

**CONSTITUTION**  
**OF**  
**MCCA LIMITED**  
**ACN 129 968 172**

Adopted	.....2009
Certified as a true copy:	.....(Signature)
Role:	Director / Company Secretary (delete one)
Name:	..... (Block letters)

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## CONTENTS

1.	PRELIMINARY .....	1
	1.1 Definitions .....	1
	1.2 Interpretation .....	1
2.	POWERS AND OBJECTS .....	2
3.	SHARE CAPITAL .....	2
	3.1 Shares .....	2
	3.2 Class of Shares - cf. ss.246B to 246G .....	2
	3.3 Shares Held in Trust.....	2
	3.4 Certificates – cf. s.1071H .....	3
	3.5 Joint Holders.....	3
	3.6 Minimum Holding for Members.....	3
	3.7 Maximum Holding.....	3
4.	CALLS .....	3
	4.1 Making a Call and Payment of Calls.....	3
	4.2 Calls Due on Allotment .....	4
	4.3 Differentiation Between Holders .....	4
	4.4 Early Payment .....	4
5.	LIEN .....	4
	5.1 Lien on Share .....	4
	5.2 Sale on Exercise of Lien.....	5
	5.3 Transfer on Exercise of Lien.....	5
	5.4 Proceeds of Sale .....	5
6.	FORFEITURE OF SHARES.....	5
	6.1 Notice Leading to Forfeiture .....	5
	6.2 Forfeiture .....	5
	6.3 Sale on Forfeiture .....	6
	6.4 Rights After Forfeiture .....	6
	6.5 Statement as to Forfeiture .....	6
	6.6 Registration on Forfeiture .....	6
	6.7 Forfeiture Applies to Every Non-Payment .....	6
7.	ALTERATION OF CAPITAL .....	6
	7.1 Power to Alter .....	6
	7.2 Power to Reduce Share Capital .....	6
	7.3 Board's Powers .....	7
8.	TRANSFER OF SHARES .....	7
	8.1 Form of Transfer.....	7
	8.2 Restrictions on Transfer - cf. (replaceable rule) s.1072G .....	7
	8.3 Registration of transfers - cf. (replaceable rule) s.1072F .....	7
9.	LESS-THAN-MINIMUM PARCELS .....	8
	9.1 Divestment of Less-than-minimum Parcel.....	8
	9.2 Annual Process .....	8
	9.3 Notice of proposed sale.....	8
	9.4 No Sale if Member gives Notice .....	8
	9.5 Terms of Sale .....	8
	9.6 Change in circumstance .....	8
	9.7 Transfers .....	9
	9.8 Application of proceeds .....	9
	9.9 Protections for transferee .....	9
	9.10 No sale where takeover bid announced .....	9
	9.11 Voting Rights & Dividend Rights.....	9
10.	TRANSMISSION OF SHARES .....	9
	10.1 Death of Member - cf. (replaceable rule) s.1072A.....	9
	10.2 Transmission Event in respect of Member - cf. (replaceable rule) s.1072B .....	10
	10.3 Mental incapacity - cf. (replaceable rule) s.1072D .....	10

11.	GENERAL MEETINGS .....	11
11.1	Calling of meetings .....	11
11.2	Notice of General Meeting .....	11
11.3	Admission to General Meetings.....	11
12.	PROCEEDINGS AT GENERAL MEETINGS .....	11
12.1	Quorum - cf. (replaceable rule) s.249T.....	11
12.2	Chairperson - cf. (replaceable rule) s.249U.....	12
12.3	Standard procedure at meetings .....	12
12.4	Adjournment - cf. (replaceable rule) ss.249M, s.249U(4) & 249W(2).....	13
12.5	Voting - cf. (replaceable rule) ss.250J & 250M.....	13
12.6	Equality of Votes.....	14
12.7	Voting Rights - cf. (replaceable rule) s.250E .....	14
12.8	Jointly held shares - cf. (replaceable rule) s.250F .....	14
12.9	Member of Unsound Mind .....	14
12.10	Voting Rights Only if Calls Paid.....	14
12.11	Objection to right to vote - cf. (replaceable rule) s.250G .....	14
12.12	Proxies - cf. (replaceable rule) s.249X .....	15
12.13	Lodging of Proxy.....	15
12.14	Validity of Proxy Vote .....	16
13.	APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS.....	16
13.1	Number, Term, Appointment & Resignation - cf. ss.201G, 203A & 203C .....	16
13.2	Transitional arrangements for directors.....	16
13.3	Directors appointed for experience or expertise.....	16
13.4	Qualification of directors .....	16
13.5	Disqualification of directors.....	17
13.6	Casual Vacancy.....	17
13.7	Election of directors .....	17
13.8	Remuneration of directors - cf. (replaceable rule) s.202A .....	18
13.9	Removal from or Vacation of Office.....	18
13.10	Conflict of Interest - cf. (replaceable rule) s.194 .....	18
13.11	Office of Profit.....	19
13.12	Management of the Company's Business - cf. (replaceable rule) s.198A .....	19
13.13	Appointment of Attorney .....	20
13.14	Cheques & other Negotiable Instruments - cf. (replaceable rule) s.198B .....	20
13.15	Directors of wholly-owned subsidiaries - cf s.187.....	21
14.	PROCEEDINGS OF DIRECTORS.....	21
14.1	Meetings - cf. (replaceable rule) ss.248C & 248E .....	21
14.2	Quorum - cf. (replaceable rule) s.248F.....	21
14.3	Proceedings if Office Vacant .....	21
14.4	Chairperson - cf. (replaceable rule) s.248E.....	21
14.5	Decisions - cf. (replaceable rule) s.248G .....	22
14.6	Circulating resolutions of companies - cf. (replaceable rule) s.248A.....	22
14.7	Validity of Acts .....	22
14.8	Delegation by the Board - cf. s.198D.....	22
15.	CHIEF EXECUTIVE OFFICER .....	22
16.	ALTERNATE DIRECTOR - CF. (REPLACEABLE RULE) S.201K.....	23
17.	SECRETARY - CF. (REPLACEABLE RULE - IN PART) SS.204A TO 204G .....	23
18.	INSPECTION OF AND ACCESS TO RECORDS .....	23
19.	EXECUTION OF DOCUMENTS - CF. S.127 .....	24
20.	DIVIDENDS .....	24
20.1	Dividends - cf. (replaceable rule) ss.254U & 254W(2) .....	24
20.2	Payment of Dividends.....	24
20.3	Deduction of unpaid calls .....	24
20.4	Distribution in specie .....	24
20.5	Mode of Payment .....	25
20.6	Capitalisation of Profits - cf. s.254S.....	25

21.	WINDING UP .....	26
22.	INDEMNITY .....	26
	22.1 Indemnity & Insurance - cf. ss.199A to 199C .....	26
23.	NOTICES .....	27
	23.1 Notices - cf ( replaceable rule) s.249J .....	27
	23.2 Service.....	27
24.	DISPUTES .....	28

**CONSTITUTION**  
**MCCA LTD ACN 129 968 172**

**("Company")**

The Replaceable Rules applicable to public companies pursuant to the *Corporations Act 2001 (C'th)* do not apply to the Company.

**1. PRELIMINARY**

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**1.1 Definitions**

In this Constitution:

**Act** means the *Corporations Act 2001 (C'th)*;

**Appointed Director** means a director appointed under Clause 13.3;

**Board** means the Directors acting as a board of directors and in relation to a Board resolution includes a resolution or determination made under Clause 14.6;

**Co-operative** means the co-operative Muslim Community Co-operative Australia Ltd.;

**Less-than-minimum Parcel** means a parcel of less than 500 shares;

**Minimum Parcel** means a parcel of 500 shares or more;

**Transmission Event** means with respect to a person who is:

- (i) a natural person: death; bankruptcy or other insolvency; or becoming of unsound mind or being liable or having his or her estate liable to be dealt with under the law relating to mental health;
- (ii) a body corporate: winding-up, administration or receivership; or succession by another body corporate to the assets and liabilities of the person.

**1.2 Interpretation**

- (a) Division 10 of Part 1.2 of the Act applies in relation to this Constitution as if it was an instrument made under that law as in force on the day on which this Constitution become binding on the Company.
- (b) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, in any of this Constitution that deals with a matter dealt with by that Part or Division unless the contrary intention appears, the same meaning as in that Part or Division.
- (c) Headings in this Constitution or in its Table of Contents are for guidance only and must not be used in the interpretation of any Clause.
- (d) A reference to one gender is a reference to all genders; a reference to a month is to a calendar month; and the singular includes the plural and vice versa, unless the context requires otherwise.

## **2. POWERS AND OBJECTS**

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- (a) The Company has no restrictions or prohibitions on the exercise of any of its powers.
- (b) The Company operates primarily with the object of providing services in accordance with Islamic principles.

## **3. SHARE CAPITAL**

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### **3.1 Shares**

- (a) The capital of the Company is comprised of shares and the Board has power to issue any shares with preferred, deferred, qualified, guaranteed or other special rights, privileges, restrictions, limitations or conditions with reference to preferential, guaranteed, fixed, fluctuating or other dividends or payment or voting or return of capital or distribution of assets or redemption (in relation to preference shares) or otherwise determined by the Company from time to time in accordance with this Constitution.
- (b) The power to issue shares in accordance with Clause 3.1(a) resides with the directors on behalf of the Company, and must be exercised subject to any resolution of the members in general meeting.

### **3.2 Class of Shares - cf. ss.246B to 246G**

- (a) The rights attached to any class or classes of shares may be varied or abrogated in the manner provided for in this Constitution, subject to the Act.
- (b) The rights attached to any class of shares (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of 75% of the holders of the shares of that class or by special resolution passed at a separate meeting of holders of shares of the class.
- (c) The provisions of this Constitution relating to general meetings apply, with any necessary changes, to separate class meetings as if they were a general meeting.
- (d) Unless otherwise expressly provided by the terms of issue of the shares of that class, the rights conferred upon the holder of the shares of any class issued with preferred or other rights will be deemed to be varied by the issue of further shares ranking equally with them.

### **3.3 Shares Held in Trust**

- (a) The Company must recognise in the Register of Members that shares are held beneficially or non-beneficially. Subject to paragraph (b), the Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any other information regarding equitable, contingent, future or partial interests in any share except as provided by this Constitution or by the Act.
- (b) If the Company recognises its founding shareholder the Co-operative as holding shares as nominee and trustee for a member of the Co-operative following a distribution of shares by the Co-operative, the shareholding in each case may be treated on a standalone basis

- (i) in the Register of Members; and
- (ii) in determining if it is a Less-than-minimum Parcel

and need not be aggregated with any other holdings of the Co-operative.

### **3.4 Certificates – cf. s.1071H**

- (a) A person whose name is entered as a member in the Register of Members is entitled without payment to receive a share certificate but, in respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.
- (b) Delivery of a certificate to one of several joint holders is sufficient delivery to those holders.
- (c) If the Board is satisfied that a share certificate issued by the Company is defaced, lost or destroyed the Board may issue a duplicate certificate free of charge.

### **3.5 Joint Holders**

- (a) If 2 or more persons are registered as the holders of a share, they hold it as joint tenants with the right of survivorship, on the following conditions:
  - (i) they are liable jointly and severally for all payments, including calls, with respect to the security;
  - (ii) paragraph 10.1(d) will apply on the death of any one of them;
  - (iii) any one of the joint holders may give an effective receipt for any dividend, bonus, payment or other distribution or payment with respect to the security.
- (b) The Company may elect to, but is not required to; register more than 3 persons as joint holders of a share, unless the joint holders become entitled due to transmission upon the death of a member.

### **3.6 Minimum Holding for Members**

- (a) Every member of the Company must hold at least a Minimum Parcel.
- (b) If any member of the Company at any time holds a Less-than-minimum Parcel, then clause 9 applies.

### **3.7 Maximum Holding**

In addition to the provisions of Part 6.1 of the Corporations Act, a member and its associates may not hold a relevant interest (as defined in the Corporations Act) in issued voting shares of the Company, as if the 20% numbers in section 606(10)(c) were 10%, without the approval of the directors or unless one of the exceptions in section 611 apply.

## **4. CALLS**

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### **4.1 Making a Call and Payment of Calls**

- (a) The directors may make calls upon the members in respect of any money unpaid on the shares of the members and not by the terms of issue of those

shares made payable at fixed times, except that no call may exceed 1/4 of the issue price of the shares or be payable earlier than 1 month from the date fixed for the payment of the last preceding call.

- (b) Each member must, upon receiving at least 14 days notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on his shares.
- (c) The directors may revoke or postpone a call.
- (d) A call will be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by instalments.
- (e) The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

#### **4.2 Calls Due on Allotment**

Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, will for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of this Constitution as to payment of expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

#### **4.3 Differentiation Between Holders**

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

#### **4.4 Early Payment**

The directors may accept from a member the whole of or a part of the amount unpaid on a share although no part of that amount has been called up.

### **5. LIEN**

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#### **5.1 Lien on Share**

- (a) The Company has a first ranking lien on:
  - (i) every partly paid share, for all unpaid calls and instalments due and unpaid on that share;
  - (ii) every share of a member or deceased former member for any amount the Company is required by law to pay and has paid in respect of that share; and
  - (iii) if the shares were acquired under an employee incentive scheme, an amount is owed to the Company for acquiring them.
- (b) The directors may at any time exempt a share wholly or in part from this Clause.
- (c) Any lien of the Company on a share extends to all dividends payable in respect of the share.



## 5.2 Sale on Exercise of Lien

- (a) Subject to paragraph 5.2(b) , the Company may sell in any manner that the directors think fit, any shares on which the Company has a lien.
- (b) A share on which the Company has a lien must not be sold unless:
  - (i) a sum in respect of which the lien exists is presently payable; and
  - (ii) not less than 14 days before the date of the sale, the Company has given to the registered holder of the share or the person entitled to the share by reason of the death, Transmission Event or mental incapacity of the registered holder a notice in writing setting out, and demanding payment of, the amount that is presently payable and in respect of which the lien exists.

## 5.3 Transfer on Exercise of Lien

- (a) For the purpose of giving effect to a sale mentioned in Clause 5.2, the directors may authorise a person to transfer the shares sold to the purchaser of the shares.
- (b) The Company must register the purchaser as the holder of the shares comprised in any such transfer and he is not bound to see to the application of the purchase money.
- (c) The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

## 5.4 Proceeds of Sale

The Company must apply the proceeds of any sale pursuant to Clause 5.2 in payment of the part of the amount in respect of which the lien exists that is presently payable, and, subject to any like lien for sums not presently payable that existed upon the shares before the sale, the residue (if any) must be paid to the person entitled to the shares at the date of the sale.

## 6. FORFEITURE OF SHARES

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### 6.1 Notice Leading to Forfeiture

- (a) If a member fails to pay a call or instalment of a call on the day appointed for payment of the call or instalment, the directors may, at any time thereafter during the time that any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any other amounts payable.
- (b) The notice must name a further day (not earlier than expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and must state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

### 6.2 Forfeiture

- (a) If the requirements of the notice served under Clause 6.1 are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

- (b) A forfeiture includes all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

### **6.3 Sale on Forfeiture**

A forfeited share may be sold or otherwise disposed of on terms and in a manner determined by the directors, and, at any time before a sale or disposition, the forfeiture may be cancelled on terms as the directors determine.

### **6.4 Rights After Forfeiture**

A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him to the Company in respect of the shares but his liability ceases if and when the Company receives payment in full of all the money so payable in respect of the shares.

### **6.5 Statement as to Forfeiture**

A statement in writing declaring that the person making the statement is a director or a Secretary, and that a share in the Company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.

### **6.6 Registration on Forfeiture**

- (a) The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (b) Upon the execution of the transfer, the transferee must be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (c) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.

### **6.7 Forfeiture Applies to Every Non-Payment**

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

## **7. ALTERATION OF CAPITAL**

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### **7.1 Power to Alter**

The Company may by resolution:

- (a) consolidate or subdivide all or any of its shares but so that in the consolidation or subdivision the proportion between the amount paid and the amount (if any) unpaid on each share is the same as it was in the case of the share from which the share is derived; and
- (b) cancel shares that, at the date of the passing of the resolution, have been forfeited.

### **7.2 Power to Reduce Share Capital**

Subject to the Act, the Company may by special resolution, reduce its share capital.

### 7.3 Board's Powers

Where as a result of a consolidation, a member would become entitled to a fraction of a share, the Board may resolve the position by doing any of the following:

- (a) make a cash payment;
- (b) determine that fractions may be disregarded in order to adjust the rights of all members;
- (c) appoint a trustee to deal with any fractions on behalf of members; and
- (d) round up a fractional entitlement to the nearest whole number by capitalising any amount available for capitalisation even though only some members participate in the capitalisation.

## 8. TRANSFER OF SHARES

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### 8.1 Form of Transfer

- (a) The instrument of transfer of any shares in the Company must be in the usual common form or any other form approved by the directors and must be executed by both the transferor and the transferee. The transferor will be deemed to remain the holder of the shares until the transfer is registered and the name of the transferee is entered in the Register of Members.
- (b) The instrument of transfer must be forwarded for registration to or left at the share register for the Company in which the share is registered, accompanied by the share certificate of the shares to which the transfer relates and by any other evidence required by the directors to prove the title of the transferor. Upon receipt of this material and subject to the restrictions on transfer contained in and the powers vested in the directors by this Constitution, the Company must register the transferee as a member and retain the instrument of transfer.

### 8.2 Restrictions on Transfer - cf. (replaceable rule) s.1072G

- (a) The Board:
  - (i) must refuse to register any transfer of shares not permitted under this Constitution; and
  - (ii) may refuse to register any transfer of shares to a person whom the Board does not approve.
- (b) A member may not transfer any shares in the Company if registration of the transfer will create a new holding that will be a Less-than-minimum Parcel.
- (c) If the Board refuses to register the transfer of any shares, they must within 14 days after the date on which the transfer was received by the Company, send to the transferee a notice of the refusal.

### 8.3 Registration of transfers - cf. (replaceable rule) s.1072F

- (a) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the Register of Members in respect of the shares.

- (b) The directors are not required to register a transfer of shares in the Company unless the transfer and any share certificate have been lodged at the Company's registered office.
- (c) The directors may refuse to register a transfer of shares in the Company if:
  - (i) the shares are not fully paid; or
  - (ii) the Company has a lien on the shares.
- (d) The directors may suspend registration of transfers of shares in the Company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

## **9. LESS-THAN-MINIMUM PARCELS**

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### **9.1 Divestment of Less-than-minimum Parcel**

The Board may cause the Company to sell a member's shares if the member holds less than a Minimum Parcel and the following procedures in Clauses 9.2 to 9.11 are observed.

### **9.2 Annual Process**

This divestment process may not be undertaken by the Board more than once per financial year.

### **9.3 Notice of proposed sale**

The Company may give written notice to a member who holds a Less-than-minimum Parcel or, if held by joint members, to all of the joint members:

- (a) explaining the effect of this Clause 9;
- (b) stating that it intends to sell the Less-than-minimum Parcel;
- (c) specifying a date at least 35 business days after the notice is given by which the member may give the Company written notice that the member wishes to retain the holding.

### **9.4 No Sale if Member gives Notice**

If the member gives notice within the specified period after the notice is given that he or she wishes to retain the holding, the process in this clause cease to apply in that year.

### **9.5 Terms of Sale**

Subject to Clause 9.2, the Company may, on behalf of the member, sell the shares which make up the Less-than-minimum Parcel as soon as practicable at a price which the Board considers to be the best price reasonably obtainable for the shares at the time they are sold. A sale of shares under this Clause includes all dividends payable on and other rights attaching to them. The Company must pay the costs of the sale if allowed to do so by the Act, or must cause the purchaser to do so. Otherwise, the Board may decide the manner, time and terms of sale.

### **9.6 Change in circumstance**

If a member's holding becomes a Minimum Parcel after notice is given but before the shares are sold, the Board may decide that this Clause 9 no longer applies to

that holding. Before a sale is effected under this Clause 9, the Board may suspend or terminate the operation of this Clause either generally or in the case of a specific member.

### **9.7 Transfers**

For the purpose of giving effect to this Clause 9, each Director and Secretary has power to execute a transfer as agent for any member who holds a Less-than-minimum Parcel.

### **9.8 Application of proceeds**

The Company must:

- (a) give written notice to the former member stating what the amount of the sale proceeds is and that it is holding the balance for the former member while awaiting the former member's return of the certificate (if any) for the shares sold or evidence of its loss or destruction;
- (b) not pay the amount until it has received the certificate for them or evidence satisfactory to the Company of the loss or destruction of the certificate; and
- (c) subject to paragraph 9.8(b), send the amount of the sale proceeds to the former holder after the sale.

### **9.9 Protections for transferee**

The title of the new holder of a share sold under this Clause 9 is not affected by any irregularity in the sale. The sole remedy of any person previously interested in the share is damages which may be recovered only from the Company.

### **9.10 No sale where takeover bid announced**

The power to sell under this Clause 9 lapses following the announcement of a takeover bid for the Company. The procedure may be started again after the close of the offers made under the takeover bid.

### **9.11 Voting Rights & Dividend Rights**

The Board may suspend the voting right or the right to receive dividends for any shares in a Less-than-minimum Parcel that is in the process of being sold. If it has done so and proceeds with the sale of the Less-than-minimum Parcel, it must send any dividends that have been withheld to the former holder after the sale of the Less-than-minimum Parcel.

## **10. TRANSMISSION OF SHARES**

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### **10.1 Death of Member - cf. (replaceable rule) s.1072A**

- (a) If a member who does not own shares jointly dies, the Company will recognise only the personal representative of the deceased member as being entitled to the deceased member's interest in the shares. The estate of the deceased member is not released from any liability in respect of the shares.
- (b) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

- (i) the personal representative may by giving a written and signed notice to the Company, elect to be registered as the holder of the shares or by giving a completed transfer form to the Company, transfer the shares to another person; and
  - (ii) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased member.
- (c) On receiving an election under subparagraph (a)(i), the Company must register the personal representative as the holder of the shares.
  - (d) If a member who owns shares in a joint tenancy dies, the Company will recognise only the survivor as being entitled to the deceased member's interest in the shares. The estate of the deceased member is released from any liability in respect of the shares.
  - (e) Where two or more persons are jointly entitled to any share in consequence of the death of the registered holder, they will be deemed to be joint holders of the share for the purpose of this Constitution.

#### **10.2 Transmission Event in respect of Member - cf. (replaceable rule) s.1072B**

- (a) If a person entitled to shares because of a Transmission Event in respect of a member gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
  - (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person.
- (b) On receiving an election under subparagraph (a)(i), the Company must register the person as the holder of the shares.
- (c) This Clause has effect subject to the *Bankruptcy Act 1966*.

#### **10.3 Mental incapacity - cf. (replaceable rule) s.1072D**

- (a) If a person entitled to shares because of the mental incapacity of a member gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
  - (i) the person may:
    - (A) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
    - (B) by giving a completed transfer form to the Company, transfer the shares to another person; and
  - (ii) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the member.
- (b) On receiving an election under subparagraph (a)(i), the Company must register the person as the holder of the shares.

## **11. GENERAL MEETINGS**

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### **11.1 Calling of meetings**

- (a) The Board may call a general meeting of the Company's members at any time.
- (b) The Board may postpone or cancel a general meeting or change its venue, if considered to be necessary by the Board, if called by Board resolution
- (c) The Board may postpone or cancel a general meeting called or requisitioned other than by Board resolution or change its venue, with the prior written consent of the person or persons who called or requisitioned the meeting.

### **11.2 Notice of General Meeting**

- (a) The Board must give each member at least 21 days notice of each general meeting.
- (b) The notice must specify the place, the date and the time of the meeting and state the general nature of the meeting's business and must include a proxy form.
- (c) Failure to give proper notice (including a proxy form) to a person does not invalidate any resolution passed or any other thing done at the general meeting if the failure occurred through accident or inadvertent error.
- (d) A person may waive the requirement for notice or any failure to give proper notice.
- (e) A person's attendance at a general meeting waives any objection that person may have to a failure to give notice of the general meeting or to a defective notice, unless the person objects at the commencement of the meeting.

### **11.3 Admission to General Meetings**

- (a) The chairperson may refuse admission to any person who is not entitled to attend a general meeting and may take any action he or she considers necessary or desirable for the safety and protection of those attending the meeting.
- (b) The Chairperson may order the removal of any person (including a member) from a meeting if, in the opinion of the Chairperson, that person is not entitled to attend the meeting is or may attempt to disrupt or cause a danger at the meeting or to record the meeting by video or audio means the meeting to, or may adjourn the meeting if that person cannot be removed.
- (c) The Board may invite any person to address a general meeting, whether a member or not, and that person may, at the invitation of the Chairperson, address the meeting.

## **12. PROCEEDINGS AT GENERAL MEETINGS**

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### **12.1 Quorum - cf. (replaceable rule) s.249T**

- (a) The quorum for a meeting of a company's members is 20 members, unless otherwise determined by the members in general meeting, and the quorum must be present at all times during the meeting.

- (b) In determining whether a quorum is present, individuals attending as proxies or body corporate representatives must be counted. However, if a member has appointed more than 1 proxy or representative, only 1 of them may be counted. If an individual is attending both as a member and as a proxy or corporate representative, he may only be counted once.
- (c) A meeting of the Company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting, the meeting:
  - (i) if convened upon the requisition of members, is abandoned; and
  - (ii) in any other case must be adjourned to the same day and time in the next week at the same place.
- (d) If at an adjourned meeting pursuant to clause 12.1(c), a quorum is not present within half an hour after the time appointed for the meeting the members present shall be a quorum.

## **12.2 Chairperson - cf. (replaceable rule) s.249U**

- (a) If the Directors have elected one of their number as chairperson of their meetings, he must preside as chairperson at every general meeting.
- (b) If not, the Directors at a meeting of the Company's members must elect an individual present to chair the meeting.
- (c) If a person is not available to chair a meeting under the preceding clause or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting), the members at the meeting must elect a member present to chair the meeting (or part of it).
- (d) Where a general meeting is held and:
  - (i) a Chairperson has not been elected as provided by paragraph 12.2(a); or
  - (ii) the Chairperson 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 elect one of their number to be chairperson of the meeting.

## **12.3 Standard procedure at meetings**

The following standing orders must be observed at general meetings:

- (a) The mover of a proposed resolution must not speak for more than 10 minutes. Subsequent speakers are allowed 5 minutes, and the mover of the resolution 5 minutes to reply. The Chairperson may extend in a particular instance the time permitted by this rule.
- (b) If an amendment to an original proposed resolution is proposed, no second amendment may be considered until the first amendment is disposed of.
- (c) If an amendment is carried, the proposed resolution as so amended displaces the original proposed resolution and may itself be amended.



- (d) If an amendment is defeated, then a further amendment may be moved to the original proposed resolution. However, only one amendment may be submitted to the meeting for discussion at one time.
- (e) The mover of every original proposed resolution, but not of an amendment, has the right to reply. Immediately after this the question must be put from the Chairperson. No other member may speak more than once on the same question, unless permission is given for an explanation, or the attention of the Chairperson is called to a point of order.
- (f) Proposed resolutions and amendments must be submitted in writing, if requested by the Chairperson.
- (g) The Chairperson may determine when a proposed resolution should be put to a vote.
- (h) Any member, or visitor invited to attend the meeting by the Board, may speak on any issue at a meeting with the permission of the Chairperson subject to any conditions imposed by the Chairperson.

The standard procedure may be suspended for any period by ordinary resolution.

#### **12.4 Adjournment - cf. (replaceable rule) ss.249M, s.249U(4) & 249W(2)**

- (a) The Chairperson may with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) The Chairperson 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 Chairperson must do so.
- (c) When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.
- (d) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

#### **12.5 Voting - cf. (replaceable rule) ss.250J & 250M**

- (a) At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before or on the declaration of the result of the show of hands:
  - (i) by the Chairperson;
  - (ii) by a member or members present in person or by proxy and representing not less than 1/10th of the total voting rights of all the members having the right to vote at the meeting; or
  - (iii) by a member or members holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than 1/10th of the total sum paid up on all the shares conferring that right.

- (b) Unless a poll is demanded, a declaration by the Chairperson that a resolution has on a show of hands been carried or carried unanimously or by a particular majority, 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 in favour of or against the resolution. The number or proportion of the votes recorded in favour of or against the resolution need not be stated by the Chairperson or recorded in the minutes.
- (c) A poll demanded on:
  - (i) the election of a chairperson or on the question of an adjournment must be taken immediately; and
  - (ii) a matter other than the election of a chairperson or the question of an adjournment must be taken when and in the manner the Chairperson directs.
- (d) The demand for a poll may be withdrawn.

### **12.6 Equality of Votes**

In the case of equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting has a second or casting vote.

### **12.7 Voting Rights - cf. (replaceable rule) s.250E**

Subject to any rights or restrictions for the time being attached to any class or classes of shares, at meetings of members or classes of members:

- (a) each member entitled to vote may vote in person or by proxy, representative or attorney; and
- (b) on a show of hands every member has 1 vote, and on a poll every member has 1 vote for each share he holds.

### **12.8 Jointly held shares - cf. (replaceable rule) s.250F**

If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the Register of Members counts.

### **12.9 Member of Unsound Mind**

If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were a member.

### **12.10 Voting Rights Only if Calls Paid**

A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by him in respect of the shares in the Company have been paid.

### **12.11 Objection to right to vote - cf. (replaceable rule) s.250G**

- (a) A challenge to a right to vote at a meeting or adjourned meeting of members:
  - (i) may only be made at the meeting at which the vote is cast; and

- (ii) must be determined by the Chairperson, whose decision is final.
- (b) Any objection must be referred to the chairperson of the meeting, whose decision is final.
- (c) A vote not disallowed after an objection is valid for all purposes.

**12.12 Proxies - cf. (replaceable rule) s.249X**

- (a) A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
- (b) An instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation duly executed or under the hand of a duly authorised officer or attorney.
- (c) An instrument appointing a proxy may specify the proportion or number of votes that the proxy may exercise and the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, that the proxy is not entitled to vote on the resolution except as specified in the instrument. If the member is entitled to cast 2 or more votes at the meeting, he may appoint proxies in respect of stated numbers of shares.
- (d) An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.
- (e) An instrument appointing a proxy must be in the following form or in a form that is as similar to the following form as the circumstances allow:

*I/We, #, of #, being a member/members of the Company, hereby appoint # of # or, in his absence, # of # as my/our proxy to vote for me/us on my/our behalf at the general meeting of the Company to be held on # and at any adjournment of that meeting.*

*\*This form is to be used <sup>\*</sup>in favour of/<sup>\*</sup>against the resolution.*

*Dated #*

*Signed.....*

*\*To be inserted if desired.*

**12.13 Lodging of Proxy**

An instrument appointing a proxy must not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power of attorney or in the case of a power of attorney in a form executed in accordance with the Instruments Act 1958 (Victoria), a copy of that power of attorney certified in accordance with section 111 of that Act, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place within the State as is specified for that purpose in the notice convening the meeting.

**12.14 Validity of Proxy Vote**

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

- (a) the appointing member dies; or
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment; or
- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member transfers the shares in respect of which the proxy was given.

**13. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

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**13.1 Number, Term, Appointment & Resignation - cf. ss.201G, 203A & 203C**

- (a) The number of directors is to be no less than 3 and no more than 7, not counting any person who holds the role of chief executive officer from time to time who may be appointed as a director, unless otherwise determined by the Company in general meeting.
- (b) The Company may by resolution appoint any person a director or remove any director and in the latter case appoint another person as a director instead but so that the total number of directors does not exceed the number determined in accordance with this Constitution.
- (c) Subject to this Constitution and to the Act, the directors for the time being will continue to hold office.
- (d) A director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

**13.2 Transitional arrangements for directors**

- (a) It is acknowledged that the directors of the Company at the date of adoption of this Constitution are persons who were directors of the Co-operative as at 30 June 2009.
- (b) For the purposes of paragraph 13.7(c), at the next AGM after adoption of this Constitution, measurement of the longest in office shall be measured from the date of their appointment as a director of the Co-operative.

**13.3 Directors appointed for experience or expertise**

The Board may designate up to 2 of the appointees or such other number approved by a general meeting of members as Appointed Directors. An Appointed Director must be a person having experience or expertise in an area relevant to the business of the Company such as banking and finance, insurance, accounting or law. An Appointed Director may be appointed for a fixed term or on another basis unanimously approved by the Board and shall not be subject to election.

**13.4 Qualification of directors**

A director may be, but is not required to be, a member of the Company.

### 13.5 Disqualification of directors

A person is disqualified from acting as a director if he or she:

- (a) is the auditor of the Company or a partner, employee or employer of the auditor;
- (b) has been convicted, whether before or after the commencement of this section, within or outside Victoria:
  - (i) on indictment of an offence in connection with the promotion, formation or management of a body corporate; or
  - (ii) of an offence involving fraud or dishonesty punishable on conviction by imprisonment for a period of not less than 3 months; or
  - (iii) of any offence under section 184, 344, 590, 592, 670A or 728 of the Act; or
  - (iv) of any offence under any provision of a previous law of Victoria or of another State or Territory, with which any of the provisions referred to in sub-paragraph (iii) corresponds
    - within a period of 5 years after the conviction or, if sentenced to imprisonment, after his or her release from prison;
- (c) is disqualified from managing corporations under Part 2D.6 (Disqualification from managing corporations) of the Act; or
- (d) is an insolvent under administration (as defined in the Act).

A casual vacancy shall occur of a director is found to be or becomes disqualified.

### 13.6 Casual Vacancy

The Board may appoint any person to be a director to fill a casual vacancy but so that the total number of directors does not at any time exceed the number determined in accordance with this Constitution. Any director so appointed will hold office until the following annual general meeting.

### 13.7 Election of directors

- (a) The following provisions apply to directors other than:
  - (i) a chief executive officer who is appointed as a director, who will remain a director so long as he continues to be chief executive officer;
  - (ii) an Appointed Director.
- (b) At each annual general meeting, one third of the directors must retire. If the number of directors counted in this rotation is not divisible by three, the number to retire shall be rounded down.
- (c) Subject to Clause 13.2(b), the directors to retire in any one year are, first, any director appointed to fill a casual vacancy and second, those that have been longest in office and if there are 2 or more elected directors who became directors on the same day, those who retire must be determined by lot unless they otherwise agree among themselves.
- (d) A retiring director retains office until the close of the meeting at which his or her successor is elected.

- (e) A retiring director is eligible for re-election.

### **13.8 Remuneration of directors - cf. (replaceable rule) s.202A**

- (a) The directors must be paid the remuneration that the Company determines by resolution from time to time.
- (b) The remuneration will be deemed to accrue from day to day.
- (c) The Company may also pay the directors' travelling and other expenses that they properly incur:
  - (i) in attending directors' meetings or any meetings of committees; and
  - (ii) in attending any general meetings of the company; and
  - (iii) in connection with the company's business.
- (d) If any director is called upon to perform extra services or to make any special exertions in going or residing abroad or otherwise for any of the purposes of the Company and does so, the Company by resolution may remunerate that director either by a fixed sum or by a percentage of profits or otherwise as may be determined by the Company and that remuneration may be either in addition to or in substitution for his entitlement to the remuneration provided above.

### **13.9 Removal from or 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:

- (a) the Company by special resolution removes the director from office before the end of the director's period of office;
- (b) the director becomes prohibited from being a director by reason of an order made under the Act;
- (c) the director 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;
- (d) the director resigns his office by notice in writing to the Company.

### **13.10 Conflict of Interest - cf. (replaceable rule) s.194**

- (a) If a director has a material personal interest in a matter that relates to the affairs of the Company and:
  - (i) under Section 191 of the Act, the director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the directors; or
  - (ii) the interest in one that does not need to be disclosed under Section 191 of the Act;

then:

- (iii) the director may vote on matters that relate to the interest; and
  - (iv) any transactions that relate to the interest may proceed; and
  - (v) the director may retain benefits under the transaction even though the director has the interest; and
  - (vi) the Company cannot avoid the transaction merely because of the existence of the interest.
- (b) If the disclosure is required under Section 191 of the Act, paragraphs (v) and (vi) apply only if the disclosure is made before the transaction is entered into.

### **13.11 Office of Profit**

A director may hold any other office or place of profit (except that of auditor) in the Company in conjunction with his Directorship and may be appointed thereto upon such terms as to remuneration, tenure of office and otherwise as may be arranged by the directors.

### **13.12 Management of the Company's Business - cf. (replaceable rule) s.198A**

- (a) The business of the Company is to be managed by or under the direction of the directors. The directors may pay all expenses incurred in promoting and forming the Company, and may exercise all the powers of the Company except any powers that the Act or this Constitution (if any) requires the Company to exercise in general meeting.
- (b) Without limiting paragraph 13.12(a) and subject to the Constitution:
- (i) the directors may from time to time at their discretion exercise all the powers of the Company to borrow money for the purposes of the Company;
  - (ii) the directors may secure the payment or repayment of money borrowed in exercise of the powers referred to in subparagraph 13.12(b)(i) or of any debts, liabilities, contracts or obligations undertaken or incurred by the Company or by a third party in such form or manner and upon such terms and conditions in all respects as they think fit including the issue of debentures or debenture stock (terminable or perpetual) or the giving of any bond, mortgage, charge or other security or obligation of the Company charged upon all or any part of the property and assets of the Company (both present and future and whether owned beneficially or not) including its uncalled and/or unpaid capital for the time being or of obligations of the Company;
  - (iii) the directors may cause or permit any of the mortgages, debentures, debenture stock, bonds, charges or other securities or obligations referred to in the immediately preceding paragraph to be redeemed, assigned or transferred as they may think fit;
  - (iv) the directors may for the purposes of securing the payment of any debentures, bonds or other securities or the payment of any monies so borrowed as aforesaid or payable under any contract whatsoever or otherwise howsoever take and carry into effect any arrangement which they may deem expedient by assigning or

conveying any property of the Company (including uncalled capital) to trustees;

- (v) any debentures, debenture stock, bonds or other security may be issued at a discount, premium or otherwise and with or without the right to the holder thereof to exchange the same in whole or in part at certain or uncertain times or with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at general meetings of the Company, appointment of directors and otherwise and any debenture or debentures may be reissued notwithstanding that it or they may have been paid off or satisfied; and the directors may give and execute, in the name and on behalf of the Company as provided by this Constitution in favour of any director, or other person, who may incur or be about to incur any personal liability for the benefit of the Company, such mortgages of the Company's property (present and future) as they think fit and with any such powers, covenants and provisions may be agreed upon;
- (vi) if any uncalled capital of the Company is included in or charged by any mortgage or other security the directors may by a duly executed instrument authorise the person in whose favour the mortgage or other security is executed or any other person in trust for him to make calls on the members in respect of that uncalled capital or to control the making of those calls, with power to control or veto transfers and to sue in the name of the Company or otherwise for the recovery of monies becoming due in respect of all such calls and to give valid receipts for those monies and the power so delegated will subsist during the continuance of the mortgage or security notwithstanding any change of directors and will be assignable if expressed so to be.

### **13.13 Appointment of Attorney**

- (a) The directors may, by power of attorney, appoint any person to be the attorney or attorneys of the Company for such purposes, with such power, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors) for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.

### **13.14 Cheques & other Negotiable Instruments - cf. (replaceable rule) s.198B**

- (a) Any 2 directors of the Company or any one director and other officer authorised by the Board from time to time may sign, draw, accept, endorse or otherwise execute a cheque or other negotiable instrument.
- (b) The Board may determine that a cheque or other negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.



**13.15 Directors of wholly-owned subsidiaries - cf s.187**

A director of a corporation that is a wholly-owned subsidiary of a body corporate is to be taken to act in good faith in the best interests of the subsidiary if:

- (a) the constitution of the subsidiary expressly authorises the director to act in the best interests of the holding company; and
- (b) the director acts in good faith in the best interests of the holding company; and
- (c) the subsidiary is not insolvent at the time the director acts and does not become insolvent because of the director's act.

**14. PROCEEDINGS OF DIRECTORS**

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**14.1 Meetings - cf. (replaceable rule) ss.248C & 248E**

- (a) The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit and must in any case meet at least every 3 months.
- (b) A director may at any time and a secretary must on the written request of a director call a meeting of the Board. Reasonable notice of a Board meeting must be given individually to each director using any technology consented to by all the directors.
- (c) At least 48 hours notice of a Board meeting must be given, except in the case of special circumstances as determined by the chairperson.
- (d) One or more directors is deemed to be present at a Board meeting if in contact with another director or other directors by telephone or any other communications equipment providing that all directors participating are able to hear each other and in that case the directors so present may vote on any proposed resolution by the relevant communication method.

**14.2 Quorum - cf. (replaceable rule) s.248F**

- (a) Unless the directors determine otherwise, the quorum for a Board meeting is 4 directors and the quorum must be present at all times during the meeting.
- (b) For the purposes of this Clause until otherwise determined by the Company in general meeting, 4 directors or (if applicable) another number of directors determined by the directors who are in contact by telephone or any other communications equipment whereby such number of directors are able to hear each other, will constitute a quorum.

**14.3 Proceedings if Office Vacant**

In the event of a vacancy or vacancies in the office of a director, the remaining directors may act but, if the number of remaining directors is not sufficient to constitute a quorum at a Board meeting, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or of convening a meeting of the Company's members.

**14.4 Chairperson - cf. (replaceable rule) s.248E**

- (a) The chairperson of the Board shall be elected at the first Board meeting after each annual general meeting.

- (b) If the chairperson of the Board is unable or unwilling to preside or is not present within 15 minutes after the time appointed for meetings of the Board, the directors present must select one of their members to preside.
- (c) The person selected under paragraph (b) presides at the Board meeting until the time that the chairperson attends and is willing to act.
- (d) The Board may remove the chairperson from office and appoint another chairperson.

#### **14.5 Decisions - cf. (replaceable rule) s.248G**

- (a) A resolution of the Board must be passed by a majority of the votes cast by directors entitled to vote on the resolution and present at a meeting of directors.
- (b) In the case of an equality of votes, the chairperson will have a second, casting vote.

#### **14.6 Circulating resolutions of companies - cf. (replaceable rule) s.248A**

- (a) The directors may pass a resolution without a Board meeting being held if all the directors 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.
- (b) 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.
- (c) The resolution is passed when the last director signs.

#### **14.7 Validity of Acts**

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or to act as a director or that a person so appointed was disqualified, all acts done by any meeting of the directors or by any person acting as a director are as valid as if the person had been duly appointed and was qualified to be a director.

#### **14.8 Delegation by the Board - cf. s.198D**

The Board may, by resolution, delegate the exercise of any of the Board's functions (other than this power of delegation) as specified in the resolution:

- (a) to a director; or
- (b) to a committee of 2 or more directors; or
- (c) to a committee of members of the Company and other persons if directors and members comprise the majority of persons on the committee.

### **15. CHIEF EXECUTIVE OFFICER**

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- (a) The Board may appoint a person to the office of chief executive officer of the Company for a term, and on the terms (including as to remuneration and whether by way of salary, commission or participation in profits, or partly in one way and partly in another), as the directors see fit.
- (b) The chief executive officer need not be a director. If he is a director, he may be titled chief executive officer or managing director.

- (c) The directors may, subject to the terms of any agreement entered into in a particular case, revoke or vary:
  - (i) an appointment; or
  - (ii) any of the powers conferred on the chief executive officer.

#### **16. ALTERNATE DIRECTOR - CF. (REPLACEABLE RULE) S.201K**

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- (a) A director may, with the approval of the other directors, appoint a person (whether a member of the Company or not) to be an alternate director in his place during such period as he thinks fit, and the appointment may or may not be for a specified period.
- (b) If the appointing director requests the Company to give the alternate notice of directors' meetings, the Company must do so.
- (c) If the appointing director is not present at a meeting, the alternate is entitled to attend and vote in his place.
- (d) An alternate may exercise any powers that the appointing director may exercise and the exercise of any such power by the alternate will be deemed to be the exercise of the power of the appointing director.
- (e) An alternate is not required to have any share qualification.
- (f) The appointing director may terminate the alternate's appointment at any time, notwithstanding that the period of the appointment of the alternate has not expired.
- (g) The alternate's appointment automatically terminates if
  - (i) the appointor ceases to be a director; or
  - (ii) the Board resolves that the alternate should cease to be the alternate of the appointor.
- (h) An appointment or its termination, except as contemplated in Clause 16(g), must be in writing. A copy must be given to the Company.

#### **17. SECRETARY - CF. (REPLACEABLE RULE - IN PART) SS.204A TO 204G**

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A Secretary may be appointed and if appointed, holds office on terms and conditions (as to remuneration and otherwise) that the directors determine, and may be removed by the directors.

#### **18. INSPECTION OF AND ACCESS TO RECORDS**

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- (a) Each director has the right to have access to and to inspect and take copies of any of the Board papers, books and records and other documents of the Company and of any related body corporate of the Company of which he or she is a director.
- (b) The Company may agree with each director to continue to provide the right of access and inspection referred to in paragraph 18(a) after the person has ceased to be a director, with respect to the period when he or she was

a director. This agreement may be made while the person is a director or after he or she has ceased to be a director.

## **19. EXECUTION OF DOCUMENTS - CF. S.127**

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The Company may execute documents by the document being signed:

- (a) by 2 directors of the Company; or
- (b) by at least one director and a Secretary or a person authorised by the directors; or
- (c) in a manner authorised by the directors.

## **20. DIVIDENDS**

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### **20.1 Dividends - cf. (replaceable rule) ss.254U & 254W(2)**

- (a) The directors may determine that a dividend is to be paid and the amount and the time and method for payment. The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.
- (b) Interest is not payable on a dividend.
- (c) The directors may authorise the payment by the Company to the members of interim dividends if the directors consider them to be justified by the profits of the Company.

### **20.2 Payment of Dividends**

- (a) Subject to the rights of persons (if any) entitled to shares with special rights as to dividends:
  - (i) all dividends must be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid; and
  - (ii) all dividends must be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid but, if any share is issued on terms providing that it will rank for dividend as from a particular date, that share ranks for dividend accordingly.
- (b) An amount paid or credited as paid on a share in advance of a call must not be taken for the purposes of this Clause to be paid or credited on the share.

### **20.3 Deduction of unpaid calls**

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

### **20.4 Distribution in specie**

- (a) Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including

paid up shares in, or debentures of, any other corporation, and the directors must give effect to such a resolution.

- (b) Where a difficulty arises in regard to such a distribution, the directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any member on the basis of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as the directors consider expedient.

## **20.5 Mode of Payment**

- (a) Any dividend or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to:
  - (i) the address of the holder as shown in the Register of Members, or in the case of joint holders, to the address shown in the Register of Members as the address of the joint holder first named in that register; or
  - (ii) to such other address as the holder or joint holder in writing directs or direct.
- (b) Any dividend or other money payable in cash in respect of shares may be paid by electronic transfer directly to the holder's nominated financial institution account.
- (c) Any one of two or more joint holders may give effectual receipts for any dividends, payments or other money payable in respect of the shares held by them as joint holders.

## **20.6 Capitalisation of Profits - cf. s.254S**

- (a) The Company may capitalise profits. The capitalisation need not be accompanied by the issue of shares. If the Company does capitalise profits, it may do any of the following:
  - (i) pay up any amount unpaid on issued shares; or
  - (ii) pay up shares to be issued to members as fully paid bonus shares; or
  - (iii) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

The amount capitalised must be applied for the benefit of members in the proportions in which the members would have been entitled to dividends if the amount capitalised had been distributed as a dividend.

- (b) The Company must not pass a resolution as mentioned in paragraph 20.6(a) unless the resolution has been recommended by the directors.
- (c) The directors must do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves, may:
  - (i) issue fractional certificates or make cash payments in cases where shares or debentures became issuable in fractions; and

- (ii) authorise any person to make, on behalf of all the members entitled to any further shares upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or for the payment up by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised, and any agreement made under an authority referred to in this paragraph (b) is effective and binding on all the members concerned.

## **21. WINDING UP**

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- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the members in kind the whole or any part of the property of the Company and may for that purpose set a value that he considers fair upon any property to be divided and may determine how the division is to be carried out as between the members or different classes of members.
- (b) The liquidator may, with the sanction of a special resolution, vest the whole or any part of property of the Company in trustees upon such trusts for the benefit of the members as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.

## **22. INDEMNITY**

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### **22.1 Indemnity & Insurance - cf. ss.199A to 199C**

- (a) Subject to the Act and in particular except where indemnity is not allowed under s199A, the Company must indemnify a person who is an officer or auditor of the Company (whether by agreement or by making a payment and whether directly or through an interposed entity) out of the assets of the Company against:
  - (i) liability as an officer or auditor arising otherwise than out of conduct involving lack of good faith;
  - (ii) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome,

except any liabilities in respect of which the Company is prohibited from doing so pursuant to the Act.
- (b) The Company may pay a premium for a contract insuring a person who is or has been an officer or auditor of the Company and its related bodies corporate against:
  - (i) any liability incurred by that person as an officer or auditor which does not arise out of conduct involving wilful breach of duty in relation to the Company or a contravention of Section 182 or 183 of the Act; and

- (ii) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal, and whatever their outcome,

except any liabilities in respect of which the Company is prohibited from doing so pursuant to the Act.

## **23. NOTICES**

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### **23.1 Notices - cf ( replaceable rule) s.249J**

- (a) A notice may be given by the Company to any member either by serving it on him personally or by fax transmission or by sending it by post to him at his address as shown in the Register of Members or at the fax number or the address supplied by him to the Company for the giving of notices.
- (b) Where a notice is sent by post, service of the notice will be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, 3 days after it is posted and, in any other case, at the time at which the letter would be delivered in the ordinary course of post. A notice of meeting sent by fax or other electronic means is deemed to be given on the business day after it is sent.
- (c) Notice to joint members must be given to the joint member named first in the Register of Members.
- (d) A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy or other insolvency of a member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of the representative of the deceased, the trustee of the bankrupt or other person appointed to act in respect of or in the place of the insolvent member upon his insolvency or by any like description at the address (if any) within the State supplied for the purpose by the person or, if such address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy or other insolvency had not occurred.

### **23.2 Service**

- (a) Notice of every general meeting must be given in the manner authorised by Clause 23.1 to:
  - (i) every member;
  - (ii) every person entitled to a share in consequence of death or bankruptcy or other insolvency or mental incapacity of a member who, but for his death bankruptcy or other insolvency or mental incapacity, would be entitled to receive notice of the meeting; and
  - (iii) the auditor for the time being of the Company (if any).
- (b) No other person is entitled to receive notices of general meetings.

**24. DISPUTES**

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- (a) Each member submits to the non-exclusive jurisdiction of the Courts having jurisdiction in Victoria or having jurisdiction over appeals from those Courts.
- (b) The grievance procedure set out in this clause applies to disputes on any matter regarding this Constitution between
  - (i) a member and another member; or
  - (ii) a member and the Company.
- (c) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (d) If the parties are unable to resolve the dispute at the meeting under clause 24(c) or if a party fails to attend that meeting, then the parties must, within 10 days, hold a meeting in the presence of a mediator.
- (e) The mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - (A) in the case of a dispute between a member and another member, by the Board of the Company; or
    - (B) in the case of a dispute between a member and the Company, a person who is a mediator with the Dispute Settlement Centre of Victoria (Department of Justice).
- (f) A member of the Company can be a mediator.
- (g) The mediator cannot be a member who is a party to the dispute.