

# Constitution

Newcastle Permanent Building Society Limited  
ACN 087 651 992

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# Constitution of Newcastle Permanent Building Society Limited

a company limited by Shares and Guarantee

Last amended [12 November 2021]

## 1 Preliminary

### Definitions

1.1 The following words have these meanings in this Constitution unless the contrary intention appears.

**Alternate Director** means an individual appointed as an alternate director under Article 11.10.

**APRA** means the Australian Prudential Regulation Authority.

**Article** means an article of this Constitution.

**Board** means the board of Directors of the Society.

**Borrower** means a person who has obtained a Loan from the Society and includes 2 or more persons who have jointly obtained financial accommodation from the Society.

**Constitution** means this constitution as amended from time to time, and a reference to a particular Article has a corresponding meaning.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Deposit** means a sum of money deposited with the Society.

**Depositor** means a person who has funds on deposit and includes 2 or more persons who jointly have funds on deposit.

**Director** means an individual holding office as a director of the Society, and where appropriate includes an Alternate Director.

**Directors** means all or some of the Directors acting as a Board.

**Executive Director** means an individual appointed as an executive director under Article 11.35.

**Guarantee Member** means any person who is a member of the Society by way of guarantee.

**Hunter Region** means the area constituted by the local government areas of Cessnock, Dungog, Lake Macquarie, Maitland, Muswellbrook, Newcastle, Port Stephens, Singleton and Upper Hunter in New South Wales and those areas of the Mid-Coast Council in New South Wales formerly constituted by the local government areas of Gloucester and Great Lakes.

**Loan** includes any form of financial accommodation.

**Managing Director** means an individual appointed as a managing director under Article 11.35.

**MCI** means "mutual capital instrument", being a share as described in Article 6.

**MCI Holder** means a person who is the holder of an MCI and whose name is for the time being entered in the Register of Members as a member of the Society (within the meaning of the *Corporations Act*).

**Member** means a person, who is a Guarantee Member or a Shareholder Member whose name is for the time being entered in the Register of Members as a member of the Society.

**Newcastle City** means the area governed by the City of Newcastle.

**Part** means a part of this Constitution.

**Prescribed Interest Rate** means the rate determined by the Directors for the purpose of this Constitution, and in the absence of a determination means 3% per annum.

**Prudential Standard** means:

- (a) any prudential standard that APRA determines under the *Banking Act 1959* (Cth);
- (b) any prudential regulation made under the *Banking Act 1959* (Cth); and
- (c) any APRA transitional prudential standard applying to the Society under the *Financial Sector Reform (Amendments and Transitional Provisions) Regulations 1999* (Cth).

**Register of Members** means the register of members of the Society (including Members and MCI Holders) under the *Corporations Act* and if appropriate includes a branch register.

**Registered Office** means the registered office of the Society.

**Representative** means:

- (a) in the case of a Shareholder Member or a Voting MCI Holder that is a body corporate, a person appointed to represent that Shareholder Member or Voting MCI Holder at a general meeting of the Society in accordance with the *Corporations Act*; and
- (b) in the case of a Guarantee Member that is a body corporate, a person appointed to represent that Guarantee Member at a general meeting of the Society under Article 3.16.

**Secretary** means an individual appointed under Article 12.1 as secretary of the Society and includes the person holding the office of secretary at the time of the adoption of this Constitution, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Society.

**Section** means a section of the *Corporations Act*.

**Share** means a share in the capital of the Society, and unless expressly stated otherwise, includes an MCI.

**Shareholder Member** means any person who is a Member of the Society by way of both holding Shares, (excluding a Share that is an MCI) and guarantee.

**Society** means Newcastle Permanent Building Society Limited (ACN 087 651 992).

**Subscription Price** means the amount payable on subscription for an MCI or, if the MCI was created on conversion of another instrument, the subscription price specified for the purposes of this definition in the terms of issue of that instrument.

**Transfer Date** means the date of transfer of engagements from the Newcastle Credit Union Limited to the Society, being 25 June 1999.

**Transferred Reserves** means the reserves of the Newcastle Credit Union Limited on the Transfer Date held by the Society for the benefit of Transferring Members.

**Transferring Members** means those persons who were Members of the Newcastle Credit Union Limited on the Transfer Date and who became Members of the Society on that same date.

**Voting MCI Holder** means an MCI Holder who has one vote at a general meeting of the Society either because such MCI Holder is also a Shareholder Member or because the MCI Holder has been granted one vote under the terms of issue of the MCIs he or she holds.

### Interpretation

- 1.2 In this Constitution unless the contrary intention appears:
- (a) words importing any gender include all other genders;
  - (b) the word “person” includes a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or an authority;
  - (c) the singular includes the plural and vice versa;
  - (d) a reference to a law includes regulations and instruments made under the law;
  - (e) a reference to a law or a provision of a law includes amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;
  - (f) a power, an authority or a discretion reposed in a Director, the Directors, the Society in general meeting, a Member or MCI Holder may be exercised at any time and from time to time; and
  - (g) a reference to an amount paid on a Share includes an amount credited as paid on that Share.
- 1.3 Unless the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the *Corporations Act*, the same meaning as in that provision of the *Corporations Act*.
- 1.4 Headings are inserted for convenience and are not to affect the interpretation of this Constitution.
- 1.5 This Constitution is divided into Parts as indicated by its contents.

### Replaceable rules not to apply

- 1.6 Unless specifically stated to apply elsewhere in this Constitution, the provisions of the *Corporations Act* that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Society.

### Intention to be an MCI mutual entity

- 1.7 The Society is intended to be an MCI mutual entity for the purposes of the *Corporations Act*.

## 2 Membership

- 2.1 Members of the Society shall consist of persons who are:
- (a) Shareholder Members; and
  - (b) Guarantee Members.
- 2.2 Unless expressly stated otherwise in this Constitution:
- (a) an MCI Holder is not a Member of the Society merely by virtue of holding an MCI;

- (b) an MCI Holder may be or become a Member of the Society if they satisfy the eligibility requirements of a Guarantee Member or Shareholder Member;
- (c) an MCI Holder who is also a Member is not deemed to be a Member (and the provisions of this Constitution relating to membership do not apply) in respect of any MCIs held by that person; and
- (d) if a Member is also an MCI Holder, they have no more than one vote at a general meeting of the Society, regardless of the applicable terms of issue of the MCI.

## 3 Guarantee Members

- 3.1 Every person who, according to the Society's records, was a Member of the Society immediately prior to the adoption of this Constitution is a Guarantee Member of the Society.
- 3.2 The Directors may admit any person as a Guarantee Member on the person complying with the requirements of Article 3.3 and Article 3.4 (if applicable) and agreeing to be bound by this Constitution.
- Application for membership**
- 3.3 A person who wishes to become a Guarantee Member must complete and lodge with the Society, at the Registered Office or any branch office or agency of the Society, an application in the form approved by the Board.
- 3.4 Where the person is seeking to become a Depositor the person must also tender a minimum amount of \$1.00 to the Society, which, on membership being granted, will constitute a Deposit.
- 3.5 The Board may refuse any membership application and need not give a reason for refusal. If an application for membership is refused any amount lodged will be returned to the applicant without interest.

### Approval of application and admission to membership

- 3.6 Subject to the *Corporations Act*, the Board or its delegate may approve applications for membership as a Guarantee Member in accordance with the procedures adopted by the Board.
- 3.7 On approval of an application for membership as a Guarantee Member the Board or the delegate approving the application must:
- (a) allocate to the applicant a membership number; and
  - (b) enter in the Register of Members the name of the applicant and such other particulars as the *Corporations Act* requires.
- 3.8 Following approval of an application, a person becomes a Guarantee Member of the Society when their name is entered in the Register of Members.

### Delegation

- 3.9 The Board may delegate to any committee of the Board or to any officer or officers of the Society the power to accept applications for membership.
- 3.10 The delegation of this power may be made concurrently to any number of officers of the Society and does not exclude the right of the Board to consider and to approve or reject any application for membership.

### Minors

- 3.11 The Society may admit a minor as a Guarantee Member.

3.12 A Guarantee Member who is a minor may not:

- (a) vote at a meeting of the Society; or
- (b) hold office in the Society.

#### **Joint Guarantee Members**

3.13 The Society may admit 2 or more persons to membership as joint Guarantee Members.

3.14 The persons constituting joint Guarantee Members may determine the order in which their names are to appear in the Register of Members. If they do not determine the order, the Society may enter the names in the order it considers to be appropriate.

3.15 The joint Guarantee Member who is named first in the Register of Members will be the primary joint Guarantee Member. Notices or other documents may be given or sent to the primary joint Guarantee Member and for all purposes under this Constitution and, to the extent permissible, the *Corporations Act*, membership is taken to be solely that of the primary joint Guarantee Member.

#### **Body corporate Guarantee Members**

3.16 A body corporate may be a Guarantee Member of the Society and may by notice to the Society appoint a person to represent it at meetings of Members at which it is entitled to attend and vote.

3.17 The appointment of the Representative must be in writing under the common seal of the body corporate or under the hand of a duly authorised attorney of the appointor.

3.18 The original, or a copy certified as a true copy by an officer of the body corporate, of:

- (a) the appointment; and
- (b) any power of attorney under which the appointment is executed,

must be lodged with the Secretary of the Society at least 48 hours before any meeting at which the person is to represent the body corporate.

3.19 A person appointed under Article 3.16 is entitled to exercise the same rights of voting as a Guarantee Member of the Society and is eligible to be elected as a Director if the person holds the qualifications required for holding office as a Director.

#### **Dormancy**

3.20 The Board may, by resolution, determine a person's Deposit account to be dormant if no Member initiated transactions have been made within a period of at least 2 years.

3.21 The Board may, at least 1 month before a Deposit account is declared dormant, send a notice to that effect to the Member at the Member's last known address as shown in the Register of Members.

3.22 When a Deposit account is declared dormant, the Society may credit the amount of money held in the Deposit account to:

- (a) the Member; or
- (b) a designated suspense account,

and close the Deposit account, provided reasonable notice of the closure of the Deposit account has been given to the Member.

3.23 Where a Deposit account has been declared dormant and

the money in the Deposit account has been credited to the designated suspense account, the relevant Member will be entitled to have their Deposit account fully reinstated on application unless the money transferred to the designated suspense account has been dealt with in accordance with the relevant law dealing with unclaimed money.

#### **Cessation of membership**

3.24 A Guarantee Member will cease to be a Member of the Society:

- (a) if the person is expelled in accordance with this Constitution;
- (b) where any contract of membership is rescinded on the ground of misrepresentation or mistake;
- (c) where the Guarantee Member is a body corporate, if the Member is dissolved or otherwise ceases to exist, has a liquidator or provisional liquidator appointed to it, or is unable to pay its debts;
- (d) if the person becomes bankrupt or insolvent or makes an arrangement or composition with the person's creditors generally; or
- (e) on death.

The Society is to record that a Guarantee Member has ceased to be a Member pursuant to this Article 3.24 promptly following the Society being aware of the event giving rise to the cessation of membership.

3.25 Unless membership is held and continues to be held in another capacity, a Guarantee Member will cease to be a Member of the Society:

- (a) if the person fails to pay any money to the Society which may be required to be paid on approval as a Guarantee Member;
- (b) if the person's Deposit account has been determined to be dormant under Article 3.20 and has not been reinstated;
- (c) if the person was admitted to membership as a Guarantee Member because the person is also a Depositor, when the whole of the Deposit and all interest thereon are withdrawn from the Society;
- (d) if the person was admitted to a membership as a Guarantee Member because the person is also a Borrower, when the whole of the person's Loan from the Society and all interest and fees payable thereon have been repaid.

#### **Death of a Guarantee Member**

3.26 Subject to the *Corporations Act*, the estate of a deceased Guarantee Member:

- (a) remains liable to the Society for the amount of any unpaid financial accommodation provided by the Society to the deceased Guarantee Member; and
- (b) retains any entitlements due from the Society.

#### **Termination of Guarantee Membership**

3.27 A Guarantee Member may, prior to the commencement of winding up of the Society by notice in writing to the Society, resign membership with immediate effect.

3.28 The Board may by notice in writing to the Guarantee Member, terminate the membership of any Guarantee Member where:

- (a) the Guarantee Member has failed to discharge their

obligations to the Society whether under this Constitution or arising out of any contract; or

- (b) the Guarantee Member has been guilty of conduct detrimental to the Society.

3.29 An expelled Guarantee Member has the right to appeal in accordance with the provision of Articles 5.6 to 5.8.

3.30 Any money standing to the credit of a Guarantee Member who has been expelled, after satisfaction of all liabilities and obligations of the Guarantee Member, will be repaid to the Guarantee Member.

## 4 Shareholder Members

### Directors to issue Shares

4.1 Subject to the *Corporations Act*, this Constitution, any requirements of APRA in Prudential Standards (where applicable) and the approval of Members, the Directors may issue Shares in the Society.

4.2 The issuance of MCIs shall be determined in accordance with Part 6.

### Shareholder Member

4.3 A person who acquires Shares (other than MCIs) and whose name is entered in the Register of Members as a holder of Shares (other than MCIs) shall be a Shareholder Member of the Society.

### Cessation of membership

4.4 A Shareholder Member ceases to be a Member immediately if the person ceases to hold any Shares (other than MCIs) and such person does not remain as a Guarantee Member alone.

## 5 Rights and Liabilities of Members

### Financial accommodation to Members

5.1 The Society may provide financial accommodation to its Members and to non-Members.

5.2 A person who wishes to obtain financial accommodation must apply to the Society in a manner approved by the Society. The application must be accompanied by such payment as the Board requires.

### Approval

5.3 The Board will have an absolute discretion to approve or refuse to approve financial accommodation in full or in part or to impose conditions on any approval, without being obliged to give any reasons.

### Delegation of power to approve

5.4 The Board may delegate its power to any one or more officers or holders of a named office to approve or reject applications for financial accommodation.

5.5 The Board must establish a policy for the delegation of the power to approve or reject applications for financial accommodation and the limits, if any, within which officers may exercise any delegated power.

### Dispute resolution

5.6 The Board must appoint a person to settle disputes between

the Society and a Member (in the capacity as a Member), and establish procedures for the settlement of such disputes.

5.7 A dispute between the Society and a Member (in the capacity as a Member) where not settled at first instance by the Society's internal procedures referred to in Article 5.6, will be settled in accordance with the dispute resolution process pursuant to any approved dispute resolution scheme of which the Society is a participant ("DR Scheme"). If for any reason the dispute is unable to be settled pursuant to the DR Scheme, the dispute will be settled by Arbitration in accordance with the *Commercial Arbitration Act 2010 (NSW)*.

5.8 Nothing in this Article will apply to any dispute as to the construction or effect of the *Corporations Act*, or of any mortgage, or of any contract contained in any document other than this Constitution.

5.9 For the purposes of Articles 5.6 to 5.8:

"Society" includes the Board and any officer;

"Member" includes:

- (a) any person who has ceased to be a Member for not more than three months; and
- (b) any person claiming by or through a Member or by or through a person referred to in (a).

### Charge on deposits etc.

5.10 The Society will have a charge on the credit balance of any Deposit account of a Member or past Member and on any dividend, interest, bonus or rebate payable to a Member or past Member in respect of any debt due from the Member to the Society, and may be entitled to appropriate any amount credited or payable to the Member or past Member on any Deposit account in or towards payment of any such debt.

5.11 The provisions of Article 5.10 are in addition to and not in place of the right of the Society to combine accounts and claim set-off.

### Authorised withdrawal

5.12 The Society may upon receipt of the necessary documentation from a legal, statutory or Government authority and where required by law, withdraw funds from a Member's account and forward the proceeds to the designated authority. The Society may levy a fee for providing this service.

### Recognition of interests

5.13 The Society may indicate by making an entry in the relevant account that money deposited is held by a person on trust for some other named person.

5.14 The Society is not to be regarded as being affected by notice of any trust in relation to money deposited whether or not any such entry is made.

5.15 The Society is not required to recognise a person as holding a Share on any trust, except as required by law.

5.16 The Society is not required to recognise any equitable, contingent, future or partial interest in any Share or unit of a Share or any other right in respect of a Share except an absolute right of ownership in the registered holder, whether or not it has notice of the interest or right concerned, except as required by law.

5.17 Where Shares (excluding MCIs) are held on trust for any person, the trustee (or the trustees who are registered jointly as a Shareholder Member) will for all the purposes of the Society be

regarded as a Shareholder Member of the Society.

### **Application and investment of funds**

- 5.18 The Society may apply and manage its funds and make such investments in accordance with the policies of the Society as are approved by the Board and not in contravention of the *Corporations Act*.

### **Limited liability of Members on winding up**

- 5.19 Subject to Article 5.21, the liability of Members of the Society is limited and each Member undertakes to contribute to the Society's property if the Society is wound up while they are a Member or within one year after they cease to be a Member, for payment of the Society's debts and liabilities contracted before they cease to be a Member and of the costs, charges and expenses of the winding up and for adjustment of the rights of the contributories among themselves, an amount not exceeding the sum of \$1.00.
- 5.20 In addition to the amount referred to in Article 5.19, Shareholder Members are also liable to pay the amount (if any) unpaid on any Shares (excluding MCIs) held by them.
- 5.21 Article 5.19 does not apply to those Guarantee Members who are Guarantee Members by virtue of Article. 3.1.

## **6 MCIs**

### **Share capital from MCIs**

- 6.1 Subject to compliance with the *Corporations Act* and satisfying the requirements of APRA in Prudential Standards (where applicable), the Society may raise capital by issuing MCIs (including MCIs which are issued upon conversion of another security).
- 6.2 The Society may create or issue MCIs at any time. The creation or issue of MCIs does not vary the rights attached to MCIs or any other Shares that the Society has already issued (or may issue in future).

### **Issue**

- 6.3 The Subscription Price for an MCI, or a capital instrument convertible to an MCI, will be determined by the Board.
- 6.4 Each MCI must be issued as a fully paid up share.
- 6.5 Any dividends in respect of an MCI are non-cumulative.

### **Rights of MCI Holders**

- 6.6 The terms of issue of an MCI (including any terms, conditions or rights attaching to the MCI) will be determined by the Board in its sole discretion, subject to the requirements of this Constitution, the requirements for MCIs in the *Corporations Act* and any applicable Prudential Standards.
- 6.7 Subject to the terms of issue of an MCI, an MCI Holder is entitled to a claim on the surplus assets and profits of the Society in a winding-up of the Society after all senior claims, including the aggregate subscription price paid for any Shares (excluding MCIs) by Shareholder Members, have been satisfied and:
- the MCI Holder's claim ranks equally and proportionately with the claims of all other MCI Holders in the same class of MCIs; and
  - the amount of the MCI Holder's claim cannot exceed the Subscription Price of the MCI.

- 6.8 Notwithstanding anything to the contrary in this Constitution, but subject to the requirements for MCIs in the *Corporations Act*, the Board may determine that the terms of issue of any MCIs:
- entitle the MCI Holder to vote at, or prohibit the MCI Holder from voting at, any general meeting of the Society; and
  - include such terms as the Society considers necessary or desirable for those MCIs to be eligible for inclusion as regulatory capital under any applicable Prudential Standard.

### **Jointly held MCIs**

- 6.9 Where 2 or more persons are registered as the joint holders of MCIs then they are taken to hold the MCIs as joint tenants with rights of survivorship. However, the Society is not bound:
- to register more than 3 persons as joint holders of an MCI; or
  - to issue more than one certificate or holding statement for MCIs jointly held.

### **Death of joint owner**

- 6.10 If an MCI Holder who holds MCIs jointly dies, the Society will recognise only the survivor as being entitled to the MCI Holder's interest in the MCIs. The estate of the MCI Holder is not released from any liability in respect of the MCIs.

### **Variation of rights attached to MCIs**

- 6.11 The rights attached to MCIs (or a class of MCIs) may only be varied or cancelled by special resolution of the Society and:
- by a special resolution passed at a meeting of MCI Holders holding MCIs in the relevant class; or
  - with the written consent of MCI holders of at least 75% of the issued MCIs of that class.

Any variation of the rights attached to MCIs which constitute Common Equity Tier 1 Capital (as defined by APRA from time to time) of the Society is subject to the prior written approval of APRA, if the variation may affect the eligibility of such MCIs for inclusion as Common Equity Tier 1 Capital of the Society.

### **Share Certificates – MCIs**

- 6.12 If the Society is required by the *Corporations Act* to issue a share certificate to an MCI Holder in respect of one or more MCIs, the MCI Holder may require the Society to issue to the MCI Holder without charge one certificate for each class of MCIs in the Society that the MCI Holder holds, unless the terms of issue of the MCIs otherwise provide.

### **Transfer of MCIs**

- 6.13 Subject to this Constitution and the terms of issue applicable to an MCI, an MCI is transferable by any method of transfer required or permitted by the *Corporations Act*.
- 6.14 If a duly completed instrument of transfer:
- is used to transfer an MCI in accordance with Article 6.13; and
  - is left for registration at the registry of the Society, accompanied by any information that the Board properly require to show the right of the transferor to make the transfer,

the Society must, subject to the powers vested in the Board by this Constitution, register the transferee as the holder of the MCI.

### Registration as holder of MCIs

- 6.15 Except as provided by the rules of a licensed CS facility (as defined in the *Corporations Act*) which apply in relation to an MCI, a person becomes registered as an MCI Holder upon entry by the Society in its Register of Members of the person's particulars in relation to the MCI as required by the *Corporations Act*.
- 6.16 The Society must register all registrable transfer forms, split certificates, renunciations and transfers, issue certificates and transmission receipts and mark or note transfer forms without imposing a charge except where the issue of a certificate is to replace a lost or destroyed certificate.
- 6.17 The Society must retain every instrument of transfer which is registered for the period required by any applicable law.
- 6.18 The Board may refuse to register a transfer of MCIs, without having to give any reason.
- 6.19 The Board cannot refuse to register a transfer of MCIs under Article 6.18 if the transfer is either to a person holding a mortgage, charge, pledge or other security interest (or to a person acting as agent, trustee or nominee for such a person) ("Secured Party") which is given by an MCI Holder over their MCIs in the Society ("MCI Security"), or is pursuant to the exercise by a Secured Party of rights in relation to an MCI Security. The Board may request and rely on a written statement of the Secured Party certifying that the transfer is pursuant to an exercise of rights under an MCI Security.

### Voting MCI Holders

- 6.20 Subject to the *Corporations Act*, this Constitution and the terms of issue of the relevant MCI, a Voting MCI Holder is entitled to vote on resolutions at any general meeting of the Society to the extent specified in the terms of issue of the relevant MCI.
- 6.21 Subject to the *Corporations Act* and the terms of issue of the relevant MCI, a person who is both a Voting MCI Holder and a Member shall be entitled to exercise only one vote on any question arising for determination by the Members of the Society and Voting MCI Holders.

### Transmission of MCIs on MCI Holder's death

- 6.22 If an MCI Holder who does not hold MCIs jointly dies, the Society will recognise only the personal representative of the MCI Holder as being entitled to the MCI Holder's interest in the MCIs.
- 6.23 If the personal representative of the MCI Holder who has died gives the Board the information they reasonably require to establish the representative's entitlement to be registered as a holder of the MCIs:
- (a) the personal representative may:
- (i) by giving a signed notice to the Society, elect to be registered as the holder of the MCIs; or
- (ii) by giving a completed transfer form to the Society, transfer the MCIs to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the MCIs, to the same rights as the MCI Holder.

On receiving an election under this article, the Society must register the personal representative as the holder of the MCIs.

### Transmission of MCIs on MCI Holder's bankruptcy or insolvency

- 6.24 If a person entitled to MCIs because of the bankruptcy or insolvency of an MCI Holder gives the Board the information they reasonably require to establish the person's entitlement to be registered as the holder of the MCIs, the person may:
- (a) by giving a signed notice to the Society, elect to be registered as the holder of the MCIs; or
- (b) by giving a completed transfer form to the Society, transfer the MCIs to another person.

On receiving an election under this article, the Society must register the person as the holder of the MCIs.

A transfer under this article is subject to the articles that apply to transfers generally.

This article has effect subject to the *Bankruptcy Act 1966* (Cth) and the *Corporations Act*.

### Transmission of MCIs on mental incapacity

- 6.25 If a person entitled to MCIs because of the mental incapacity of an MCI Holder gives the Board the information they reasonably require to establish the person's entitlement to be registered as the holder of the MCIs:
- (a) the person may:
- (i) by giving a signed notice to the Society, elect to be registered as the holder of the MCIs; or
- (ii) by giving a completed transfer form to the Society, transfer the MCIs to another person; and
- (b) the person is entitled, whether or not registered as the holder of the MCIs, to the same rights as the MCI Holder.

On receiving an election under this article, the Society must register the person as the holder of the MCIs.

A transfer under this article is subject to the articles that apply to transfers generally.

## 7 General meetings

### Annual general meeting

- 7.1 If the Society is a public company, annual general meetings of the Society are to be held in accordance with the *Corporations Act*.

### General meeting

- 7.2 The Directors may convene a general meeting of the Society and the Directors must convene and arrange to hold a general meeting when requisitioned by Members and/or Voting MCI Holders in accordance with the *Corporations Act*.

### Notice of general meeting

- 7.3 Except where Section 249H(2) applies, at least 21 days notice must be given of a general meeting, exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given.
- 7.4 Notice of a general meeting must be given in accordance with Section 249J, and the replaceable rule in Section 249J(4) applies.

- 7.5 A notice of a general meeting must:
- (a) set out the place, date and time of meeting, and state the general nature of the business to be dealt with at the meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner; and
  - (b) state that:
    - (i) a Member or Voting MCI Holder who is entitled to attend and cast a vote at the meeting has a right to appoint a proxy; and
    - (ii) a proxy need not be a Member or Voting MCI Holder.

7.6 If a special resolution is to be proposed, the notice of meeting must set out an intention to propose the special resolution and state the resolution.

7.7 The non-receipt of notice of a general meeting by, or the accidental omission to give notice of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting.

### Postponement or cancellation of meeting

7.8 Where a general meeting (including an annual general meeting) is convened by the Directors they may, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.

7.9 Written notice of cancellation or postponement of a general meeting must be given to each Member, and Voting MCI Holder individually and such other person as is entitled under the *Corporations Act* or this Constitution and must specify the reason for cancellation or postponement (as the case may be).

7.10 A notice postponing the holding of a general meeting must specify:

- (a) a date and time for the holding of the postponed general meeting;
- (b) a place for the holding of the postponed general meeting which may be either the same as or different from the place specified in the notice convening the general meeting; and
- (c) if the postponed general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

7.11 The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed general meeting must not be less than the number of clear days notice of the general meeting required to be given by this Constitution or the *Corporations Act*.

7.12 The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the notice convening the postponed general meeting.

7.13 The accidental omission to give notice of the cancellation or postponement of a general meeting to, or the non-receipt of any such notice by, any Member, Voting MCI Holder or person entitled to notice does not invalidate that cancellation or postponement or any resolution passed at a postponed meeting.

7.14 Where:

- (a) by the terms of an instrument appointing a proxy or attorney or of an appointment of a Representative, a proxy or an attorney or a Representative is authorised to attend and

vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and

- (b) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy, power of attorney or appointment of Representative,

then, by force of this Article, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, power of attorney or appointment of Representative unless the Member or Voting MCI Holder appointing the proxy, attorney or Representative gives to the Society at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

7.15 Articles 7.8 to 7.14 (both inclusive) do not apply to a general meeting convened by Members and/or Voting MCI Holders under Section 249F or by the Directors pursuant to a requisition of Members and/or Voting MCI Holders under the *Corporations Act*.

## 8 Proceedings at general meetings

### Representation of Member and Voting MCI Holders

8.1 Subject to any rules prescribed by the Directors pursuant to Article 8.17, a Member and Voting MCI Holder entitled to vote may be present and vote in person or may be represented at any meeting of the Society by:

- (a) proxy;
- (b) attorney; or
- (c) in the case of a body corporate which is a Member or Voting MCI Holder, a Representative.

8.2 Unless the contrary intention appears, a reference to a Member or Voting MCI Holder in Article 8 means a person who is a Member or Voting MCI Holder, or is a proxy, attorney or Representative of that Member or MCI Holder.

### Quorum

8.3 The quorum for a general meeting:

- (a) is, where the meeting is convened by or upon the requisition of Members and/or Voting MCI Holders, or is to consider any resolution which was the subject of a notice from Members and/or Voting MCI Holders pursuant to section 249N of the *Corporations Act* and is not recommended by the Directors, Members entitled to attend and vote at the meeting present in person or by proxy, Attorney or representative comprising 5% of all Members at the time of the meeting; or
- (b) is otherwise, but subject to Article 8.7, five Members entitled to attend and vote at the meeting present in person or by proxy, attorney or Representative.

8.4 A Member placing a direct vote under Article 8.19 is not taken into account in determining whether or not there is a quorum at a general meeting.

8.5 An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the beginning of a meeting it is to be deemed present throughout the meeting unless the chairman of the meeting on the chairman's own motion or at the instance of a Member or Voting MCI Holder, proxy, attorney or Representative who is present otherwise declares.

- 8.6 If within 30 minutes after the time appointed for a meeting a quorum is not present, the meeting:
- (a) is dissolved if it is a meeting referred to in Article 8.3(a); and
  - (b) in any other case stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members, Voting MCI Holders and others entitled to notice of the meeting.

8.7 At a meeting adjourned under Article 8.6(b) two persons each being a Member, or a proxy, attorney or Representative of a Member present at the meeting are a quorum and, if a quorum is not present within 10 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

#### **Appointment and powers of chairman of general meeting**

8.8 If the Directors have elected one of their number as chairman of their meetings, that person is entitled to preside as chairman at a general meeting.

8.9 If a general meeting is held and:

- (a) a chairman has not been elected by the Directors; or
- (b) the elected chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chairman of the meeting (in order of precedence): a Director chosen by a majority of the Directors present; the only Director present; a Member chosen by a majority of the Members present in person or by proxy, attorney or Representative.

8.10 The chairman of a general meeting:

- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
- (b) may determine any dispute about the admission or rejection of a vote (including a vote recorded in a form of proxy);
- (c) may require the adoption of any procedure which is in the chairman's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and
- (d) may, having regard where necessary to Sections 250S and 250T, terminate discussion or debate on any matter whenever the chairman considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chairman under this Article is final.

#### **Adjournment of general meetings**

8.11 The chairman of a general meeting may, and must if so directed by the meeting, adjourn the meeting to a new day, time or place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

8.12 When a meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting.

8.13 Except as provided by Article 8.12, it is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting.

8.14 A demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

8.15 A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

#### **Voting on a resolution**

8.16 Subject to Article 8.19 and any rules prescribed by the Directors pursuant to Article 8.17, at any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded:

- (a) before the vote is taken;
  - (b) before the voting results on the show of hands are declared; or
  - (c) immediately after the voting results on the show of hands are declared,
- by:
- (d) the chairman;
  - (e) not less than 5 Members entitled to vote on the resolution; or
  - (f) Members with at least 5% of the votes that may be cast on the resolution of a poll.

On a show of hands, a declaration by the chairman is conclusive evidence of the result.

#### **Direct Voting**

8.17 The Directors may determine that at any general meeting or class of meeting, a Member who is entitled to attend and vote on a resolution at that meeting is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Society by post, fax or other electronic means approved by the Directors. The Directors may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving a direct vote in order for the vote to be valid, and the treatment of direct votes.

8.18 A direct vote on a resolution at a meeting in accordance with Article 8.17 is of no effect and will be disregarded:

- (a) if, at the time of the resolution, the person who cast the direct vote:
  - (i) is not entitled to vote on the resolution; or
  - (ii) would not be entitled to vote on the resolution if the person were present at the meeting at which the resolution is considered;
- (b) if, had the vote been cast in person at the meeting at which the resolution is considered:
  - (i) the vote would not be valid; or
  - (ii) the Society would be obliged to disregard the vote;
- (c) subject to any rules prescribed by the Directors, if the person who cast the direct vote is present in person at the meeting at the time the resolution is considered; and
- (d) if the direct vote was cast otherwise than in accordance with any regulations, rules and procedures prescribed by the Directors under Article 8.17.

8.19 Subject to any rules prescribed by the Directors, if the Society receives a valid direct vote on a resolution in accordance with Articles 8.17 and 8.18 and, prior to, after or at the same time as receipt of the direct vote, the Society receives an instrument appointing a proxy, attorney or Representative to vote on behalf of the same Member or Voting MCI Holder on that resolution,

the Society may regard the direct vote as effective in respect of that resolution and disregard any vote cast by the proxy, attorney or Representative on the resolution at the meeting.

#### Questions decided by majority

- 8.20 Subject to the requirements of the *Corporations Act*, a resolution is taken to be carried if a simple majority of votes cast by those Members and Voting MCI Holders (or the proxies, attorneys or Representatives of those Members or Voting MCI Holders) entitled to attend and vote on the resolution are in favour of it.

#### Poll

- 8.21 If a poll is properly demanded, it must be taken in the manner and at the date and time directed by the chairman and the result of the poll is the resolution of the meeting at which the poll was demanded.
- 8.22 A poll demanded on the election of a chairman or on a question of adjournment must be taken immediately.
- 8.23 A demand for a poll may be withdrawn.

#### Equality of votes – chairman's casting vote

- 8.24 If there is an equality of votes, either on a show of hands or on a poll, the chairman of the meeting is entitled to a casting vote in addition to any votes to which the chairman is entitled as a Member or Voting MCI Holder or as a proxy, attorney or Representative of a Member or Voting MCI Holder.

#### Offensive material

- 8.25 A person may be refused admission to, or required to leave and not return to, a meeting if the person:
- (a) refuses to permit examination of any article in the person's possession; or
  - (b) is in possession of any:
    - (i) electronic or recording device;
    - (ii) placard or banner; or
    - (iii) other article;

which the chairman considers to be dangerous, offensive or liable to cause disruption.

#### Entitlement to vote

- 8.26 Subject to Article 8.27 and any rights or restrictions for the time being attached to any class or classes of Shares and irrespective of the number of accounts or Shares held or whether the person is the primary joint Guarantee Member, primary joint Shareholder Member or primary joint Voting MCI Holder:
- (a) on a show of hands, each Member and Voting MCI Holder present in person and each other person present as a proxy, attorney or Representative of a Member or Voting MCI Holder has one vote.
  - (b) on a poll, each Member and Voting MCI Holder present in person or who has duly lodged a valid direct vote in respect of the relevant resolution under Article 8.17 has one vote and each person present as proxy or attorney or Representative of a Member or Voting MCI Holder has one vote for each Member or Voting MCI Holder that the person represents.

- 8.27 Subject to any rights or restrictions for the time being attached to any class or classes of Shares a person is entitled to receive notice of, attend and vote at a meeting if, and only if:

- (a) in the case of a Guarantee Member, the Member has held the minimum amount of \$500 on deposit with the Society continuously for a period of at least 90 days ending on the last preceding 30 June; or
- (b) in the case of a Shareholder Member, the Member has held at least 500 Shares (excluding MCIs) continuously for a period of at least 90 days ending on the last preceding 30 June and all calls and other sums due and presently payable by the Member in respect of the Member's Shares (excluding MCIs) have been paid.

- 8.28 A Member may be required to provide reasonable evidence to establish their voting rights under Article 8.27.
- 8.29 If a Member or Voting MCI Holder has been appointed to act as a Representative, proxy or attorney of another Member or Voting MCI Holder that person may vote both as a Member or Voting MCI Holder and for that other Member or Voting MCI Holder if the requirements of Article 8.27 are satisfied.
- 8.30 Section 250E(2) of the *Corporations Act* is excluded from application.
- 8.31 A proxy's authority to speak and vote for a Member or a Voting MCI Holder at a meeting is suspended while the Member or Voting MCI Holder is present at the meeting.

#### Joint Members' or joint Voting MCI Holder's vote

- 8.32 In the case of joint Members or joint Voting MCI Holders the vote of the primary joint Guarantee Member, the primary joint Shareholder Member or the primary joint Voting MCI Holder (as the case may be) if they tender a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders. If the primary joint Guarantee Member, the primary joint Shareholder Member or the primary joint Voting MCI Holder (as the case may be) does not tender a vote then the vote of the senior Member or senior Voting MCI Holder who tenders a vote, whether in person, proxy, attorney, or Representative will be accepted and, for this purpose, seniority is determined by the order in which the names stand in the Register of Members (as applicable).

#### Vote of Member or Voting MCI Holder of unsound mind

- 8.33 If a Member or Voting MCI Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health then the Member's or Voting MCI Holder's committee or trustee or such other person as properly has the management of the Member's or Voting MCI Holder's estate may exercise any rights of the Member or Voting MCI Holder in relation to a general meeting as if the committee, trustee or other person were the Member or Voting MCI Holder.

This article is subject to Article 6.25, in respect of a Voting MCI Holder.

#### Objection to voting qualification

- 8.34 An objection may not be raised to the right of a person to attend or vote at the meeting or adjourned meeting except at that meeting or adjourned meeting. Any such objection must be referred to the chairman of the meeting, whose decision is final.

The chairman may adjourn the meeting to allow time to assess the eligibility of Members or Voting MCI Holders to vote. A vote not disallowed under such an objection is valid for all purposes.

### **Appointment of proxy**

- 8.35 A Member or Voting MCI Holder entitled to attend and vote at a general meeting may appoint a person as the Member's or Voting MCI Holder's proxy to attend and vote for the Member or Voting MCI Holder at the meeting. A proxy need not be a Member or Voting MCI Holder.
- 8.36 A person may not act as proxy for more than 3 Members, unless that person is the chairman of the meeting.
- 8.37 An appointment of a proxy is valid if it is signed by the Member or Voting MCI Holder making the appointment and contains the following information:
- (a) the Member's or Voting MCI Holder's name and address;
  - (b) the Society's name;
  - (c) the proxy's name or the name of the office held by the proxy; and
  - (d) the meetings at which the appointment may be used.
- An appointment may be a standing one.
- 8.38 An undated appointment is to be taken to have been dated on the day it is given to the Society.
- 8.39 An appointment may specify the way the proxy is to vote on a particular resolution. In that event:
- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
  - (b) if the proxy has two or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
  - (c) if the proxy is the chairman, the proxy must vote on a poll, and must vote that way; and
  - (d) if the proxy is not the chairman, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a Member or Voting MCI Holder, this Article does not affect the way that the person can cast any voting rights that person has.

- 8.40 Except to the extent that the appointment of a proxy expressly limits the exercise by the proxy of the power to vote at a meeting, a proxy has the same rights to attend, vote and otherwise act at the meeting as a Member or Voting MCI Holder attending the meeting in person.
- 8.41 An appointment of a proxy does not need to be witnessed.
- 8.42 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.
- 8.43 An instrument appointing a proxy is to be taken to confer authority to demand or join in demanding a poll.

### **Receipt of proxy and other instruments**

- 8.44 An instrument appointing a proxy may not be treated as valid unless the instrument (and any power of attorney under which the instrument is signed or, in the case of an unregistered power, a copy of that power or authority certified as a true copy) is received by the Society not less than 48 hours before the time for holding the meeting or adjourned meeting at

which the person named in the instrument proposes to vote at the Registered Office or at any other place specified for that purpose in the notice convening the meeting.

If the notice convening a general meeting specifies a facsimile number to which a proxy and related materials may be sent, then receipt by the facsimile machine on that number of a complete and legible facsimile of the document will be taken as a receipt by the Society at a specified place for the purposes of this Article.

### **Validity of vote in certain circumstances**

- 8.45 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding:
- (a) the previous death or unsoundness of mind of the principal;
  - (b) the revocation of the instrument, or of the authority under which the instrument was executed, or of the power; or
  - (c) the execution of a transfer of the Share in respect of which the instrument or power is given,

if notice in writing of the death, unsoundness of mind, revocation or transfer has not been received by the Society at the Registered Office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

### **Director entitled to notice of meeting**

- 8.46 A Director is entitled to receive notice of and to attend all general meetings and all separate general meetings of the holders of any class of Shares and is entitled to speak at those meetings.

### **Auditor entitled to notice of meeting**

- 8.47 The Society must give its auditor (if any):
- (a) notice of a general meeting in the same way that a Member and Voting MCI Holder is entitled to receive notice; and
  - (b) any other communications relating to the general meeting that a Member and Voting MCI Holder is entitled to receive.

### **Special Resolutions**

- 8.48 A special resolution to modify or repeal this Constitution, or any Article relating to:
- (a) the rights of Members, Guarantee Members or Shareholder Members or the rights attaching to a class or classes of Shares (excluding MCIs);
  - (b) the residence requirements of Directors;
  - (c) the qualifications of Directors;
  - (d) the entitlement of Members to vote at a general meeting;
  - (e) the quorum at a meeting of Members;
  - (f) the profits, surplus assets or reserves of the Society, except where the modification relates to the rights of MCI Holders to surplus assets or profits under Article 6.7;
  - (g) the distribution of assets on winding up, except where the modification relates to the rights of MCI Holders to surplus assets or profits under Article 6.7; or
  - (h) this Article 8.48,

is only effective if 5% or more of all Members eligible to vote on the resolution either in person or by proxy, attorney or Representative vote on the resolution.

## 9 The Directors

### Number of Directors

- 9.1 The number of Directors is the number, not less than 5 nor more than 9, or such lesser number as is fixed by the Directors from time to time, but the number so fixed at a particular time must not be fewer than the number of Directors when the determination takes effect. The Directors in office at the time of adoption of this Constitution continue in office subject to this Constitution. The Society in general meeting may by resolution increase or reduce the number of Directors.

### Residence of Directors

- 9.2 At least one half of the number of Directors from time to time in office must be persons who are ordinarily resident in the Hunter Region. No person may be appointed as a Director if their appointment would result in contravention of this Article 9.2. If a Director ceases to be ordinarily resident in the Hunter Region or a person who is a Director ordinarily resident in the Hunter Region ceases to hold office as a Director so as to result in a contravention of this Article 9.2, the remaining Directors must take all reasonable steps to remedy the contravention as soon as practicable.

### Rotation of Directors

- 9.3 At each annual general meeting the number of Directors in office shall determine the number of Directors who must retire. If the number of Directors in office at the time of the annual general meeting is seven or more, then two Directors must retire, otherwise one Director must retire from office.

In determining the number of Directors to retire, account is not to be taken of a Director who only holds office until the conclusion of the meeting in accordance with Article 9.8 or a Managing Director or Executive Director.

### Office held until conclusion of meeting

- 9.4 A retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

### Directors to retire

- 9.5 The Directors to retire at any annual general meeting in accordance with Article 9.3 must be those who have been longest in office since their last election, but, as between persons who were last elected as Directors on the same day, those to retire must be determined by lot, unless they otherwise agree among themselves.

### Director elected at general meeting

- 9.6 The Society may, at a general meeting, at which a Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

### Eligibility for election as Director

- 9.7 Except for:
- (a) a person who is eligible for election or re-election under Article 9.4 or 9.8; or
  - (b) a person recommended for election by the Directors,
- a person is not eligible for election as a Director at a general meeting of the Society unless a consent to nomination signed by the person has been lodged at the Registered Office at least 30 business days before the general meeting or any other period permitted under the *Corporations Act*.

### Casual vacancy or additional Director

- 9.8 The Society in general meeting may by resolution and the Directors may at any time appoint any person to be a Director to hold office until the next annual general meeting, either to fill a casual vacancy or as an addition to the existing Directors. A person appointed to be a Director under this Article:
- (a) if appointed by the Society in general meeting to fill a casual vacancy, is subject to retirement at the same time as if the person had become a Director on the day on which the Director in whose place they are appointed was last elected a Director; and
  - (b) if appointed by the Directors and is not a Managing Director or Executive Director who is exempt under Article 11.37, holds office until the conclusion of the next annual general meeting of the Society but is eligible for election as a Director at that meeting.

### Removal of Director

- 9.9 The Society in general meeting may by resolution under Section 203D remove a Director from office as a Director.

### Qualification of Directors

- 9.10 A Director is not required to hold a Share in the Society but must:
- (a) be a Member;
  - (b) have a minimum of \$2000 invested with the Society for a period of not less than 3 years immediately prior to appointment as a Director; and
  - (c) maintain the minimum Deposit of \$2000 throughout the Director's period of office.

The requirement in paragraph (b) does not apply to Directors appointed prior to 29 September 2000.

- 9.11 The Directors may at their discretion vary or waive some or all of the requirements of Article 9.10 in relation to a particular Director.

### Remuneration of Directors

- 9.12 Subject to Article 9.14, the Directors are entitled to be paid out of the funds of the Society as remuneration for their services as Directors such sum accruing from day to day as the Society in general meeting determines.
- 9.13 In the absence of apportionment determined by the meeting, the Directors may determine how the sum for their remuneration is to be apportioned among them (excluding the remuneration of any employee Director in respect of their employment) and how and when it is to be paid.
- 9.14 If the number of Directors in office is greater than the number in office when the Directors' remuneration was last determined (whether at a general meeting or by Article 9.12) each additional Director is entitled, until the remuneration of the Directors is next determined at a general meeting, to be paid as remuneration for services as a Director an amount per annum up to a limit obtained by dividing the aggregate amount paid to the other Directors as remuneration for their services as Directors by the number of the other Directors.
- 9.15 If a Director is required to perform services for the Society otherwise than as a Director, then the Society may pay the Director an additional amount for that service.

9.16 The Society must pay a retired Director, or the estate of a Director who dies in office, a retirement benefit in recognition of past services calculated at the maximum limit permitted by the *Corporations Act*. This Article only applies to Directors first elected prior to 31 December 2010.

#### Travelling expenses

9.17 A Director is also entitled to be reimbursed out of the funds of the Society such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a committee or when otherwise engaged on the business of the Society.

#### Director's interests

9.18 A Director is not disqualified by the Director's office and the fiduciary relationship established by it from holding any office or place of profit, other than that of auditor, under the Society or a related body corporate of the Society. A Director may, subject to the *Corporations Act*:

- (a) be or become a director of or otherwise hold office or a place of profit in any other company promoted by the Society or in which the Society may be interested as vendor, shareholder or otherwise;
- (b) contract or make any arrangement with the Society or any related body corporate whether as vendor, purchaser, broker, solicitor or accountant or other professional person or otherwise and any contract or arrangement entered or to be entered into by or on behalf of the Society or any related body corporate in which any Director is in any way interested is not avoided for that reason; and
- (c) participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Society or any related body corporate, or any of their respective predecessors in business or their dependants or persons connected with them.

9.19 A Director who:

- (a) holds any office or place of profit under the Society;
- (b) holds any office or place of profit referred to in Article 9.18(a);
- (c) is involved in a contract or arrangement referred to in Article 9.18(b); or
- (d) participates in an association or otherwise under Article 9.18(c),

is not by reason only of that fact or any interest resulting from it or the fiduciary relationship established by it liable to account to the Society for any remuneration or other benefits accruing from it.

9.20 A Director or a firm of which the Director is a partner or employee may act in a professional capacity, other than as auditor, for the Society or any related body corporate and a Director or a Director's firm is entitled to remuneration for professional services as if the relevant Director was not a Director.

9.21 Each Director must disclose that Director's interests to the Society in accordance with the *Corporations Act*.

9.22 A Director who has a material personal interest in a matter that is being considered at a meeting of the Directors may not:

- (a) vote on the matter (or in relation to a proposed resolution

specified in Section 195(2) in relation to the matter, whether in relation to that or a different Director); or

- (b) be present while the matter (or a proposed resolution of that kind) is being considered at the meeting,

except as permitted by Section 195(1). Except as provided by this Article, a Director is not disqualified from voting as contemplated by paragraph (a) or from being present as contemplated by paragraph (b).

9.23 The Director may be counted in the quorum present at any Director's meeting at which the contract, proposed contract or arrangement or other matter is considered if the Director is permitted by the *Corporations Act* to be present during the consideration.

9.24 For the purposes of Article 9.22, a Director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure, the Director against a liability incurred by the Director as an officer of the Society or of a related body corporate. This Article does not apply if the Society is the insurer.

9.25 The restrictions contained in Article 9.22 may at any time or times be suspended or relaxed to any extent and either prospectively or retrospectively by resolution of the Society in general meeting, if that is permitted by the *Corporations Act*.

9.26 If a Director has a material personal interest in a matter the Director may not participate in the execution of any instrument by or on behalf of the Society and whether through signing or sealing the same or otherwise.

#### Vacation of office of Director

9.27 In addition to the circumstances in which the office of a Director becomes vacant under the *Corporations Act*, the office of a Director becomes vacant if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) resigns from the office by notice in writing to the Society;
- (c) is removed from office under Article 9.5;
- (d) retires from office under Article 9.6;
- (e) is not present personally or by an Alternate Director or by a proxy at 3 consecutive meetings of the Directors without leave of absence from the Directors;
- (f) dies;
- (g) ceases to be a Member of the Society; or
- (h) becomes an employee of the Society (except if appointed under Article 11.35);
- (i) fails to maintain at a minimum, the Deposit requirement specified in Article 9.10 or determined under Article 9.11 (unless this requirement has been waived by the Directors under Article 9.11) and the situation is not rectified within 5 business days of the breach being notified to the Director;
- (j) is 3 months in arrears in relation to any money due to the Society and has failed to make arrangements for payment satisfactory to the Society; or
- (k) voluntarily resigns from the office of Managing Director or Executive Director.

## 10 Powers and duties of Directors

### Directors to govern Society

- 10.1 The business of the Society is to be governed by the Directors, who may exercise all such powers of the Society as are not, by the *Corporations Act* or by this Constitution, required to be exercised by the Society in general meeting.
- 10.2 Without limiting the generality of Article 10.1, the Directors may exercise all the powers of the Society to borrow or raise money, to charge any property or business of the Society or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Society or of any other person.

### Power to delegate

- 10.3 Without limiting Article 9.5, the Directors may delegate all or any of their powers, authorities or discretions.

### Appointment of attorney

- 10.4 The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Society for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.
- 10.5 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.

### Minutes

- 10.6 The Directors must cause minutes of meetings to be made and kept in accordance with the *Corporations Act*.

### Execution of Society cheques, etc

- 10.7 All cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Society, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Directors determine from time to time.

### Confidentiality

- 10.8 Except as otherwise required by law, every Director and other agent or officer of the Society must:
- (a) keep secret all aspects of all transactions of the Society except:
- (i) to the extent necessary to enable the Director, agent or officer to perform their duties to the Society; and
- (ii) as required by law; and
- (b) if requested by the Directors, sign and make a declaration not to disclose or publish any aspect of any transaction of the Society.

### Custody of papers

- 10.9 All books of account, securities, documents and papers of the Society other than such (if any) as the Board may direct to be kept elsewhere will be kept at the Registered Office of the Society in such manner and with such provisions for their security as the Board directs.

### Registered Office

- 10.10 The Registered Office and principal place of actual management of the Society must at all times be located in Newcastle City.

## 11 Proceedings of Directors

### Directors' meetings

- 11.1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 11.2 A Director may at any time, and the Secretary must on the written request of a Director, convene a Directors' meeting.
- 11.3 Except as specified in Article 11.4, at least 48 hours notice must be given to each Director of all Directors' meetings.
- 11.4 Directors' meetings may be convened on less than 48 hours notice where:
- (a) the Chairman determines that there are exceptional circumstances; or
- (b) a majority of Directors authorise the Secretary to convene a meeting on shorter notice.
- 11.5 Directors' meetings shall be held at least every two months.

### Notice of meeting

- 11.6 Each Director may provide an address and/or an email address to which notices may be sent. It is acceptable that notice of any meeting and any other communication with a Director is given to any address or email address provided by the Director. If it is known that a Director is outside Australia at the time that notice is given, the notice must be sent by email to the Director's nominated email address if the Director has provided an email address.

### Questions decided by majority

- 11.7 Questions arising at a Directors' meeting are to be decided by a majority of votes of Directors present and entitled to vote and any such decision is for all purposes to be deemed a decision of the Directors.
- 11.8 A person who is present at a Directors' meeting as an Alternate Director or as a proxy for another Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director or proxy, and if that person is also a Director has one vote as a Director in that capacity.

### Chairman's casting vote

- 11.9 In the event of an equality of votes, the chairman of the Directors' meeting has a casting vote.

### Alternate Directors and proxies

- 11.10 Subject to the *Corporations Act*, a Director may appoint a person approved by a majority of the Directors to be an Alternate Director in the Director's place during such period as the Director thinks fit.
- 11.11 An Alternate Director is entitled to notice of all Directors' meetings and, if the appointor does not attend a Directors' meeting, is entitled to attend and vote in the appointor's stead.
- 11.12 An Alternate Director may exercise all the powers except the power to appoint an Alternate Director and, subject to the *Corporations Act*, may perform all the duties of the appointor insofar as the appointor has not exercised or performed them.
- 11.13 Whilst acting as a Director, an Alternate Director is responsible to the Society for the Alternate Director's own acts and defaults and the appointor is not responsible for them.

- 11.14 An Alternate Director is not entitled to receive from the Society any remuneration or benefit under Article 9.12, 9.15 or 9.16.
- 11.15 The appointment of an Alternate Director may be terminated at any time by the appointor notwithstanding that the period of the appointment of the Alternate Director has not expired, and terminates in any event if the appointor ceases to be a Director.
- 11.16 An appointment, or the termination of an appointment, of an Alternate Director must be effected by a notice in writing signed by the Director who makes or made the appointment and delivered to the Society.
- 11.17 An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.
- 11.18 A Director may attend and vote by proxy at a Directors' meeting if the proxy:

- (a) is another Director; and
- (b) has been appointed in writing under the signature of the appointor or by an email from the appointor,

and such an appointment may be general or for one or more particular Directors' meetings. A Director present as a proxy for another Director who would be entitled to vote if present at the Directors' meeting has one vote for that other Director and one vote as a Director in that capacity.

#### **Quorum for Directors' meeting**

- 11.19 At a Directors' meeting, the number of Directors whose presence in person or by proxy is necessary to constitute a quorum is at least half the Directors then in office or any greater number determined by the Directors from time to time. For the purposes of this Article, a quorum is present during the consideration of a matter at a Directors' meeting if at least half of the Directors then in office who are entitled to vote on any motion in relation to that matter are present.

If, within 30 minutes of the time appointed for a Directors' meeting, a quorum is not present the meeting will stand adjourned to the same day, time and place in the next week.

#### **Remaining Directors may act**

- 11.20 The continuing Directors may act notwithstanding a vacancy in their number but, if and so long as their number is reduced below the minimum fixed by Article 9.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or of convening a general meeting.

#### **Chairman**

- 11.21 The Directors must elect a Director as chairman of Directors' meetings and may determine the period for which the chairman will hold office. To be eligible to be elected and to continue to hold office as Chairman, the Director must be ordinarily resident in the Hunter Region.
- 11.22 The chairman, whilst remaining qualified to act as a Director, may only be removed from office as chairman by resolution of which notice has been given to all Directors not less than 14 days before the Directors' meeting at which the resolution is proposed. The Directors' meeting must be one which the chairman attends unless the chairman wilfully absents himself or herself from that meeting.
- 11.23 If no chairman is elected or if the chairman is not present at any Directors' meeting within 10 minutes after the time appointed

for the meeting to begin, the Directors present must elect a Director to be chairman of the meeting.

- 11.24 A chairman who ceases to be a Director, also ceases to be the chairman.

#### **Directors' committees**

- 11.25 The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a Board, to a committee or committees consisting of at least one of their number and such other persons as they think fit.
- 11.26 A committee to which any powers have been delegated under Article 11.25 must exercise the powers delegated in accordance with any directions of the Directors and a power so exercised is deemed to have been exercised by the Directors.
- 11.27 The Board will ordinarily, when electing the membership of a committee, appoint one of the committee members as chairman of the committee meetings. If a meeting of a committee is held and:

- (a) a chairman has not been elected; or
- (b) the chairman is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members involved may elect one of their number to be chairman of the meeting.

- 11.28 A committee may meet and adjourn as it thinks proper.
- 11.29 Questions arising at a meeting of a committee are to be determined by a majority of votes of the members involved and voting. The chairman, in addition to the chairman's deliberative vote, has a casting vote.

#### **Written resolution by Directors**

- 11.30 If:
- (a) the text of a proposed written resolution is sent to all of the Directors who are eligible to vote on the resolution; and
  - (b) at least two-thirds of the Directors eligible to vote on the resolution (being at least a quorum) sign or consent to the written resolution,

then that resolution is taken to have been passed at a Directors' meeting held at the time when the written resolution was signed or consented to by the last eligible Director (constituting two-thirds of them) to sign or consent to it and the written resolution should be minuted accordingly.

- 11.31 A written resolution may consist of several documents in like form, each signed or consented to by one or more Directors, including:
- (a) a signed document in the form of a facsimile transmission; or
  - (b) a document consented to by a Director by giving the Secretary a written notice, including by email or other electronic means, signifying their assent to the resolution.

#### **Use of technology**

- 11.32 A Directors' meeting may be called or held using any technology consented to by each Director. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting.

- 11.33 The Directors need not all be physically present in the same place for a Directors' meeting. A Director who participates in a Directors' meeting held in accordance with this Article is deemed to be present and entitled to vote at the meeting.

#### **Validity of acts of Directors**

- 11.34 All acts of the Directors, Alternate Directors, a committee or a person or committee or member of a committee are valid notwithstanding that it is afterwards discovered that there was some defect in the appointment, election or qualification of them or any of them or that they or any of them were disqualified or had vacated office.

#### **Appointment of Managing and Executive Directors**

- 11.35 Subject to Article 11.36, the Directors may appoint one of their number to the office of Managing Director or as an Executive Director or to any other office, except auditor, of employment under the Society for the period and on the terms they think fit. The Directors may, subject to the terms of any contract between the relevant Director and the Society, at any time remove or dismiss any Managing Director or Executive Director from that office and may appoint another Director in their place. A Managing Director or Executive Director automatically ceases to be a Managing Director or Executive Director on ceasing to be a Director.

- 11.36 The Managing Director must be employed in a full-time capacity in that role.

#### **Managing and Executive Directors Exempt**

- 11.37 A Managing Director or Executive Director is, while holding that office, exempt from retirement by rotation under Article 9.3.

#### **Remuneration of Managing and Executive Directors**

- 11.38 The remuneration of a Managing Director or an Executive Director may be fixed by the Directors and may be by way of salary or commission or participation in profits or by all or any of those modes.

#### **Powers of Managing and Executive Directors**

- 11.39 The Directors may confer on a Managing Director or an Executive Director any of the powers exercisable by them, on such terms and conditions and with such restrictions as they think fit. The Directors may at any time withdraw or vary any of the powers conferred on a Managing Director or an Executive Director.

## **12 Secretary**

#### **Appointment of Secretary**

- 12.1 There must be at least one Secretary who is to be appointed by the Directors for the period and on the terms they think fit. The Secretary must be an employee of the Society.

#### **Suspension and removal of Secretary**

- 12.2 The Directors may suspend or remove a Secretary from that office.

#### **Powers, duties and authorities of Secretary**

- 12.3 The Directors may vest in a Secretary such powers, duties and authorities as they may from time to time determine and the Secretary must exercise all such powers and authorities subject at all times to the control of the Directors.

## **13 Seals**

#### **Common and duplicate common seal**

- 13.1 The Society may but need not have:
- a common seal; and
  - a duplicate common seal, which must be a copy of the common seal with the words "duplicate seal", "Share seal" or "certificate seal" added.
- 13.2 The Directors must provide for the safe custody of each seal of the Society.

#### **Use of common seal**

- 13.3 The common seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the common seal. Every document to which the common seal is affixed must be signed by any two persons being a Director, a Secretary or another person or persons appointed by the Directors to sign that document or a class of documents in which that document is included.

## **14 Inspection of records**

#### **Inspection by Members and MCI Holders**

- 14.1 Subject to the *Corporations Act*, the Directors may determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Society or any of them will be open to the inspection of Members and MCI Holders (other than Directors), and a Member or MCI Holder (other than a Director) does not have the right to inspect any document of the Society except as provided by law or authorised by the Directors or by the Society in general meeting.

## **15 Reserves**

#### **Reserves and profits carried forward**

- 15.1 The Directors may set aside out of the profits or other surplus assets of the Society such sums as they think proper as reserves, to be applied, at the discretion of the Directors, for any purpose for which the profits of the Society may be properly applied.
- 15.2 Pending any such application, the reserves may, at the discretion of the Directors, be used in the business of the Society or be invested in such investments as the Directors think fit.
- 15.3 The Directors may carry forward so much of the profits remaining as they consider without transferring those profits to a reserve.
- 15.4 The Directors may carry forward profits as retained earnings.

## 16 Service of documents

### Service of documents

- 16.1 This Part does not apply to a notice of a general meeting, nor in relation to an MCI and the MCI Holder of that MCI, to the extent provided in the terms of issue of that MCI.
- 16.2 The Society may give a document to a Member or MCI Holder:
- (a) personally;
  - (b) if to a Member – by sending it by post to the address for the Member in the Register of Members or an alternative address nominated by the Member;
  - (c) if to a Member – by sending it to a fax number or electronic address nominated by the Member;
  - (d) if to an MCI Holder – in any manner permitted by the terms of issue of the MCIs; or
  - (e) by any other means permitted by law.
- 16.3 If a document is sent by post, delivery of the document is deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and the document is deemed to have been delivered on the day after the date of its posting.
- 16.4 If a document is sent by facsimile or electronic transmission, delivery of the document is to be deemed:
- (a) to be effected by properly addressing and transmitting the facsimile or electronic transmission, and
  - (b) to have been delivered on the day following its despatch.
- 16.5 A document may be given by the Society to joint Members or joint MCI Holders by giving the document to the primary joint Member or MCI Holder.
- 16.6 Subject to Article 16.1, a person who by operation of law, transfer or other means whatsoever becomes entitled to any Share is absolutely bound by every document given in accordance with this Article to the person from whom that person derives title prior to registration of that person's title in the Register of Members.

## 17 Audit and accounts

### Society to keep accounts

- 17.1 The Directors must cause the Society to keep accounts of the business of the Society in accordance with the requirements of the *Corporations Act*.

### Society to audit accounts

- 17.2 The Directors must cause the accounts of the Society to be audited in accordance with the requirements of the *Corporations Act*.

## 18 Winding up

### Distribution of assets

- 18.1 Subject to Articles 18.2, 5.2 and 6.7, if the Society is wound up, any surplus property of the Society (but not including the Transferred Reserves until the expiry of 7 years from the Transfer Date) after first paying the Deposits and all other liabilities, then repaying the capital paid up on each Share,

will be distributed by the liquidator among the Shareholder Members and Guarantee Members in the following order:

- (a) in satisfaction of any priority entitlements of Shareholder Members in accordance with the terms of issue of any Shares (excluding MCIs);
- (b) to Shareholder Members in proportion to the paid up amount of any Shares (excluding MCIs) held by them as at the date of commencement of the winding up of the Society and subject to the terms of issue of any Share (excluding MCIs);
- (c) to Guarantee Members in proportion to the amount invested with the Society as at the date of commencement of the winding up of the Society.

- 18.2 Transferring Members are entitled to participate equally in the Transferred Reserves if the Society is wound up within a period of 7 years from the Transfer Date. This right lapses on the first to occur of:

- (a) the account of the Transferring Member being closed; and
- (b) the expiry of 7 years from the Transfer Date.

- 18.3 The liquidator may, with the sanction of a special resolution of the Society, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Member is compelled to accept any shares or other securities in respect of which there is any liability.

## 19 Indemnity and insurance

### Indemnity of officers

- 19.1 Every person who is or has been:
- (a) a Director of the Society or of a wholly-owned subsidiary of the Society;
  - (b) a Secretary of the Society or of a wholly-owned subsidiary of the Society; or
  - (c) a person making, or participating in making, decisions that affect the whole, or a substantial part, of the business of the Society or of a wholly-owned subsidiary of the Society; or
  - (d) a person having the capacity to affect significantly the financial standing of the Society or of a wholly-owned subsidiary of the Society,

is entitled to be indemnified out of the property of the Society against:

- (e) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (f) all legal costs incurred in by the person in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

unless and to the extent:

- (g) the Society is forbidden by statute to indemnify the person against the liability or legal costs; or
- (h) an indemnity by the Society of the person against the liability or legal costs would, if given, be made void by statute.

## **Insurance**

- 19.2 The Society may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who has or has had a capacity mentioned in paragraph (a), (b), (c) or (d) of Article 19.1 against liability incurred by the person in that capacity, including a liability for legal costs, unless:
- (a) the Society is forbidden by statute to pay or agree to pay the premium; or
  - (b) the contract would, if the Society paid the premium, be made void by statute.

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