

# **Constitution**

**Vision Super Pty Ltd**  
ACN 082 924 561

**A company limited by shares**

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**VISION SUPER PTY LTD**

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**Constitution**

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**1 Preliminary****1.1 Definitions**

In this constitution:

**Act** means the Corporations Act 2001 (Cth);

**Chairperson** means the director appointed as chairperson under rule 5.17;

**Class A Share** means a share in the capital of the company that was on issue prior to any Class B Share, Class C Share or Class D Share being issued;

**Class A Shareholder** means a holder of one or more Class A Shares from time to time;

**Class B Share** means a class “B” share in the capital of the company having the rights set out in rules 1 – 14 of this constitution and Schedule 1;

**Class B Shareholder** means a holder of one or more Class B Shares from time to time;

**Class C Share** means a class “C” share in the capital of the company having the rights set out in rules 1 – 14 of this constitution and Schedule 2;

**Class C Shareholder** means a holder of one or more Class C Shares from time to time;

**Class D Share** means a class “D” share in the capital of the company having the rights set out in rules 1 – 14 of this constitution and Schedule 3;

**Class D Shareholder** means a holder of one or more Class D Shares from time to time;

**Cohort** means one of the following groups of directors: the Member Directors and the Employer Directors.

**employee** has the same meaning as in the SIS Act;

**employer** has the same meaning as in the SIS Act;

**Employer Directors** means directors appointed under rule 5.2;

**Fund** means any or all of, as applicable:

- (1) the Local Authorities Superannuation Fund; and
- (2) any other superannuation fund, within the meaning of the SIS Act, which is agreed to by the directors;

**Fund Member** means a member of the Local Authorities Superannuation Fund;

**Independent Director** means a director appointed under rule 5.4;

**Member Directors** means directors appointed under rule 5.3;

**Participating Employer** includes any person who for the time being participates in a Fund as an employer under the governing rules for that Fund;

**power** includes any function, duty, discretion, right and authority;

**Primary Director** is a director who has appointed a proxy in accordance with rule 5.5;

**PST** means any or all of, as applicable:

- (1) the Vision Pooled Superannuation Trust; and
- (2) any other pooled superannuation trust, within the meaning of the SIS Act, which is agreed to by the directors;

**Relevant Law** means the SIS Act, the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997, and any other present or future law of the Commonwealth or any State or Territory of Australia which the company, a Fund, a PST, or a Participating Employer must comply with or satisfy in order to secure or better secure a concession in respect of taxation or in order to avoid a penalty, detriment or disadvantage;

**representative**, in relation to a shareholder which is a body corporate, means a person authorised by the body corporate under the Act or a corresponding previous law to act as its representative;

**shareholder** means a holder of a share in the capital of the company from time to time;

**SIS Act** means the Superannuation Industry (Supervision) Act 1993 (Cth); and

**transmission event** means:

- (a) in respect of a shareholder who is an individual:
  - (1) the shareholder's death;
  - (2) the shareholder's bankruptcy;
  - (3) the shareholder becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
  - (4) where the shareholder is a Nominee (as defined in Schedules 2 or 3, as relevant), the insolvency of their nominating organisation; and
- (b) in respect of a shareholder who is a body corporate:
  - (1) the dissolution of the shareholder or the succession by another body corporate to the assets and liabilities of the shareholder; or
  - (2) the insolvency of the shareholder.

## 1.2 Interpretation

- (a) A reference in this constitution to a partly paid share is a reference to a share on which there is an amount unpaid.
- (b) A reference in this constitution to a call or an amount called in respect of a share includes a reference to an amount that, by the terms of issue of a share, becomes payable on issue or at a fixed date.
- (c) A Chairperson appointed under this constitution may be referred to as chairman or chairwoman, or as chair, as appropriate.
- (d) A shareholder is to be taken to be present at a general meeting if the shareholder is present in person, by proxy or by representative.
- (e) A reference in this constitution in general terms to a person holding or occupying a particular office or position includes a reference to any person who occupies or performs the duties of that office or position for the time being.
- (f) Unless the contrary intention appears, in this constitution:
  - (1) headings, underlinings and bold type are for convenience only and do not affect the interpretation of this constitution;
  - (2) words importing the singular include the plural and vice versa;
  - (3) words importing a gender include the other gender;
  - (4) words used to denote persons generally or importing a natural person include any company, corporation, body corporate, body politic, partnership, joint venture, association, board, group or other body (whether or not the body is incorporated);
  - (5) a reference to a person includes that person's successors and legal personal representatives;
  - (6) a reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute; and
  - (7) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## 1.3 Application of the Act

- (a) Unless the contrary intention appears, an expression in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision of the Act.
- (b) Subject to rule 1.3(a), unless the contrary intention appears, an expression in a rule that is used in the Act has the same meaning in this constitution as in the Act.



## 1.4 Exercise of powers

- (a) The company may, in any way the Act permits:
- (1) exercise any power;
  - (2) take any action; or
  - (3) engage in any conduct or procedure,
- which, under the Act, a company limited by shares may exercise, take or engage in.
- (b) Where this constitution provides that a person or body may do a particular act or thing, the act or thing may be done at the discretion of the person or body.
- (c) Where this constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the same manner and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing.
- (d) Where this constitution confers a power to do a particular thing in respect of particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that thing in respect of some only of those matters or in respect of a particular class or particular classes of those matters and to make different provision in respect of different matters or different classes of matters.
- (e) Where this constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:
- (1) to appoint a person to act in the office or position until a person is appointed to the office or position;
  - (2) subject to any contract between the company and the relevant person, to remove or suspend any person appointed, with or without cause; and
  - (3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (f) Where this constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.
- (g) Where this constitution confers a power or imposes a duty on the holder of an office as such then, unless the contrary intention appears, the power may be exercised and the duty must be performed by the holder for the time being of the office.
- (h) Where this constitution confers power on a person or body to delegate a function or power:
- (1) the delegation may be concurrent with, or (except in the case of a delegation by the board of directors) to the exclusion of, the

performance or exercise of that function or power by the person or body;

- (2) the delegation may be either general or limited in any manner provided in the terms of delegation;
  - (3) the delegation need not be to a specified person but may be to any person from time to time holding, occupying or performing the duties of a specified office or position;
  - (4) the delegation may include the power to delegate;
  - (5) where the performance or exercise of that function or power is dependent on the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and
  - (6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body.
- (i) Without limiting the generality of this rule 1.4, the company may receive any form of remuneration in relation to any services it provides or role it performs as trustee of any superannuation entity within the meaning of the SIS Act.

### **1.5 Single shareholder company**

If at any time the company has only one shareholder then, unless the contrary intention appears:

- (a) a reference in a rule to “the shareholders” is a reference to that shareholder; and
- (b) without limiting rule 1.5(a), a rule which confers a power or imposes an obligation on the shareholders to do a particular act or thing confers that power or imposes that obligation on that shareholder.

### **1.6 Replaceable rules not to apply**

The provisions of the Act designated as replaceable rules do not apply to the company except so far as they are repeated in this constitution.

### **1.7 No distribution to shareholders**

- (a) The main purpose of the company is to act as the trustee of one or more regulated superannuation funds, pooled superannuation trusts or both within the meaning of the Relevant Law but it is also able to do all other things permitted by the Act.
- (b) The income and property of the company shall be applied solely towards the promotion of the purpose of the company.

## **1.8 Single director company**

If at any time the minimum number of directors fixed under this constitution is one and the company in fact has only one director then, unless the contrary intention appears:

- (a) a reference in a rule to “the directors” is a reference to that director; and
- (b) without limiting rule 1.8(a), a rule which confers a power or imposes an obligation on the directors to do a particular thing confers that power or imposes that obligation on that director.

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## **2 Share capital**

### **2.1 Shares and options**

Without prejudice to any special rights conferred on the holders of any shares or class of shares and subject to rule 2.2, the directors may issue, allot or grant options in respect of, or otherwise dispose of, shares to such persons, for such price, on such conditions, at such times and with such preferred, deferred or other special rights or special restrictions as the directors think fit.

### **2.2 Share structure**

The directors may issue, allot or grant options in respect of, or otherwise dispose of, shares at any time in accordance with this constitution provided that at all times:

- (a) the number of Class B Shares on issue is equal to the number of Class C Shares on issue;
- (b) the aggregate number of Class B Shares and Class C Shares on issue is equal to the number of Class A Shares on issue; and
- (c) no more than one Class D Share is on issue,

unless all Class A Shareholders, Class B Shareholders and Class C Shareholders consent in writing to an alternative share structure.

### **2.3 Variation of class rights**

Unless otherwise provided by the terms of issue of a class of shares, including Schedules 1 to 3:

- (a) all or any of the rights or privileges attached to the class may be varied, whether or not the company is being wound up, only with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a separate meeting of the holders of the issued shares of that class;
- (b) the provisions of this constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each separate meeting of the holders of the issued shares of that class; and

- (c) the rights conferred on the holders of the shares of that class are to be taken as not having been varied by the creation or issue of further shares ranking equally with them.

#### **2.4 Power to alter share capital**

Subject to rule 2.2, the company may alter its share capital as permitted by law.

#### **2.5 Power to reclassify share capital**

Subject to rule 2.2, the company may by resolution reclassify or convert shares from one class to another.

#### **2.6 Power to reduce share capital**

Subject to rule 2.2, the company may, by special resolution, reduce its share capital, any capital redemption reserve or any share premium account in any manner permitted by the Act.

#### **2.7 Joint holders of shares**

Where 2 or more persons are registered as the holders of a share they hold it as joint tenants with rights of survivorship subject to the following provisions:

- (a) they and their respective legal personal representatives are liable severally as well as jointly for all payments, including calls, which ought to be made in respect of the share;
- (b) the company is not bound to issue more than one certificate in respect of the share;
- (c) delivery of a certificate for the share to any one of them is sufficient delivery to all of them; and
- (d) the provisions as to voting set out in rule 4.8(b).

#### **2.8 Equitable and other claims**

- (a) Except as otherwise required by law or provided by this constitution, the company is entitled to treat the registered holder of a share as the absolute owner of that share and need not:
  - (1) recognise a person as holding a share upon any trust, even if the company has notice of that trust; or
  - (2) recognise, or be bound by, any equitable, contingent, future partial claim to or interest in a share by any other person except an absolute right of ownership in the registered holder, even if the company has notice of that claim or interest.
- (b) With the consent of the directors, shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (c) Nothing in rule 2.8(b) limits the operation of rule 2.8(a).

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## 3 Transfer and transmission of shares

### 3.1 Transfer of shares

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares (including Schedules 1 to 3), a shareholder may transfer any of the shareholder's shares by an instrument in writing in any usual form or in any other form that the directors approve.
- (b) An instrument of transfer referred to in rule 3.1(a) must:
  - (1) be signed by or on behalf of both the transferor and the transferee unless:
    - (A) the instrument of transfer relates only to fully paid shares and signature by the transferee has been dispensed with by the directors; or
    - (B) the transfer of the shares is effected by a document which is, or documents which together are, a sufficient transfer of those shares under the Act;
  - (2) if required by law to be stamped, be duly stamped;
  - (3) in the case of a transfer of partly paid shares, be endorsed by, or accompanied by an instrument executed by, the transferee to the effect that the transferee agrees to accept the shares subject to the terms and conditions on which the transferor held them and to become a shareholder and to be bound by the company's constitution; and
  - (4) be left for registration at the registered office of the company, or at such other place as the directors determine, accompanied by the certificate for the shares to which it relates and such other evidence the directors require to prove the title of the transferor or the transferor's right to the shares and to prove the right of the transferee to be registered as the owner of the shares.
- (c) A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of shareholders in respect of the shares.
- (d) The company may retain a registered instrument of transfer for any period the directors think fit.
- (e) Except in the case of fraud, the company must return any instrument of transfer which the directors decline to register to the person who deposited it with the company.
- (f) The directors may, to the extent permitted by law, waive all or any of the requirements of this rule 3.1.

### 3.2 Transfer of Class A Shares

A Class A Shareholder may not transfer one or more of its Class A Shares unless, following the transfer, the Class A Share(s) will continue to be held on trust for

the direct or indirect benefit of members of the Local Authorities Superannuation Fund.

### **3.3 Power to decline registration of transfers**

Subject to any special rights conferred on the holders of any shares or class of shares, the directors:

- (a) may, in their absolute discretion, decline to register any transfer of shares; and
- (b) must decline to register:
  - (1) a transfer of Class A Shares which does not comply with rule 3.2;
  - (2) a transfer of a Class B Share which does not comply with Schedule 1;
  - (3) a transfer of a Class C Share which does not comply with Schedule 2; or
  - (4) a transfer of a Class D Share which does not comply with Schedule 3.

### **3.4 Power to suspend registration of transfers**

The directors may suspend the registration of transfers at such times and for such periods, not exceeding in total 30 days in any year, as they think fit.

### **3.5 Transfer of director's shares**

A director who is also a shareholder owes an irrevocable obligation to the company secretary to transfer all shares in the company held by that director to any person nominated by the company secretary, if a director ceases to be director for any reason. The director, in consideration of the issue or transfer of a share or shares to the director irrevocably appoints the company secretary as that director's attorney to do all things necessary, including, but not limited to, the signing of a share transfer form, to give effect to the relevant transfer. The appointment of the company secretary as a director's attorney under this rule 3.5 will continue despite the occurrence of a transmission event in respect of the director.

### **3.6 Death of shareholders**

- (a) Where a shareholder dies, the only persons the company will recognise as having any title to the shareholder's shares or any benefits accruing in respect of those shares are:
  - (1) where the deceased was a sole holder:
    - (A) if the holder was a Nominee (as defined in Schedules 1, 2 or 3, as relevant), the nominating organisation for the deceased; or
    - (B) otherwise, the legal personal representative of the deceased; and
  - (2) where the deceased was a joint holder, the survivor.

- (b) Nothing contained in rule 3.6(a) releases the estate of a deceased shareholder from any liability in respect of a share, whether that share was held by the deceased solely or jointly with other persons.
- (c) The directors may require a person who becomes entitled to a share as a result of the death of a shareholder (“**Entitled Person**”) to execute a transfer of the share to a person nominated by the directors on payment by that person of the amount paid up on that share to the Entitled Person.
- (d) The provisions of this constitution relating to the right to transfer shares, and the registration of transfers of shares apply, so far as they can and with any necessary changes, to any transfer under rule 3.6(c) as if the death of a shareholder had not occurred and the transfer was signed by the registered holder of the share.
- (e) For the purpose of this constitution, where 2 or more persons are jointly entitled to any share in consequence of the death of a shareholder they will, upon being registered as the holders of the share, be taken to hold the share as joint tenants and rule 2.7 will apply to them.
- (f) Notwithstanding rule 3.6(a), the directors may register a transfer of shares signed by a shareholder prior to the death of the shareholder even though the company has notice of the death of the shareholder.

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## **4 General Meetings**

### **4.1 Calling general meetings**

- (a) The directors may, whenever they think fit, call and arrange to hold a general meeting.
- (b) A general meeting may be convened only as provided by this rule 4.1 or as otherwise required by the Act.
- (c) The directors may postpone, cancel or change the venue of a general meeting, but a general meeting called and arranged under section 249D of the Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the requisitioning shareholder or shareholders.

### **4.2 Notice of general meetings**

- (a) Subject to this constitution and to the rights or restrictions attached to any shares or class of shares, notice of a general meeting must be given within the time limits prescribed by the Act.
- (b) The content of a notice of a general meeting called by directors is to be decided by the directors, but must specify the time and place of the meeting and state the general nature of the business to be transacted at the meeting and any other matters required by the Act.
- (c) A person may waive notice of any general meeting by notice in writing to the company.

- (d) Failure to give notice of a general meeting or a proxy form to any person entitled to receive notice of a general meeting under this rule 4.2 does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
- (1) the failure occurred by accident or error; or
  - (2) before or after the meeting, the person:
    - (A) has waived or waives notice of that meeting under rule 4.2(c); or
    - (B) has notified or notifies the company of the person's agreement to that act, matter, thing or resolution by notice in writing to the company.
- (e) A person's attendance at a general meeting:
- (1) waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting; and
  - (2) waives any objection that person may have to the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting unless the person objects to considering the matter when it is presented.

### **4.3 Admission to general meetings**

The Chairperson of a general meeting may take any action he or she considers appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and remain out of, the meeting any person:

- (a) in possession of a pictorial-recording or sound-recording device;
- (b) in possession of a placard or banner;
- (c) in possession of an article considered by the Chairperson to be dangerous, offensive or liable to cause disruption;
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (f) who is not:
  - (1) a shareholder, proxy, or representative of a shareholder;
  - (2) a director;
  - (3) an auditor of the company; or
  - (4) a person requested by the directors or chairman to attend the meeting.



#### 4.4 Quorum at general meetings

- (a) No business may be transacted at any general meeting, except the election of a Chairperson and the adjournment of the meeting, unless a quorum of shareholders is present when the meeting proceeds to business.
- (b) A quorum for any general meeting or adjourned general meeting consists of:
  - (1) two Class A Shareholders, a Class B Shareholder and a Class C Shareholder; or
  - (2) if only one shareholder is entitled to vote - that shareholder, present at the meeting.
- (c) If a quorum is not present within 30 minutes after the time appointed for the general meeting:
  - (1) where the meeting was convened on the requisition of shareholders, the meeting must be dissolved; or
  - (2) in any other case:
    - (A) the meeting stands adjourned to the day, and at such time and place, as the directors decide or, if no decision is made by the directors, to the same day in the next week at the same time and place; and
    - (B) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.

#### 4.5 Chairperson of general meetings

- (a) The Chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as Chairperson at each general meeting.
- (b) If at a general meeting:
  - (1) there is no Chairperson of directors; or
  - (2) the Chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
  - (3) the Chairperson of directors is present within that time but is not willing to act as Chairperson of the meeting,then one of the other directors must act as Chairperson.

#### 4.6 Conduct of general meetings

- (a) The Chairperson of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting and may require the adoption of any procedures which are in his or her opinion necessary or desirable for:

- (1) proper and orderly debate or discussion, including limiting the time that a person may speak on a motion or other item of business before the meeting; and
  - (2) the proper and orderly casting or recording of votes at the general meeting, whether on a show of hands or on a poll, including the appointment of scrutineers.
- (b) The Chairperson of a general meeting may at his or her sole discretion at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question or resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting.
- (c) No business may be transacted at an adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (d) Where a meeting is adjourned, notice need not be given to any person unless the meeting is adjourned for more than 30 days.
- (e) Where a meeting is adjourned, the directors may postpone, cancel or change the venue of the adjourned meeting.
- (f) Where a meeting of shareholders is held at 2 or more venues using any form of technology:
- (1) a shareholder participating in the meeting is to be taken to be present in person at the meeting;
  - (2) all the provisions in this constitution relating to meetings of shareholders apply, so far as they can and with such changes as are necessary, to meetings of the shareholders using that technology; and
  - (3) the meeting is to be taken to be held at the place determined by the Chairperson of the general meeting as long as at least one of the shareholders involved was at that place for the duration of the general meeting.
- (g) If the technology used encounters a technical difficulty, whether before or during the meeting, which results in a shareholder not being able to participate in the meeting, the Chairperson may, subject to the Act, allow the meeting to continue or may adjourn the meeting either for such reasonable period as may be required to fix the technology or to such other time and location as the Chairperson deems appropriate.

#### **4.7 Decisions at general meetings**

- (a) Except in the case of any resolution which as a matter of law requires a special majority, questions arising at a general meeting are to be decided by a majority of votes cast by the shareholders present at the meeting and any such decision is for all purposes a decision of the shareholders.

- (b) In the case of an equality of votes upon any proposed resolution:
  - (1) the Chairperson of the meeting will not have a second or casting vote; and
  - (2) the proposed resolution is to be taken as having been lost.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless a poll is demanded before a show of hands is held or before result of the show of hands is delivered or immediately after the declaration of the result of the show of hands:
  - (1) by the Chairperson of the meeting; or
  - (2) by any shareholder present and having the right to vote at the meeting.
- (d) A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the Chairperson of a general meeting that resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded for or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it will be taken in such manner and (subject to rule 4.7(g)) either at once or after an interval or adjournment or otherwise as the Chairperson of the meeting directs, and the result of the poll as declared by the Chairperson is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a Chairperson of the meeting or a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.

#### **4.8 Voting rights**

- (a) Subject to this constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:
  - (1) on a show of hands, every shareholder present has one vote; and
  - (2) on a poll, every shareholder present has one vote for each share held by the shareholder and in respect of which the shareholder is entitled to vote.
- (b) If a person present at a general meeting represents personally, by proxy or representative more than one shareholder:
  - (1) on a show of hands the person is entitled to one vote only, even though he or she represents more than one shareholder;
  - (2) that vote will be taken as having been cast for all the shareholders the person represents; and

- (3) the person must not exercise that vote in a way which would contravene any directions given to the person in accordance with rule 4.11(g) in any instrument appointing the person as a proxy.
- (c) A joint holder may vote at any meeting in person, by proxy or representative as if that person were the sole holder. If more than one joint holder tenders a vote, the vote of the holder named first in the register must be accepted to the exclusion of the other or others.
- (d) A person entitled to a share because of a transmission event may vote at any general meeting in respect of that share in the same way as if that person were the registered holder of the share if, before the meeting, the directors have:
  - (1) admitted that person's right to vote at that meeting in respect of the share; or
  - (2) been satisfied of that person's right to be registered as the holder of, or to transfer, the share under rule 3.1(c),
 and any vote so tendered by that person must be accepted to the exclusion of the vote of the registered holder of the share.
- (e) A shareholder is not entitled to vote at a general meeting unless all calls and other sums presently payable by that shareholder in respect of shares in the company have been paid.
- (f) An objection to the qualification of a person to vote at a general meeting must be:
  - (1) raised before or at the meeting at which the vote objected to is given or tendered; and
  - (2) referred to the Chairperson of the meeting, whose decision is final.
- (g) A vote not disallowed by the Chairperson of a meeting under rule 4.8(d) is valid for all purposes.

#### **4.9 Decisions without general meetings**

When the company has more than one shareholder:

- (a) the company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held:
  - (1) if all of the shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of a resolution set out in the document; and
  - (2) otherwise in accordance with the Act.
- (b) If a share is held jointly, each of the joint shareholders must sign the document.
- (c) The passage of the resolution satisfies any requirement in the Act, or in this constitution, that the resolution be passed at a general meeting.

#### 4.10 Resolution of single shareholder

When the company has only one shareholder, the company may pass a resolution by the shareholder recording it and signing the record.

#### 4.11 Representation at general meetings

- (a) Subject to this constitution, each shareholder entitled to vote at a meeting of shareholders may vote:
  - (1) in person;
  - (2) by not more than 2 proxies; or
  - (3) where the shareholder is a body corporate, by its representative.
- (b) A proxy or representative may, but need not, be a shareholder of the company.
- (c) A proxy or representative may be appointed for all general meetings, or for any number of general meetings, or for a particular general meeting.
- (d) Subject to rule 4.11(h), an instrument appointing a proxy need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the shareholder.
- (e) Unless otherwise provided in the instrument, an instrument appointing a proxy or representative will be taken to confer authority:
  - (1) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
  - (2) to agree to a resolution being proposed and passed as a special resolution at a meeting of which less than the period of notice required by the Act has been given; and
  - (3) even though the instrument may refer to specific resolutions and may direct the proxy or representative how to vote on those resolutions:
    - (A) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
    - (B) to vote on any procedural motion, including any motion to elect the Chairperson, to vacate the chair or to adjourn the meeting; and
    - (C) to act generally at the meeting.
- (f) Where a shareholder appoints 2 proxies to vote at the same general meeting, the following rules apply:
  - (1) the appointment is of no effect and a proxy may not vote unless each proxy, as the case may be, is appointed to represent a specified proportion of the shareholder's voting rights;
  - (2) if the Act precludes the company from treating as invalid the appointment of 2 proxies which fails to specify the proportion or

- number of votes that each may exercise, each person appointed may exercise half the shareholder's votes;
- (3) on a show of hands, neither proxy may vote;
  - (4) on a poll, each proxy may only exercise the voting rights the proxy represents; and
  - (5) if both appointments cannot be validly exercised at the meeting, the later appointment revokes the earlier appointment of a proxy.
- (g) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.
- (h) A proxy may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, and a certified copy of the authority (if any) under which the instrument is signed, are received at the registered office of the company or at another place or election address specified for that purpose in the notice convening the meeting:
- (1) in the case of a meeting or an adjourned meeting, before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; or
  - (2) in the case of a poll, before the time appointed for the taking of the poll.
- (i) The directors may waive all or any of the requirements of rule 4.11(d) and rule 4.11(h) and in particular may, on the production of any other evidence the directors require to prove the validity of the appointment of a proxy, accept:
- (1) an oral appointment of a proxy;
  - (2) an appointment of a proxy which is not signed in the manner required by rule 4.11(d), if required; and
  - (3) the deposit, tabling or production of a copy (including a copy sent by electronic means) of an instrument appointing a proxy or other authority under which the instrument is signed.
- (j) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite:
- (1) a transmission event occurring in relation to the appointer; or
  - (2) the revocation of the instrument or of the authority under which the instrument was executed,
- if no notice in writing of the transmission event or revocation has been received by the company by the time and at one of the places at which the instrument appointing the proxy is required to be deposited under rule 4.11(h).
- (k) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the transfer of the share in respect of which the

instrument was given, if the transfer is not registered by the time at which the instrument appointing the proxy is required to be deposited, tabled or produced under rule 4.11(h).

- (l) The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the person acting as proxy for the appointer is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

## **5 Directors**

### **5.1 Number and appointment of directors**

- (a) A person can only become a director of the company pursuant to this rule 5.
- (b) The number of directors must not be less than 2 and unless the company resolves otherwise, not more than 10.
- (c) The directors shall comprise:
  - (1) an equal number of:
    - (A) Employer Directors (appointed by the directors in accordance with rule 5.2); and
    - (B) Member Directors (appointed by the directors in accordance with rule 5.3); and
  - (2) two Independent Directors (appointed by the directors in accordance with rule 5.4).
- (d) If required by law in order that the company be trustee of a particular type of fund or trust, the company must satisfy the definition of "independent trustee" as defined in the SIS Act.

### **5.2 Appointment of Employer Directors**

- (a) Subject to rule 5.1 and rule 5.2(c):
  - (1) the Municipal Association of Victoria has the right to nominate a candidate (or candidates) for one Employer Director position;
  - (2) the Victorian Water Industry Association Inc. and the Victorian Employers' Chamber of Commerce and Industry, collectively, have the right to nominate a candidate (or candidates) for one Employer Director position; and
  - (3) the Class B Shareholder has (or, if applicable, the Class B Shareholders, collectively, have) the right to nominate candidates for two Employer Director positions.
- (b) Subject to rule 5.1 and rule 5.2(a), all Employer Directors (including those appointed pursuant to rule 5.8) will be appointed in such manner, and in accordance with such rules and conditions, as may be determined

by the directors from time to time either generally or in any particular case.

- (c) If, in the opinion of the directors, any of the employer associations referred to in rule 5.2(a) ceases to represent a sufficient proportion of the Fund Members (“**retiring employer association**”), the directors must identify another person or entity to nominate one or more Employer Directors in the future in place of the retiring employer association. However, any Employer Director then serving who was nominated by the retiring employer association will be allowed to complete the term of office for which he or she was appointed.

### **5.3 Appointment of Member Directors**

- (a) Subject to rule 5.1:
- (1) the ASU Victorian and Tasmanian Authorities & Services Branch has the right to nominate candidates for two Member Director positions; and
  - (2) the Class C Shareholder has (or, if applicable, the Class C Shareholders, collectively, have) the right to nominate candidates for two Member Director positions.
- (b) Subject to rule 5.1 and rule 5.3(a), all Member Directors (including those appointed pursuant to rule 5.8) will be appointed by the directors in such manner, and in accordance with such rules and conditions, as may be determined by the directors from time to time either generally or in any particular case.

### **5.4 Appointment of the Independent Directors**

Subject to rule 5.1, the Independent Directors will be appointed by the directors in such manner, and in accordance with such rules and conditions, as may be determined by the directors from time to time either generally or in any particular case.

### **5.5 Appointment of proxies**

- (a) Subject to rule 5.1, each:
- (1) Employer Director may appoint a fellow Employer Director or the Chairperson, as a proxy;
  - (2) Member Director may appoint a fellow Member Director or the Chairperson, as a proxy; and
  - (3) Independent Director may appoint a fellow Independent Director or the Chairperson as their proxy,

to act on the Primary Director’s behalf at one or more directors’ meetings, and carry out any other duties of the Primary Director which stem from the Primary Director’s position as a director of the company.



- (b) An instrument appointing a proxy need not be in any particular form as long as it is in writing, legally valid and signed by or on behalf of the Primary Director.
- (c) A proxy is entitled to notice of meetings of directors, and of any committee or other group of which a Primary Director in respect of whom he or she is a proxy is a member in his or her capacity as a director, and to attend and vote and otherwise act on behalf of a Primary Director at any such meeting at which the Primary Director is not present, but he or she will automatically vacate office as a proxy in respect of a particular Primary Director on the earliest of the following events:
  - (1) the expiry of the proxy's period of appointment;
  - (2) the death of the proxy;
  - (3) the proxy becoming prohibited from being a proxy by reason of, or a disqualified person in terms of, any Relevant Law;
  - (4) the proxy resigning as a proxy by notice in writing to the company;
  - (5) the proxy ceasing to be qualified under this constitution to hold the office of a proxy;
  - (6) the Primary Director ceasing to be a director;
  - (7) the proxy being removed from office by the same procedure as that by which he or she was appointed as a proxy; or
  - (8) the proxy suffering any mental or physical incapacity or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, and in respect of whom the directors have passed a resolution declaring the office of that person to be vacant.
- (d) A proxy shall not be taken into account in determining the minimum or maximum number of directors allowed for the time being under this constitution, or for the purpose of determining whether a quorum is present at any meeting of the directors attended by the proxy at which he or she is entitled to vote.
- (e) The same person may act as a proxy in respect of more than one director and while a person is so acting that person's presence shall for all purposes be counted as the presence of each of the Primary Directors (in addition to his or her own presence if a director in his or her own right) that person represents and that person shall be entitled to a separate vote for each Primary Director that person represents and, if a director in his or her own right, his or her vote or votes as a proxy shall be in addition to his or her own vote as a director.
- (f) If more than one proxy has been appointed in respect of a Primary Director and more than one of those proxies is present in person at a meeting from which the Primary Director is absent, only the oldest of those proxies present shall be entitled to vote for the Primary Director, and the other proxy or proxies shall not remain at the meeting unless they

are entitled to vote at the meeting as a director in their own right or as a proxy for another Primary Director.

## **5.6 Period of office**

- (a) Directors are appointed for a maximum term of four (4) years and may be reappointed in accordance with rule 5.6(b).
- (b) If a person ceases to be a director, that person may, subject to rule 5.6(c), be reappointed as a director, unless the person ceases to be a director under rule 5.7(b) or (c).
- (c) The maximum tenure of a director is twelve (12) years (whether or not consecutive) unless exceptional circumstances apply as determined by the directors.

## **5.7 Vacation of office**

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Act, the office of a director becomes vacant if he or she:

- (a) dies;
- (b) becomes prohibited from being a director by reason of, or a disqualified person in terms of, any Relevant Law;
- (c) suffers any mental or physical incapacity or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, and in respect of whom the directors have passed a resolution declaring the office of that person to become vacant;
- (d) resigns his or her office by notice in writing to the company;
- (e) unless the directors unanimously determine otherwise, ceases to satisfy any eligibility criteria that had to be satisfied for that person to be appointed to the office of Employer Director, Member Director, or Independent Director (as applicable);
- (f) ceases to hold office as a result of the period of office determined under rule 5.6 expiring; or
- (g) is removed from office by the same procedure as that by which he or she was appointed.

## **5.8 Filling vacancies**

- (a) If the office of a director becomes vacant then:
  - (1) if the director is an Employer Director, the vacancy must be filled within 90 days of the vacancy occurring by either:
    - (A) the directors appointing a person to fill the vacancy after receiving a nomination from the same organisation(s) that nominated the original director pursuant to rule 5.2; or
    - (B) if the directors determine that the vacancy is not likely to be filled in accordance with rule 5.8(a)(1)(A) within the

- 90 day period, the directors appointing a person to fill the vacancy within the time required; or
- (2) if the director is a Member Director, the vacancy must be filled within 90 days of the vacancy occurring by either:
    - (A) the directors appointing a person to fill the vacancy after receiving a nomination from the same organisation(s) or person(s) that nominated the original director pursuant to rule 5.3; or
    - (B) if the directors determine that the vacancy is not likely to be filled in accordance with rule 5.8(a)(2)(A) within the 90 day period, the directors appointing a person to fill the vacancy within the time required.
  - (3) if the director is an Independent Director, the vacancy must be filled within 180 days of the vacancy occurring (or such other period as may be required), pursuant to rule 5.4.
- (b) Unless the directors determine otherwise, the person appointed to fill a vacancy in the office of director will hold office for the unexpired portion of the term of office of, and otherwise on the same conditions as, the director whose office became vacant.

## **5.9 Remuneration and expenses**

- (a) If a general meeting of the company determines by a two-thirds majority of all shareholders entitled to vote to alter the level of remuneration for directors, the directors will be paid such remuneration as determined by that general meeting.
- (b) In addition to the remuneration which has been determined in accordance with rule 5.9(a), the directors may resolve that a director shall be paid reasonable travelling and other expenses properly incurred by him or her in attending and returning from meetings of the directors, or any committee of the directors, or general meetings of the company, or otherwise in connection with the business of the company including any insurance premiums incurred by the director.
- (c) If a director renders or is called on to perform extra services or to make any special exertions in connection with the affairs of the company, the directors may arrange for a special remuneration to be paid to that director, either in addition to or in substitution for that director's remuneration which has been determined in accordance with rule 5.9(a).
- (d) Nothing in rule 5.9(a) restricts the remuneration to which a director may be entitled as an officer of the company or of a related body corporate in a capacity other than director, which may be either in addition to or in substitution for that director's remuneration which has been determined in accordance with rule 5.9(a).

### 5.10 Share qualification

- (a) A director is not required to hold any shares in the company to be eligible to hold office.
- (b) A director who is not a shareholder of the company is nevertheless entitled to attend and speak at general meetings.
- (c) The company secretary may at any time require a director who is also a shareholder to:
  - (1) execute a deed appointing the company secretary as the director's attorney for the purposes of rule 3.5; and
  - (2) execute share transfers in favour of:
    - (A) the company secretary; and
    - (B) any person (including no particular person) as specified by the company secretary.

### 5.11 Interested directors

- (a) A director may hold any other office or place of profit (other than auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that office or place upon such terms as to remuneration, tenure of office and otherwise as the directors think fit.
- (b) A director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the company or in which the company may be interested as a shareholder or otherwise, provided that the director discloses such a position or interest to the company.
- (c) A director is not disqualified from contracting with the company either as vendor, purchaser or otherwise merely because of being a director or because of the fiduciary obligation arising out of that office.
- (d) No contract made by a director with the company and no contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is avoided or rendered voidable merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (e) No director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under any such contract or arrangement merely because of the director holding office as a director or because of the fiduciary obligations arising out of that office.
- (f) A director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest, vote, be present and be counted in a quorum at the meeting unless that is prohibited by the Act or by a written policy approved by the directors.

- (g) No act of the company is invalidated due to a contravention of this rule 5.11.

## **5.12 Powers of directors**

- (a) The directors are responsible for managing the business of the company and may exercise to the exclusion of the company in general meeting all the powers of the company which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting the generality of rule 5.12(a), the directors may exercise all the powers of the company to borrow or otherwise raise money in any other way, 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.
- (c) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
  - (1) appoint or employ any person to be an officer, agent or attorney of the company for such purposes with such powers, discretions and duties (including powers, discretions of duties vested in or exercisable by the directors), for such period and on such conditions as they decide;
  - (2) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (3) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney of the company at any time, with or without cause.
- (f) A power of attorney may contain provisions for the protection and convenience of the attorney or persons dealing with the attorney that the directors decide.

## **5.13 Proceedings of directors**

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A meeting of the directors may be held by using telephone or audio or audio visual communication consented to by all participating directors and the consent may be a standing one. The contemporaneous linking together by telephone or other method of audio or audio visual

communication of a number of the directors sufficient to constitute a quorum, constitutes a meeting of the directors and all the provisions in this constitution relating to meetings of the directors apply, so far as they can and with such changes as are necessary, to meetings of the directors by telephone or audio or audio visual communication.

- (c) A director participating in a meeting by telephone or audio or audio visual communication will be taken to be present in person at that meeting.
- (d) A meeting by telephone or audio or audio visual means is to be taken to be held at the place determined by the Chairperson of the meeting provided that at least one of the directors involved was at that place for the duration of the meeting.
- (e) If, before or during the meeting, any technical difficulty occurs as a result of which one or more directors cease to participate, the Chairperson may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

#### **5.14 Convening of meetings of directors**

- (a) A director may, whenever the director thinks fit, convene a meeting of the directors.
- (b) A company secretary must, on the requisition of a director, convene a meeting of the directors.

#### **5.15 Notice of meetings of directors**

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice a director, other than a director on leave of absence approved by the directors; or
- (b) A notice of a meeting of directors:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting;
  - (4) may be given in person or by post or by telephone or other electronic means; and
  - (5) is to be taken to have been given to a proxy if it is given to the Primary Director.
- (c) A director may waive notice of any meeting of directors by notifying the company to that effect in person or by post, telephone or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any act, thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;

- (2) before or after the meeting, the director:
    - (A) has waived or waives notice of that meeting under rule 5.15(c); or
    - (B) has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone or other electronic means; or
  - (3) the director, or proxy appointed by the Primary Director, attended the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a proxy of a Primary Director on leave of absence approved by the directors does not invalidate any act, thing done or resolution passed at the meeting if:
- (1) the non-receipt or failure occurred by accident or error;
  - (2) before or after the meeting, the proxy or the Primary Director or another proxy appointed in respect of that director:
    - (A) has waived or waives notice of that meeting under rule 5.15(c); or
    - (B) has notified or notifies the company of his or her agreement to that act, thing or resolution personally or by post, telephone or other electronic means; or
  - (3) the proxy or the Primary Director or another proxy appointed in respect of that director attended the meeting.
- (f) Attendance by a person at a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.
- (g) If the person is:
- (1) a director, the waiver applies to any proxy appointed in respect of that Primary Director; or
  - (2) a proxy, the waiver applies to the Primary Director and to any other proxy appointed in respect of that Primary Director.

## 5.16 Quorum

- (a) A quorum for a meeting of directors is the greater of:
  - (1) one Employer Director and one Member Director; and
  - (2) two-thirds of the number of directors in office.
- (b) In the event of a vacancy in the office of a director or vacancies in the offices of directors, the remaining director or directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, the remaining director or directors may act only in an emergency or increase in the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the company.

## 5.17 Chairperson

- (a) The directors must elect one of the directors to the office of Chairperson of directors and:
  - (1) may, at the time of the election, specify a term over which the Chairperson is to hold office; and
  - (2) the director so elected must be from a Cohort other than the Cohort from which the most recent Chairperson (who was from a Cohort) was elected, except where:
    - (A) the directors agree unanimously otherwise; or
    - (B) the directors elect an Independent Director to the office of Chairperson.
- (b) The Chairperson will hold office as Chairperson of directors until the earlier of:
  - (1) the Chairperson's term of office as a director expiring; or
  - (2) the term of the Chairperson's office, if specified in accordance with rule 5.17(a)(1), expiring; or
  - (3) the term of the Chairperson's office being vacated in accordance with rule 5.17(d).
- (c) The office of Chairperson of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the director holding that office for the purposes of rule 5.9(c).
- (d) There is no prohibition on a Chairperson whose term of office has expired or whose office has been vacated from again being elected Chairperson if he or she subsequently again serves as a director.
- (e) If the Chairperson of directors:
  - (1) resigns as Chairperson of directors by notice in writing to the directors;
  - (2) ceases to be a director; or
  - (3) is removed as Chairperson of directors by a resolution of the directors,
 his or her office as Chairperson of directors will be vacated and:
  - (4) the directors must elect one of their number to be Chairperson of directors in accordance with rule 5.17(a);
  - (5) the new Chairperson will hold office as Chairperson of directors for the term set out in rule 5.17(b).
- (f) Subject to rule 5.5(e), the Chairperson of directors shall not have a second or casting vote.
- (g) The directors:
  - (1) must elect one of the directors to the office of deputy Chairperson of directors and the director so elected must be from a Cohort



other than the Cohort from which the existing (or most recent) Chairperson (who is or was from a Cohort) belongs (or belonged), except where:

- (A) the directors agree unanimously otherwise; or
  - (B) the directors elect an Independent Director to the office of deputy Chairperson; and
- (2) shall determine the period for which that director is to be deputy Chairperson of directors as well as the terms and conditions of that office.

### **5.18 Decisions of directors**

- (a) A meeting of directors at which a quorum is present is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the directors under this constitution.
- (b) A resolution in a meeting of the directors is only valid if not less than two-thirds of the total number of directors in office vote in favour of it.
- (c) Subject to rule 5.5(e), at any meeting of directors, each director present has one vote only and no director has a second or casting vote.
- (d) The Chairperson (or such other person determined by the directors) shall sign all minutes of directors' meetings which minutes shall be taken to be a true and correct record.
- (e) If votes are equal on a proposed resolution:
  - (1) the Chairperson of the meeting does not have a casting vote in addition to any deliberative vote; and
  - (2) the proposed resolution is to be taken as having been lost.

### **5.19 Written resolutions**

- (a) If:
    - (1) not less than two thirds of the total number of directors, other than:
      - (A) any director on leave of absence approved by the directors;
      - (B) any director who disqualifies himself or herself from considering the act, matter, thing or resolution in question on the grounds that he or she is not entitled at law to do so or has a conflict of interest; and
      - (C) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question,
- assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and

- (2) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.

- (b) For the purposes of rule 5.19(a):
- (1) the meeting is to be taken as having been held:
- (A) if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
- (B) if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
- (2) 2 or more separate documents in identical terms, each of which is assented to by one or more directors, are to be taken as constituting one document; and
- (3) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telephone or other method of written, audio or audio visual communication.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.
- (d) Where a document is assented to in accordance with rule 5.19(a), the document is to be taken as a minute of a meeting of directors.

## **5.20 Committees of directors and delegation**

- (a) The directors may delegate any of their powers to a committee or committees comprising such directors as the directors think fit.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.
- (c) The provisions of this constitution applying to meetings and resolutions of directors apply, so far as they can and with such changes as are necessary, to meetings and resolutions of a committee of directors.
- (d) Membership of a committee of directors may, if the directors so resolve, be treated as an extra service or special exertion performed by the members for the purposes of rule 5.9(c).
- (e) The directors may delegate any of their powers to a director.
- (f) A director to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the directors.

- (g) The acceptance of a delegation of powers by a director may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 5.9(c).

### **5.21 Validity of acts**

An act done by a person acting as a director or by a meeting of directors or a committee of directors attended by a person acting as a director is not invalidated merely because of:

- (a) a defect in the person's appointment as a director;
- (b) the person being disqualified from being a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the directors or committee (as applicable) when the act was done.

## **6 Executive officers**

### **6.1 Company secretary**

- (a) The directors must appoint at least one company secretary and may appoint additional company secretaries.
- (b) The directors may appoint one or more assistant company secretaries.

### **6.2 Provisions applicable to all executive officers**

- (a) A reference in this rule 6.2 and rule 11.1 to an executive officer is a reference to a company secretary or assistant company secretary appointed under rule 6.1.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer of the company may be removed or dismissed by the directors at any time, with or without cause, and if he or she is also a director, the executive officer ceases to be a director on termination of his or her employment.
- (d) The directors may:
  - (1) confer on an executive officer such powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) as they think fit;
  - (2) withdraw, suspend or vary any of the powers, discretions and duties so conferred; and
  - (3) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on the executive officer.
- (e) An executive officer need not hold any shares to qualify for appointment.

- (f) An act done by a person acting as an executive officer is not invalidated merely because of:
- (1) a defect in the person's appointment as an executive officer; or
  - (2) the person being disqualified from being an executive officer, if that circumstance was not known by the person when the act was done.

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## **7 Seals**

### **7.1 Common seal**

Without limiting the ways in which the company can execute documents in accordance with the Act, if the directors so decide, the company may have a common seal.

### **7.2 Use of seal**

The directors may decide on procedures for the use of the seal.

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## **8 Reserves, Profits and Dividends**

### **8.1 Reserves**

- (a) Subject to this constitution, the directors may keep such reserves or provisions for such purposes as they think fit.
- (b) The directors may appropriate to the profits of the company any amount previously set aside as a reserve or provision.
- (c) Setting aside an amount as a reserve or provision does not require the directors to keep the amount separate from the other assets of the company or prevent the amount being used in the business of the company or being invested in such investments as the directors decide.

### **8.2 Carry forward of profits**

The directors must carry forward so much of the profits remaining as is not transferred to a reserve or provision.

### **8.3 Dividends**

Subject to the rights and restrictions attached to any shares or class of shares, the directors may determine that a dividend is payable and fix:

- (a) the amount;
- (b) the time for payment; and
- (c) the method of payment.

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## 9 Winding Up

- (a) Subject to rule 9(b) and rule 9(c), and to the rights and restrictions attached to any shares or class of shares, if upon the winding up or dissolution of the company there remains, after satisfaction of all the company's debts and liabilities, any property whatsoever, that property may be given or transferred to one or more of the Funds or PSTs (as determined by the directors, having regard to Relevant Law) to be used for the purpose of the general administration of those Funds or PSTs (as determined by the directors, having regard to Relevant Law), or may be paid to or distributed amongst the shareholders of the company subject to any relevant dividend declaration made by the director (it being noted that the shareholders hold the shares in trust for the Local Authorities Superannuation Fund).
- (b) If each of the Funds and PSTs is no longer in existence at the time of the winding up or dissolution of the company, then any property remaining must be given or transferred to another superannuation fund which the shareholders regard as being a successor fund to the applicable Fund under the Relevant Law or to another pooled superannuation trust (as determined by the directors, having regard to Relevant Law). If there is, in the shareholders' opinion, no successor fund or other pooled superannuation trust, then the remaining property shall be given or transferred to some other company, fund, authority or institution which has objects similar to the objects of the company (the "successor entity"). In such circumstances, the successor entity is to be determined by the shareholders of the company at or before the time of winding up or dissolution or, in default, by a judge of the Supreme Court of the State or Territory in which the company has its registered office as may have or acquire jurisdiction in the matter.
- (c) If the company ceases to be the trustee of a Fund, regardless of whether the company has been wound up or dissolved under rule 9(a), the company must, as soon as practicable, give or transfer to that Fund any property the company holds which was transferred to the company from that Fund in order for the company to meet any capitalisation requirements imposed by a regulator under the Relevant Law.
- (d) If the company ceases to be the trustee of a PST, regardless of whether the company has been wound up or dissolved under rule 9(a), the company must, as soon as practicable, give or transfer to that PST any property the company holds which was transferred to the company from that PST in order for the company to meet any capitalisation requirements imposed by a regulator under the Relevant Law.

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## **10 Minutes and records**

### **10.1 Minutes**

The directors must cause minutes of all proceedings and resolutions of general meetings and of meetings of directors (including committees of directors) to be recorded, in books kept for that purpose, within one month after the relevant meeting is held.

### **10.2 Minutes of resolutions passed without a meeting**

The directors must ensure minutes of resolutions passed by shareholders and resolutions passed and declarations made by directors (and committees of directors) without a meeting are recorded in books kept for the purpose within one month after the resolution is passed or the declaration is made.

### **10.3 Signing of minutes**

Except in the case of documents which are taken to be minutes under rule 4.10 or rule 5.18(d), those minutes must be signed within a reasonable time by the Chairperson of the meeting at which the proceedings took place or by the Chairperson of the next succeeding meeting.

### **10.4 Minutes as evidence**

A minute that is recorded and signed under rule 10.1 and rule 10.3 is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

### **10.5 Inspection of records and access to documents**

- (a) The directors must ensure the minute books for general meetings are open for inspection by shareholders free of charge.
- (b) The directors may determine whether and to what extent, and at what time and places and under what conditions, the minute books, accounting records and other documents of the company or any of them will be open to the inspection of shareholders other than directors.
- (c) A person who is not a director does not have the right to inspect any of the board papers, books, records or documents of the company, except as provided by law or this constitution, or authorised by the directors.
- (d) The company may enter into contracts with its directors agreeing to provide continuing access for a specified period after they cease to be a director to board papers, books, records and documents of the company which relate to the period during which the director was a director on such terms and conditions as the directors think fit and which are not inconsistent with this rule 10.5.

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## **11 Indemnity and insurance**

### **11.1 Officers to whom rule 11.2 and 11.4 applies**

Rules 11.2 and 11.4 apply to:

- (a) each person who is, or has been, a director or executive officer (within the meaning of rule 6.2(a)) of the company; and
- (b) any other officers or former officers of the company or of its related bodies corporate as the directors in each case decide.

### **11.2 Indemnity**

The company may indemnify on a full indemnity basis and to the full extent permitted by law, each person to whom this rule 11.2 applies against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.

### **11.3 Extent of indemnity**

The indemnity in rule 11.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 11.2 applies even though that person has ceased to be an officer of the company; and
- (b) operates only to the extent that the loss or liability in question is not covered by insurance.

### **11.4 Insurance**

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 11.4 applies against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

### **11.5 Savings**

Nothing in rule 11.2 or 11.4:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom those rules do not apply.

### **11.6 Deed**

Without limiting a person's right under this rule 11, the company may enter into a deed agreeing with the person to give effect to the rights of the person conferred by this rule 11 or the exercise of a discretion under this rule 11, on such terms

and conditions as the directors think fit, as long as they are not inconsistent with this rule 11.

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## 12 Notices

### 12.1 Notices by the company to shareholders

- (a) The company may give notices, including a notice of general 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 electronic address (if any) nominated by the shareholder.
- (b) A notice may be given by the company to the joint holders of a share by giving the notice in the manner authorised by rule 12.1(a) to the joint holder first named in the register of shareholders in respect of the share.
- (c) A notice given to a shareholder in accordance with rule 12.1(a) or 12.1(b) is, despite the occurrence of a transmission event and whether or not the company has notice of that occurrence:
  - (1) duly given in respect of any shares registered in that person's name, whether solely or jointly with another person; and
  - (2) sufficient service on any person entitled to the shares as a result of the transmission event.

A notice given to a person who is entitled to a share as a result of a transmission event is sufficient service on the shareholder in whose name the share is registered.

- (d) Any person who, because of a transfer of shares, becomes entitled to any shares registered in the name of a shareholder is bound by every notice which, before that person's name and address is entered in the register of shareholders in respect of those shares, is given to the shareholder in accordance with this rule 12.1.
- (e) A certificate signed by a director or company secretary to the effect that a notice has been given in accordance with this constitution is conclusive evidence of that fact.

### 12.2 Notices by company to directors

Subject to this constitution, a notice may be given by the company to any director or proxy either by serving it personally at, or by sending it by post in a prepaid envelope to, the director's or proxy's usual residential or business address, or by electronic means to such electronic address as the director or proxy has supplied to the company for the giving of notices.



### **12.3 Notices by shareholders or directors to the company**

Subject to this constitution, a notice may be given by a shareholder, director or proxy to the company by serving it on the company at, or by sending it by post in a prepaid envelope to, the registered office of the company or by electronic means to the principal electronic address of the company.

### **12.4 Notices posted to addresses outside Australia**

A notice sent by post to an address outside Australia must be sent by airmail.

### **12.5 Time of service**

- (a) Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected:
  - (1) in the case of a notice of a general meeting, on the day after the date of its posting, or
  - (2) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (b) Where a notice is sent by electronic means, service of the notice is to be taken to be effected:
  - (1) in the case of an electronic messaging system that contains a delivery verification function, on the generation by the electronic messaging system of a delivery verification notice or log entry, or other confirmation; or
  - (2) in the case of electronic mail or other electronic messaging system (other than those referred to in rule 12.5(b)(1)), on the delivery to:
    - (A) where the addressee is a natural person, the addressee's electronic mail or electronic messaging system account; or
    - (B) where the addressee is a corporation, the corporation's computer system.
- (c) If service under rule 12.5(b) is on a day which is not a business day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the next following business day.
- (d) For the purposes of rule 12.5(c), business day means a day that is not a Saturday, Sunday or a public holiday or bank holiday in the place concerned.

### **12.6 Other communications and documents**

Rule 12.1 to rule 12.5 (inclusive) apply, so far as they can and with any necessary changes, to the service of any communication or document.

## 12.7 Notices in writing

A reference in this constitution to a written notice includes a notice given by electronic transmission or any other form of written communication.

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# 13 General

## 13.1 Submission to jurisdiction

Each shareholder submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the company is taken to be registered, the Federal Court of Australia and the courts which may hear appeals from those courts.

## 13.2 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

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# 14 Transitional provisions

This constitution must be interpreted in such a way that:

- (a) every director, executive officer and company secretary in office in that capacity immediately before this constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this constitution;
- (b) any register maintained by the company immediately before this constitution is adopted is taken to be a register maintained under this constitution;
- (c) any seal adopted by the company immediately before this constitution is adopted is taken to be a seal which the company has under a relevant authority given by this constitution;
- (d) unless a contrary intention appears in this constitution, all persons, things, agreements and circumstances appointed, approved or created by or under the constitution of the company in force before this constitution is adopted, continue to have the same status, operation and effect after this constitution is adopted; and
- (e) except where expressly stated to the contrary, the adoption of this constitution does not alter the rights attaching to any class of shares which exist at the date this constitution is adopted.

## Schedule 1 – Class B Share terms

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### 1 Issue of Class B Shares

#### 1.1 Terms of issue

This Schedule 1 sets out rights and restrictions of Class B Shares which may be issued by the company.

#### 1.2 Separate class

The Class B Shares are a separate class of shares in the company.

#### 1.3 Constitution

The provisions of this constitution apply to Class B Shares.

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### 2 Rights and Restrictions

#### 2.1 Voting

Each Class B Share gives its holder the right to receive notice of and attend and vote at general meetings of the company equally with the holders of Class A Shares.

#### 2.2 Dividends and distributions

A Class B Share does not give its holder the right to receive any dividend or to participate in any distribution of profits or assets of the company.

#### 2.3 Restrictions on transfer

A Class B Share may not be transferred by its holder, unless the transfer is:

- (a) approved by a majority of Class B Shareholders (if there is more than one Class B Shareholder); and
  - (b) to an Employer or an Employer Association who represents the interests of Employers in New South Wales or to the Nominee of such an Employer or Employer Association.
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### 3 Defined terms

In this Schedule 1:

- (a) **Employer** has the same meaning as in the Trust Deed for the Local Authorities Superannuation Fund;
- (b) **Employer Association** means an employer association registered under the Fair Work (Registered Organisations) Act 2009 (Cth) or the Industrial Relations Act 1996 (NSW); and

- (c) **Nominee** means a person nominated in writing by an Employer or Employer Association to hold shares on behalf of that Employer or Employer Association.

## Schedule 2 – Class C Share terms

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### 1 Issue of Class C Shares

#### 1.1 Terms of issue

This Schedule 2 sets out rights and restrictions of Class C Shares which may be issued by the company.

#### 1.2 Separate class

The Class C Shares are a separate class of shares in the company.

#### 1.3 Constitution

The provisions of this constitution apply to Class C Shares.

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### 2 Rights and Restrictions

#### 2.1 Voting

Each Class C Share gives its holder the right to receive notice of and attend and vote at general meetings of the company equally with the holders of Class A Shares.

#### 2.2 Dividends and distributions

A Class C Share does not give its holder the right to receive any dividend or to participate in any distribution of profits or assets of the company.

#### 2.3 Restrictions on transfer

A Class C Share may not be transferred by its holder, unless the transfer is:

- (a) approved by a majority of Class C Shareholders (if there is more than one Class C Shareholder); and
  - (b) to a Union or an Employee Association who represents the interests of employees in New South Wales or to the Nominee of such a Union or an Employee Association.
- 

### 3 Defined terms

In this Schedule 2:

- (a) **Employee Association** means an organisation that is not a Union and whose members comprise employees of a single employer;
- (b) **Nominee** means a person nominated in writing by a Union or Employee Association to hold shares on behalf of that Union or Employee Association; and
- (c) **Union** means a union registered under the Fair Work (Registered Organisations) Act 2009 (Cth) or the Industrial Relations Act 1996 (NSW).

## Schedule 3 – Class D Share terms

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### 1 Issue of Class D Shares

#### 1.1 Terms of issue

This Schedule 3 sets out rights and restrictions of Class D Shares which may be issued by the company.

#### 1.2 Separate class

The Class D Shares are a separate class of shares in the company.

#### 1.3 Constitution

The provisions of this constitution apply to Class D Shares.

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### 2 Rights and Restrictions

#### 2.1 Rights do not extend to voting

- (a) A Class D Share gives its holder the right to receive notice of and attend and participate at general meetings of the company equally with the holders of Class A Shares, except as set out in paragraph (b) below.
- (b) A Class D Share does not give its holder the right to vote on any resolution of the company or demand a poll at a general meeting of the company.

#### 2.2 Dividends and distributions

A Class D Share does not give its holder the right to receive any dividend or to participate in any distribution of profits or assets of the company.

#### 2.3 Restrictions on transfer

A Class D Share may not be transferred by its holder, unless the transfer is to a Union or an Employee Association who represents the interests of engineers employed in New South Wales or to the Nominee of such a Union or an Employee Association.

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### 3 Defined terms

In this Schedule 3:

- (a) **Employee Association** means an organisation that is not a Union and whose members comprise employees of a single employer;
- (b) **Nominee** means a person nominated in writing by a Union or Employee Association to hold shares on behalf of that Union or Employee Association; and

- (c) **Union** means a union registered under the Fair Work (Registered Organisations) Act 2009 (Cth) or the Industrial Relations Act 1996 (NSW).