

# Constitution

Perpetual Superannuation Limited  
ACN 008 416 831 ("Company")

A public company limited by shares

Adopted on 1 May 2014

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## **1 Share capital**

### **1.1 Directors to issue shares**

The issue of shares in the Company is under the control of the Directors who may:

- (a) issue and cancel shares in the Company;
- (b) grant options over unissued shares in the Company; and
- (c) settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act and any special rights conferred on the holders of any shares or class of shares.

### **1.2 Non-recognition of interests**

- (a) Except as required by law or this Constitution, the Company is entitled to treat the registered holder of a share as the absolute owner of that share and is not required to:
  - (i) recognise a person as holding a share on any trust; or
  - (ii) recognise, or be bound by, any other equitable, contingent, future or partial claim to or interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, claim, interest or right.

- (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 article 1.2(b) limits the operation of article 1.2(a).

### **1.3 Joint holders of shares**

Where two or more persons are registered as the joint holders of shares then they are taken to hold the shares as joint tenants with rights of survivorship, but the Company is not bound:

- (a) to register more than three persons as joint holders of a share; or
- (b) to issue more than one certificate or holding statement in respect of shares jointly held.

### **1.4 Alteration of share capital**

- (a) The Company may alter its share capital in any manner permitted by law.
- (b) Where fractions of shares are or would otherwise be created by an alteration of share capital under article 1.4(a), the Directors may:

- (i) make cash payments;
- (ii) decide that fractions of shares are to be disregarded or rounded down to the nearest whole share; or
- (iii) decide that fractions of shares are to be rounded up to the nearest whole share by capitalising any amount available for capitalisation under Part 15 even though some only of the Members may participate in that capitalisation.

## **1.5 Currency**

An amount payable to the holder of a share, whether by way of or on account of dividend, return of capital, participation in the property of the Company on a winding up or otherwise, may be paid, with the agreement of the holder or pursuant to the terms of issue of the share, in the currency of a country other than Australia and the Directors may fix a date up to 30 days before the payment date as the date on which any applicable exchange rate will be determined for that purpose.

## **1.6 Variation of class rights**

Unless otherwise provided by the terms of issue of a class of shares:

- (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.

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# **2 Lien**

## **2.1 Lien on share**

- (a) To the extent permitted by law, the Company has a first and paramount lien on every share for:
  - (i) all amounts (whether presently payable or not) called or otherwise due under this Constitution in respect of that share;
  - (ii) all money which the Company has been called on by law to pay, and has paid, in respect of that share;
  - (iii) interest at the Prescribed Interest Rate on the amount due from the date it becomes due until payment; and
  - (iv) reasonable expenses of the Company in respect of the default on payment.

- (b) To the extent permitted by law, the Company has a first and paramount lien on all shares registered in the name of a sole holder for all amounts presently payable by the holder or the holder's estate to the Company.

## **2.2 Lien on loans under employee incentive schemes**

The Company also has a first and paramount lien on each share registered in the name of the Member for all money payable to the Company by the Member under loans made under an employee incentive scheme.

## **2.3 Lien on distributions**

A lien on a share under article 2.1 or 2.2 extends to all distributions in respect of that share, including dividends.

## **2.4 Exemption from article 2.1 or 2.2**

The Directors may at any time exempt a share wholly or in part from the provisions of article 2.1 or 2.2.

## **2.5 Release of lien**

If a transfer of the share is registered without the Company giving notice of the lien to the transferee, the Company's lien is released so far as it relates to amounts owing by the transferor or any predecessor in title on the shares transferred.

## **2.6 Company's rights to recover payments**

A Member must reimburse the Company on demand in writing for all payments the Company makes to a government or taxing authority in respect of the Member, the death of a Member or the Member's shares or any distributions on the Member's shares, including dividends, where the Company is either:

- (a) obliged by law to make the relevant payment; or
- (b) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxing authority that the Company is obliged by law to make the relevant payment.

The Company is not obliged to advise the Member in advance of its intention to make the payment.

## **2.7 Reimbursement is a debt due**

The obligation of the Member to reimburse the Company is a debt due to the Company as if it were a call on all the Member's shares, duly made at the time when the written demand for reimbursement is given by the Company to the Member. The provisions of this Constitution relating to non-payment of calls, including payment of interest and sale of the Member's shares under lien, apply to the debt.

## **2.8 Sale under lien**

Subject to article 2.9, the Company may sell, in any manner the Directors think fit, any share on which the Company has a lien.



## **2.9 Limitations on sale under lien**

A share on which the Company has a lien may not be sold by the Company unless:

- (a) an amount in respect of which the lien exists is presently payable; and
- (b) the Company has, not less than 14 days before the date of sale, given to the registered holder of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder, a notice in writing setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.

## **2.10 Transfer on sale under lien**

For the purpose of giving effect to a sale under article 2.8, the Company may receive the consideration, if any, given for the share so sold and may execute a transfer of the share sold in favour of the purchaser of the share, or do all such other things as may be necessary or appropriate for it to do to effect the transfer. The purchaser is not bound to see to the application of the purchase money.

## **2.11 Irregularity or invalidity**

The title of the purchaser to the share is not affected by any irregularity or invalidity in connection with the sale of the share under article 2.8.

## **2.12 Proceeds of sale**

The proceeds of a sale under article 2.8 must be applied by the Company in payment of:

- (a) first, the expenses of sale;
- (b) second, all amounts presently payable by the former holder whose shares have been sold,

and the residue, if any, must be paid (subject to any lien that exists under article 2.1(a)(i) in respect of amounts not presently payable) to the person entitled to the share immediately before the sale.

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# **3 Calls on shares**

## **3.1 Directors to make calls**

The Directors may:

- (a) make calls on a Member in respect of any money unpaid on the shares of that Member, if the money is not by the terms of issue of those shares made payable at fixed times;
- (b) make a call payable by instalments; and
- (c) revoke or postpone a call or extend the time for payment.

### **3.2 Time of call**

A call is taken to be made at the time when the resolution of the Directors author

ising the call is passed.

### **3.3 Members' liability**

Each Member must, upon receiving not less than 30 business days' notice specifying the time or times and place of payment, pay to the Company by the time or times, and at the place, so specified the amount called on that Member's shares.

### **3.4 Joint holders' liability**

The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.

### **3.5 Non-receipt of notice**

The non-receipt of a notice of any call by, or the accidental omission to give notice of a call to, a Member does not invalidate the call.

### **3.6 Interest on default**

If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due must pay interest on the sum to the time of actual payment at the Prescribed Interest Rate. The Directors may waive payment of that interest wholly or in part.

### **3.7 Fixed instalments**

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

### **3.8 Differentiation between holders as to calls**

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

### **3.9 Prepayment of calls and interest**

The Directors may:

- (a) accept from a Member the whole or a part of the amount unpaid on a share even if no part of that amount has been called;
- (b) authorise payment by the Company of interest on the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the Prescribed Interest Rate, as is agreed between the Directors and the Member paying the sum; and
- (c) unless a different agreement is made, repay to a Member all or a part of the amount accepted under article 3.9(a).

### **3.10 Proceedings for recovery of calls**

- (a) In an action or other proceedings to recover a call, or interest or costs or expenses incurred because of the failure to pay or late payment of a call, proof that:
- (i) the name of the defendant is entered in the register as the holder or one of the holders of the share on which the call is claimed;
  - (ii) the resolution making the call is recorded in the minute book; and
  - (iii) notice of the call was given to the defendant complying with this Constitution,
- is conclusive evidence of the debt and it is not necessary to prove the appointment or committee membership of the Directors who made the call or any other matter.
- (b) In article 3.10(a), 'defendant' includes a person against whom the Company alleges a set off or counterclaim and 'action or other proceedings to recover a call' is to be interpreted accordingly.

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## **4 Forfeiture of shares**

### **4.1 Notice requiring payment of call**

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, give a notice to the Member requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued and all costs and expenses that may have been incurred by the Company by reason of the non-payment or later payment of the call or instalment.

### **4.2 Contents of notice**

The notice must name a further day, not earlier than the 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.

### **4.3 Forfeiture for failure to comply with notice**

If a notice under article 4.1 has not been complied with by the date specified in the notice, the Directors may by resolution forfeit the relevant shares, at any time before the payment required by the notice has been made.

### **4.4 Dividends and distributions included in forfeiture**

A forfeiture under article 4.3 includes all dividends and other amounts payable by the Company (including other distributions declared or to be made) in respect of the forfeited shares and not actually paid or distributed before the forfeiture.

#### **4.5 Sale or re-issue of forfeited shares**

Subject to the Corporations Act, a share forfeited under article 4.3 becomes the property of the Company and may be sold, re-issued or otherwise disposed of to such person and on such terms as the Directors think fit.

#### **4.6 Notice of forfeiture**

If any share is forfeited under article 4.3, notice of the forfeiture must be given to the Member holding the share immediately before the forfeiture and an entry of the forfeiture and its date must be made in the Register. Any failure to give notice or enter the forfeiture in the Register does not invalidate the forfeiture.

#### **4.7 Surrender instead of forfeiture**

The Directors may accept the surrender of any share which they are entitled to forfeit on any terms they think fit and any share so surrendered is taken to be a forfeited share.

#### **4.8 Cancellation of forfeiture**

At any time before a sale or disposal of a share under article 4.5, the forfeiture of that share may be cancelled on such terms as the Directors think fit.

#### **4.9 Effect of forfeiture on former holder's liability**

A person whose shares have been forfeited:

- (a) ceases to be a Member in respect of the forfeited shares; and
- (b) remains liable to pay the Company all money that, at the date of forfeiture, was payable by that person to the Company in respect of the shares, plus interest at the Prescribed Interest Rate from the date of forfeiture and the reasonable expenses of the sale of the shares, until the Company receives payment in full of all money (including interest and expenses) so payable in respect of the shares.

#### **4.10 Evidence of 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 forfeited in accordance with this Constitution on the date declared in the statement, is prima facie evidence of the facts in the statement as against all persons claiming to be entitled to the share.

#### **4.11 Transfer of forfeited share**

The Company may receive the consideration (if any) given for a forfeited share on any sale or disposal of the share under article 4.5 and may execute or effect a transfer of the share in favour of the person to whom the share is sold or disposed.

#### **4.12 Registration of transferee**

On 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.

#### **4.13 Irregularity or invalidity**

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.

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## **5 Transfer of shares**

### **5.1 Forms of instrument of transfer**

Subject to this Constitution, a share in the Company is transferable by an instrument in writing in any usual or common form or in any other form that the Directors approve.

### **5.2 Execution and delivery of transfer**

The instrument of transfer must be:

- (a) a proper instrument of transfer within the meaning of the Corporations Act;
- (b) executed by or on behalf of both the transferor and the transferee unless it is a sufficient transfer of those securities under the Corporations Act;
- (c) duly stamped, if required by law to be stamped; and
- (d) left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer and the transferee's right to be registered as owner of the shares,

and in that event the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

### **5.3 Effect of registration**

A transferor of a share remains the holder of the share transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the share.

### **5.4 Company to register forms without charge**

The Company must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where the issue of a certificate is to replace a lost or destroyed certificate.

### **5.5 Company to retain instrument of transfer**

The Company may retain every instrument of transfer which is registered for any period the Directors decide.

### **5.6 Directors' powers to decline to register**

The Directors may decline to register any transfer of shares, without being bound to give any reason whatsoever for so doing.

## **5.7 Directors' 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.

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## **6 Transmission of shares**

### **6.1 Transmission of shares on death**

- (a) If a Member, who does not hold shares jointly, dies, the Company will recognise only the personal representative of the Member as being entitled to the Member's interest in the shares.
- (b) Article 6.1(a) does not release the estate of the deceased Member from any liability on a share.

### **6.2 Information given by personal representative**

If the personal representative gives the Directors the information they reasonably require to establish the representative's entitlement to be registered as a holder of the shares:

- (a) the personal representative 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; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the personal representative as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

### **6.3 Death of joint owner**

If a Member, who holds shares jointly, dies, the Company will recognise only the survivor as being entitled to the Member's interest in the shares. The estate of the Member is not released from any liability in respect of the shares.

### **6.4 Transmission of shares on bankruptcy**

If a person entitled to shares because of the bankruptcy 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, 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.

On receiving an election under paragraph (a), the Company must register the person as the holder of the shares.

A transfer under paragraph (b) is subject to the articles that apply to transfers generally.

This article has effect subject to the Bankruptcy Act 1966 (Cwlth).

## **6.5 Transmission of shares on mental incapacity**

If a person entitled to shares because of the mental incapacity of a Member, or because of the Member becoming a person who is, or whose estate is, liable in any way to be dealt with under the law relating to mental health, gives the Directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

- (a) 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; and
- (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the Member.

On receiving an election under paragraph (a)(i), the Company must register the person as the holder of the shares.

A transfer under paragraph (a)(ii) is subject to the articles that apply to transfers generally.

## **6.6 Deemed joint tenancy**

For the purpose of this Constitution, where 2 or more persons are jointly entitled to a share because of a Member's death, a Member's bankruptcy or the Member 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, they will, on being registered as the holders of the share, be taken to hold the share as joint tenants.

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# **7 General meetings**

## **7.1 Annual general meeting**

Annual general meetings of the Company are to be held in accordance with the Corporations Act.

## **7.2 Convening a general meeting**

The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

### **7.3 Notice of general meeting**

Notice of a general meeting must be given in accordance with Part 16 and the Corporations Act.

### **7.4 Calculation of period of notice**

In computing the period of notice under article 7.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **7.5 Cancellation or postponement of a meeting**

- (a) Subject to article 7.5(b), where a general meeting (including an annual general meeting) is convened by the Directors they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.
- (b) A general meeting called and arranged under section 249D of the Corporations 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 Member or Members.

### **7.6 Business at postponed meeting**

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

### **7.7 Proxy, attorney or Representative at postponed meeting**

Where by the terms of an instrument appointing a proxy or attorney or an appointment of a Representative:

- (a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and
- (b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member appointing the proxy, attorney or Representative gives to the Company at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

### **7.8 Non-receipt of notice**

The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.



## **7.9 Director entitled to notice of meeting**

A Director is entitled to attend all general meetings and all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.

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# **8 Proceedings at general meetings**

## **8.1 Reference to a Member**

Unless the contrary intention appears, a reference to a Member in this Part 8 means a person who is a Member, or a:

- (a) proxy;
- (b) attorney; or
- (c) Representative,

of that Member.

## **8.2 Number for a quorum**

Subject to article 8.5, the quorum for a general meeting is:

- (a) where the Company has only one Member, that Member; or
- (b) otherwise, two Members,

present in person or by proxy, attorney or Representative. In determining whether a quorum is present, each individual attending as a proxy, attorney or Representative is to be counted, except that:

- (c) where a Member has appointed more than one proxy, attorney or Representative, only one is to be counted; and
- (d) where an individual is attending both as a Member and as a proxy, attorney or Representative, that individual is to be counted only once.

## **8.3 Requirement for a quorum**

No item of business may be transacted at a general meeting, except the election of a chairman and the adjournment of the meeting, unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the chairman of the meeting (on the chairman's own motion or at the request of a Member, proxy, attorney or Representative who is present) declares otherwise.

## **8.4 If quorum not present**

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

- (a) if convened by a Director, or at the request of Members, is dissolved; and

- (b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint.

#### **8.5 Adjourned meeting**

At a meeting adjourned under article 8.4(b), two persons each being a Member, proxy, attorney or Representative present at the meeting are a quorum and, if a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **8.6 Appointment and powers of chairman of general meeting**

If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

#### **8.7 Absence of chairman at general meeting**

If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence):

- (c) the deputy chairman (if any);
- (d) a Director chosen by a majority of the Directors present;
- (e) the only Director present;
- (f) a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

#### **8.8 Conduct of general meetings**

The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion (including limiting the time that a person may speak on a motion or other item of business) and the proper and orderly casting or recording of votes at the general meeting; and
- (c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this article is final.

## **8.9 Adjournment of general meeting**

- (a) The chairman of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:
  - (i) in exercising the discretion to do so, the chairman may, but need not, seek the approval of the Members present in person or by proxy, attorney or Representative; and
  - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

Unless required by the chairman, a vote may not be taken or demanded by the Members present in person or by proxy, attorney or Representative in respect of any adjournment.

- (b) Where a meeting is adjourned, the Directors may postpone, cancel or change the venue of the adjourned meeting.

## **8.10 Notice of adjourned meeting**

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

## **8.11 Meetings may be held in 2 or more venues**

- (a) Where a meeting of Members is held at 2 or more venues using any form of technology:
  - (i) a Member participating in the meeting is to be taken to be present in person at the meeting;
  - (ii) all the provisions in this Constitution relating to meetings of Members apply, so far as they can and with such changes as are necessary, to meetings of the Members using that technology; and
  - (iii) the meeting is to be taken to be held at the place determined by the chairman of the general meeting as long as at least one of the Members involved was at that place for the duration of the general meeting.
- (b) If the technology used in accordance with the requirement of article 8.11(a) encounters a technical difficulty, whether before or during the meeting, which results in a Member not being able to participate in the meeting, the chairman may, subject to the Corporations 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 chairman deems appropriate.

## **8.12 Questions decided by majority**

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour

of it. A decision made in this way is for all purposes a decision of the Members.

#### **8.13 Equality of votes - no casting vote for chairman**

If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is not entitled to a casting vote, in addition to any votes to which the chairman is entitled as a Member or proxy or attorney or Representative.

#### **8.14 Voting on show of hands**

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 effectively demanded before a show of hands is held or before the result of the show of hands is declared or immediately after the result of the show of hands is declared and the demand is not withdrawn. A declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or 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. Neither the chairman nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

#### **8.15 Poll**

If a poll is effectively demanded:

- (a) it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded;
- (b) on the election of a chairman or on a question of adjournment, it must be taken immediately;
- (c) the demand may be withdrawn with the chairman's consent; and
- (d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

#### **8.16 Representation at general meetings**

- (a) Subject to this Constitution, each Member entitled to vote at a meeting of Members may vote:
  - (i) in person or, where a Member is a body corporate, by its Representative;
  - (ii) by not more than 2 proxies; or
  - (iii) by not more than 2 attorneys.
- (b) A proxy, attorney or Representative may, but need not, be a Member of the Company.

- (c) Where a Member appoints 2 proxies or attorneys, the appointment may specify the proportion or number of votes that the proxy or attorney may exercise. If the appointment is silent, each person appointed may exercise half the Member's votes.

#### **8.17 Entitlement to vote**

Subject to any rights or restrictions for the time being attached to any class or classes of shares and to this Constitution:

- (a) on a show of hands, each Member present in person and each other person present as a proxy, attorney or Representative of a Member has one vote (even if they represent more than one Member); and
- (b) on a poll, each Member present in person has one vote for each fully paid share held by the Member and each person present as proxy, attorney or Representative of a Member has one vote for each fully paid share held by the Member that the person represents.

#### **8.18 Joint shareholders' vote**

A joint holder may vote at any meeting in person or by proxy, attorney 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.

#### **8.19 Effect of unpaid call**

A Member is not entitled at a general meeting to cast a vote attached to a share on which a call is due and payable and has not been paid.

#### **8.20 Validity of vote in certain circumstances**

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy, attorney or Representative, a vote cast by that person is valid even if, before the person votes:

- (a) the appointing Member dies;
- (b) the Member becomes bankrupt;
- (c) the Member is mentally incapacitated or becomes a person who is, or whose estate is, liable in any way to be dealt with under the law relating to mental health;
- (d) the Member revokes the appointment or authority;
- (e) the Member revokes the authority under which the appointment was made by a third party; or
- (f) the Member transfers the share in respect of which the appointment or authority was given.

#### **8.21 Objection to voting qualification**

An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

- (a) may not be raised except before or at that meeting or adjourned meeting; and
- (b) must be referred to the chairman of the meeting, whose decision is final.

A vote not disallowed under the objection is valid for all purposes.

## **8.22 Decisions without general meetings**

- (a) When the Company has only one Member the Company may pass a resolution by the Member recording it and signing the record.
- (b) When the Company has more than one Member, the Company may pass a resolution (except a resolution to remove an auditor) without a general meeting being held:
  - (i) if all of the Members 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
  - (ii) otherwise in accordance with the Corporations Act.
- (c) If a share is held jointly, each of the joint Members must sign the document.
- (d) For the purposes of article 8.22(b):
  - (i) the resolution is passed when the last person signs the document; and
  - (ii) separate copies of a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.
- (e) The passage of a resolution under this article 8.22 satisfies any requirement in the Corporations Act, or in this Constitution, that the resolution be passed at a general meeting.

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## **9 The Directors**

### **9.1 Minimum number of Directors**

Unless otherwise determined by the Company in general meeting, the number of Directors is to be not less than three. The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution.

### **9.2 Maximum number of Directors**

The Company in general meeting may by resolution determine the maximum number of Directors.

### **9.3 Appointment and removal of Directors**

- (a) The Company may by resolution appoint or remove a Director.

- (b) Where the Company is a Controlled Corporation, the Controlling Corporation may by written notice served on the Company appoint or remove a Director.
- (c) The Directors may appoint any natural person to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but the total number of Directors must not at any time exceed the maximum number allowed under this Constitution.
- (d) Subject to article 9.6 and to the terms of any agreement entered into between the Company and the relevant Director, a Director holds office until the Director dies or is removed from office under this article 9.3.
- (e) Despite anything else in this article 9.3, a person is not eligible to be appointed as a Director unless they are 'fit and proper' within the meaning of any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the Company.

#### **9.4 Remuneration of Directors**

The Directors are to be remunerated for their services as Directors as determined by the Holding Company.

#### **9.5 Director's interests**

- (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 on 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, and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
- (c) The Directors may exercise the voting rights conferred by shares in any body corporate held or owned by the Company in such manner in all respects as the Directors think fit (including voting in favour of any resolution appointing a Director as a director or other officer of that body corporate or voting for the payment of remuneration to the directors or other officers of that body corporate) and a Director may, if permitted by law, vote in favour of the exercise of those voting rights even though he or she is, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.
- (d) A Director is not disqualified merely because of being a Director from contracting with the Company.

- (e) 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.
- (f) 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 contract or arrangement merely because of the Director holding office as a Director or because of the fiduciary obligations arising out of that office.
- (g) Subject to the Corporations Act, a Director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:
  - (i) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (ii) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and
  - (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement to which the seal is affixed.

## **9.6 Vacation of office of Director**

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes 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;
- (b) resigns from the office by notice in writing to the Company; or
- (c) is removed from office under article 9.3.
- (d) is disqualified from holding office as a Director of the Company on the grounds of not being 'fit and proper' within the meaning of any Australian legislation or any regulatory requirement or standard made in accordance with such legislation applicable to the Company.

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# **10 Powers and duties of Directors**

## **10.1 Directors to manage Company**

The business and affairs of the Company are to be managed by or under the direction of the Directors, who (in addition to the powers and authorities conferred on them by this Constitution) may exercise all powers and do all things that are:



- (a) within the power of the Company; and
- (b) are not, by the Corporations Act or by this Constitution, directed or required to be exercised by the Company in general meeting.

### **10.2 Specific powers of Directors**

Without limiting the generality of article 10.1, the Directors may exercise all the powers of the Company to borrow or raise money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **10.3 Interests of Holding Company**

While the Company is a wholly owned subsidiary its Directors may, subject to the Act, act in the best interests of the Company's holding company or the Holding Company.

### **10.4 Appointment of officers, agents and attorneys**

The Directors may:

- (a) appoint or employ any person to be an officer, agent or attorney of the Company for such purposes with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the Directors), for such period and on such conditions as they decide;
- (b) authorise an officer, agent or attorney to delegate any of the powers, discretions and duties vested in the officer, agent or attorney; and
- (c) 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.

### **10.5 Provisions in power of attorney**

A power of attorney may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **10.6 Signing of cheques**

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

### **10.7 Delegation**

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to:

- (a) a Committee of Directors; or
- (b) a Director; or

- (c) an employee of the Company or an employee of the Holding Company; or
- (d) any other person.

#### **10.8 Powers delegated**

A Committee or person to which any powers have been delegated under article 10.7 must exercise those powers in accordance with any directions of the Directors.

#### **10.9 Appointment of Managing and Executive Directors**

The Directors may appoint one or more of themselves to the office of Managing Director or as an Executive Director or to any other office (except auditor), or any position of employment with the Company for the period and on the terms they think fit.

#### **10.10 Termination of appointment of Managing or Executive Director**

Whether or not the appointment of a Managing Director or Executive Director was expressed to be for a specified term, the appointment of a Managing Director or Executive Director terminates if:

- (a) the Managing Director or Executive Director ceases for any reason to be a Director;
- (b) the Directors remove the Managing Director or Executive Director from the office of Managing Director or Executive Director (which, subject to any contract between the Company and the Managing Director or Executive Director, the Directors have power to do); or
- (c) the Managing Director or the Executive Director ceases to be employed by the Company and any related body corporate of the Company, in which case the Managing Director or the Executive Director will also cease to be a Director, unless the Directors determine otherwise.

#### **10.11 Powers of Managing and Executive Directors**

The Directors may:

- (a) confer on a Managing Director or an Executive Director such of the powers exercisable by them, on such terms and conditions and with such restrictions, as they think fit; and
- (b) withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

#### **10.12 Powers of delegation**

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

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## **11 Proceedings of Directors**

### **11.1 Directors' meetings**

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) The contemporaneous linking together by technology (including by telephone or other electronic means) 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 technology.
- (c) A Director participating in a meeting by technology is to be taken to be present in person at the meeting and to have consented to the holding of the meeting by the use of the relevant technology.
- (d) A meeting by technology is to be taken to be held at the place determined by the chairman of the meeting as long as 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 chairman may adjourn the meeting until the difficulty is remedied or may, where a quorum of Directors remains present, continue with the meeting.

### **11.2 Director may convene a meeting**

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

### **11.3 Questions decided by majority**

- (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 question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors.
- (c) If votes are equal on a proposed resolution the proposed resolution is taken as having been lost.

### **11.4 Alternate Director or proxy and voting**

A person who is present at a meeting of Directors as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy and, if that person is also a Director, has one vote as a Director in that capacity.

### **11.5 Chairman of Directors**

The Directors may elect one of their number as chairman of their meetings and may also determine the period for which the person elected as chairman is to hold office.

### **11.6 Absence of chairman at Directors' meeting**

If a Directors' meeting is held and:

- (a) a chairman has not been elected under article 11.5; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect one of their number to be a chairman of the meeting.

### **11.7 Chairman's casting vote at Directors' meetings**

The chairman of the meeting does not have a casting vote.

### **11.8 Appointment of Alternate Director**

A Director may appoint, with approval of a majority of other Directors:

- (a) a person to be the Director's Alternate Director for such period as the Director thinks fit; and
- (b) another person to be the Director's Alternate Director in the absence of any Alternate Director appointed under article 11.8(a).

### **11.9 Alternate Director and meetings**

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

### **11.10 Alternate Director's powers**

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

### **11.11 Alternate Director responsible for own acts and defaults**

Whilst acting as a Director, an Alternate Director:

- (a) is an officer of the Company and not the agent of the appointor; and
- (b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

### **11.12 Termination of appointment of Alternate Director**

The appointment of an Alternate Director may be terminated at any time by the appointor or, where the Company is a Controlled Corporation, by notice from the Controlling Corporation to the Company, even if the period of the

appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.

#### **11.13 Appointment or termination in writing**

An appointment, or the termination of an appointment by the appointor, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Company.

#### **11.14 Alternate Director and number of Directors**

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

#### **11.15 Director attending and voting by proxy**

A Director may participate in and vote by proxy at a meeting of the Directors if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing signed by the appointor.

The appointment may be general or for one or more particular meetings. A Director present as a proxy for another Director who would be entitled to vote if present at the meeting has one vote for the appointor and one vote in his or her own capacity as a Director.

#### **11.16 Quorum for Directors' meeting**

At a meeting of Directors, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is as determined by the Directors and, unless so determined, is two.

#### **11.17 Remaining Directors may act**

The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by article 9.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

#### **11.18 Chairman of Committee**

The members of a Committee may elect one of their number as chairman of their meetings. If a meeting of a Committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

#### **11.19 Meetings of Committee**

A Committee may meet and adjourn as it thinks proper.

## **11.20 Determination of questions**

Questions arising at a meeting of a Committee are to be determined by a majority of votes of the members of the Committee present and voting.

The chairman of the meeting does not have a casting vote.

## **11.21 Circulating resolutions**

(a) If:

- (i) all of the Directors (other than any Director on leave of absence approved by the Directors, any Director not present in Australia, and any Director who disqualifies himself or herself from considering the resolution in question and any Director who would be prohibited by the Corporations Act from voting on the resolution in question) are given a document setting out a written resolution;
- (ii) a majority of those Directors sign or consent to the written resolution; and
- (iii) the Directors who sign or consent to the resolution would have constituted a quorum at a meeting of Directors held to consider that resolution,

then that resolution is taken to have been passed by a meeting of Directors.

(b) A Director may consent to a resolution by:

- (i) signing the document containing the resolution (or a copy of that document);
  - (ii) giving the Company a written notice (including by fax to its registered office or by other electronic means) addressed to the Secretary or to the chairman signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (iii) telephoning the Secretary or the chairman and signifying assent to the resolution and clearly identifying its terms.
- (c) 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.
- (d) The resolution is passed when the last Director required to constitute a majority of the Directors under 11.21(a) signs or otherwise consents to the resolution under article 11.21(b).

## **11.22 Validity of acts of Directors**

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

- (a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

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## **12 Secretary**

### **12.1 Appointment of Secretary**

The Company must have at least one Secretary who is to be appointed by the Directors.

### **12.2 Suspension and removal of Secretary**

The Directors may suspend or remove a Secretary from that office.

### **12.3 Powers, duties and authorities of Secretary**

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

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## **13 Seals**

### **13.1 Common seal**

- (a) Without limiting the ways in which the Company can execute documents in accordance with the Corporations Act, if the Directors so decide, the Company may have a common seal.
- (b) If the Company has a common seal, the Directors may decide that the Company will cease to have a common seal.

### **13.2 Safe custody of common seals**

If the Company has a common seal, the Directors must provide for the safe custody of any seal of the Company.

### **13.3 Use of common seal**

If the Company has a common seal, the Directors may decide on procedures for the use of the seal.

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## **14 Inspection of records**

The Holding Company may inspect the accounting records and other documents of the Company at any time.

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## **15 Distribution of profits**

### **15.1 Dividends**

- (a) The Directors may pay any interim and final dividends that, in their judgment, the financial position of the Company justifies.
- (b) The Directors may pay any dividend required to be paid under the terms of issue of a share.
- (c) Paying a dividend does not require confirmation at a general meeting.
- (d) Subject to any rights or restrictions attached to any shares or class of shares:
  - (i) all dividends in respect of shares must be paid in proportion to the number of shares held by the Members;
  - (ii) where shares are partly paid, all dividends must be apportioned and paid proportionately to the amounts so paid or credited during any portion or portions of the period in respect of which the dividend is paid;
  - (iii) for the purposes of articles 15.1(d)(1) and 15.1(d)(2), an amount paid or credited as paid on a share in advance of a call is to be taken as not having been credited as paid on the share; and
  - (iv) interest is not payable by the Company on any dividend.
- (e) The Directors may fix a record date in respect of a dividend, with or without suspending the registration of transfers from that date under article 5.7.
- (f) A dividend in respect of a share must be paid to the person who is registered, or entitled under article 5.2 to be registered, as the holder of the share:
  - (i) where the Directors have fixed a record date in respect of the dividend, on that date; or
  - (ii) where the Directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend, and a transfer of a share that is not registered, or left with the Company for registration in accordance with article 5.2(d), on or before that date is not effective, as against the Company, to pass any right to the dividend.
- (g) When resolving to pay a dividend the Directors may direct payment of the dividend from any available source permitted by law, including:
  - (i) direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares or



other securities of the Company or of another body corporate, either generally or to specific Members; and

- (ii) direct that the dividend be paid to particular Members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source and to the remaining Members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source or generally.
- (h) The Directors may deduct from any dividend payable to a Member all amounts presently payable by the Member to the Company and apply the amount so deducted in or towards satisfaction of the amount owing.
- (i) Where a person is entitled to a share in the circumstances contemplated by articles 6.1, 6.2, 6.3, 6.4 or 6.5 of this Constitution, the Directors may, but need not retain any dividends payable in respect of that share until that person becomes registered as the holder of the share or transfers it.
- (j) Without prejudice to any other method of payment the Directors may adopt, any dividend, interest or other amount payable in cash in respect of shares may be paid by cheque and sent by post to 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 to another address that the holder or joint holders direct in writing:
- (k) A cheque sent under article 15.1(j) may be made payable to bearer or to the order of the Member to whom it is sent or another person that the Member directs and is sent at the Member's risk.

## **15.2 Capitalisation of profits**

- (a) Subject to any rights or restrictions attached to any shares or class of shares, the Directors may capitalise and distribute among those Members who would be entitled to receive dividends, and in the same proportions, any amount:
  - (i) forming part of the Company's undivided profits;
  - (ii) representing profits arising from an ascertained accretion to capital or a revaluation of the Company's assets;
  - (iii) arising from the realisation of any of the Company's assets;  
or
  - (iv) otherwise available for distribution as a dividend.
- (b) The Directors may resolve that any part of the capitalised amount is to be applied:
  - (i) in paying up in full shares or other securities of the Company to be issued to Members;

- (ii) in paying up any amounts unpaid on shares or other securities held by the Members; or
- (iii) partly as specified in article 15.2(b)(1) and partly as specified in article 15.2(b)(2),

and such an application must be accepted by the Members entitled to share in the distribution in full satisfaction of their interests in the capitalised amount.

- (c) Articles 15.1(e) and 15.1(f) apply, so far as they can and with any necessary changes, to capitalising an amount under this article 15.2 as if references in those articles to a dividend and to the date a dividend is paid were references respectively to a capitalisation of an amount and to the date the Directors resolve to capitalise the amount under this article 15.2.

### **15.3 Ancillary powers**

- (a) To give effect to any resolution to satisfy a dividend as set out in article 15.1(g)(1) or to capitalise any amount under article 15.2, the Directors may:
  - (i) settle as they think expedient any difficulty that may arise in making the distribution or capitalisation and, in particular, where shares or other securities in the Company are or would otherwise be issuable in fractions, make cash payments, decide that fractions of shares are to be disregarded or rounded down to the nearest whole number or decide that fractions of shares are to be rounded up to the nearest whole share;
  - (ii) fix the value for distribution of any specific assets;
  - (iii) pay cash or issue shares or other securities to any Members in order to adjust the rights of all parties;
  - (iv) vest any of those specific assets, cash, shares or other securities in a trustee on trust for the persons entitled to the dividend or capitalised amount; and
  - (v) authorise any person to make, on behalf of all the Members entitled to any further shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another body corporate providing, as appropriate, for the issue to them of those further shares or other securities credited as fully paid up or for the payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares or other securities by applying their respective proportions of the amount resolved to be capitalised.
- (b) Any agreement made under an authority referred to in article 15.3(a)(5) is effective and binding on all Members concerned.

- (c) If the Company distributes to Members (either generally or to specific Members) securities in the Company or in another body corporate or trust (whether as a dividend or otherwise and whether or not for value), each of those Members appoints the Company as his or her agent to do anything needed to give effect to that distribution, including agreeing to become a Member of that other body corporate.

#### **15.4 Reserves**

- (a) The Directors may set aside out of the Company's profits any reserves or provisions they decide.
- (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 Company's other assets or prevent the amount being used in the Company's business or being invested as the Directors decide.

#### **15.5 Carry forward of profits**

The Directors may carry forward any part of the profits remaining that they consider should not be distributed as dividends or capitalised, without transferring those profits to a reserve or provision.

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## **16 Service of documents**

### **16.1 Document includes notice**

In Part 16, a reference to a document includes a notice.

### **16.2 Methods of service**

The Company may give a document to a Member:

- (a) personally;
- (b) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
- (c) by sending it to a fax number or electronic address nominated by the Member.

### **16.3 Post**

A document sent by post:

- (a) if sent to an address in Australia, may be sent by ordinary post; and
- (b) if sent to an address outside Australia, must be sent by airmail,

and in either case is taken to have been received on the day after the date of its posting.

#### **16.4 Fax or electronic transmission**

If a document is sent by fax or electronic transmission, delivery of the document is taken:

- (a) to be effected by properly addressing and transmitting the fax or electronic transmission; and
- (b) to have been delivered on the day following its transmission.

#### **16.5 Evidence of service**

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is conclusive evidence that the document was so sent on that date.

#### **16.6 Joint holders**

A document may be given by the Company to the joint holders of a share by giving it to the joint holder first named in the Register in respect of the share.

#### **16.7 Persons entitled to shares**

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this Part 16 to the person from whom that person derives title prior to registration of that person's title in the Register.

#### **16.8 Notices by the Company to Directors**

Subject to this Constitution, a document may be given by the Company to any Director or Alternate Director either by serving it personally at, or by sending it by post in a prepaid envelope to, the Director's usual residential or business address, or by electronic means or fax to such electronic address or fax number, as the Director has supplied to the Company for giving notices.

#### **16.9 Notices by Members or Directors to the Company**

Subject to this Constitution, a document may be given by a Member, Director or Alternate Director 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 fax or electronic means to the principal fax number or the principal electronic address of the Company at its registered office.

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### **17 Winding up**

#### **17.1 Distribution of surplus**

Subject to this Constitution and the rights or restrictions attached to any shares or class of shares:

- (a) if the Company is wound up and the property of the Company available for distribution among the Members is more than sufficient to pay:
  - (i) all the debts and liabilities of the Company; and
  - (ii) the costs, charges and expenses of the winding up,

the excess must be divided among the Members in proportion to the number of shares held by them, irrespective of the amounts paid or credited as paid on the shares;

- (b) for the purpose of calculating the excess referred to in article 17.1(a), any amount unpaid on a share is to be treated as property of the Company;
- (c) the amount of the excess that would otherwise be distributed to the holder of a partly paid share under article 17.1(a) must be reduced by the amount unpaid on that share at the date of the distribution; and
- (d) if the effect of the reduction under article 17.1(c) would be to reduce the distribution to the holder of a partly paid share to a negative amount, the holder must contribute that amount to the Company.

## **17.2 Division of property**

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution:
  - (i) divide among the Members the whole or any part of the Company's property; and
  - (ii) decide how the division is to be carried out as between the Members or different classes of Members.
- (b) A division under article 17.2(a) need not accord with the legal rights of the Members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part.
- (c) Where a division under article 17.2(a) does not accord with the legal rights of the Members, a Member is entitled to dissent and to exercise the same rights as if the special resolution sanctioning that division were a special resolution passed under section 507 of the Corporations Act.
- (d) If any of the property to be divided under article 17.2(a) includes securities with a liability to calls, any person entitled under the division to any of the securities may, within 10 days after the passing of the special resolution referred to in that article, by written notice direct the liquidator to sell the person's proportion of the securities and to account for the net proceeds. The liquidator must, if practicable, act accordingly.
- (e) Nothing in this article 17.2 takes away from or affects any right to exercise any statutory or other power which would have existed if this article were omitted.
- (f) Article 15.3 applies, so far as it can and with any necessary changes, to a division by a liquidator under article 17.2(a) as if references in article 15.3 to the Directors and to a distribution or capitalisation were respectively references to the liquidator and to the division under article 17.2(a).

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## **18 Indemnity and insurance**

### **18.1 Indemnity**

The Company may indemnify any current or former Director, Alternate Director, Secretary or senior manager of the Company or of a subsidiary of the Company against:

- (a) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

- (c) the Company is forbidden by statute to indemnify the person against the liability or legal costs; or
- (d) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by statute.

### **18.2 Insurance**

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Alternate Director or Secretary or senior manager of the Company or of a subsidiary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by statute to pay or agree to pay the premium; or
- (b) the contract would, if the Company paid the premium, be made void by statute.

### **18.3 Contract**

The Company may enter into an agreement with a person referred to in articles 18.1 and 18.2 with respect to the matters covered by those articles. An agreement entered into pursuant to this article may include provisions relating to rights of access to the books of the Company conferred by the Corporations Act or otherwise by law.

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## **19 Definitions and Interpretation**

### **19.1 Definitions**

In this Constitution unless the contrary intention appears:

**Alternate Director** means a person appointed as an alternate director under article 11.8.

**Committee** means a committee of Directors constituted under article 10.7.

**Company** means Perpetual Superannuation Limited (formerly Perpetual Property Securities Ltd).

**Controlled Corporation** means a company of a particular corporation where each member and Deemed Member of the company is a person who is:

- (a) the particular corporation; or
- (b) a subsidiary of the particular corporation; or
- (c) a nominee of or trustee for the particular corporation; or
- (d) a Deemed Member of the Company who is:
  - (i) also a member or a Deemed Member of the particular corporation; and
  - (ii) only a Deemed Member of the Company by reason of being a member or Deemed Member of the particular corporation and for no other reason.

**Controlling Corporation** means, in relation to the Company, the corporation (if any) which is:

- (a) where there is only one ‘particular corporation’ for the purposes of the definition of “Controlled Corporation”, that corporation; and
- (b) where there is more than one ‘particular corporation’ for the purposes of the definition of “Controlled Corporation”, the one corporation which is not a subsidiary of any of the other ‘particular corporations.’

**Constitution** means this constitution as amended from time to time, and a reference to an article is a reference to an article of this Constitution.

**Corporations Act** means the Corporations Act 2001 (Cwlth).

**Deemed Member** where a person is a member or a Deemed Member of a corporation, and that corporation is a member of another corporation, the person is a Deemed Member of the second mentioned corporation.

**Director** means a person holding office as a director of the Company, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Holding Company** means Perpetual Limited ACN 000 431 827.

**Executive Director** means a person appointed as an executive director under article 10.9.

**Managing Director** means a person appointed as a managing director under article 10.9.

**Member** means a person entered in the Register as a holder of shares in the capital of the Company.

**Part** means a Part of this Constitution.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution.

**Register** means the register of Members of the Company under the Corporations Act and if appropriate includes a branch register.

**Registered Office** means the registered office of the Company.

**Related Body Corporate** has the same meaning as related body corporate has in the Corporations Act.

**Representative** means a person appointed to represent a corporate Member at a general meeting of the Company in accordance with the Corporations Act or a corresponding previous law.

**Secretary** means a person appointed under article 12.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

**State** means the State or Territory in which the Company is for the time being registered.

## 19.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) **(gender)** words importing any gender include all other genders;
- (b) **(chairperson)** a chairman appointed under this Constitution may be referred to as a chairman or chairwoman, or as chair, as appropriate;
- (c) **(office or position holders)** 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;
- (d) **(person)** the word person includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(legislation)** a reference to any law includes all delegated legislation made under it, and amendments, consolidations, re-enactments or replacements of any of them, whether by the State or the Commonwealth of Australia or otherwise;
- (g) **(from time to time)** a power, an authority or a discretion reposed in a Director, the Directors, the Company in general meeting or a Member may be exercised at any time and from time to time;



- (h) **(amount paid)** a reference to an amount paid on a share includes an amount credited as paid on that share;
- (i) **(signed)** where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors; and
- (j) **(writing)** “writing” and “written” includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

### 19.3 Corporations Act

In this Constitution unless the contrary intention appears:

- (a) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and
- (b) “section” means a section of the Corporations Act.

### 19.4 Headings and Parts

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

This Constitution is divided into Parts as indicated by its Contents.

### 19.5 Exercise of powers

- (a) The Company may, in any way the Corporations Act permits:
  - (i) exercise any power;
  - (ii) take any action; or
  - (iii) engage in any conduct or procedure,
 which, under the Corporations 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 person’s discretion.
- (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:
  - (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
  - (ii) subject to any contract between the Company and the relevant person, to remove or suspend any person appointed, with or without cause; and
  - (iii) 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 the 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:
  - (i) the delegation may be concurrent with, or (except in the case of a delegation by the Directors) to the exclusion of, the performance or exercise of that function or power by the person or body;
  - (ii) the delegation may be either general or limited in any manner provided in the terms of delegation;
  - (iii) 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;
  - (iv) the delegation may include the power to delegate;
  - (v) 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 on the opinion, belief or state of mind of the delegate in relation to that matter; and

- (vi) 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.

#### **19.6 Replaceable rules not to apply**

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

#### **19.7 Single Member company**

If at any time the Company has only one Member then, unless the contrary intention appears:

- (a) a reference in an article to 'the Members' is a reference to that Member; and
- (b) without limiting article 19.7(a), an article which confers a power or imposes an obligation on the Members to do a particular thing confers that power or imposes that obligation on that Member.

#### **19.8 Previous constitution superseded**

This Constitution supersedes the constitution of the Company in force immediately prior to the adoption of this Constitution.

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### **20 Transitional provisions**

This Constitution must be interpreted in such a way that:

- (a) every Director, Managing Director, Executive Director, Alternate Director and 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.