

Constitution of Legal Super Pty Limited

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Constitution of Legal Super Pty Limited

Date 9 October 2014

Parties

Legal Super Pty Limited ACN 004 455 789, a proprietary company limited by shares.

1 Definitions and interpretation

1.1 Definitions

In this Constitution:

Australian Services Union means the organisation registered under the *Fair Work (Registered Organisations) Act 2009* (Cth) as the ‘Australian Municipal, Administrative, Clerical and Services Union’ and trading as the ‘Australian Services Union - Victorian Private Sector branch’ or, if that union ceases to exist:

- (a) any union approved by the Board which arises following the merger or amalgamation of the Australian Services Union with any one or more other unions; or
- (b) in circumstances where paragraph (a) cannot be applied, such other union as may be approved by ordinary resolution of the shareholders,

which represents the interests of the members of legalsuper.

Chair means the person occupying the position of Chair or acting Chair of the Directors under rule 45.

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

Deputy Chair means a person appointed as Deputy Chair pursuant to rule 45(a).

Director means a person appointed or elected to the office of Director of the company in accordance with this Constitution and includes any alternate Director acting as a Director and, where the context permits, a sole Director.

election includes appointment and nomination.

Employer Director means a Director appointed pursuant to rule 32(d) or rule 32(e) or a person appointed to fill a vacancy among the Employer Directors pursuant to rule 40.

Independent Director means a Director appointed pursuant to rule 32(f) or rule 32(g).

legalsuper means the superannuation fund known as legalsuper established and governed by trust deed dated 6 March 1989 (as amended from time to time).

LIV means Law Institute of Victoria Limited (ACN 075 475 731).

LSNSW means The Law Society of New South Wales (ACN 000 000 699).

Member Director means a Director appointed pursuant to rule 32(a) or 32(b) or 32(c) or a person appointed to fill a vacancy among the Member Directors pursuant to rule 40.

person and words importing persons means any person including partnerships, associations and bodies corporate, unincorporated bodies and all other entities or associations recognised by law as well as individuals.

Secretary means a person appointed as, or to perform the duties of, secretary of the company.

Securities includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity.

Shareholder Present means, in connection with a meeting, the shareholder present at the venue or venues for the meeting, in person or by proxy, by attorney or, where the shareholder is a body corporate, by representative.

The Victorian Bar Inc means the organisation incorporated under the *Associations Incorporation Act 1981 (Vic)* and known as ‘The Victorian Bar Inc’.

United Services Union means the ‘New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union’ trading as the ‘United Services Union’ or, if that union ceases to exist:

- (a) any union approved by the Board which arises following the merger or amalgamation of the United Services Union with any one or more other unions; or
- (b) in circumstances where paragraph (a) cannot be applied, such other union as may be approved by ordinary resolution of the shareholders,

which represents the interests of the members of legalsuper.

2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

- (c) A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.
- (d) A word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution.

3 Replaceable rules

The replaceable rules contained in the Corporations Act do not apply to the company.

4 Transitional

- (a) This Constitution supersedes the constitution in force immediately before the adoption of this Constitution.
- (b) Everything done under any previous constitution of the company continues to have the same operation and effect after the adoption of this Constitution as if properly done under this Constitution. In particular (without limitation) every Director, alternate Director and Secretary in office immediately before the adoption of this Constitution is taken to have been appointed and continues in force under this Constitution.

5 Proprietary company and superannuation trustee company provisions

- (a) The company is a proprietary company.
- (b) The number of shareholders of the company is limited to 50 shareholders.
- (c) The company is maintained for the purpose of acting solely as the trustee of a regulated superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993.
- (d) The income and property of the company, however derived, shall be applied solely for the promotion of the objectives of the company and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to the members of the company except on a winding up of the company under rule 54.

Capital

6 Issue of Securities

Without affecting any special rights conferred on the holders of any Securities, any Securities may be issued with preferred, deferred or other special rights, obligations or restrictions, whether in regard to dividends, voting, return of share capital, payment of calls or otherwise, as the Directors may determine and on any terms the Directors consider appropriate.

7 Directors' power to issue shares

Except as provided by contract or this Constitution to the contrary, all unissued shares are under the control of the Directors who may grant options on the shares, issue or otherwise dispose of the shares on the terms and conditions and for the consideration they think fit. An issue of shares of the same class as an existing class of shares is not to be considered to constitute a variation of the rights of the holders of shares in the existing class. Shares may only be issued to a person who has been approved by a special resolution of the shareholders.

8 Recognition of third party interests

- (a) Except as required by law, the company is not bound to recognise a person as holding a Security on any trust.
- (b) Whether or not it has notice of the rights or interests concerned, the company is not bound to recognise:
 - (i) any equitable, contingent, future or partial claim to, or interest in, any Security or unit of a Security; or
 - (ii) any other right in respect of a Security,

except an absolute right of ownership of the Security holder or as otherwise provided by this Constitution or by law.

9 Surrender of Securities

In their discretion, the Directors may accept a surrender of Securities by way of compromise of any question as to whether or not those Securities have been validly issued or in any other case where the surrender is within the powers of the company. Any Securities surrendered may be sold or re issued in the same manner as forfeited shares.

10 Joint holders

Where two or more persons are registered as the holders of any Securities, they are considered to hold the Securities as joint tenants with benefits of survivorship subject to the following provisions:

- (a) the company is not bound to register more than three persons as the holders of the Securities (except in the case of personal representatives of a deceased Security holder);
- (b) the joint holders of the Securities are liable severally as well as jointly in respect of all payments which ought to be made in respect of the Securities;
- (c) on the death of any one of the joint holders, the remaining joint holders are the only persons recognised by the company as having any title to the Securities but the

Directors may require evidence of death and the estate of the deceased joint holder is not released from any liability in respect of the Securities;

- (d) any one of the joint holders may give a receipt for any dividend, bonus or return of capital payable to the joint holders in respect of the Securities;
- (e) only the person whose name stands first in the Securities register as one of the joint holders of the Securities is entitled, if the company determines to issue certificates for Securities, to delivery of a certificate relating to the Securities or to receive notices from the company and any notice given to that person is considered notice to all the joint holders; and
- (f) any one of the joint holders may vote at any meeting of the company either personally or by properly authorised representative, proxy or attorney, in respect of the Securities as if that joint holder was solely entitled to the Securities. If more than one of the joint holders are present personally or by properly authorised representative, proxy or attorney, only the vote of the joint holder whose name appears first in the Securities register counts.

Certificates for Securities

11 Certificates

Directors may determine to issue certificates for Securities of the company and to cancel any certificates on issue and to replace lost destroyed or defaced certificates on issue on the basis and in the form they determine from time to time.

Transfer of Securities

12 Transfers

- (a) No transfer of any Securities may be registered unless a proper instrument of transfer, in writing in the usual or common form or in any form the Directors may prescribe or in a particular case accept, signed by the transferor and the transferee and properly stamped (if necessary) is delivered to the company (but the Directors may dispense with the execution of the instrument by the transferee if the Directors think fit).
- (b) The transferor is considered to remain the holder of the Securities transferred until the name of the transferee is entered on the Securities register.

13 Directors may refuse to register

- (a) The Directors may in their discretion refuse to register any transfer of Securities and may decline to give their reasons and grounds for doing so.
- (b) Where the Directors resolve to refuse to register a transfer of Securities, the Directors must notify the transferee within two months of the date of lodgement of the transfer with the company.

- (c) A person may not transfer any Securities without the consent of the Board.

14 Transfer and certificate (if any)

- (a) Every transfer must be left for registration at the registered office of the company or any other place the Directors determine. Unless the Directors otherwise determine either generally or in a particular case, the transfer is to be accompanied by the certificate for the Securities to be transferred. In addition, the transfer is to be accompanied by any other evidence which the Directors may require to prove the title of the transferor, the transferor's right to transfer the Securities, execution of the transfer or compliance with the provisions of any law relating to stamp duty.
- (b) Subject to rule 14(a), on each application to register the transfer of any Securities or to register any person as the holder in respect of any Securities transmitted to that person by operation of law or otherwise, the certificate specifying the Securities in respect of which registration is required must be delivered to the company for cancellation and on registration the certificate is considered to have been cancelled.
- (c) Each transfer which is registered may be retained by the company for any period determined by the Directors after which the company may destroy it.

Transmission of Securities

15 Transmission on death

- (a) Where a Security holder dies:
- (i) the legal personal representatives of the deceased, where the Security holder was a sole holder or a joint holder holding as a tenant in common; and
- (ii) the survivor or survivors, where the Security holder was a joint holder,
- are the only persons recognised by the company as having any title to the Security holder's interest in the Securities of the company (as the case may be).
- (b) Subject to the Corporations Act, the Directors may require evidence of a Security holder's death as they determine.
- (c) This rule does not release the estate of a deceased joint holder from any liability in respect of any Security that had been jointly held by the holder with other persons.

16 Transmission by operation of law

A person (a **transmittee**) who establishes to the satisfaction of the Directors that the right to any Securities has devolved on the transmittee by will or by operation of law may be registered as a holder in respect of the Securities or may (subject to the provisions in this Constitution relating to transfers) transfer the Securities. The Directors have the same right

to refuse to register the transmittee as if the transmittee was the transferee named in a transfer presented for registration.

Alteration of capital

17 Power to alter share capital

The company may reduce or alter its share capital in any manner provided for by the Corporations Act. The Directors may do anything which is required to give effect to any resolution authorising reduction or alteration of the share capital of the company; and without limitation, may make provision for the issue of fractional certificates or the sale of fractions of shares and the distribution of net proceeds as they think fit.

General meetings

18 General meetings

- (a) A Director may convene a general meeting of the company whenever the Director thinks fit.
- (b) Any Director may cancel any meeting convened by that Director by notice in writing to all persons who were entitled to receive notice of that meeting, except where the cancellation or postponement would be contrary to the Corporations Act. . The non-receipt of a notice of cancellation or postponement by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the cancellation or postponement or any resolution passed at a postponed meeting.

19 Notice of general meetings

A notice of a general meeting is to specify the place and time of the meeting, the general nature of the business to be transacted at the meeting and any other matters required by the Corporations Act. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate any resolution passed at the meeting.

20 Quorum

- (a) No business may be transacted at any general meeting except, subject to rule 21, the election of the Chair unless a quorum of shareholders is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, two Shareholders Present constitutes a quorum.
- (c) If there is not a quorum at a general meeting within 30 minutes after the time specified in the notice of the meeting, the meeting is dissolved unless the Chair or the Directors adjourn the meeting to a date, time and place determined by the Chair or the

Directors. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

21 Conduct of meetings

- (a) Subject to rule 21(b), the Chair of Directors or, in the Chair's absence, the Deputy Chair is entitled to preside as Chair at every general meeting.
- (b) Where a general meeting is held and:
 - (i) there is no Chair or Deputy Chair; or
 - (ii) the Chair or Deputy Chair is not present within 15 minutes after the time appointed for the meeting, or does not wish to act, or is unable to act as Chair of the meeting,

the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Shareholders Present may elect one of their number to be Chair of the meeting.

- (c) The general conduct of each general meeting of the company and the procedures to be adopted at the meeting are as determined at, during or prior to the meeting by the Chair.
- (d) The Chair may make rulings without putting the question (or any question) to the vote if the Chair considers action is required to ensure the orderly conduct of the meeting.
- (e) At any time the Chair considers it necessary or desirable for the proper and orderly conduct of the meeting, the Chair may demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Shareholders Present.
- (f) Any determination by the Chair in relation to matters of procedure (including any procedural motions moved at, or put to, any meeting) or any other matter arising directly or indirectly from the business is final (including any procedural motions moved at, or put to, any meeting). Any challenge to a right to vote (whether on a show of hands or on a poll) or to a determination to allow or disregard to a vote may only be made at the meeting and may be determined by the Chair whose decision is final.
- (g) If a person purports to cast a vote in contravention of the Corporations Act, the Chair may determine that the vote be disregarded and treated as not having been cast.
- (h) Nothing contained in this rule limits the powers conferred on a Chair by law.

22 Adjournments

During the course of the meeting the Chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the Chair. If the Chair exercises a right of adjournment of a meeting under this rule, the Chair has the sole discretion to decide whether to seek the approval of the Shareholders Present to the adjournment and, unless the Chair exercises that discretion, no vote may be taken by the Shareholders Present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

23 Voting at general meetings

- (a) Each question submitted to a general meeting is to be decided by a show of hands of the Shareholders Present and entitled to vote, unless a poll is demanded.
- (b) Unless a poll is demanded, a declaration by the Chair following a vote on a show of hands that a resolution has been passed or lost is conclusive.
- (c) A poll may be demanded by a shareholder in accordance with the Corporations Act (and not otherwise) or by the Chair. No poll may be demanded on the election of a Chair of a meeting or, unless the Chair otherwise determines, the adjournment of a meeting. A demand for a poll may be withdrawn.

24 Special meetings

All the provisions of this Constitution as to general meetings apply to any special meeting of any class of shareholders which may be held under the operation of this Constitution or the Corporations Act.

25 Procedure for polls

- (a) When demanded, a poll may be taken in the manner and at the time the Chair directs.
- (b) The result of a poll may be announced in the manner and at the time (whether during the relevant meeting or afterwards) as the Chair considers appropriate.
- (c) The result of the poll is the resolution of the meeting at which the poll was demanded.
- (d) The demand for a poll does not prevent a meeting from continuing for the transaction of any business other than that on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting and without adjournment.

26 No casting vote

In the case of an equality of votes on a show of hands or on a poll the Chair of the meeting does not have a casting vote in addition to any vote to which the Chair may be entitled as a shareholder or as a proxy, attorney or properly appointed representative of a shareholder.

27 Representation and voting of shareholders

Subject to this Constitution and any rights or restrictions for the time being attached to any class or classes of shares:

- (a) at meetings of shareholders or classes of shareholders each shareholder entitled to attend and vote may attend and vote in person or by proxy, by attorney or (where the shareholder is a body corporate) by representative;
- (b) on a show of hands:
 - (i) subject to rule 27(b)(ii) and rule 27(b)(iii), each Shareholder Present has one vote;
 - (ii) where a shareholder has appointed more than one person as representative, proxy or attorney for the shareholder, none of the representatives, proxies or attorneys is entitled to vote; and
 - (iii) where a person is entitled to vote because of rule 27(b)(i) in more than one capacity, that person is entitled only to one vote; and
- (c) on a poll, only Shareholders Present may vote and every Shareholder Present having the right to vote on the resolution has:
 - (i) one vote for each fully paid share they hold; and
 - (ii) in the case of a partly paid share, that fraction of a vote equivalent to the proportion which the amount paid up (not credited) on that shareholder's share bears to the total amount paid and payable for that share (excluding amounts credited). Amounts paid in advance of a call are ignored when calculating the proportion.

28 Restriction on voting rights

A shareholder is not entitled to attend or vote at a general meeting unless all calls and other sums presently payable by the shareholder in respect of shares have been paid.

29 Form of proxy

- (a) A shareholder who is entitled to attend and vote at a meeting of the company may appoint a person as a proxy to attend and vote for the shareholder in accordance with the Corporations Act but not otherwise. A proxy appointed in accordance with the

Corporations Act to attend and vote may exercise the rights of the shareholder on the basis and subject to the restrictions provided in the Corporations Act and in this Constitution but not otherwise.

- (b) A form of appointment of a proxy is valid if it is in accordance with the Corporations Act or in any form (including electronic) which the Directors may prescribe or accept.
- (c) Any appointment of proxy under this rule 29 which is incomplete may be completed by the Secretary on the authority of the Directors and the Directors may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.
- (d) Where a notice of meeting provides for electronic lodgement of proxies, a proxy lodged at the electronic address specified in the notice is taken to have been received at the registered office and validated by the shareholder if there is compliance with the requirements set out in the notice.

30 Number of proxies

- (a) A shareholder may appoint not more than two proxies. A proxy need not be a shareholder.
- (b) If the Shareholder appoints two proxies and the appointment does not specify the proportion or number of the shareholder's votes each proxy may exercise, each proxy may exercise half of the votes.
- (c) If a shareholder appoints two proxies, neither proxy shall be entitled to vote on a show of hands. Otherwise, a proxy is entitled to vote on a show of hands.

31 Validity of proxies

- (a) A vote exercised in accordance with the terms of an instrument of proxy, a power of attorney or other relevant instrument of appointment is valid despite:
 - (i) the previous death or unsoundness of mind of the principal;
 - (ii) the revocation of the instrument (or of the authority under which the instrument was executed) or the power; or
 - (iii) the transfer of the share in respect of which the instrument or power is given,if no notice in writing of the death, unsoundness of mind, revocation or transfer (as the case may be) has been received by the company at its registered office before the commencement of the meeting, or adjourned meeting at which the instrument is used or the power is exercised.

- (b) A proxy is not revoked by the principal attending and taking part in the meeting unless the principal actually votes at the meeting on a resolution for which the proxy is proposed to be used.
- (c) Voting instructions given by a shareholder to a Director or employee of the company who is appointed as proxy (**Company Proxy**) are valid only if contained in the form of appointment of the Company Proxy or, in the case of new instructions or variations to earlier instructions, the new or varied instructions are only valid if either they are received at the registered office of the company before the meeting or adjourned meeting by a notice in writing signed by the shareholder or they are otherwise validated by the shareholder in a manner acceptable to the Directors in their discretion prior to the commencement of the meeting.

Directors

32 Number of Directors

The Directors of the company will be:

- (a) two Member Directors nominated by the Australian Services Union, each of whom must be a member of legalsuper;
- (b) two Member Directors nominated by the United Services Union, each of whom must be a member of legalsuper;
- (c) one Member Director nominated by The Victorian Bar Inc, who must be a member of legalsuper;
- (d) two Employer Directors nominated by LIV;
- (e) two Employer Directors nominated by LSNSW;
- (f) one Independent Director appointed by the Board to act as Chair pursuant to rule 45(a); and
- (g) (if so determined by the Board) up to two additional Directors appointed by the Board as Independent Directors.

33 Qualification of Directors

In order to be appointed as a Director pursuant to rule 32, a person:

- (a) must not be 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) must not be mentally or physically incapable;
- (c) must not be absent without the consent of the Directors from three consecutive meetings of the Directors;

- (d) must satisfy the requirements specified in any legislation, regulations or regulatory policy in relation to directors of a trustee of a complying superannuation fund and any policy developed by the company in its capacity as trustee of a complying superannuation fund pursuant to those requirements;
- (e) must satisfy the requirements of any applicable financial services licence or other licence which is held by the company;
- (f) must satisfy the fit and proper standards as determined and implemented by the Australian Prudential Regulatory Authority from time to time;
- (g) in the case of a Member Director nominated by the Australian Services Union pursuant to rule 32(a), must satisfy the conditions prescribed in rule 32(a);
- (h) in the case of a Member Director nominated by the United Services Union pursuant to rule 32(b), must satisfy the conditions prescribed in rule 32(b);
- (i) in the case of a Member Director nominated by The Victorian Bar Inc pursuant to rule 32(c), must satisfy the conditions prescribed in rule 32(c); and
- (j) must not be a disqualified person for the purposes of any relevant law.

The Board may determine whether the above criteria have been met by any Director or proposed director.

34 Removal and replacement

- (a) A Member Director appointed pursuant to rule 32(a) may be removed and replaced by the Australian Services Union at any time.
- (b) A Member Director appointed pursuant to rule 32(b) may be removed and replaced by the United Services Union at any time.
- (c) A Member Director appointed pursuant to rule 32(c) may be removed and replaced by The Victorian Bar Inc at any time.
- (d) An Employer Director appointed pursuant to rule 32(d) may be removed and replaced by LIV at any time.
- (e) An Employer Director appointed pursuant to rule 32(e) may be removed and replaced by LSNSW at any time.
- (f) Subject to the terms of appointment, an Independent Director may be removed by the Board at any time.

35 Retirement of Directors

- (a) Subject to this rule, on 31 March in each year, commencing 31 March 2009, at least one Employer Director and one Member Director must retire from office.

- (b) A Director must retire from office on 31 March four years after which the Director was appointed or reappointed or elected or re-elected.
- (c) If no Employer Director is required to retire pursuant to paragraph (b), the Employer Director required to retire pursuant to paragraph (a) is the Employer Director longest in office since last being appointed or elected.
- (d) If no Member Director is required to retire pursuant to paragraph (b), the Member Director required to retire pursuant to paragraph (a) is the Member Director longest in office since last being appointed or elected.
- (e) Where no Employer Director or Member Director is required to retire under rule 35(b) and there are two or more Employer Directors or Member Directors who are potentially required to retire under rule 35(a) because they were appointed or elected on the same day (in the absence of agreement between the Employer Directors concerned and the Member Directors concerned), the Employer Director or Member Director required to retire will be determined by lot.
- (f) A retiring Director is eligible for re-appointment or re-election.

36 Form of nomination, removal or replacement

A nomination, removal or replacement of a Director pursuant to rules 32(a), 32(b), 32(c), 32(d), 32(e) or 34 must be effected by instrument in writing delivered to the Secretary.

37 No share qualification

Directors are not required to hold shares in the capital of the company.

38 Remuneration

- (a) The Directors will be reimbursed for all expenses incurred by them on the business of the company but will not be entitled to remuneration for their services except pursuant to paragraph (b).
- (b) Any amount payable to or received by the company as remuneration or compensation for the company acting as the trustee of a complying superannuation fund (including legalsuper) will be divided between and paid to the Directors such that:
 - (i) where the total amount paid to the company was calculated on the basis of particular amounts to be paid to each Director as remuneration, the amount to be paid to or in respect of each Director will equal the amount paid to the company in respect of that Director; and
 - (ii) in all other cases, the amount to be paid to or in respect of each Director will be determined by the Board.

- (c) A Director may be engaged by the company in any other capacity (other than auditor) and may be appointed on terms as to remuneration, tenure of office and otherwise as may be agreed by the Directors.

39 Vacation of office

- (a) 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:
- (i) ceases to satisfy any of the conditions of appointment as a Director under rule 33;
 - (ii) resigns by notice in writing to the company;
 - (iii) retires from office;
 - (iv) is removed pursuant to this Constitution; or
 - (v) dies.
- (b) The office of a Director who is an employee of the company or any of its subsidiaries is terminated on the Director ceasing to be employed but the person concerned is eligible for reappointment or re-election as a Director of the company.

40 Filling of casual vacancies

Where a casual vacancy occurs in the office of a Director under rule 39 or otherwise, an eligible person may be appointed to fill that vacancy by the body entitled to appoint or elect the person who has ceased to hold office. The person so appointed or elected shall be deemed to be appointed or elected on the same day as the person who has ceased to hold office.

41 Alternate Directors

- (a) Each Director may from time to time:
- (i) in the case of an Employer Director – with the approval in writing of all of the other Employer Directors; or
 - (ii) in the case of a Member Director – with the approval in writing of all of the other Member Directors,

appoint any person who satisfies the qualifications of appointment as a Director under rule 33 of this Constitution (including, without limitation, any Director of the company whether or not he or she is an alternate Director, an Independent Director or a Director in their own right) to act as an alternate Director in the Director's place, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise the Director is unable

to attend to duties as a director. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the company by forwarding or delivering it to the registered office or by forwarding or delivering it to a meeting of the Board. The appointment takes effect immediately:

- (iii) upon receipt of the appointment at the registered office; or
 - (iv) at a meeting of the Board and with approval by a majority decision of the Board; or
 - (v) upon such later date or at such later time as is specified in the appointment.
- (b) The following provisions will apply to any such alternate Director:
- (i) he or she may be removed or suspended from office by written notice, letter, fax, email or other form of visible communication from the Director by whom he or she was appointed to the company;
 - (ii) their office shall be vacated if he or she resigns as an alternate Director, and if he or she acts as an alternate Director for more than one Director, he or she may resign their office in respect of all or any of their appointments as specified in the resignation notice;
 - (iii) he or she shall be entitled to receive notice of meetings of the Board, and to attend and vote and be counted in the quorum at the meetings, if any Director by whom he or she was appointed is not present;
 - (iv) he or she shall, if appointed by more than one Director, be entitled to a separate vote for each Director he or she is representing and, if he or she is a Director in their own right, their vote or votes as an alternate Director shall be in addition to their own vote;
 - (v) he or she shall be entitled to exercise all the powers (except the power to appoint an alternate Director) and perform all the duties of a Director, insofar as the Director by whom he or she was appointed had not exercised or performed them;
 - (vi) he or she shall not be required to hold any share qualification in, or be entitled to receive any remuneration as a Director from, the company;
 - (vii) he or she shall ipso facto vacate office if the Director by whom he or she was appointed should vacate office or die;
 - (viii) he or she shall not be taken into account in determining the number of Directors;
 - (ix) he or she shall, whilst acting as a Director, be responsible to the company for their own acts and defaults and shall not be deemed to be the agent of the Director by whom he or she was appointed; and

- (x) he or she shall, if acting as a Member Director, be a member of legalsuper.

Powers of Directors

42 Powers of Directors

The affairs of the company are governed by the Directors, who may exercise all powers of the company which are not, by the law or this Constitution, required to be exercised by the company in general meeting.

Proceedings of Directors

43 Proceedings

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they determine.
- (b) Until otherwise determined by the Directors, a quorum will be constituted by at least two-thirds of the total number of Directors present in person or by their alternate Directors. A Director's meeting may be called by a Director giving reasonable notice to every other Director. A notice may be given by mail (electronic or otherwise), personal delivery or facsimile transmission to the usual place of business or residence of the Director or at any other address given to the Secretary by the Director or by any technology agreed by all the Directors.

44 Meetings by technology

- (a) For the purposes of the Corporations Act, each Director, by consenting to be a Director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Directors meeting:
 - (i) video;
 - (ii) telephone;
 - (iii) any other technology which permits each Director to communicate with every other Director at the same time; or
 - (iv) any combination of these technologies.

A Director may withdraw the consent given under this rule in accordance with the Corporations Act.

- (b) Where the Directors are not all in attendance at one place and are holding a meeting using technology and each Director can communicate with the other Directors:

- (i) the participating Directors are, for the purpose of every provision of this Constitution concerning meetings of the Directors, taken to be assembled together at a meeting and to be present at that meeting; and
- (ii) all proceedings of those Directors conducted in that manner are as valid and effective as if conducted at a meeting at which all of them were physically present in the one location.

45 Chair and Deputy Chair of Directors

- (a) The Board may resolve by a two thirds majority to appoint a Chair and a Deputy Chair and may determine the periods for which they are to hold office respectively.
- (b) The person appointed Chair pursuant to rule 45(a) must be an Independent Director.
- (c) Notwithstanding rule 45(b), if an Independent Director has not been appointed as Chair, the Board may resolve by a two thirds majority to appoint one of the Directors as Chair and may determine the period for which the Chair is to hold office.
- (d) If the Chair is not present within 15 minutes of the time appointed for holding any meeting (or there is no appointed Chair), the Deputy Chair will act as Chair for the purposes of the relevant meeting. If neither of the Chair nor the Deputy Chair is present within 15 minutes of the time appointed for holding a meeting (or if there is no Chair or Deputy Chair), the Board may resolve to appoint one of the Directors to act as Chair for the purposes of the relevant meeting.
- (e) The Chair and/or the Deputy Chair may be removed from the office of Chair or Deputy Chair (but not from the office of Director) by resolution of the Board even if the term of their appointment has not expired.

46 Directors' voting rights and exercise of powers

- (a) Subject to this Constitution, questions arising at a meeting of Directors are decided by a majority of votes comprising at least two-thirds of the total number of Directors.
- (b) In the case of an equality of votes, the Chair of the meeting does not have a casting vote in addition to the Chair's deliberative vote.
- (c) An Independent Director is not entitled to have a casting vote.
- (d) Subject to rule 47 and the Corporations Act, a Director:
 - (i) who has an interest in a matter may vote in respect of that matter if it comes before the Directors and be counted as part of the quorum;
 - (ii) may enter into contracts with, or otherwise have dealings with, the company; and

- (iii) may hold other offices in the company.
- (e) A Director is not liable to account to the company for any profit realised by any contract or arrangement, by reason only of holding the office of Director or of the fiduciary relationship established by the office.
- (f) Subject to the Corporations Act, a Director or any person who is an associate of a Director may participate in any issue by the company of financial products.
- (g) Despite having an interest in any contract or arrangement a Director may participate in the execution of any document evidencing or connected with the contract or arrangement, whether by signing, sealing or otherwise.

47 Material personal interests

- (a) A Director is not disqualified from the Director's office by contracting with the company or any related body corporate of the company in any capacity by reason of holding of the office of Director.
- (b) In relation to a contract or arrangement in which a Director has a material personal interest:
 - (i) the fact that the Director signed the document evidencing the contract or arrangement will not in any way affect its validity;
 - (ii) a contract or arrangement made by the company or any related body corporate with a Director may not be avoided merely because the Director is a party to the contract or arrangement or otherwise interested in it; and
 - (iii) the Director will not be liable to account to the company for any profit derived in respect of the contract or arrangement merely because of the Director's office or the fiduciary relationship it entails.
- (c) If a Director has a material personal interest in a matter that relates to the affairs of the company and that interest has been disclosed in accordance with the Corporations Act or is of a type that does not require disclosure:
 - (i) the Director may vote on matters that relate to the interest; and
 - (ii) any transactions that relate to the interest may proceed; and
 - (iii) the Director can retain benefits from the transaction even though the Director has the interest; and
 - (iv) the company cannot avoid the transaction merely because of the existence of the interest.

- (d) If the material personal interest of a Director requires disclosure in accordance with the Corporations Act, rule 47(c)(iii) and rule 47(c)(iv) only apply if the disclosure is made before the transaction is entered into.
- (e) Nothing in the preceding provisions of this rule affects the duty of a Director who holds any office or possesses any property whereby, directly or indirectly, duties or interests might be created in conflict with the Directors' duties or interests as a Director, to declare at a meeting of Directors, the fact and the nature, character and extent of the conflict.
- (f) Rules 47(d) and 47(e) do not apply to a Director who is a sole Director of the company.

48 Committees

- (a) The Directors may delegate any of their powers to committees consisting of any one or more Directors or any other person or persons as the Directors think fit. In the exercise of delegated power, any committee formed or person or persons appointed to the committee must conform to any regulations that may be imposed by the Directors. A delegate of the Directors may be authorised to sub delegate any of the powers for the time being vested in the delegate.
- (b) Unless otherwise determined by the Board:
 - (i) questions arising at a meeting of a committee will be decided by two-thirds majority; and
 - (ii) a quorum will be constituted by two-thirds of the members of the committee.
- (c) Nothing in this rule 48 limits the power of the Directors to delegate.

49 Written resolutions

A resolution in writing signed by all Directors for the time being in Australia entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the Directors) is a valid resolution of the Directors and is effective when signed by the last of all the Directors. The resolution may consist of several documents in the same form each signed by one or more of the Directors. For the purposes of this rule 49 the references to Directors include any alternate Director for the time being present in Australia who is appointed by a Director not for the time being present in Australia but do not include any other alternate Director. A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with the Director's authority is considered a document in writing signed by the Director and is deemed to be signed when received in legible form.

50 Defects in appointments

- (a) All actions at any meeting of the Directors or by a committee or by any person acting as a Director are, despite the fact that it is afterwards discovered that there was some

defect in the appointment of any of the Directors or the committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been properly appointed and was qualified and continued to be a Director or a member of the committee.

- (b) If the number of Directors is reduced below the minimum number fixed under this Constitution, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the company but for no other purpose.

Secretaries and Other Officers

51 Secretaries

- (a) A Secretary of the company holds office on the terms and conditions, as to remuneration and otherwise, as the Directors decide.
- (b) The Directors may at any time terminate the appointment of a Secretary.
- (c) Where the company has one Director only and that Director is also the Secretary of the company, the shareholders may terminate the appointment of the Secretary.

52 Other officers

- (a) The Directors may from time to time:
 - (i) create any other position or positions in the company with the powers and responsibilities as the Directors may from time to time confer; and
 - (ii) appoint any person, whether or not a Director, to any position or positions created under rule 52(a)(i).
- (b) The Directors may at any time terminate the appointment of a person holding a position created under rule 52(a)(i) and may abolish the position.

Seals

53 Seals and their use

- (a) The company may have a common seal and a duplicate common seal which are to be used by the company as determined by the Directors.
- (b) If the company has a sole Director and no Secretary, a document will be taken to be duly executed by the company if it is signed by that Director.

Winding Up

54 Winding up

If the company is wound up, whether voluntarily or otherwise, the liquidator may divide among all or any of the contributories as the liquidator thinks fit in kind any part of the assets of the company, and may vest any part of the assets of the company in trustees on any trusts for the benefit of all or any of the contributories as the liquidator thinks fit.

Indemnity

55 Indemnity of officers, insurance and access

- (a) The company is to indemnify each officer of the company out of the assets of the company to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer, unless the liability was incurred by the officer through their own dishonesty, negligence, lack of good faith or breach of duty.
- (b) Where the Directors consider it appropriate, the company may execute a documentary indemnity in any form in favour of any officer of the company or a subsidiary.
- (c) Where the Directors consider it appropriate, the company may:
 - (i) make payments by way of premium in respect of any contract effecting insurance on behalf or in respect of an officer of the company against any liability incurred by the officer in or arising out of the conduct of the business of the company or in or arising out of the discharge of the duties of the officer; and
 - (ii) bind itself in any contract or deed with any officer of the company to make the payments.
- (d) Where the Directors consider it appropriate, the company may:
 - (i) give a former Director access to certain papers, including documents provided or available to the Directors and other papers referred to in those documents; and
 - (ii) bind itself in any contract with a Director or former Director to give the access.
- (e) The indemnity granted by this rule 55 will only be provided if the relevant officer:
 - (i) upon becoming aware of a claim or potential claim promptly notifies the company and provides the company with all information, records, statements and assistance that the company may reasonably require in relation to the claim or potential claim;

- (ii) does not admit liability for or settle or attempt to settle any such claim or incur any costs or expenses in connection with such claim without the prior written consent of the company; and
 - (iii) co-operates with the company in the defence of the claim and in respect of any action taken to recover contribution or an indemnity in respect of the claim.
- (f) In this rule 55:
- (i) officer means:
 - (A) a Director or Secretary, executive officer or employee; or
 - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the company,and includes a former officer.
 - (ii) duties of the officer includes, in any particular case where the Directors consider it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the company or, where applicable, the subsidiary of the company to any other corporation.
 - (iii) to the relevant extent means:
 - (A) to the extent the company is not precluded by law from doing so;
 - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, a subsidiary or an insurer under any insurance policy); and
 - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation.
 - (iv) liability means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.