



**Corporations Act**  
**A Company limited by shares**

# **Constitution of Marasi Education Pty Ltd (ACN 647 474 968)**



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**1. Preliminary**

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**1.1. Replaceable rules**

All of the replaceable rules set out in the Act which the Company is entitled to displace, are displaced by the rules set out in this Constitution.

**1.2. Definitions**

The following expressions in this Constitution have the meaning below:

- (a) *Act* means the *Corporations Act 2001 (Commonwealth)* or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;
  - (b) *Board* means:
    - (i) if the Company is a single director Company, the sole Director exercising powers under the Act and this Constitution; or
    - (ii) in any other case, the Directors acting collectively under this Constitution;
  - (c) *Company* means the company named at the beginning of this Constitution;
  - (d) *Director* means any person who is appointed for the time being as a director of the Company in accordance with this Constitution and, except where appropriate, includes a person appointed as an alternate director in accordance with this Constitution and *Directors* means all or any of the directors of the Company for the time being;
  - (e) *Executive Director* means a Director who is an employee of the Company or acts in an executive capacity for the Company under a contract for services and includes a Managing Director;
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- (f) *Interest Rate* means, in respect of each rule in which that term is used:
  - (i) the rate for the time being prescribed by the Board in respect of that rule;  
or
  - (ii) if no rate is prescribed, 15% per annum;
- (g) *Managing Director* means a managing director appointed under **rule 7.1**;
- (h) *Remuneration* in relation to a Director (other than an Executive Director):
  - (i) includes salary, bonuses, fringe benefits and superannuation contributions provided by the Company; and
  - (ii) excludes a payment as compensation for loss of office or in connection with retirement from office and an indemnity under **rule 10**;
- (i) *Secretary* means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this Constitution; and
- (j) *Voting Member* in relation to a general meeting, or meeting of a class of members, means a member who has the right to be present, and to vote on at least 1 item of business to be considered at that meeting.

### 1.3. Interpretation

- (a) Words importing the singular include the plural and vice versa.
  - (b) Words importing a gender include any gender.
  - (c) Words or expressions defined in the Act have those meanings.
  - (d) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of these rules that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
  - (e) Headings are for convenience only, and do not affect interpretation.
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- (f) A reference to:
- (i) a party includes its administrators, successors, substitutes by novation, and assigns;
  - (ii) any legislation includes legislation varying consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
  - (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and
  - (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

## **2. Proprietary company**

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The Company is a proprietary company and must comply with the requirements for such a company contained in the Act.

## **3. Objects and Purpose**

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The object for which the Company is established is to provide excellence in quality education and training services.

The two principal business of the Company are the provision of higher education and vocational education and training services. The company will operate as a:

1. Higher education provider as defined by section 5 of the *Tertiary Education Quality and Standards Agency Act 2011* (subject to TEQSA approval);
2. Quality provider of higher education courses to Domestic and International Students;
3. Compliant provider in accordance with all regulatory framework(s) for the delivery of higher education.

The delivery of its object and purpose is underpinned by the Company:

- Ensuring free intellectual inquiry in its academic endeavours;
  - Creating a governance structure which has a clear distinction between corporate and academic governance;
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- Ensuring institutional Policies and Procedures provide for equity and diversity, including consideration for people of Aboriginal and Torres Strait Islander background;
- Ensuring academic staff are encouraged and supported in participation in scholarly activity and research;
- Developing relationships and industry partnerships which contribute to practical graduate attributes and improve graduate employment opportunities;
- Ensuring that institutional Policies and Procedures guarantee the safety and wellbeing of all children and young people.

#### **4. Directors**

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##### **4.1. Number**

The Company must have at least, if the Company is a single director Company, 1 or otherwise 2 Directors. The Company may by special resolution determine the maximum number of Directors.

##### **4.2. Appointment**

Subject to the maximum number of Directors (if any) for the time being fixed under **rule 4.1** not being exceeded:

- (a) the Company by ordinary resolution; or
- (b) members holding a majority of the issued shares of the Company conferring the right to vote, by written notice delivered to the Company; or
- (c) the Board (except during a general meeting),

may appoint a person to be a Director either to fill a casual vacancy or as an addition to the Board.

##### **4.3. Share qualification**

A Director need not be a member of the Company.

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#### 4.4. **Casual vacancies**

- (a) The Directors may at any time appoint a person to be a Director either to fill a casual vacancy or as an addition to the existing number of Directors. The total number of Directors may not exceed the number fixed in accordance with this Constitution.
- (b) If a person is appointed under this rule as a Director, the Company must confirm the appointment by resolution at the Company's next general meeting of members.
- (c) If the appointment is not confirmed in accordance with **rule 4.4(b)**, the person ceases to be a Director at the end of the general meeting of members.

#### 4.5. **Cessation**

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

- (a) becomes an insolvent under administration;
- (b) is not permitted by the Act to be a director or vacates office by force of a provision of the Act;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) is absent without the consent of the Directors from Board meetings for a continuous period of 6 months;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under **rule 4.6**; or
- (g) dies,

or if the person was appointed to the office for a specified period and that period expires.

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#### 4.6. **Removal**

Whether or not a Director's appointment was expressed to be for a specified period:

- (a) the Company by ordinary resolution; or
- (b) members holding a majority of the issued shares of the Company conferring the right to vote, by writing delivered to the Company,

may remove a Director from office.

#### 4.7. **Too few Directors**

If the number of Directors is reduced below the minimum required by **rule 4.1**, the continuing Directors may act as the Board only:

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

#### 4.8. **Deceased sole Director**

Without limiting the power contained in the Act, a person named as legal personal representative of a deceased sole Director may immediately assume office without having to wait for probate to be granted.

### 5. **Alternate Directors**

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#### 5.1. **Appointment**

A Director may, with the approval of the other Directors, appoint a person (whether a member of the Company or not) to be an alternate Director during such period as the Director thinks fit.

#### 5.2. **Form of appointments and revocations**

A Director may only appoint or terminate the appointment of an alternate Director by a notice in writing and must serve a copy of the notice on the Company.

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### 5.3. **Notice of Board meetings**

An alternate Director is entitled to notice of meetings of Directors and, if the appointor of the alternate is not present at such a meeting, may attend and vote in place of the appointor.

### 5.4. **Obligations and entitlements**

An alternate Director:

- (a) may attend and vote in place of the appointor at a Board meeting at which the appointor is not present;
- (b) who is also a Director, has a separate right to vote as an alternate Director;
- (c) for more than one appointor has a separate right to vote in place of each appointor;
- (d) may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate Director will be deemed to be the exercise of the power of the appointor;
- (e) will be deemed to be a Director for the purposes of constituting a quorum; and
- (f) is entitled to payment of expenses as provided to Directors under **rule 10.4** but is not entitled to any other Remuneration from the Company (but the appointor may further remunerate the alternate).

### 5.5. **Termination of appointment**

The appointment of an alternate Director is immediately terminated if:

- (a) the Director who appointed the alternate Director ceases for any reason to be a Director;
  - (b) the Director who appointed the alternate Director gives notice of termination of the appointment to the Company; or
  - (c) the Directors resolve to terminate the appointment after giving 7 days' notice of intention to remove the alternate Director to the Director who appointed the alternate Director.
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## **6. Powers of the Board**

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### **6.1. Powers**

Subject to the Act and to any other provision of this Constitution, the Board will manage the business of the Company. The Board may exercise all the powers of the Company as are not required by the Act or by this Constitution to be exercised by the Company in general meeting.

### **6.2. Exercise of powers**

A power of the Board can be exercised only by resolution passed, or treated by **rule 11** as passed, at a meeting of the Board, or in accordance with **rule 8**.

### **6.3. Negotiable instruments**

The Board must decide the manner in which negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company. The Company may execute, accept or endorse negotiable instruments only in the manner for the time being decided by the Board.

## **7. Managing Director**

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### **7.1. Appointment of Managing Director**

The Board may from time to time appoint one or more Directors to the office of Managing Director for such period and on such terms as they think fit.

### **7.2. Termination of appointment**

The appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, subject to the terms of any agreement between the Company and the Managing Director, the Board may do),

whether or not the appointment was expressed to be for a specified term.

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### 7.3. **Confer power**

The Board may confer powers on the Managing Director which may be:

- (a) concurrent with, or be to the exclusion of, the powers of the Board;
- (b) on the terms and subject to any restrictions the Board decides; and
- (c) revoked by the Board at any time.

## 8. **Delegation of Board powers**

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### 8.1. **Delegation of powers**

The Board may delegate any of its powers to an attorney or to a committee:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power a further delegate) and subject to any restrictions the Board decides.

### 8.2. **Revocation of powers**

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

### 8.3. **Status of exercise of power**

Any power exercised in accordance with a delegation of the Board is taken to be exercised by the Board.

### 8.4. **Powers of attorney**

A power of attorney under **rule 8.1** may contain the provisions for the protection and convenience of those who deal with the attorney that the Board thinks appropriate.

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## 8.5. **Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, as far as practicable, governed by the rules of this Constitution which regulate the meetings and proceedings of the Board.

## 9. **Director's duties and interests**

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### 9.1. **Holding offices or entering into agreements**

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

- (a) holding any office or place of profit or employment, other than that of the Company's auditor, or being a member or creditor, of any corporation (including the Company) or partnership other than the auditor; or
- (b) entering into any agreement with the Company.

### 9.2. **Declaration of interests**

Subject to the Act, if a Director has a material personal interest in a matter that relates to the affairs of the Company that Director must give the other Directors notice of the interest including the nature and extent of the interest, and the relation of the interest to the affairs of the Company at the first Board meeting held after the Director becomes aware of their interest in the matter or after appointment as a Director (whichever is later) and the details must be recorded in the minutes of the Board meeting.

### 9.3. **Director interested in agreement**

- (a) If a Director has a material personal interest in a matter that relates to the affairs of the Company, unless disclosure is not required under the Act, the Director must disclose the nature and extent of the interest and its relation to the affairs of the Company at a Board meeting in accordance with **rule 9.2** and the Act so that the Director may be counted in a quorum at a Board meeting that considers, and may vote on, matters that relate to the interest.
  - (b) The Director may vote on matters that relate to the interest.
  - (c) Any transactions that relate to the interest may proceed.
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- (d) The Director may participate in the execution by or on behalf of the Company of any documents that relate to the interest.
- (e) If the disclosure is made before the transaction is entered into:
  - (i) the Director may retain benefits under the transaction even though the Director has the interest; and
  - (ii) the Company cannot avoid the transaction merely because of the existence of the interest.

## **10. Directors' Remuneration**

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### **10.1. Remuneration of non-Executive Directors**

Subject to any agreement with the Company, the Directors (other than Executive Directors) may be paid as a whole, or provided Remuneration the total of which must not exceed the amount from time to time determined by a resolution of the members as the aggregate maximum sum.

### **10.2. Division of aggregate sum**

The aggregate maximum sum will be divided among the Directors as decided by the Board (including interested Directors), or in default of agreement, equally having regard to the proportion of the relevant year for which each Director held office.

### **10.3. Remuneration of Executive Directors**

Subject to any contract with the Company the Board may fix the remuneration of each Executive Director and that remuneration may consist of salary, bonus, commission on profits or dividends, participation in profits or other elements as is from time to time determined by a resolution of the members.

### **10.4. Additional remuneration for extra services**

If a Director, at the request of the Board and for the purposes of the Company, performs extra services or makes special exertions (including going or living away from the Director's usual residential address), the Company may remunerate that Director for doing so. Remuneration under this rule may be either in addition to or in substitution for any remuneration to which that Director is entitled under **rule 10.1** or **rule 10.3**.

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### 10.5. Expenses of Directors

The Company may pay the Directors' travelling and other expenses they properly incur:

- (a) in attending Directors' meetings and any committee meetings; or
- (b) in attending any general meetings of the Company; or
- (c) otherwise in connection with the Company's business.

## 11. Indemnity

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### 11.1. Definitions

For the purposes of this Constitution:

- (a) *Officer* means a Director, an alternate Director, a Secretary, an officer as defined by the Act, or the Chief Executive Officer; and
- (b) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which relates to or arises in connection with the Officer being an officer of the Company or the employment of the Officer with the Company.

### 11.2. Indemnity

Every Officer and past Officer (with the exception of any auditor) of the Company is hereby indemnified by the Company to the fullest extent permitted by law against a liability incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings.

### 11.3. Insurance premiums

The Company may pay the premium on a contract insuring a person who is or has been an Officer of the Company to the fullest extent permitted by law.

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#### **11.4. Indemnity to employees**

Every employee who is not a Director, Secretary or executive officer of the Company may be indemnified out of the property of the Company against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:
  - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
  - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

### **12. Board meetings**

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#### **12.1. Convening**

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

#### **12.2. Notice**

The convenor of each Board meeting must give reasonable notice of the meeting, using any technology (and, if it is adjourned, on its resumption) individually to each Director and each alternate in respect of whom the appointor has given notice requiring notice of Board meetings to be given to that alternate. Failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

#### **12.3. Use of technology is allowed**

A Board meeting may be held using any means by which each Director participating can hear and be heard by each and every other Director participating or in any other way permitted by the Act.

#### **12.4. Place of meeting if technology is used**

A Board meeting held solely or partly by use of technology is treated as held at the place agreed by the Directors, provided at least one of the Directors present at the meeting was at that place for the duration of the meeting.

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#### 12.5. **Appointment of chair**

The Directors must elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairperson or the chairperson is not present at the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

#### 12.6. **Quorum**

Unless the Board decides otherwise, the quorum for a Board meeting is 2 Directors, or one Director if the Company has only one Director. An alternate who is also a Director or a person who is an alternate for more than 1 appointor may only be counted once toward a quorum.

#### 12.7. **Majority decisions**

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.

#### 12.8. **Chairperson has casting vote**

The chairperson has a casting vote if necessary in addition to any vote they have in their capacity as a Director except where only 2 Directors are present and entitled to vote.

#### 12.9. **Board determines procedures**

The Board may meet together, adjourn and regulate its meetings as it decides.

#### 12.10. **Circular resolutions**

The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on a resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs. Directors may sign separate documents if the wording of the resolution and statement is identical in each copy. A telex, telegram, fax or email message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

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#### **12.11. Effect of irregularities**

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

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

#### **12.12. Single director company**

If the Company is a single director company a Director may pass a resolution by recording it and signing the record.

#### **12.13. Proceedings of committees**

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Board must be governed by the provisions of this Constitution in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Board.

### **13. Meetings of members**

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#### **13.1. Calling meetings**

A Director may at any time and the Board must when required by the Act or by order made under the Act call a meeting of members.

#### **13.2. Notice of meeting**

Subject to **rules 13.3** and **13.6**, at least 21 days' written notice of a meeting of members must be given in accordance with the Act to each member, to each Director and to the auditor (if any).

#### **13.3. Short notice**

Subject to the Act, the Company may call on short notice:

- (a) an annual general meeting, if all the members entitled to attend and vote agree beforehand; and
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- (b) any other general meeting if members with at least 95% of the votes that may be cast at the meeting agree beforehand.

#### **13.4. Postponement or cancellation**

Subject to the Act, the Board may postpone or cancel a meeting of members by written notice given individually to each person entitled to be given notice of the meeting. If a meeting is adjourned for one month or more, the Company must give new notice of the resumed meeting.

#### **13.5. Notice to the auditor**

The Company must give its auditor:

- (a) notice of a general meeting in the same way that a member is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a member is entitled to receive.

#### **13.6. Notice to joint holders of shares**

If a share is held jointly, the Company need only give notice of a meeting of members to the joint holder named first in the register of members.

#### **13.7. Use of technology**

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

#### **13.8. Accidental failure to give notice**

An accidental omission to give notice of a general meeting or the postponement of a general meeting to any person entitled to receive that notice or the non-receipt of notice by any person entitled to receive that notice does not invalidate the proceedings or any resolutions passed at the general meeting.

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### 13.9. **Class meetings**

**Rules 13 to 20** inclusive apply to a separate meeting of a class of members as far as they are capable of application and modified as necessary.

### 13.10. **Representatives of corporations**

Any corporation which is a member of the Company may authorise an individual to act as its representative at any meeting of the Company. The person so authorised may exercise the same powers on behalf of the corporation which he represents as that corporation could exercise if it were an individual member of the Company.

### 13.11. **Quorum**

No business will be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business. The presence of 2 members entitled to attend and vote will constitute a quorum, unless there is only one member of the Company in which case that member will constitute a quorum.

For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a member, will be deemed to be a member.

## 14. **Conduct of general meetings**

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- 14.1. The general conduct of each general meeting of the Company and the procedures to be adopted at the meeting will be determined by the chairperson, including the procedure for the conduct of the election of Directors.
  - 14.2. If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question and no vote may be taken by the members on any such determination by the chairperson.
  - 14.3. A Director (and an alternate Director when acting as a Director) is entitled to speak at every general meeting.
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#### **14.4. Quorum not present**

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

- (a) if the meeting was convened by or on the requisition of members, it is automatically dissolved; or
- (b) in any other case:
  - (i) it will stand adjourned to the same time and place 7 days after the meeting, or to another day, time and place determined by the Directors; and
  - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is dissolved.

#### **14.5. Quorum at adjourned general meetings**

If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### **14.6. Unpaid calls**

If a call on a share is due and unpaid, the holding of that share does not entitle a member to be present, speak, or vote at, or be counted in the quorum for, a meeting of members.

### **15. Appointment of chair of meetings of members**

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- 15.1. If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members.
  - 15.2. The Directors present at a general meeting must elect a Director to be the chairperson of the meeting if:
    - (a) a Director has not been elected as chair of the Board's meetings; or
    - (b) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or he is unwilling to act.
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- 15.3. The Voting Members present at a general meeting must elect a member to be the chairperson of the meeting if:
- (a) there are no Directors present within 15 minutes after the time appointed for the holding of the meeting; or
  - (b) all Directors present decline to be the chair.

## **16. Adjourned meetings**

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### **16.1. Ability to adjourn**

The chairperson of a meeting at which a quorum is present:

- (a) may, in the chairperson's discretion, adjourn a meeting with the meeting's consent; and
- (b) must adjourn a meeting if the meeting directs the chairperson to do so.

### **16.2. Venue of adjourned meeting**

An adjourned meeting may take place at a different venue from the initial meeting.

### **16.3. Business at adjourned meeting**

The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.

### **16.4. Notice of adjourned meeting**

If a general meeting has been adjourned for more than 42 days, notice of the adjourned meeting must be given to members as if it were an original meeting, but otherwise it is not necessary to give notice of an adjourned meeting or the business of the adjourned meeting.

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## **17. Proxies, attorneys and representatives**

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### **17.1. Ability to appoint**

A member who is entitled to attend and vote at a meeting of members may appoint a person as the member's proxy for the meeting. The appointment may specify that proportion or number of votes that the proxy may exercise.

### **17.2. More than one proxy**

If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of votes each proxy may exercise, each proxy may exercise half of the vote.

### **17.3. Validity of appointment**

An appointment of a proxy is valid if it is signed by the member making the appointment and contains the information required under the Act.

### **17.4. Voting directions**

- (a) A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides:
    - (i) the proxy need not vote on a show of hands but, if a proxy does so, the proxy is not entitled to vote on the resolution except as specified in the instrument;
    - (ii) 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.
  - (b) A proxy appointed to attend and vote for a member has the same rights as the member:
    - (i) to speak at the meeting;
    - (ii) to vote (but only to the extent allowed by the appointment);
    - (iii) join in a demand for a poll.
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#### **17.5. Effectiveness of appointment**

An appointment of a proxy for a meeting of members is not effective unless:

- (a) the proxy's appointment; and
- (b) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority,

is received by the Company at least 48 hours before the meeting.

#### **17.6. Adjourned meeting**

If a meeting of members has been adjourned, any 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.

#### **17.7. Validity of vote of proxy**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes, the appointor:

- (a) dies;
- (b) becomes mentally incapacitated;
- (c) revokes the proxy or power appointment; or
- (d) transfers the share in respect of which the proxy was given.

#### **17.8. Standing appointments**

A member may appoint a proxy, attorney or representative to:

- (a) act at a particular meeting of members; or
- (b) make a standing appointment,

and may revoke any appointment.

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#### **17.9. Suspension of proxy or attorney's powers if member present**

A proxy or attorney has no power to act for a member at a meeting at which the member is present either personally, or by an attorney or, in the case of a body corporate, by a representative.

#### **17.10. Priority of conflicting appointments of attorney or representative**

If more than one attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to **rule 17.10(a)**, an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

#### **17.11. More than 2 current proxy appointments**

The appointment of proxy made first in time is the first to be treated as revoked by the appointment of a subsequent proxy.

### **18. Voting**

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#### **18.1. Number of votes**

Subject to this Constitution, the contents of any proxy, and terms on which shares are issued, a member:

- (a) on a show of hands has one vote; and
- (b) on a poll has one vote for every share held.

The chairperson of a meeting of members does not have a second or casting vote. If an equal number of votes is cast for and against a resolution the matter is decided in the negative.

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#### **18.2. Votes of joint holders**

If a share is jointly held and more than one member votes in respect of the share, only the vote of the member whose name appears first in the register of members counts.

#### **18.3. Objection to right to vote**

A member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairperson, whose decision is final.

#### **18.4. Method of voting**

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairperson's declaration of a decision on a show of hands is final.

#### **18.5. Demand for a poll**

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

- (a) at least 5 members entitled to vote on the resolution; or
- (b) members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chairperson.

#### **18.6. When and how polls must be taken**

A poll demanded on the adjournment of a meeting must be taken immediately. If a poll is demanded on any other resolution, the poll must be taken when and in the manner the chairperson directs.

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## **19. Resolutions without meetings**

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### **19.1. Written resolutions**

The Company may pass a resolution without a general meeting being called or held if all 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. If a share is held jointly, each of the joint members must sign.

### **19.2. Separate copies**

The Company may use separate copies of a document for signing by members if the wording of the resolution and statement is identical in each copy.

### **19.3. Time of resolution**

The resolution is passed when the last member signs.

### **19.4. Signature of resolutions**

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a member in a manner satisfactory to the Board as being signed by that member.

## **20. Secretary**

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### **20.1. Appointment and removal of Secretary**

The Board may appoint one or more individuals to be a Secretary of the Company.

### **20.2. Terms and conditions of office**

A Secretary holds office for the duration and on the terms, including as to remuneration, that the Board from time to time determines.

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## **21. Minutes**

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### **21.1. Minutes must be kept**

The Board must keep minutes in accordance with the Act of:

- (a) proceedings and resolutions of meetings of members;
- (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (c) resolutions passed by members without a meeting;
- (d) resolutions passed by Directors without a meeting; and
- (e) if the Company has only one Director, the making of declarations by the Director.

### **21.2. Minutes as evidence**

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

### **21.3. Inspection of minute books**

Members may access the minute book of meetings of members in accordance with the Act.

## **22. Company seals**

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### **22.1. Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
  - (b) is responsible for the safe custody of the seal (if any) and any duplicate seal.
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## **22.2. Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board in compliance with the Act.

## **22.3. Fixing seals to documents**

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

- (a) if the Company has only one sole Director who is also the sole Secretary, by that person; or
- (b) otherwise, by 2 Directors or one Director and one Secretary; or
- (c) (in either case) by any other signatories or in any other way authorised by the Board.

## **22.4. Witness to seal and validity**

A statement by the witness that the witness is the sole Director and sole Secretary should appear next to that person's signature, if they are witnessing a document in that capacity but the absence of that statement does not affect the validity of the execution of the document.

## **23. Accounts and audit**

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### **23.1. Keeping accounts**

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

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.

### **23.2. Right of access**

A Director has a right of access to financial records of the Company at all reasonable times.

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### 23.3. Financial report

If required by the Act, the Board must cause the Company to prepare a financial report and a Directors' report that comply with the Act and must report to members in accordance with the Act.

### 23.4. Audit

If required by the Act, the Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report.

## 24. Inspection of financial records and books

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Subject to **rule 21.3** and the Act, a member who is not a Director does not have any right to inspect any financial records or books of the Company except as authorised by the Board or by a resolution of members.

## 25. Shares

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### 25.1. Issue at discretion of Board

Subject to the Act and this Constitution, the Directors may issue, allot grant options over, or dispose of shares to persons:

- (a) on such terms and with such rights as they determine;
- (b) at the times they think fit.

### 25.2. Extent of powers

The Directors' power under **rule 25.1** includes the power to:

- (a) grant options over unissued shares;
  - (b) issue and allot shares with any:
    - (i) preferential, deferred or special rights, privileges or conditions; or
    - (ii) restrictions in regard to dividend, voting, return of capital or otherwise;
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- (c) issue and allot preference shares that are liable to, or may be at the option of the Company, be redeemed; and
- (d) issue and allot bonus shares for whose issue no consideration is payable to the Company.

## **26. Share certificates**

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### **26.1. Issue of certificate**

A person whose name is entered as a member in the register of members is entitled without payment to receive a certificate in respect of the share. In respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.

### **26.2. Delivery to joint holders**

Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.

### **26.3. Replacement certificates**

The Company may issue replacement certificates.

## **27. Variation of class rights**

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### **27.1. Power to vary**

The rights attached to any class of shares may, unless their terms of issue state otherwise, be varied:

- (a) with the written consent of the holders of 75% of the shares of the class; or
  - (b) with the sanction of a special resolution passed at a separate meeting of the holders of shares of the class.
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## **27.2. Rules of class meetings**

The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings except that:

- (a) a quorum is 2 persons holding or representing by proxy, attorney or representative, at least one-third of the issued shares of the class or, if there is only one holder of shares in a class, that person; and
- (b) any holder of shares of the class present in person or by proxy, attorney or representative, may demand a poll.

## **28. Calls**

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### **28.1. Directors may make calls**

Subject to the terms on which partly paid shares are issued, the Directors may:

- (a) make calls on the holders of the shares for any money unpaid on them;
- (b) require a call to be paid by instalments; and
- (c) revoke or postpone a call.

A call is made when the resolution of the Directors authorising it is passed.

### **28.2. Notice**

A member to whom notice of a call is given must pay to the Company the amount called in accordance with the notice.

### **28.3. Failure to send notice**

Failure to send notice of a call to any member or the non-receipt of a notice by any member does not invalidate the call.

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#### **28.4. Payment of calls in advance**

The Board may:

- (a) accept from a member some or all of the amount unpaid on a share although no part of that amount has been called up;
- (b) authorise payment by the Company of interest at a rate no higher than the Interest Rate on any amount accepted, until the amount is payable under a call.

#### **28.5. Effect of advance payment on distributions**

The Board may not take into account any amount paid in advance in calculating participation in profit or ascertaining entitlement to surplus on a winding up or other distributions attributable to that share other than payment of interest under **rule 30**.

#### **28.6. Shares with different terms**

The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

#### **28.7. Joint holders**

Joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

#### **28.8. Interest and expenses**

If a call is not paid on or before the due day, the Board may require the member liable for the call to also pay:

- (a) interest on the amount of the call at the Interest Rate from that day until payment is made; and
  - (b) all costs and expenses incurred by the Company because payment was not made on that day.
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## **28.9. Recovery and proof of call**

On the hearing of an action for recovery of a called amount, proof that:

- (a) the name of the person sued was, when the call was made, entered in the register as a holder of the share in respect of which the call was made;
- (b) the minute book of the Company records the resolution making the call; and
- (c) notice of the call was given to the person sued;

is conclusive proof of the debt.

## **28.10. Fixed instalments**

Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date will be treated as a call duly made and payable on the date on which by the terms of issue the sum becomes payable. If the amount is not paid, all the relevant provisions of these rules apply as if the sum had become payable by virtue of a call duly made and notified.

## **29. Company liens**

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### **29.1. Existence of liens**

The Company has a first and paramount lien on each share for all money:

- (a) due and unpaid to the Company at a fixed time, in respect of the share;
- (b) presently payable by a holder or the holder of the share, or the holder's estate, to the Company in respect of the share; or
- (c) which the Company is required by law to pay (and has paid) in respect of the share.

The lien extends to all dividends payable in respect of the share and to proceeds of sale of the share.

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## 29.2. Lien sale

If:

- (a) the Company has a lien on a share;
- (b) an amount secured by the lien is due and payable;
- (c) the Company has given notice to the member registered as the holder of the share demanding payment of the money by a specified date at least 14 days after the date of the notice and specifying a place at which payment of that amount must be made; and
- (d) money is not paid in accordance with the notice given under **rule 29.2(c)**,

the Company may sell the share in any manner determined by the Directors.

## 29.3. Indemnity for payments made by the Company

If the law of any jurisdiction imposes or purports to impose any immediate, future or contingent liability on the Company, or authorises any person to require the Company to make any payment, on account of a member or referable to a share held by that member or a dividend or other amount payable in respect of a share held by that member, the Company:

- (a) must be fully indemnified by the member from that liability;
  - (b) may recover as a debt due from the member the amount of that liability together with interest at the Interest Rate from the date of payment by the Company to the date of repayment by the member;
  - (c) has a lien on the shares and dividends and other moneys payable in respect of the shares, whether the shares are held by the member solely or jointly with another person, in respect of any payment made or liability incurred by the Company, together with reasonable interest on any payment made by the Company at a rate to be fixed by the Directors not exceeding 15% per annum from the date of payment by the Company to the date of repayment by the member;
  - (d) may set off amounts so paid by the Company against amounts payable by the Company to the member as dividends or otherwise; and
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- (e) may refuse to register a transfer of any share by that member until the debt has been paid to the Company.

### **30. Forfeiture notice**

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#### **30.1. Notice of call not paid**

The Directors may at any time after a call or instalment becomes payable and remains unpaid by a member, serve a notice on the member requiring the member to pay:

- (a) the unpaid amount;
- (b) any interest that has accrued; and
- (c) all expenses incurred by the Company as a consequence of the non-payment.

#### **30.2. Contents of notice**

The notice under **rule 30.1** must:

- (a) specify a day (not earlier than 14 days after the date of the notice) on or before which the payment required by the notice must be made; and
- (b) state that if a member does not comply with the notice, the shares in respect of which the call was made or instalment is payable will be liable to be forfeited.

### **31. Forfeiture**

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#### **31.1. Ability to forfeit**

If a member does not comply with a notice under **rule 30.1**, the Board may forfeit any or all of the shares in respect of which that notice was given (and all dividends, interest and other money payable in respect of that share and not actually paid before the forfeiture) by resolution of the Directors passed before the called amount is paid.

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### 31.2. **Disposal and reissue of forfeited shares**

On forfeiture, the shares immediately become the property of the Company and the Directors may sell or otherwise dispose of the shares, and execute and register a transfer or it on the terms they think fit.

### 31.3. **Irregularities**

The title of the new holder is not affected by any irregularity or invalidity in the forfeiture, sale or disposal of the share and the sole remedy of any person previously interested in the share is damages which may be recovered only from the Company. The new holder is not liable for any unpaid called amount.

### 31.4. **Notice of forfeiture**

Promptly after a share has been forfeited the Company must:

- (a) give notice of the forfeiture of a share to the member in whose name the share was held immediately before its forfeiture; and
- (b) enter the forfeiture and its date in the register of members.

Omission to give this notice does not invalidate a forfeiture.

### 31.5. **Written declaration**

A written declaration that a share was forfeited on a specified date and notice of forfeiture was given in accordance with this Constitution signed by a Director or Secretary is, in the absence of proof to the contrary, evidence of those facts and of the Company's right to dispose of the share.

### 31.6. **Cancellation of forfeiture**

The Board may cancel the forfeiture of a share on any terms at any time before it disposes of that share under **rule 31.2**.

## 32. **Liability of former member**

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A person who held a share which has been forfeited under **rule 31.1** ceases to be a member in respect of that share but remains liable to pay the called amount until it is paid

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in full. The Board may elect not to enforce payment of an amount due to the Company under this rule.

### 32.1. **Application of proceeds**

The Company must:

- (a) apply the net proceeds of any reissue, sale or disposal of a forfeited share under **rule 31.2** (after payment of all costs and expenses) to satisfy the called amount; and
- (b) pay any surplus to the person who held the share immediately before forfeiture.

### 32.2. **Applicability**

The provisions of these Rules as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, becomes payable at a fixed time as if that sum had been payable by virtue of a call duly made and notified.

### 32.3. **Registration of transfer**

Upon the execution of any transfer, the transferee will be registered as the holder of the share and is not bound to see the application of any money paid as consideration.

## 33. **Declaration or determination of dividends**

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### 33.1. **Declaration**

The Directors may by resolution declare a dividend to be paid to members and may fix the amount, the time for payment and the method of payment.

### 33.2. **Interim dividend**

The Directors may authorise the Company to pay an interim dividend which is payable on the date fixed by the Directors.

### 33.3. **No interest**

The Company must not pay interest on any dividend.

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#### **33.4. Reserves**

The Directors may:

- (a) set aside out of profits such amounts by way of reserves as they think appropriate before declaring a dividend or determining to pay a dividend;
- (b) apply the reserves for any purpose for which profits may be properly applied;
- (c) pending any application of the reserves, invest or use the reserves in the business of the Company or in other investments as they think fit; or
- (d) carry forward any undistributed profits without transferring them to a reserve.

#### **33.5. Dividends to be paid out of profits**

The Company must not pay a dividend except out of profits of the Company. The Company does not incur a debt merely by fixing the amount or time for payment of a dividend. A debt arises only when the time fixed for payment arrives and the decision to pay a dividend may be revoked by the Board at any time before then. A resolution of the Board as to the amount of the Company's profits and the amount of them available for payment of a dividend is conclusive.

#### **33.6. Deductions from dividends**

The Directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to shares in the Company.

### **34. Distribution of dividends**

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- 34.1. Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends will be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
  - 34.2. All dividends will be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid. But, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.
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- 34.3. An amount paid on a share in advance of a call will not be taken as paid for the purposes of rule 34.

## **35. Manner of distribution**

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### **35.1. Cash or assets**

The Board may resolve to pay a dividend in wholly or partly in cash or by distribution of specific assets, including shares or securities of any other corporation. If the Board satisfies a dividend by distribution of assets, the Board may:

- (a) fix the value of all or any part of any asset distributed;
- (b) make cash payments to members on the basis of the fixed value so as to adjust the rights of members; and
- (c) vest any asset in trustees.

### **35.2. Impracticability**

If a distribution of specific assets is in the Director's opinion, impracticable, the Directors may make a cash payment to the member or members on the basis of the fixed value instead of the distribution of specific assets.

### **35.3. Method of payment**

The Company may pay any cash dividend, interest or other money payable in respect of shares by cheque sent, and may distribute assets by sending the certificates or other evidence of title to them, through the mail directed to:

- (a) the address of the member shown in the register or to the address of the joint holder named first in the register; or
- (b) an address which the member or the joint holders have in writing notified the Company as the address to which dividends are to be sent.

### **35.4. Joint holders' receipt**

Any one of the joint holders may give an effective receipt for any or other money paid in relation to that share.

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## **36. Transfer of shares**

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### **36.1. Written instrument**

Subject to **rule 36.3** a member may transfer a share by a written document which:

- (a) shows the jurisdiction of registration of the Company; and
- (b) is executed both by the transferor and the transferee.

### **36.2. Delivery of transfer and certificate**

A document of transfer must be:

- (a) delivered to the registered office of the Company or the address of the register last notified to members by the Company; and
- (b) accompanied by the certificate for the shares to be transferred where a certificate has been issued unless the Board waive production of the certificate on receiving evidence of the loss or destruction of the certificate.

The Directors may require other evidence of the transferor's right to transfer the shares.

### **36.3. Refusal to register transfer**

The Board may, in its absolute discretion, decline to register a transfer of shares. If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within 2 months after the date on which the transfer was delivered to it.

### **36.4. Transferor remains holder until transfer registered**

A transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the register in respect of the share.

## **37. Powers of attorney**

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The Company may assume, as against a member, that a power of attorney granted by that member that is lodged with or produced or exhibited to the Company remains in

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force, and may rely on it, until the Company receives express notice in writing at its registered office of:

- (a) the revocation of the power of attorney; or
- (b) the death, dissolution or insolvency of the member.

## **38. Title on death**

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### **38.1. Legal personal representative**

The legal personal representative of a deceased member who was the sole holder of shares is the only person whom the Company will recognise as having any title to the deceased member's shares.

### **38.2. Joint holders**

If a deceased member was a joint holder of shares, the other joint holder is, or the other joint holders are, the only person or persons whom the Company will recognise as having any title to the deceased member's shares.

### **38.3. Continuation of liability**

The estate of the deceased member will not be released from any liability to the Company in respect of the shares.

### **38.4. Registration of transfers after death**

The Company may register or give effect to a transfer to a transferee who dies before the transfer is registered.

## **39. Transmission**

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### **39.1. Entitlement to transmission**

A person who becomes entitled to a share as a consequence of the death, mental illness or bankruptcy of a member may, subject to **rule 36.3** and to producing to the Company evidence of that person's entitlement which is satisfactory to the Directors, elect to:

- (a) be registered as the holder of the share; or
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- (b) transfer the share to some other person nominated by that person.

#### 39.2. **Obligations of transferee**

If the person who has become entitled to a share:

- (a) elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by him or her; or
- (b) elects to transfer the share, then the person must effect a transfer of the share.

#### 39.3. **General transfer rules apply**

An election to be registered as a holder of a share under **rule 39.2** or a transfer of a share from a member or deceased member under this rule is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the member or deceased member himself or herself.

#### 39.4. **Entitlement to dividends**

A person who:

- (a) has become entitled to a share by operation of law; and
- (b) has produced evidence of that person's entitlement which is satisfactory to the Directors,

is entitled to the dividends and other rights of the registered holder of the share.

### 40. **Share capital**

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#### 40.1. **Capitalisation of profits**

The Company may capitalise profits, reserves or other amounts available for distribution to members. Subject to the terms of issue of shares, members are entitled to participate in a capital distribution in the same proportions in which they are entitled to participate in dividends.

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#### 40.2. **Adjustment of capitalised amounts**

The Board may settle any difficulty that arises in regard to a capitalisation of profits as it thinks appropriate and necessary to adjust the rights of members among themselves which includes:

- (a) fixing the value of specific assets;
- (b) issuing fractional certificates;
- (c) making cash payments to members on the basis of the value fixed or on the basis that fractional entitlements are disregarded so as to adjust the rights of members between themselves; and
- (d) vesting cash or specific assets in trustees.

#### 40.3. **Conversion of shares**

Shares may be converted in accordance with the Act.

#### 40.4. **Reduction of capital**

The Company may reduce its capital in any manner as authorised by the Act.

### 41. **Winding up**

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#### 41.1. **Entitlement of members**

Subject to the terms of issue of shares and this **rule 41**, the surplus assets of the Company remaining after payment of its debts are divisible among the members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

#### 41.2. **Distribution of assets generally**

If the Company is wound up, the liquidator may, with the sanction of a special resolution:

- (a) divide the assets of the Company among the members in kind;
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- (b) for that purpose fix the value of assets and decide how the division is to be carried out as between the members and different classes of members; and
- (c) vest assets of the Company in a trustee on trusts determined by the liquidator for the benefit of contributories.

#### **41.3. No distribution of liabilities**

The liquidator cannot compel a member to accept any shares or other securities in respect of which there is a liability as part of a distribution of assets of the Company.

### **42. Notices**

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#### **42.1. Notices by Company**

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

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

#### **42.2. Overseas members**

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

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#### 42.3. **When given**

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

- (a) if it is delivered personally or sent by fax or electronic message:
  - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day; and
- (b) if it is sent by mail:
  - (i) within Australia - 3 business days after posting; or
  - (ii) to a place outside Australia - 7 business days after posting.

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

#### 42.4. **Notice to joint holders**

Notice to joint holders of shares must be given to the joint member named first in the register. Every person who becomes entitled to a share is bound by every notice in respect of that share that was properly given to a person registered as the holder the share before the transfer or transmission of the share was entered in the register.