

CORPORATIONS ACT

Company Limited by Shares

CONSTITUTION OF FIRST SUPER PTY LIMITED ACN 053 498 472

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CORPORATIONS ACT

Company Limited by Shares

CONSTITUTION

-of-

FIRST SUPER PTY LIMITED ACN 053 498 472

1. INTERPRETATION

1.1 Definitions

In this Constitution unless expressed or implied to the contrary:

"**Auditor**" means the auditor of the Company from time to time;

"**Board**" means the duly appointed Board of Directors of the Company from time to time;

"**Chairpersons**" will mean the Directors elected to hold office as Chairpersons of the Company in accordance with this Constitution;

"**clause**" means a clause of this Constitution;

"**Company**" means First Super Pty Limited;

"**Complying Superannuation Fund**" in relation to a year of income means a fund which is a regulated superannuation fund and which complies with the Relevant Requirements;

"**Constitution**" means this Constitution as altered or added to from time to time and a reference to a provision as altered or added to from time to time;

"**Corporations Act**" means the *Corporations Act 2001* (Cth) as amended from time to time;

"**Director**" means, at the relevant time, a duly appointed director of the Company and includes an Independent Director;

"**Directors**" means all or some of the Directors acting as a board and "**committee**" and "**committee of Directors**" have a corresponding meaning;

"**Eligible Organisation**" means an organisation which is either an Employer Organisation or a Fund Member Organisation or a natural person who has been nominated in writing by any such organisation as its representative and whose duly executed written nomination has been delivered to the Secretary;

"**Employer Director**" means a Director appointed as the representative of the Fund's sponsoring employers in accordance with the equal representation requirements under clause 14 of this Constitution;

"Employer Organisation" means an organisation accepted by the Board as representing the interests of employers of Fund Members and is acceptable within the Relevant Requirements;

"Employer Sponsor" means an employer-sponsor within the meaning of the Relevant Law;

"Fund" means the regulated superannuation fund established under the Trust Deed and known as "First Super";

"Fund Member" means a person who is admitted to membership of the Fund in accordance with the Trust Deed and has not ceased to be a member of the Fund in accordance with the Trust Deed;

"Fund Member Organisation" means Construction Forestry Mining & Energy Union (Forestry and Furnishing Products Division), an organisation of employees duly registered pursuant to the provisions of the Workplace Relations Act 1996 (Cth), or any successor organisation thereto at law, that represents Fund Members and meets the Relevant Requirements.

"Independent Director" means, at the relevant time, a duly appointed Independent Director of the Company appointed in accordance with this Constitution who qualifies as an independent director within the meaning of the Relevant law;

"Member" means a member of the Company in accordance with the *Corporations Act* and shall include the beneficial owner of a Share in the Company;

"Member Director" means a Director appointed as the representative of the Fund Members in accordance with the equal representation requirements under clause 14 of this Constitution;

"Office" means the registered office of the Company;

"Operating Standards" means the operating standards within the meaning of Part 3 of the *Superannuation Industry (Supervision) Act 1993* and in force from time to time under the Relevant Law.

"Ordinary Resolution" means any resolution other than a Special Resolution or an Extraordinary Resolution;

"Register" means the Register of Members kept in accordance with the *Corporations Act*;

"Relevant Law" means the Corporations Act, the *Superannuation Industry (Supervision) Act 1993* and any other legislation, regulations, by-laws codes or other law of the Commonwealth of Australia or State or Territory of Australia (including, where applicable, any declaration, determination, ruling or guideline made by any regulator or responsible authority) with which the Company or the Directors or the Fund must comply from time to time;

"Relevant Requirements" means the Relevant Requirements as defined in the Trust Deed;

"Secretary" means any person duly authorised to perform the duties of Secretary of the Company appointed in accordance with this Constitution;

"Share" means a share in the Company;

"Special Resolution" has the same meaning as in the *Corporations Act*;

"Transfer Price" means one dollar (\$1);

"Trust Deed" means the trust deed constituting the Fund and includes all alterations and variations thereto.

1.2 Construction

- (a) Words or expressions used in this Constitution will be interpreted in accordance with the provisions of the Relevant Requirements and the *Corporations Act* in force at the time the interpretation is required.
- (b) In this Constitution unless a different intention appears:
 - (i) words importing the singular will include the plural and vice versa; and
 - (ii) words importing one gender will include the other; and
 - (iii) words importing person will include companies and corporations; and
 - (iv) any headings or marginal notes in this Constitution are used for convenience only and will not affect its construction.

1.3 Replaceable Rules Inapplicable

The replaceable rules to the *Corporations Act* do not apply to the Company.

1.4 Headings

Headings and subheadings are included for reference only and do not affect the interpretation of this Constitution.

2. PROPRIETARY COMPANY

2.1 Restricted Right of Transfer

The Company is a proprietary company and accordingly the right to transfer Shares in the Company is restricted as provided in this Constitution.

2.2 Members Not to Exceed Fifty

The number of Members must not exceed fifty and for the purposes of this Constitution joint shareholders count as one Member and employees or former employees of the Company or of any subsidiary of the Company, who hold Shares in the Company are not counted as Members.

2.3 Public Not to Subscribe

The Company must not invite the public to subscribe for or make any offer to the public to accept subscriptions for Shares in or debentures of the Company. The Company must not invite the public to deposit money with or make any offer to the public to accept deposits of money with the Company.

2.4 Act Solely as Trustee

The Company is to act solely as trustee of the Fund.

3. **CONSTITUTION SUBJECT TO RELEVANT REQUIREMENTS**

This Constitution will be read and construed on the basis that the provisions of the Relevant Requirements are incorporated to the extent that they impose covenants or obligations on the Company to enable the Fund to qualify as a Complying Superannuation Fund. This Constitution will be further read and construed on the basis that where there is any inconsistency between a provision in this Constitution and a provision under the Relevant Requirements, the latter will prevail, PROVIDED THAT this Constitution will not be so read or construed and no such provision of the Relevant Requirements will be so incorporated, if to do so would contravene the *Corporations Act*.

4. **ISSUE OF SHARES**

4.1 **Shares Issued by the Directors**

Where it is determined appropriate by the Board to issue additional Shares or otherwise allot, control or dispose of Shares in the Company, they may do so subject to the provisions and limitations of this Constitution, the *Corporations Act*, the Relevant Requirements and without prejudice to Members' existing rights.

4.2 **Ordinary Shares**

Without limitation to clause 4.2, the Board has power to issue Ordinary Shares on such terms as it sees fit from time to time.

4.3 **Members must be an Eligible Organisation**

Only an Eligible Organisation can be a Member.

5. **INCREASE IN CAPITAL**

5.1 **Creation of New Shares**

The Company may by Ordinary Resolution increase its share capital by any amount by the creation of new Shares subject to the limitations in clause 2.

5.2 **Conditions of Issue of New Shares**

Newly created Shares may have special, preferential, deferred, qualified or restricted rights, privileges, powers or advantages assigned to them or disabilities or conditions attached to them as determined by Directors on or before the issue of those Shares, subject to the *Corporations Act* and to any rights previously conferred on the holders of any Shares or class of Shares.

5.3 **New Shares**

Capital raised by the creation of new Shares is deemed to be part of the original capital and is subject to this Constitution in all respects unless this Constitution provides otherwise.

6. **REDUCTION OF CAPITAL**

The Company may, by Special Resolution:

- (a) reduce its capital in any way permitted by law; and

- (b) cancel shares which have not then been taken or agreed to be taken by any person or which have been forfeited and reduce the amount of its share capital by the amount of the cancelled Shares.

7. VARIATION OF CLASS RIGHTS

7.1 Variation

Where the share capital is divided into different classes of Shares, the rights, privileges, disabilities and conditions attached to any class may be varied or abrogated only in accordance with the *Corporations Act* and this clause.

7.2 Consent Required

No rights, privileges, disabilities or conditions attached to any class of Shares can be varied or abrogated without the written consent of the holders of at least two thirds of the issued Shares of that class or without the sanction of a Special Resolution passed at a general meeting of the holders of the Shares of that class. The clauses dealing with general meetings apply so far as they are capable to general meetings of classes of shareholders except that two persons constitute a quorum and any holder of Shares of the relevant class may demand a poll.

7.3 Restrictions on Variation

The rights conferred on the holders of the Shares of a particular class are not deemed to be varied by the creation or issue of further Shares ranking equally with the first mentioned Shares unless expressly provided by the terms of issue of those first mentioned Shares or unless required by the *Corporations Act*.

7.4 Trust Holding

Except as prohibited by law, the Company may recognise a person as holding a Share upon any trust.

8. CERTIFICATES

8.1 Right to Certificate

Every Member is entitled without payment to receive a certificate under the seal of the Company (if any) in accordance with the *Corporations Act* for the Shares registered in the name of that Member. Delivery of a certificate to one joint holder is sufficient delivery to all joint holders of that Share.

8.2 Lost, Destroyed and Damaged Certificates

If the share certificate or other document of title is lost or destroyed, the Company may issue a duplicate certificate in its place upon the conditions set out in section 1070D of the *Corporations Act*. If a share certificate is worn out or damaged, then upon its production to the Company, the Directors may order it to be cancelled and may issue a duplicate certificate in its place.

9. TRANSFER OF SHARES

9.1 Right to Transfer

Members may transfer all or any of the Shares registered in their names subject to clause 9.5, and in accordance with this Constitution by instrument in writing in any usual or common form, or in such form as the Directors shall approve. The transferor shall remain the holder of the Shares until such time as the name of the transferee is entered on the Register by the Board.

9.2 Permitted Transfer

The following transfers shall be permitted transfers subject to sub-clause 9.5 below:

- (a) where a Member wishes to transfers Shares and all other members have agreed in writing.

9.3 Pre-Emptive Transfer on Cessation of being Eligible Organisation

In the event that the Members by Ordinary Resolution determine that a Member is no longer an Eligible Organisation, that Member will be deemed to have given the Company a transfer notice in the terms as set out below in respect of its Shares.

9.4 Transfer Notice

Where a transfer notice is deemed to have been given to the Member, the following provisions shall apply in relation to the transfer notice:

- (a) the transfer notice must contain the number of Shares, the class of each Share and any other particulars necessary to adequately identify the Shares to be transferred (Relevant Shares);
- (b) the transfer notice will constitute the Board as agents for the transfer of the Relevant Shares;
- (c) the transfer notice will be unconditional;
- (d) if given in respect of more than one Share, the transfer notice will be deemed to be a separate transfer notice for each Share;
- (e) the transfer notice is not revocable except with the consent of the Directors; and
- (f) the transfer notice will specify the value of the Shares as the Transfer Price.

9.5 Directors' Discretion

A majority of Directors may refuse to register any transfer and are not obliged to give reasons for the refusal. If the Directors refuse to register an instrument of transfer, notice of the refusal must be given to the transferee within two months from the date the transfer was lodged in the Office.

9.6 Retaining Instruments of Transfer

Instruments of transfer that are registered must be retained by the Company for the minimum period required by law or longer if the Directors determine. An instrument of transfer that the

Directors refuse to register must be returned if requested to the person who lodged it unless there has been fraud or alleged fraud.

9.7 Transfer Price

Shares will only be transferred at the Transfer Price provided that if the Shares are held on trust there shall be no price paid in respect of the transfer to the beneficial owner of the Shares or to another trustee.

9.8 Closing the Register

The Register may be closed as the Directors think fit, subject to the *Corporations Act*, for no more than 30 days in any calendar year.

10. GENERAL MEETINGS

10.1 Annual General Meeting

An annual general meeting of the Company must be held once in every calendar year. The procedure for convening and holding the annual general meeting must be in accordance with the general meeting requirements of the *Corporations Act* and this Constitution.

10.2 General Meetings

General meetings of the Company other than annual general meetings are called general meetings.

10.3 Convening General Meetings

Any two Directors may convene a general meeting upon giving notice in accordance with this clause.

10.4 Notice of General Meetings

Notice of general meetings must:

- (a) subject to the *Corporations Act*, be served on all Members entitled to receive notice at least 21 days before the day of the meeting (not including the day of service of the notice but including the day of the meeting);
- (b) be in writing;
- (c) specify the place, day and hour of the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
- (d) specify the general nature of the business to be transacted at the meeting but need not specify the general business of an annual general meeting;
- (e) contain notice of Special Resolutions proposed to be passed at the general meeting in accordance with the *Corporations Act*; and
- (f) if a member is entitled to appoint a proxy, contain a proxy statement in accordance with the *Corporations Act*.

10.5 Omission to give Notice

The accidental omission to give notice of a general meeting or the non-receipt of a notice of a general meeting by a Member does not invalidate the proceedings at the general meeting.

10.6 Resolution Without General Meeting

Subject to the *Corporations Act*, a document containing a resolution of the Members of the Company, signed by each Member entitled to vote is as valid and effective as if that resolution was passed in general meeting.

10.7 Validation of Meetings on Short Notice

Subject to the *Corporations Act*, the Company may call on shorter notice:

- (a) an annual general meeting, if all the members entitled to attend and vote at the annual general meeting agree beforehand; and
- (b) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.

11. PROCEEDINGS AT GENERAL MEETINGS

11.1 Business of Annual General Meetings

The ordinary business of an annual general meeting includes:

- (a) the receipt and consideration of accounts and reports of the Directors and the Auditor;
- (b) the election of the Chairpersons in accordance with this Constitution;
- (c) fixing the remuneration of the Directors, if any, and the Auditor; and
- (d) any other business required by the *Corporations Act* to be transacted at annual general meetings.

11.2 Special Business

All business transacted at general meetings and at annual general meetings other than the ordinary business of an annual general meeting is deemed special business.

11.3 Quorum

Four members present in person or by proxy, attorney or representative are a quorum at a general meeting.

11.4 Procedure if No Quorum

If a quorum is not present after 15 minutes from the time appointed for the meeting, the meeting will be dissolved, if it were convened by the Members. If Directors have convened the meeting, the meeting will be adjourned to the same time and place in the following week. If at the adjourned meeting, no quorum is present, the meeting will be dissolved.

11.5 Chairpersons

The Chairpersons may take the chair at every general meeting. If there are no Chairpersons or if the Chairpersons are not present at the time appointed for the meeting or are unwilling to take the chair, the Members present may choose another person to be Chairperson for that meeting.

11.6 Adjournment of General Meetings

The Chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting. If the meeting is adjourned for more than 30 days, notice of the adjournment must be given to all Members entitled to receive notice of general meetings. No business may be transacted at the adjourned meeting except the unfinished business of the original business of which notice was given.

12. VOTING AT GENERAL MEETINGS

12.1 Show of Hands

Every question put to a general meeting is to be decided by a simple majority by a show of hands unless a poll is duly demanded. The Chairperson of a meeting may declare that a resolution has, on a show of hands, been carried, carried unanimously, carried by a particular majority or lost. The entry to this effect in the minute book is conclusive evidence of the fact.

12.2 Demanding a Poll

A poll may be demanded before or on the declaration of the result of a show of hands by:

- (a) the Chairperson of the meeting;
- (b) at least two Members present in person or by proxy; or
- (c) a Member present in person or by proxy representing not less than one tenth of the total voting rights of all Members entitled to vote at the meeting.

12.3 Taking a Poll

If a poll is duly demanded, it must be taken as and when the Chairperson of the meeting directs. A poll demanded on the election of a Chairperson of the meeting or on a question of adjournment must be taken immediately. The result of a poll will be the resolution of the meeting. The demand for a poll may be withdrawn.

12.4 Casting Vote

Questions will be decided by Ordinary Resolution except for resolutions that must be passed by a majority other than a simple majority in accordance with the *Corporations Law*. If there is an equality of votes, whether on a show of hands or on a poll the Chairperson of the meeting will not have a casting vote.

12.5 Member's Entitlement to Vote

Votes may be given personally or by proxy, attorney or Company representative duly appointed. Every Member present is entitled subject to any rights or restrictions attached to any Shares to one vote on a show of hands and if a poll is taken one vote for each Share held by that Member. A Member may appoint a proxy, attorney or Company representative (who

need not be a Member) to attend and vote at general meetings on behalf of the original Member. That proxy, attorney or Company representative is not entitled to vote at the general meeting if the principal is present and votes at that general meeting. The Chairperson of the meeting may decide questions relating to the qualification of any voter and the decision is final and binding.

12.6 Appointment of Proxies, Attorneys and Representatives

An instrument appointing a proxy shall be in such form as is approved by the Directors from time to time.

12.7 Proxy

The instrument of proxy, power of attorney and minutes of resolutions must be deposited at the Office at least 24 hours before the time of holding the meeting at which the proxy or attorney or representative proposed to vote.

12.8 Authority of Proxy

The appointment of a proxy, attorney or representative is deemed to confer authority to demand or join in demanding a poll. A vote given by a proxy, attorney or representative is valid regardless of the prior death or liquidation of the principal or revocation of the proxy or transfer of the Shares in respect of which the vote is given if no written indication of the death liquidation revocation or transfer is received at the Office before the meeting.

13. DIRECTORS

13.1 Number and Appointment of Directors

- (a) The Directors shall be not less than four, but no more than 15.
- (b) The Directors shall have the power to appoint such number of Independent Directors that is no greater than one-third of all Directors¹.
- (c) The Directors may appoint further Directors either in addition to or to fill a vacancy in their number so long as the total number of Directors does not exceed the maximum number of Directors.
- (d) The selection and appointment of a new Director shall be at the discretion of the existing Board and on such conditions and for such term as the Board shall determine, subject only to the new Director's appointment being made in accordance with this Constitution and the Relevant Law and the Director's tenure continuing until the relevant Director is removed in accordance with sub-clauses 13.4, 13.5 or 13.6.

13.2 Nomination of Proposed Directors

- (a) The Board will seek proposals for one or more person/s to be considered for appointment as a Director in accordance with this clause 13.2. The Board will determine in its discretion the procedure for seeking such proposals.
- (b) Notwithstanding the Board receiving any proposal, the Board is not under any obligation to accept the proposal and has complete discretion as to the appointment of Directors, subject only to the Director's appointment being made in accordance with

¹ Amended at the 25 September 2012 AGM.

this Constitution and the Relevant Law. Without limitation to the foregoing, the Board is not obliged to appoint such one or more Directors in proportion to the respective shareholding of the Members.

- (c) A Member Director must be nominated by a Fund Member Organisation that is also a Member in order to be eligible for appointment as a Member Director.
- (d) An Employer Director must be nominated by:
 - (i) an Employer Organisation that is also a Member; or
 - (ii) any one or more Employer Sponsors of the Fund;
 in order to be eligible for appointment as an Employer Director.
- (e) Any appointment as a Director in accordance with this clause shall take effect from the later date on which:
 - (i) a signed consent to act is produced to a meeting of the Directors; or
 - (ii) a satisfactory police check in accordance with the Relevant Requirements is produced to a meeting of the Directors; and
 - (iii) the Board resolves that the appointment is in accordance with the Relevant Law and the Relevant Requirements.
- (f) No Director shall be appointed otherwise than as provided in this Constitution.

13.3 Independent Director

An Independent Director shall have all the same rights and entitlements as a Director of the Company including the right to vote.

13.4 Removal of Directors²

A Director may only be removed by:

- (a) a resolution of the Board following proper procedure made in accordance with clause 19 of this Constitution; or
- (b) a Special Resolution of Members to remove the Director on the grounds that the continued appointment of the person as a Director is inconsistent with the best interests of the Fund or Fund Members.

13.5 Director Vacancy

In addition to the circumstances in which the office of a Director becomes vacant by virtue of subclause 13.4 or the *Corporations Law*, the office of a Director shall become vacant if the Director:

- (a) resigns that office by notice in writing to the Company; or
- (b) dies; or

² Amended by the 25 September 2012 AGM.

- (c) is removed from office in accordance with any provisions of this clause; or
- (d) is removed from office in accordance with the Relevant Law, the Relevant Requirements or the provisions of *the Superannuation Industry (Supervision) Act 1993*; or
- (e) becomes insolvent under administration; or
- (f) becomes prohibited from being a Director by reason of being a disqualified person under the Relevant Law, the Relevant Requirements or the *Superannuation Industry (Supervision) Act 1993* or by reason of an order made under the *Corporations Act*; or
- (g) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health; or
- (h) is absent without permission from two or more consecutive Directors' meetings; or
- (i) having been appointed for a fixed term, that period expires; or
- (j) acts against the Company or inconsistently with the interests of the Company as determined by the Board.

13.6 **Removal of Independent Director**

An Independent Director appointed under this Constitution shall cease to hold office:

- (a) if he or she dies; or
- (b) if he or she is under a mental or physical incapacity which prevents them from discharging their office; or
- (c) if he or she becomes a disqualified person or is removed or suspended in accordance with the Relevant Law or the Relevant Requirements or under the Operating Standards; or
- (d) if he or she resigns from office; or
- (e) if his or her tenure of office expires; or
- (f) if he or she ceases to be an Independent Director; or
- (g) if he or she ceases to satisfy a condition that they were required to satisfy to be eligible for appointment including but not limited to a condition required by a Relevant Law or a Relevant Requirement; or
- (h) subject to the compliance with the Relevant Law, if the remaining Directors unanimously agree that the Independent Director should be removed for any reason.

13.7 **Natural Persons**

All Directors of the Company shall be natural persons.

13.8 Other Offices

A Director may hold any other office in the Company in addition to the Directorship on any terms as to tenure and remuneration or otherwise as determined by the Directors.

14. EQUAL REPRESENTATION

The equal representation requirements set out in the *Superannuation Industry (Supervision) Act 1993* will apply to the Company only if the Relevant Requirements require so.

15. REMUNERATION OF DIRECTORS

15.1 Remuneration and Expenses

Directors shall be entitled to be paid out of the funds of the Company such remuneration and all reasonable expenses incurred in connection with the business and activities of the Company as are approved by the Directors from time to time.

15.2 Special Remuneration

Where a Director performs services for the Company which, in the opinion of the Directors, exceed the ordinary duties of a Director, the Directors may pay special remuneration from the funds of the Company to that Director.

16. DIRECTORS' INTERESTS

16.1 Directors' Contracts

Subject to the *Corporations Act* and to this Constitution:

- (a) Directors are not disqualified from entering into a contract or arrangement with the Company or from becoming or remaining a director of another company which has contracts with the Company;
- (b) contracts or arrangements involving the Company, cannot be avoided on the basis that a Director has an interest in the contract or arrangement;
- (c) Directors are not liable to account to the Company for any profits realised by them as a result of them being interested in any such contract or arrangement; and
- (d) any Director may attest the affixing of the seal (if any) of the Company to a contract whether or not that Director is interested in that contract.

16.2 Declaration of Interest

Every Director who has a direct or indirect interest in a contract or arrangement, and every Director who holds any office or possesses any property which may directly or indirectly create a conflict with that Director's duties or interest, must, before voting, declare the fact and the nature, character and extent of the conflict or potential conflict as required by the *Corporations Act*.

16.3 Secretary to Record Declarations

The Secretary must record in the minutes any declaration made by a Director in accordance with this clause.

17. **DIRECTORS' POWERS**

17.1 **Management of Business of Company**

The management and control of the business and affairs of the Company is vested in the Directors. The Directors may exercise all powers and all things authorised by the *Corporations Act* unless this Constitution or the *Corporations Act* requires that those powers and things be done by the Company in general meeting. The Directors must act in accordance with this Constitution, the *Corporations Act* and regulations made by the Company in general meeting. Regulations made by the Company in general meeting cannot invalidate an earlier action or decision of the Directors, which would have been valid, if the regulation had not been made.

17.2 **Appointment of Committees**

The Directors may appoint committees in accordance with clause 20 and delegate any of its powers to those committees as they think fit. Clauses regulating Directors' meetings apply to the extent that they are appropriate and applicable to any such meetings of committees so appointed.

17.3 **Appointment of Attorneys**

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 the conditions as the Directors think fit. The power of attorney must be recorded in the Company's minute book. 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 the attorney.

18. **CHAIRPERSON OF DIRECTORS**

The Directors may elect one of their number as Chairperson or elect two of their number as Co-Chairpersons of the Company as they see fit who shall be Chairperson or Co-Chairperson as the case may be of their meetings and such appointment shall be for a period of one year unless otherwise determined by the Directors.

19. **PROCEEDINGS OF DIRECTORS' MEETINGS**

19.1 **Role of Chairperson Chairpersons**

The Chairperson or Chairpersons of Directors shall chair all Directors' meetings and provided that in the event that the Chairperson or Chairpersons are not in attendance at the meeting, the Directors must appoint one of their number in attendance as the Chairperson. Where there are Co-Chairpersons, they will alternate as chair of each meeting.

19.2 **Meetings**

The Directors may meet together, adjourn and otherwise regulate their meetings as they see fit. The quorum shall throughout each meeting be at least half of the total number of duly appointed directors at the time of the meeting.

19.3 **Voting**

Notwithstanding any other clause in this Constitution to the contrary, subject to the Relevant Requirements, a decision of the Directors must be taken not to have been made, or to be of no effect, if fewer than two-thirds of the total number of Directors eligible to vote, voted for it.

19.4 **Casting Vote**

The Chairperson of the meeting shall not, in addition to a deliberative vote (if any) under any circumstances have a second or casting vote.

19.5 **Use of Technology**

A meeting of Directors may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw his/her consent within a reasonable period before the meeting.

19.6 **Written Resolution without Meeting**

The Directors of the Company 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. 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. The resolution is passed when the last Director signs.

19.7 **Defect in Appointment**

All acts done at Directors' meetings or at committee meetings are valid and effective even if it is later realised that there was a defect in the appointment of a Director or of a person acting as Director or a member of the committee or if any such person was disqualified or not entitled to vote at that time.

19.8 **Directors may Act in Event of a Vacancy**

The Directors may act even if there is a vacancy in the body of Directors provided that the Directors are not authorised to act if the number of Directors falls below the minimum number required for a quorum in accordance with this Constitution. If the number of Directors is below the minimum number or below a quorum, the continuing Directors or Director may only act to increase the number of Directors to the minimum number or to convene a general meeting of the Company or of any class of shareholders.

20. **APPOINTMENT OF COMMITTEES**

20.1 **Minimum Membership Requirements**

The Directors may from time to time appoint committees for the purpose of managing specific affairs of the Company, such committees consisting of a minimum of two Directors plus such other persons who are not Directors as the Directors may determine, and they may delegate all or any of their powers to any such committee and from time to time revoke any such delegation and discharge any such committee in whole or in part.

20.2 Committee Powers

Any committee formed in accordance with sub-clause 21.1 above shall, in the exercise of the powers delegated to it, conform to any regulations that may from time to time be imposed upon it by the Directors. The committee may meet and adjourn as it thinks fit provided that the quorum for the meeting of any such committee shall throughout the meeting be at least two Directors. Any committee shall have power to co-opt as a member or members of the committee one or more independent additional members notwithstanding those persons are not a Director of the Company.

20.3 Voting Majority

Each member of a committee shall have one vote and subject to the Relevant Requirements, all business arising at any meeting of a committee shall be determined by Ordinary Resolution of those persons present.

20.4 Chairperson of Committee

If the Chairperson or Chairpersons of the Company are not a member of a committee or are not present at a meeting the committee may elect a Director who is one of their number as Chairperson of the meetings provided that such Chairperson in addition to a deliberative vote shall not have a second or casting vote.

20.5 Alternative Chairperson

Where a committee meeting is held and the Chairperson is not present within ten minutes after the time appointed for the holding of the meeting or is unwilling to act, the committee members present shall elect one of their number to be Chairperson of the meeting provided that such Chairperson shall not have a second or casting vote.

21. SECRETARY

Subject to the requirements of the Corporations Act, the Directors may appoint any person or persons to be or act as Secretary of the Company for the term upon the conditions and with such remuneration as they shall think fit. The Directors may remove a Secretary from office at any time.

22. MINUTES

22.1 Secretary to Enter Minutes

The Secretary must cause minutes to be entered in the minute book provided by the Company as soon as reasonably practical after the relevant meeting, which shall include:

- (a) all appointments of officers;
- (b) the names of all persons present at each Directors' meeting and committee meeting;
- (c) the resolutions and proceedings of all meetings of the Company and of all Directors' meetings and committee meetings; and
- (d) all declarations made or notices given by a Director of their interests in a contract or proposed contract and of their office or property as a result of which a conflict of duty or interest may arise.

22.2 Minutes to be Signed

Minutes of a meeting signed by the Chairperson of that meeting or of the next succeeding meeting will be prima facie evidence of the matters stated in those minutes.

22.3 Minute Book

The books containing the minutes of general meetings and committee meetings must be kept at the Office or principal place of business of the Company.

23. STATUTORY REGISTERS

The Company must keep registers as required by the Directors or by the *Corporations Act* including but not limited to:

- (a) register of Members;
- (b) register of debenture holders;
- (c) register of charges;
- (d) register of Directors' interests; and
- (e) register of Directors, Secretaries and other officers.

24. COMPANY SEAL

24.1 Custody

If the Directors determine to adopt the use of a seal for the purpose of execution of documents by the Company, the Directors must provide for the safe custody of the Company seal.

24.2 Use of Seal

The use of the Company seal, if any, must be authorised by the Directors. Each instrument to which the seal is affixed must be signed by at least one Chairperson or delegate Director and countersigned by another Director or by the Secretary or other person authorised by the Directors for that purpose.

25. DIVIDENDS

Neither the Members in general meeting nor the Directors may declare any dividend or create any reserve in managing the affairs of the Company.

26. ACCOUNTS

26.1 Accounting Records

The Directors must keep proper books of account in accordance with the *Corporations Act* and accepted accounting standards. The books of account must be kept at the Office or other place as the Directors think fit.

26.2 Statutory Accounts

The Directors must cause to be made out for each financial year of the Company a profit and loss account that gives a true and fair view of the profit or loss of the Company for that financial year and a balance sheet that gives a true and fair view of the state of affairs of the Company for that financial year.

26.3 Inspection of Books

The accounting records of the Company must be open to inspection by the Directors. Members who are not Directors are not entitled to inspect accounting records unless authorised by statute, the Directors or the Company in general meeting.

26.4 Retention of Books

The Company must retain all accounting records for the minimum period required by law or longer if the Directors determine.

27. CHEQUES

All cheques, bills of exchange and promissory notes must be signed, drawn, accepted, made or endorsed for and on behalf of the Company as the Directors determine.

28. AUDITOR

The Auditor must be appointed and may be removed and its remuneration, rights and duties must be regulated in accordance with the Relevant Law.

29. NOTICES

29.1 Service

The Company may serve a notice on a Member:

- (a) by leaving it at the Member's registered address;
- (b) by posting it by pre-paid ordinary mail to the Member's registered address; or
- (c) by facsimile transmission or e-mail to the Member's number for service or email address as notified by the Member to the Company.

29.2 Time of Service

Service given:

- (a) by post is deemed received if posted within Australia to an Australian address two business days after posting;
- (b) by facsimile, is deemed received at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee address;
- (c) after 6.00 pm in the place of receipt or in a day which is not a business day is deemed received at 9.00 am on the next business day;

- (d) by email is deemed received on the business day after the day on which the email was sent.

29.3 **Notice to Joint Holders**

Notices may be served on joint shareholders by serving notice on the joint holder named first in the Register in respect of the Share.

29.4 **Entitlement to Receive Notice of General Meetings**

Notice of every general meeting must be given as provided for by the Relevant Law to every Member, every person entitled to a Share as a result of death or bankruptcy of a Member, each Director and the Auditor.

30. **INDEMNITY**

30.1 **Indemnification of Directors**

To the extent permitted by the Relevant Law, every Director and other officer of the Company is entitled to be indemnified out of the assets of the Company against all losses or liabilities which may be incurred as a result of executing their office.

30.2 **No Liability for Loss**

No Director or other officer of the Company is liable for any loss or damage incurred by the Company in the execution of the duties of their office, other than a liability that cannot be excluded by operation of the Relevant Law.

30.3 **Extended Indemnity**

The Company may, if it sees fit and to the extent permitted by the Relevant Law, exempt or indemnify a Director or other officer of the Company:

- (a) against liability to third parties;
- (b) in defending any criminal or civil proceedings arising out of their conduct as an officer of the Company.

30.4 **Alternative Indemnity Insurance**

This indemnity and exemption may where appropriate be offered directly or by means of the Company insuring the officer against liability, as the Directors consider appropriate, subject to the *Corporations Act*.

31. **WINDING UP**

31.1 **Division of Assets**

If the Company is wound up, the liquidator may, with the sanction of a Special Resolution, divide amongst the Members in kind, the whole or any part of the property of the Company and may for that purpose, set such value as the liquidator considers fair upon any property to be so divided.

31.2 Vesting of Assets

The liquidator may, with the sanction of a Special Resolution, vest the whole or any part of any such property in trustees upon such trust for the benefit of the Members.

32. BOARD SUCCESSION³

- (a) The Directors shall have the power to appoint and remove one or more persons to be given the title “Associate Director”. An Associate Director will be a person selected to receive relevant training and professional development to allow them to be suitable for appointment as a Director as and when positions on the Board need to be filled. The objective of an Associate Director appointment is to ensure a smooth transition of Directors from time to time. The appointment of an Associate Director shall be on such conditions and for such term as the Directors shall determine, provided that an Associate Director:
- (i) shall not have any powers, rights or entitlements as a Director, including the right to vote, and shall not otherwise be permitted to act as or be deemed to be a director, as defined in the Corporations Act, and, for the avoidance of doubt, shall not be a shadow director;
 - (ii) shall not have any formal capacity to influence the decision making of the Company and shall not otherwise be a senior manager, as defined in the Corporations Act or paragraph 19 of the Fit and Proper Prudential Standard CPS520 issued by the Australian Prudential Regulation Authority, as amended from time to time (“Fit and Proper Prudential Standard”); and
 - (iii) shall be a fit and proper person in accordance with the Fit and Proper Prudential Standard.

An Associate Director may be invited by the Chairperson to attend any one or more Board meetings, or part of, any Board meeting.

³ Insert at the 25 September 2012 AGM.