

Constitution of WA Local Government Superannuation Plan Pty Ltd

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Corporations Act 2001

Company Limited by Shares

CONSTITUTION

OF

WA LOCAL GOVERNMENT SUPERANNUATION PLAN PTY LTD

INTRODUCTION

1. Replaceable Clauses Excluded

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

2. Definitions and Interpretation

2.1 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it.
- (2) **Appointor** means the Employer Association or Union on whose behalf a Nominee holds shares.
- (3) **APRA** means the Australian Prudential Regulation Authority.
- (4) **Business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office.
- (5) **Company** means WA Local Government Superannuation Plan Pty Ltd ABN 64 066 797 162.
- (6) **Director** means a duly appointed director of the Company and unless the context requires otherwise, includes an Employer Director, a Member Director and an Independent Director.
- (7) **Employee** has the same meaning as in the Trust Deed.
- (8) **Employer** has the same meaning as in the Trust Deed.

- (9) **Employer Association** means an employer association registered under the *Fair Work Act 2009* (Cth) or under the relevant State Industrial Relations Act or equivalent legislation which represents the interests of Employers of Fund Members, or a non-registered body that represents the interests of Employers of Fund Members. The Employer Association will be the Western Australian Local Government Association and the Local Government Professionals Australia (WA).
- (10) **Employer Class Share** means a fully paid share in the capital of the Company with the rights set out in Clause 90.1(1).
- (11) **Employer Director** means a director nominated by the Employer Association.
- (12) **Fund** means WA Local Government Superannuation Plan.
- (13) **Fund Member** means a person admitted to membership of the Fund in accordance with the Trust Deed.
- (14) **Independent Director** means a director of the Company appointed pursuant to clause 9.
- (15) **Member** means a Union.
- (16) **Member Class Share** means a fully paid share in the capital of the Company with the rights set out in Clause 90.1(2).
- (17) **Member Director** means the director nominated by a Union.
- (18) **Non-Affiliated Director** is free from any business or other association that could materially interfere with the exercise of their independent judgement.
- (19) **Nominee** means an individual person holding shares on behalf of an Appointor, as contemplated by Clause 88.1.
- (20) **Nominee Director** means an Employer Director or a Member Director or both, as the context requires.
- (21) **Register** means the register of Shareholders kept by the Company under the Act.
- (22) **Regulator** means APRA or its successor.
- (23) **Seal** means the common seal of the Company and includes any official seal of the Company.
- (24) **Share** means a share in the capital of the Company and includes an Ordinary share, an Employer Class Share and a Member Class Share.

- (25) **Shareholder** means a person whose name has been entered in the Register as a Shareholder of the Company.
- (26) **SIS Act** means the *Superannuation Industry (Supervision) Act 1993*.
- (27) **SIS Regulations** means any regulations made under the SIS Act.
- (28) **Successor Fund Transfer** means the transfer of the Concept One The Industry Superannuation Fund to the WA Local Government Superannuation Plan in accordance with the requirements of regulation 6.29 of the *Superannuation Industry (Supervision) Regulations 1994 (Cth)*.
- (29) **Transfer Date** means the date of the Successor Fund Transfer, as stated in the relevant successor fund transfer deed.
- (30) **Transition Director** means a person appointed as an Independent Director under clause 9.5.
- (31) **Trust Deed** means the trust deed of the WA Local Government Superannuation Plan dated 1st October 2007 (Consolidated) and includes all alterations and variations thereto.
- (32) **Union** means a union registered under the *Fair Work Act 2009 (Cth)* and includes a union registered under a State Industrial Relations Act or equivalent legislation which represents the interests of Fund Members. In this case the Unions will be the Australian Municipal Administration Clerical and Services Union, Western Australian Clerical and Services Branch (the “**ASU**”) and the Western Australian Shire Council, Municipal Road Boards, Health Boards, Parks, Cemeteries and Racecourse, Public Authorities, Water Boards Union (the “**LGRCEU**”).

2.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
 - (a) an expression has in this constitution the same meaning as in the Act; and

- (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) **including** and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

OBJECTS OF COMPANY

3. Special Purpose Company

- 3.1 The Company is formed for the purpose of acting solely as the trustee of a regulated superannuation fund within the meaning of section 19 of the SIS Act. Notwithstanding any provisions of this constitution, no portion or monies shall be paid, transferred or otherwise distributed, directly or indirectly, by way of dividend, bonus or otherwise, to or among the Shareholders.
- 3.2 This constitution will be read and construed on the basis that the provisions of the SIS Act and SIS Regulations are incorporated to the extent that they impose covenants or obligations on the Company to enable the Fund to qualify as a complying superannuation fund. If there is an inconsistency between this constitution and the SIS Act or SIS Regulations, the latter will prevail, provided that no such provision will be incorporated if it would contravene the Act.

PROPRIETARY COMPANY

4. Restrictions

[compare section 113]

- 4.1 The Company must not have more than 50 shareholders.
- 4.2 The Company must not engage in any activity that would require the lodgement of a disclosure document under Chapter 6D of the Act.

APPOINTMENT OF DIRECTORS

5. Number of Directors

[compare section 201A]

- 5.1 The number of the directors must be not less than 4 and, subject to clause 9.5, no more than 8.
- 5.2 The Shareholders must use their best endeavours to ensure that at all times there is an equal number of Employer Directors and Member Directors.
- 5.3 Alternate directors are not to be treated as directors for the purposes of determining the minimum or maximum number of directors under Clause 5.1.

6. Directors' Share Qualifications

- 6.1 A share qualification for directors may be fixed by the Company in general meeting. Unless and until varied an Employer Director and a Member Director is required to hold one share in the Company.

7. Appointment of Directors

[compare section 201A]

- 7.1 Subject to the provisions of clause 7.2 and 9.5, Directors must be appointed as follows:
 - (1) There will be 2 Employer Directors nominated by the Employer Association and each holding three Employer Class Shares unless clause 22.3 applies.
 - (2) There will be 2 Member Directors nominated by the Unions and each holding three Member Class shares unless Clause 22.3 applies.
 - (3) There will be 4 Independent Directors appointed by the Company.
 - (4) Directors will be appointed for a term of up to four (4) years and may be re-appointed in accordance with Clause 7.1(6).
 - (5) If a Nominee Director ceases to be a director for any reason (including the reasons set out in Clause 24), the Appointor who nominated that Nominee Director must immediately nominate another person to be a director in place of the Nominee Director.
 - (6) Subject to the board tenure policy of the Company, at the end of a director's term, the Appointor nominating that director must within

90 days of the end of the term re-nominate that director or nominate another person in his or her place.

- (7) The nomination of a director by an Appointor is made by the Appointor giving a notice in writing to the Company, specifying the person to be nominated. The Appointor must only give such notice if the proposed director has consented in writing to be appointed and has confirmed by statutory declaration that he or she is not a disqualified person for the purpose of the SIS Act. The nomination of the director takes effect at the time of the giving of the notice or at a later date specified in the notice of appointment.
- (8) In the case of an Independent Director , at the end of his or her term, the Company must within 90 days at the end of the term decide to reappoint the director (subject to the board tenure policy of the Company) or subject to clause 9.1 nominate and appoint another candidate.

7.2 Appointment & Selection

- (1) The Directors nominated in accordance with clause 7.1 (1) clause 7.1 (2), and clause 7.1(3) shall be appointed as Directors of the Company if the Company is satisfied that the nominee satisfies the Responsible Person (Fit & Proper) Policy of the Company and is not otherwise disqualified under clause 25.
- (2) .
- (3) .

8. Insufficient Directors

[compare replaceable rule 201H]

- 8.1 In the event of a vacancy or vacancies in the office of a director or offices of directors, the remaining directors may act, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.
- 8.2 If a director has become a disqualified person for the purposes of the SIS Act, then that director must be removed by the other directors immediately (and in any event within 14 days of becoming so aware). A director must then be appointed in accordance with Clause 7.
- 8.3 No person shall be appointed as a director unless the person has consented in writing to the appointment and has confirmed by statutory declaration that he or she is not a disqualified person for the purposes of the SIS Act.

INDEPENDENT DIRECTORS

9. Terms of Appointment

9.1 Subject to clauses 9.2 and 9.5, the Company will appoint four (4) Independent Directors on such conditions and for such term as it resolves.

9.2 A person will only be eligible to be appointed as an Independent Director if and for so long as that person is not:

- (1) a Fund Member;
- (2) an Employer in relation to a member of the superannuation fund to which the Company is the trustee (or an associate of such a member);
- (3) an officer or employee of an Employer or Employer Association (or an associate thereof); or
- (4) an officer or representative of a Union or union association that represents the interests of the members of the Fund;
- (5) a person who does not satisfy the Responsible Person (Fit & Proper) Policy of the Company, or is otherwise disqualified under clause 25;
- (6) in breach of the Non-Affiliated Director provisions.

9.3 Voting

An Independent Director will be entitled to vote in any proceedings of directors but shall not be entitled to exercise a casting vote in addition to any vote which that Independent Director has as a director.

9.4 Removal of Independent Director

- (a) The Company can resolve to remove any Independent Director. The chairperson of that meeting must immediately give notice to the Independent Director that he or she has been removed with effect from the date of the meeting.
- (b) In addition to clause 9(a) above, the Regulator may at any time by giving a notice in writing, remove one or more Independent Directors. If this notice has been given, the Company will immediately remove the named Independent Director(s).

9.5 Transition Directors

- (a) In the event of the Successor Fund Transfer, and subject to the consent of the Regulator, the Directors of the Company will

appoint a further two (2) Independent Directors (**Transition Directors**), from the Transfer Date, so that the number of Independent Directors appointed by the Company will be six (6), provided that:

- (i) each Transition Director may only be appointed for one term of up to four (4) years (**Transition Director Term**), in the capacity as a Transition Director;
 - (ii) no other person may be appointed as a Transition Director during the Transition Director Term;
 - (iii) in the event that a Transition Director is removed, resigns or otherwise vacates office during the Transition Director Term, no person may be appointed to replace that Transition Director for the remainder of the Transition Director Term; and
 - (iv) upon the cessation of the Transition Director Term:
 - (A) a Transition Director will vacate the office of Independent Director;
 - (B) a Transition Director may not be reappointed for any further term as a Transition Director; and
 - (C) the number of Independent Directors must be no greater than four (4).
- (b) The Transition Directors will be subject to the same rules, rights and obligations as apply to Independent Directors, under this Constitution, unless otherwise specified in clause 9.5(a).

ALTERNATE DIRECTORS

[compare replaceable rule 201K]

10. Appointment

- 10.1 An Employer Director may only appoint another Employer Director to act as an alternate director in place of the appointing Employer Director for a meeting or for a specified period.
- 10.2 A Member Director may only appoint another Member Director to act as an alternate director for a meeting or for a specified period.
- 10.3 An Independent Director may only appoint another Independent Director to act as an alternate director for a meeting or for a specified period.
- 10.4 An alternate director is not required to have any share qualification.

- 10.5 An alternate director is not taken into account for the purpose of Clause 5.
- 10.6 Unless otherwise agreed by the directors there can only be one Employer alternate director, one Member alternate director and one Independent alternate director at any one time for each respective director. A director cannot therefore act as alternate for more than one other director.

11. Rights and Powers of Alternate Director

- 11.1 An alternate director is entitled to notice of meetings of the directors and, if the appointing director is not present at a meeting, is entitled to attend and vote in his or her place.
- 11.2 When an alternate director exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.

12. Suspension or Revocation of Appointment

- 12.1 A director may suspend or revoke the appointment of an alternate director appointed by him or her.
- 12.2 The directors may suspend or remove an alternate director by resolution after giving the appointing director reasonable notice of their intention to do so.

13. Form of Appointment, Suspension or Revocation

- 13.1 Every appointment, suspension or revocation under Clause 10 or Clause 12.1 must be in writing and a copy must be given to the Company. The notice may be given by facsimile.

14. Termination of Appointment

- 14.1 The appointment of an alternate director automatically determines:
- (1) if the appointing director ceases to hold office as director;
 - (2) on the happening in respect of the alternate director of any event which causes a director to vacate the office of director; or
 - (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

POWERS OF DIRECTORS

15. Validation of Acts of Directors and Secretaries

[compare section 201M and 204E]

- 15.1 An act done by a director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- 15.2 Clause 15.1 does not deal with the question whether an effective act of a director or secretary:
- (1) binds the Company in its dealings with other people; or
 - (2) makes the Company liable to another person.

16. General Business Management

[compare replaceable rule 198A]

- 16.1 The business of the Company is to be managed by or under the direction of the directors.
- 16.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 16.3 No Clause made or resolution passed by the Company in general meeting can invalidate any prior act of the directors which would have been valid if that Clause or resolution had not been made or passed.

17. Borrowing Powers

- 17.1 Without limiting the generality of Clause 16, but subject to Clause 4, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person. This power does not extend to the underlying trust assets of the Fund.

18. Appointment of Attorney

- 18.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.

18.2 A power of attorney may contain those provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

19. Negotiable Instruments

[compare replaceable rule 198B]

19.1 Any 2 directors or a director and the secretary may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

19.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

20. Delegation

[compare replaceable rule 198D]

20.1 The directors may delegate any of their powers to:

- (1) a committee of directors;
- (2) a director;
- (3) an employee of the Company; or
- (4) any other person.

20.2 The delegate must exercise the powers delegated in accordance with any directions of the directors.

20.3 The exercise of the power by the delegate is as effective as if the directors had exercised it.

20.4 A delegation of powers under clause 20.1 may be:

- (1) for a specified period or without specifying a period; and
- (2) on the terms (including power to further delegate) and subject to such restrictions as the directors decide,

and the directors may revoke, withdraw, alter or vary the delegation of those powers previously made (whether or not the delegation is expressed to be for a specified period).

21. Committee of Directors

- 21.1 The meetings and proceedings of any committee of directors consisting of 2 or more members are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.

REMOVAL AND RESIGNATION OF DIRECTORS

22. Removal of Directors

[compare replaceable rule 203C]

- 22.1 An Appointor entitled to nominate a Nominee Director has the right to remove any Nominee Director nominated by it by instrument in writing, provided that it replaces the removed Nominee Director by nominating another Nominee Director in accordance the Clause 7 by instrument in writing at the same time.
- 22.2 A removal or nomination under Clause 22.1 takes effect on the date the directors have approved the incoming nomination is accordance with the provisions of clause 7.
- 22.3 If a Union or Employer Association removes its Nominee Director or its Nominee Director resigns under Clause 23 and the Union or Employer Association fails to nominate another eligible Nominee Director within 90 days of the removal or resignation then the other Union or Employer Association can nominate an eligible Nominee Director for an interim period as set by the directors.
- 22.4 If neither a Union nor Employer Association nominates an eligible Nominee Director pursuant to Clause 22.3 above, the directors are entitled to appoint a director for an interim period set by the directors.
- 22.5 If a Director ceases to satisfy the Company's Fit and Proper Person Standards Policy, he or she may be removed by a vote of two thirds of the Directors.
- 22.6 An Independent Director can only be removed in accordance with Clause 9.4

23. Resignation of Director

[replaceable rule 203A]

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

24. Vacation of Office of Director

[compare section 203B and Part 2D.6, being sections 206A to 206H]

24.1 In addition to any other circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director:

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (3) is absent from 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
- (4) ceases to be qualified as a director under Clause 7 or Clause 23.5;
- (5) being an executive director, ceases to be employed full-time by the Company or a subsidiary or related body corporate;
- (6) becomes disqualified from being a director under the Act or the SIS Act or any order made under the Act or the SIS Act;
- (7) is removed by resolution in accordance with Clause 22; or
- (8) resigns from office in accordance with Clause 23.

DIRECTORS' INTERESTS

25. Director to Disclose Interests

[compare section 191]

25.1 A director who has a material personal interest or even a potential conflict of interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest.

25.2 The requirements of Clause 25.1 are subject to section 191 of the Act and section 52A of the SIS Act.

25.3 The directors must act in accordance with the Company's conflict of interest policy.

26. Effect of Interest in Contract

[compare replaceable rule 194]

26.1 If a director has a material personal interest or even a potential conflict of interest in a matter that relates to the affairs of the Company and the director discloses the nature and extent of the interest and its relation to the affairs of the Company at a meeting of the directors, then:

the director may not vote on matters that relate to the interest;

27. Standing Notice of Interest

[compare section 192]

27.1 A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.

27.2 A notice under Clause 27.1 may be given:

- (1) at a directors' meeting (either orally or in writing); or
- (2) to the other directors individually in writing.

27.3 If the standing notice is given to the other directors individually in writing:

- (1) the notice is effective when it has been given to every director; and
- (2) the notice must be tabled at the next directors' meeting after it is given.

27.4 The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

28. Other Interests

28.1 Without limiting Clause 25 or Clause 26, a director may to the extent permitted by the Act and the SIS Act:

- (1) Hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director; Extension of meaning of Company

28.2 For the purposes of Clauses 25, 26 and 27, **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

29. Other Directorships and Shareholdings

29.1 Subject to the Company's conflicts of interest policy, a director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and must disclose that interest to the Company but can retain any benefits received as a director, officer, employee or member of the other company.

29.2 Subject to the Act and the SIS Act:

- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that director as a director or other officer of the other company;
- (3) any director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that director as a director or other officer of the other company; and
- (4) a director of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the director to any other office in the other company and a resolution appointing any other directors of the Company as directors or other officers of the other company.

REMUNERATION OF DIRECTORS

[compare replaceable rule 202A]

30. Payment of Remuneration

[compare replaceable rule 202A(1)]

30.1 The directors are to be paid the remuneration that the Company determines by resolution in accordance with its remuneration policy.

31. Payment of Expenses

[compare replaceable Clause 202A(2)]

31.1 The Company may also pay the directors' travelling and other expenses that they properly incur:

- (1) in attending directors' meetings or any meetings of committees of directors;
- (2) in attending any general meetings of the Company; and
- (3) in connection with the Company's business.

32. Information About Directors Remuneration

[compare section 202B]

- 32.1 If required by the Act and the SIS Act, the Company must disclose the remuneration paid to each director paid by the Company (whether paid to the director in his or her capacity as a director or another capacity).

33. Cancellation, Suspension, Reduction or Postponement

- 33.1 The Company may by resolution cancel, suspend, reduce or postpone payment of any remuneration of any director.

SECRETARY

[compare Part 2D.4 being sections 204A to 204G]

34. Secretary

[compare section 204A]

- 34.1 The Company may, but need not, have a secretary.

35. Terms of Office of Secretary

[compare section 204D]

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

INDEMNITY AND INSURANCE

36. Indemnity

[compare section 199A]

- 36.1 To the extent permitted by the Act, the Company indemnifies:
- (1) every person who is or has been an officer of the Company; and
 - (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;

against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be).

36.2 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under Clause 37.2(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for the court order are found by the court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act, in which the Court denies the relief.

Clause 37.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of Clause 37.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

37. Insurance

[compare section 199B]

37.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or of a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or section 183 of the Act.

38. Director Voting on Contract of Indemnity or Insurance

[compare section 191]

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

39. Meaning of Officer

39.1 For the purposes of Clauses 37, 38 and 39, **officer** means a director, secretary, executive officer or a member of a local board or agency appointed by the Company.

INSPECTION OF RECORDS

40. Rights of Inspection

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

40.1 The directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a Shareholder to inspect books of the Company.

40.2 A Shareholder other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its Shareholders and for resolutions of Shareholders passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.

41. Confidential Information

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

DIRECTORS' MEETINGS

[compare sections 248A to 248G]

42. Circulating Resolutions

[compare replaceable rule 248A]

- 42.1 The directors may pass a resolution without a directors' meeting being held if two-thirds of directors entitled to vote on the resolution:
- (1) sign a document containing a statement that they are in favour of the resolution set out in the document (which signature may be electronic);
 - (2) state in an electronic mail message sent by the directors from their respective electronic mail address at which the directors may be given notice, attaching or containing in the body of the electronic mail message the relevant resolution and any other relevant documents, that they are in favour of that resolution; or
 - (3) give their approval of the resolution in such manner as deemed to be acceptable, as prescribed in the applicable policy or procedure from time to time.
- 42.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- 42.3 The resolution is passed when the last director signs, or gives approval of the resolution by electronic mail message as set out in Clause 43.1(2), or in another manner as permitted under Clause 43.1(3).
- 42.4 A facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this Clause 43 must be treated as a document in writing signed by that director.

43. Meetings of Directors

- 43.1 The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they see fit.
- 43.2 The minutes of any meeting of the directors must state the method of meeting and the persons present.

44. Calling Directors' Meetings

[compare replaceable rule 248C]

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

44.2 A secretary may at any time call a meeting of the directors.

45. Notice of Meeting

[compare replaceable rule 248C]

45.1 Reasonable notice of every directors' meeting must be given to each director and alternate director, except that it is not necessary to give notice of a meeting of directors to any director who:

- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left a facsimile number or electronic address at which he or she may be given notice.

45.2 A notice of a meeting of directors may be given in writing or orally, by facsimile, telephone, electronic mail or any other means of communication.

46. Waiver of Notice

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

47. Technology Meeting of Directors

[compare section 248D]

47.1 A directors' meeting may be held using telephone or any other technology consented to by all the directors. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.

47.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

47.3 The following provisions apply to a technology meeting:

- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and

- (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.

47.4 If the secretary is not present at a technology meeting or the Company does not have a secretary 1 of the directors present must take minutes of the meeting.

47.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.

47.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

48. Chairing Directors' Meetings

[compare replaceable rule 248E]

48.1 The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.

48.2 The directors must elect a director present to chair a meeting, or part of it, if:

- (1) a director has not already been elected to chair the meeting; or
- (2) a previously elected chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for the meeting or the part of the meeting.

48.3 The directors may appoint a deputy chair who in the absence of the chair at a meeting of the directors may exercise all the powers and authorities of the chair.

49. Quorum

[compare replaceable rule 248F]

49.1 The quorum for a directors' meeting is not less than two-thirds of all directors. The quorum must be present at all times during the meeting and for all voting purposes.

49.2 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present.

50. Passing of Directors' Resolutions

[compare replaceable rule 248G]

- 50.1 A resolution of the directors must be passed by not less than two-thirds of the total number of directors.
- 50.2 The chair does not have a casting vote in addition to any vote he or she has as a director.
- 50.3 A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

MEETINGS OF SHAREHOLDERS

51. Circulating Resolutions - more than 1 Shareholder

[compare section 249A]

- 51.1 This Clause 52 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 51.2 The Company may pass a resolution without a general meeting being held if all the Shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. If a share is held jointly, each of the joint Shareholders must sign.
- 51.3 Separate copies of a document may be used for signing by Shareholders if the wording of the resolution and statement is identical in each copy.
- 51.4 The resolution is passed when the last Shareholder signs.
- 51.5 If the Company receives by facsimile transmission a copy of a document referred to in this Clause 52 it is entitled to assume that the copy is a true copy.

52. Calling of General Meeting

[compare replaceable rule 249C and section 249D]

- 52.1 A director may call a meeting of the Company's shareholders.
- 52.2 The directors must call and arrange to hold a general meeting on the request of Shareholders holding at least 5% of the votes that may be cast at a general meeting.
- 52.3 So long as the Company remains a proprietary company, no annual general meeting need be held.

53. Amount of Notice of Meeting

[compare section 249H]

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

54. Persons Entitled to Notice of General Meeting

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

54.1 Written notice of a meeting of the Company's Shareholders must be given individually to:

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

54.2 No other person is entitled to receive notice of general meetings.

55. Notice upon Transmission

55.1 A person entitled to a share in consequence of the bankruptcy, insolvency or winding up of a Shareholder is not entitled to notice of meetings until the person has produced all information as to the person's entitlement that the directors properly require.

55.2 A notice may be given by the Company to a person entitled to a share in consequence of the bankruptcy, insolvency or winding up of a Shareholder by serving it on the person personally or by sending it to the person by post addressed to the person by name or by the title of assignee of the insolvent, or by any like description, at the address (if any) in Australia supplied for the purpose by the person or, if an address has not been supplied, at the address to which the notice might have been sent if the insolvency or winding up had not occurred.

56. How Notice is Given

[compare section 249J(3)]

56.1 The Company may give the notice of meeting to a Shareholder:

- (1) personally;
- (2) by sending it by post to the address for the Shareholder in the register of Shareholders or the alternative address (if any) nominated by the Shareholder; or

- (3) by sending it to the facsimile number or electronic address (if any) nominated by the Shareholder.

57. When Notice Is Given

[compare replaceable rule 249J(4)]

- 57.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.
- 57.2 Except as provided by Clause 58.3, a notice of meeting sent by facsimile, or other electronic means, is taken to be given on the business day after it is sent.
- 57.3 Service by facsimile or electronic mail is not effective if:
 - (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
 - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
 - (3) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.

58. Contents of Notice

[compare section 249L]

- 58.1 A notice of a general meeting must:
 - (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
 - (2) state the general nature of the meeting's business;
 - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
 - (4) contain a statement setting out the following information:
 - (a) that the Shareholder has a right to appoint a proxy;
 - (b) that the proxy need not be a Shareholder of the Company; and
 - (c) that a Shareholder who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

59. Constructive Notice

- 59.1 Every person who by operation of law, transfer or any other means becomes entitled to any share is bound by every notice in respect of the share which, before his or her name and address is entered on the register of Shareholders, has been duly given to the person from whom he or she derives title or to any previous holder of the share.

60. Notice of Adjourned Meeting

[replaceable rule 249M]

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

61. Accidental Omission to Give Notice

[compare section 1322(3)]

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

62. Postponement of General Meeting

- 62.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by shareholders as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 62.2 Whenever any meeting is postponed (as distinct from being adjourned under Clause 65.3 or Clause 66.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

63. Technology

[section 249S]

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

64. Quorum

[compare replaceable rule 249T]

- 64.1 The quorum for a meeting of the Company's Shareholders is not less than 75% of all Shareholders and the quorum must be present at all times during the meeting.
- 64.2 In determining whether a quorum is present, individuals attending as proxies or body corporate representatives are counted. However, if a Shareholder has appointed more than 1 proxy or representative, only 1 of them is counted.
- 64.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the Shareholders or upon the requisition of Shareholders, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified - the same day in the next week;
 - (b) if the time is not specified - the same time; and
 - (c) if the place is not specified - the same place.
- 64.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

65. Chair at General Meetings

[compare replaceable rule 249U]

- 65.1 If the directors have appointed 1 of their number as chair of their meetings, the person appointed presides as chair at every general meeting.
- 65.2 Where a general meeting is held and:
- (1) a chair has not been appointed as referred to in Clause 66.1; or
 - (2) the chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Shareholders present must appoint another director or if no director is present or willing to act then the Shareholders present may appoint any 1 of their number to be chair of the meeting.

65.3 The chair must adjourn a meeting of the Company's Shareholders if the Shareholders present with a majority of votes at the meeting agree or direct that the chair must do so.

66. Business at Adjourned Meetings

[replaceable rule 249W(2)]

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

PROXIES AND BODY CORPORATE REPRESENTATIVES

67. Who Can Appoint A Proxy

[compare replaceable rule 249X]

67.1 A Shareholder who is entitled to attend and cast a vote at a meeting of the Company's Shareholders or at a meeting of the holders of a class of shares may appoint a person as the Shareholder's proxy to attend and vote for the Shareholder at the meeting. The proxy need not be a Shareholder.

67.2 The appointment may specify the proportion or number of votes that the proxy may exercise.

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

67.4 Disregard any fractions of votes resulting from the application of Clause 68.2 or Clause 68.3.

68. Rights of Proxies

[compare section 249Y]

68.1 A proxy appointed to attend and vote for a Shareholder has the same rights as the Shareholder:

- (1) to speak at the meeting;
- (2) to vote (but only to the extent allowed by the appointment); and
- (3) to join in a demand for a poll.

68.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

68.3 A proxy's authority to speak and vote for a Shareholder at a meeting is suspended while the Shareholder is present at the meeting.

69. When Proxy Form Must Be Sent to All Shareholders

[section 249Z]

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

70. Appointing a Proxy

[compare section 250A]

- 70.1 An appointment of a proxy is valid if it is signed by the Shareholder making the appointment and contains the following information:
- (1) the Shareholder's name and address;
 - (2) the Company's name;
 - (3) the proxy's name or the name of the office held by the proxy; and
 - (4) the meetings at which the appointment may be used.
- An appointment may be a standing one.
- 70.2 An undated appointment is taken to have been dated on the day it is given to the Company.
- 70.3 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands;

If a proxy is also a Shareholder, this Clause 71.3 does not affect the way that the person can cast any votes the person holds as a Shareholder.

- 70.4 An appointment does not have to be witnessed.

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

71. Form of Proxy Sent Out by Company

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

- (1) enable the Shareholder to specify the manner in which the proxy must vote in respect of a particular resolution; and
- (2) leave a blank for the Shareholder to fill in the name of the person primarily appointed as proxy.

71.2 The form may provide that if the Shareholder leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.

71.3 Despite Clause 72.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

WA LOCAL GOVERNMENT SUPERANNUATION PLAN PTY LTD ABN 64 066 797 162

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

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

Signed on _____ .

* Strike out whichever is not desired.

† To be inserted if desired.

72. Receipt of Proxy Documents

[compare section 250B]

72.1 For an appointment of a proxy for a meeting of the Company's Shareholders to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

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

72.2 If a meeting of the Company's Shareholders has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

72.3 The Company receives an appointment or authority when it is received at any of the following:

- (1) the Company's registered office;
- (2) a facsimile number at the Company's registered office; or
- (3) a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

72.4 An appointment of a proxy is ineffective if:

- (1) the Company receives either or both the appointment or authority at a facsimile number or electronic address; and
- (2) a requirement (if any) in the notice of meeting that:
 - (a) the transmission be verified in a way specified in the notice; or
 - (b) the proxy produce the appointment and authority (if any) at the meeting,

is not complied with.

73. Validity of Proxy Vote

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

73.1 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:

- (1) the appointing Shareholder is in liquidation or wound up;
- (2) the Shareholder revokes the proxy's appointment; or
- (3) the Shareholder transfers the share in respect of which the proxy was given.

74. Body Corporate Representative

[section 250D]

74.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

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

The appointment may be a standing one.

74.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

74.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

74.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

75. Attorney of Shareholder

75.1 An attorney for a Shareholder may do whatever the Shareholder could do personally as a Shareholder, but if the attorney is to vote at a meeting of Shareholders or a class of Shareholders the instrument conferring the power of attorney or a certified copy of the authority must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

VOTING AT MEETINGS OF SHAREHOLDERS

76. How Many Votes a Shareholder Has

[compare replaceable rule 250E]

76.1 Subject to any rights or restrictions attached to any class of shares, at a meeting of Shareholders:

- (1) on a show of hands, each Shareholder has 1 vote; and
- (2) on a poll, each Shareholder has 1 vote for each share the Shareholder holds.

76.2 The vote may be exercised in person or by proxy, body corporate representative or attorney.

76.3 A Shareholder is not entitled to vote at a general meeting in respect of shares on which any calls or other sums presently payable are unpaid.

77. Objections to Right to Vote

[compare replaceable rule 250G]

77.1 A challenge to a right to vote at a meeting of Shareholders:

- (1) may only be made at the meeting; and
- (2) must be determined by the chair, whose decision is final.

77.2 A vote not disallowed following the challenge is valid for all purposes.

78. How Voting Is Carried Out

[compare replaceable rule 250J, section 251A]

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

78.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

79. Matters on which a Poll may be Demanded

[compare section 250K]

79.1 A poll may be demanded on any resolution.

79.2 A demand for a poll may be withdrawn.

80. When a Poll is Effectively Demanded

[compare section 250L]

80.1 At a meeting of the Company's Shareholders, a poll may be demanded by:

- (1) at least 5 Shareholders entitled to vote on the resolution;
- (2) a Shareholder or Shareholders with at least 5% of the votes that may be cast on the resolution on a poll; or
- (3) the chair.

80.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or

- (3) immediately after the voting results on a show of hands are declared.

80.3 The percentage of votes that Shareholders have is to be worked out as at the midnight before the poll is demanded.

81. When and How Polls Must Be Taken

[compare replaceable rule 250M]

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

82. Chair's Casting Vote

[compare replaceable rule 250E(3)]

- 82.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting does not have a casting vote.

83. Voting Rights of Persons Entitled under Transmission Clause

- 83.1 A person entitled under the transmission Clause (Clause 97) to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:
 - (1) 48 hours at least before the time of holding the meeting or adjourned meeting there is lodged at the registered office of the Company documentation of entitlement which satisfies the chair of the meeting or adjourned meeting of the entitlement; or
 - (2) the directors have previously admitted the person's right to vote at the meeting in respect of the shares.

84. Resolutions Proposed by Shareholders

[compare section 249O]

- 84.1 A Shareholder may not at any meeting move any resolution relating to special business unless:

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

84.2 Upon receiving a notice referred to in Clause 85.1(1) the Company must:

- (1) if the notice convening the meeting has already been despatched, immediately notify the Shareholders of the proposed resolution; or
- (2) otherwise include notice of the proposed resolution in the notice convening the meeting.

MEETINGS OF SHAREHOLDERS HOLDING SHARES IN A CLASS

85. Variation of Class Rights

[compare sections 246B and 246C]

85.1 Rights attached to shares in a class of shares may be varied or cancelled only:

- (1) by special resolution of the Company; and
- (2) either:
 - (a) by special resolution passed at a meeting of the Shareholders holding shares in the class; or
 - (b) with the written consent of Shareholders with at least 75% of the votes in the class.

85.2 Clause 86.1 applies whether or not the Company is being wound up.

85.3 The Company must give a notice in writing of the variation or cancellation of shares to Shareholders of the class affected within 7 days after variation or cancellation of the shares.

85.4 The provisions of this constitution relating to general meetings apply so far as they are capable of application and with the necessary changes to every meeting of Shareholders holding shares in a class except that:

- (1) a quorum is constituted by not less than 75% of all Shareholders in the class; and
- (2) any Shareholder who holds or represents shares of the class may demand a poll.

MINUTES

86. Minutes to be Kept

[compare section 251A]

- 86.1 The directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Company's Shareholders;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (3) resolutions passed by Shareholders without a meeting; and
 - (4) resolutions passed by directors without a meeting.
- 86.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 86.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 86.4 If the Company has only 1 director, the director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.
- 86.5 Without limiting Clause 87.1 the directors must record in the minute books:
- (1) all appointments of officers and executive officers;
 - (2) the names of the directors and alternate directors present at all meetings of directors and the Company; and
 - (3) the method by which a meeting of directors was held.

SHARES

87. Nominees

- 87.1 An Appointor may, by notice in writing to the Company, appoint a Nominee to hold shares on its behalf.

88. Control of Issue of Shares

[compare sections 254A and 254B]

88.1 Subject to Clause 89.2 and 89.3 and without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Act and Clause 99, the issue of shares in the Company is under the control of the directors.

88.2 Employer Class Shares may only be issued:

- (1) to the Employer Association (or the Nominee of the Employer Association);

88.3 Member Class Shares may only be issued:

- (1) to a Member (or the Nominee of a Member).

89. Classes of Shares

89.1 The directors may issue shares in any of the following classes:

- (1) Employer Class Shares:

- (a) which confer upon the holders:

- (i) the right to attend and vote at meetings of the Company and on a show of hands to 1 vote and on a poll to 1 vote for each Employer Class Share held.

- (2) Member Class Shares:

- (a) which confer upon the holders:

- (i) the right to attend and vote at meetings of the Company and on a show of hands to 1 vote and on a poll to 1 vote for each Member Class Share held.

TITLE TO AND TRANSFER OF SHARES

90. Entitlement to Share Certificates

[compare sections 1070B and 1070C]

90.1 A person whose name is entered as a Shareholder in the register of Shareholders is entitled without payment to 1 certificate for the shares registered in the Shareholder's name or to several certificates in reasonable denominations.

90.2 A certificate must state:

- (1) the name of the Company and the fact that it is registered under the Act;
- (2) the number of the certificate; and
- (3) the number and class of shares for which the certificate is issued.

91. Replacement of Certificates

[compare section 1070D]

- 91.1 If any certificate or other document of title to shares is worn out or defaced then upon production of the certificate or document to the directors they may order it to be cancelled and issue a new certificate in its place upon the conditions prescribed by the Act.
- 91.2 If any certificate or other document of title to shares is stolen, lost or destroyed then the directors must issue a duplicate of the certificate or document upon the conditions prescribed by the Act.

92. Recognition of Ownership

- 92.1 Except as required by law, the Company is not bound to recognise a person as holding a share upon any trust.
- 92.2 Except as otherwise provided by this constitution or by law, 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 or any other right in any share or unit of a share except an absolute right of ownership in the registered holder.

93. Transfer of Shares

[compare section 1071B]

- 93.1 A Shareholder wishing to transfer Employer Class Shares must not transfer (or purport to transfer) such Employer Class Shares unless the majority of the holders of Employer Class Shares first resolve to approve that transfer, which they must only do if:
 - (1) the proposed transferee is the Nominee of the Employer Association).
- 93.2 A Shareholder wishing to transfer Member Class Shares must not transfer (or purport to transfer) such Member Class Shares unless
 - (1) the proposed transferee is the Nominee of the Union.
- 93.3 Where the approval of the Shareholders has been obtained under Clause 94.1 or Clause 94.2, the Shareholder may transfer all or any of the Shareholder's shares by instrument in writing in any usual or common

form or in any other form that the directors approve, save that the form of the instrument must comply with the requirements specified by the Act.

- 93.4 An Employer or Member Shareholder must transfer its share to the next Nominee of their Appointor at the end of its term as a director or on their removal or resignation as a director. If the Shareholder refuses to transfer their share within 60 days of those events, the directors can resolve to transfer the share to the new Nominee or such other person as they think fit.

94. Registration of Transfers – Shareholder’s Discretion

[compare replaceable rule 1072G]

- 94.1 Despite compliance with the provisions in Clause 94, the directors may in their discretion refuse to register a transfer of shares without assigning any reason for refusal.

95. Registration of Transfers - Procedure

[compare replaceable rule 1072F]

- 95.1 A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the Register in respect of the shares.
- 95.2 Before a transfer of shares is registered:
- (1) the transfer and any share certificate must be lodged at the Company’s registered office or any other place the directors allow;
 - (2) any fee payable on registration of the transfer must be paid; and
 - (3) the directors must be given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- 95.3 The directors may suspend the registration of transfers of shares in the Company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.
- 95.4 The directors may in their discretion dispense with any of the requirements of Clause 96.2.
- 95.5 The instrument of transfer must be executed by or on behalf of both the transferor and the transferee.
- 95.6 All powers of attorney granted by Shareholders which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company are deemed as between the Company and the grantor of the powers to remain in full force and may be acted upon until

express notice in writing of their revocation or of the death of the grantor is lodged at the registered office of the Company.

96. Transmission of Shares

[compare replaceable rules 1072A, 1072B and 1072D and section 1072C]

- 96.1 If a Shareholder who does not own shares jointly is bankrupt, insolvent or is wound up, the Company will recognise only the personal representative of the Shareholder as being entitled to the Shareholder's interest in the shares.
- 96.2 If the person entitled to shares as the personal representative of a Shareholder, (**successor**) gives the directors the information they reasonably require to establish the successor's entitlement to be registered as holder of the shares:
- (1) the successor may, subject to satisfying the eligibility criteria:
 - (a) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the Company, transfer the shares to another person; and
 - (2) the successor, whether or not registered as the holder of the shares, is entitled to the same rights, and is subject to the same liabilities, as if the successor were registered as holder of the shares.
- 96.3 On receiving an election under Clause 97.2(1)(a), the Company must register the successor as the holder of the shares.
- 96.4 A transfer under Clause 97.2(1)(b) is subject to the same Clauses (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

EXECUTION OF DOCUMENTS

97. Common Seal

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

98. Use of Common Seal

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

- 98.1 If the Company has a common seal the directors must provide for its safe custody.

98.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.

98.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by 2 directors or a director and secretary of the Company.

99. Execution of Documents Without Common Seal

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

99.1 The Company may execute a document without using a common seal if the document is signed by 2 directors or a director and secretary of the Company.

100. Execution of Document as a Deed

[section 127(3)]

100.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with Clause 99 or Clause 100.

101. Execution - General

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

101.1 Except if the Company has a sole director who is also the sole company secretary, the same person may not sign in the dual capacities of director and secretary.

101.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.

101.3 Clauses 99 and 100 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

INADVERTENT OMISSIONS

102. Formalities Omitted

[compare section 1322]

102.1 If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is

proved to the satisfaction of the directors that the omission has directly prejudiced any Shareholder financially. The decision of the directors is final and binding on all Shareholders.

WINDING UP

103. Shareholders' Rights on Distribution of Assets

- 103.1 If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the Shareholders in kind the whole or any part of the property of the Company and may for that purpose set the value the liquidator considers fair upon any property to be so divided and may determine how the division is to be carried out as between the Shareholders or different classes of Shareholders.
- 103.2 The liquidator may, with the sanction of a special resolution, vest the whole or any part of the property referred to in Clause 104.1 in trustees upon trusts for the benefit of the contributories that the liquidator sees fit, but so that no Shareholder is compelled to accept any shares or other securities on which there is any liability.