notice in writing delivered to the secretary and signed by or on behalf of all the Employer Member.

53.7 Each director of the Company is obliged to act in the best interests of the Company and does not by accepting appointment to the office of director accept or assume any obligations to the party or parties appointing him or her to such office. This provision may not be removed without the consent in writing of every member of the Company.

53.8 The Company shall notify all members of appointments of directors.

54 Time appointment, retirement or removal takes effect

54.1 Directors who are appointed at a meeting of members take office immediately after the end of the meeting.

54.2 Directors who retire at a meeting of members continue to hold office until the end of the meeting.

54.3 Directors who are appointed other than at a meeting of members take office at 11:59pm on the day the secretary receives notice of their appointment or such later date as is specified in the notice.

54.4 Directors who retire other than at a meeting of members cease to hold office at 11:59pm on:

- (1) if they retire due to the application of rule 52.1, the date on which they are required to retire under that rule; and
- (2) otherwise, the day the secretary receives notice of their retirement or such later date as is specified in the notice.

54.5 Directors who are removed from office by notice given by a member or members will cease to hold office at the time that the notice is received by the secretary or at 11:59pm on such later date as is specified in the notice.

54.6 Directors who were appointed by the directors prior to 1 September 2014 and who were to hold office until the termination of the next annual general meeting of the Company will hold office only until that time and then be eligible for reappointment at that annual general meeting or at any time thereafter.

55 Office bearers

55.1 The office bearers of the Company are:

- (1) the president;
- (2) the deputy president (if appointed); and
- (3) the secretary.

56 Office bearers and subsequent election at board meeting

56.1 The president and the deputy president (if appointed) are appointed and hold office in accordance with rule 51.

56.2 The secretary is elected by the directors and holds office on the terms and conditions that the directors determine.

- 56.3 The person appointed president in accordance with rule 51 shall act as chair of the meeting for the purpose of the election.

57 Eligibility and nomination

- 57.1 A partner, employer or employee of an auditor of the Company shall not be capable of being appointed a director or alternate director of the Company.
- 57.2 Except for the president and rule 97, only directors may be office bearers. Any director is eligible for election to any office bearer position.
- 57.3 Each director standing for election as an office bearer must be proposed by another director.
- 57.4 If a director stands for election for more than 1 position as an office bearer separate nominations must be received in respect of each position.
- 57.5 A nomination may be:
- (1) in writing, received by the secretary not less than 24 hours prior to the board meeting at which the election is to take place and signed by the candidate and the proposer; or
 - (2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

58 Election procedure – office bearers

- 58.1 The election of the office bearers is held in the order in which the positions are listed in rule 55.1.
- 58.2 If there is only 1 candidate for election to any office bearer position that person is declared elected to that position.
- 58.3 If there is more than 1 candidate for election to any office bearer position a ballot must be held among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- 58.4 In the case of an equality of votes in respect of any position a further ballot must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.
- 58.5 If a director is elected to a position as office bearer then his or her nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.
- 58.6 Subject to this rule 58 a ballot is conducted in the manner the directors determine.

Alternate directors

[compare replaceable rule 201K]

59 Appointment

- 59.1 Subject to rule 57.1 a director may appoint any person approved by a majority of the other directors to act as an alternate director in place of the appointing director for:

(1) a meeting including any board committee meeting or other meeting dealing with the business of the Company that the appointing director is involved in; or

(2) a specified period.

59.2 An alternate director is not taken into account for the purpose of rule 48.

60 Rights and powers of alternate director

60.1 An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.

60.2 Subject to the requirements of the Act, rule 93.1 and rule 93.2, an alternate director is entitled to a separate vote for each director that the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.

60.3 An alternate director, when acting as a director, is responsible to the Company for his or her own acts and defaults and is not to be taken as the agent of the director by whom he or she was appointed.

61 Suspension or revocation of appointment

61.1 A director may revoke or suspend the appointment of an alternate director appointed by him or her.

61.2 The directors may suspend or remove an alternate director by resolution after giving the appointing director reasonable notice of their intention to do so.

62 Form of appointment, suspension or revocation

62.1 An appointment, suspension or revocation under rules 59 or 61 takes effect only when the Company has received notice in writing of the appointment, suspension or revocation. The notice may be given by facsimile.

63 Termination of appointment

63.1 The appointment of an alternate director automatically terminates:

(1) if the appointor ceases to hold office as director;

(2) on the happening in respect of the alternate director any event which causes a director to vacate the office of director; or

(3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

64 Power to act as alternate for more than 1 director

64.1 A director or any other person may act as alternate director to represent more than 1 director.

64.2 Subject to the Act, in determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.

Powers of directors

65 Validation of acts of directors and secretaries

[compare sections 201M and 204E]

- 65.1 An act done by a director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- 65.2 Rule 65.1 does not deal with the question whether an effective act by a director or secretary:
- (1) binds the Company in its dealings with other people; or
 - (2) makes the Company liable to another person.
- 65.3 Where a person whose office as director of the Company is vacated under a provision of the Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

66 General business management

[compare replaceable rule 198A]

- 66.1 The business of the Company is to be managed by or under the direction of the directors.
- 66.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 66.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.

67 Borrowing powers

- 67.1 Without limiting the generality of rule 66, but subject to rule 6, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

68 Appointment of attorney

- 68.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- 68.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

69 Negotiable instruments

[compare replaceable rule 198B]

- 69.1 Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 69.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.
- 69.3 A director's power to sign, draw, accept, endorse or execute a negotiable instrument may be delegated in accordance with rule 71.

70 Delegation to committee of directors

[compare section 198D]

- 70.1 The directors may delegate any of their powers to a committee of directors provided that each such committee shall include at least one director appointed by the Employer Members and at least one director appointed by the Union Members.
- 70.2 The directors may from time to time revoke the delegation referred to in rule 70.1.
- 70.3 A committee must exercise the powers delegated to it in accordance with any directions of the directors.
- 70.4 No decision or recommendation of any committee shall be implemented or otherwise acted on unless:
 - (1) the decision or recommendation has been ratified by the directors; or
 - (2) the directors have specifically authorised the decision or recommendation to be implemented or otherwise acted on as one of the terms of the delegation to the committee.
- 70.5 The meetings and proceedings of any committee of directors are governed by the provisions in this constitution regulating the meetings and proceedings of the directors except rule 92.1. The quorum for any meeting of any committee of directors is at least one director appointed by the Employer Members and at least one director appointed by the Union Members.

71 Delegation generally

[compare rule 198D]

- 71.1 For managing any affairs of the Company in any specified locality the directors may:
 - (1) establish any local committees, boards or branches;
 - (2) appoint any members of the Company or any nominated representative of a corporate member to be a member of the local committee, board or branch;
 - (3) appoint any managers or agents, fix their remuneration and delegate to them any of the powers vested in the directors; and
 - (4) authorise the members for the time being of the local committee, board or branch to fill any vacancies on it and to act despite vacancies.

- 71.2 In the exercise of delegated powers, any committee formed (including a committee of directors and a local board or branch) or person or persons appointed to the committee must conform to any regulations that may be imposed by the directors. The committee may be authorised to sub-delegate any of the powers vested in it.
- 71.3 A local committee, board or branch may remove any person appointed under rule 71.1(3) and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation is affected by it.

72 Powers

- 72.1 The directors may, upon terms and conditions and with any restrictions they see fit, confer on the chief executive officer any of the powers that the directors can exercise.
- 72.2 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.

73 Withdrawal of appointment or powers

- 73.1 The directors may revoke or vary:
- (1) an appointment; or
 - (2) any of the powers conferred on the chief executive officer.

74 Temporary appointments

- 74.1 If the chief executive officer becomes incapable of exercising the powers conferred, the directors may appoint any other person, not being a director, to temporarily exercise those powers.
- 74.2 A director who is unable to attend any meeting of the directors and has not appointed and alternate director under rule 59.1 may authorise either in writing or verbally any other director to vote for him at that meeting and, in the event the director so authorised shall have a vote for each director by whom he is so authorised in addition to his own vote. Any such authority must be noted in the minutes and be left with the secretary for retention with the Company's records.

Removal and resignation of directors

75 Removal of directors

[compare section 203D]

- 75.1 The Company may by resolution remove a director from office.

76 Resignation of director

[replaceable rule 203A]

- 76.1 A director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

77 Vacation of office of director

[compare section 206B]

- 77.1 In addition to any other circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director:
- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
 - (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (3) is not present (either personally or by an alternate director) at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
 - (4) ceases to be qualified as a director under rules 49, 50 and 53;
 - (5) becomes disqualified from being a director under the Act or any order made under the Act;
 - (6) is removed from office in accordance with rule 75; or
 - (7) resigns from office in accordance with rule 76.

Directors' interests

78 Prohibition on being present or voting

[compare section 195]

- 78.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:
- (1) must not be counted in a quorum;
 - (2) must not vote on the matter; and
 - (3) must not be present while the matter is being considered at the meeting.
- 78.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the Act from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.
- 78.3 A director who is interested in any matter may, despite that interest, witness the fixing of the seal to any document evidencing or otherwise connected with that matter.

79 Director to disclose interests

[compare section 191]

- 79.1 A director or the president who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the director's or the president's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Company.

- 79.2 A director or the president who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director or president must declare at a meeting of the directors of the Company or by written notice to the secretary of the Company the fact and the nature, character and extent of the conflict.
- 79.3 For the purposes of rules 79.1 and 79.2, a director's or the president's interest or any conflict must be disregarded if it arises from or relates solely to:
- (1) a guarantee to be given by the director or the president (or by persons including the director or the president or by a body corporate of which the director or the president is a member or officer) in respect of a loan to the Company; or
 - (2) the position of the director or the president as a director of a related body corporate.

80 Effect of interest in contract

[compare replaceable rule 194]

- 80.1 Subject to the Act, if a director or the president has an interest in a contract or proposed contract with the Company (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the directors, and the director or the president discloses the nature and extent of the interest or duty at a meeting of the directors or by written notice to the secretary of the Company:
- (1) the contract may be entered into; and
 - (2) if the disclosure is made before the contract is entered into:
 - (a) the director or the president may retain benefits under the contract even though the director or the president has an interest in the contract;
 - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
 - (c) the director or the president is not disqualified from the office of director or president.
- 80.2 For the purposes of rule 80.1 **contract** includes an arrangement, dealing or other transaction.

81 Standing notice of interest

[compare section 192]

- 81.1 A director or the president who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. 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.
- 81.2 A notice under the above rule may be given:
- (1) at a directors' meeting (either orally or in writing); or
 - (2) to the other directors individually in writing.

- 81.3 If the standing notice is given to the other directors individually in writing:
- (1) the notice is effective when it has been given to every director; and
 - (2) the notice must be tabled at the next directors' meeting after it is given.
- 81.4 The director or the president must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

82 Other interests

- 82.1 Without limiting rule 79 or rule 80 a director or the president may to the extent permitted by the Act:
- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director or president (as relevant);
 - (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

83 Extension of meaning of “Company”

- 83.1 For the purposes of rules 79, 80 and 81 **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

84 Other directorships and shareholdings

- 84.1 A director or the president of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any remuneration or benefits received as a director, officer, employee or member of the other company.
- 84.2 Subject to the Act:
- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or the president or any of them as directors or other officers of the other company;
 - (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that director or the president as a director or other officer of the other company;
 - (3) any director or the president of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that director or the president as a director or other officer of the other company; and
 - (4) a director or the president of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the director or the president to any other office in the other company and a resolution appointing any other directors of the Company as directors or other officers of the other company.

Directors' meetings

[compare sections 248A to 248G]

85 Circulating resolutions

[compare replaceable rule 248A]

- 85.1 The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign or consenting to a document containing a statement that they are in favour of the resolution set out in the document.
- 85.2 Separate copies of a document may be used for signing or consenting by directors if the wording of the resolution and statement is identical in each copy.
- 85.3 The resolution is passed when the last director signs or provides the consent.
- 85.4 A facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 85 must be treated as a document in writing signed by that director.
- 85.5 A director may provide consent via received email, received text message, verbal consent received by telephone, using other electronic voting functions available such as voting button in a board portal in response to an email.
- 85.6 In this rule 85 a reference to all the directors does not include a reference to an alternate director whose appointor has signed or acknowledged agreement the document, but an alternate director may sign the document in the place of his or her appointor.

86 Meetings of directors

- 86.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

87 Calling directors' meetings

[compare replaceable rule 248C]

- 87.1 A director may at any time, and a secretary must on the requisition of a director, call a meeting of the directors.

88 Notice of meeting

[compare replaceable rule 248C]

- 88.1 Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:
- (1) has been given special leave of absence; or
 - (2) is absent from Australia and has not left a facsimile number or other contact details acceptable to the directors at which he or she may be given notice.
- 88.2 Any notice of a meeting of directors may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication.

89 Waiver of notice

- 89.1 All resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

90 Technology meeting of directors

[compare section 248D]

- 90.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.
- 90.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- 90.3 The following provisions apply to a technology meeting:
- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
 - (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- 90.4 If the secretary is not present at a technology meeting 1 of the directors present or another person nominated by them present at the meeting must take minutes of the meeting.
- 90.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 90.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

91 Chairing directors' meetings

[compare replaceable rule 248E]

- 91.1 The president is the chair of all meetings of the directors.
- 91.2 At a meeting of directors if:
- (1) no president has been elected as provided by rule 51; or
 - (2) the president is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the deputy president is the chair of the meeting, but if:
- (3) no deputy president has been elected as provided by rule 51; or
 - (4) the deputy president is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the directors present must elect a director present to chair the meeting.

92 Quorum

[compare replaceable rule 248F]

- 92.1 The quorum for a directors' meeting is 7 directors (excluding the Independent Non-executive Director) or a greater number determined by the directors. The quorum must be present at all times during the meeting.
- 92.2 A director interested is to be counted in a quorum notwithstanding his interest.
- 92.3 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present.
- 92.4 Subject to rule 92.3, an alternate director who is also a director shall be counted in his or her capacity both as an alternate director and as a director.
- 92.5 If a quorum is not present within thirty (30) minutes after the time appointed for the holding of the directors' meeting, it will stand adjourned for the same time and place seven (7) days thereafter.

93 Passing of directors' resolutions

[compare replaceable rule 248G]

- 93.1 A resolution of the directors must be a unanimous resolution of the directors either voting in person or through an alternate director duly appointed pursuant to rule 59.1 or through a person or persons duly authorised pursuant to rule 74.2.
- 93.2 In accordance with rule 51, the president shall have no right to vote, however if a president is appointed by the directors from one of their number pursuant to rule 51.8 or 91.2 above, such person shall retain his or her right to vote while holding the office as president, but shall not have any second or casting vote.
- 93.3 In accordance with rule 60, a person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

Remuneration of directors

94 Directors' remuneration

[compare section 150]

- 94.1 A director may receive remuneration for his or her services in his or her capacity as a director of the Company as is from time to time determined by the Company in general meeting.
- 94.2 That remuneration will be deemed to accrue from day to day.

95 Directors' expenses

- 95.1 Despite rules 6 and 94 the Company may permit payments to directors in the following circumstances:
 - (1) for the payment of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the board;

- (2) for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the board and the amount payable is approved by a resolution of the board and is on reasonable commercial terms. Such payments may be either in addition to or in substitution for his or her remuneration for services in his or her capacity as a director of the Company; or
- (3) as an employee of the Company where the terms of employment have been approved by a resolution of the board.

96 Financial benefit

[compare Chapter 2E - sections 207 and following]

- 96.1 A director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.
- 96.2 Subject to the Act and the provisions of this constitution dealing with loans to members, the Company may make loans to directors or provide guarantees or security for obligations undertaken by directors.

Secretary

97 Appointment of secretary

[compare section 204A]

- 97.1 The directors must, in accordance with the Act, appoint 1 or more secretaries.
- 97.2 The directors may appoint a person as an acting secretary or as a temporary substitute for a secretary.

98 Terms of office of secretary

[compare replaceable rule 204F]

- 98.1 A secretary of the Company holds office on the terms and conditions (including as to remuneration) that the directors determine.

Indemnity and insurance

99 Indemnity

[compare section 199A]

- 99.1 To the extent permitted by the 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;against all losses, liabilities, costs, charges and expenses 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). This indemnity includes, without limitation:
 - (3) a liability for negligence; and

- (4) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Act.
- 99.2 The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.
- 99.3 In accordance with section 199A of the 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 Act or a compensation order under section 1317H of the 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 99.3(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 Act in which the Court denies the relief.

Rule 99.3(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.
 - (3) For the purposes of rule 99.3(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.
- 99.4 An officer must:
 - (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified by the Company;
 - (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
 - (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
 - (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and

co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;

- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

99.5 In rule 99.4 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 99.5(1) or 99.5(2) may be initiated.

99.6 If an officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, and the officer may be indemnified under rule 99.1, the directors may, despite the interest (if any) of the directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

100 Insurance

[compare section 212]

100.1 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 (including for legal costs) 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.

101 Director voting on contract of indemnity or insurance

[compare section 191(2)(vi)]

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

102 Liability

- 102.1 An officer of the Company is not 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.

103 Meaning of “officer”

- 103.1 For the purposes of rules 99, 100, 101 and 102, **officer** means a director or secretary or a member of a local committee, board or branch appointed under rule 71.1, C-suite executive.

Winding up

104 Winding up

- 104.1 If the Company is wound up or dissolved, the amount that remains after such winding up or dissolution and the satisfaction of all debts and liabilities will be transferred to another organisation with similar objects and purposes which is not carried on for the profit or gain of its members as determined by the members of the Company.
- 104.2 If the Company is endorsed as a deductible gift recipient by the Commissioner of Taxation under Division 30 of the *Income Tax Assessment Act 1997* and such endorsement is revoked, the Company must transfer to another organisation which is endorsed as a deductible gift recipient as determined by the members of the Company any surplus representing:
- (1) gifts of money or property made for the principal purpose of the Company;
 - (2) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
 - (3) money received by the Company because of such gifts and contributions.
- 104.3 If the members do not make the necessary determination under rules 104.1 and 104.2, the Company may apply to the Supreme Court to determine the organisation or organisations to whom the transfers are to be made.

Minutes

105 Minutes to be kept

[compare section 251A]

- 105.1 The directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Company's members;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (3) resolutions passed by members without a meeting; and
 - (4) resolutions passed by directors without a meeting.

- 105.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 105.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 105.4 Without limiting rule 105.1 the directors must record in the minute books:
- (1) all appointments of officers;
 - (2) the names of the directors and alternate directors present at all meetings of directors and the Company;
 - (3) in the case of a technology meeting, the method by which the meeting was held;
 - (4) all orders resolutions and proceedings of general meetings and of meetings of the directors and of committees formed by the directors;
 - (5) proxy votes exercisable and exercised in respect of each resolution at a meeting; and
 - (6) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest in a matter that relates to the affairs of the Company.
- 105.5 The minute books of the Company shall be kept at the registered office or the principal place of business of the Company.

Inspection of records

106 Rights of inspection

[compare replaceable rule 247D and sections 173, 198F, 247A and 251B]

- 106.1 The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.
- 106.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolution of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.
- 106.3 Directors have the rights of inspection and access provided by section 198F of the Act.

107 Confidential information

- 107.1 Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Accounts, audit and records

108 Accounts

[compare sections 286-291, 296 and 297]

- 108.1 The directors must cause proper accounting and other records to be kept in accordance with the Act.
- 108.2 The directors must distribute copies of every financial statement (including every document required by law to be attached to it) as required by the Act.

109 Audit

[compare sections 301, 327D and 328A-331]

- 109.1 Subject to the Act, a registered company auditor must be appointed.
- 109.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.
- 109.3 Every financial statement when audited and approved by a general meeting is conclusive except as regards any error discovered within three months after the approval. When any such error is discovered within that period the financial statement will be corrected and conclusive.

Execution of documents

110 Common seal

- 110.1 The Company may, but need not, have a common seal.

111 Use of common seal

[compare sections 127(2) and 129(6)]

- 111.1 If the Company has a common seal the directors must provide for its safe custody.
- 111.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.
- 111.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
 - (1) 2 directors of the Company;
 - (2) a director and a company secretary of the Company; or
 - (3) a director and any other person authorised by the directors for that purpose.

112 Execution of documents without common seal

[compare sections 127(1) and 129(5)]

- 112.1 The Company may execute a document without using a common seal if the document is signed by:
 - (1) 2 directors of the Company; or

- (2) a director and a company secretary of the Company.

113 Execution of document as a deed

[compare section 127(3)]

- 113.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 113 or rule 114.

114 Execution – general

[compare sections 129(5), 129(6) and 127(4)]

- 114.1 The same person may not sign in the dual capacities of director and secretary.
- 114.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.
- 114.3 Rules 113 and 114 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.
- 114.4 The Company shall keep a register of all documents that have been executed on behalf of the Company.

Notices

115 Notices other than notices of meeting

- 115.1 Any notice by the Company to a member may be given in the same way as a notice of meeting may be given under rule 19, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 20.

Inadvertent omissions

116 Formalities omitted

[compare section 1322]

- 116.1 If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

Alterations

117 Alterations

- 117.1 If the Company is endorsed as an income tax exempt fund, a tax concession charity or a deductible gift recipient by the Australian Taxation Office, before making any alterations to this constitution the directors must consider:

- (1) whether those alterations may effect the entitlement of the Company to that endorsement; and
- (2) whether, as a term of the endorsement, the Company is required to notify the Australian Taxation Office or any other government authority of the alterations to this constitution.

117.2 Any alterations to this constitution must require the unanimous approval of all members.