

**CORPORATIONS ACT**

**A COMPANY LIMITED BY SHARES**

**CONSTITUTION**

**OF**

**NESS SUPER PTY LTD  
ABN 28 003 156 812**

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**CORPORATIONS ACT**  
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**OF**

**NESS SUPER PTY LTD**  
**ABN 28 003 156 812**

**1. Interpretation**

1.1 In this Constitution unless there is something in the subject or context inconsistent therewith:

"Auditor" or "Auditors" means the auditor or auditors for the time being of the Company;

"Chairperson of Directors" means the chairperson appointed pursuant to Clause 19.8;

"Company" means **NESS Super Pty Ltd ABN 28 003 156 812**;

"Commission" means the Australian Securities and Investments Commission;

"Constitution" includes all alterations of and additions to this Constitution from time to time in force;

"Director" means a person duly appointed as a director from time to time and includes a Nominated Director and an Independent Director;

"the Directors" and "the Board" means the Directors for the time being or such number of them as have authority to act for the Company, acting as a body;

"Employer" means the person or persons who hold the office of employer in relation to the Fund;

"Fund" means **NESS Super**;

"Fund Member" means a person who is for the time being a member of the Fund;

"Governing Rules" means the trust deed or any other document governing the Fund, as amended from time to time;

"Independent Director" means a director appointed by the Nominated Directors pursuant to clause 16.1(a)(6);

"Nominated Director" means a director appointed by the shareholders pursuant to Clause 16.1(a)(4) or (5);

"the office" or "the office of the Company" means its registered office for the time being in the State;

"paid up" includes credited as paid up;

"present" when used of a shareholder in relation to a meeting means present in person, or by representative appointed pursuant to this Constitution or by attorney or by proxy or deemed presence in person under Clause 11.8 and when used of a Director in relation to a meeting means present in person or deemed presence in person under Clause 19.10;

"register" means the register of shareholders kept pursuant to the Corporations Act;

"registered address" of a shareholder means the address of a shareholder stated in the register, or, if the shareholder has given notice in writing to the Company of a changed address, the last address of which the shareholder has given such notice;

"Relevant Law" has the same meaning as in the Governing Rules;

"representative" in relation to a body corporate which is a shareholder of the Company means a representative appointed pursuant to Section 250M of the Corporations Act;

"seal" means the common seal of the Company;

"Secretary" means any person appointed to perform the duties of a secretary;

"shareholder" means a person who for the time being is a member of the Company in accordance with the provisions of the Corporations Act; and

"State" means the State or Territory of Australia in which the registered office of the Company is located.

1.2 In this Constitution unless there is something in the subject or context inconsistent therewith, and subject to Relevant Law:

- (a) expressions referring to writing shall be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all genders;
- (d) words importing natural persons include corporations;
- (e) references to notices in Clause 24 include not only formal notices of meeting but also all documents and other communications from the Company to its shareholders but do not include cheques;
- (f) references to any officer of the Company include any person acting for the time being as such officer; and

(g) references to any statutory enactment, regulation, rule, by-law or other law or a provision thereof (hereinafter collectively called a "law") shall include that law as amended or re-enacted from time to time and any law which replaces the same or has the same effect in whole or in part (whether or not passed or approved by the same legislative body or other authority and whether or not incorporating or adopting any law previously in force) and shall also include any regulation, or any effective and enforceable determination or ruling, made under the authority of such a law.

1.3 An expression used in a particular Part or Division of the Corporations Act that is given by that Part or Division a special meaning for the purposes of that or any other Part or Division has, in any of this Constitution that deals with a matter dealt with by the relevant Part or Division, the same meaning as applies in or in respect of that Part or Division.

1.4 The headings and any index shall not affect the construction of this Constitution.

1.5 The replaceable rules listed in Section 141 of the Corporations Act shall not apply to the Company.

1.6 The Directors may pay out of the moneys of the Company for the time being in their hands all expenses in and about the formation and registration of the Company and the vesting in it of assets acquired by it.

## **2. Proprietary Company Restrictions**

2.1 The right to transfer shares is restricted in the manner set out in Clause 6.

2.2 The Company limits to not more than fifty the number of its shareholders.

2.3 The Company prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the Company.

2.4 The Company prohibits any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the Company for fixed periods or payable at call, whether bearing or not bearing interest.

## **3. Exercise of Powers**

3.1 The Company may by resolution or special resolution as the Corporations Act requires exercise from time to time any power which by the Corporations Act a company limited by shares may exercise if authorised by its Constitution.

## **4. Capital and Shares**

4.1 The capital of the Company is one million dollars (\$1,000,000) divided into one million (1,000,000) shares of one dollar (\$1.00) each comprising five hundred thousand (500,000) "A" shares and five hundred thousand (500,000) "B" shares. The "A" shares and the "B" shares shall carry the respective rights and privileges and shall be subject to the restrictions set out in this Constitution but shall otherwise rank *pari passu* with one another.

- 4.2 Without prejudice to any special rights previously conferred on the holders of existing shares or class of shares but subject to the Corporations Act shares in the Company may be issued by the Directors and any such share may be issued with such preferred, deferred or other special rights, or subject to such restrictions, whether in regard to voting, return of capital or other matters, as the Directors may from time to time determine.
- 4.3 If at any time the capital of the Company is divided into different classes of shares, the rights and privileges attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of not less than three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class. The provisions of this Constitution relating to general meeting shall apply to every such meeting, except that the necessary quorum shall be shareholders present holding or representing three-quarters of the nominal amount of the issued shares of the class and that any shareholder present holding shares of that class may demand a poll.
- 4.4 (a) Except as required by law, the Company shall not recognise a person as holding a share upon any trust.
- (b) The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by this Constitution or by law) any other right in respect of a share except an absolute right of ownership in the registered holder.

## **5. Certificates**

- 5.1 A person whose name is entered as a shareholder in the register is entitled without payment to receive a certificate in respect of the share under the seal of the Company in accordance with the Corporations Act.
- 5.2 If a share certificate is defaced, lost or destroyed it may be renewed on payment of such fee (if any) prescribed pursuant to the Corporations Act, and, subject to the Corporations Act, on such terms (if any) as to evidence and indemnity as the Directors think fit.

## **6. Transfer and Transmission of Shares**

- 6.1 Unless otherwise authorised by law, the instrument of transfer of any share shall be executed by or on behalf of the transferor and the transferee and the transferor shall be deemed to remain the holder of the share until the name of the transferee is entered in the register in respect thereof.
- 6.2 Shares may be transferred in any form which the Directors approve.
- 6.3 The Directors may in their discretion decline to register any transfer of shares.
- 6.4 [Deleted] .
- 6.5 Every instrument of transfer shall be left at the office for registration or at such other place as the Directors shall determine accompanied by the certificate of the shares to be transferred and such other evidence as the Company may require to prove the title of the transferor or his or her right to transfer the

shares and to prove the title of the transferee to be registered as the owner of the shares. No fee shall be charged by the Company for any transfer of shares.

- 6.6 All instruments of transfer which shall be registered shall be retained by the Company but any instrument of transfer which the Directors may decline to register shall except in the case of fraud be returned to the person who deposited it with the Company.
- 6.7 Subject to this Constitution, in case of the death of a shareholder, the legal personal representative of the deceased shall be the only person recognised by the Company as having any title to the shareholder's interest in the shares.
- 6.8 The transfer books and register of shareholders may be closed during such time as the Directors think fit, not exceeding in total thirty days in each year.

## **7. Alteration of Capital**

- 7.1 The Company may from time to time by resolution increase the authorised share capital by the creation of new shares of such amount as the resolution shall prescribe.
- 7.2 Subject to the Corporations Act, the Company may:
- (a) consolidate and divide all or any of its authorised share capital into shares of larger amount than its existing shares;
  - (b) subdivide its shares or any of them into shares of a smaller amount than is fixed by the Memorandum; so however that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
  - (c) cancel shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person and diminish the amount of its share capital by the amount of the shares so cancelled;
  - (d) reduce its share capital, any capital redemption reserve fund or any share premium account created in accordance with the Corporations Act.

## **8. General Meetings**

- 8.1 A general meeting may be convened:
- (a) by the Secretary, with the authority of the Directors; or
  - (b) by 2 or more shareholders holding at least 5% of the issued shares of the Company.

## **9. Notice of General Meetings**

- 9.1 (a) A notice of general meeting shall be given to all shareholders entitled to attend and vote at the meeting and shall specify the place, the day and the hour of meeting and, except as provided by Clause 9.1(b), shall state

the general nature of the business to be transacted at the meeting.

- (b) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of accounts and the reports of the Directors and auditors, the election of Directors in place of those retiring or the appointment and fixing of the remuneration of the auditors.

9.2 Subject to the Corporations Act relating to agreements for shorter notice, meetings of the Company or of classes of shareholders that do not relate to the passing of a special resolution, shall be convened by notice in writing of at least 14 days and meetings that do relate to the passing of a special resolution shall be convened by notice in writing of at least 21 days.

9.3 Subject to the Corporations Act the omission whether by accident or error to give notice of a meeting to, or the non-receipt of notice of a meeting by, any shareholder shall not invalidate the proceedings of any meeting.

## **10. Business of Meeting**

10.1 Anything that under this Constitution or under the Corporations Act may be done by the Company in general meeting may be done either at an annual general or other general meeting provided that due notice is given in accordance with this Constitution.

## **11. Proceedings at General Meetings**

11.1 No business shall be transacted at any general meeting unless a quorum of shareholders who for the time being are entitled to vote is present at the time when the meeting proceeds to business. Save as herein otherwise provided a quorum shall be two shareholders consisting of one shareholder who is the holder of an "A" share and the other a holder of a "B" share present in person or by a representative, attorney or proxy.

11.2 If a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved.

11.3 The Chairperson of Directors shall be entitled to take the chair at every general meeting but if there is no Chairperson of Directors, or if at any meeting that chairperson is not present within fifteen minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the shareholders present and entitled to vote shall elect one of their number to be chairperson of the meeting.

11.4 The chairperson may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but so that:

- (a) when a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting; and
- (b) except as provided in paragraph (a), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.



- 11.5 All business arising at any general meeting shall be determined only by resolution put to the vote of the meeting.
- 11.6 In the case of an equality of votes the chairperson of the meeting shall not be entitled to a second or casting vote.
- 11.7 Subject to the provisions of the Corporations Act any resolution of the Company determined other than at a general meeting and evidenced by writing under the hand of each shareholder of the Company who for the time being is entitled to vote, or of his or her attorney appointed as provided in this Constitution, or the shareholder being a corporation of its representative appointed as provided in this Constitution shall be as valid and effectual as a resolution duly passed at a general meeting of the Company.
- 11.8 Any shareholder may participate in a meeting of the shareholders by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.

## **12. Votes of Shareholders**

- 12.1 Subject to the conditions upon which any shares may be issued or may for the time being be held and subject to Clause 13.3, at any general meeting:
- (a) the holder or holders of the "A" shares present in person or by proxy, representative or attorney shall have that number of votes which equals the number of "A" shares at that time issued; and
  - (b) the holder or holder of the "B" shares present in person or by proxy, representative or attorney shall have that number of votes which equals the number of "B" shares at that time issued.
- 12.2 Votes may be given either personally or by representative appointed pursuant to this Constitution or by attorney or by proxy.
- 12.3 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered. Any such objection shall be referred to the chairperson of the meeting, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

## **13. Proxies**

- 13.1 The instrument appointing a proxy shall be in writing under the hand of the appointor or of his or her attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- 13.2 A proxy may, but need not, be a shareholder.
- 13.3 A shareholder may not appoint more than one proxy.
- 13.4 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as

specified in the instrument.

- 13.5 An instrument appointing a proxy shall be in a form approved by the Directors.
- 13.6 An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a certified photostat copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the office of the Company or at such other place within the State as is specified for that purpose in the notice convening the meeting.
- 13.7 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed), or the transfer or the redemption of the share in respect of which the instrument is given, if no intimation in writing of the death, unsoundness of mind, or transfer or redemption has been received by the Company at the office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

#### **14. Corporations acting by Representatives**

- 14.1 Any body corporate which is a shareholder may by resolution of its directors or other governing body authorise any person (whether a shareholder or not) whom it thinks fit to act as its representative at any meeting of the Company or of any class of shareholders, and, if the corporation thinks fit, to exercise (whether at a meeting or not) the same powers (including the giving of any consent and the signing of any resolution appointment or other document) as the corporation could exercise if it were an individual shareholder and also to exercise all such other powers as are conferred by the instrument of appointment.

#### **15. Attorneys of Shareholders**

- 15.1 Any shareholder may appoint an attorney (who may, but need not, be a shareholder) to act for or on that shareholder's behalf at all meetings of the Company at which that shareholder is not present and to give any consent and sign any appointment or resolution or other document which the shareholder could give or sign.
- 15.2 Any such appointment shall be made by power of attorney duly executed by the shareholder and attested by one or more witness or witnesses, or if the shareholder is a corporation then under its common seal, and the power of attorney shall at least forty-eight hours before the attorney becomes entitled to act thereunder be deposited at the office of the Company accompanied by such evidence of its due execution and non-revocation as the Directors require.

- 15.3 The power of attorney shall be in a form approved by the Directors.
- 15.4 No act done or vote given by attorney shall be rendered invalid by the revocation of the appointment of the attorney by death or otherwise unless and until a duly authenticated notice of such revocation is received at the office of the Company.
- 15.5 The attorney so appointed may during the absence of the shareholder and while the power of attorney remains unrevoked attend at and take part in the proceedings and vote at all meetings of the Company and demand or join in the demand for a poll in the same manner as the shareholder could do if personally present, and may give any consent and sign any appointment or resolution or other document which the shareholder could give or sign.

## **16. Directors**

- 16.1 (a) (1) There shall be two classes of Directors, namely Nominated Directors and Independent Directors.
- (2) The number of Nominated Directors (excluding alternate directors) shall be four or such other number as the Directors may determine from time to time.
- (3) The maximum number of Independent Directors shall be one.
- (4) The shareholder or shareholders holding the majority of the "A" shares shall have the right to appoint 50% of the Nominated Directors of the Company for a period of up to five years and the Nominated Directors so appointed shall be referred to as Nominated Directors appointed by the "A" shareholders.
- (5) The shareholder or shareholders holding the majority of the "B" shares shall have the right to appoint 50% of the Nominated Directors of the Company for a period of up to five years and the Nominated Directors so appointed shall be referred to as Nominated Directors appointed by the "B" shareholders.
- (6) The Nominated Directors may appoint a person as an Independent Director provided that person is not:
- (i) an Employer;
- (ii) an officer or employee of an Employer; or
- (iii) an official of a trade union or any organisation that represents Employers or members.
- (b) (1) Each Nominated Director shall hold office subject to Clause 16.1(f) until he or she dies or resigns or is removed from office by his or her appointor or appointors. Any appointment or removal under this Clause shall be made by notice in writing to the Company served upon the Company personally or by prepaid registered mail addressed to the Company's registered office or by electronic transmission to an e-mail address provided by the Company. For any appointment of a director, written consent to act as a Director is required.

- (2) An Independent Director shall hold office for five years or such other period specified in the resolution of the Nominated Directors appointing the Independent Director. The appointment of the Independent Director takes effect from the date specified in the resolution, or the date the person consents to be an Independent Director, if later. An Independent Director is eligible to be reappointed upon the expiration of his term of office by a resolution of the Nominated Directors.
- (c) The Directors shall be paid such remuneration as is from time to time determined by the Board subject to Relevant Law.
- (d) That remuneration shall be deemed to accrue from day to day.
- (e) The Directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.
- (f) In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or the Relevant Law, the office of a Director becomes vacant if the Director:
- (1) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (2) in the case of a Nominated Director, is removed by the shareholder or shareholders responsible for the appointment of that Director;
  - (3) resigns his or her office by notice in writing to the Company;
  - (4) is absent without the consent of the Directors from meetings of the Directors held during a period of 6 months;
  - (5) if the Director's term of office expires or that Director's appointment to such office otherwise ceases;
  - (6) becomes disqualified from that office by operation of law or that Director becomes a disqualified person as that term is defined in the Relevant Law; or
  - (7) subject to Clause 16.1(g), if, at a meeting of Directors, a resolution is passed where at least two-thirds of the other Directors vote that the Director no longer meets the "fit and proper person" requirements in the Relevant Law.
- (g) If the Secretary is reasonably of the view that a Nominated Director no longer meets the "fit and proper person" requirements in the Relevant Law, the Secretary must notify the shareholder or shareholders responsible for the appointment of that Nominated Director and request that the shareholder or shareholders remove the Director within seven days of that notice. If that Nominated Director is not so removed, then the Secretary may request the Directors to remove that

Director under Clause 16.1(f)(7).

- 16.2 No Director shall be appointed otherwise than as herein provided.
- 16.3 A Director shall not hold any shares in the Company. A Director shall nevertheless be entitled to attend and speak at general meetings.
- 16.4 (a) A Nominated Director shall not be disqualified from that office by being a Fund Member.
- (b) A Director shall not be disqualified from contracting with the Company either as vendor purchaser or otherwise or from being employed by the Company or acting in any capacity professional or other on behalf of the Company.
- (c) No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested shall be avoided or rendered voidable by reason only of such Director holding that office or of the fiduciary relation thereby established.
- (d) No Director so contracting or being so interested shall be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding that office or of the fiduciary relation thereby established.
- 16.5 For the avoidance of any doubt as to the operation of Clause 16.4, but subject to Clause 16.6, a Director:
- (a) being a Fund Member, shall not be disqualified from voting on contracts or arrangements that the Company proposes to enter into which in any way, whether directly or indirectly, relate to the Fund; or
- (b) shall not be disqualified from holding shares in either the Company or the Employer.
- 16.6 A Director is bound by, and must comply with, the Company's conflict of interest policy applicable from time to time.

## **17. Powers and Duties of Directors**

- 17.1 Subject to the Corporations Act and to any other provisions of this Constitution, the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all the powers of the Company that are not by the Corporations Act or by this Constitution required to be exercised by the Company in general meeting.
- 17.2 Without limiting the generality of Clause 17.1 and without prejudice to the other powers conferred by this Constitution it is hereby expressly declared that the Directors shall have the powers necessary to enable the Company to carry out its trusteeship of the Fund in accordance with the Governing Rules and Relevant Law.

## **18. Minutes**

- 18.1 The Directors shall cause minutes to be made of:
- (a) all appointments of Directors and officers;
  - (b) the names of the Directors present at each meeting of the Directors;
  - (c) all orders made by the Directors;
  - (d) all declarations made or notices given by any Director (either generally or specially) of his or her interest in any contract or proposed contract or of his or her holding of any office or property whereby any conflict of duty or interest may arise;
  - (e) all resolutions and proceedings of meetings of shareholders and classes of shareholders and of the Directors; and
  - (f) any other matter required by Relevant Law.
- 18.2 Any such minutes so entered of any meeting of the Directors or of any general meeting of shareholders, or of any class or classes of shareholders, if purporting to be signed by the chairperson of the meeting or of the next succeeding meeting of the same body, shall be receivable as prima facie evidence of the matters stated in the minutes of that meeting of the meeting having been duly held and convened and of the validity of all proceedings and appointments at such meetings.

## **19. Proceedings of Directors**

- 19.1 (a) Except as otherwise provided in this Constitution or in the Governing Rules, the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and manner of dispatching business as they think fit and a meeting at which a quorum is present should be competent to exercise all or any of the powers exercisable by the Directors generally.
- (b) Directors may meet either in person, or by telephone, audio visual link or by any other technology (including in cases one or more of the Directors is outside Australia) which allows each Director who participates to hear each of the other participating Directors addressing the meeting and if a Director so wishes, to address all of the other participating Directors simultaneously.
- 19.2 (a) No business shall be transacted at any meeting of Directors at any time when a quorum of Directors is not present. A quorum shall be two-thirds of the Directors in office for the time being.
- (b) In the event that all of the Directors appointed by the "A" shareholders are not present at the meeting, the Directors so appointed who are present at the meeting shall be entitled to cast (in addition to the vote to which those Directors are otherwise entitled to cast) the vote or votes of the Director or Directors so appointed who are not present at the meeting.
- (c) In the event all of the Directors appointed by the "B" shareholders are not present at a meeting, the Directors so appointed who are present

at the meeting shall be entitled to cast (in addition to the vote to which those Directors are otherwise entitled to cast) the vote or votes of the Director or Directors so appointed who is not present at the meeting.

- 19.3 [Deleted]
- 19.4 All business arising at any meeting of the Directors shall be determined only by resolution and no such resolution shall be effective unless carried by at least a quorum of Directors or such other number or combination of Directors as the Governing Rules or Relevant Law provide is necessary for the conduct of business.
- 19.5 Each Director present at a meeting of Directors shall have one deliberative vote on any question. No Director shall have a second or casting vote in addition to his or her deliberative vote.
- 19.6 A Director may at any time, and the Secretary shall on the requisition of a Director, convene a meeting of the Directors. Unless a quorum of Directors determine that a meeting of Directors shall be held at shorter notice not less than ten days prior written notice of a meeting of Directors shall be given to each of the Directors or other Directors, as the case may be. Notice of meeting of Directors may be given by mail (electronic or otherwise), personal delivery, facsimile transmission or by any other technology agreed by all the Directors to the usual place of business or residence of the Director or to any other address given to the Secretary by the Director.
- 19.7 The continuing Directors (provided that there is a quorum as defined in Clause 19.2) may act notwithstanding any vacancy.
- 19.8 (a) The Directors shall elect one of their number as chairman of their meetings and may determine the period for which he or she is to hold office.
- (b) Where such a meeting is held and:
- (i) a chairman has not been elected as provided by sub-Clause (a); or
- (ii) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act,
- the Directors present shall elect one of their number to be chairman of the meeting.
- 19.9 [Deleted]
- 19.10 Any Director may participate in a meeting of the Directors by means of conference telephone or similar communications equipment (including in cases where one or more of the Directors is outside Australia) whereby all persons participating in the meeting can hear each other and if a Director so wishes, to address all of the other persons participating simultaneously and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.
- 19.11 All acts done by any meeting of the Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was

some defect in the appointment of a person to be a Director, or to act as a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director.

- 19.12 (1) The Board may delegate any of its powers or discretions to a Director, a committee, an employee of the Company or any other person. A delegate of the Board may be authorised to sub-delegate any of the powers or discretions for the time being vested in it.
- (2) In relation to delegations to a Director, the Directors may delegate any power authority or discretion exercisable by the Directors to any one or more of their number (without specifically naming or identifying the Director or Directors concerned) who shall in the exercise of the powers authorities or discretions so delegated comply with such terms and conditions which may be imposed upon any such delegate by the Directors.
- (3) In relation to delegations to a committee, the Board may delegate any of its powers or discretions (including without prejudice to the generality of the foregoing all powers and discretions whose exercise involves or may involve the payment of remuneration to or the conferring of any other benefit on all or any of the Directors) to Committees consisting of Directors or any other person or persons as the Board thinks fit. In the exercise of the powers or discretions delegated, any committee formed or person or persons appointed to the committee must conform to any terms and conditions that may be imposed by the Board.
- 19.13 The Directors may at any time and from time to time by power of attorney appoint any person or persons or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors under this Constitution) and for such period and subject to such conditions as the Directors may from time to time think fit. Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with such attorney as the Directors think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions for the time being so vested.
- 19.14 If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document or have otherwise indicated by telex, facsimile transmission, electronic means or other visible communication bearing the name of the Director signifying the Director's approval of such resolution, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed, or, if the Directors signed the document on different days, on the day on which the document was last signed by a Director, or, if all such documents were by telex, facsimile transmission, electronic means or other visible communication, then a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the last document was received.
- 19.15 For the purposes of Clause 19.14, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document



containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

19.16 A reference in Clause 19.14 to Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

- 19.17 (a) A Director may, with the approval of the other Directors, appoint a person (whether a shareholder of the Company or not) to be an alternate director in his or her place during such period as he or she thinks fit.
- (b) An alternate director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his or her stead.
- (c) An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointor.
- (d) The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired and terminates in any event if the appointor vacates office as a Director.

(e) An appointment, or the termination of an appointment, of an alternate director shall be effected by service on the Company of a notice in writing signed by the Director who makes or made the appointment.

- (g) The appointment of an alternate director shall terminate if any circumstances set out in Clause 16.1(f) apply to that alternate director. The Secretary's powers in relation to Nominated Directors under Clause 16.1(g) shall apply equally to alternate directors.

## **20. Secretary**

20.1 The Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine. The Directors may at any time terminate the appointment of a Secretary.

## **21. The Seal and Execution of Documents**

21.1 The seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors and every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose.

21.2 All documents which of legal necessity need not be under seal and which the Company is capable in law of entering into shall be legally binding on the Company if signed by one of the Directors in accordance with a resolution of Directors made under Clause 19.4.

21.3 Promissory notes, cheques or other negotiable instruments shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be, for or

on behalf of the Company by two of the Directors or in such other manner as the Directors may from time to time determine.

## **22. Inspection of Records**

22.1 The Directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open for the inspection of shareholders other than Directors, and a shareholder other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

## **23. Reserves and Provisions**

23.1 The Directors may set aside out of the profits of the Company such sums as they think proper as reserves or provisions to be applied for such purposes as the profits of the Company may be properly applied.

23.2 Pending such application the Directors may invest any such reserve or provision or may dispose of all or any part of it for the benefit of the Company.

## **24. Notices**

24.1 A notice may be given by the Company to any shareholder:

(a) by serving the notice on that shareholder personally; or

(c) by sending the notice by post to that shareholder at the shareholder's registered address or (if the shareholder has no registered address within the State) the address, if any, within the State supplied to the Company for the giving of notices; or

(d) by sending the notice by electronic transmission to a facsimile number or email address supplied by the shareholder for the giving of notices; or

(e) by giving the notice in any other means authorised in writing by the shareholder

24.2 When a notice is sent:

(a) by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting in the State a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of the posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post;

(b) electronically, the service of the notice shall be deemed to be effective on the date and time the notice was sent.

24.3 If a shareholder has no registered address within the State, a notice addressed to that shareholder and advertised in a morning newspaper published in the capital city of the State shall be deemed to be duly given to that shareholder at noon on the day on which the advertisement appears.

24.4 Notice of every general meeting shall be given in any manner hereinbefore

authorised to:

- (a) every shareholder except those shareholders who (having no registered address within the State) have not supplied to the Company an address within the State for the giving of notices to them;
- (b) the Auditor; and
- (c) every Director of the Company.

## **25. Winding Up**

- 25.1 If the Company is wound up, the liquidator may, with the sanction of a special resolution, vest the whole or any part of any property of the Company in trustees on such trusts as are consistent with a wind up of the Fund under the Governing Rules. No property of the Company shall be divided amongst shareholders except to the extent a shareholder may be a beneficiary under a trust referred to above.

## **26. Indemnity**

- 26.1 Every Director, agent, Auditor, Secretary and other officer for the time being of the Company shall be entitled to be indemnified out of the assets of the Company and as provided in the Governing Rules against all losses or liabilities which may be sustained or incurred in or about the execution of that office or otherwise in relation thereto.
- 26.2 No Director, agent, Auditor, Secretary or other officer for the time being of the Company shall be liable for any loss, damage or misfortune which may happen to or be incurred by the Company in the execution of the duties of office or in relation thereto.
- 26.3 The Employer shall not be personally liable for or in respect of any cost, loss or expense arising out of or in connection with the exercise or failure to exercise its powers pursuant to this Constitution.
- 26.4 Notwithstanding anything aforesaid, this Clause shall have effect only in so far as its provisions are not avoided by the Corporations Act.

## **27. Paramount Provision**

- 27.1 Notwithstanding anything to the contrary expressed or implied in this Constitution the Company, the management, administration and operation thereof (whether internal or otherwise) including without limitation the appointment and powers of Directors, transfer, redemption and transmission of shares (if any), the conduct of business of the Company and the amendment of this Constitution shall at all times comply with the Relevant Law.