



# **Constitution of Encircle Ltd.**

**ACN 169899914**

**ABN 87944092271**

**A company limited by guarantee**

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## CONSTITUTION OF ENCIRCLE LTD.

### 1 Interpretation

A word or expression that is not defined in these rules, but is defined in the *Corporations Act 2001* and the *Corporations Regulations 2001* and the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission Regulation 2013* has, if the context permits, the meaning given by these Acts and Regulations.

These rules are intended to comply with the *Corporations Act 2001* and the *Corporations Regulations 2001* and the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission Regulation 2013*. In all matters pertaining to the company, the provisions of the *Corporations Act 2001* and the *Corporations Regulations 2001* and the *Australian Charities and Not-for-profits Commission Act 2012* and the *Australian Charities and Not-for-profits Commission Regulation 2013* override any provisions contained in these rules.

"Ordinary resolutions" are not specifically defined in the *Corporations Act* and require only a simple majority to pass (i.e. more than 50% of the members present at the meeting, either in person, or by proxies),

"Special resolution" means a resolution to be considered at an annual general meeting or a special general meeting which can only be passed by a vote of 75% of the members present and who are entitled to vote on the resolution. Actions which require a special resolution are defined in the *Corporations Act 2001*.

### 2 Name

The name of the company limited by guarantee is ENCIRCLE ("the company").

### 3 Objects

The objects of the company are to operate as a charity for the benefit of individuals, families and communities, targeting the most disadvantaged by:

- 3.1 Fostering cooperation between persons, groups and organisations in relation to community wellbeing.
- 3.2 Promoting and assisting the development and implementation of community services engaged in the relief of poverty, homelessness, distress or disadvantage.
- 3.3 Coordinating and supporting community development activities and

advocating to governments and the community for adequate resources.

- 3.4 Facilitating and participating in public forums and seminars on community issues.
- 3.5 Encouraging community involvement and participating in meeting the objectives of the company.
- 3.6 Undertaking other activities and functions which are incidental to the attainment of the objectives of the company.

#### **4 Powers**

- 4.1 The company has the powers of an individual.
- 4.2 The company may, for example:
  - a. enter into contracts, and
  - b. acquire, hold, deal with and dispose of property, and
  - c. make charges for services and facilities it supplies, and
  - d. do other things necessary or convenient to be done in carrying out its affairs and/or objects
- 4.3 The company may also issue secured and unsecured notes, debentures and debenture stock for the company.

#### **5 Classes of members**

- 5.1 The membership of the company shall consist of
  - a. ordinary members
  - b. life members
  - c. organisational (not for profit) members
  - d. business (for profit) members
- 5.2 The number of ordinary members is unlimited.
- 5.3 For the purposes of voting, each organisational and business member will hold a single vote, cast by their nominated representative.

#### **6 New membership**

- 6.1 An applicant for membership of the company must be proposed by one member of the company (the *proposer*) and seconded by another member (the *seconder*).
- 6.2 An application for membership must be:
  - a. in writing, and
  - b. signed by the applicant and the applicant's proposer and

- seconded, and
- c. in the form decided by the board of directors.

6.3 The membership application form must inform the applicant of the guarantee liability of members (see section 8) and that the company holds public liability insurance and the amount of such insurance.

6.4 Life membership is determined from time to time by the board of directors where a member is deemed to have made a significant contribution to the company.

## **7 Membership fees**

The membership fees are:

- a. the amount decided by the board of directors from time to time, and
- b. payable when, and in the way, the board decides.

## **8 Members' liability**

If the company is wound up, and it is in debt, the guaranteed liability of each member current at the date of winding up shall be \$10 only.

## **9 Approval of new members**

9.1 The board of directors must consider an application for membership at the next meeting of the board held after it receives:

- a. the application, and
- b. the appropriate membership fee for the application.

9.2 The directors must decide at the meeting whether to approve or not approve the application.

9.3 If a majority of the directors present at the meeting vote to accept the applicant as a member, the applicant must be accepted as a member to the class of membership for which he or she has applied.

9.4 The secretary of the company must, as soon as practicable, after the directors, decide to approve or not approve an application, give the applicant a written notice of the decision.

## **10 When membership ends**

10.1 A member may resign from the company by giving a written notice of resignation to the secretary.

10.2 The resignation takes effect on:

- a. the day and at the time the notice is received by the secretary, or
  - b. if a later day is stated in the notice, the later day.
- 10.3 The board of directors may terminate a member's membership if the member:
  - a. is convicted of an indictable offence, or
  - b. does not comply with any of the provisions of these rules, or
  - c. has membership fees in arrears for at least thirty days, or
  - d. conducts himself or herself in a way considered to be injurious or prejudicial to the character or interests of the company.
- 10.4 Before the board of directors terminates a member's membership under the provision of section 10.3 of these rules, the directors must give the member a full and fair opportunity to show why the membership should not be terminated.
- 10.5 If, after considering all representations made by the member, the board of directors decides to terminate the membership, the secretary must give the member a written notice of the decision.

## **11 Appeal against rejection or termination of membership**

- 11.1 A person whose application for membership has been rejected, or whose membership has been terminated, may give the secretary written notice of his or her intention to appeal against the decision.
- 11.2 A notice of intention to appeal must be given to the secretary within one month after the person receives written notice of the decision.
- 11.3 If the secretary receives a notice of intention to appeal, the secretary must, within one month after the day of receipt, call a special general meeting to decide the appeal.

## **12 Special general meeting to decide appeal**

- 12.1 The special general meeting to decide an appeal must be held within three months after the secretary receives the notice of the intention to appeal.
- 12.2 At the meeting, the applicant must be given a full and fair opportunity to show why the application should not be rejected or the membership should not be terminated.
- 12.3 The directors who rejected the application or terminated the membership must be given an opportunity to show why the application should be rejected or the membership should be terminated.
- 12.4 An appeal must be decided by a majority vote of the members present and



eligible to vote at the meeting.

- 12.5 If a person whose application has been rejected does not appeal against the decision within one month after receiving written notice of the decision, or the person appeals but the appeal is unsuccessful, the secretary must, as soon as practicable, refund the application fee paid by the person.

### **13 Register of members**

- 13.1 The directors must keep a register of members of the company.
- 13.2 The register of members must include the following particulars for each member:
- a. the full name of the member,
  - b. the postal or residential address of the member,
  - c. the date of admission as a member,
  - d. the date of death or time of resignation of the member,
  - e. details about the termination or reinstatement of membership, and
  - f. any other particulars the board of directors or the members at a special general meeting decide.
- 13.3 The register must be open for inspection by members of the company at all reasonable times. Such an inspection would reveal only the names of the members.
- 13.4 A member must contact the secretary to arrange an inspection of the register.

### **14 Prohibition on use of information on register of members**

- 14.1 A member of the company must not:
- a. use information obtained from the register of members of the company to contact, or send material to, another member of the company for the purpose of advertising for political, religious, charitable or commercial purposes, or
  - b. disclose information obtained from the register to someone else, knowing that the information is likely to be used to contact, or send material to, another member of the company for the purpose of advertising for political, religious, charitable or commercial purposes.
- 14.2 Rule 14.1 does not apply if the use or disclosure of the information is approved by the company.

## **15 Membership of the board of directors**

- 15.1 The board of directors of the company consists of a chairperson, vice-chairperson, chairperson of the Finance Audit and Risk Management Committee and secretary (the executive) and a minimum of one other member elected at an annual general meeting by company members.
- 15.2 The maximum number of directors will be decided by the board.
- 15.3 A member of the board of directors must be a member of the company.
- 15.4 Ideally, the board will include a balanced representation of members from:
- a. professions whose skills and experience will contribute to the board of directors and the company,
  - b. the locations/sites served by the company,
  - c. diverse services and activities within the community sector,
  - d. all genders.
- 15.5 A member of the company may be appointed to a casual vacancy on the board of directors under Rule 19.

## **16 Electing the board of directors**

- 16.1 A director may only be elected as follows:
- a. any two members of the company may nominate another member (the *candidate*) to serve as a director,
  - b. the nomination must be -
    - i. in writing, and
    - ii. signed by the candidate and the members who nominated him or her, and
    - iii. given to the secretary at least fourteen days before the annual general meeting at which the election is to be held
  - c. each member of the company present and eligible to vote at the annual general meeting may vote for one candidate for each vacant position on the board of directors,
  - d. if, at the start of the meeting, there are not enough candidates nominated, nominations may be taken from the floor of the meeting.
- 16.2 The board will ensure that at all times the company has in place a transparent procedure for assessing the suitability of a member to be a director, the outcome of which procedure is that a member “is recommended” or “is not recommended” to become a director, and which recommendation is communicated to members in accordance with 16.5.
- 16.3 Notwithstanding the outcome of the process referred to in 16.2, any

member may still nominate as a director in accordance with 16.1

- 16.4 A person may be a candidate only if the person is:
- a. aged 18 years and over,
  - b. a member of Encircle Ltd, and
  - c. not ineligible to be elected as a director under section 201B of the Act.
- 16.5 A list of the candidates' names in alphabetical order, with the names of the members who nominated each candidate and the recommendation of the board pursuant to clause 16.2, must be posted in a conspicuous place in the office or usual place of meeting of the company, and on the company's website, for at least seven days immediately preceding the annual general meeting.
- 16.6 If required by the board of directors, balloting lists must be prepared containing the names of the candidates in alphabetical order.
- 16.7 The directors must ensure that, before a candidate is elected as a member of the board, the candidate is advised that the company holds public liability insurance and the amount of such insurance.

## **17 Term of director including maximum term**

- 17.1 At each annual general meeting:
- a. any director appointed by the directors to fill a casual vacancy or as an additional director must retire, and
  - b. at least one-third of the remaining directors must retire.
- 17.2 The directors who must retire at each annual general meeting under clause 17.1(b) will be the directors who have been longest in office since last being elected. Where directors were elected on the same day, the director(s) to retire will be decided by lot unless they agree otherwise.
- 17.3 Other than a director appointed under clause 17.1(a), a director's term of office starts at the end of the annual general meeting at which they are elected and ends at the end of the annual general meeting at which they retire.
- 17.4 Each director must retire at least once every three years.
- 17.5 A director who has held office for a continuous period of nine (9) years or more may only be re-appointed or re-elected by a special resolution

## **18 Functions of the secretary**

- 18.1 The secretary's functions include, but are not limited to:

- a. calling meetings of the board, including preparing notices of a meeting and of the business to be conducted at the meeting in consultation with the chairperson of the board,
- b. ensuring that minutes are kept of each meeting,
- c. keeping copies of all correspondence and other documents relating to the company, and
- d. maintaining the register of members of the company.

18.2 Unless otherwise delegated by the board of directors, the secretary will act as the public officer of the company.

## **19 Resignation, removal or vacation of office of a director**

19.1 A director may resign from the board by giving written notice of resignation to the secretary.

19.2 The resignation takes effect at:

- a. the time the notice is received by the secretary, or
- b. if a later time is stated in the notice, the later time.

19.3 A director may be removed from office at a special general meeting of the company if a majority of the members present and eligible to vote at the meeting vote in favour of removing the director.

19.4 Before a vote of members is taken about removing the director from office, reasons for removal must be given and the director must be given a full and fair opportunity to show cause why they should not be removed from office.

19.5 A director has no right of appeal against his or her removal from office under this rule.

## **20 Vacancies on the board of directors**

20.1 If a casual vacancy happens on the board of directors, the continuing members of the board may appoint another member of the company to fill the vacancy until the next annual general meeting.

20.2 If a vacancy happens in the office of secretary, the directors must ensure a secretary is appointed or elected for the company within one (1) month after the vacancy happens.

20.3 The continuing members of the board may act despite a casual vacancy on the board.

20.4 However, if the number of directors is fewer than the number fixed under rule 23(1) as a quorum of the directors, the continuing directors may act

only to:

- a. increase the number of directors to the number required for a quorum, or
- b. call a special general meeting of the company.

## **21 Functions of the board of directors**

### **Duties of Directors**

21.1 The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- a. to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company,
- b. to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company set out in clause 3
- c. not to misuse their position as a director,
- d. not to misuse information they gain in their role as a director
- e. to disclose any perceived or actual material conflicts of interest
- f. to ensure that the financial affairs of the company are managed responsibly, and
- g. not to allow the company to operate while it is insolvent.

21.2 Subject to these rules or any special resolution of the members of the company carried at a special general meeting, the directors have the general control and management of the administration of the affairs, property and funds of the company.

21.3 The board of directors has authority to interpret the meaning of these rules and any matter relating to the company on which the rules are silent, but any interpretations must have regard to the relevant *Acts*, including any regulation made under these *Acts*.

21.4 The board of directors may exercise the powers of the company:

- a. to borrow, raise or secure the payment of amounts of money,
- b. to secure the amounts mentioned in paragraph (a) or the payment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way, including by the issue of debentures (perpetual or otherwise) charged upon the whole or part of the company's property, both present and future,
- c. to purchase, redeem or pay off any securities issued,
- d. to borrow amounts from members and pay interest on the amounts borrowed,
- e. to mortgage or charge the whole or part of its property, and
- f. to issue debentures and other securities, whether outright or as

- security for any debt, liability or obligation of the company, and
- g. to provide and pay off any securities issued,
- h. to invest in a way the directors decide, and
- i. if the members of the company by special resolution decide the powers should be exercised in a particular way not provided for by these rules, in that way.

- 21.5 For rule 21.3(d), the rate of interest must not be more than the current rate being charged for overdrawn accounts on money lent (regardless of the term of the loan) by:
- a. the financial institution for the company, or
  - b. if there is more than one financial institution for the company, the financial institution nominated by the directors.

## **22 Meetings of the board of directors**

- 22.1 Subject to this rule, the board of directors may meet and conduct its proceedings as it considers appropriate.
- 22.2 The board of directors must meet at least once every four months to exercise its functions.
- 22.3 The directors must decide how a meeting is to be called.
- 22.4 Notice of a meeting is to be given in the way decided by the directors.
- 22.5 The board of directors may hold meetings, or permit a director to take part in its meetings, by using any technology that reasonably allows the director to hear and take part in discussions as they happen.
- 22.6 A director who participates in the meeting as mentioned in rule 22.5 is taken to be present at the meeting.
- 22.7 A question arising at a board meeting is to be decided by a majority vote of directors present at the meeting and, if the votes are equal, the question is decided in the negative.
- 22.8 A director must not vote on a question about a contract or proposed contract with the company if the director has an interest in the contract or proposed contract and, if the director does vote, the director's vote must not be counted.
- 22.9 The chairperson is to chair the board meeting.
- 22.10 If there is no chairperson or if the chairperson is not present within ten minutes after the time fixed for a board meeting, the directors may choose one of their number to chair the meeting.

## **23 Conflicts of interest**

- 23.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- a. to the other directors, or
  - b. if all of the directors have the same conflict of interest, to advise the members at the next general meeting, or at an earlier time if reasonable to do so.
- 23.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 23.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 23.4:
- a. be present at the meeting while the matter is being discussed, or
  - b. vote on the matter.
- 23.4 A director may still be present and vote if:
- a. their interest arises because they are a member of the company, and the other members have the same interest
  - b. their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company (see clause 24.)
  - c. their interest relates to a payment by the company under clause 24 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
  - d. the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or
  - e. the directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company, and
    - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.
- 23.5 The Secretary shall cause a Register of potential Conflicts of Interest to be created and maintained.

## **24 Indemnity, insurance and access**

### **24.1 Indemnity**

- 24.1.1 The company indemnifies each officer of the company out of the assets of the company, to the relevant extent, against all losses

and liabilities (including costs, expenses and charges) incurred by that person as an officer of the company.

24.1.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

24.1.3 In this clause, 'to the relevant extent' means:

- a. to the extent that the company is not precluded by law (including the Corporations Act) from doing so, and
- b. for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

24.1.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the company.

## **24.2 Insurance**

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the company may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as an officer of the company.

## **24.3 Directors' access to documents**

24.3.1 A director has a right of access to the financial records of the company at all reasonable times.

24.3.2 If the directors agree, the company must give a director or former director access to:

- a. certain documents, including documents provided for or available to the directors, and
- b. any other documents referred to in those documents.

## **25 Quorum for and adjournment of board meeting**

25.1 At a board meeting, more than 50% of the directors elected to the board as at the close of the last annual or applicable special general meeting of the members form a quorum and additionally if appointed to fill a casual vacancy after the AGM will be included in establishing the quorum .

25.2 If there is no quorum within thirty minutes after the time fixed for a board meeting called on the request of members of the board, the meeting lapses.

25.3 If there is no quorum within thirty minutes after the time fixed for a board meeting called other than on the request of the directors:

- a. the meeting is to be adjourned for at least one day, and
- b. the directors who are present are to decide the day, time and place of



the adjourned meeting

- 25.4 If, at an adjourned meeting mentioned in rule 23.3, there is no quorum within thirty minutes after the time fixed for the meeting, the meeting lapses.

## **26 Special meeting of board of directors**

- 26.1 If the secretary receives a written request signed by at least 33% of the directors, the secretary must call a special meeting of the board by giving each director notice of the meeting within fourteen days after the secretary receives the request.
- 26.2 If the secretary is unable or unwilling to call the special meeting, the chairperson must call the meeting.
- 26.3 A request for a special meeting must state:
- a. why the special meeting is called, and
  - b. the business to be conducted at the meeting
- 26.4 A notice of the special meeting must state:
- a. the day, time and place of the meeting, and
  - b. the business to be conducted at the meeting
- 26.5 A special meeting of the board of directors must be held within fourteen days after notice of the meeting is given to the directors.

## **27 Minutes of board meetings**

- 27.1 The secretary must ensure full and accurate minutes of all questions, matters, resolutions and other proceedings of each board meeting are entered in a minute book.
- 27.2 To ensure the accuracy of the minutes, the minutes of each board meeting must be signed by the chairperson of the meeting, or the chairperson of the next board meeting, verifying their accuracy.

## **28 Appointment of subcommittees**

- 28.1 The board of directors may appoint a subcommittee consisting of members of the company considered appropriate by the board to help with the conduct of the company's operations.
- 28.2 A member of the subcommittee who is not a member of the board of directors is not entitled to vote at a board meeting.
- 28.3 A subcommittee may elect a chairperson of its meetings.
- 28.4 If a chairperson is not elected, or if the chairperson is not present within ten minutes after the time fixed for a meeting, the members present may choose one of their number to be a chairperson of the meeting.

- 28.5 A subcommittee may meet and adjourn as it considers appropriate.
- 28.6 A question arising at a subcommittee meeting is to be decided by a majority vote of the members present at the meeting and, if the votes are equal, the question is to be decided in the negative.

## **29 Executive officer**

- 29.1 The directors may appoint any person, not being a director, to the position of executive officer for the period and on the terms (including as to remuneration) they see fit.
- 29.2 The executive officer is not a member of the board of directors of the company but may attend meetings of the board except where the directors otherwise request.
- 29.3 The directors may, upon terms and conditions and with any restrictions they see fit, confer on an executive officer any of the powers that the directors can exercise.
- 29.4 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.
- 29.5 The directors may revoke or vary an appointment, or any of the powers conferred on executive officer.
- 29.6 If an executive officer becomes incapable of acting in that capacity the directors may appoint any other person, not being a director, to act temporarily as executive officer.

## **30 Acts not affected by defects or disqualification**

- 30.1 An act performed by the board of directors, a subcommittee or a person acting as a member of the board is taken to have been validly performed.
- 30.2 Rule 30.1 applies even if the act was performed when
- a. there was a defect in the appointment of a director, subcommittee or person acting as a member of the board, or
  - b. a director, subcommittee member or person acting as a member of the board was disqualified from being a member.

## **31 Resolutions of board without meeting**

- 31.1 A written resolution signed by each director is as valid and effectual as if it had been passed at a board meeting that was properly called and held.

- 31.2 A resolution mentioned in rule 29.1 may consist of several documents in like form, each signed by one or more members of the board.
- 31.3 An email from a director may serve as a written resolution for the purposes of 29.1 but only if sent from an email address previously notified to the secretary.

### **32 Annual general meeting**

- 32.1 Each annual general meeting must be held:
- a. at least once each year, and
  - b. within six months after the end date of the company's reportable financial year
- 32.2 The secretary must give members 21 days notice of an annual general meeting.

### **33 Business to be conducted at an annual general meeting**

The following business must be conducted at each annual general meeting of the company:

- a. receiving the company's financial statement, and audit report, for the last reportable financial year,
- b. presenting the financial statement and audit report to the meeting for adoption,
- c. electing members of the board of directors,
- d. appointing an auditor or an accountant for the present financial year any other business determined by the board of directors.

### **34 Special general meeting**

- 34.1 The secretary must call a special general meeting by giving each member of the company notice of the meeting within fourteen days after:
- a. being directed to call the meeting by the board of directors, or
  - b. being given a written request signed by:
    - i. at least 33% of the number of members of the board of directors when the request is signed, or
    - ii. at least the number of ordinary members of the company equal to double the number of members of the company on the board when the request is signed plus one, or
  - c. being given a written notice of an intention to appeal against the of the directors:
    - i. to reject an application for membership, or
    - ii. to terminate a person's membership

- 34.2 The secretary must give members 21 days notice of a special general

- meeting.
- 34.3 A request mentioned in rule 34.1b must state:
- a. why the special general meeting is being called, and
  - b. the business to be conducted at the meeting
- 34.4 A special general meeting must be held within three months after the secretary:
- a. is directed to call the meeting by the board of directors, or
  - b. is given the written request mentioned in rule 32.1b, or
  - c. is given the written notice of intention to appeal mentioned in rule 34.1c

### **35 Quorum for, and adjournment of, annual or special general meeting**

- 35.1 The quorum for an annual or special general meeting is at least the number of members elected or appointed to the board of directors at the close of the last annual general meeting plus one.
- 35.2 No business may be conducted at an annual or special general meeting unless there is a quorum of members when the meeting proceeds to business.
- 35.3 If there is no quorum within thirty minutes after the time fixed for an annual or general meeting called on the request of the board of directors or the company, the meeting lapses.
- 35.4 If there is no quorum within thirty minutes after the time fixed for an annual or general meeting called other than on the request of the board or the company:
- a. the meeting is to be adjourned for at least seven days, and
  - b. the board is to decide the day, time and place of the adjourned meeting
- 35.5 The chairperson may, with the consent of any meeting at which there is a quorum, and must if directed by the meeting, adjourn the meeting from time to time and place to place.
- 35.6 If a meeting is adjourned under rule 33.5, only the business left unfinished at the meeting from which the adjournment took place may be conducted at the adjourned meeting.
- 35.7 The secretary is not required to give the members notice of an adjournment or of business to be conducted at an adjourned meeting unless a meeting is adjourned for at least thirty days.
- 35.8 If a meeting is adjourned for at least thirty days, notice of the adjourned meeting must be given in the same way notice is given for an original

meeting.

### **36 Procedure at annual or special general meeting**

- 36.1 A member may take part and vote at an annual or special general meeting in person, by proxy, by attorney or by using any technology that reasonably allows the member to hear and take part in discussions as they happen.
- 36.2
- a. A member who participates in an annual or special general meeting as mentioned in rule 36.1 is taken to be present at the meeting,
  - b. The meeting may delegate this task to the first meeting of the board of directors after the annual or special General Meeting. In this case the minutes are to be ratified at the next annual or special general meeting.
- 36.3 At each annual or special general meeting:
- a. the chairperson is to preside as chairperson, and
  - b. if there is no chairperson or if the chairperson is not present within fifteen minutes after the time fixed for the meeting or is unwilling to act, the members present must elect one of their number to be chairperson of the meeting, and
  - c. the chairperson must conduct the meeting in a proper and orderly way

### **37 Voting at annual or special general meetings**

- 37.1 At an annual or special general meeting:
- a. each question, matter or ordinary resolution must be decided by a majority of votes of the members present, either in person or by proxies (see Clause 1, Interpretation re “ordinary resolution”)
  - b. each special resolution must be decided by a vote of 75% of the members present, either in person or by proxies, and who are entitled to vote on the resolution (see Clause 1, Interpretation re “special resolutions”)
- 37.2 Each member present and eligible to vote is entitled to one vote only and, if the votes are equal, the chairperson has a casting vote as well as a primary vote.
- 37.3 A member is not entitled to vote at an annual or special general meeting if the member’s annual subscription is in arrears at the date of the meeting.
- 37.4 The method of voting is to be decided by the board of directors.

- 37.5 If at least 20% of the members present demand a secret ballot, voting must be by secret ballot.
- 37.6 If a secret ballot is held, the chairperson must appoint two members to conduct the ballot in the way the chairperson decides.
- 37.7 The result of a secret ballot as declared by the chairperson is taken to be resolution the meeting at which the ballot was held.

### **38 Minutes of annual and special general meetings**

- 38.1 The secretary must ensure full and accurate minutes of all questions, matters, resolutions and other proceedings of each annual or special general meeting are entered in a minute book.
- 38.2 To ensure the accuracy of the minutes:
  - a. The minutes of each annual or special general meeting must be signed by the chairperson of the annual or special general meeting, or the chairperson of the next annual or special general meeting, verifying their accuracy. The meeting may delegate this task to the first meeting of the board of directors after the annual or special General Meeting. In this case the minutes are to be ratified at the next annual or special general meeting.
- 38.3 If asked by a member of the company, the secretary must, within 28 days after the request is made:
  - a. Make the minute book for a particular annual or special general meeting available for inspection by the member at a mutually agreed time and place and
  - b. Give the member copies of the minutes of the meeting
- 38.4 The company may require the member to pay the reasonable costs of providing of the minutes.

### **39 Proxies**

- 39.1 An instrument appointing a proxy must be in writing and be in following or similar form:  
*[Name of company]*:  
 I \_\_\_\_\_, of \_\_\_\_\_, being a member of the company, appoint \_\_\_\_\_, of \_\_\_\_\_, as my proxy to vote for me on my behalf at the (annual/special) [*strike out whichever is not wanted*] general meeting of the company, to be held on the \_\_\_\_ day of 20\_\_\_\_.  
 And at any adjournment of the meeting.  
 Signed this day of 20 .  
 Signature \_\_\_\_\_,

- 39.2 The instrument appointing a proxy must:
- a. If the appointor is an individual, be signed by the appointer or the appointor's attorney properly authorised in writing, or
  - b. If the appointor is the nominated representative of an organisational or business member:
    - i. Be under seal, or
    - ii. Be signed by a properly authorised officer or attorney of the organisation or business
- 39.3 A proxy may be a member of the company or another person.
- 39.4 The instrument appointing a proxy is taken to confer authority to demand join in demanding a secret ballot.
- 39.5 Each instrument appointing a proxy must be given to the secretary before start of the meeting or adjourned meeting at which the person named in the instrument proposed to vote.
- 39.6 Unless otherwise instructed by the appointor, the proxy may vote as the proxy considers appropriate.
- 39.7 If a member wants a proxy to vote for or against a resolution, the instrument the proxy must be in the following or similar form:
- [Name of company]:*  
 I, ..... Of ....., being a member of the company, appoint ..... of ..... as my proxy to vote for me on my behalf at the (annual/special) *[strike out whichever is not wanted]* general meeting of the company, to be held on the        day of 20 .  
 Signature .....
- This form is to be used *\*in favour of/against\** *[strike out whichever is not wanted]* the following resolutions –  
*[List relevant resolutions]*

#### **40 Alteration of the constitution**

- 40.1 Subject to the *Act*, this constitution may be amended, repealed or added to by a special resolution carried at a special general meeting.
- 40.2 An amendment, repeal or addition is valid only if it is registered by the secretary.

#### **41 Common seal**

- 41.1 The board of directors must ensure the company has a common seal.

- 41.2 The common seal must be:
- a. Kept securely by the directors, and
  - b. Used only under the authority of the board of directors
- 41.3 Each instrument to which the seal is attached must be signed by a member of the board and countersigned by:
- a. The secretary, or
  - b. Another member of the board, or
  - c. Someone authorised by the board of directors

## **42 Funds and accounts**

- 42.1 The funds of the company must be kept in an account held in the name of the company in one or more financial institutions as decided by the board of directors.
- 42.2 Records and accounts must be kept in the English language showing full and accurate particulars of the financial affairs of the company.
- 42.3 All amounts of money received by the company, in whatever form, must be deposited in a financial institution account referred to in rule 40.1 as soon as practicable after receipt.
- 42.4 Any payment by the company of an amount in excess of the amount determined the board of directors must be paid by means other than cash.
- 42.5 All non-cash financial transactions may be conducted by cheque, electronic funds transfer (EFT or EFTPOS), debit card, credit card or other means (e.g. fuel cards) as approved from time to time by the board of directors.
- Any such financial transaction may be approved and signed by two of the:
- a. The chairperson
  - b. The vice-chairperson
  - c. The secretary
  - d. The chair of the Finance Audit and Risk Management Committee
  - e. Any member of the company's staff authorised by the board of directors to make financial transactions
- 42.6 A petty cash account must be kept on the imprest system, and the board of directors must decide the amount of petty cash kept in the account.
- 42.7 All expenditure or transfer of money from any company account must be approved or ratified at a board meeting.

## **43 General financial matters**

- 43.1 On behalf of the board of directors, the Chairperson of the Finance Audit



and Risk Management Committee must, as soon as practicable after the end date of each financial year, ensure a financial statement for the last reportable financial year is prepared.

43.2 The income, funds and property of the company must be used solely in promoting the company's objects and exercising the company's powers.

43.3 No part of the company's income, funds or property is to be distributed, paid or transferred by way of bonus, dividend or other similar payment to its members.

#### **44 Documents**

The board of directors must ensure the safe custody of books, documents, files, instruments of title and securities of the company.

#### **45 Financial year**

The end date of the company's financial year is 30 June in each year.

#### **46 Distribution of surplus assets to another entity**

46.1 This rule applies if the company:

- a. Is wound-up under part 5.5 of the *Act*, and
- b. Has surplus assets

46.2 The surplus assets must be given to another entity;

- c. Having objects similar to the company's objects, and
- d. The rules of which prohibit the distribution of the entity's income and assets to its members
- e. Which is a public benevolent institution for the purposes of any *Commonwealth Taxation Act*