

Dated

2018

**Constitution of
Council of Social Service of New
South Wales**

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Corporations Act 2001

Company limited by guarantee

Constitution of Council of Social Service of New South Wales

Introduction

1. Replaceable rules excluded

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

2. Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **Aboriginal Person** means a person of Aboriginal descent who identifies as Aboriginal and is accepted as such by their community;
- (2) **Aboriginal and Torres Strait Islander Person** means any one of the following:
 - (a) an Aboriginal Person;
 - (b) a Torres Strait Islander Person; or
 - (c) a person of both Aboriginal and Torres Strait Islander ancestry;
- (3) **ACNC** means the Australian Charities and Not-for-Profits Commission;
- (4) **ACNC Act** means the *Australian Charities & Not-for-profits Commission Act 2012* (Cth);
- (5) **Act** means the *Corporations Act 2001* (Cth);
- (6) **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;
- (7) **Company** means Council of Social Service of New South Wales ACN 001 797 137;

- (8) **corporate member** means a member which is a body corporate;
- (9) **COSS network** means the network of Councils of Social Service which operate throughout Australia;
- (10) **current financial member** means a member who:
- (a) has paid the annual subscription due under rule 20 for the current year; or
 - (b) whose annual subscription remains unpaid for a period of less than 2 months and is not suspended from exercising the rights or privileges of membership under rule 21.
- (11) **directors** means the directors for the time being of the Company or the directors assembled as a board;
- (12) **Direct Vote** means the giving of a valid notice by a member of their voting intention pursuant to rule 108;
- (13) **Elected Director** means a director elected to the board by the members of the Company under rule 31;
- (14) **Gift Moneys** means all gifts of money or property (including contributions made in relation to an eligible fundraising event) made to the Company;
- (15) **Government Entity** has the same meaning as given under the *Charities Act 2013* (Cth);
- (16) **ITAA** means the *Income Tax Assessment Act 1997* (Cth);
- (17) **nominated representative** means the person appointed by a corporate member to represent it in the Company. Subject to a corporate member giving notice to the Company of its nominated representative, the following officers of a corporate member will be deemed the nominated representative, in the following order of priority:
- (a) president or chair;
 - (b) company secretary;
 - (c) chief executive officer or equivalent;
- (18) **secretary** means the secretary referred to in rule 68 and any other person appointed to perform the duties of a secretary of the Company;
- (19) **special resolution** means a resolution:
- (a) of which notice required under section 249L(1)(c) of the Act has been given; and
 - (b) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; and

- (20) **Torres Strait Islander** means a person of Torres Strait Islander descent who identifies as a Torres Strait Islander and is accepted as such by their community.

2.2 Interpretation

- (1) Reference to:
- (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (i) that Statutory Provision as amended or re-enacted;
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision; and
 - (iii) another regulation or other statutory instrument made or issued under that Statutory Provision;
- (2) Except so far as the contrary intention appears in this constitution:
- (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

3. Objects

3.1 The Company is established to be a charity whose purposes are to:

- (1) advance social or public welfare; and
- (2) other purposes beneficial to the general public;

by undertaking activities which include:

- (3) contributing to the relief of poverty, sickness and other misfortune and to the promotion of the wellbeing of individuals, groups and communities who are disadvantaged and vulnerable either socially, physically, intellectually, economically or emotionally (**Social Welfare**);

- (4) developing informed public opinion on matters relating to Social Welfare and promoting participation in Social Welfare;
- (5) advocating for all residents of New South Wales to have access to services and resources which mitigate the impacts of poverty on their lives and future;
- (6) working towards the elimination of poverty in New South Wales by influencing social and economic policy through partnerships, research, education and strategy;
- (7) working directly with individuals and communities who are disadvantaged or vulnerable to identify challenges faced by them in order to understand the relief and assistance they require and collaborating with communities, service providers, government and the private sector to work towards providing relief to those in need and promoting Social Welfare;
- (8) carrying out programs designed to contribute to the elimination of poverty and the promotion of Social Welfare;
- (9) representing the non-government sector to the Government, businesses, philanthropic networks and the public to ensure strong, diverse and effective organisations are accessible in local communities across New South Wales;
- (10) representing the views and needs of disadvantaged and vulnerable individuals and groups to all levels of the government and non-government sector, the media and the general public in relation to social policies, community services planning and service delivery issues; and
- (11) working in partnership with the COSS network across Australia to address social disadvantage, promote Social Welfare and to present non-government organisations to State and Federal Governments in the creation of Social Welfare public policy.

3.2 The Company must pursue charitable purposes only and must apply its income in promoting those purposes.

4. Powers

[compare section 124]

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

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

5. Application of income and property

[compare sections 125 and 150]

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

6. No distribution to members

[compare section 150]

6.1 Subject to rules 6.2 and 136.2, no portion of the income or property of the Company may be paid directly or indirectly, to the members of the Company.

6.2 Rule 6.1 does not prevent:

- (1) the payment in good faith of remuneration to any officer, employee or member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
- (2) the payment of interest at a rate not exceeding 12% per annum on money borrowed from any member of the Company;
- (3) the payment of reasonable and proper rent by the Company to a member of the Company for premises leased by the member to the Company; or
- (4) the reimbursement of expenses incurred by any member on behalf of the Company.

7. Limited liability

7.1 The liability of the members is limited.

8. Guarantee

[compare section 117]

8.1 Every member of the Company undertakes to contribute an amount not exceeding \$10 to the property of the Company in the event of its being wound up while the member is a member or within 1 year after the member ceases to be a member, if required for payment:

- (1) of the debts and liabilities of the Company (contracted before the member ceases to be a member);
- (2) of the costs, charges and expenses of winding up; and
- (3) for the adjustment of the rights of the contributories among themselves.

9. Gift fund

9.1 The Company, if endorsed as a deductible gift recipient in its own right, will ensure that it is carried on for the purposes in respect of which the Company is so endorsed or approved and may maintain for that purpose a fund (**Gift Fund**):

- (1) to which all gifts of money or property for those purposes are made;
- (2) to which contributions are made in relation to an eligible fundraising event held for the principal purposes of the Company;
- (3) to which all money received by the Company because of the gifts is credited; and

(4) which does not receive any other money or property.

9.2 The Company must use the Gift Fund (if applicable) only for its objects set out in rule 3.

Membership

10. Number of members

10.1 The number of members for which the Company proposes to be registered is unlimited.

11. Categories of membership

11.1 The categories of membership are:

- (1) ordinary members; and
- (2) associate members.

11.2 Additional categories of members, if recommended by the directors, may be created from time to time by the members in general meeting.

12. Application for ordinary membership

12.1 Any individual who:

- (1) is not less than 18 years of age at the date of application; and
- (2) is sympathetic to the purpose of the Company set out in rule 3.1;

may apply for ordinary membership of the Company.

12.2 Any body, whether incorporated or unincorporated, which:

- (1) is not-for-profit;
- (2) is not a Government Entity;
- (3) operates in New South Wales; and
- (4) delivers human services, or is involved in community development, policy or advocacy;

may apply for ordinary membership of the Company.

13. Application for associate membership

13.1 Any body, whether incorporated or unincorporated, which:

- (1) is sympathetic to the Company's purpose in rule 3.1; and
- (2) is not eligible for ordinary membership;

may apply for associate membership of the Company.

13.2 Despite anything in this constitution to the contrary, an associate member:

- (1) has the right to receive notices of and to attend and be heard at any general meeting; but
- (2) has no right to vote at any general meeting.

14. Form of application

14.1 An application for membership must be:

- (1) in writing in a form approved by the directors, including an electronic form accessible and submitted via a website; and
- (2) accompanied by any other documents or evidence as to qualification for the type of membership applied for which the directors require.

14.2 An application form must be accompanied by:

- (1) an application fee, if any, determined in accordance with rule 19.1; and
- (2) the annual subscription, determined in accordance with rule 20.

15. Admission to membership

15.1 The directors must consider an application for membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.

15.2 If an application for membership is made in respect of an unincorporated association then the nominated representative for that association must be recorded as the member in respect of the unincorporated association and, notwithstanding any other provision in this constitution, is the only person to be recognised by the Company as member.

15.3 The directors need give no reason for the rejection of an application.

15.4 If an application for membership is rejected the application fee, if any, and the annual subscription must be refunded to the applicant.

15.5 If an applicant is accepted for membership:

- (1) the secretary must notify the applicant of admission in the form of a receipt for the application fee, if any, and annual subscription or in any other form the directors determine; and
- (2) the name and details of the member must be entered in the register of members.

16. Notification by members

- 16.1 Each member must promptly notify the secretary in writing of any change in their qualification to be a member of the Company.
- 16.2 Each corporate member must promptly notify the secretary in writing of any change in its nominated representative.

17. Register of members

[compare sections 168 and 169]

- 17.1 A register of members of the Company must be kept in accordance with the Act.
- 17.2 The following must be entered in the register of members in respect of each member:
- (1) the full name of the member;
 - (2) the address and electronic mail address, if any, of the member;
 - (3) the category of membership;
 - (4) the date of admission to and cessation of membership;
 - (5) the date of last payment of the member's annual subscription;
 - (6) in the case of a corporate member, the full name and electronic mail address, if any, of its nominated representative; and
 - (7) such other information as the directors require.
- 17.3 Each member and nominated representative must notify the secretary in writing of any change in that person's name, address or electronic mail address within 1 month after the change.

18. Nominated representative

- 18.1 For the avoidance of any doubt, only one person may act as the nominated representative at any time.

Application fee and annual subscription

19. Application fee

- 19.1 The application fee payable by each applicant for membership is the sum the directors determine for each category of membership.

20. Annual subscription

- 20.1 The annual subscription payable by a member of the Company is the sum the directors determine and the Company approves in general meeting by ordinary resolution.
- 20.2 Annual subscriptions are due and payable by members on the anniversary of each member becoming a member of the Company.

21. Unpaid annual subscriptions

- 21.1 If:
- (1) the annual subscription of a member remains unpaid for 2 months after it becomes payable; and
 - (2) a notice of default is given to the member following a resolution of the directors to do this;

the member ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the directors see fit.

Cessation of membership

22. Resignation

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

23. Failure to pay

- 23.1 If a member has not paid all arrears of annual subscriptions under rule 20 or, if paid, the member's rights and privileges are not reinstated:
- (1) the member remains liable for all the obligations and liabilities of membership until the expiration of 6 months after the date of notification under rule 21.1(2); and
 - (2) the member ceases to be a member and member's name must be removed from the register of members at the expiration of the 6 month period.

24. Cessation of membership

- 24.1 A member who is an individual ceases to be a member:
- (1) on the death of the member; or

(2) if the member is expelled under rule 25.

24.2 A corporate member ceases to be a member:

(1) if it is wound up or is otherwise dissolved or deregistered; or

(2) if it is expelled under rule 25.

25. Disciplining members

25.1 If any member:

(1) wilfully refuses or neglects to comply with the provisions of this constitution; or

(2) is guilty of any conduct which, in the opinion of the directors, is unbecoming of a member or prejudicial to the interest of the Company;

the directors may resolve to censure, fine, suspend or expel the member from the Company and, in the case of expulsion, to remove the member's name from the register of members.

25.2 In exercising their powers under rule 25.1 the directors must not fine a member an amount exceeding the annual subscription of an ordinary member, being an individual (whether or not the member is an individual or a body corporate, or is liable to pay an annual subscription).

25.3 At least 1 week before the meeting of the directors at which a resolution of the nature referred to in rule 25.1 is passed the directors must give to the member notice of:

(1) the meeting;

(2) what is alleged against the member; and

(3) the intended resolution.

25.4 At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing any explanation or defence the member sees fit.

25.5 After considering any explanation given by the member pursuant to rule 25.4, the directors may:

(1) take no further action;

(2) warn the member;

(3) suspend the member's rights as a member for a period of no more than 12 months;

(4) expel the member;

(5) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this rule 25); or

- (6) require the matter to be determined by a majority of members at a general meeting.

25.6 The secretary must give written notice to the member of the decision under rule 25.5 as soon as possible.

26. Effect of cessation of membership

26.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Company for any money which, at the time of the member ceasing to be a member, the member owes to the Company on any account and for any sum not exceeding \$10 for which the member is liable under rule 8 of this constitution.

27. Dispute resolution

27.1 The dispute resolution procedure in this rule applies to disputes or disagreements under this constitution between a member or director and:

- (1) one or more members;
- (2) one or more directors; or
- (3) the Company.

27.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under rule 25 until the disciplinary procedure is completed.

27.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.

27.4 If those involved in the dispute do not resolve it under rule 27.3, they must within 10 days:

- (1) tell the directors about the dispute in writing;
- (2) agree or request that a mediator be appointed; and
- (3) attempt in good faith to settle the dispute by mediation.

27.5 The mediator must:

- (1) be chosen by agreement of those involved; or
- (2) where those involved do not agree:
 - (a) for disputes between members, a person chosen by the directors; or
 - (b) for other disputes, a person chosen by either the Commissioner of the ACNC or the President or Vice President of the Law Society of New South Wales.

27.6 A mediator chosen by the directors under rule 27.5(2)(a):

- (1) may be a member or former member of the Company;
- (2) must not have a personal interest in the dispute; and
- (3) must not be biased towards or against anyone involved in the dispute.

27.7 When conducting the mediation, the mediator must:

- (5) allow those involved a reasonable chance to be heard;
- (6) allow those involved a reasonable chance to review any written statements;
- (7) ensure that those involved are given natural justice; and
- (8) not make a decision on the dispute.

Appointment of directors

28. Number of directors

[compare section 201A]

- 28.1 Subject to rule 28.2, the number of the directors must be not less than 3 nor more than 12.
- 28.2 The Company in general meeting may by resolution increase or reduce the number of directors referred to in rule 28.1 but the number may not be reduced below 3.
- 28.3 The directors will comprise:
- (1) Elected Directors; and
 - (2) up to 8 Board Appointed Directors.

29. Directors' qualifications

- 29.1 No person may be a director unless that person:
- (1) is an ordinary member of the Company or is the nominated representative of a corporate ordinary member;
 - (2) is not an employee of the Company; and
 - (3) is not precluded from being a director under the Act or a responsible entity under the ACNC Act.
- 29.2 In addition, subject to rule 38, at least 1 director must be an Aboriginal and Torres Strait Islander Person. If an Aboriginal and Torres Strait Islander Person is not elected to the board under the following provisions of this constitution, then the directors for the time being must appoint an appropriately qualified person to the board to ensure that there is an Aboriginal and Torres Strait Islander Person on the board at all times even if the effect of such appointment is to increase the number of the board members to 13. Any such appointment to the board will be deemed as an

appointment to fill a casual vacancy to the intent that the provisions of rule 40 will apply to that director.

- 29.3 For the avoidance of doubt, the requirements of rule 28.2 will have been met if an Aboriginal and Torres Strait Islander Person is a member of the board, whether in the capacity of an office bearer or otherwise.

30. Appointment of Board Appointed Directors

30.1 Subject to:

- (1) the number of directors who have been elected by the members (having regard to rule 28); and
- (2) rule 30.3;

the directors may appoint up to 8 people qualified to be a director.

- 30.2 Any person appointed pursuant to this rule will be deemed to have been appointed to fill a casual vacancy under rule 40.1 (**Board Appointed Directors**).
- 30.3 Despite rule 29.1(1), a Board Appointed Director need not be an ordinary member of the Company nor a nominated representative of a corporate ordinary member.

31. Election of Elected Directors

[compare section 201E and replaceable rule 201G]

- 31.1 At each annual general meeting of the Company 1/3 of the Elected Directors for the time being or, if their number is not 3 or a multiple of 3, then the number nearest to but not exceeding 1/3, retire from office but no Elected Director may retain office for more than 3 years without submitting himself or herself for re-election even though the submission results in more than 1/3 of the directors retiring from office.
- 31.2 The Elected Director or Elected Directors to retire at an annual general meeting are those who have been longest in office since their election. For the purposes of determining the Elected Director or Elected Directors to retire, regard must be had to the length of prior service given by each Elected Director in their capacity as a Elected Director of the Company prior to the adoption of this constitution.
- 31.3 As between or among 2 or more Elected Directors who became directors on the same day, the Elected Director or Elected Directors to retire are determined by lot unless they otherwise agree between or among themselves.
- 31.4 A retiring Elected Director is eligible for re-election without the necessity of giving any previous notice of their intention to submit himself or herself for re-election.
- 31.5 Unless it is decided at an annual general meeting to reduce the number of directors in office, the Company at any annual general meeting at which any Elected Director retires may fill the vacated office by re-electing the retiring Elected Director or electing some other qualified person.
- 31.6 If at the annual general meeting the vacated office is not filled, the retiring Elected Director, if willing and not disqualified, must be treated as re-elected unless the board

decide to reduce the number of directors in office or a resolution for the re-election of that Elected Director is put and lost.

31.7 Each of the Elected Directors must be appointed by a separate resolution unless:

- (1) the members present have first passed a resolution that the appointments may be voted on together; and
- (2) no votes were cast against that resolution.

32. Maximum term

32.1 A director who has held office for a continuous period of 9 years or more may only be re-appointed or re-elected by a special resolution of members.

33. Nomination for election

33.1 Each candidate for election as an Elected Director must:

- (1) be proposed by an ordinary member or the nominated representative of an ordinary corporate member; and
- (2) be seconded by another ordinary member or the nominated representative of another ordinary corporate member;

both of which members must be current financial members of the Company at the time of nomination.

33.2 No ordinary member or nominated representative of an ordinary member may propose more than 1 person as a candidate but may second more than 1 nomination.

33.3 A nomination of a candidate for election must:

- (1) be in writing;
- (2) be signed by the candidate; and
- (3) be signed by the proposer and seconder.

33.4 A nomination of a candidate for election must be received at the registered office of the Company not later than 5pm on the day which is 30 days prior to the annual general meeting at which the candidate seeks election.

33.5 A list of the candidates' names in alphabetical order together with the proposers' and seconders' names must be sent to members with the notice of the annual general meeting.

34. Election procedure – directors

34.1 If the number of candidates for election as Elected Directors is equal to or less than the number of vacancies on the board, the chair of the annual general meeting must declare those candidates to be duly elected as directors.

- 34.2 If the number of candidates for election as Elected Directors is greater than the number of vacancies on the board, a ballot must be held for the election of the candidates by way of Direct Vote.
- 34.3 If a ballot is required, the notice of the annual general meeting required to be given under rule 86 must list the names of the candidates for election in alphabetical order.
- 34.4 At each annual general meeting, the election of the Elected Directors will occur by Direct Vote in the manner determined by the directors.
- 34.5 The Direct Votes must be received by the secretary at least 7 days before the annual general meeting.
- 34.6 The candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.
- 34.7 If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair, prior to the declaration of the result of the ballot, in addition to their deliberative vote (if any) is entitled to a casting vote, except that if the chair:
- (1) does not exercise a casting vote; or
 - (2) is one of the candidates who received the same number of votes;
- then the names of the candidates who received the same number of votes must be put to a further ballot immediately.
- 34.8 There is not a vacancy for the purpose of this rule 34 (or rules 40 or 41) because the number of directors is less than the maximum allowed under rule 28.1. There is a vacancy only if the number of directors is less than the number elected at the previous annual general meeting (adjusted for any increase under rule 40.1).

35. Time appointment or retirement takes effect

- 35.1 Directors who are elected at a meeting of members take office immediately after the end of the meeting.
- 35.2 Directors who retire at a meeting of members continue to hold office until the end of the meeting.

36. Office bearers

- 36.1 The office bearers of the Company are:
- (1) the president; and
 - (2) the treasurer.

37. Office bearers election at board meeting

- 37.1 Office bearers are elected by the directors at the first meeting of the directors held after the immediately preceding annual general meeting and hold office until the end of the first meeting of the directors held after the next annual general meeting.
- 37.2 The directors present must appoint one of their number to act as chair of the meeting for the purpose of the election.

38. Eligibility and nomination

- 38.1 Only directors may be office bearers. Any director is eligible for election to any office bearer position.
- 38.2 Each director standing for election as an office bearer must be proposed by another director.
- 38.3 If a director stands for election for more than 1 position as an office bearer separate nominations must be received in respect of each position.
- 38.4 A nomination may be:
- (1) in writing, received by the secretary not less than 24 hours prior to the board meeting at which the election is to take place and signed by the candidate and the proposer; or
 - (2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

39. Election procedure – office bearers

- 39.1 The election of the office bearers is held in the order in which the positions are listed in rule 36.1.
- 39.2 If there is only 1 candidate for election to any office bearer position that person is declared elected to that position.
- 39.3 If there is more than 1 candidate for election to any office bearer position a ballot must be held among the candidates. The candidate receiving the greatest number of votes cast in their favour is declared elected to that position.
- 39.4 In the case of an equality of votes in respect of any position a further ballot must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.
- 39.5 If a director is elected to a position as office bearer, then their nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.
- 39.6 Subject to this rule 39 a ballot is conducted in the manner the directors determine.

Appointment of directors between AGMs

40. Casual vacancies and additional directors

[compare replaceable rules 201G and 201H]

- 40.1 The Company in general meeting may by resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- 40.2 Any director appointed under rule 40.1 holds office until the termination of the next annual general meeting of the Company and is then eligible for re-election.

41. Insufficient directors

[compare replaceable rule 201H]

- 41.1 In the event:
- (1) of a vacancy in the office of a director; or
 - (2) there being no Aboriginal or Torres Strait Islander Person on the board for whatever reason;
- the remaining directors may act.
- 38.2 If the number of the 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.

Powers of directors

42. Validation of acts of directors and secretaries

[compare sections 201M and 204E]

- 42.1 The acts of a director or secretary of the Company are valid despite any defect that may afterwards be discovered in their appointment or qualification.
- 42.2 Where a person whose office as director of the Company is vacated under a provision of the Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

43. General business management

[compare replaceable rule 198A]

- 43.1 The business of the Company is to be managed by or under the direction of the directors.

- 43.2 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.
- 43.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.

44. Delegation

- 44.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company or any other person as they may consider appropriate.
- 44.2 The delegation must be recorded in the Company's minute book.

45. Borrowing powers

- 45.1 Without limiting the generality of rule 43, but subject to rule 6, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

46. Appointment of attorney

- 46.1 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.
- 46.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

47. Financial management

[compare replaceable rule 198B]

- 47.1 The directors must decide on the responsible financial management of the Company including:
- (1) any suitable written delegations of power under rule 51; and
 - (2) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

48. By-laws

- 48.1 The directors may pass a resolution to make, amend, or repeal by-laws to give effect to this constitution and for the internal management of the Company

- 48.2 Members and directors must comply with by-laws as if they were part of this constitution.
- 48.3 A by-law may be set aside by a vote of members at a general meeting.

Chief executive officer

[compare replaceable rule 201J]

49. Power to appoint

- 49.1 The directors may appoint any person, not being a director, to the position of chief executive officer for the period and on the terms (including as to remuneration) the directors see fit.

50. Not a member of the board

- 50.1 The chief executive officer is not a member of the board of the Company but may attend meetings of the directors except where the directors otherwise request.

51. Powers

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

52. Withdrawal of appointment or powers

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

53. Temporary appointments

- 53.1 If a chief executive officer becomes incapable of acting in that capacity the directors may appoint any other person, not being a director, to act temporarily as chief executive officer.

Committees of directors

54. Committees of directors

[compare replaceable rule 198D]

- 54.1 The directors may delegate any of their powers to 1 or more committees of directors which may include also any individual who is not a director.
- 54.2 The directors may delegate any of their powers to a committee of directors.
- 54.3 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.
- 54.4 The meetings and proceedings of any committee consisting of 2 or more people are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.

Removal and resignation of directors

55. Removal of directors

[compare section 203D]

- 55.1 Subject to the Act the Company may by resolution at a general meeting remove a director from office.

56. Resignation of director

[replaceable rule 203A]

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

57. Vacation of office of director

[compare section 206B]

- 57.1 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 their creditors;
 - (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - (3) is not present at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare their seat to be vacant;
 - (4) ceases to be qualified as a director under rule 28.2;
 - (5) becomes disqualified from being a director under the Act or a responsible entity under the ACNC Act or any order made under the Act or the ACNC Act;
 - (6) is removed from office in accordance with rule 55; or

- (7) resigns from office in accordance with rule 56.

Directors' duties and interests

58. Duties of directors

- 58.1 The directors must comply with their duties as directors and with the duties described in Governance Standard 5 of the Regulations made under the ACNC Act which are:
- (1) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
 - (2) to act in good faith and the best interests of the Company and to further the purposes of the Company set out in rule 3;
 - (3) not to misuse their position as a director;
 - (4) not to misuse information they gain in their role as a director;
 - (5) to disclose any perceived or actual material conflicts of interest in the manner set out in rule 60;
 - (6) to ensure that the financial affairs of the Company are managed responsibly; and
 - (7) not to allow the Company to operate while it is insolvent.

59. Prohibition on being present or voting

[compare section 195]

- 59.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:
- (1) must not be counted in a quorum;
 - (2) must not vote on the matter; and
 - (3) must not be present while the matter is being considered at the meeting.
- 59.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors is not prohibited by the Act from being present at the meeting and voting, the director may be present, be counted in the quorum and may be heard but may not vote on the matter.

60. Director to disclose interests

[compare section 191]

- 60.1 A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant

facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Company.

60.2 A director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with their duties or interests as director must declare at a meeting of the directors of the Company or by written notice to the secretary of the Company the fact and the nature, character and extent of the conflict.

60.3 For the purposes of rules 60.1 and 60.2, a director's interest or any conflict must be disregarded if it arises from or relates solely to:

- (1) a guarantee to be given by the director (or by persons including the director or by a body corporate of which the director is a member or officer) in respect of a loan to the Company; or
- (2) the position of the director as a director of a related body corporate.

61. Effect of interest in contract

[compare replaceable rule 194]

61.1 If a director has an interest in a contract or proposed contract with the Company (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the directors, and the director discloses the nature and extent of the interest or duty at a meeting of the directors or by written notice to the secretary of the Company:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
 - (a) the director may retain benefits under the contract even though the director has an interest in the contract;
 - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
 - (c) the director is not disqualified from the office of director.

61.2 For the purposes of rule 61.1, **contract** includes an arrangement, dealing or other transaction.

62. Other interests

62.1 Without limiting rule 60 or rule 61 a director may to the extent permitted by the Act:

- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director;
- (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

63. Extension of meaning of "Company"

63.1 For the purposes of rules 60, 61 and 62, **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.

64. Other directorships and shareholdings

64.1 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 is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

64.2 Subject to the Act:

- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or 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

65. No directors' remuneration

[compare section 150]

65.1 Despite rule 6.2 no director may receive any remuneration for their services in their capacity as a director of the Company.

66. Directors' expenses

66.1 Despite rule 65 the Company may 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.

66.2 The directors must approve all payments the Company makes to its directors.

67. Financial benefit

[compare Chapter 2E - sections 207 and following]

67.1 To the extent, if any, required by the Act, a director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.

Secretary

68. Terms of office of secretary

[compare replaceable rule 204F]

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

Indemnity and insurance

69. Indemnity

[compare section 199A]

69.1 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 their capacity as an officer of the Company or of the related body corporate (as the case may be).

69.2 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 rule 69.2(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 making the order are found by the Court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 69.2(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 rule 69.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

69.3 An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under rule 69.1;
- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

69.4 In rule 69.3 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 69.4(1) or 69.4(2) may be initiated.

70. Insurance

[compare section 199B]

- 70.1 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 a related body corporate except a liability (other than one for legal costs) arising out of:
- (1) conduct involving a wilful breach of duty in relation to the Company; or
 - (2) a contravention of section 182 or 183 of the Act.
- 70.2 In the case of a director, any premium paid under this rule is not remuneration for the purpose of rule 65.

71. Director voting on contract of insurance

[compare section 191(2)(vi)]

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

72. Liability

- 72.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of their office unless it arises through their own negligence, default, breach of duty or breach of trust.

73. Meaning of "officer"

- 73.1 For the purposes of rules 69, 70, 71 and 72, **officer** means a director or secretary.

Inspection of records

74. Rights of inspection

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

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

75. Confidential information

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

Directors' meetings

[compare sections 248A to 248G]

76. Circulating resolutions

[compare replaceable rule 248A]

- 76.1 The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia who has not left an electronic mail address at which he or she may be given notice) sign a document containing a statement that he or she is in favour of the resolution set out in the document.
- 76.2 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.
- 76.3 The resolution is passed when the last director signs.
- 76.4 An email to or received by the Company and purporting to be a scanned copy of an email which has been signed originally by a director (and not by way of electronic signature) for the purpose of this rule 76 must be treated as a document in writing signed by that director.

77. Meetings of directors

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

78. Calling directors' meetings

[compare replaceable rule 248C]

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

79. Notice of meeting

[compare replaceable rule 248C]

79.1 Reasonable notice of every directors' meeting must be given to each 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 an electronic mail address at which he or she may be given notice.

79.2 Any notice of a meeting of directors may be given in writing or orally, and whether by telephone, electronic mail or any other means of communication.

80. Technology meeting of directors

[compare section 248D]

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

80.2 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.

80.3 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 their presence to all the other directors taking part in the meeting.

80.4 If the secretary is not present at a technology meeting 1 of the directors present must take minutes of the meeting.

80.5 A director may not leave a technology meeting by disconnecting their link to the meeting unless that director has previously notified the chair of the meeting.

80.6 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.

81. Chairing directors' meetings

[compare replaceable rule 248E]

81.1 The president is the chair of all meetings of the directors.

81.2 At a meeting of directors if:

- (1) no president has been elected as provided by rule 39; or
- (2) the president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present may elect a director present to chair the meeting.

82. Quorum

[compare replaceable rule 248F]

82.1 The quorum for a directors' meeting is 50 per cent of the directors plus 1 director entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.

83. Passing of directors' resolutions

[compare replaceable rule 248G]

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

83.2 The chair has a casting vote if necessary in addition to any vote he or she has as a director. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

Meetings of members

84. Circulating resolutions

[compare section 249A]

84.1 This rule 84 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.

84.2 The Company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

84.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.

84.4 The resolution is passed when the last member signs.

84.5 If the Company receives by electronic mail a copy of a document referred to in this rule 84 it is entitled to assume that the copy is a true copy.

85. Calling of general meeting

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

- 85.1 A majority of directors may call a general meeting whenever they see fit.
- 85.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.
- 85.3 Except as provided in the Act, no member or members may call a general meeting.

86. Amount of notice of meeting

[compare section 249H]

- 86.1 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.

87. Persons entitled to notice of general meeting

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

- 87.1 Written notice of a meeting of the Company's members must be given individually to:
- (1) each member, whether or not they are entitled to vote at the meeting;
 - (2) each director; and
 - (3) the Company's auditor.
- 87.2 No other person is entitled to receive notice of general meetings.

88. How notice is given

[compare sections 249J(3) and 240J(3A)]

- 88.1 The Company may give the notice of meeting to a member:
- (1) personally;
 - (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
 - (3) by sending it to the electronic address (if any) nominated by the member;
 - (4) by sending it by other electronic means (if any) nominated by the member; or
 - (5) by notifying the member in accordance with rule 88.2.
- 88.2 If the member nominates:
- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
 - (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

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

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

89. When notice is given

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

- 89.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.
- 89.2 Except as provided by rule 89.3, a notice of meeting given to a member under rule 88.1(3) is taken to be given on the Business Day after it is sent.
- 89.3 A notice of meeting given to a member under rule 88.1(3) is not effective if:
- (1) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
 - (2) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- 89.4 A notice of meeting given to a member under rule 88.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.
- 89.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 89 is conclusive evidence of the matter.

90. Period of notice

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

91. Contents of notice

[compare replaceable rule 249L]

- 91.1 A notice of a general meeting must:
- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
 - (2) state the general nature of the meeting's business;
 - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
 - (4) be worded and presented in a clear, concise and effective manner; and

- (5) contain a statement setting out the following information:
 - (d) that the member has a right to appoint a proxy; and
 - (e) that the proxy need not be a member of the Company;
- (9) set out the requirements and method for members voting by a Direct Vote, if any.

92. Notice of adjourned meeting

[replaceable rule 249M]

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

93. Accidental omission to give notice

[compare section 1322(3)]

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

94. Postponement of general meeting

- 94.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 94.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 96.3 or rule 95.3) 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.

95. Technology

[section 249S]

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

96. Quorum

[compare replaceable rule 249T]

- 96.1 The quorum for a meeting of the Company's members is 20 persons entitled to vote and the quorum must be present at all times during the meeting.
- 96.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. If an individual is attending both as a member and as a proxy, attorney or body corporate representative, the individual is counted only once.

- 96.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 96.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

97. Chair at general meetings

[compare replaceable rule 249U]

- 97.1 The president presides as chair at every general meeting.
- 97.2 Where a general meeting is held and:
- (1) no president has been elected as provided in rule 39; or
 - (2) the president is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the members present must appoint another director or if no director is present or willing to act then the members present may appoint any one of their number to be chair of the meeting.
- 97.3 The chair must adjourn a meeting of the Company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

98. Business at adjourned meetings

[replaceable rule 249W(2)]

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

Proxies and body corporate representatives

99. Who can appoint a proxy

[compare mandatory rule 249X]

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

100. Rights of proxies

[compare section 249Y]

100.1 A proxy appointed to attend and vote for a member has the same rights as the member:

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

100.2 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.

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

100.4 A proxy may be revoked at any time by notice in writing to the Company.

101. When proxy form must be sent to all members

[section 249Z]

101.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (1) if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (2) otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

102. Appointing a proxy

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

102.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001* and in rules 102.2 and 102.3) by the member making the appointment and contains the following information:

- (1) the member's name and address;
- (2) the Company's name;
- (3) the proxy's name or the name of the office held by the proxy; and

- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

102.2 An electronically authenticated appointment of a proxy must in addition to rule 106.1:

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

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

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

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

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

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

If a proxy is also a member, this rule 102.5 does not affect the way that the person can cast any votes the person holds as a member.

102.6 An appointment does not have to be witnessed.

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

103. Form of proxy sent out by Company

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

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

- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.

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

103.3 Despite rule 103.1 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:

Council of Social Service of New South Wales

ACN 001 797 137

I/We, _____ of _____, being a member/members of the abovenamed company, appoint _____ of _____ or, in their 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.

104. Receipt of proxy documents

[compare section 250B]

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

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

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

104.3 The Company receives an appointment or authority:

- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a place or electronic mail address specified for the purpose in the notice of meeting; or

- (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with rules 102.2 and 102.3.

104.4 An appointment of a proxy is ineffective if:

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

is not complied with.

105. Validity of proxy vote

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

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

105.2 A vote cast by a proxy is valid although, before the proxy votes:

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

unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

106. Body corporate representative

[section 250D]

106.1 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 members;
- (2) at meetings of creditors or debenture holders;
- (3) relating to resolutions to be passed without meetings; or
- (4) in the capacity of a member's proxy appointed under rule 99.

The appointment may be a standing one.

- 106.2 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.
- 106.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- 106.4 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.

107. Attorney of member

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

Direct Votes

108. Voting directly

- 108.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may cast a Direct Vote prior to the relevant general meeting.

109. Priority of votes

- 109.1 If a member casts a Direct Vote on a particular resolution they are taken to have revoked the authority of their proxy, if any, to vote on their behalf on that resolution.

110. Method of Direct Vote

- 110.1 If the Direct Vote is sent by post or fax, the Direct Vote must be signed by the member or, if the member is a corporate member, by its nominated representative or by a duly authorised officer or attorney.
- 110.2 If the Direct Vote is sent by electronic transmission, the Direct Vote is taken to have been signed if it has been signed or authorised by the member in the manner approved by the directors or specified in the notice of the meeting, such as where voting is effected by telephone or use of PIN identification process or similar.
- 110.3 A Direct Vote includes any form of vote that the directors may prescribe or accept including by any electronic means.

111. Timing of receipt of Direct Vote

111.1 At least 48 hours before the time for holding the relevant general meeting, the adjourned meeting or the poll at which the member proposes to cast a notice of their voting intention, or an earlier time if specified in the notice of the relevant general meeting, adjourned meeting or the poll, there must be received at the registered office or such other place specified for that purpose in the notice of the meeting, or be transmitted to a facsimile number or electronic address specified for that purpose in the notice of meeting:

- (1) notice of the member's voting intention; and
- (2) any authority or power under which the Direct Vote was signed or certified copy of that power or authority.

112. Form of Direct Vote

112.1 A notice of a member's voting intention is valid if:

- (1) it contains the following information:
 - (a) the member's name and address or any applicable identifying notations such as their member number or similar approved by the directors or specified in the notice of the meeting; and
 - (b) the member's voting intention on any or all of the resolutions to go before the meeting;
- (2) complies with any requirement set out in the notice of meeting.

113. Chair's decision

113.1 The Chair's decision as to whether a Direct Vote is valid is conclusive.

114. Attendance by member who has cast a Direct Vote

114.1 A member or the nominated representative of a member who has cast a Direct Vote is entitled to attend the meeting. However, they are not able to vote in respect of the resolutions to go before the meeting on which they have issued their Direct Vote.

Voting at meetings of members

115. How vote may be exercised

115.1 Subject to rules 116 and 117 at any general meeting of members:

- (1) each individual ordinary member present has 1 vote on a show of hands and on a poll; and

- (2) each ordinary corporate member present has 1 vote on a show of hands and 2 votes on a poll.

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

116. Voting disqualification

116.1 A member is not entitled to vote at a general meeting if:

- (1) the annual subscription of the member; or
- (2) in the case of a person who is a nominated representative, the annual subscription of the corporate member for which he or she is the nominated representative;

is more than 2 months' in arrears at the date of the meeting or the postponed or adjourned meeting.

117. Objections to right to vote

[compare replaceable rule 250G]

117.1 A challenge to a right to vote at a meeting of members:

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

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

118. How voting is carried out at a meeting

[compare replaceable rule 250J and section 251A]

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

118.2 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.

118.3 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

119. Matters on which a poll may be demanded

[compare section 250K]

119.1 A poll may be demanded on any resolution.

119.2 A demand for a poll may be withdrawn.

120. When a poll is effectively demanded

[compare section 250L]

120.1 At a meeting of the Company's members, a poll may be demanded by:

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

120.2 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.

121. When and how polls must be taken

[compare replaceable rule 250M]

121.1 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.

121.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

121.3 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.

121.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

122. Chair's casting vote

[compare replaceable rule 250E(3)]

122.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in their capacity as a member or proxy.

122.2 The chair has a discretion both as to use of the casting vote and as to the way in which it is used.

Annual general meeting

[compare section 250N]

123. Business of an annual general meeting

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

123.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (1) the consideration of the annual financial report, directors' report (including a review of the Company's activities) and auditor's report;
- (2) the election of directors;
- (3) the approval of the sum of the annual subscription under rule 20.1;
- (4) the appointment of the auditor; and
- (5) the fixing of the auditor's remuneration.

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

123.2 Before or at the annual general meeting, the directors must give information to the members on the Company's activities and finances during the period since the last annual general meeting.

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

123.4 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.

123.5 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor, or that representative, questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

124. Resolutions proposed by members

[compare sections 249N and 249O]

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

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

Minutes

125. Minutes to be kept

[compare section 251A]

- 125.1 The directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Company's members;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (3) resolutions passed by members without a meeting; and
 - (4) resolutions passed by directors without a meeting.
- 125.2 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.
- 125.3 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.
- 125.4 Without limiting rule 125.1 the directors must record in the minute books:
- (1) all appointments of officers;
 - (2) the names of the directors present at all meetings of directors and the Company;
 - (3) in the case of a technology meeting, the nature of the technology; and
 - (4) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

Accounts, audit and records

126. Accounts

[compare sections 285-297, 314-317]

- 126.1 The directors must cause proper accounting and other records to be kept in accordance with the Act or the ACNC Act as the case may be.
- 126.2 The directors must distribute copies of the statement of profit or loss and other comprehensive income, statement of financial position and statement of cash flows (including every document required by law to be attached to them) as required by the Act or the ACNC Act as the case may be.

127. Audit

[compare sections 301, 327A-331]

- 127.1 A registered company auditor must be appointed if required by the Act or the ACNC Act as the case may be.
- 127.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act or the ACNC Act as the case may be.

Execution of documents

128. Common seal

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

129. Use of common seal

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

- 129.1 If the Company has a common seal the directors must provide for its safe custody.
- 129.2 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.
- 129.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) 2 directors of the Company; or
 - (2) a director and a company secretary of the Company.

130. Execution of documents without common seal

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

- 130.1 The Company may execute a document without using a common seal if the document is signed by:
- (1) 2 directors of the Company; or
 - (2) a director and a company secretary of the Company.

131. Execution of document as a deed

[compare section 127(3)]

- 131.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 129 or rule 130.

132. Execution – general

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

- 132.1 The same person may not sign in the dual capacities of director and secretary.
- 132.2 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 their signature complies with the requirements of this constitution as to execution despite their interest.
- 132.3 Rules 129 and 130 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

Inadvertent omissions

133. Formalities omitted

[compare section 1322]

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

Alterations

134. Alterations

[section 65-5 ACNC Act]

- 134.1 If the Company is registered as a charity by the ACNC, the ACNC must be notified in writing of any alterations to this constitution.

Change of status and winding up

135. Change of status

135.1 If:

- (1) the Company ceases to be endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA; or
- (2) the Company is wound up and, at that time, the Company is endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA;

any surplus Gift Moneys that the Company may hold at that time must be transferred to a fund, authority or institution:

- (3) which is charitable at law;

- (4) gifts to which can be deducted under Division 30 of the ITAA; and
- (5) which has been approved in writing by the Company.

136. Winding up

- 136.1 Subject to rule 135.1, if at the time of winding up or dissolution of the Company, any property remains, other than Gift Moneys, after satisfaction of all its debts and liabilities, that property must not be paid or distributed to a member or former member of the Company, unless that member or former member is a registered charity that meets the requirements described in rule 136.2.
- 136.2 Subject to rule 135.1, the Act, the ACNC Act and any Court order, any surplus assets that remain after the Company is wound up must be distributed to one or more charities which are registered with the ACNC:
- (1) that have charitable purposes similar to or inclusive of the purposes set out in rule 3;
 - (2) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company; and
 - (3) which has been approved in writing by the members of the Company at or before the time of winding up.
- 136.3 If the members do not make the necessary determination under rule 136.2(3), the Company may apply to the Supreme Court to determine the charity or charities.

End of document