

Dated

**Constitution of
The M.G. Car Club Ltd
ACN 000 560 538**

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Corporations Act 2001

Company limited by guarantee

Constitution

of

The M.G. Car Club Ltd

Introduction

1 Replaceable rules excluded

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

2 Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (3) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (4) **Company** means The M.G. Car Club Limited ACN 000 560 538;
- (5) **directors** means the directors for the time being of the Company or the directors assembled as a board;
- (6) **poll** means the casting and recording of votes by way of ballot;
- (7) **Register** means the register of members to be kept pursuant to the Act; and
- (8) **secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary.

2.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the other; and
 - (b) the singular includes the plural and the plural includes the singular.

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

3 Objects

- 3.1 The objects for which the Company is established are to promote the sport and pastime of motoring in all its forms and to further the interests of owners and drivers of MG cars and other Marques.
- 3.2 The Company must pursue charitable purposes only and must apply its income in promoting those purposes.

4 Powers

[compare section 124]

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

5 Application of income and property

[compare sections 125 and 150]

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

6 No distribution to members

[compare sections 150 and 254SA]

- 6.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Company.

7 Limited liability

- 7.1 The liability of the members is limited.

8 Guarantee

- 8.1 Every member of the Company undertakes to contribute an amount not exceeding \$1 to the property of the Company in the event of its being wound up while the member is a member or within 6 months after the member ceases to be a member, if required for payment:

- (1) of the debts and liabilities of the Company (contracted before the member ceases to be a member);
- (2) of the costs, charges and expenses of winding up; and
- (3) for the adjustment of the rights of the contributories among themselves.

Membership

9 Number of members

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

10 Membership

10.1 The members of the Company are:

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

11 Categories of membership

11.1 The categories of membership are:

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

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

12 Application for ordinary membership

12.1 Any individual who is not less than 18 years of age at the date of application may apply for ordinary membership of the Company.

13 Application for family membership

13.1 Any individual who is a nominated person of the family of a member who pays the prescribed annual subscription, may apply for family membership of the Company.

- 13.2 A family member who is not less than 18 years of age may be admitted as an ordinary member upon payment of the annual membership subscription.
- 13.3 Despite anything in this constitution to the contrary, a family member, who is not less than 18 years of age:
- (1) has the right to receive notices of and to attend and be heard at any general meeting; and
 - (2) has the right to vote at any general meeting.

14 Form of application

- 14.1 An application for membership must be in writing in a form approved by the directors and signed by the applicant.
- 14.2 An application form must be accompanied by:
- (1) an application fee, if any, determined in accordance with rule 20.1; and
 - (2) the annual subscription, determined in accordance with rule 21.

15 Admission to membership

- 15.1 The directors must consider an application for membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.
- 15.2 The directors are not obliged to give any reason for the rejection of an application.
- 15.3 If an application for membership is rejected, the application fee, if any, and the annual subscription must be refunded to the applicant.
- 15.4 If an applicant is accepted for membership:
- (1) the secretary must notify the applicant of admission in the form of a receipt for the application fee, if any, and annual subscription or in any other form the directors determine; and
 - (2) the name and details of the member must be entered in the Register.

16 Notification by members

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

17 Life membership

- 17.1 If, in the opinion of the directors, a member has made over a period of years a significant contribution to the Company, the directors may nominate the member as a life member of the Company.
- 17.2 A member nominated under rule 17.1 becomes a life member of the Company on the nomination being approved by an ordinary resolution of members at a general meeting.
- 17.3 A life member will not be required to pay any application fee or annual subscription fee.

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

18 Honorary membership

- 18.1 If, in the opinion of the directors, a person, not being a member of the Company, has demonstrated a commitment to the objectives of the Company, the directors may nominate that person as an honorary member of the Company and may be admitted as a member of the Company subject to such conditions as the directors of the Company see fit.
- 18.2 Honorary members will not be required to pay any application fee or annual subscription fee.
- 18.3 An honorary member has no rights and privileges of membership, other than the right to receive notices of and attend and be heard at any general meeting, and is otherwise subject to this constitution.

19 Register of members

[compare sections 168 and 169]

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

Application fee and annual subscription

20 Application fee

- 20.1 The application fee payable by each applicant for membership is the sum the directors determine for each category of membership.
- 20.2 No application fee is payable by any honorary member or life member.

21 Annual subscription

- 21.1 The annual subscription payable by a member of the Company is the sum the directors determine from time to time and the Company approves in general meeting.
- 21.2 All annual subscriptions are due and payable in advance on 1 July in each year.

21.3 If a person is admitted to membership of the Company during the year the directors may alter the annual subscription payable by the applicant in any manner they see fit.

21.4 No annual subscription is payable by any life member or honorary member.

22 Unpaid annual subscriptions

22.1 If:

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

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

Cessation of membership

23 Resignation

23.1 A member may resign from membership of the Company by giving written notice to the secretary.

23.2 The resignation of a member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

24 Failure to pay

24.1 If a member has not paid all arrears of annual subscriptions under rule 21:

- (1) the member remains liable for all the obligations and liabilities of membership until the expiration of 6 months after the date of notification under rule 22.1(2); and
- (2) the member ceases to be a member and member's name must be removed from the Register at the expiration of the 6 month period.

25 Cessation of membership

25.1 A member who is an individual ceases to be a member:

- (1) on the death of the member;
- (2) if the member is expelled under rule 26; or
- (3) if the member became a member under rule 11.2, at the time specified when the membership is created.

25.2 A life member or an honorary member ceases to be a member:

- (1) if the member is an individual, in accordance with rule 25.1; or

- (2) if the directors, for any reason, request in writing the resignation of the member and the member does not resign within 2 months after the request is sent.

26 Disciplining members

26.1 If any member:

- (1) wilfully refuses or neglects to comply with the provisions of this constitution; or
- (2) is guilty of any conduct which, in the opinion of the directors, is unbecoming of a member or prejudicial to the interest of the Company;

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

26.2 At least 1 week before the meeting of the directors at which a resolution of the nature referred to in rule 26.1 is passed the directors must give to the member notice of:

- (1) the meeting;
- (2) what is alleged against the member; and
- (3) the intended resolution.

26.3 At the meeting and before the passing of the resolution, the member must have an opportunity of giving orally or in writing any explanation or defence the member sees fit.

26.4 A member may, by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the directors, elect to have the question dealt with by the Company in general meeting and in that event, a general meeting of the Company must be called for that purpose.

26.5 If at the meeting a resolution to the same effect as the resolution which was to be considered by the directors is passed by a majority of 2/3 of those present and voting (and the vote must be taken by secret ballot), the member concerned must be punished in the manner resolved and in the case of a resolution for expulsion the member is expelled and the member's name must be removed from the Register.

26.6 If any member ceases to be a member under rule 26.5, the directors may reinstate the member and restore the name of that member to the Register upon and subject to any terms and conditions they see fit.

27 Effect of cessation of membership

27.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Company for any money which, at the time of the member ceasing to be a member, the member owes to the Company on any account and for any sum not exceeding \$1 for which the member is liable under rule 8 of this constitution.

Meetings of members

28 Calling of general meeting

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

- 28.1 A director or the president of the Company may call a general meeting whenever they see fit.
- 28.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year and within 5 months after the end of the Company's financial year.
- 28.3 Except as provided in the Act, no member or members may call a general meeting.

29 Amount of notice of meeting

[compare section 249H]

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

30 Persons entitled to notice of general meeting

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

- 30.1 Written notice of a meeting of the Company's members must be given individually to:
- (1) each member;
 - (2) each director; and
 - (3) the Company's auditor.
- 30.2 The Company is only required to give notice of general meetings to those persons entitled to receive notice under this constitution and the Act.

31 How notice is given

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

- 31.1 The Company may give the notice of meeting to a member:
- (1) personally;
 - (2) by sending it by post to the address for the member in the Register or the alternative address (if any) nominated by the member;
 - (3) by sending it by other electronic means (if any) nominated by the member; or
 - (4) by notifying the member in accordance with rule 31.2.
- 31.2 If the member nominates:
- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
 - (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

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

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

32 When notice is given

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

- 32.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.
- 32.2 A notice of meeting given to a member by any other means than post is taken to be given on the business day after it is sent.

33 Period of notice

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

34 Contents of notice

[compare section 249L]

- 34.1 A notice of a general meeting must:
 - (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
 - (2) state the general nature of the meeting's business;
 - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
 - (4) be worded and presented in a clear, concise and effective manner; and
 - (5) contain a statement setting out the following information:
 - (a) that the member has a right to appoint a proxy; and
 - (b) that the proxy need not be a member of the Company.

35 Notice of adjourned meeting

[replaceable rule 249M]

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

36 Accidental omission to give notice

[compare section 1322(3)]

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

37 Postponement of general meeting

- 37.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 37.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 38.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

38 Quorum

[compare replaceable rule 249T]

- 38.1 The quorum for a meeting of the Company's members is 5% members and the quorum must be present at all times during the meeting.
- 38.2 In determining whether a quorum is present, individuals attending as proxies are counted.
- 38.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.
- 38.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

39 Chair at general meetings

[compare replaceable rule 249U]

- 39.1 The president of the Company, if present, presides as chair at every general meeting.
- 39.2 Where a general meeting is held and:
- (1) there is no president of the Company; or
 - (2) the president is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the vice-president of the Company if present presides as chair of the meeting or, if the vice-president is not present or is unwilling to act, the directors present may appoint 1 of their number to be chair of the meeting.

- 39.3 The chair may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned

meeting at any time and any place. In exercising this discretion, the chair may, but need not, seek the approval of the members present. Unless required by the chair, no vote may be taken or demanded by the members present in respect of any adjournment.

- 39.4 The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.

40 Business at adjourned meetings

[replaceable rule 249W(2)]

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

Proxies

41 Who can appoint a proxy

[compare mandatory rule 249X]

- 41.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members may appoint an individual or a body corporate as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.

42 Rights of proxies

[compare section 249Y]

- 42.1 A proxy appointed to attend and vote for a member has the same rights as the member:
- (1) to speak at the meeting; and
 - (2) to vote (but only to the extent allowed by the appointment); and
 - (3) to join in a demand for a poll.
- 42.2 A proxy may be revoked at any time by notice in writing to the Company.

43 Appointing a proxy

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

- 43.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated by the member making the appointment and contains the following information:
- (1) the member's name and address;
 - (2) the Company's name;
 - (3) the proxy's name or the name of the office held by the proxy; and
 - (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

44 Form of proxy sent out by Company

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

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

45 Receipt of proxy documents

[compare section 250B]

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

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

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

45.3 The Company receives an appointment or authority:

- (1) when it is received at any of the following:
 - (a) the Company's registered office; or
 - (b) a place or electronic mail address specified for the purpose in the notice of meeting.

46 Validity of proxy vote

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

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

46.2 A proxy is not revoked by the member attending and taking part in the meeting unless the member actually votes at the meeting on a resolution for which the proxy is proposed to be used.

Voting at meetings of members

47 How vote may be exercised

47.1 At any general meeting of members, each ordinary member, each family member and each life member present, who is over 18 years of age, has 1 vote on a show of hands and on a poll.

47.2 The vote may be exercised in person or by proxy.

48 Voting disqualification

48.1 A member is not entitled to vote at a general meeting if the annual subscription of the member is more than 2 month in arrears at the date of the meeting or the postponed or adjourned meeting.

49 How voting is carried out

[compare replaceable rule 250J]

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

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

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

50 Chair's casting vote

[compare replaceable rule 250E(3)]

50.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.

Annual general meeting

[compare section 250N]

51 Business of an annual general meeting

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

51.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (1) the consideration of the annual financial report, directors' report and auditor's report;
- (2) the election of directors;
- (3) the appointment of the auditor;
- (4) the fixing of the auditor's remuneration; and
- (5) any business, at the request of a member, entitled to vote at the annual general meeting, notice of which is received by the Secretary no less than twenty one (21) days prior to meeting and signed by at least 5 members.

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

- 51.2 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 51.3 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must:
- (1) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit, the preparation and content of the auditor's report, the accounting policies adopted by the Company in relation to the preparation of the financial statements and the independence of the auditor in relation to the conduct of the audit; and
 - (2) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA of the Act.

52 Resolutions proposed by members

[compare sections 249N and 249O]

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

Appointment of directors

53 Number of directors

[compare section 201A]

- 53.1 The number of the directors must be not less than 4 and no more than 9.
- 53.2 The Company in general meeting may by resolution increase or reduce the number of directors referred to in rule 53.1 but the number may not be reduced below 3.

54 Directors' qualifications

- 54.1 No person may be a director unless that person is an ordinary member, a family member or a life member of the Company who is over the age of 18 years.

55 Election of directors

[compare section 201E and replaceable rule 201G]

- 55.1 The directors are elected at each annual general meeting of the Company.
- 55.2 An elected director holds office until the termination of the next annual general meeting held after his or her election.

56 Nomination for election

56.1 Each candidate for election as a director must:

- (1) be 18 years or older;
- (2) be proposed by an ordinary member, family member or a life member; and
- (3) be seconded by another ordinary member, family member or another life member;

both of which members must be over the age of 18 and current financial members of the Company at the time of nomination.

56.2 No ordinary member, family member or life member may propose more than 1 person as a candidate but may second more than 1 nomination.

56.3 A nomination of a candidate for election must:

- (1) be in writing;
- (2) be signed by the candidate; and
- (3) be signed by the proposer and seconder.

56.4 A nomination of a candidate for election must be received at the registered office of the Company not later than 5pm on the day which is 30 days prior to the annual general meeting at which the candidate seeks election.

56.5 A list of the candidates' names in alphabetical order together with the proposers' and seconds' names must be sent to members with the notice of the annual general meeting.

57 Election procedure – directors

57.1 If the number of candidates for election as directors is equal to or less than the number of vacancies on the board, the chair of the annual general meeting must declare those candidates to be duly elected as directors.

57.2 If the number of candidates for election as directors is greater than the number of vacancies on the board, a ballot must be held for the election of the candidates.

57.3 If a ballot is required, balloting lists must be prepared listing the names of the candidates only in alphabetical order.

57.4 At the annual general meeting each person entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.

57.5 The candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.

57.6 If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair, prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:

- (1) does not exercise a casting vote; or
- (2) is one of the candidates who received the same number of votes;

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

- 57.7 There is not a vacancy for the purpose of this rule 57 (or rule 63) because the number of directors is less than the maximum allowed under rule 53.1. There is a vacancy only if the number of directors is less than the number elected at the previous annual general meeting (adjusted for any increase under clause 63.1).

58 Time appointment or retirement takes effect

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

59 Office bearers

- 59.1 The office bearers of the Company are:

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

60 Election of office bearers at board meeting

- 60.1 Office bearers are elected by the directors at the first meeting of the directors held after the immediately preceding annual general meeting and hold office until the end of the first meeting of the directors held after the next annual general meeting.
- 60.2 At the commencement of meeting under section 60.1, the directors must appoint an ordinary member as independent chair of the meeting. The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.

61 Eligibility and nomination

- 61.1 Except for the secretary, only directors may be office bearers. Any director is eligible for election to any office bearer position.
- 61.2 Each director standing for election as an office bearer must be proposed by another director.
- 61.3 If a director stands for election for more than 1 position as an office bearer separate nominations must be received in respect of each position.

- 61.4 A nomination may be:
- (1) in writing, received by the secretary not less than 24 hours prior to the board meeting at which the election is to take place and signed by the candidate and the proposer; or
 - (2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

62 Election procedure – office bearers

- 62.1 The election of the office bearers is held in the order in which the positions are listed in rule 59.1.
- 62.2 If there is only 1 candidate for election to any office bearer position that person is declared elected to that position.
- 62.3 If there is more than 1 candidate for election to any office bearer position a ballot must be held among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- 62.4 In the case of an equality of votes in respect of any position a further ballot must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.
- 62.5 If a director is elected to a position as office bearer then his or her nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.
- 62.6 Subject to this rule 62 a ballot is conducted in the manner the directors determine.

Appointment of directors between AGMs

63 Casual vacancies and additional directors

[compare replaceable rules 201G and 201H]

- 63.1 The Company in general meeting may by resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- 63.2 Any director appointed under rule 63.1 holds office until the termination of the next annual general meeting of the Company and is then eligible for re-election at that annual general meeting.

64 Insufficient directors

[compare replaceable rule 201H]

- 64.1 In the event of a vacancy or vacancies in the office of a director, the remaining directors may act, but if the number of remaining directors is not sufficient to constitute a quorum (in accordance with clause 85) at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

Alternate directors

[compare replaceable rule 201K]

65 Appointment

65.1 A director may appoint any person who is:

- (1) qualified to be a director;
- (2) over the age of 18; and
- (3) who is approved by a majority of the other directors to act,

as an alternate director in place of the appointing director for a meeting or for a specified period.

65.2 An alternate director is not taken into account for the purpose of rule 53.

66 Rights and powers of alternate director

66.1 An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.

66.2 Subject to the requirements of the Act, an alternate director is entitled to a separate vote for each director that the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.

66.3 An alternate director, when acting as a director, is responsible to the Company for his or her own acts and defaults and is not to be taken as the agent of the director by whom he or she was appointed.

67 Suspension or revocation of appointment

67.1 A director may revoke or suspend the appointment of an alternate director appointed by him or her.

67.2 The directors may suspend or remove an alternate director by resolution after giving the appointing director reasonable notice of their intention to do so.

68 Form of appointment, suspension or revocation

68.1 An appointment, suspension or revocation under rules 65 or 67 takes effect only when the Company has received notice in writing of the appointment, suspension or revocation.

69 Termination of appointment

69.1 The appointment of an alternate director automatically terminates:

- (1) if the appointor ceases to hold office as director;
- (2) on the happening in respect of the alternate director any event which causes a director to vacate the office of director; or

- (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Company.

70 Power to act as alternate for more than 1 director

- 70.1 A director or any other person may only act as alternate director to represent 1 director.
- 70.2 Subject to the Act, in determining whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for the director on whose behalf the alternate director is attending the meeting.

Powers of directors

71 Validation of acts of directors and secretaries

[compare sections 201M and 204E]

- 71.1 An act done by a director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- 71.2 Rule 71.1 does not deal with the question whether an effective act by a director or secretary:
 - (1) binds the Company in its dealings with other people; or
 - (2) makes the Company liable to another person.
- 71.3 Where a person whose office as director of the Company is vacated under a provision of the Act purports to do an act as a director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

72 General business management

[compare replaceable rule 198A]

- 72.1 The business of the Company is to be managed by or under the direction of the directors.
- 72.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 72.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.

73 Negotiable instruments

[compare replaceable rule 198B]

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

Removal and resignation of directors

74 Removal of directors

[compare section 203D]

74.1 The Company may by resolution remove a director from office.

75 Resignation of director

[replaceable rule 203A]

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

76 Vacation of office of director

[compare section 206B]

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

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (3) is not present (either personally or by an alternate director) at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
- (4) ceases to be qualified as a director under rule 54;
- (5) becomes disqualified from being a director under the Act or any order made under the Act;
- (6) is removed from office in accordance with rule 74; or
- (7) resigns from office in accordance with rule 75.

Directors' interests

77 Prohibition on being present or voting

[compare section 195]

77.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

77.2 A director who is interested in any matter may, despite that interest, witness the fixing of the seal to any document evidencing or otherwise connected with that matter.

78 Standing notice of interest

[compare section 192]

- 78.1 A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- 78.2 A notice under the above rule may be given:
- (1) at a directors' meeting (either orally or in writing); or
 - (2) to the other directors individually in writing.
- 78.3 If the standing notice is given to the other directors individually in writing:
- (1) the notice is effective when it has been given to every director; and
 - (2) the notice must be tabled at the next directors' meeting after it is given.
- 78.4 The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

Directors' meetings

[compare sections 248A to 248G]

79 Circulating resolutions

[compare replaceable rule 248A]

- 79.1 The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 79.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.
- 79.3 The resolution is passed when the last director signs.
- 79.4 A document addressed to or received by the Company by way of any electronic means and purporting to be signed or sent by a director for the purpose of this rule 79 must be treated as a document in writing signed by that director.
- 79.5 In this rule 79 a reference to all the directors does not include a reference to an alternate director whose appointor has signed the document, but an alternate director may sign the document in the place of his or her appointor.

80 Meetings of directors

- 80.1 The directors must meet together at least four (4) times per year for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

81 Calling directors' meetings

[compare replaceable rule 248C]

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

82 Notice of meeting

[compare replaceable rule 248C]

- 82.1 Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:
- (1) has been given special leave of absence; or
 - (2) is absent from Australia and has not left any other contact details acceptable to the directors at which he or she may be given notice.
- 82.2 Any notice of a meeting of directors may be given in writing or orally, and whether by telephone, electronic mail or any other means of communication.

83 Waiver of notice

- 83.1 All resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

84 Chairing directors' meetings

[compare replaceable rule 248E]

- 84.1 The president is the chair of all meetings of the directors.
- 84.2 At a meeting of directors if:
- (1) no president has been elected as provided by rule 62; or
 - (2) the president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the vice-president is the chair of the meeting, but if:
- (3) no vice-president has been elected as provided by rule 62; or
 - (4) the vice-president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;
- the directors present must elect a director present to chair the meeting.

85 Quorum

[compare replaceable rule 248F]

- 85.1 The quorum for a directors' meeting is 50% (rounded up) of the directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.
- 85.2 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the Act relating to directors' interests, entitled to vote).

86 Passing of directors' resolutions

[compare replaceable rule 248G]

- 86.1 A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- 86.2 The chair has a casting vote if necessary in addition to any vote he or she has as a director. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- 86.3 A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

Remuneration of directors

87 No directors' remuneration

[compare section 150]

- 87.1 No director may receive any remuneration for his or her services in his or her capacity as a director of the Company.

88 Directors' expenses

- 88.1 Despite rules 6 and 87 the Company may permit payments to directors in the following circumstances:
- (1) for the payment of out-of-pocket expenses incurred in carrying out the duties of a director where the payments do not exceed an amount previously approved by the board; or
 - (2) for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the board and the amount payable is approved by a resolution of the board and is on reasonable commercial terms.

89 Financial benefit

[compare Chapter 2E - sections 207 and following]

- 89.1 A director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.

Secretary

90 Appointment of secretary

[compare section 204A]

- 90.1 The directors must, in accordance with the Act, appoint 1 or more secretaries.
- 90.2 The directors may appoint a person as an acting secretary or as a temporary substitute for a secretary.

91 Terms of office of secretary

[compare replaceable rule 204F]

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

Indemnity and insurance

92 Indemnity

[compare section 199A]

- 92.1 To the extent permitted by the Act, the Company may indemnify:

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

against all losses, liabilities, costs, charges and expenses incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be). This indemnity includes, without limitation:

- (3) a liability for negligence; and
- (4) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Act.

- 92.2 An officer must:

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

92.3 In rule 92.2 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 92.3(1) or 92.3(2) may be initiated.

92.4 If an officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, and the officer may be indemnified under rule 92.1, the directors may, despite the interest (if any) of the directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

93 Insurance

[compare section 212]

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

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

94 Liability

94.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

95 Meaning of “officer”

95.1 For the purposes of rules 92, 93, and 94, **officer** means a director or secretary or a member of a local committee.

Winding up

96 Winding up

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

Minutes

97 Minutes to be kept

[compare section 251A]

- 97.1 The directors must keep minute books in which they record within one month:
- (1) proceedings and resolutions of meetings of the Company's members;
 - (2) proceedings and resolutions of directors' meetings;
 - (3) resolutions passed by members without a meeting; and
 - (4) resolutions passed by directors without a meeting.
- 97.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 97.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 97.4 Without limiting rule 97.1 the directors must record in the minute books:
- (1) all appointments of officers;
 - (2) the names of the directors and alternate directors present at all meetings of directors and the Company;
 - (3) in the case of a technology meeting, the method by which the meeting was held;
 - (4) all orders resolutions and proceedings of general meetings and of meetings of the directors and of committees formed by the directors;
 - (5) proxy votes exercisable and exercised in respect of each resolution at a meeting; and
 - (6) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest in a matter that relates to the affairs of the Company.

Inspection of records

98 Rights of inspection

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

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

Accounts, audit and records

99 Accounts

[compare sections 286-291, 296 and 297]

- 99.1 The directors must cause proper accounting and other records to be kept in accordance with the Act.
- 99.2 The directors must distribute copies of every financial statement (including every document required by law to be attached to it) as required by the Act.

100 Audit

[compare sections 301, 327D and 328A-331]

- 100.1 Subject to the Act, a registered company auditor must be appointed.
- 100.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

Execution of documents

101 Execution of documents

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

- 101.1 The Company can only execute a document if the document is signed by:
- (1) 2 directors of the Company; or
 - (2) a director and a company secretary of the Company.

102 Execution – general

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

- 102.1 The same person may not sign in the dual capacities of director and secretary.
- 102.2 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.

Notices

103 Notices other than notices of meeting

- 103.1 Any notice by the Company to a member may be given in the same way as a notice of meeting may be given under rule 31, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 32.

Inadvertent omissions

104 Formalities omitted

[compare section 1322]

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