



Constitution of Lactation Consultants of Australia and New Zealand Limited

**As amended by special resolutions passed at the annual general meeting
held on 24 September 2011**

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Corporations Act 2001

Company limited by guarantee

Constitution

of

Lactation Consultants of Australia and New Zealand Limited

Introduction

1. Replaceable rules excluded

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

2. Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (3) **Company** means Lactation Consultants of Australia and New Zealand Limited;
- (4) **direct vote** includes a vote delivered to the Company by post, facsimile, electronically or by any other technology approved by the directors that gives the members entitled to vote a reasonable opportunity to participate in the voting;
[inserted by special resolution on 24 September 2011]
- (5) **directors** means the directors for the time being of the Company or the directors assembled as a board;

- (6) **Foundation Members** means the persons who consent to be the first directors of the Company on the registration of the Company;
- (7) **International Board Certified Lactation Consultant** means a healthcare professional expert in the management of breastfeeding and human lactation, who has passed the International Board of Lactation Consultant Examiners Inc. certification examination and is currently certified as an International Board Certified Lactation Consultant; and
- (8) **secretary** means the secretary referred to in rule 37 and any other person appointed to perform the duties of a secretary of the Company.

2.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
 - (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) “Including” and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

3. Objects

- 3.1 The objects for which the Company is established are to build and sustain a trans-national organisation which provides professional

development, advocacy and peer support for all members of the Company; to commit to the empowerment of breastfeeding women and their families/whanau, and to advise and make representations to relevant State and National Government authorities on issues relating to breastfeeding and human lactation and the profession of lactation consultancy. Without limiting the generality of the foregoing, the objects include the following:

- (1) promoting the profession of International Board Certified Lactation Consultant as a specialist profession;
- (2) providing a forum for discussion and regular communication and networking among International Board Certified Lactation Consultants;
- (3) providing facilities for education and research to foster better maternal and child health by protecting, promoting and supporting breastfeeding and the use of human milk for infants;
- (4) fostering an awareness in health professionals of human milk feeding as an important preventative health measure, and providing continuing professional education;
- (5) providing continuing professional education and development to International Board Certified Lactation Consultants and other healthcare professionals;
- (6) creating an awareness in the community of the importance of human milk and breastfeeding, and of the hazards of breastmilk substitutes;
- (7) encouraging, stimulating, establishing funds for, and aiding research and investigation into, all aspects of lactation and infant feeding;
- (8) supporting the *International Code of Marketing of Breastmilk Substitutes* as interpreted by the World Health Organisation and the World Health Assembly;
- (9) providing mutual support and education for Australian and New Zealand International Board Certified Lactation Consultants;
- (10) making representations to relevant authorities on issues of concern to International Board Certified Lactation Consultants and serving as an advisory body for such authorities;

- (11) producing written and audiovisual materials on issues of concern to International Board Certified Lactation Consultants and other health workers;
- (12) maintaining a directory of International Board Certified Lactation Consultants in Australia and New Zealand;
- (13) co-operating, supporting, liaising, associating or affiliating with organisations wherever established or operating that have objects similar to or compatible with those of the Company, including expressly co-operating, supporting, liaising, associating or affiliating with the International Lactation Consultant Association, a Virginia, USA not-for-profit corporation;
- (14) liaising with manufacturers/providers of goods and services used by breastfeeding women and evaluating such goods and services;
- (15) liaising with human milk banking organisations internationally, and lobbying for the establishment and maintenance of human milk banks in Australia and New Zealand; and
- (16) evaluating and reporting on existing programs about lactation and infant nutrition in universities, colleges and other relevant institutions.

4. Powers

[compare section 124]

- 4.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 4.2 Despite rule 4.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in rule 3.

5. Application of income and property

[compare sections 125 and 150]

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

6. No distribution to members

[compare section 150]

- 6.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company.
- 6.2 Rule 6.1 does not prevent:
- (1) the payment in good faith of remuneration to any officer, servant or member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (2) the payment of interest at a rate not exceeding 12% per annum on money borrowed from any member of the Company;
 - (3) the payment of reasonable and proper rent by the Company to a member of the Company for premises leased by the member to the Company; or
 - (4) the reimbursement of expenses incurred by any member on behalf of the Company.

7. Limited liability

- 7.1 The liability of the members is limited.

8. Guarantee

[compare section 117]

- 8.1 Every member of the Company undertakes to contribute an amount not exceeding \$1.00 to the property of the Company in the event of its being wound up while the member is a member or within 1 year after the member ceases to be a member, if required for payment:
- (1) of the debts and liabilities of the Company (contracted before the member ceases to be a member);
 - (2) of the costs, charges and expenses of winding up; and
 - (3) for the adjustment of the rights of the contributories among themselves.

Membership

9. Number of members

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

10. Membership

10.1 The members of the Company are:

- (1) the Foundation Members; and
- (2) any other persons the directors admit to membership in accordance with this constitution.

11. Categories of membership

11.1 The categories of membership are:

- (1) ordinary members;
- (2) associate members;
- (3) life members; and
- (4) honorary members.

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

12. Application for ordinary membership

12.1 Any individual who:

- (1) is not less than 18 years of age at the date of application;
and
- (2) is an International Board Certified Lactation Consultant;

may apply for ordinary membership of the Company.

13. Application for associate membership

13.1 Any individual who:

- (1) is not less than 18 years of age at the date of application;
and
- (2) is:
 - (a) a health professional who has a demonstrated interest in lactation;
 - (b) a person who has a demonstrated interest in human lactation by publication or research and has been invited by the directors to apply for associate membership of the Company; or
 - (c) otherwise qualified to be an associate member within the category or categories that the directors may establish from time to time;

may apply for associate membership of the Company.

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

- (1) has the right to receive notices of and to attend and be heard at any general meeting; but
- (2) has no right to vote at any general meeting; and
- (3) has no right to be elected or appointed as a director or to any other office or position in the Company (other than a committee of members established under rule 54).

14. Form of application

14.1 An application for membership must be:

- (1) in writing in a form approved by the directors;
- (2) signed by the applicant; and
- (3) accompanied by any other documents or evidence as to qualification for the type of membership applied for which the directors require.

- 14.2 An application form must be accompanied by:
- (1) an application fee, if any, determined in accordance with rule 21.1; and
 - (2) the annual subscription, determined in accordance with rule 22.

15. Admission to membership

- 15.1 The directors must consider an application for membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.
- 15.2 The directors need give no reason for the rejection of an application.
- 15.3 If an application for membership is rejected the secretary must notify the applicant in writing and refund the application fee, if any, and the annual subscription.
- 15.4 If an applicant is accepted for membership:
- (1) the secretary must notify the applicant of admission in the form of a receipt for the application fee, if any, and annual subscription or in any other form the directors determine; and
 - (2) the name and details of the member must be entered in the register of members.
- 15.5 If payment of the application fee, if any, and the annual subscription is not received within 2 months after the date of the giving of the notice referred to in rule 15.4 the directors may revoke their acceptance of the applicant for membership.

16. Notification by members

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

17. Foundation Members

- 17.1 Foundation Members who have agreed to be the first directors of the Company before the Company is registered become ordinary members of the Company on registration of the Company.

17.2 Foundation Members are not required:

- (1) to have any qualification for membership; or
- (2) to pay any application fee;

but must pay the first annual subscription as determined in rule 22.4.

17.3 Foundation Members must otherwise comply with this constitution.

18. Life membership

18.1 If, in the opinion of the directors, an ordinary member has made over a period of years a significant contribution to the Company the directors may nominate the member as a life member of the Company.

18.2 A member nominated under rule 18.1 becomes a life member of the Company on the nomination being approved by an ordinary resolution of members at a general meeting.

18.3 A life member has all the rights and privileges of membership and is otherwise subject to this constitution.

18.4 The Company in general meeting, on the recommendation of the directors, may make provision for the granting to ordinary members of life membership (**paid life membership**) on payment of an amount recommended by the directors, and approved by the Company in general meeting, as a reasonable equivalent of payment in advance of an annual subscription over a period of years.

18.5 If the Company provides for paid life membership it is open to any member, and the amount to be paid is the same for any member, whatever the member's age.

18.6 The Company in general meeting may, on the recommendation of the directors, remove the provision for paid life membership, or change the amount to be paid for it, but this does not affect the rights of members who were granted paid life membership while the provision was in force.

19. Honorary membership

19.1 If, in the opinion of the directors, a person, not being a member of the Company, has made over a period of years a significant contribution to the Company, or to the promotion or support of the

objects of the Company, the directors may nominate that person as an honorary member of the Company.

- 19.2 A person nominated under rule 19.1 becomes an honorary member of the Company on the later to occur of:
- (1) the person consenting in writing to be an honorary member; and
 - (2) the nomination being approved by an ordinary resolution of members at a general meeting.
- 19.3 An honorary member has no rights and privileges of membership, other than the right to receive notices of and attend and be heard at any general meeting, and is otherwise subject to this constitution.

20. Register of members

[compare sections 168 and 169]

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

Application fee and annual subscription

21. Application fee

- 21.1 The application fee payable by each applicant for membership is the sum the directors determine for each category of membership.
- 21.2 No application fee is payable by any honorary member.

22. Annual subscription

- 22.1 The annual subscription payable by a member of the Company is the sum the directors determine for each category of membership.
- 22.2 Unless the directors determine otherwise:
 - (1) all annual subscriptions are due and payable in advance on 1 January in each year; and
 - (2) if a person is admitted to membership of the Company during the months of July to December inclusive the directors may reduce the annual subscription payable by the applicant in any manner they see fit.
- 22.3 No annual subscription is payable by any life member or honorary member.
- 22.4 Despite any other provision of this rule 22 and for the purpose of rule 17.2, each of the Foundation Members must pay the first annual subscription of an amount and within the time determined by the directors at the first meeting of the directors held after the registration of the Company

23. Unpaid annual subscriptions

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

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

Cessation of membership

24. Resignation

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

25. Failure to pay

- 25.1 If a member has not paid all arrears of annual subscriptions under rule 22 or, if paid, the member's rights and privileges are not reinstated:
- (1) the member remains liable for all the obligations and liabilities of membership until the expiration of 6 months after the date of notification under rule 23.1(2); and
 - (2) the member ceases to be a member and member's name must be removed from the register of members at the expiration of the 6 month period.

26. Cessation of membership

- 26.1 A member who is an individual ceases to be a member:
- (1) on the death of the member; or
 - (2) if the member is expelled under rule 27.
- 26.2 A life member or an honorary member ceases to be a member:
- (1) in accordance with rule 26.1; or
 - (2) if the directors, for any reason, request in writing the resignation of the member and the member does not resign within 2 months after the request is sent.

27. Disciplining members

- 27.1 If any member:
- (1) wilfully refuses or neglects to comply with the provisions of this constitution; or

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

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

- 27.2 In exercising their powers under rule 27.1 the directors must not fine a member an amount exceeding the annual subscription of an ordinary member, being an individual (whether or not the member is an individual or a body corporate, or is liable to pay an annual subscription).
- 27.3 At least 1 week before the meeting of the directors at which a resolution of the nature referred to in rule 27.1 is passed the directors must give to the member notice of:
 - (1) the meeting;
 - (2) what is alleged against the member; and
 - (3) the intended resolution.
- 27.4 At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing any explanation or defence the member sees fit.
- 27.5 A member may, by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the directors, elect to have the question dealt with by the Company in general meeting and in that event, a general meeting of the Company must be called for that purpose.
- 27.6 If at the meeting a resolution to the same effect as the resolution which was to be considered by the directors is passed by a majority of 2/3 of those present and voting (and the vote must be taken by secret ballot), the member concerned must be punished in the manner resolved and in the case of a resolution for expulsion the member is expelled and the member's name must be removed from the register of members.
- 27.7 If any member ceases to be a member under rule 27.6, the directors may reinstate the member and restore the name of that member to the register of members upon and subject to any terms and conditions they see fit.

28. Effect of cessation of membership

- 28.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Company for any money which, at the time of the member ceasing to be a member, the member owes to the Company on any account and for any sum not exceeding \$1.00 for which the member is liable under rule 8 of this constitution.

Appointment of directors

29. Number of directors

[compare section 201A]

- 29.1 The number of the directors must be not less than 5 nor more than 9.
- 29.2 The Company in general meeting may by resolution increase or reduce the number of directors referred to in rule 29.1 but the number may not be reduced below 3.

30. Residence of directors

- 30.1 Subject to rules 35.7, 41.2 and 42.2, at least 2 directors must be ordinarily resident in New Zealand.

31. Directors' qualifications

- 31.1 No person may be a director unless that person is:
- (1) an ordinary member or a life member (which includes a paid life member) of the Company; and
 - (2) is currently certified as an International Board Certified Lactation Consultant by the International Board of Lactation Consultant Examiners Inc.

32. First directors

- 32.1 The first directors are those named in the application for registration of the Company.
- 32.2 The first directors hold office until the termination of the first annual general meeting of the Company but, subject to this constitution, are eligible for election at that meeting. If they resign before the first annual general meeting, they may be replaced at a general

meeting before the first annual general meeting, and their replacements hold office until the termination of the first annual general meeting.

33. Retirement and Election of directors

[compare section 201E and replaceable rule 201G]

- 33.1 At each annual general meeting of the Company held after the first annual general meeting one-third of the directors for the time being, or if their number is not a multiple of 3, then the nearest to but not exceeding one-third, retire from office.
- 33.2 The director or directors to retire at an annual general meeting are those who have been longest in office since their election or appointment to office, as the case may be.
- 33.3 As between or among 2 or more directors who became directors on the same day, the director or directors to retire are determined by lot unless they otherwise agree between or among themselves.
- 33.4 Subject to rule 33.5, a retiring director is eligible for re-election in accordance with rules 34 and 35.
- 33.5 Despite rules 33.1 and 33.2, no director who is elected at an annual general meeting may retain office for more than 3 consecutive years without submitting himself or herself for re-election, even though the submission results in more than the number of the directors who are to retire from office in accordance with rule 33.1.
- 33.6 Despite rules 33.4, 34 and 35, as from the date of the first annual general meeting, no director may retain office for more than 6 consecutive years. However, such a person may be re-elected or re-appointed as a director after he or she person has ceased to be a director for not less than 1 year.

34. Nomination for election

34.1 Each candidate for election as a director must:

- (1) be proposed by an ordinary member; and
- (2) be seconded by another ordinary member;

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

- 34.2 A nomination of a candidate for election must:
- (1) be in writing;
 - (2) be signed by the candidate; and
 - (3) be signed by the proposer and seconder.
- 34.3 A nomination of a candidate for election must be received at the registered office of the Company not later than 5pm on the day which is 28 days prior to the annual general meeting at which the candidate seeks election.
- 34.4 A list of the candidates' names in alphabetical order and the country in which he or she is ordinarily resident, together with the proposers' and seconders' names must be sent to members with the notice of the annual general meeting.

35. Election procedure – directors

- 35.1 If the number of candidates for election as directors is equal to or less than the number of vacancies on the board, the chair of the annual general meeting must declare those candidates to be duly elected as directors.
- 35.2 If the number of candidates for election as directors is greater than the number of vacancies on the board, a ballot must be held for the election of the candidates.
- 35.3 If a ballot is required, balloting lists must be prepared listing the names of the candidates in alphabetical order and the country in which they are ordinarily resident.
- 35.4 At the annual general meeting each person entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.
- 35.5 Subject to rules 35.6 and 35.7 the candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.
- 35.6 If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair, prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:
- (1) does not exercise a casting vote; or

- (2) is one of the candidates who received the same number of votes;

then the names of the candidates who received the same number of votes must be put to a further ballot immediately.

35.7 Despite rules 35.5 and 35.6, if:

- (1) the ballot does not result in the election of the requisite number of directors ordinarily resident in New Zealand as determined in accordance with rule 30; and
- (2) the list of candidates included 1 or more candidates resident in New Zealand; then
- (3) if the number of candidates resident in New Zealand is equal to or less than the requisite number, that candidate or those candidates, as the case requires (up to the maximum requisite number), is taken to have received the highest number of votes of all of the candidates at the election; or
- (4) if the number of candidates resident in New Zealand is greater than the requisite number, that candidate or those candidates, as the case requires (up to the maximum requisite number), who as between or among those candidates resident in New Zealand received the highest number of votes, is taken to have received the highest number of votes of all of the candidates at the election.

35.8 There is not a vacancy for the purpose of this rule 35 (or rules 41 or 42) because the number of directors is less than the maximum allowed under rule 29.1. There is a vacancy only if the number of directors is less than the number elected at the previous annual general meeting (adjusted for any increase under clause 41.1).

35.9 Nothing in this rule 35 prevents the election of the directors by ballot being conducted by a direct vote. If a ballot is conducted by a direct vote the directors may determine that the chosen method of voting is:

- (1) to the exclusion of voting at the meeting; or
- (2) in addition to members being also entitled to vote on the ballot at the meeting.

[amended by special resolution on 24 September 2011]

35.10 A direct vote is only valid if received by the Company at least 48 hours before the general meeting. However, a direct vote is taken

to have been exercised and given at the meeting.
[inserted by special resolution on 24 September 2011]

36. Time appointment or retirement takes effect

- 36.1 Directors who are appointed at a meeting of members take office immediately after the end of the meeting.
- 36.2 Directors who retire at a meeting of members continue to hold office until the end of the meeting.

37. Office bearers

37.1 The office bearers of the Company are:

- (1) the president;
- (2) the vice-president;
- (3) the treasurer; and
- (4) the secretary.

38. First office bearers and subsequent election at board meeting

- 38.1 The first office bearers of the Company are elected by the first directors appointed under rule 32. They hold office until the end of the first meeting of the directors held after the first annual general meeting of the Company.
- 38.2 Subsequent office bearers are elected by the directors at the first meeting of the directors held after the immediately preceding annual general meeting and hold office until the end of the first meeting of the directors held after the third annual general meeting held after their appointment.
- 38.3 The directors present must appoint one of their number to act as chair of the meeting for the purpose of the election.

39. Eligibility and nomination

- 39.1 Only directors may be office bearers. Any director is eligible for election to any office bearer position.
- 39.2 Each director standing for election as an office bearer must be proposed by another director.

- 39.3 If a director stands for election for more than 1 position as an office bearer separate nominations must be received in respect of each position.
- 39.4 A nomination may be:
- (1) in writing, received by the secretary not less than 24 hours prior to the board meeting at which the election is to take place and signed by the candidate and the proposer; or
 - (2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

40. Election procedure – office bearers

- 40.1 The election of the office bearers is held in the order in which the positions are listed in rule 38.1.
- 40.2 If there is only 1 candidate for election to any office bearer position that person is declared elected to that position. If there is no candidate for election to an office bearer position, the position remains vacant until filled by the directors at any subsequent meeting of the board. However, until that position is filled, a director, whether or not elected to an officer bearer position may at the request of the directors agree to act as a temporary holder of that position until it is filled.
- 40.3 If there is more than 1 candidate for election to any office bearer position a ballot must be held among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- 40.4 In the case of an equality of votes in respect of any position a further ballot must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.
- 40.5 If a director is elected to a position as office bearer then his or her nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.
- 40.6 Subject to this rule 40 a ballot is conducted in the manner the directors determine.

Appointment of directors between AGMs

41. Casual vacancies and additional directors

[compare replaceable rules 201G and 201H]

- 41.1 The Company in general meeting may by resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- 41.2 If at the time the vacancy occurs the composition of the board does not meet the requirements in rule 30, in filling the casual vacancy the directors are to use reasonable endeavours to appoint a person who is ordinarily resident in New Zealand to fill the vacancy.
- 41.3 Any director appointed under this rule 41 holds office until the termination of the next annual general meeting of the Company and is then eligible for re-election.

42. Insufficient directors or New Zealand resident directors

[compare replaceable rule 201H]

- 42.1 In the event of a vacancy 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 meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.
- 42.2 Without affecting rule 42.1:
- (1) in the event that there is only 1 director who is ordinarily resident in New Zealand the directors may act, but the provisions of rule 41.2 apply; but
 - (2) in the event that there is no director who is ordinarily resident in New Zealand the directors may act only for the purpose of appointing a director who is ordinarily resident in New Zealand or convening a general meeting of the Company

Powers of directors

43. Validation of acts of directors and secretaries

[compare sections 201M and 204E]

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

44. General business management

[compare replaceable rule 198A]

- 44.1 The business of the Company is to be managed by or under the direction of the directors.
- 44.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 44.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.
- 44.4 The directors may pay all expenses incurred in promoting and forming the Company from the assets of the Company.

45. Borrowing powers

- 45.1 Without limiting the generality of rule 44, but subject to rule 6, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

46. Appointment of attorney

- 46.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or

exercisable by the directors), for the period and subject to the conditions they see fit.

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

47. Negotiable instruments

[compare replaceable rule 198B]

- 47.1 Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 47.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

Executive officer

[compare replaceable rule 201J]

48. Power to appoint

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

49. Not a member of the board

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

50. Powers

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

51. Withdrawal of appointment or powers

51.1 The directors may revoke or vary:

- (1) an appointment; or
- (2) any of the powers conferred on an executive officer.

52. Temporary appointments

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

Committees of directors and regional branches

53. Committees of directors

[compare replaceable rule 198D]

53.1 The directors may delegate any of their powers to a committee of directors.

53.2 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.

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

54. Regional branches and administration

54.1 The directors may provide for the management and administration of the affairs of the Company in any specified region or locality in the manner they see fit.

54.2 Without limiting the operation of rule 54.1 the directors may:

- (1) establish any regional or local committees or branches;
- (2) appoint any members of the Company to be a member of the local committee or branch;
- (3) appoint any managers or agents, fix their remuneration and delegate to them any of the powers vested in the directors; and

- (4) authorise the members for the time being of the local committee or branch to fill any vacancies on it and to act despite vacancies.

54.3 A local committee or branch may remove any person appointed under rule 54.2(4) and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation is affected by it.

Removal and resignation of directors

55. Removal of directors

[compare section 203D]

55.1 Subject to the Act the Company may by resolution remove a director from office.

56. Resignation of director

[replaceable rule 203A]

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

57. Vacation of office of director

[compare section 206B]

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

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (3) is not present at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
- (4) fails to comply with any by-law of the Company requiring directors to declare conflicts of interest and the directors declare his or her seat to be vacant by reason of such failure;
- (5) ceases to be qualified as a director under rule 31;

- (6) becomes disqualified from being a director under the Act or any order made under the Act;
- (7) is removed from office in accordance with rule 55; or
- (8) resigns from office in accordance with rule 56.

Directors' interests

58. Prohibition on being present or voting

[compare section 195]

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

59. Director to disclose interests

[compare section 191]

- 59.1 A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Company.
- 59.2 A director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as director must declare at a meeting of the directors of the Company or by written notice to the secretary of the Company the fact and the nature, character and extent of the conflict.
- 59.3 For the purposes of rules 59.1 and 59.2, a director's interest or any conflict must be disregarded if it arises from or relates solely to:

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

60. Effect of interest in contract

[compare replaceable rule 194]

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

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

60.2 For the purposes of rule 60.1 **contract** includes an arrangement, dealing or other transaction.

61. Other interests

61.1 Without limiting rule 59 or rule 60 a director may to the extent permitted by the Act:

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

62. Extension of meaning of “Company”

62.1 For the purposes of rules 59, 60 and 61 **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

63. Other directorships and shareholdings

63.1 A director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

63.2 Subject to the Act:

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

Remuneration of directors

64. No directors' remuneration

[compare section 150]

64.1 Despite rule 6.2 no director may receive any remuneration for his or her services in his or her capacity as a director of the Company.

65. Directors' expenses

65.1 Despite rule 64 the Company may pay the directors' travelling and other expenses that they properly incur:

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

66. Financial benefit

[compare Chapter 2E - sections 207 and following]

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

Secretary

67. Terms of office of secretary

[compare replaceable rule 204F]

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

Indemnity and insurance

68. Indemnity

[compare section 199A]

68.1 To the extent permitted by the Act, the Company indemnifies:

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

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

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

- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 68.2(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for

making the order are found by the Court to have been established; or

- (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 68.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of rule 68.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

68.3 An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under rule 68.1;
- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim

and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

68.4 In rule 68.3 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 68.4(1) or 68.4(2) may be initiated.

69. Insurance

[compare section 241A]

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

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

69.2 In the case of a director, any premium paid under this rule is not remuneration for the purpose of rule 64.

70. Director voting on contract of insurance

[compare section 191(2)(vi)]

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

71. Liability

71.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other

loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

72. Meaning of “officer”

72.1 For the purposes of rules 68, 69, 70 and 71, **officer** means a director or secretary or a member of a regional or local committee of branch appointed under rule 54.2.

Inspection of records

73. Rights of inspection

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

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

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

73.3 Directors have the rights of inspection and access provided by section 198F of the Act.

74. Confidential information

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

Directors’ meetings

[compare sections 248A to 248G]

75. Circulating resolutions

[compare replaceable rule 248A]

75.1 The directors may pass a resolution without a directors’ meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia or if ordinarily resident in

New Zealand, from New Zealand) who has not left a facsimile number or electronic mail address at which he or she may be given notice) sign a document containing a statement that he or she is in favour of the resolution set out in the document.

- 75.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- 75.3 The resolution is passed when the last director signs.
- 75.4 A facsimile or electronic mail communication addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 75 must be treated as a document in writing signed by that director.

76. Meetings of directors

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

77. Calling directors' meetings

[compare replaceable rule 248C]

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

78. Notice of meeting

[compare replaceable rule 248C]

- 78.1 Reasonable notice of every directors' meeting must be given to each director except that it is not necessary to give notice of a meeting of directors to any director who:
- (1) has been given special leave of absence; or
 - (2) is absent from Australia or if ordinarily resident in New Zealand, from New Zealand, and has not left a facsimile number or electronic mail address at which he or she may be given notice.
- 78.2 Any notice of a meeting of directors may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication.

79. Technology meeting of directors

[compare section 248D]

- 79.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.
- 79.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- 79.3 The following provisions apply to a technology meeting:
- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
 - (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- 79.4 If the secretary is not present at a technology meeting 1 of the directors present must take minutes of the meeting.
- 79.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 79.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

80. Chairing directors' meetings

[compare replaceable rule 248E]

- 80.1 The president is the chair of all meetings of the directors.
- 80.2 At a meeting of directors if:
- (1) no president has been elected as provided by rule 40; or
 - (2) the president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the vice-president is the chair of the meeting, but if:
- (3) no vice-president has been elected as provided by rule 38; or

- (4) the vice-president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

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

81. Quorum

[compare replaceable rule 248F]

- 81.1 The quorum for a directors' meeting is 3 directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.

82. Passing of directors' resolutions

[compare replaceable rule 248G]

- 82.1 A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- 82.2 The chair has a casting vote if necessary in addition to any vote he or she has as a director. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.

Meetings of members

83. Circulating resolutions

[compare section 249A]

- 83.1 This rule 83 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 83.2 The Company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 83.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- 83.4 The resolution is passed when the last member signs.

83.5 If the Company receives by facsimile transmission a copy of a document referred to in this rule 83 it is entitled to assume that the copy is a true copy.

84. Calling of general meeting

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

84.1 A majority of directors may call a general meeting whenever they see fit.

84.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.

84.3 Except as provided in the Act, no member or members may call a general meeting.

85. Amount of notice of meeting

[compare section 249H]

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

86. Persons entitled to notice of general meeting

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

86.1 Written notice of a meeting of the Company's members must be given individually to:

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

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

87. How notice is given

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

87.1 The Company may give the notice of meeting to a member:

- (1) personally;

- (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
- (3) by sending it to the facsimile number or electronic mail address (if any) nominated by the member;
- (4) by sending it by other electronic means (if any) nominated by the member; or
- (5) by notifying the member in accordance with rule 87.2.

87.2 If the member nominates:

- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

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

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

88. When notice is given

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

- 88.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.
- 88.2 Except as provided by rule 88.3, a notice of meeting given to a member under rule 87.1(3) is taken to be given on the business day after it is sent.
- 88.3 A notice of meeting given to a member under rule 87.1(3) is not effective if:
 - (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
 - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or

- (3) in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.

88.4 A notice of meeting given to a member under rule 87.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

88.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 88 is conclusive evidence of the matter.

89. Period of notice

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

90. Contents of notice

[compare replaceable rule 249L]

90.1 A notice of a general meeting must:

- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
- (2) state the general nature of the meeting's business;
- (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
- (4) be worded and presented in a clear, concise and effective manner; and
- (5) contain a statement setting out the following information:
 - (a) that the member has a right to appoint a proxy; and
 - (b) that the proxy must be a member of the Company entitled to vote at the meeting.

91. Notice of adjourned meeting

[replaceable rule 249M]

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

92. Accidental omission to give notice

[compare section 1322(3)]

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

93. Postponement of general meeting

93.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.

93.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 95.3 or rule 96.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

94. Technology

[section 249S]

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

95. Quorum

[compare replaceable rule 249T]

95.1 The quorum for a meeting of the Company's members is 3 persons entitled to vote and the quorum must be present at all times during the meeting.

95.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. If an individual is attending both as a member and as a proxy, attorney or body corporate representative, the individual is counted only once.

95.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:

- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or

- (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.

95.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

96. Chair at general meetings

[compare replaceable rule 249U]

96.1 The president of the Company, if present, presides as chair at every general meeting.

96.2 Where a general meeting is held and:

- (1) there is no president of the Company; or
- (2) the president is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the vice-president of the Company if present presides as chair of the meeting or, if the vice-president is not present or is unwilling to act, or if no vice-president has been elected as provided by rule 38, the directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the members present may appoint any 1 of their number to be chair of the meeting.

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

97. Business at adjourned meetings

[replaceable rule 249W(2)]

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

Proxies

98. Who can appoint a proxy

[compare mandatory rule 249X]

98.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint an individual as the member's proxy to attend and vote for the member at the meeting. The proxy must be a member who is entitled to vote at the meeting.

99. Rights of proxies

[compare section 249Y]

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

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

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

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

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

100. When proxy form must be sent to all members

[section 249Z]

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

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

101. Appointing a proxy

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

101.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001*, and in rules 101.2 and 101.3) by the member making the appointment and contains the following information:

- (1) the member's name and address;
- (2) the Company's name;
- (3) the proxy's name or the name of the office held by the proxy; and
- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

101.2 An electronically authenticated appointment of a proxy must:

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

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

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

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

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

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

- (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
- (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this rule 101.5 does not affect the way that the person can cast any votes the person holds as a member.

101.6 An appointment does not have to be witnessed.

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

102. Form of proxy sent out by Company

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

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

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

103. Receipt of proxy documents

[compare section 250B]

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

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

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

103.3 The Company receives an appointment or authority:

- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic mail address specified for the purpose in the notice of meeting; or
- (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with rules 101.2 and 101.3.

103.4 An appointment of a proxy is ineffective if:

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

is not complied with.

104. Validity of proxy vote

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

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

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

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

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

105. Attorney of member

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

Voting at meetings of members

106. How vote may be exercised

106.1 Subject to rules 107 and 108 at any general meeting of members, each ordinary member and each life member present has 1 vote on a show of hands and on a poll.

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

106.3 Despite any other provision of this Constitution, and without affecting rule 35, the directors may determine that at any general meeting a member who is entitled to attend and vote at the meeting is entitled to a direct vote. The directors may specify the form, method and timing of giving a direct vote at a meeting in order for it to be valid. In determining whether a resolution is passed by the requisite majority the votes cast at the meeting and those cast by a direct vote are aggregated, other than in the case of a direct vote that by rule 35.9(1) is to the exclusion of voting at the meeting.

[inserted by special resolution on 24 September 2011]

107. Voting disqualification

107.1 A member is not entitled to vote at a general meeting if the annual subscription of the member is more than 1 month in arrears at the date of the meeting or the postponed or adjourned meeting.

108. Objections to right to vote

[compare replaceable rule 250G]

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

(1) may only be made at the meeting; and

(2) must be determined by the chair, whose decision is final.

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

109. How voting is carried out

[compare replaceable rule 250J and section 251A]

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

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

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

110. Matters on which a poll may be demanded

[compare section 250K]

110.1 A poll may be demanded on any resolution.

110.2 A demand for a poll may be withdrawn.

111. When a poll is effectively demanded

[compare section 250L]

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

- (1) at least 3 members entitled to vote on the resolution; or
- (2) the chair.

111.2 The poll may be demanded:

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

112. When and how polls must be taken

[compare replaceable rule 250M]

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

113. Chair's casting vote

[compare replaceable rule 250E(3)]

- 113.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.
- 113.2 The chair has a discretion both as to use of the casting vote and as to the way in which it is used.

Annual general meeting

[compare section 250N]

114. Business of an annual general meeting

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

- 114.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
 - (1) the consideration of the annual financial report, directors' report and auditor's report;
 - (2) the election of directors;
 - (3) the appointment of the auditor; and
 - (4) the fixing of the auditor's remuneration.

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

- 114.2 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.
- 114.3 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 114.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

115. Resolutions proposed by members

[compare sections 249N and 249O]

- 115.1 A member may not at any meeting move any resolution relating to special business unless:
- (1) members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months' notice has elapsed since the notice was given; or
 - (2) the resolution has previously been approved by the directors.

Minutes

116. Minutes to be kept

[compare section 251A]

- 116.1 The directors must keep minute books in which they record within 1 month:
- (1) proceedings and resolutions of meetings of the Company's members;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (3) resolutions passed by members without a meeting; and
 - (4) resolutions passed by directors without a meeting.

- 116.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 116.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 116.4 Without limiting rule 116.1 the directors must record in the minute books:
- (1) all appointments of officers;
 - (2) the names of the directors present at all meetings of directors and the Company;
 - (3) in the case of a technology meeting, the nature of the technology; and
 - (4) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

Accounts, audit and records

117. Accounts

[compare sections 285-297, 314-317]

- 117.1 The directors must cause proper accounting and other records to be kept in accordance with the Act.
- 117.2 The directors must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.

118. Audit

[compare sections 301, 327-331]

- 118.1 A registered company auditor must be appointed.
- 118.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

Execution of documents

119. Common seal

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

120. Use of common seal

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

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

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

120.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:

- (1) 2 directors of the Company; or
- (2) a director and a company secretary of the Company.

121. Execution of documents without common seal

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

121.1 The Company may execute a document without using a common seal if the document is signed by:

- (1) 2 directors of the Company; or
- (2) a director and a company secretary of the Company.

122. Execution of document as a deed

[compare section 127(3)]

122.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 120 or rule 121.

123. Execution – general

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

123.1 The same person may not sign in the dual capacities of director and secretary.

- 123.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.
- 123.3 Rules 120 and 121 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

Inadvertent omissions

124. Formalities omitted

[compare section 1322]

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

Alterations

125. Alterations

- 125.1 If the Company is so required by the Australian Taxation Office in order to meet and maintain any taxation requirements, the Australian Taxation Office must be notified in writing of any alterations to this constitution.

Winding up

126. Winding up

- 126.1 If upon the winding up or dissolution of the Company any property remains, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the members of the Company but must be given or transferred to some other institution or institutions determined by the members of the Company at or before the time of dissolution which has similar objects to the Company and which is approved by the Commissioner of Taxation for the purposes of any Commonwealth Taxation Act.

126.2 If the members do not make the necessary determination under rule 126.1, the Company may apply to the Supreme Court to determine the institution or institutions.