



CARE Super Pty Ltd
ACN 006 670 060
Constitution

Adopted 11 December 2018

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Corporations Act
A proprietary company limited by shares
Constitution
- of -
CARE Super Pty Ltd
ACN 006 670 060

1. Interpretation

1.1 DEFINITIONS

In this Constitution unless expressed or implied to the contrary:

"Alternate Director" means, at the relevant time, an Alternate Director of the Company duly appointed under clause 20.

"Appointment Policy" means any policy or policies the Board has adopted in relation to the appointment, renewal and removal of Directors for the purposes of this Constitution and of the Relevant Law.

"ASU" means the Australian Municipal, Administrative, Clerical and Services Union, which is known by the name of Australian Services Union.

"Board" means the Board of Directors of the Company from time to time.

"Business Day" means a day on which trading banks are open for business in Melbourne, other than a Saturday or Sunday.

"Chairperson" means the Director elected to hold office as Chairperson of the Company pursuant to clause 22.

"Clause" means a clause of this Constitution.

"Constitution" means this constitution.

"Company" means CARE Super Pty Ltd.

"Complying Superannuation Fund" has the same meaning as in section 45 of SIS.

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

"Deputy Chairperson" means the Director elected to hold office as deputy chairperson pursuant to clause 22.

"Director" means a director of the Company.

"Employer Director" means a Director:

- a) nominated by an Employer Organisation; or
- b) a person who, by virtue of his or her experience, background and/or qualifications is regarded by the holders of the Employer shares as a person suitable for appointment as an Employer Director; and
- c) who is elected by the holders of the Employer Shares and who is approved by the Board.

"Employer Organisation" means an organisation including NSWBC, VECI and any individual employer or group of employers of Fund Members which is accepted by the Board as representing the interests of employers of Fund Members and which is acceptable within the Relevant Law.

"Employer Share" means a Share issued as an Employer Share in accordance with clause 4.

"Equal Representation" means an equal number of Employer Directors and Member Directors as Directors of the Company or as members of a committee constituted by the Board.

"Fund" means the regulated superannuation fund established under the Trust Deed and known as "CARE Super".

"Fund Member" means a person who is admitted to membership of the Fund in accordance with the Trust Deed and has not ceased to be a member of the Fund in accordance with the Trust Deed.

"Fund Member Organisation" means an organisation including the ASU, Unions NSW or any other organisation accepted by the Board as representing the interests of Fund Members and which is acceptable within the Relevant Law.

"Independent Director" means a Director appointed pursuant to clause 17.

"Member Director" means a Director:

- a) nominated by a Fund Member Organisation; or
- b) a person who by virtue of his or her experience, background and/or qualifications is regarded by the holders of the Member Shares as a person suitable for appointment as a Member Director; and
- c) who is elected by the holders of the Member Shares and who is approved by the Board.

"Member Share" means a Share issued as a Member Share in accordance with clause 4.

"Nominating Organisation" means an Employer Organisation or a Fund Member Organisation.

"NSWBC" means the New South Wales Business Chamber.

"Office" means the registered office of the Company.

"Officer" means a person who is a current or former Director or Secretary of the Company or a person who takes part in, or is concerned with, management of the Company.

"Ordinary Resolution" has the same meaning as in the Corporations Act.

"Register" means the register of Shareholders kept in accordance with the Corporations Act.

"Relevant Law" means the Relevant Law as defined in the Trust Deed.

"Shareholder" means a person entered in the Register as a holder of a share in the Company.

"SIS" means the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth).

"Secretary" means any person duly authorised to perform the duties of Secretary of the Company appointed in accordance with clause 25.

"Special Resolution" has the same meaning as in the Corporations Act.

"Transfer Price" in clause 4.4 and clause 10 means one dollar (\$1).

"Trust Deed" means the trust deed dated 1 May 1986 constituting the Fund and includes all alterations and variations to the deed.

"UNSW" means Unions NSW.

"VECCI" means the Victorian Employers' Chamber of Commerce and Industry.

1.2 CONSTRUCTION

- a) Words or expressions used in this Constitution will be interpreted in accordance with the provisions of the Relevant Law and the Corporations Act in force at the time the interpretation is required.
- b) In this Constitution unless a different intention appears:
 - i. words importing the singular will include the plural and vice versa;

- ii. words importing one gender will include the other;
- iii. words importing person will include companies and corporations;
- iv. any headings or marginal notes in this Constitution are used for convenience only and will not affect its construction; and
- v. written notice includes notice given by way of facsimile and electronic transmission.

1.3 REPLACEABLE RULES INAPPLICABLE

To the maximum extent permitted by the Corporations Act, the provisions of the Corporations Act that apply as replaceable rules are expressly displaced and do not apply to the Company.

1.4 HEADINGS

Headings and subheadings are included for reference only and do not affect the interpretation of this Constitution.

2. Proprietary company

2.1 RESTRICTED RIGHT OF TRANSFER

The Company is a proprietary company and accordingly the right to transfer shares in the Company is restricted as provided in this Constitution.

2.1 SHAREHOLDERS NOT TO EXCEED FIFTY

The number of Shareholders must not exceed fifty and for the purposes of this Constitution joint shareholders count as one Shareholder.

2.3 PUBLIC NOT TO SUBSCRIBE

The Company must not engage in anything that would require disclosure to investors under Chapter 6D of the Corporations Act other than as authorised by the Corporations Act.

2.4 ACT SOLELY AS TRUSTEE

The sole purpose of the Company is to act as trustee of the Fund, being a regulated superannuation fund within the meaning of section 19 of SIS.

2.5 LEGAL CAPACITY AND POWERS OF THE COMPANY

The Company has the legal capacity and powers of an individual both in and outside Australia. The Company also has all the powers of a body corporate, including the power to do anything that it is authorised to do under law (including a law of a foreign country).

3. Constitution subject to relevant law

This Constitution will be read and construed on the basis that the provisions of the Relevant Law are incorporated to the extent that they impose covenants or obligations on the Company to enable the Fund to qualify as a Complying Superannuation Fund. This Constitution will be further read and construed on the basis that where there is any inconsistency between a provision in this Constitution and a provision under the Relevant Law, the latter will prevail, provided that this Constitution will not be so read or construed and no such provision of the Relevant Law will be so incorporated, if to do so would contravene the Corporations Act.

4. Share capital

4.1 SHARE CLASSES

The Company shall have up to seventy-two issued ordinary shares divided into thirty-six "A" shares (which are Member Shares) and thirty-six "B" shares (which are Employer Shares).

4.2 SHAREHOLDING ALLOTMENTS

- a) The "A" shares shall be allotted by the Board in its absolute discretion to any of the following:
 - i. Member Directors;
 - ii. Fund Member Organisations;
 - iii. persons who are accepted by the Board as a representative of Fund Member Organisation.
- b) The "B" shares shall be allotted by the Board in its absolute discretion to any of the following:
 - i. Employer Directors;
 - ii. Employer Organisations;
 - iii. persons who are accepted by the Board as a representative of an Employer Organisation.

4.3 RIGHTS OF SHARES

The "A" shares and the "B" shares shall be separate classes of shares, but save as provided herein all shares shall carry the same rights and privileges and shall rank *pari passu* in all respects.

4.4 EQUAL ALLOTMENT AS BETWEEN CLASSES

The Board may issue fully paid ordinary shares in the capital of the Company and any such shares so issued shall be allotted on the following basis:

- a) no allotment of "A" shares shall be made unless an allotment of an equal number of "B" shares is made;
- b) no allotment of "B" shares shall be made unless an allotment of an equal number of "A" shares is made;
- c) on the occasion of any allotment of shares, they shall be allotted at the same price, being the Transfer Price; and
- d) no shares shall be issued other than to:
 - i. in respect of "A" shares, a Member Director, Fund Member Organisation or a person who is accepted by the Board as a representative of a Fund Member Organisation; and
 - ii. in respect of "B" shares, an Employer Director, an Employer Organisation or a person who is accepted by the Board as a representative of an Employer Organisation

4.5 OTHER ISSUES PROHIBITED

Save and except as provided in sub-clause O, the Board shall not have power to issue any shares nor to allot or grant options or subscriptions or conversion rights over or otherwise dispose of the same.

4.6 PROHIBITION ON DISTRIBUTION OF INCOME OR CAPITAL

The Company is prohibited from distributing the income or capital of the Company to the Shareholders, including by way of payment of dividends.

5. Increase in capital

5.1 CREATION OF NEW SHARES

The Company may by Ordinary Resolution increase its share capital by any amount by the creation of new shares subject to the limitations in clause 4.

5.2 CONDITIONS OF ISSUE OF NEW SHARES

Subject to clause 4, newly created shares may have special, preferential, deferred, qualified or restricted rights, privileges, powers or advantages assigned to them or disabilities or conditions attached to them as determined by the Board on or before the issue of those shares, subject to the Corporations Act and to any rights previously conferred on the holders of any shares or class of shares.

6. Reduction of capital

The Company may, by Special Resolution, reduce its capital in any way permitted by law.

7. Other alteration of capital

The Company may, by Special Resolution:

7.1 CONSOLIDATION

consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares; and

7.2 CANCELLATION

cancel shares which have not then been taken or agreed to be taken by any person or which have been forfeited and reduce the amount of its share capital by the amount of the cancelled shares.

8. Variation of class rights

8.1 VARIATION

Where the share capital is divided into different classes of shares, the rights, privileges, disabilities and conditions attached to any class may be varied or abrogated only in accordance with the Corporations Act, this clause 8 and clause 4.3.

8.2 CONSENT REQUIRED

No rights, privileges, disabilities or conditions attached to any class of shares can be varied or abrogated without the written consent of the holders of at least two thirds of the issued shares of that class or without the sanction of a Special Resolution passed at a general meeting of the holders of the shares of that class. The clauses dealing with general meetings apply so far as they are capable to general meetings of classes of shareholders except that two persons constitute a quorum and any holder of shares of the relevant class may demand a poll.

8.3 RESTRICTIONS ON VARIATION

The rights conferred on the holders of the shares of a particular class are not deemed to be varied by the creation or issue of further shares ranking equally with the first mentioned shares unless expressly provided by the terms of issue of those first mentioned shares or unless required by the Corporations Act.

8.4 TRUST HOLDING

The Company must recognise a person as holding a share upon any trust designated by that person.

9. Certificates

9.1 RIGHT TO CERTIFICATE

Every Shareholder is entitled without payment to receive a certificate under the seal of the Company (if any) in accordance with the Corporations Act for the shares registered in the name of that Shareholder.

9.2 LOST, DESTROYED AND DAMAGED CERTIFICATES

If the share certificate or other document of title is lost or destroyed, the Company may issue a duplicate certificate in its place upon the conditions set out in section 1070D of the Corporations Act. If a share certificate is worn out or damaged, then upon its production to the Company, the Board may order it to be cancelled and may issue a duplicate certificate in its place.

10. Transfer of shares

10.1 RIGHT TO TRANSFER

Subject to this clause 10, a Shareholder may transfer all or any of the shares registered in their name in accordance with this Constitution to:

- a) a Member Director or Employer Director;
- b) a Nominating Organisation; or
- c) a person who is accepted by the Board as a representative of a Nominating Organisation,

in each case as approved by the Board, by an instrument of transfer in the terms set out in clause 10.3(b). The transferor shall remain the holder of the shares until such time as the name of the transferee is entered on the Register by the Board.

10.2 DEEMED TRANSFER

In the event of a Shareholder:

- a) ceasing to be a Member Director or Employer Director; or
- b) ceasing to be a Nominating Organisation; or
- c) in the opinion of the Board, ceasing to be a representative of a Nominating Organisation,

such Shareholder will be deemed to have given the Company an instrument of transfer in the terms set out in clause 10.3 in respect of their shares in favour of such person (being a Member Director or Employer Director, a Nominating Organisation, or a person who is accepted by the Board as a representative of a Nominating Organisation), as the Board determines, and appoints the Chairperson as their attorney for the purpose of signing all documents and doing all things as are necessary or desirable for the transfer of such shares.

10.3 INSTRUMENT OF TRANSFER

- a) No transfer of shares may be registered unless an instrument of transfer is given in writing or in such other form the Board may prescribe, or is deemed to have been given pursuant to clauses 10.2 or 11.
- b) An instrument of transfer must:
 - i. specify the number of shares, the class of each share and any other particulars necessary to adequately identify the shares to be transferred;
 - ii. specify the value of each of the shares as the Transfer Price; and
 - iii. be lodged at the Office.
- c) An instrument of transfer:
 - i. is unconditional;
 - ii. if given in respect of more than one share, will be deemed to be a separate transfer notice for each share; and
 - iii. is not revocable except with the consent of the Directors.

10.4 DIRECTORS' DISCRETION

The Board may refuse to register any transfer and is not obliged to give reasons for the refusal. If the Board refuses to register an instrument of transfer, notice of the refusal must be given to the transferee within two months from the date the transfer was lodged at the Office.

10.5 RETAINING INSTRUMENTS OF TRANSFER

Instruments of transfer that are registered must be retained by the Company for the minimum period required by law or longer if the Board determines. An instrument of transfer that the Board refuses to register must be returned if requested to the person who lodged it unless there has been fraud or alleged fraud.

10.6 TRANSFER PRICE

Shares will only be transferred at the Transfer Price provided that if the shares are held on trust there shall be no price paid in respect of the transfer to the beneficial owner of the shares or to a trustee.

10.7 CLOSING THE REGISTER

The Register may be closed as the Board thinks fit, subject to the Corporations Act, for no more than 30 days in any calendar year.

11. Transmission of shares

In the case of the death, bankruptcy, insolvency or other incapacity of a Shareholder, the Company shall be deemed to have been given a transfer notice in respect of the shares held by that Shareholder on the day before the death, bankruptcy, insolvency or other incapacity of the Shareholder. Clause 10.2 shall then apply mutatis mutandis in respect of the transfer of those shares.

This clause does not release the estate or legal personal representative of a deceased, bankrupt, insolvent or incapacitated Shareholder from any liability in respect of the share attributable to the period of membership of the Company prior to the death, bankruptcy, insolvency or other incapacity of the Shareholder.

12. General meetings

12.1 ANNUAL GENERAL MEETING

An annual general meeting of the Company need only be held if required by the Corporations Act.

12.2 GENERAL MEETINGS

General meetings of the Company other than annual general meetings are called general meetings.

12.3 CONVENING GENERAL MEETINGS

- a) Any Director may convene a general meeting upon giving notice in accordance with this clause.
- b) Shareholder may requisition the holding of a general meeting only in accordance with the Corporations Act and the Board must call a general meeting within 21 days after receiving such requisition.

12.4 NOTICE OF GENERAL MEETINGS

Notice of general meetings must:

- a) be served on all Shareholders entitled to receive notice at least 14 days before the day of the meeting (not including the day of service of the notice but including the day of the meeting);
- b) be in writing;
- c) specify the place, day and hour of the meeting;
- d) specify the general nature of the business to be transacted at the meeting but need not specify the general business of an annual general meeting; and
- e) contain notice of Special Resolutions proposed to be passed at the general meeting in accordance with the Corporations Act.

12.5 OMISSION TO GIVE NOTICE

The accidental omission to give notice of a general meeting or the non-receipt of a notice of a general meeting by a Shareholder does not invalidate the proceedings at the general meeting.

12.6 RESOLUTION WITHOUT GENERAL MEETING

- a) Except in the case of a resolution under section 329 of the Corporations Act to remove an auditor, or any other resolution which the Corporations Act or this Constitution requires to be passed at a general meeting, the Company may pass a resolution without a general meeting being held if all the shareholders 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.
- b) Separate copies of a document may be used for signing by Shareholders if the wording of the resolution and statement is identical in each copy and such document may be signed by electronic means.
- c) The resolution is passed when the last Shareholder signs the document.
- d) This clause does not affect any rule of law relating to the assent of Shareholders not given at a general meeting.

12.7 VALIDATION OF MEETINGS ON SHORT NOTICE

Notice of a general meeting may be called by shorter notice than is provided by this Constitution if all Shareholders entitled to receive notice of the meeting agree to that short notice.

12.8 CALLING CLASS MEETINGS

Where the capital of the Company is divided into different classes of shares, the Board may, if it thinks fit, and must on the requisition of Shareholders holding not less than one tenth of the issued shares of the relevant class, immediately convene a general meeting of the holders of shares of that class. The provisions of the Corporations Act and this Constitution regarding general meetings apply to meetings requisitioned under this clause.

13. Proceedings at general meetings

13.1 QUORUM

No business shall be transacted at any general meeting unless the requisite quorum is present at the commencement of business, and also when such business is voted upon. Six Shareholders present in person or by proxy, including two persons which are holders of any of the "A" Shares and two persons which are holders of any of the "B" Shares, shall be a quorum. No item of business may be transacted at a general meeting except for the election of a chairperson unless a quorum is present at the commencement of the transaction of that item of business.

13.2 PROCEDURE IF NO QUORUM

If a quorum is not present after 15 minutes from the time appointed for the meeting, the meeting will be dissolved, if it were convened by the Shareholders. If a Director convened the meeting, the meeting will be adjourned to the same time and place in the following week. If at the adjourned meeting, no quorum is present, the meeting will be dissolved.

13.3 CHAIRPERSON

The Chairperson may take the chair at every general meeting. If there is no Chairperson or if the Chairperson is not present at the time appointed for the meeting or is unwilling to take the chair, the Deputy Chairperson shall take the chair and if the Deputy Chairperson is not present at the time appointed for the meeting or is unwilling to take the chair, the Shareholders present may choose another Director to be chairperson for that meeting.

13.4 ADJOURNMENT OF GENERAL MEETINGS

The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting. If the meeting is adjourned for more than 30 days, notice of the adjournment must be given to all Shareholders entitled to receive notice of general meetings. No business may be transacted at the adjourned meeting except the unfinished business of the original business of which notice was given.

13.5 TECHNOLOGY

A general meeting may be held at two or more venues using any technology that gives the Shareholders as a whole a reasonable opportunity to participate.

14. Voting at general meetings

14.1 SHOW OF HANDS

Every question put to a general meeting is to be decided by a show of hands (or equivalent where Shareholders participate using technology that allows them to be heard but not seen by the chairperson of the general meeting) unless a poll is duly demanded. The chairperson of a meeting may declare that a resolution has, on a show of hands (or equivalent), been carried, carried unanimously, carried by a particular majority or lost. The entry to this effect in the minute book is conclusive evidence of the fact.

14.2 DEMANDING A POLL

A poll may be demanded before or on the declaration of the result of a show of hands (or equivalent) by:

- a) the chairperson of the meeting;
- b) at least two Shareholders present in person or by proxy;
- c) a Shareholder present in person or by proxy representing not less than one tenth of the total voting rights of all Shareholders entitled to vote at the meeting.

14.3 TAKING A POLL

If a poll is duly demanded, it must be taken as and when the chairperson of the meeting directs. A poll demanded on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately. The result of a poll will be the resolution of the meeting. The demand for a poll may be withdrawn.

14.4 CASTING VOTE

Questions will be decided by a simple majority of votes except for Special Resolutions or other resolutions that must be passed by a majority other than a simple majority in accordance with the Corporations Act. If there is an equality of votes, whether on a show of hands (or equivalent) or on a poll the chairperson of the meeting will not have a casting vote.

14.5 SHAREHOLDERS' ENTITLEMENT TO VOTE

Votes may be given personally or by proxy, attorney or company representative duly appointed. Every Shareholder present is entitled subject to any rights or restrictions attached to any shares to one vote on a show of hands (or equivalent) and if a poll is taken one vote for each share held by that Shareholder. A Shareholder who is entitled to attend and cast a vote at a general meeting may appoint a proxy, attorney or company representative (who need not be a Shareholder) to attend and vote at general meetings on behalf of the original Shareholder. That proxy, attorney or company representative is not entitled to vote at the general meeting if the principal is present and votes at that general meeting. The chairperson of the meeting may decide questions relating to the qualification of any voter and the decision is final and binding.

14.6 APPOINTMENT OF PROXIES, ATTORNEYS AND REPRESENTATIVES

- a) An instrument appointing a proxy shall be in the following form or a form that is similar to the following form:

CARE Super Pty Ltd

I, _____ of _____

being a shareholder of the abovenamed company, hereby appoint

_____ of _____

as my proxy to vote for me on my behalf at the *annual general/*general meeting of the

Company to be held on _____ 20_____

and at any adjournment of that meeting.

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

Signed _____ 20_____.

*Strike out whichever is inapplicable.

- b) The instrument of proxy, power of attorney and minutes of resolutions appointing a representative must be deposited at the Office at least 24 hours before the time of holding the meeting at which the proxy or attorney or representative is proposed to vote.

14.7 AUTHORITY OF PROXY

The appointment of a proxy, attorney or representative is deemed to confer authority to demand or join in demanding a poll. A vote given by a proxy, attorney or representative is valid regardless of the prior death or liquidation of the principal or revocation of the proxy or transfer of the shares in respect of which the vote is given if no written indication of the death, liquidation, revocation or transfer is received at the Office before the meeting.

15. Directors

15.1 NUMBER OF DIRECTORS

- a) The Directors shall be not less than eight, but may be a larger even number, of whom one-half shall be appointed by the holders of the "A" shares (Member Directors) and one half shall be appointed by the holders of the "B" shares (Employer Directors).
- b) Subject to this sub-clause, the Board shall include the following unless the Board and or the Shareholders resolve otherwise in accordance with the requirements of this Constitution:
 - i. Three Member Directors nominated by ASU;
 - ii. Two Member Directors nominated by Unions NSW;
 - iii. One Employer Director nominated by VECCI; and
 - iv. One Employer Director nominated by NSWBC.
- c) Except when a Nominating Organisation has ceased to exist or the Board determines that such organisation has ceased to represent the interests of Fund Members or the interests of employers of Fund Members (as the case may be), this Constitution cannot be amended to remove the ability of any of the Nominating Organisations referred to in sub-clause 15.1(b) to nominate a Director under that sub-clause unless the Board by resolution approved such amendment and the Nominating Organisation concerned provides its written consent or consent is provided by a Shareholder who is accepted by the Board as a representative of the Nominating Organisation concerned.
- d) Notwithstanding the provisions of sub-clause 15.1(a), the Board shall have power to appoint one or more Independent Directors in the event that the Member Directors or the Employer Directors so request, provided that the resolution for the appointment of an Independent Director shall be unanimous and that the number of Independent Directors shall not exceed those appointed as Member Directors or as Employer Directors. Subject to clause 17, an Independent Director shall have all the same rights and entitlements as other Directors of the Company. An Independent Director cannot be a Shareholder.

15.2 APPOINTMENT

a) Member Directors and Employer Directors

Subject to clause 15.7, including approval by the Board:

- i. a Member Director shall be appointed by the Board on receipt of a memorandum signed by all of the holders of Member Shares confirming that such person has been elected by them; and
 - ii. an Employer Director shall be appointed on receipt of a memorandum signed by all of the holders of Employer Shares confirming that such person has been elected by them;
- and his or her tenure shall continue until the relevant Director is removed in accordance with sub-clause O or his or her office becomes vacant under sub-clause O.

b) Effective Date of Appointment and Term of Office

Any appointment as a Director in accordance with this clause shall:

- i. take effect from the date of the appointment of the relevant Director, being the time at which a memorandum of appointment is produced to a meeting of the Board and approved by the Board, or such other date determined by the Board; and
- ii. be for such fixed term as is determined by the Board.

c) Directors

No Director shall be appointed otherwise than as provided in this Constitution.

15.3 REMOVAL OF DIRECTORS

a) **Member Directors**

The holders of the Member Shares may at any time by memorandum signed by all such Shareholders (except a Shareholder who is a Member Director who is the subject of the memorandum) remove any Member Director and such removal shall take effect from the date on which such memorandum is lodged at the Office or such later date specified in such memorandum.

b) **Employer Directors**

The holders of Employer Shares may at any time by memorandum signed by all of such Shareholders (except a shareholder who is an Employer Director who is the subject of the memorandum) remove any Employer Director and such removal shall take effect from the date on which such memorandum is lodged at the Office or such later date specified in such memorandum.

c) **Independent Directors**

The Board may by unanimous resolution (not including for these purposes any Independent Director who is the subject of the resolution) terminate the appointment of an Independent Director appointed under this Constitution if the Member Directors or the Employer Directors (in each case acting by majority) notify the Board that they wish to terminate the appointment of the Independent Director. The Independent Director shall cease to be a Director of the Company from the date determined by the Board. The Company shall immediately give notice signed by the Chairperson to the Independent Director of his or her removal as an Independent Director of the Company.

15.4 DIRECTOR VACANCY

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act, the office of a Director shall become vacant if the Director:

- a) resigns that office by notice in writing to the Company;
- b) dies;
- c) is removed from office in accordance with any provisions of this clause 15;
- d) is removed from office in accordance with the provisions of the Relevant Law;
- e) is determined by resolution of the Board to be a person whose continued appointment does not comply with the Relevant Law or to be a person who does not meet one or more of the criteria or terms contained in the Appointment Policy;
- f) becomes insolvent under administration;
- g) becomes prohibited from being a Director by reason of being a disqualified person under the Relevant Law or by reason of an order made under the Corporations Act;
- h) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health;
- i) for more than six months is absent without permission from Board meetings;
- j) having been appointed for a fixed term, that period expires and the Director is not re-appointed;
- k) being an Independent Director, is determined by a resolution of the Board to cease to meet the criteria to be considered independent under the Relevant Law or under the Appointment Policy;
- l) being a Director who was nominated by a Nominating Organisation, is subject to a notification to the Board by the relevant Nominating Organisation that it wishes to withdraw its support for that Director, and having made enquiries, the Board is satisfied that such withdrawal of support is not for reasons which would be in breach of the Relevant Law or any other applicable law.

15.5 NATURAL PERSONS

All Directors of the Company shall be natural persons.

15.6 OTHER OFFICES

A Director may hold any other office in the Company in addition to the Directorship on any terms as to tenure and remuneration or otherwise as determined by the Board.

15.7 FILLING VACANCIES

- a) Member Directors and Employer Directors
 - i. If a vacancy in the office of Director arises (whether because a fixed term for which that Director was appointed has expired or from some other reason), and the Director in respect of whom the vacancy has arisen was nominated by a Nominating Organisation:
 - A. the Board must invite the relevant Nominating Organisation to nominate a person to fill the vacancy, such nomination to be provided within 30 days or such other period specified by the Board;
 - B. the Board must provide the relevant Nominating Organisation with such information and documents relevant to the nomination and appointment process as required pursuant to the Appointment Policy; and
 - C. the relevant Nominating Organisation must provide the Board with such information and documents regarding its nominated person as required pursuant to the Appointment Policy.
 - ii. If a vacancy in the office of Director arises (whether because a fixed term for which that Director was appointed has expired or from some other reason), and the Director in respect of whom the vacancy has arisen was not nominated by a Nominating Organisation:
 - A. the Board must invite the holders of the Member Shares or the holders of the Employer Shares (as the case requires) to nominate a person to fill the vacancy, such nomination to be provided within 30 days or such other period specified by the Board;
 - B. the Board must provide the relevant Shareholders with such information and documents relevant to the nomination and appointment process as required pursuant to the Appointment Policy; and
 - C. the relevant Shareholders must provide the Board with such information and documents regarding any person such Shareholders propose to elect as required pursuant to the Appointment Policy.
 - iii. The appointment of such nominated or proposed person to the office of Director will be subject to the receipt by the Board of a memorandum of appointment signed by all of the holders of the Member Shares or of the Employer Shares (as the case requires) pursuant to clause 15.2(a) and to approval of the Board. In deciding whether to approve such an appointment, the Board must consider whether such appointment would comply with the Relevant Law and whether such person meets any criteria or terms contained in the Appointment Policy.
 - iv. Unless the Board otherwise determines, where an appointment is made to fill a vacancy that has arisen other than by reason of the expiry of a fixed term, the person appointed to fill the vacancy will hold office, subject to sub-clauses 15.3(a) and 15.3(b) (as applicable) and 15.4, for the unexpired portion of the term of office and otherwise on the same conditions as the Director whose office became vacant.
- b) Failure to Nominate

Subject to sub-clause 15.7(c), in the event that a Nominating Organisation or Shareholders which has or have been invited in writing by the Board to nominate or propose a person to fill a vacancy decline/s or fail/s to nominate or propose a person

within 30 days or such other period specified by the Board, the Board may, subject to and within such period prescribed by the Relevant Law, appoint a person to fill the vacancy.

c) **Unacceptable Nomination**

In the event that a Nominating Organisation or Shareholders which has or have been invited in writing by the Board to nominate a person to fill a vacancy nominate/s or proposed a person who is determined by the Board not to meet the requirements of the Relevant Law or not to meet any criteria or terms contained in the Appointment Policy (Unacceptable Nomination), the Board shall seek a further nomination or proposal from the Nominating Organisation or relevant Shareholders, such nomination or proposal to be provided within 30 days or such other period specified by the Board. In the absence of a further nomination or proposal received within time, or in the event of the nominating Organisation or relevant Shareholders making another Unacceptable nomination, the Board may, subject to and within such period prescribed by the Relevant Law, appoint a person to fill the vacancy.

15.8 REPLACEMENT OF INDEPENDENT DIRECTOR

If an Independent Director ceases to hold office other than by reason of the expiry of a fixed term, the Board may, subject to and within such period prescribed by Relevant Law, appoint a person to fill the vacancy. Unless the board otherwise determines, the person appointed to fill the vacancy will hold office, subject to sub-clauses 15.3(c) and 15.4(k) for the unexpired portion of the term of office and otherwise on the same conditions as the Independent Director whose office became vacant. Where an Independent Director ceases to hold office by reason of the expiry of a fixed term, sub-clause 15.1(d) will apply to the re-appointment of that Independent Director or to the appointment of a new Independent Director.

16. Equal representation

The Equal Representation requirements set out in SIS will apply to the Company.

17. Independent directors

17.1 TERMS OF APPOINTMENT

The appointment by the Board of an Independent Director under the provisions of sub-clause 15.1(d) shall be on such conditions and for such term as the Board shall determine.

17.2 ELIGIBILITY

A person must not be appointed as an Independent Director unless that person meets the criteria to be considered independent under the Relevant Law or under the Appointment Policy.

18. Remuneration of directors

18.1 REMUNERATION AND EXPENSES

Each Director shall be entitled to such remuneration for his or her services as the Board determines, and such remuneration is to be paid out of the funds of the Company. Directors shall also be entitled to be paid out of the funds of the Company, all reasonable expenses incurred in connection with the business and activities of the Company as are approved by the Board from time to time.

18.2 SPECIAL REMUNERATION

Where a Director performs services for the Company which, in the opinion of the Board, exceed the ordinary duties of a Director or Chairperson, the Board may pay special remuneration from the funds of the Company to that Director, either instead of, or in addition to the remuneration already provided for in sub clause O.

18.3 PAYMENTS TO NOMINATING ORGANISATIONS

Where any remuneration or fees would be payable to a Director under the two preceding sub-clauses and the Director concerned requests that any such payment be made to a Nominating Organisation and/or to his or her employer, the Board may authorise payment to that Nominating Organisation and/or to his or her employer of an amount equivalent to that which the Director would otherwise personally receive.

19. Directors' interests

19.1 DIRECTORS' CONTRACTS

Subject to the Corporations Act and to this Constitution:

- a) Directors are not disqualified from entering into a contract or arrangement with the Company or from becoming or remaining a director of another company which has contracts with the Company;
- b) contracts or arrangements involving the Company cannot be avoided on the basis that a Director has an interest in the contract or arrangement;
- c) Directors are not liable to account to the Company for any profits realised by them as a result of them being interested in any such contract or arrangement; and
- d) any Director may attest the affixing of the seal (if any) of the Company to a contract whether or not that Director is interested in that contract.

19.2 DECLARATION OF INTEREST

Every Director who has a direct or indirect interest in a contract or arrangement, and every Director who holds any office or possesses any property which may directly or indirectly create a conflict with that Director's duties or interest, must, before voting, declare the fact and the nature, character and extent of the conflict or potential conflict as required by the Corporations Act and the Relevant Law.

19.3 SECRETARY TO RECORD DECLARATIONS

The Secretary must record in the minutes any declaration made by a Director in accordance with this clause.

20. Alternate directors

20.1 APPOINTMENT OF ALTERNATE DIRECTOR

Each Director except an Independent Director may, subject to Board approval, appoint any person to act as Alternate Director in his or her place either indefinitely or for any specified period. The Alternate Director may be removed or suspended from office by the Director at any time. The instrument appointing or removing an Alternate Director must be in writing, executed by the appointing Director, and served on the Company at least twenty-four hours preparatory to the Alternate Director attending a meeting.

20.2 STATUS OF ALTERNATE DIRECTOR

An Alternate Director:

- a) is competent to exercise all powers and duties of the Director who has appointed him or her;
- b) is entitled to receive notice of all Board meetings and if the appointor Director is not present at a meeting, the Alternate Director may attend and vote at that meeting;
- c) ceases to hold office immediately upon the appointor Director revoking his or her appointment as an Alternate Director or immediately upon the appointor Director ceasing to be a Director;
- d) is not entitled to remuneration from the Company, unless authorised by the Board, but is entitled to be paid out of the funds of the Company all reasonable expenses incurred in connection with the business of the Company as approved by the Board.

21. Directors' powers

21.1 MANAGEMENT OF BUSINESS OF COMPANY

The management and control of the business and affairs of the Company is vested in the Directors. The Directors may exercise all powers and do all things authorised by the Corporations Act unless this Constitution or the Corporations Act requires that those powers and things be done by the Company in general meeting. The Directors must act in accordance with this Constitution, the Corporations Act and regulations made by the Company in general meeting. Regulations made by the Company in general meeting cannot invalidate an earlier action or decision of the Directors, which would have been valid, if the regulation had not been made.

21.2 DIRECTORS' BORROWING POWERS

The Board may exercise all of the powers of the Company to borrow money, to mortgage or charge all or part of the Company's undertaking, assets and uncalled capital and to give securities for a debt, guarantee or obligation of the Company or of any other person.

21.3 APPOINTMENT OF ATTORNEYS

The Board may appoint any person or persons to be the attorney or attorneys of the Company to do anything the Company may do with the powers and subject to the conditions as the Board thinks fit.

21.4 APPOINTMENT OF COMMITTEES

The Board may appoint committees in accordance with clause 24 and delegate any of its powers to those committees as they think fit. Clauses regulating Board meetings apply to the extent that they are appropriate and applicable to any such meetings of committees so appointed.

21.5 EXERCISE OF POWERS OUTSIDE VICTORIA

The Board may exercise all of the powers of the Company in relation to the seal of the Company for use outside Victoria and may establish branch registers.

22. Chairperson

22.1 APPOINTMENT OF CHAIRPERSON

The Directors shall elect one of their number as Chairperson of the Company and such appointment shall be for a period of four years or for such shorter period as the Directors shall determine.

22.2 APPOINTMENT OF DEPUTY CHAIRPERSON

The Directors shall elect one of their number as Deputy Chairperson of the Company and such appointment shall be for a period of four years or for such shorter period as the Directors shall determine.

22.3 NOMINATION OF CHAIRPERSON AND DEPUTY CHAIRPERSON

The Member Directors and the Employer Directors may nominate any one of the Directors as Chairperson or Deputy Chairperson and may nominate a Director for either role who already holds one of those roles.

22.4 DIRECTORSHIP CLASSIFICATION

Where the Chairperson elected is Director nominated by the Member Directors, then the Deputy Chairperson shall be a Director nominated by the Employer Directors and where the Chairperson elected is a Director nominated by the Employer Directors, then the Deputy Chairperson elected shall be a Director nominated by the Member Directors. No Independent Director shall hold the position as Chairperson or Deputy Chairperson of the Company.

22.5 ROTATIONAL BASIS

The nomination of Chairperson and Deputy Chairperson between Member Directors and Employer Directors shall be on a rotational basis, such that for at least four years in every eight consecutive years, a person nominated by the Member Directors will be Chairperson and for at least four years in every eight consecutive years, a person nominated by the Employer Directors will be Chairperson.

23. Proceedings of Board meetings

23.1 ROLE OF CHAIRPERSON

The Chairperson of the Company shall chair all Board meetings provided that in the event that the Chairperson is not in attendance at the meeting, the Deputy Chairperson shall chair the meeting.

23.2 MEETINGS

The Directors may meet together, adjourn and otherwise regulate their meetings as they see fit. The quorum shall, throughout each meeting, be two-thirds of the total number of Directors in office, of whom at least two shall be Member Directors and two shall be Employer Directors.

23.3 VOTING

All business arising at any Board meeting shall be determined only by resolution and no such resolution shall be effective unless carried by a majority of not less than two-thirds of the total number of Directors.

23.4 CASTING VOTE

The chairperson of the meeting shall not, in addition to a deliberative vote (if any) under any circumstances have a second or casting vote.

23.5 BOARD MEETINGS AND RESOLUTIONS BY USE OF TECHNOLOGY

A Board meeting may be held at two or more venues using any technology that gives all of the Directors a reasonable opportunity to participate.

23.6 WRITTEN RESOLUTION WITHOUT MEETING

- a) A written resolution of the Directors signed or approved by each of them present in Australia and eligible to vote on the resolution (and for these purposes an Alternate Director may sign or approve in place of his or her appointer Director) will be deemed to have been passed at a Board meeting on the day on which the last Director:
 - i. signed and dated a document (including by electronic means) containing a statement that he or she is in favour of the resolution; or
 - ii. communicated his or her approval (including by electronic means) of the resolution by written notice.

- b) Separate copies of a document may be used for signing by Directors if the text of the resolution and statement is identical in each copy.

23.7 DEFECT IN APPOINTMENT

All acts done at Board meetings or at committee meetings are valid and effective even if it is later realised that there was a defect in the appointment of a Director or of a person acting as Director or a member of the committee or if any such person was disqualified or not entitled to vote at that time.

23.8 DIRECTORS MAY ACT IN EVENT OF A VACANCY

The Directors may act even if there is a vacancy in the body of Directors provided that the Directors are not authorised to act if the number of Directors falls below the minimum number required for a quorum in accordance with this Constitution other than to increase the number of Directors to the minimum number or to convene a general meeting of the Company or of any class of shareholders.

24. Appointment of committees

24.1 MINIMUM MEMBERSHIP REQUIREMENTS

The Board may from time to time appoint committees consisting of a minimum of four Directors where there is at least one Member Director and at least one Employer Director plus such Independent Directors and other persons who are not Directors as the Directors may determine, and the Board may delegate all or any of its powers to any such committee and from time to time revoke any such delegation and discharge any such committee in whole or in part.

24.2 COMMITTEE POWERS

Any committee formed in accordance with sub-clause O shall, in the exercise of the powers delegated to it, conform to any regulations that may from time to time be imposed upon it by the Board. The committee may meet and adjourn as it thinks fit provided that the quorum for the meeting of any such committee shall throughout the meeting be at least one Member Director and at least one Employer Director. Any committee shall have the power to co-opt additional members, notwithstanding those persons are not Directors.

24.3 VOTING MAJORITY

All business arising at any meeting of a committee shall be determined only by a resolution and no such resolution shall be effective unless carried by a majority of not less than two-thirds of the total number of the members of the committee including at least two thirds of the Directors who are members of the committee.

24.4 CHAIRPERSON OF COMMITTEE

The committee may elect a Director who is one of their number as chairperson of the meetings provided that such chairperson in addition to a deliberative vote shall not have a second or casting vote.

24.5 ALTERNATIVE CHAIRPERSON

Where a committee meeting is held and:

- a) the chairperson has not been elected; or
- b) the chairperson is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act, the committee members present shall elect one of their number to be chairperson of the meeting provided that such chairperson shall not have a second or casting vote.

25. Secretary

The Board may appoint any person or persons to be or act as Secretary of the Company for such term upon such conditions and with such remuneration as they shall think fit. The Board may remove a Secretary from office at any time.

26. Minutes

26.1 SECRETARY TO ENTER MINUTES

The Secretary must cause minutes to be entered in the minute book provided by the Company within one month after the relevant meeting, which shall include:

- a) the resolutions and proceedings of all meetings of the Shareholders;
- b) the resolutions and proceedings of all Board meetings and committee meetings;
- c) resolutions passed by Shareholders without a meeting; and
- d) resolutions passed by the Directors without a meeting.

26.2 MINUTES TO BE SIGNED

Minutes of a meeting signed by the chairperson of that meeting or of the next succeeding meeting will be prima facie evidence of the matters stated in those minutes.

26.3 MINUTE BOOK

The books containing the minutes of general meetings and committee meetings must be kept at the Office or principal place of business of the Company.

27. Statutory registers

The Company must keep the following registers as required by the Board or by the Corporations Act:

- a) register of Shareholder;
- b) register of charges;
- c) register of Directors' interests; and
- d) register of Directors, Secretaries and other officers.

28. Company seal

28.1 CUSTODY

If the Board determines to adopt the use of a seal for the purpose of execution of documents by the Company, the Board must provide for the safe custody of the Company seal.

28.2 USE OF SEAL

The use of the Company seal, if any, must be authorised by the Board. Each instrument to which the seal is affixed must be signed by at least one Director and countersigned by another Director or by the Secretary or other person authorised by the Board for that purpose.

29. Accounts

29.1 ACCOUNTING RECORDS

The Board must keep proper books of account in accordance with the Corporations Act and accepted accounting standards. The books of account must be kept at the Office or other place as the Board thinks fit.

29.2 STATUTORY ACCOUNTS

The Board must cause to be made out for each financial year of the Company a profit and loss account that gives a true and fair view of the profit or loss of the Company for that financial year and a balance sheet that gives a true and fair view of the state of affairs of the Company for that financial year.

29.3 INSPECTION OF BOOKS

The accounting records of the Company must be open to inspection by the Directors. Shareholders who are not Directors are not entitled to inspect accounting records unless authorised by statute, the Board or the Company in general meeting.

29.4 RETENTION OF BOOKS

The Company must retain all accounting records for the minimum period required by law or longer if the Board determines.

30. Cheques

All cheques, bills of exchange and promissory notes must be signed, drawn, accepted, made or endorsed for and on behalf of the Company as the Board determines.

31. Auditors

The auditor or auditors must be appointed and may be removed and their remuneration, rights and duties must be regulated in accordance with the Corporations Act.

32. Notices

32.1 SERVICE

The Company may serve a notice on a Shareholder:

- a) in person;
- b) by leaving it at, or posting it (by pre-paid ordinary mail) to, the Shareholder's registered address in the Register or an alternative address (if any) nominated by that shareholder;
- c) if the Shareholder is deceased or bankrupt or otherwise under a legal disability to the address given to the Company by the person entitled under the clause dealing with transmission of shares; or
- d) by facsimile or electronic transmission to the Shareholder's number or e-mail address for service as notified by the Shareholder to the Company.

32.2 TIME OF SERVICE

Service given:

- a) by post to an address within Australia is taken to be given two Business Days after posting;
- b) by post to an address outside Australia is taken to be given five Business Days after posting;
- c) by facsimile, is taken to be given at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee address;
- d) by electronic transmission to a telephone number or email address is taken to be given on the Business Day it is sent; and
- e) after 6.00 p.m. in the place of receipt or in a day which is not a Business Day is deemed received at 9.00 a.m. on the next Business Day.

32.3 NOTICE TO JOINT HOLDERS

Notices may be served on joint shareholders by serving notice on the joint holder named first in the Register in respect of the share.

32.4 ENTITLEMENT TO RECEIVE NOTICE OF GENERAL MEETINGS

Notice of every general meeting must be given to every Shareholder having a registered address or address for service of notices within Victoria, every person entitled to a share as a result of death or bankruptcy of a Shareholder and the auditor of the Company.

33. Indemnity

33.1 INDEMNIFICATION OF OFFICERS

- a) Subject to clause 33.1(b), the Board may determine that the Company indemnify any Officer:
 - i. for any liability (other than for legal costs dealt with in clause 33.1(a)(ii)) incurred by the Officer in the Officer's capacity as an officer of the Company; and
 - ii. for legal costs incurred by the Officer in defending an action for a liability incurred by the Officer in the Officer's capacity as an officer of the Company;
- b) The indemnity in clause 33.1(a) does not extend to any amount in respect of which:
 - i. the Company is prohibited by the Corporations Act, or any other statute from indemnifying against; or
 - ii. an indemnity would otherwise be illegal, void, unenforceable or not permitted by law.

33.2 INDEMNITY INSURANCE

- a) Subject to clause 33.2(b), the Board may determine that the Company pay or agree to pay a premium for a contract insuring an Officer against a liability incurred by the Officer in the Officer's capacity as an officer of the Company, including a liability for legal costs.
- b) The Company must not pay a premium under clause 33.2(a) where:
 - i. the Company is prohibited by the Corporations Act or any other statute from paying or agreeing to pay such a premium; or
 - ii. the payment of such a premium would otherwise be illegal, void, unenforceable or not permitted by law.

34. Winding up

34.1 DIVISION OF ASSETS

If the Company is wound up or dissolved, the Shareholders have no right to participate in any distribution or payment of the assets or property of the Company.

34.2 VESTING OF ASSETS

If the Company is wound up or dissolved, any surplus assets or property of the Company available for distribution after satisfaction of all debts and liabilities must be transferred to the Fund for the benefit of the beneficiaries of the Fund.