

**HOLLINGWORTH & SPENCER**

LAWYERS



(Attachment One)

## **CONSTITUTION**

(Working Party Report 1<sup>st</sup> August 2008 at Sydney Meeting)

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Australian Register of Counsellors and  
Psychotherapists Pty Ltd  
ACN 110 047 197

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A Company Limited by Shares

## CONSTITUTION

### OF

## Australian Register of Counsellors and Psychotherapists Pty Ltd ACN 110 047 197

### 1 INTERPRETATION

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#### 1.1 In these Rules:

<b>Term</b>	<b>Definition</b>
<b>ACA</b>	means Australian Counselling Association
<b>the ACA Register</b>	shall mean the register of Counsellors who have been admitted to Professional Membership by the Australian Counselling Association or its successors;
<b>Affiliate</b>	means a person registered on part C of the National Register;
<b>AGM</b>	means the annual general meeting of the Company;
<b>Alternate Director</b>	means any person who for the time being holds office as an alternate Director appointed in accordance with these Rules;
<b>the Act</b>	shall mean the Corporations Act 2001 in force from time to time and any reference to a section of the Act or a section of the Law shall mean a reference to the Corporations Act 2001 and the particular section of the Corporations Act 2001;
<b>the ARCAP Register</b>	shall mean the register of Counsellors and Psychotherapists who have been admitted to registration in a Division of the National Register in accord with Rule 9 of this Constitution.
<b>Board</b>	means the board of Directors of the Company;
<b>Board Executive</b>	means the Presidents and CEO's of ACA and PACFA from time to time and changes to the relevant representatives on the Board Executive shall be immediately implemented on written notice from the relevant association of the appointment of a new officer to that role and that person having tendered their consent to appointment as a director of the Company;
<b>By-laws</b>	means regulations made by the Board for the administration and management of the Company's affairs;
<b>CEO</b>	means Chief Executive Officer (however designated and whether or not a director of the Company) to perform the executive duties of the Company;
<b>Code of Ethics</b>	means the code of ethics of the Company as may be adopted by the Board from time to time and to which the Company may require applicants to become Registrants to agree as a condition of registration;



<b>Term</b>	<b>Definition</b>
<b>Code of Conduct</b>	means the code of conduct of the Company as may be adopted by the Board from time to time and to which the Company may require applicants to become Registrants to agree as a condition of registration ;
<b>the Company</b>	shall mean the above named Company;
<b>Constitution</b>	means the constitution of the Company;
<b>Corporations Act</b>	means the Corporations Act 2001 as amended from time to time, together with any applicable subordinate legislation. Any reference to the Corporations Act shall include any modification or substitution of it;
<b>Directors and Board</b>	shall mean all or any number of the Directors for the time being of the Company acting in accordance of these Rules. In the event that the Company has only a sole Director, the word's Directors shall mean Director;
<b>Dividend</b>	shall mean any dividend arising from the division of the profits of the Company and shall include "bonus";
<b>Division</b>	means one of Part A, Part B, Part C, Part D of the National Register and the plural shall include one or more Division as the context requires;
<b>Effective Date</b>	means the date on which the previous constitution of the Company is repealed and this Constitution is approved by special resolution of the shareholders of the Company as the new constitution of the Company.
<b>General Meeting</b>	means an Annual General Meeting or Special General Meeting of the Board members nominated by ACA and PACFA.
<b>Indemnify</b>	means in <b>Rule 81</b> of the Constitution, the same meaning as in <b>Section 199A of the Corporations Act</b> .
<b>Initial Shareholder</b>	means each of the organisations referred to in Rule 6.3
<b>In Writing and Written</b>	shall include printing and lithography and other modes of reproducing or representing words in a visible form and shall include electronic means provided the same can be recorded in a permanent form.
<b>the Law</b>	shall mean the <b>Corporations Law</b> and any statutory modification amendment or re-enactment thereof from time to time in force together with any constitutional provision, treaty, decree, statute, act, code, regulation, rule, order, ordinance, proclamation, subordinate legislation, bylaw, judgement, rule or common law or equity, rule, ruling or guideline made by a competent authority exercising jurisdiction in the relevant matter or any government body.
<b>Large Proprietary Company</b>	has the meaning set out in <b>Section 45A(3) of the Corporations Act</b> .
<b>Local Time</b>	means the day and time at the Registered Office.
<b>Member Association</b>	(MA) means any organization representing Counsellors and/or Psychotherapists accepted as a full member of PACFA and/or accepted as a Member Association of ACA; or ACA as the case may



<b>Term</b>	<b>Definition</b>
	be.
<b>Members</b>	means in the case of there being a single Shareholder, that Shareholder, and in the case of there being 2 or more Shareholder, those Shareholder.
<b>The National Register</b>	shall mean the register of Counsellors and/or Psychotherapists that have been admitted to registration of a Division of The National Register in accord with <b>Rule 9</b> of this Constitution.
<b>Office or Registered Office</b>	shall mean the registered office for the time being of the Company.
<b>Paid</b>	shall mean paid or credited as paid.
<b>the PACFA Register</b>	shall mean the register of Psychotherapists and/or Counsellors admitted to the Clinical Register of the Psychotherapists and Counsellors Federation of Australia or its successors.
<b>PACFA</b>	means the Psychotherapy and Counselling Federation of Australia
<b>Person</b>	means a natural person.
<b>The Register</b>	shall mean the register of shareholders charges and other information required by the Act;
<b>Registrant</b>	shall mean any person for the time being registered as a member of the National Register;
<b>The Registrar</b>	means a Director of the Company or such other person as is appointed by the Board to maintain the National Register , to protect the privacy of personal information records of applicants for registration in the National Register and of Registrants and to undertake such other functions in relation to the National Register as the Board may determine from time to time ;
<b>Related Body Corporate</b>	has the meaning given to it by the Corporations Act. pursuant to the Corporations Act;
<b>Resolution</b>	means <b>Declaration</b> in the event that the Company has only a sole Director;
<b>Seal</b>	means the common seal of the Company and includes any official seal of the Company;
<b>Secretary</b>	shall mean and include the Secretary and any assistant or acting Secretary and any other person for the time being appointed to perform whether alone or in addition to any other person or persons the duties of a Secretary of the Company;
<b>these Rules</b>	shall mean the Rules forming part of the Company's Constitution as originally adopted or as from time to time added to or amended.
<b>Signature</b>	shall mean the impression of a mark by hand, facsimile mechanical electronic or other means which is properly authorised by the person purported to have signed the document, and signed shall mean the result of a signature produced by any means defined above.
<b>Small Proprietary</b>	has the meaning set out in <b>Section 45A(2) of the Corporations Act.</b>



Term	Definition
<b>Company</b>	
<b>Special Resolution</b>	means a resolution carried by not less than 75% of the Members entitled to vote on the resolution in accordance with this Constitution.
<b>Statement of Accounts</b>	means accounts which give a true and fair account of: <ol style="list-style-type: none"> <li>(a) the income and expenditure of the Company during the most recently ended financial year;</li> <li>(b) the assets and liabilities of the Company at the end of the financial year;</li> <li>(c) any mortgages, charges or other securities of any description affecting any property of the Company at the end of the financial year;</li> <li>(d) in respect of each trust of which the Company was the trustee during a period in that financial year, accounts in relation to those matters in (a) to (c) inclusive in respect of each trust.</li> </ol>
<b>Subscription</b>	means the Membership application fees, payable by a person who is seeking to become a share holder in the Company on proof of eligibility for Membership.
<b>Subsidiary</b>	means any Company or corporation which for the time being is deemed to be a subsidiary of the Company in accordance with the Act.
<b>Terms of Reference</b>	means a document which provides the objectives for a committee, group or board to undertake a task or project and may include the title, membership, Convenor, budget, methodology, time and reporting requirements.
<b>Words or Expressions</b>	contained in these Rules shall be interpreted in accordance with the provisions of the Law as in force at the date of which such interpretation is required.

**1.2** The replaceable rules contained in **section 141 of the Corporations Act** shall not apply to this Company. This Constitution shall apply to the full extent applicable under the Corporations Act. In the event of a conflict between the Corporations Act and this Constitution then this Constitution shall apply except only as precluded by the Corporations Act.

**1.3** The Company is a proprietary Company and accordingly:

- (a) The right to transfer shares in the Company is restricted as hereinafter provided;
- (b) The number of Members of the Company (counting joint holders of shares as one person and not counting any person in the employment of the Company or its subsidiary or any person who, while previously in the employment of the Company or of its subsidiary was, and thereafter has continued to be, a member of the Company) shall not exceed fifty;
- (c) Any invitation to the public to subscribe for, any offer to the public to accept subscriptions for, any shares in, or debentures of, the Company is hereby prohibited and;
- (d) Any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with the Company for fixed periods or repayable at call whether bearing or not bearing interest is hereby prohibited.



- 1.4** The Corporations Act applies in relation to these Rules as if they were an instrument made under that Corporations Act as in force on the day when these Rules become binding on the Company.

## **2 OBJECTS**

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- 2.1** The Company (ARCAP) is the independent national professional self-registration body recognised by the Australian Counselling Association (ACA) and the Psychotherapy and Counselling Federation of Australia (PACFA) for Australian counsellors and psychotherapists who have confirmed in writing acceptance of the code of ethics, code of conduct and compliance procedures of the Company and generally to do all such acts, matters and things and to enter into and make such arrangements as are incidental or conducive to the main Object of the Company.
- 2.2** The main objects for which the Company is established is to maintain an independent National Register of Counsellors and Psychotherapists who hold qualifications and recognised supervised professional practice and continuing professional education that qualifies them to offer accredited psychotherapeutic and counselling service and assistance to the Australian public in order:
- (a) to protect the public, family and community interest in the provision of quality assured professional practice of Counselling and Psychotherapy services to persons seeking clinical and/ professional psychotherapeutic and counselling services;
  - (b) to enhance the public and professional recognition and identity of the professions of Counselling and Psychotherapy by undertaking listing, registration or recognition of candidates for registration or listing of all persons seeking recognition as engaged in the profession who have confirmed their compliance with the clinical and professional training and accreditation standards established by ACA and PACFA respectively.
  - (c) to promote the professions of Counselling and Psychotherapy by enhancing the public and professional recognition and identity of Clinical, Professional and Registered Counsellors and Psychotherapists who accept personal accountability for the establishment, monitoring and improvement of the ethical practice of their profession;
  - (d) to promote the registration or recognition of training and educational institutions with skill, expertise, commitment to professional and ethical standards and financial standing to train and educate candidates for the professions of Counselling and Psychotherapy;
  - (e) to co-relate and encourage the efforts of recognised professional associations of Counsellors and Psychotherapists and encourage the support and assistance in all other forms of related organizations, companies, associations, societies, institutions, agencies, statutory authorities, government departments and other authorities and individuals committed to compliance with codified practice and ethical standards for the recognised practice of these professions;
  - (f) to take steps to protect the status and title of Registered Counsellors and/or Psychotherapists as the trade marks, qualifications and intellectual property of persons approved for membership of the Divisions of the National Register by the Board Executive from time to time;
  - (g) to originate and promote improvements in the law and to support or oppose alterations therein and to effect improvements in administration and for the purposes aforesaid to petition the Crown or any legislative body or authority and to promote deputations and to take such other steps and proceedings as may be deemed expedient for the furtherance of any of the objects of the Company;



- (h) generally to do all such acts matters and things and to enter into and make such arrangements as are incidental or conducive to the attainment of the main object of the Company.

### **3 PROPRIETARY COMPANY**

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The Company is a proprietary Company and accordingly:

- 3.1** The right to transfer shares in the Company is restricted to transfers as permitted by these Rules.
- 3.2** Any invitation to the public to subscribe for and any offer to the public to accept subscriptions for any shares or debentures of the Company is prohibited.
- 3.3** Any invitation to the public to deposit money with and any offer to the public to accept deposits of money with the Company for fixed periods or payable at call whether bearing or not bearing interest is prohibited.
- 3.4** The Company must not engage in any activity that would require disclosure to investors under chapter 6D of the Act other than an offer of shares to any:
- (a) shareholder of the Company; or
  - (b) person in the employment of the Company or of any subsidiary of the Company
  - (c) 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 shareholders.
  - (d) **Rule 3.4** does not prevent:
    - (i) the payment in good faith of remuneration to any officer, employee, Shareholder Director in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
    - (ii) the payment of interest at a rate not exceeding the rate of interest For 90 day bank bills issued by the Company's bank on money borrowed from any Shareholder of the Company; or
    - (iii) the payment of reasonable and proper rent by the Company to a Shareholder for premises leased by the Shareholder to the Company; or
    - (iv) the reimbursement of approved expenses incurred by a Shareholder or Director on behalf of the Company.

### **4 REGISTER LISTING REQUIREMENTS**

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- 4.1** The Registrar may list a person accepted by the Board Executive as eligible for registration on the National Register as a Registrant in the appropriate Division of the Register.
- 4.2** The Company may in its discretion grant certain rights to use and apply the trade marks of the Company to a Registrant in respect of the Division in which they are registered subject to the payment of such licence fees as may be determined by the Board Executive from time to time. The rights granted to persons listed on the National Register may include the benefits of recognition of the use of the title and benefits as appropriate to such Registrants set out in Appendix 1.



- 4.3** The Directors may withdraw eligibility for listing on the National Register by any person who has been identified as in breach of the code of ethics or code of conduct of the Member Associations, ACA or PACFA by the Board Executive and may direct the Registrar to remove or suspend the registration of the Registrant whilst the standing of the Registrant is determined in accord with the provisions of this constitution or such procedures of the Company as may be determined by the Board Executive from time to time.
- 4.4** If the Directors shall be of the opinion that an applicant for registration on the National Register would or might in the absolute discretion of the Board prejudice the status or reputation of the Company or the integrity the National Register the Board may decline to register such person and direct the Registrar accordingly.
- 4.5** The Directors may at any time require any person whose name is entered in the National Register, to furnish them with any information supported (if the Directors so require) by a statutory declaration which they may consider necessary for the purpose of determining whether or not the person is qualified to be registered in a Division of the National Register.
- 4.6** If any requirement of **Rule 5** is not complied with the Directors may suspend eligibility to remain listed on the National Register.

## **5 CONSTITUTION**

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- 5.1** This is the Company's Constitution and describes the way in which the Company is to be internally managed.
- 5.2** Company may modify or repeal this Constitution or any provision of it by special resolution from time to time. Subject to the provisions of **Rule 17**, such modification, repeal or adoption takes effect on the date on which the resolution is passed or, if the resolution specifies a date which is later than the date on which the resolution is passed on that date.

## **6 SHAREHOLDING**

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- 6.1** The capital of the Company shall be divided into one class of shares being Ordinary Shares.
- 6.2** The Ordinary Class shares shall entitle the holder or holders of those shares to receive notice of meetings and shall confer upon any holder of those shares when present in person or by proxy or by attorney at any general meeting of the Company the right to cast one (1) vote upon a show of hands and upon a poll to cast one (1) vote for each share held.
- 6.3** The initial shareholding of the Company shall be:
- (a) Ten Ordinary shares held by ACA
  - (b) Ten Ordinary shares held by PACFA
- 6.4** Subject to this Constitution and to the Act, the Board may issue such further shares to persons following the incorporation of the Company at such price, according to such terms and conditions and to such persons as it sees fit.
- 16.5 In the event of an equality of votes on a decision, the determination will be in the negative.**



## **7 POWERS OF THE BOARD**

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- 7.1** Subject to the Act and to any provision of this Constitution, the business of the Company is to be under the direction of the Board.
- 7.2** The Board may exercise all of the powers of the Company except any powers that the Act or this Constitution requires the Company to exercise in general meeting.
- 7.3** The Board may delegate the approval of applications for registration to the Registrar provided that the person has established their eligibility for registration in that Division to the satisfaction of the Registrar.

## **8 CONFLICTS OF INTEREST**

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- 8.1** Subject to compliance with this section, a Director may, notwithstanding the Director's office as such and the fiduciary relationship thereby established:
- (a) Hold any other office or place of profit (except that of auditor of the Company) in the Company or in any body corporate in which the Company is a shareholder or otherwise interested;
  - (b) Enter into a contract or arrangement with the Company as vendor, purchaser, underwriter or otherwise and may participate in any association, institution, fund, trust, scheme or convenience for past or present employees or Directors of the Company;
  - (c) Retain for the Director's own benefit, any profit arising from such other office or place of profit, or from any such contract or arrangement and any remuneration, pension, allowance, commission or other benefit received in relation to those matters or institution, fund, trust, scheme or convenience;
  - (d) Vote in respect of any contract or arrangement or proposed contract or arrangement or any other matter in which the Director has, directly or indirectly, an interest;
  - (e) Sign or countersign a contract or other document to which the seal is affixed and in which the Director has, whether directly or indirectly, an interest; and
  - (f) Be counted in the number present for a quorum, notwithstanding the Director's interest in any matters arising in the meeting.
- 8.2** A Director who is in any way, directly or indirectly, interested in a contract or arrangement or proposed contract or arrangement with the Company or who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Director's duties or interests as Director, shall declare the nature of the interest or the nature, character and extent of the conflict (as the case may be) in accordance with section 191 of the Corporations Law.



## **9 ELIGIBILITY FOR DIVISIONAL LEVELS OF THE NATIONAL REGISTER**

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**9.1** There shall be four (4) Divisions of the National Register to which a person may, at the discretion of the Board Executive be granted registration to the National Register that certifies their ARCAP registration status and reputation of the professional practice at that Divisional level, namely:

- (a) Division A – PACFA Division:
  - (i) ARCAP Counsellor (PACFA); or
  - (ii) ARCAP Psychotherapist (PACFA);
  - (iii) Counsellor (Provisional listing) (PACFA);
  - (iv) Psychotherapist (Provisional listing) (PACFA);
  - (v) National Mental Health Practitioner (PACFA).
  
- (b) Division B – ACA Division:
  - (i) ARCAP Counsellor (ACA);
  - (ii) ARCAP Psychotherapist (ACA);
  - (iii) Counsellor (Provisional listing) (ACA);
  - (iv) Psychotherapist (Provisional listing) (ACA);
  - (v) National Mental Health Practitioner (ACA).
  
- (c) Division C – Affiliate Division:
  - (i) Counselling Supervisor (ARCAP);
  - (ii) Trainee Counsellor;
  - (iii) International Counsellor.
  
- (d) Division D – Training Division:
  - (i) Corporate Member (ARCAP);
  - (ii) Registered Training Organisation.

**9.2** Eligibility for registration of Registrants shall be determined on the basis of eligibility to meet the requirements for listing on the Register so as to meet the Private Health Insurance (Accreditation) Rules 2008 and that the ARCAP shall ensure that Registration in a Division of the Register will meet the provisions of those Rules. (See Appendix One).



## **10 THE ESTABLISHMENT OF STANDARDS**

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- 10.1** Pursuant to **Rules 2 and 4** of this Constitution, the initial standards for eligibility for inclusion in a Division of the National Register will be determined in accord with the provisions of Appendix 1.
- 10.2** The Board is entitled to take such advice as it sees fit in respect of the establishment of codes of ethics, codes of conduct and complaints procedures for Registrants, including persons who are not eligible for membership of a professional membership association that meets the requirements of Sections 10 of the Exposure Draft on Private Health Insurance 2008.
- 10.3** The standards of eligibility for inclusion on the National Register shall initially be confirmed for a period of five (5) years by the Board with provision for extension for a further five years following receipt of advice from the Members of the Company on any preferred and desired improvements or required modifications, to establish continuity of the National Register and alignment with national registration provisions for allied health professions. Any such variation shall be made after consultation with and reflective of the then current standards observed by ACA and PACFA.
- 10.4** The Board Executive and Officers of the Company shall be responsible for consultation and representation of the Register Divisions conduct such negotiations in relation to the classification of Registrants in Part A or Part B of the National Register with Government and Private agencies to confirm that the standards required of Registrants meet any required standards of qualifications, training, codes of ethics and conduct, continuing education and national representation as set by any legislated requirements of the Federal, State and Territory Governments. The Board Executive and Officers of the Company shall undertake to establish that the initial standards for eligibility of Registrants to be included in Parts A and B of the Register meet the professional title, rebates, and legislated requirements of Federal, State and Territory Governments.
- 10.5** The Board Executive and Officers of the Company shall undertake to establish that the Initial Standards for eligibility of Registrants to be included under Section 9.1(a)(i), 9.1(a)(ii), 9.1(a)(v) and Section 9.1(b)(i), 9.1(b)(ii), 9.1(b)(v) to meet the requirements of Federal, State and Territory Governments and ensure that only persons qualified for such Registration shall be publicly registered and confirmed as qualified clinical and professional counsellors and/or psychotherapists entitled to use the ARCAP trademarks and designations.

## **11 FORFEITURE OF REGISTRATION**

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- 11.1** If any Registrant fails to maintain their standing in the Division in which they are registered or are found to be in breach of the code of ethics or code of conduct, the Board must refer the allegation to the Member Association of which the Registrant is a member for determination as a delegate of the Company. If a Member Association makes a determination, it must inform the Board Executive within sixty days and upon receipt or, in the event that no determination is received within sixty days, the Board Executive must send notice to the Registrant of the Board's intention to consider that person's removal from the National Register.
- 11.2** The notice shall name a further day which shall be a least fourteen days after the date upon which the notice is given and a place or places at which the Board Executive will review the status of the Registrant as a Registrant and any recommendations of the Member Association's compliance committees and determine whether there is a case for the Registrant to answer.
- 11.3** The Registrant has a right of appeal against the decision under 11.1 or a recommendation of a Member Association to the Board Executive under 11.2. The Board Executive may hear and



determine any appeal as a hearing ab initio according to such procedures as it may determine from time to time and The Board shall then form a view as to the Registrant in question and may resolve to remove the Registrant from registration in any Division to which the Registrant is registered on the National Register. Such resolution shall be by unanimous vote of the Board.

- 11.4** The Company must give written notice of any variation or cancellation under this section to the remaining Registrants of the affected class or classes within seven days after the variation or cancellation is made by a unanimous vote of the Board.
- 11.5** The Company reserves the right to refuse registration and to demand the forfeiture of registration in the event of notification of a decision of a properly constituted ethics or standards review body indicating that the Registrant no longer qualifies for listing on the National Register.

## **12 REGISTERED OFFICE**

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- 12.1** The registered office of the Company will be situated at any place in Australia as the directors may from time to time determine.
- 12.2** It is not necessary that the Company keep its registered office open to the public.
- 12.3** It is not necessary that the Company display the words "Registered Office" outside its registered office, but the Company must display its name prominently, either outside or inside, at every place at which the Company carries on business and that is open to the public.

## **13 EFFECT OF CONSTITUTION**

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**13.1** This Constitution has effect as a contract:

- (a) between the Company and each member; and
- (b) between the Company and each director and Company secretary; and
- (c) between a member and each other member;

under which each person agrees to observe and perform the terms of the Constitution so far as they apply to that person

**13.2** Unless a member of the Company agrees in writing to be bound, they are not bound by a modification of the Constitution made after the date on which they become a member so far as the said modification:

- (a) requires the member to take up additional shares; or
- (b) increases the member's liability to contribute to the share capital of, or otherwise pay money to, the Company; or
- (c) imposes or increases restrictions on the right to transfer the shares already held by the member.



## 14 LEGAL CAPACITY

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- 14.1** The Company has the legal capacity of an individual and without limiting the generality of the foregoing, has power both within and outside the jurisdiction of incorporation to:
- (a) Issue and cancel shares in the Company, whether fully or partially paid;
  - (b) Buy-back shares in the Company to the extent permitted by the Corporations Act;
  - (c) Issue debentures of the Company;
  - (d) Grant options over unissued shares;
  - (e) Subject to Rule 15, distribute any of the property of the Company among the Members, in kind or otherwise;
  - (f) Give security by charging uncalled capital;
  - (g) Undertake borrowings of any type;
  - (h) Carry on business of any nature;
  - (i) Undertake investments of any nature;
  - (j) Act as a Trustee or a Trust or Trusts;
  - (k) Grant a floating charge over the property of the Company;
  - (l) Procure the Company to be registered or recognised as a body corporate in any other place outside the jurisdiction of incorporation; and
  - (m) Do any other act that it is authorised to do by any law (including the law of a foreign country).

And this Constitution, subject to any amendment, does not restrict or prohibit the Company's exercise of any of its powers **and** if this Constitution is amended as to set out the Company's objects then any act of the Company is not invalid merely because it is contrary to or beyond any objects so adopted.

## 15 SHARE CAPITAL AND CLASSES OF SHARES

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- 15.1** The capital of the Company is One Hundred Million Dollars (\$100,000,000.00) divided into One Hundred Million (100,000,000) ordinary shares of One Dollar (\$1.00) each and notwithstanding the Replaceable Rules in Section 141 of the Corporations Act the Company in General Meeting may on the recommendation of the Directors declare dividends from time to time
- 15.2** A Member, being the holder or holders of any issued Ordinary shares shall have the following entitlements:



- (a) to receive notice of meetings and shall confer upon any holder thereof, when present in person or by proxy or by attorney at any General Meeting of the Company the right to cast one (1) vote upon a show of hands and upon a poll to cast one (1) vote for each share held;
- (b) the right to participate in the dividends (if any) declared on that class of share;
- (c) in a winding up of the Company to repayment of capital paid upon such share and the right to participate in the division of any surplus assets or profits of the Company.

**15.3** Variation of Share Capital may take place on the following terms:

- (a) If at any time the issued share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of the holders of three-quarters of the issued shares of that class, or with the sanction of a special resolution passed at a special meeting of the holders of the shares of the class.
- (b) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

**15.4** Brokerage or commission payments may be made on the following terms:

- (a) The Company may exercise the power to make payments by way of brokerage or commission conferred by the Corporations Act in the manner provided by the Corporations Act.
- (b) Payments by way of brokerage or commission may be satisfied by the payment of cash, by the allotment of fully or paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

## **16** ISSUE OF SHARES

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**16.1** Without prejudice to any special rights previously conferred on the holders of any existing shares or class of shares but subject to the Corporations Act, shares in the Company may be issued by the Directors and any such share may be issued with such preferred, deferred or other special rights or such restrictions, whether with regard to dividend, voting, return of capital or otherwise, as the Directors, subject to any resolution, determine.

**16.2** Subject to the Corporations Act, the Company may issue preference shares, which are, or at the option of the Company to be redeemed and such power may be exercised by the Directors.

## **17** VARIATION OF RIGHTS

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**17.1** If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may whether or not the Company is being wound up be varied with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class.



- 17.2** The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall, unless otherwise expressly provided by the terms of issue of the shares of that class, be deemed to be varied by the creation or issue of further shares ranking equally with the first-mentioned shares.

## **18 MEETING OF CLASSES OF SHAREHOLDERS**

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- 18.1** The provisions of these Rules relating to general meetings apply so far as they are capable mutatis mutandis to every such separate meeting of the member(s) of a class of shares except that:
- (a) where there is more than one member of a class, a quorum is constituted by two persons, each being a member or a proxy or representative of a member, who between them hold or represent one-third of the issued shares of the class; or
  - (b) where there is one member of a class, a quorum is constituted by that member or a proxy or representative of that member; and
  - (c) any holder of shares of the class, present in person or by proxy or by representative, may demand a poll.

## **19 COMMISSION**

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- 19.1** The Company may exercise the power to make payments by way of brokerage or commission conferred by the Corporations Act in the manner provided by the Corporations Act.
- 19.2** Payments by way of brokerage or commission may be satisfied by the payment of cash by the allotment of fully or partly paid shares or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

## **20 EQUITABLE & OTHER INTERESTS IN SHARES**

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- 20.1** Except as required by Corporations Act, the Company shall not recognise a person holding a share upon any trust.
- 20.2** The Company is not bound by or compelled in any way to recognise (whether or not it has notice of the interest or rights concerned) any equitable, contingent, future or partial interest in any share or unit of a share or (except as otherwise provided by these Rules or by the Corporations Act) any other right in respect of a share except an absolute right of ownership in the registered holder.

## **21 SHARE CERTIFICATES**

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- 21.1** A person whose name is entered as a member in the register of members may receive a certificate in respect of the share if the directors of the Company approve the issuing of that certificate. In respect of a share or shares held jointly by several persons, the Company is not bound to issue more than one certificate.
- 21.2** Delivery of a certificate for a share to one of several joint holders is sufficient delivery to all such holders.



## **22 LIEN**

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- 22.1** The Company has a first and paramount lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share.
- 22.2** The Company has a first and paramount lien on all shares (other than fully paid shares) registered in the name of a sole holder for all money presently payable by him or his estate to the Company.
- 22.3** The Directors may at any time exempt a share wholly or in part from the provisions of this rule.
- 22.4** The Company's lien (if any) on a share extends to all dividends payable in respect of the share.

## **23 CALLS ON SHARES**

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- 23.1** The Directors may make calls upon the members in respect of any money unpaid on the shares of the members (whether on account of the nominal value of the shares or by way or premium) and not by the terms of issue of those shares made payable at fixed times, except that no call shall exceed one-quarter of the sum of nominal values of the shares or be payable earlier than one month from the date fixed for the payment of the last preceding call.
- 23.2** Each member shall, upon receiving at least 14 days notice specifying the time or times and place of payment, pay to the Company at the time or times and place so specified the amount called on his shares.
- 23.3** The Directors may revoke or postpone a call.
- 23.4** The Directors may, on the issue of shares, differentiate between the holders as to the amount of calls to be paid and the times of payment.

## **24 TIMING OF CALL**

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- 24.1** A call shall be deemed to have been made at the time when the resolution of the Directors authorising the call was passed and may be required to be paid by instalments

## **25 CALLS ON JOINT HOLDERS**

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

## **26 UNPAID CALLS**

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- 26.1** 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 shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding 8% per annum as the Directors determine but the Directors may waive payment of that interest wholly or in part.

## **27 CHARGES ON UNPAID CALLS**

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- 27.1** Any sum that, by the terms of issue of a share, becomes payable on allotment or at a fixed date, whether on account of the nominal value of the share or by way of premium, shall for the



purposes of these regulations be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of these regulations 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.

## **28 PREPAYMENT OF CALLS**

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- 28.1** The Directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- 28.2** The Directors may authorise payment by the Company of interest upon the whole or part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the Directors and the member paying the sum.
- 28.3** For the purposes of **Rule 28.2**, the prescribed rate of interest is:
- (a) If the Company has, by resolution, fixed a rate-the rate so fixed; and
  - (b) In any other case - 8% per annum.

## **29 FORFEITURE OF SHARES**

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- 29.1** If a member failed to pay a call or instalment or a call on the day appointed for payment of the call or instalment, the Directors may, at any time thereafter during such time as any part of the call or instalment remains unpaid, serve a notice on him requiring payment of so much of the call or instalment as is unpaid, together with any interest that has accrued.
- 29.2** The notice shall 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 shall 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.
- 29.3** If the requirements of a notice served under this rule are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.
- 29.4** Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- 29.5** A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the Directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the Directors think fit.
- 29.6** A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the Company all money that, at the date of forfeiture, was payable by him to the Company in respect of the shares (including interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the Directors think fit to enforce payment of the interest), but his liability ceases if and when the Company receives payment in full of all the money (including interest) so payable in respect of the shares.
- 29.7** A statement in writing declaring that the person making the statement is a Director or a secretary of the Company, and that a share in the Company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.



### **30 SALE OF FORFEITED SHARES**

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- 30.1** The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- 30.2** Upon the execution of the transfer, the transferee shall be registered as the holder of the share and is to be bound to see to the application of any money paid as consideration.
- 30.3** 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.
- 30.4** The provisions of these regulations as to forfeiture apply in the case of non-payment of any sum that, by the terms of issue of a share, become payable at a fixed time, whether on account of the nominal value of the share or by way of premium, as if that sum had been payable by virtue of a call duly made and notified.

### **31 TRANSFER OF SHARES**

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- 31.1** Subject to these regulations, a member may transfer all or any of his shares by instrument in writing in any usual or common form or in any other form that the Directors approve.
- 31.2** An Instrument of transfer referred to in **Rule 31.1** shall be executed by or on behalf of both the transferor and the transferee.
- 31.3** The sale, transfer or other disposal of any interest in any shares to any person(s) not already a member of the Company shall not be effective unless and until the person(s) acquiring the interest in the said shares enters into an agreement by which he, she or they agree to be bound by the terms of this Constitution as if the person(s) were an original party to the Constitution.
- 31.4** A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.
- 31.5** The instrument of transfer must be left for registration at the registered office of the Company, together with such fee (if any) not exceeding \$20.00 as the Directors require, accompanied by the certificate of the shares to which it relates and such other information as the Directors properly require to show the right of the transferor to make the transfer, and thereupon the Company shall, subject to the powers vested in the Directors by these regulations, register the transferee as a shareholder.
- 31.6** The Directors may decline to register a transfer of shares, not being fully paid shares, to a person of whom they do not approve and may also decline to register any transfer of shares on which the Company has a lien.
- 31.7** The registration of transfers may be suspended at such times and for such periods as the Directors from time to time determine not exceeding in the whole 30 days in any year.

### **32 FINANCIAL ASSISTANCE**

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- 32.1** The Company may financially assist a person to acquire shares in the Company or a holding Company of the Company only if:
- (a) giving the assistance does not materially prejudice:



- (i) the interests of the Company or its members; or
- (ii) the Company's ability to pay its creditors; or
- (b) the assistance is approved by the members under **Rule 32.4**; or
- (c) the assistance is exempted under **Section 260B of the Corporations Act**.

**32.2** Without limiting **Rule 32.1**, financial assistance may:

- (a) be given before or after the acquisition of shares; and
- (b) take the form of paying a dividend.

**32.3** **Rule 32.1** extends to the acquisition of shares by:

- (a) issue; or
- (b) transfer; or
- (c) any other means.

**32.4** Member approval for financial assistance by the Company must be given by:

- (a) a special resolution passed at a general meeting of the Company, with no votes being cast in favour of the resolution by the person acquiring the shares or by their associates; or
- (b) a resolution agreed to, at a general meeting, by all ordinary members.

**32.5** If the Company calls a meeting for the purpose of **Rule 32.4** it must include with the notice of the meeting a statement setting out all the information known to the Company that is material to the decision on how to vote on the resolution. However, the Company does not have to disclose information if it would be unreasonable to require the Company to do so because the Company had previously disclosed the information to its members.

**32.6** Before the notice of meeting for the purpose of **Rule 32.4** is sent to members of the Company, the Company must lodge with the Australian Securities and Investments Commission a copy of:

- (a) the notice of the meeting; and
- (b) any document relating to the financial assistance that will accompany the notice of the meeting sent to the members.

**32.7** The Company must lodge with the Australian Securities and Investments Commission, at least 14 days before giving the financial assistance, a notice in the prescribed form stating that the assistance has been approved under this rule.

**32.8** A special resolution passed for the purpose of **Rule 32.4** must be lodged with the Australian Securities and Investments Commission by the Company within 14 days after it is passed.

### **33 TRANSMISSION OF SHARES ON DEATH**

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**33.1** If a member dies who does not own shares jointly, the Company will recognise only the personal



representative of the deceased member as being entitled to the deceased member's interest in the shares.

- 33.2** If the personal representative gives the directors the information they reasonably require to establish the representatives entitlement to be registered as 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 deceased member.
- 33.3** On receiving an election under **Rule 33.2(a)(i)**, the Company must register the person as the holder of the shares.
- 33.4** A transfer under **Rule 33.2(a)(ii)** is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as applies to transfers generally.
- 33.5** If a member dies who owns shares jointly, the Company will recognise only the survivor as being entitled to the deceased member's interest in the shares. The estate of the deceased member is not released from any liability in respect of the shares.

## **34 TRANSMISSION OF SHARES ON BANKRUPTCY**

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- 34.1** If a person entitled to shares because of the bankruptcy or the appointment of an administrator or receiver of a member gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
- (i) by giving a written and signed notice to the Company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the Company, transfer the shares to another person.
- 34.2** On receiving an election under **Rule 34.1(i)**, the Company must register the person as the holder of the shares.
- 34.3** A transfer under **Rule 34.1(ii)** is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- 34.4** This rule has effect subject to the Bankruptcy Act 1966.

## **35 TRANSMISSION OF SHARES ON MENTAL INCAPACITY**

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- 35.1** If a person entitled to shares because of the mental incapacity of a member gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:



- (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.

**35.2** On receiving an election under **Rule 35.1(a)(i)**, the Company must register the person as the holder of the shares.

**35.3** A transfer under **Rule 35.1(a)(ii)** is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as applies to transfers generally.

## **36 ALTERATION OF CAPITAL**

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**36.1** The Company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a meeting of its members.

**36.2** The conversion takes effect on the day after the resolution is passed or a later day specified in the resolution.

**36.3** Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

**36.4** The Company must lodge a copy of the resolution with the Australian Securities and Investments Commission within 1 month after it is passed.

## **37 REDUCTION OF SHARE CAPITAL**

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**37.1** The Company may reduce its share capital in a way that is not otherwise authorised by law if the reduction:

- (a) is fair and reasonable to the Company's members as a whole; and
- (b) does not materially prejudice the Company's ability to pay its creditors; and
- (c) approved by the members in accordance with the provisions of **Rules 37.5** and **37.6**.

**37.2** The Company may, by resolution passed at a general meeting, cancel shares that have been forfeited under the terms on which the shares are on issue. **Rule 37.1(b)** does not apply to a reduction of share capital of this kind.

**37.3** The Company may by a special resolution cancel shares that, at the date of the passing of the resolution, have not been taken up or agreed to be taken up by any person. **Rule 37.1(b)** does not apply to a reduction of share capital of this kind.

**37.4** The Company may reduce its share capital by cancelling any paid-up share capital that is lost or is not represented by available assets. This power does not apply if the Company also cancels shares.



**37.5** If the reduction in share capital is an equal reduction because:

- (a) it relates only to ordinary shares; and
- (b) it applies to each holder of ordinary shares in proportion to the number of ordinary shares they hold; and
- (c) the terms of the reduction are the same for each holder of ordinary shares, then the reduction must be approved by a resolution passed at a meeting of the Company's members.

**37.6** If the reduction in share capital is a selective reduction because it does not comply with the provisions of **Rule 37.5**, then the reduction must be approved by either:

- (a) a special resolution passed at a meeting of the Company' members, with no votes being cast in favour of the resolution by any person who is to receive consideration as part of the reduction or whose liability to pay amounts unpaid on shares is to be reduced, or by their associates; or
- (b) a resolution agreed to, at a meeting of the Company's members, by all ordinary members.

**37.7** For the purpose of applying **Rule 37.5**, ignore differences in the terms of the reduction that are:

- (a) attributable to the fact that shares have different accrued dividend entitlements; or
- (b) attributable to the fact that shares have different amounts unpaid on them; or
- (c) introduced solely to ensure that each member is left with a whole number of shares.

## **38 SHARE BUY-BACKS**

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**38.1** The Company may buy back its own shares if:

- (a) the buy-back does not materially prejudice the Company's ability to pay its creditors; and
- (b) the Company follows the procedures laid down in **Chapter 2J, Division 2** of the Corporations Act.

## **39 PRE-EMPTION**

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**39.1** Before issuing shares of a particular class, the directors of the Company must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each member must be in proportion to the number of shares of that class that they already hold.

**39.2** To make the offer, the directors must give the members a statement setting out the terms of the offer, including:

- (a) the number of shares offered; and
- (b) the period for which the offer will remain open.

**39.3** The directors may issue any shares not taken up under the offer under **Rule 39.1** as they see fit.



- 39.4** The Company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with **Rule 39.1**.
- 39.5** Subject to **Rules 37.5** and **37.6**, before a member sells, transfers, assigns, grants an option with respect to or otherwise disposes of any interest in any shares of a particular class, the following rights of pre-emption must be exhausted, that is to say:
- (a) the member who desires to sell, transfer or otherwise dispose of any interest in any shares (the "Vendor") must give notice in writing to the directors of the Company of such desire and such notice shall constitute the Company his or her agent for the sale of such shares to other members at a price to be agreed upon between the Vendor and the directors or in default of agreement to be determined by an independent person nominated by the directors; and
  - (b) upon the price for such shares being agreed upon or fixed as aforesaid, the directors of the Company must offer the shares of a particular class to the existing holders of shares of that class. As far as practicable, the number of shares offered to each member must be in proportion to the number of shares of that class that they already have; and
  - (c) to make the offer, the directors must give the members a statement setting out the terms of the offer, including:
    - (i) the number of shares offered; and
    - (ii) the period for which the offer will remain open.
  - (d) The Vendor may sell, transfer or otherwise dispose of any interest in any shares not taken up under the offer under **Rule 39.5(b)** as he or she sees fit.
- 39.6** The provisions of **Rule 39.5** do not apply to any transfer or other disposal of any interest in any share in the Company held by a member to any related body corporate of the said member, provided that the said member shall first give an understanding in a form and substance approved by the directors that the member will not dispose of any interest in the shares of the related body corporate without first complying with the provisions of **Rule 39.5** and that Rule shall apply mutatis mutandis as if the shares in the related body corporate were shares in the Company.

## **40 GENERAL MEETINGS**

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- 40.1** Any Director may whenever he thinks fit convene a general meeting on at least 21 days notice to the members. Such a meeting must be held for a proper purpose and at a reasonable time and place.
- 40.2** The Directors must call and arrange to hold a General Meeting on the request of Members with at least 5% of the votes that may be cast at the General Meeting subject to the request:
- (a) being in writing;
  - (b) stating any resolution to be proposed at the meeting;
  - (c) stating any other matter that is intended to be properly considered at that General Meeting;
  - (d) being signed by the Members making the request; and



(e) being given to the Company.

- 40.3** A notice of a general meeting shall specify the place, the day and the hour of meeting and, except as provided by **Rule 40.4**, shall state the general nature of the business to be transacted at the meeting.
- 40.4** It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the declaring of a dividend the consideration of accounts and the reports of the Directors and auditors, the election of Directors in the place of those retiring or the appointment and fixing of the remuneration of the auditors.
- 40.5** Members with more than 50% of the votes of all the Members who make a request under **Rule 40.2** may call and arrange to hold a General Meeting if the Directors do not do so within 21 days after the request is given to the Company and the General Meeting shall be held not later than 3 months after the request is given to the Company, and the Company shall pay the reasonable expenses incurred by the Members in calling and arranging to hold the General Meeting.

## **41 NOTICE OF GENERAL MEETING**

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- 41.1** A notice of a General Meeting shall specify the place, date and time of the meeting and shall state the general nature of the business to be transacted at the meeting, any resolutions to be moved at the meeting and such other statements as required by the Corporations Act.
- 41.2** A Notice of a General Meeting shall be in writing and shall be given individually to each Member entitled to vote at the meeting (if a share is held jointly, the notice need only be given to 1 of the Member being the Member named first in the Register of the Company), to each Director and to the Company's Auditor (if an Auditor has been appointed) and to every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting.
- 41.3** A General Meeting can be held at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 41.4** At least 21 days notice must be given of a General Meeting but the Company may call on shorter notice if all the Members entitled to vote at the meeting agree beforehand.
- 41.5** The Company may not call on shorter notice of a General Meeting if a resolution will be moved to remove an Auditor under **section 329 of the Corporations Act**.

## **42 CIRCULAR RESOLUTIONS BY MEMBERS**

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- 42.1** The Company may pass a resolution without a General Meeting being held if all 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 PROVIDED THAT if a share is held jointly then each of the joint Members must sign.
- 42.2** Several copies of the document referred to in **Rule 42.1**, may be used for signing by the Members if the wording of the resolution and statement is identical in effect in each copy.
- 42.3** If the Company has only 1 Member then the Member may pass a resolution by recording it and signing the record.
- 42.4** Passage of a resolution under this **Rule** shall be recorded in the Company's minute books.



#### **43 MEMBERS' RIGHT TO PUT RESOLUTIONS AT MEETINGS**

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- 43.1** Members with at least 5% of the votes that may be cast on a resolution may give the Company notice of a resolution that they propose to move at a general meeting.
- 43.2** The notice must:
- (a) be in writing; and
  - (b) set out the wording of the proposed resolution; and
  - (c) be signed by the members proposing to move the resolution.
- 43.3** Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
- 43.4** The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.

#### **44 QUORUM FOR GENERAL MEETING**

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- 44.1** No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- 44.2** For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a body corporate that is a member, shall be deemed to be a member.
- 44.3** If a quorum is not present within half an hour from the time appointed for the meeting:
- (a) where the meeting was convened upon the requisition of members-the meeting shall be dissolved; or
  - (b) in any other case:
    - (i) The meeting stands adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by the Directors, to the same day in the next week at the same time and place; and
    - (ii) If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting two (2) members constitutes a quorum.

#### **45 CHAIRING OF GENERAL MEETING**

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- 45.1** If the Directors have elected one of their number as chairman of their meetings, he shall preside as chairman at every general meeting.
- 45.2** Where a general meeting is held and:
- (a) a chairman has not been elected as provided by Sub-rule (1); or
  - (b) the chairman is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act; the members present shall elect one of their number to be



chairman of the meeting.

## **46 ADJOURNMENT OF GENERAL MEETING**

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- 46.1** The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 46.2** When a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- 46.3** Except as provided by **Rule 46.2**, it is not necessary to give notice of an adjournment or of the business to be transacted at any adjourned meeting.

## **47 VOTING AT GENERAL MEETINGS**

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- 47.1** At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (a) by the chairman;
  - (b) by at least 3 members present in person or by proxy;
  - (c) by a member or member present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
  - (d) by a member or members holding shares in the Company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.
- 47.2** Unless a poll is so demanded, 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 without proof of the number or proportion of the votes recorded in favour or against the resolution.
- 47.3** The demand for a poll may be withdrawn.

## **48 POLLS AT GENERAL MEETINGS**

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- 48.1** If a poll is duly demanded, it shall be taken in such manner and (subject to **Rule 48.2**) either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- 48.2** A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.
- 48.3** In the case of an equality of votes, whether on a show of hands or on a poll the chairman of the meeting at which the show of hands takes place or at which the poll is demanded, in addition to his deliberative vote (if any), has a casting vote.



## **49 RULES RELATING TO CASTING OF VOTES AT GENERAL MEETINGS**

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**49.1** Subject to any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of members or classes of members each member entitled to vote may vote in person or by proxy or attorney; and
- (b) on a show of hands every person present who is a member or a representative of a member has one vote, and a poll every person present in person or by proxy or attorney has one vote for each share he holds.

**49.2** In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy or by attorney, shall be accepted to the exclusion of the votes of the other joint holders, and for this purpose, seniority shall be determined by the order in which the names stand in the register of members.

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

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

**49.5** An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.

**49.6** Any such objection shall be referred to the chairman of the meeting, whose decision is final.

**49.7** A vote not disallowed pursuant to such an objection is valid for all purposes.

## **50 APPOINTMENT OF PROXY**

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**50.1** An instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a body corporate, either under seal or under the hand of an officer or attorney duly authorised.

**50.2** An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.

**50.3** An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

**50.4** An instrument appointing a proxy shall be in the following form or in a form that is similar to the following form as the circumstances allow:

Australian Register of Counsellors and Psychotherapists Pty Ltd ACN 110 047 197

I/we, \_\_\_\_\_, of \_\_\_\_\_, being a member/members of the  
 above named Company, hereby appoint \_\_\_\_\_ of \_\_\_\_\_  
 or in his absence, \_\_\_\_\_ of \_\_\_\_\_ as my/our proxy to vote for  
 me/us on my/our behalf at the annual general/general meeting of the Company to be held on the  
 day of \_\_\_\_\_ 20\_\_\_\_ and at any adjournment of that meeting.



\* this form is to be used in favour/against the resolution.

Signed this            day of            20 \*to be inserted if desired.

## **51 APPOINTMENT OF BODY CORPORATE REPRESENTATIVE**

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- 51.1** A body corporate may appoint an individual as a representative to exercise all of any of the powers the body corporate may exercise:
- (a) at meetings of the Company's members; or
  - (b) at meetings of creditors or debenture holder; or
  - (c) relating to resolutions to be passed without meetings. The appointment may be a standing one.
- 51.2** The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 51.3** A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- 51.4** Unless other wise specified in the appointment, the representative may exercise, on behalf of the body corporate, all of the powers that the body could exercise at a meeting and in voting on a resolution.

## **52 COPY OF PROXY TO BE DELIVERED BEFORE MEETING**

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- 52.1** An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

## **53 VALIDITY OF PROXY VOTE**

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- 53.1** Unless the Company receives written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by a proxy will be valid if given in accordance with the terms of the instrument of proxy even if, before the proxy votes:
- (a) the appointing member dies; or
  - (b) the member is mentally incapacitated; or
  - (c) the member revokes the proxy's appointment; or
  - (d) the member revokes the authority under which the proxy was appointed by a third party; or
  - (e) the member transfers the share in respect of which the proxy was given.



## **54 OBJECTIONS TO RIGHT TO VOTE**

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**54.1** A challenge to a right to vote at a meeting of a Company's members:

- (a) may only be made at the meeting or adjourned meeting at which the vote objected to is given; and
- (b) must be determined by the chair, whose decision is final.

**54.2** A vote not disallowed pursuant to such objection is valid for all purposes.

## **55 APPOINTMENT AND NUMBER OF DIRECTORS**

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**55.1** The number of the Directors shall be between 1 and 25.

**55.2** The Company may, by resolution, increase or reduce the number of Directors, and may also determine in what rotation (if any) the increase or reduced number is to go out of office.

**55.3** The Company may appoint a person as a director by resolution passed in general meeting.

**55.4** ACA and PACFA shall be entitled to appoint an equal number of Directors and at no time will either ACA or PACFA have a greater number of nominee directors. Such nominee directors shall hold office and may be removed from office forthwith on written notice to the Company from whichever of ACA or PACFA nominated them.

**55.5** Written consent is required for each person who agrees to become a director of the Company.

**55.6** There shall be no share qualification for a director.

**55.7** The Company may from time to time increase or reduce the number of directors by resolution.

## **56 CASUAL APPOINTMENTS**

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**56.1** The Directors may at any time appoint any person 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 determined in accordance with these regulations.

**56.2** Any Director so appointed holds office only until the next following Annual General Meeting and is then eligible for re-election but shall not be taken into account in determining the Directors who are to retire by rotation at that meeting.

## **57 REMOVAL OR RESIGNATION OF DIRECTORS**

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**57.1** A director shall hold office until he or she is removed by resolution of the Company or until his or her office shall become vacant pursuant to this Constitution or pursuant to the Corporations Act.

**57.2** The Company may, by resolution, remove a director from office before the expiration of his or her period of office and appoint another person as director instead.

**57.3** The office of director becomes vacant if the director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in



anyway under the law relating to mental health; or

- (b) is absent without the consent of the directors from a meeting of the directors held during a period of six months; or
- (c) without the consent of a meeting of the members of the Company, holds any other office of profit under the Company except that of managing director, principal executive officer, manager or secretary; or
- (d) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his or her interest in manner required by the Corporations Act and this Constitution.

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

## **58 PAYMENT OF DIRECTORS**

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**58.1** The Directors shall be paid such remuneration as is from time to time determined by the Company in general meeting.

**58.2** That remuneration shall be deemed to accrue from day to day.

**58.3** The Directors may also be paid all travelling and other expenses properly incurred by them:

- (a) in attending and returning from meetings of the Directors or any committee of the Directors, or
- (b) general meetings of the Company, or
- (c) otherwise in connection with the business of the Company.

**58.4** The Company must disclose the remuneration paid to each director of the Company by the Company or by an entity controlled by the Company if the Company is directed to disclose the information by members with at least 5% of the votes that may be cast at a general meeting of the Company. The Company must disclose all remuneration paid to the director, regardless of whether it is paid to the director in relation to their capacity as director or another capacity.

**58.5** The Company must comply with the direction to disclose the remuneration paid to each director as soon as practicable by:

- (a) preparing a statement of the remuneration of each director of the Company or subsidiary for the last financial year before the direction was given; and
- (b) having the statement audited; and
- (c) sending a copy of the audited statement to each person entitled to receive notice of general meetings of the Company.

## **59 POWERS AND DUTIES OF DIRECTORS**

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**59.1** Subject to the Corporations Act and to any other provision of these regulations, the business of the Company shall be managed by the Directors, who may pay all expenses incurred in



promoting and forming the Company, and may exercise all such powers of the Company as are not, by the Corporations Act or by these regulations, required to be exercised by the Company in general meeting.

- 59.2** Without limiting the generality of **Rule 59.1**, the Directors may exercise all the powers of the Company to borrow 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 or of the Company or of any other person.
- 59.3** The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- 59.4** Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in him.
- 59.5** All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director are valid and effective, notwithstanding that it is afterwards discovered that there was some defect in the appointment of the person to be a director or a member of a committee, or to act or to continue to act as a director, or that a person so appointed was disqualified.

## **60 NEGOTIABLE INSTRUMENTS**

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- 60.1** All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, where there is only one Director by that Director and in all other cases by any two Directors.
- 60.2** The Directors may determine a different procedure for executing negotiable instruments from time to time.

## **61 PROCEEDINGS OF DIRECTORS INCLUDING PROCEEDINGS OF THE BOARD EXECUTIVE**

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- 61.1** The Directors may elect a Chairman and Deputy Chairman and may determine the periods during which they are to hold office respectively.
- 61.2** The Chairman of Directors or in the Chairman's absence the Deputy Chairman, shall preside at meetings of the Directors, but if at the time of any meeting, no such Chairman or Deputy Chairman has been elected and is in office or if at any meeting, no such Chairman or Deputy Chairman is present within fifteen minutes of the time appointed for holding such meeting, the Directors present shall choose one of their number to be the Chairman of that meeting.
- 61.3** Subject to this Constitution, a resolution of Directors is passed if at least two-thirds of the total number of Directors vote in favour of the resolution, and otherwise is deemed not to have been passed. A resolution of Directors relating to the issue of further shares or variation of registration requirements and other matters relating to the National Register generally shall be passed if by unanimous vote by the Directors in favour of the resolution, and otherwise is deemed not to have been passed.
- 61.4** The Chairman of the meeting does not have a casting vote in addition to a deliberative vote.



- 61.5** All acts of the Directors of a person acting as a Director are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.
- 61.6** The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 61.7** A director at any time, and a secretary shall on the requisition of a director, convene a meeting of the Directors. Thirty (30) days notice of every Director's meeting shall be given to each director and alternate director. A proposed agenda shall be given to every Director at least 21 days prior to any meeting of the Directors. Such notice of meetings and agendas may be circulated electronically by e-mail.
- 61.8** The following paragraphs apply generally to the proceedings of Directors:
- (a) Without limiting the discretion of the Directors to regulate their meetings, the Directors may, if they think fit, confer by radio, telephone, closed circuit television or other electronic means of audio or audio-visual communications.
  - (b) Notwithstanding that the Directors are not present together in one place at the time of the conference, a resolution passed by such a conference will be deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which the conference was held.
  - (c) The provisions of the Rules relating to proceedings of Directors apply to such conferences to the extent that they are capable of applying, and with the necessary changes.
  - (d) A Director present at the commencement of the conference will be conclusively presumed to have been present and, subject to other provisions of the Rules, to have formed part of the quorum throughout the conference.
  - (e) Any minutes of a conference of the type referred to in these Rules purporting to be signed by the chairman of that conference or by the chairperson of the next succeeding meeting of Directors, will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the conference.
  - (f) When by the operation of these Rules a resolution is deemed to have been passed at a meeting of the Directors, that meeting will be deemed to have been held at such place as is determined by the chairman of the relevant conference, provided that at least one of the Directors who took part in the conference was at such place for the duration of the conference.

## **62 MATERIAL PERSONAL INTEREST IN THE AFFAIRS OF THE COMPANY**

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- 62.1** If a director of the Company has a material personal interest in a matter that relates to the affairs of the Company and:
- (a) the director discloses the nature and extent of the interest and its relation to the affairs of the Company at a meeting of the director; or
  - (b) the interest is one that does not need to be disclosed under **section 191 of the Corporations Act**; then:
  - (c) the director may vote on the matters that relate to that interest; and



- (d) any transactions that relate to the interest may proceed; and
- (e) the director may retain benefits under the transaction even though the director has the interest; and
- (f) the Company cannot avoid the transaction merely because of the existence of the interest.

### **63 DIRECTOR INTERESTED IN CONTRACT WITH THE COMPANY**

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- 63.1** If a director of the Company has an interest in a contract or a proposed contract with the Company (other than as a member) and the director discloses the nature and extent of the interest at a meeting of director:
- (a) the director may vote on whether the Company enters into the contract; and
  - (b) the contract may be entered into; and
  - (c) the director may vote on matters involving the contract; and
  - (d) if the disclosure is made before the contract is entered into:
    - (i) the director may retain benefits under the contract even though the director has an interest in the contract; and
    - (ii) the Company cannot avoid the contract merely because of the existence of the interest; and
  - (e) the director shall not be disqualified from his or her office merely because of the existence of the interest.

### **64 ALTERNATE DIRECTORS**

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- 64.1** A director may, with the approval of the other Directors, appoint a person (whether a member of the Company or not) to be an alternate director in his place during such period as he thinks fit.
- 64.2** An alternate director is entitled to notice of meetings of the Directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in his stead. If the alternate director is already a director of the Company he shall be entitled to vote on his own behalf as well as on behalf of the director appointing him, but for the purpose of determining whether a quorum is present, he shall be counted only once.
- 64.3** An alternate director may exercise any powers that the appointor may exercise and the exercise of any such power by the alternate director shall be deemed to be the exercise of the power by the appointor.
- 64.4** An alternate director is not required to have any share qualifications.
- 64.5** The appointment of an alternate director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the alternate director has not expired, and terminates in any event if the appointor vacates office as a director.
- 64.6** An appointment or the termination of an appointment, of an alternate director shall be effected by a notice in writing signed by the director who makes or made the appointment and served on the



Company.

## **65 QUORUM OF DIRECTORS**

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- 65.1** A quorum of the Board and the Board Executive shall comprise a minimum of 4 people and must in any event comprise an equal number of Directors nominated each by ACA and PACFA.
- 65.2** A director or alternate director interested in a contract or arrangement shall be counted in a quorum notwithstanding his interest.
- 65.3** In the event of a vacancy or vacancies in the office of a director or offices of Directors, any 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 such a quorum or of convening a general meeting of the Company.

## **66 DELEGATION TO COMMITTEES**

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- 66.1** The Directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- 66.2** A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the Directors and a power so exercised shall be deemed to have been exercised by the Directors.
- 66.3** The members of such a committee may elect one of their number as chairman of their meetings.
- 66.4** Where such a meeting 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 unwilling to act,
- the members present may elect one of their number to be chairman of the meeting.
- 66.5** A committee may meet and adjourn as it thinks proper.
- 66.6** Questions arising at a meeting of a committee shall be determined by a majority of votes, of the members present and voting.
- 66.7** In the case of an equality of votes, the chairman, in addition to his deliberative vote (if any), has a casting vote.

## **67 CIRCULAR RESOLUTIONS**

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- 67.1** If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the Directors signed the document on different days, on the day on which, and at the time at which, the document was last signed by a director.



**67.2** For the purposes of these Rules, two or more separate documents containing statements in identical terms each of which is signed by one or more Directors shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

**67.3** A reference in these Rules to all Directors does not include a reference to a director who, at a meeting of Directors, would not be entitled to vote on the resolution.

## **68 VALIDITY OF ACTIONS**

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

## **69 USE OF TECHNOLOGY**

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**69.1** The linking together of the directors by any type or kind of technology to which all the directors consent shall be deemed to constitute a meeting of the directors and all the provisions in this Constitution as to meetings of the directors shall apply to such meetings as long as the following conditions are met:

- (a) the use of the technology is consented to by all the directors and this consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting; and
- (b) all the directors for the time being entitled to receive notice of a meeting of the directors (including any alternate for any director) shall be entitled to notice of a meeting to be held by the specific technology and this notice may be given by telephone or other means of communication; and
- (c) each of the directors and the secretary taking part in the meeting by any of the abovementioned means of communication must be able to hear each of the other participants taking part at the commencement of the hearing; and
- (d) at the commencement of the meeting each director must acknowledge his or her presence for the purpose of a meeting of the directors of the Company to all the other participants taking part in the meeting.

**69.2** A director may not leave the meeting by disconnecting the technology in use for the meeting unless he or she has previously obtained the express consent of the chairman of the meeting.

**69.3** A director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting held through the use of technology unless the director has previously obtained the express consent of the chairman of the meeting to leave the meeting as aforesaid.

## **70 SECRETARY**

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**70.1** A secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.



- 70.2** A director may be appointed as secretary of the Company.
- 70.3** An act done by the secretary is effective even if their appointment, or the continuance of their appointment, is invalid because the Company or secretary did not comply with this Constitution or any provision of the Corporations Act.
- 70.4** **Rule 70.3** does not deal with the question whether an effective act by a secretary:
- (a) binds the Company in its dealings with other people; or
  - (b) makes the Company liable to another person.

## **71 SEAL**

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- 71.1** The Company may have a seal and the Directors shall provide for the safe custody of the seal.
- 71.2** The seal shall be used only by the authority of the Directors, or of a committee of the directors authorised by the Directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed in accordance with these Rules.
- 71.3** If the Company has a sole director who is also the sole secretary, every document to which the seal is affixed shall be signed by that director, and next to his or her signature it shall be stated that he or she or his/her representatives witnesses the sealing in the capacity of sole director and sole secretary of the Company.
- 71.4** If the Company has 2 or more Directors, every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.
- 71.5** If the Company has a Permanent Governing Director, every document to which the seal is affixed and shall be signed by that Permanent Governing Director and next to his or her signature it shall be stated that he or she witnesses the sealing in the capacity of Permanent Governing Director.
- 71.6** The Company shall be entitled by resolution of the Board to adopt a subsidiary seal to be known as the "Certificate Seal" which shall be held in the custody of the Registrar and used by the Registrar, subject to the direction of the Board, for the purposes of issuing certificates of registration to Registrants from time to time.

## **72 MINUTES**

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- 72.1** The Company must keep minute books in which it records within 1 month:
- (a) proceedings and resolutions of meetings of the Company's members; and
  - (b) proceedings and resolutions of director's meetings (including meetings of a committee of director); and
  - (c) resolutions passed by members without a meeting; and
  - (d) resolutions passed by directors without a meeting; and



(e) if the Company has only 1 director – the making of declarations by the director.

**72.2** The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

**72.3** The Company must ensure that a director signs minutes of a resolution passed without a meeting within a reasonable time after the resolution is passed.

**72.4** If the Company has only 1 director, that director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.

**72.5** The Company must keep its minute books at:

- (a) its registered office; or
- (b) its principal place of business in Australia; or
- (c) another place approved by the Australian Securities and Investments Commission.

**72.6** A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

## **73 FINANCIAL RECORDS**

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**73.1** The Company must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited, but nothing in this rule shall require an audit to be conducted.

**73.2** The financial records may be kept in any language, but an English translation of financial records not kept in English must be made available within a reasonable time to a person who is entitled to inspect the records and who asks for the English translation.

**73.3** If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

**73.4** The Company may decide where to keep the financial records.

**73.5** If financial records about particular matters are kept outside Australia, sufficient written information about those matters must be kept in Australia to enable true and fair financial statements to be prepared. The Company must give the Australian Securities and Investments Commission written notice in prescribed form of the place where the information is kept.

## **74 INSPECTION OF RECORDS**

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- 74.1** The Company will keep such accounting and other records of the business of the Company as it is required to keep by the Corporations Act.
- 74.2** At the annual general meeting in every year the Directors will lay before the Company a profit and loss account and balance sheet for the last financial year of the Company, together with such other accounts, reports and statements as are required by the Corporations Act.
- 74.3** The Company will upon the written request of a member, or otherwise as required by the Corporations Act, cause a copy of every document which is required to be laid before each annual general meeting to be sent to the member together with the notice of the relevant meeting.
- 74.4** Every account of the Directors when audited and approved or received by a general meeting at which it is presented shall be conclusive except as regards any material error discovered in it within 3 months next after its approval or adoption. Whenever any material error is discovered within that period the account shall be forthwith corrected and then it shall be conclusive.
- 74.5** The Directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of Members other than Directors, and a member other than a director does not have the right to inspect any document of the Company except as provided by law, as provided in these Rules or as authorised by the Directors or by the Company in general meeting.
- 74.6** The Directors will cause minutes of all proceedings of general meetings and of the Directors, including committees, to be duly entered in books kept for that purpose in accordance with the Corporations Act.
- 74.7** Books containing the minutes of proceedings of general meetings will be open for inspection by any member without charge.
- 74.8** The Register of Members, the Register of Options and the Register of Debenture Holders will be open for inspection by any member without charge.
- 74.9** A director of the Company has a right of access to the financial records of the Company at all reasonable times.
- 74.10** A director of the Company may inspect the books of the Company (other than financial records) at all reasonable times for the purpose of a legal proceeding:
- (a) to which the person is a party; or
  - (b) that the person proposes in good faith to bring; or
  - (c) that the person has reason to believe will be brought against them.
- 74.11** A person who ceases to be a director of the Company may inspect the books of the Company (including its financial records) at all reasonable times for the purposes of a legal proceeding:
- (a) to which the person is a party; or
  - (b) that the person proposes in good faith to bring; or
  - (c) that the person has reason to believe will be brought against them.



- 74.12** If a person asks the Company in writing to inspect a particular book of the Company that the person has a right to inspect, the Company will make the book available within 7 days for inspection by the person at the place where it is required to be kept and at the time and under such conditions as the directors shall determine.
- 74.13** The Company must send a copy of its Constitution to a member of the Company if the member asks the Company, in writing, for the copy and pays any fee required by the Company.
- 74.14** The Company may send, as determined by the directors, either a short form annual report or a long form annual report to its members.
- 74.15** The Company must send a copy of the following documents or resolutions to a member of the Company if the member asks the Company in writing for a copy of such document or resolution:
- (a) any minutes of a meeting of the Company's members or an extract of the minutes; or
  - (b) any minutes of a resolution passed by members without a meeting; or
  - (c) a notice lodged with the Australian Securities and Investments Commission setting out the particulars of:
    - (i) a division of shares in the Company into classes if the shares were not previously so divided;
    - (ii) a conversion of shares in a class of shares in the Company into shares in another class.
- 74.16** The Company must send a copy of any of the documents or resolutions specified in this rule within 14 days after the Company receives the payment if the Company requires the member to pay for the copy, or if the Company does not require payment for the copy, the Company must send the copy within 14 days after the member asks for it in writing.
- 74.17** The amount of any payment the Company requires for a copy of any of the documents or resolutions specified in this rule must not exceed any prescribed amount as set forth in the Corporations Regulations.

## **75 DIVIDENDS AND RESERVES**

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- 75.1** The Directors (without the sanction of a general meeting), or a general meeting on the recommendation of the Directors, may declare a dividend whether interim or final to be paid to the Members out of profits or, subject to the Corporations Act, out of the share premium account or both according to the Member's rights and interests in the profits at the time of entitlement to dividend.
- 75.2** A general meeting shall not declare a larger dividend than is recommended by the Directors.
- 75.3** The Directors may in their discretion declare and pay or recommend such dividends as in their opinion the position of the Company justifies. The Directors may fix the time for payment of a dividend and if no time is so fixed the dividend shall be payable forthwith upon its declaration.
- 75.4** Where at any time there is more than one class of share on issue, then subject to the rights applicable to the shares concerned, dividends whether interim or otherwise may be declared and paid at different rates for different classes of shares and may be declared and paid on the shares of any one or more class or classes of shares to the exclusion of the shares of any other class or classes of shares. The shares of any one or more such class or classes of shares shall as



between the members of each class of shares participate equally in any such dividends declared in respect of that class.

## **76 OTHER PROVISIONS RELATING TO DIVIDENDS**

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- 76.1** The Directors may authorise the payment by the Company to the Members of such dividends whether interim or otherwise as appear to the Directors to be justified by the profits of the Company.
- 76.2** Interest is not payable by the Company in respect of any dividend.
- 76.3** The Directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Company may be properly applied.
- 76.4** Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Company or be invested in such investments as the Directors think fit.
- 76.5** The Directors may carry forward so much of the profits remaining as they consider ought not to be distributed as dividends without transferring those profits to a reserve.
- 76.6** Subject to the rights of persons (if any) entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect of which the dividend is paid.
- 76.7** All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid but, if any share is issued on terms providing that it will rank for a dividend as from a particular date, the share ranks for dividend accordingly.
- 76.8** An amount paid or credited as paid on a share in advance of a call shall not be taken for the purposes of this rule to be paid or credited as paid on the share.
- 76.9** The Directors may deduct from any dividend payable to a member all sums of money (if any) presently payable by him to the Company on account of calls or otherwise in relation to shares in the Company.
- 76.10** Any general meeting declaring a dividend may, by resolution, direct payment of the dividend wholly or partly by the distribution of specific assets, including paid up shares in, or debentures of, any other corporation, and the Directors shall give effect to such a resolution.
- 76.11** Where a difficulty arises in regard to such a distribution, the Directors may settle the matter as they consider expedient and fix the value for distribution of the specific assets or any part of those assets and may determine that cash payments will be made to any Members on the basis of the value so fixed in order to adjust the rights of all parties, and may vest any such specific assets in trustees as the Directors consider expedient.
- 76.12** Any dividend, interest or other money payable in cash in respect of shares may be paid by cheque sent through the post directed to:
- (a) 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
  - (b) to such other address as the holder or joint holders in writing directs or direct.



**76.13** Any one of 2 or more joint holders may give effectual receipts for any dividends, interest or other money payable in respect of the shares held by them as joint holders.

## **77 CAPITALISATION OF PROFITS**

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**77.1** Subject **Rule 77.2**, the Company in general meeting may resolve that it is desirable to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account or the profit and loss account or otherwise available for distribution to members, and that sum be applied, in any of the ways mentioned in **Rule 77.3**, for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend.

**77.2** The Company shall not pass a resolution as mentioned in **Rule 77.1** unless the resolution has been recommended by the Directors.

**77.3** The ways in which a sum may be applied for the benefit of members under **Rule 77.1** are:

- (a) In paying up any amounts unpaid on shares held by members;
- (b) In paying up in full unissued shares or debentures to be issued to members as fully paid; or
- (c) Partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

**77.4** The Directors shall do all things necessary to give effect to the resolution and, in particular, to the extent necessary to adjust the rights of the members among themselves, may;

- (a) Issue fractional certificates or make cash payments in cases where shares or debentures issuable in fractions;
- (b) Authorise any person to make, on behalf of all the members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any further shares or debentures or for the payment up by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised;

and any agreement made under an authority referred to in paragraph (b) is effective and binding on all members concerned.

**77.5** Where the Company has only one Director who is the sole member then a resolution as mentioned in **Rule 77** may be passed by the Director without reference to the Company in general meeting.

## **78 ACCOUNTS AND AUDITOR**

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**78.1** The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the Act.

**78.2** If the Company is a Small Proprietary Company, the Company does not have to prepare a Financial Report or a Directors' Report unless:

- (a) Members with at least 5% of the votes in the Company give the Company a direction to prepare these reports and send them to all Members; and



- (b) The direction is signed by the Members giving the direction and is made no later than 12 months after the end of the Financial Year concerned.

**78.3** The direction specified in **Rule 78.2** may specify all or any of the following:

- (a) That the Financial Report does not have to comply with some or all of the accounting standards as specified by the Corporations Act.
- (b) That a Director's Report or a part of that report need not be prepared; and
- (c) That the Financial Report is to be audited.

**78.4** If the Company is a Large Proprietary Company, the Company shall prepare a Financial Report and a Director's Report in accordance with the Corporations Act.

**78.5** If the Company is a Small Proprietary Company, the Company shall not appoint an Auditor unless required to do so by the Corporations Act or pursuant to **Rule 78.3(c)** or if it is resolved in General Meeting to appoint an Auditor.

**78.6** If the Company is a Large Proprietary Company, the Directors shall appoint an Auditor for the Company.

## **79 NOTICES**

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**79.1** A notice may be given by the Company to any member either:

- (a) by serving it on him personally;
- (b) by sending it by post to him at the address shown in the Register of Members or the address supplied by the member for the purposes of serving notices on the member; or
- (c) by sending it by facsimile transmission to a facsimile number nominated by the member for the purpose of serving notices on the member.

**79.2** Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice and to have been effected in the case of a notice of a meeting, on the day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.

**79.3** Where a notice is sent by facsimile, service of the notice shall be deemed to be served on receipt by the Company of a transmission report confirming successful transmission.

**79.4** The Company may give a notice to the joint holders of a share by giving the notice to the joint holder first named in the Register of Members in respect of the share.

**79.5** A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on him personally or by sending it to him by post addressed to him by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) within Australia supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

**79.6** Notice of every general meeting shall be given in the manner authorised by these Rules:



- (a) Every member;
- (b) Every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
- (c) The auditor for the time being of the Company.

**79.7** No other person is entitled to receive notices of general meetings.

## **80 WINDING UP**

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- 80.1** If the Company is wound up, the liquidator may, with the sanction of a special resolution, divide among the Members in kind the whole or any part of the property of the Company and may for that purpose set such value as he considers fair upon any property to be so divided and may determine how the division is to be carried out as between the Members or different classes of Members, subject to the rights of holders of shares issued with special rights on winding up of the Company.
- 80.2** The liquidator may, with the sanction of a special resolution, vest the whole or any part of any such property in trustees upon such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no member is compelled to accept any shares or other securities in respect of which there is any liability.
- 80.3** Nothing in this **Rule** prejudices the rights of the holders of shares issued on special terms and conditions.

## **81 INDEMNITY**

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- 81.1** To the extent permitted by law:
- (a) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability for costs and expenses incurred by that person in defending any Proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any Proceedings in which the court grants relief to the person under the Corporations Act; and
  - (b) the Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability incurred by the person, as an Officer of the Company or of a wholly-owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.
- 81.2** To the extent permitted by the Corporations Act 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 of a subsidiary of the Company against a liability:
- (a) incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a subsidiary of the Company or otherwise arising out of the Officer's holding such office PROVIDED THAT the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company; or



- (b) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

**81.3** The term "Proceedings" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act matter or thing in his or her capacity as such an Officer or in the course of acting in connection with the affairs of the Company or a wholly-owned subsidiary or subsidiary of the Company or otherwise arising out of the Officer's holding such office (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly-owned subsidiary or subsidiary of the Company).

**81.4** Whenever any law imposes or purports to impose any immediate, future or possible liability upon the Company to make any payments, or empowers or purports to empower any government or taxing authority or government official to require the Company to make any payment in respect of:

- (a) any shares registered in a Member's name; or
- (b) any dividends or other money due or payable or accruing due or which may become due or payable to a Member by the Company in respect of any shares registered in a Member's name or in respect of any Member and whether in consequence of:
  - (A) the death of a Member;
  - (B) the liability of a Member for, or the non-payment by a Member of, any tax duty or imposition;
  - (C) the liability for or non-payment or, any estate, probate, succession, death, stamp or other duty by the executor or administrator of a Member or by or out of the Member's estate; or
  - (D) any other act or thing.

then the Company in every such case:

- (c) must be fully indemnified by the Member or the Member's legal personal representative from all liability;
- (d) will have a charge or lien upon the shares registered in the name of the Member for all money paid by the Company pursuant to such law;
- (e) will have a charge or lien upon all dividends and other money payable in respect of the shares' registered in any of the Company's registers as held either jointly or solely by the Member for all money paid or payable by the Company pursuant to such law, together with interest at the rate of 15% per annum from the date of payment to the date of repayment;
- (f) may deduct or set off, against any dividends or other money payable, any money paid or payable by the Company under such law together with interest;
- (g) may recover as a debt due from the Member or the Member's legal personal representatives any money paid by the Company pursuant to such law together with interest at the rate and for the period set out in **Rule 81.4(e)** above in excess of any dividend or other money then due and payable by the Company to the Member and set off pursuant to **Rule 81.4(f)** above; and
- (h) may, where any money is paid or payable by the Company pursuant to such law, refuse to



register a transfer of shares by a Member or the Member's executor or administrator until the money and interest is set off or deducted as provide for in this **Rule** or in the case the money and interest exceeds the amount of any dividend or other money then due or payable by the Company to a Member, until the excess is paid to the Company;

AND nothing in this **Rule** will prejudice or affect any right or remedy which any law or this Constitution confers or purports to confer on the Company, or as between the Company and a Member or the Member's legal personal representative, any right or remedy which any law or this Constitution confers or purports to confer on the Company.



## APPENDIX 1

### THE ARCAP NATIONAL REGISTER

There shall be four Divisions of the ARCAP

**DIVISION A OF THE ARCAP NATIONAL REGISTER shall comprise the following designations:**

DIVISION A – PACFA

**A.1 ARCAP Counsellor (PACFA):**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) is a fully accredited member of a Member Association of PACFA; and
- (c) is not liable to be struck off or otherwise deprived of membership, disqualified, subject to deprivation of membership or disqualification and is not the subject of disciplinary proceedings or an undischarged order restricting his or her capacity to practise; and
- (d) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by PACFA from time to time;
- (e) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (f) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice;
- (g) has agreed to undertake as necessary such ongoing professional development as may be required from time to time by PACFA and or the Member Association to which they are a fully accredited member under its rules including professional supervision.

**A.2 ARCAP Psychotherapist (PACFA):**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) is a fully accredited member of a Member Association of PACFA; and
- (c) is not liable to be struck off or otherwise deprived of membership, disqualified, subject to deprivation of membership or disqualification and is not the subject of disciplinary proceedings or an undischarged order restricting his or her capacity to practise; and
- (d) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by PACFA from time to time;
- (e) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (f) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer



- in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice;
- (g) has agreed to undertake as necessary such ongoing professional development as may be required from time to time by PACFA and or the Member Association to which they are a fully accredited member under its rules including professional supervision.

#### **A.3 Counsellor (Provisional listing) (PACFA):**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) has completed the training pathway but has not yet completed the post-training accreditation requirements of PACFA;
- (c) is not liable to be struck off or otherwise deprived of membership, disqualified, subject to deprivation of membership or disqualification and is not the subject of disciplinary proceedings or an undischarged order (including an order to practise only under supervision); and
- (d) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by PACFA from time to time;
- (e) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (f) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice required to gain Registration under Clause A1 or A2.
- (g) has agreed to undertake as necessary such ongoing professional development as may be required from time to time by PACFA and or the Member Association to which they are a financial member under its rules including professional supervision prior to meeting the requirements for Registration under Clause A1 or A2.
- (h) has agreed in writing not to apply the designation of ARCAP Counsellor and/or ARCAP Psychotherapist in respect of their clinical or professional practice unless and until meeting all requirements for Registration under Clause A1 or A2 and gained membership eligibility status with a Member Association of PACFA.

#### **A4. Psychotherapist (Provisional listing) (PACFA):**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) has completed the training pathway but has not yet completed the post-training accreditation requirements of PACFA;
- (c) is not liable to be struck off or otherwise deprived of membership, disqualified, subject to deprivation of membership or disqualification and is not the subject of disciplinary proceedings or an undischarged order (including an order to practise only under supervision); and



- (d) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by PACFA from time to time;
- (e) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (f) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice required to gain Registration under Clause A1 or A2.
- (g) has agreed to undertake as necessary such ongoing professional development as may be required from time to time by PACFA and or the Member Association to which they are a financial member under its rules including professional supervision prior to meeting the requirements for Registration under Clause A1 or A2.
- (h) has agreed in writing not to apply the designation of ARCAP Counsellor and or ARCAP Psychotherapist in respect of their clinical or professional practice unless and until meeting all requirements for Registration under Clause A1 or A2 and gained membership eligibility status with a Member Association of PACFA.

**A5. National Mental Health Practitioner (PACFA)**

- (a) is a natural person who is Registered under Sections A1 or A2 above
- (a) is eligible for recognition as a Mental Health Practitioner under the Better Access Initiative.

**DIVISION B OF THE ARCAP NATIONAL REGISTER shall comprise the following designations:**

**DIVISION B – ACA**

**B1. ARCAP Counsellor (ACA):**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) is a fully accredited member of the Australian Counselling Association ('ACA') listed on the ACA National Public Register and listed in a subcategory, namely:
  - A. (i) Practising;
  - (ii) Qualified;
  - (iii) Professional;
- (c) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer



- in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice;
- (d) has agreed to undertake as necessary such ongoing professional development as may be specified from time to time by the ACA under its rules, including professional supervision;
  - (e) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by ACA from time to time;
  - (f) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;

**B2. ARCAP Psychotherapist (ACA)**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) is a fully accredited member of the Australian Counselling Association ('ACA') listed on the ACA National Public Register and listed in a subcategory, namely:
  - B. (i) Practising;
  - (ii) Qualified;
  - (iii) Professional;
- (c) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice;
- (d) has agreed to undertake as necessary such ongoing professional development as may be specified from time to time by the ACA under its rules, including professional supervision;
- (e) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by ACA from time to time;
- (f) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;

**B3. Counsellor (Provisional listing) (ACA)::**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) is a fully accredited member of the Australian Counselling Association ('ACA') in the category of:
  - C. (i) Non-Practising;
  - (ii) Proficient;
  - (iii) Clinical;



- and is listed in the ACA National Public Register;
- (c) is not liable to be struck off or otherwise deprived of membership, disqualified, subject to deprivation of membership or disqualification and is not the subject of disciplinary proceedings or an undischarged order restricting her or his capacity to practise.
- (d) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by ACA from time to time;
- (e) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (f) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice required to gain Registration under Clause B1 or B2.
- (g) has agreed to undertake as necessary such ongoing professional development as may be specified from time to time by the ACA under its rules, including professional supervision prior to meeting the requirements for Registration under Clause B1 or B2.
- (h) has agreed in writing not to apply the designation of ARCAP Counsellor and or ARCAP Psychotherapist in respect of their clinical or professional practice unless and until meeting all requirements for Registration under Clause B1 or B2.

**B4. Psychotherapist (Provisional listing) (ACA):**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) is a fully accredited member of the Australian Counselling Association ('ACA') in the category of:
  - D. (i) Non-Practising;
  - (ii) Proficient;
  - (iii) Clinical;
- and is listed in the ACA National Public Register;
- (c) is not liable to be struck off or otherwise deprived of membership, disqualified, subject to deprivation of membership or disqualification and is not the subject of disciplinary proceedings or an undischarged order restricting her or his capacity to practise.
- (f) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by ACA from time to time;
- (g) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (f) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer in respect of all risks to which a prudent practitioner may be liable in



- respect of clinical practice required to gain Registration under Clause B1 or B2.
- (g) has agreed to undertake as necessary such ongoing professional development as may be specified from time to time by the ACA under its rules, including professional supervision prior to meeting the requirements for Registration under Clause B1 or B2.
  - (h) has agreed in writing not to apply the designation of ARCAP Counsellor and or ARCAP Psychotherapist in respect of their clinical or professional practice unless and until meeting all requirements for Registration under Clause B1 or B2.

**B5. National Mental Health Practitioner (ACA):**

- (a) is a natural person who is Registered under Sections B1 or B2 above;
- (b) is eligible for recognition as a Mental Health Practitioner under the Better Access Initiative.

**DIVISION C OF THE ARCAP NATIONAL REGISTER shall comprise the following:**

**AFFILIATE DIVISION**

**C.1 Counselling Supervisor (ARCAP)**

- (a) May be a natural person or an incorporated body under the laws of any country;
- (b) Agrees to conform to the Code of Ethics and Code of Conduct; of the ACA and or PACFA.
- (c) Has completed an ACA or PACFA recognised course of instruction in Supervision and is accredited by either the ACA or PACFA for persons seeking listing or Registration in Division A or Division B of the National Register.
- (c) has taken out and maintains current professional indemnity insurance or is covered by approved group insurance with a solvent, reputable insurer in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice;
- (d) has agreed to undertake whenever necessary such ongoing professional development for the purposes of providing professional supervision as may be required from time to time by the ACA and or PACFA.
- (e) has agreed by virtue of membership or otherwise to adhere to the Code of Ethics published by ACA and or PACFA from time to time;
- (f) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (g) has agreed in writing not to apply the designation of ARCAP Counsellor and/or ARCAP Psychotherapist in respect of their clinical or professional practice unless and until meeting all requirements for Registration under Divisions A1 or A2 or A5 or B1 or B2 or B5 and gained membership eligibility status with ACA or a Member Association of PACFA.



## **C2. Trainee Counsellor**

- (a) is a natural person who is an Australian citizen, a permanent resident of Australia or eligible for permanent residency in Australia;
- (b) Agrees to conform to the Code of Ethics and Code of Conduct of the ACA and or PACFA.
- (c) Is a candidate for listing or Registration under Division A or Division B of the National Register enrolled in and actively involved in a course of study by a body approved in Category D of the National Register;
- (d) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (e) has agreed in writing not to apply the designation of ARCAP Counsellor and or ARCAP Psychotherapist in respect of their clinical or professional practice unless and until meeting all requirements for Registration under Divisions A or B and gained membership eligibility status with ACA or a Member Association of PACFA.

## **C3. International Counsellor**

- (a) Is a natural person under the laws of any country;
- (b) Agrees to conform to the Code of Ethics and Code of Conduct of the ACA and or PACFA.
- (c) Is a professionally qualified Counsellor and or Psychotherapist with international qualifications seeking to be accredited by either the ACA or PACFA for Registration under Division A or Division B of the National Register;
- (d) has made or has agreed to make a detailed declaration relating to their ethical conduct including details of any past complaints against them;
- (e) has agreed in writing not to apply the designation of ARCAP Counsellor and or ARCAP Psychotherapist in respect of their clinical or professional practice unless and until meeting all requirements for Registration under Divisions A or B and gained membership eligibility status with ACA or a Member Association of PACFA.

**DIVISION D OF THE ARCAP NATIONAL REGISTER shall comprise the following designations:**

### **TRAINING DIVISION**

#### **D.1 Corporate Member (ARCAP)**

- (a) Is an incorporated body incorporated in a State or Territory of Australia that is entitled to employ, assess or engage candidates actively enrolled in a course of study with a training institution recognised under section D2.
- (b) Is a service organisation providing the services of Registered



Counsellors and or Psychotherapists offering current professional indemnity insurance with a solvent, reputable insurer in respect of all risks to which a prudent practitioner may be liable in respect of clinical or professional practice;



## **D.2 Registered Training Organisation**

- (a) Is an incorporated body incorporated in a State or Territory of Australia;
- (b) Is a university or Registered Training Organisation (non-university) offering a course leading to an accredited diploma or higher award recognised by ACA and or PACFA.



## **SCHEDULE ONE- Protection of Title and Use of Trade Marks**

### PERSONS LISTED ON THE REGISTER:

(a) under Division A will be entitled to use the Trade Marks

- a. "ARCAP COUNSELLOR (PACFA)";
- b. "ARCAP PSYCHOTHERAPIST (PACFA)";
- c. "NATIONAL MENTAL HEALTH PRACTITIONER (PACFA)";

as the case may be;

(b) under Division B will be entitled to use the Trade Marks:

- a. "ARCAP COUNSELLOR (ACA)";
- b. "ARCAP PSYCHOTHERAPIST (ACA)";
- c. "NATIONAL MENTAL HEALTH PRACTITIONER (ACA)";

as the case may be;

(c) under Division C will be entitled to use the Trade Mark

- a. "COUNSELLING SUPERVISOR (ARCAP)";

(d) under Division D will be entitled to use the Trade Mark

- a. "CORPORATE MEMBER (ARCAP)";
- b. "Accredited ARCAP Training Provider."

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