

**CONSTITUTION OF
AWARE SUPER PTY LTD
ACN 118 202 672**

**(CONFORMED TO INCLUDE CHANGES
MADE UP 7 SEPTEMBER 2020)**

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**CONSTITUTION
OF
AWARE SUPER PTY LTD**

1. PRELIMINARY

1.1 Definitions

In the construction of this Constitution, unless the contrary intention appears:

at any time means at any time or times and from time to time.

Board means the board of directors of the Company.

Company means Aware Super Pty Ltd ACN 118 202 672.

Constitution means the clauses that comprise the constitution of the Company in force for the time being.

Corporations Act means the *Corporations Act 2001* as it applies to the Company for the time being.

directors means the directors of the Company in office at the relevant time.

directors' fees means the remuneration for their ordinary services as directors (whether or not executive or other paid work is undertaken) of persons who are directors of the Company at any time.

Disqualified Person has the meaning given in section 10 of SIS.

Employer Representative Director means a director appointed by the Fund Employer Entity.

Fund means the Initial Fund and any Other Fund.

Fund Employer Entity means the entity or entities appointed from time to time by the directors under clause 14.9 as a Fund Employer Entity provided that, in any event, at all times, the requirements of SIS in respect of who may appoint Employer Representative Directors must be satisfied.

Until varied by Directors in accordance with clause 14.9, the current Fund Employer Entities are:

- (a) The Secretary of the New South Wales Treasury jointly with the Director General of the Department of Premier and Cabinet in respect of the appointment of three (3) Employer Representative Directors;
- (b) Victorian Healthcare Association Limited in respect of the appointment of one (1) Employer Representative Director;
- (c) LASA National in respect of the appointment of one (1) Employer Representative Director;
- (d) Victorian Public Sector Commission in respect of one (1) Employer Representative Director; and
- (e) Department of Education and Training Victoria in respect of one (1) Employer Representative Director.

Fund Member Entity means the entity or entities appointed from time to time by the directors under clause 14.11 as a Fund Member Entity provided that, in any event, at all times, the requirements of SIS in respect of who may appoint Member Representative Directors must be satisfied.

Until varied by Directors in accordance with clause 14.11, the current Fund Member Entities are:

- (a) Unions NSW in respect of the appointment of three (3) Member Representative Directors; and
- (b) Health Services Union in respect of the appointment of one (1) Member Representative Director;
- (c) Australian Nursing and Midwifery Federation (Victorian Branch) in respect of the appointment of one (1) Member Representative Director;
- (d) Australian Education Union Victoria in respect of the appointment of one (1) Member Representative Director; and
- (e) CPSU, the Community and Public Sector Union in respect of the appointment of one (1) Member Representative Director.

Independent Director has the meaning given under section 10 of SIS.

Initial Fund means Aware Super and any other superannuation fund, managed investment scheme or other entity with which it amalgamates, merges or otherwise combines from time to time.

meeting of members means a meeting of members and any adjourned holding of it.

member means any person entered in the register as a member of the Company.

member present means a member present at any meeting of members, in person or by proxy.

membership qualifications means a person meeting the following criteria:

- (a) is a director of the Company; and
- (b) consents in writing to holding a share,

but a director may choose not to be a member.

Member Representative Director means a director appointed by the Fund Member Entity.

ordinary resolution means a resolution of a meeting of members where more than two thirds of the total votes cast on the resolution are in favour of the resolution.

Other Fund means any Regulated Superannuation Fund (other than the Initial Fund) for which the Company acts as trustee.

proxy means a person duly appointed under a proxy form by a member who is entitled to attend and vote at a meeting of members, to attend and vote instead of the member at the meeting.

proxy form means an instrument for appointing a proxy, that instrument complying with this Constitution.

Redemption Value means the amount payable to a member on redemption of redeemable preference shares issued by the Company.

register means the register of members kept under the Corporations Act.

registered office means the registered office for the time being of the Company.

Regulated Superannuation Fund has the meaning given under section 10 of SIS.

Regulator has the meaning given under section 10 of SIS.

Schedule 1 is part of this Constitution.

Secretary means any person appointed to perform the duties of secretary of the Company and includes an assistant secretary or any person appointed to act as such temporarily.

shares means the shares (of any class) into which the capital of the Company is at any time divided.

simple majority means, in respect of:

- (a) a vote by a group of people, more than fifty percent (50%) of those people actually voting on the resolution or issue; or
- (b) a consent or approval required from a group of people, more than fifty percent (50%) of all people in the group.

SIS means the *Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations 1994 and any prudential standards made under that Act* (and includes any other legislation that governs or relates to superannuation).

special resolution means a resolution of a meeting of members:

- (a) of which notice as set out in section 249L(c) of the Corporations Act has been given; and
- (b) where at least seventy five percent (75%) of the total votes cast on the resolution are in favour of the resolution.

transfer means dispose of in any way and includes, without limitation, assign, assure, declare a trust, transfer or sell and also includes agreeing to do any of those things.

1.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded; and
- (b) words importing persons include partnerships, associations, corporations, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals; and
- (c) singular includes plural and vice versa and words importing any gender include all other genders; and
- (d) except where the context otherwise requires, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of SIS or the Corporations Act, the same meaning as in that provision of SIS or the Corporations Act; and
- (e) all references to statutory provisions are construed as references to any statutory modification or re-enactment for the time being in force.

1.3 Exclusion of replaceable rules

All of the replaceable rules contained in the Corporations Act are displaced by this Constitution and do not apply to the Company.

2. OBJECTS

2.1 Objects

The objects for which the Company is established are:

- (a) to act as a trustee of the Initial Fund; and
- (b) to act as a trustee of any Other Fund;
- (c) to promote the Initial Fund; and
- (d) to promote any Other Fund; and
- (e) to do anything that the directors consider necessary or desirable for the above purposes; and

- (f) to do anything that the directors consider incidental to the above purposes; and
- (g) solely for the above purposes, to do anything allowed by the operation of SIS and the Corporations Act (whether or not in respect of any object or power contained in this clause 2.1).

2.2 Objects independent

Each object is independent and does not affect the interpretation of any other object.

3. PRIMACY OF SIS AND CORPORATIONS ACT

Despite any other provisions of this Constitution:

- (a) if SIS or the Corporations Act requires the Company or the directors to do any act or thing, or refrain from doing any act or thing, then the Company or the directors (as the case may be) must do such act or thing or refrain from doing such act or thing (as the case may be); and
- (b) if any provision of this Constitution is inconsistent with the requirements of SIS or the Corporations Act, then SIS and the Corporations Act prevail to the extent of that inconsistency, and the directors and the Company must use their respective best endeavours to amend this Constitution as soon as reasonably practicable so that this Constitution is consistent with the requirements of SIS and the Corporations Act; and
- (c) if any provision of this Constitution is inconsistent with the requirements of SIS and the Corporations Act and SIS and the Corporations Act are inconsistent, then SIS prevails to the extent of that inconsistency, and the directors and the Company must use their respective best endeavours to amend this Constitution as soon as reasonably practicable so that this Constitution is consistent with the requirements of SIS; and
- (d) any action required of the directors or the Company under this clause 3 which would otherwise be in breach of this Constitution is deemed not to be in breach of this Constitution.

4. USE OF THE PROPERTY BY THE COMPANY

4.1 Application of Company property

All income and property of the Company must be applied for one or more of the objects of the Company as set out in clause 2. No portion of the income or property may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit or return of capital to members of the Company (except for the payment of the Redemption Value on redemption of redeemable preference shares). On a merger, winding up or dissolution of the Company, clause 5 applies.

4.2 Remuneration payments

No remuneration or other benefit (including, without limitation, salaries, wages, commissions, fees, rewards, allowances, bonuses, incentive schemes or profit sharing schemes) (**remuneration**) may be paid or given by the Company to any director or member provided that nothing in clause 4 prevents a payment:

- (a) for the remuneration of directors in accordance with clause 16; or

- (b) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a director or officer or the business of the Company; or
- (c) for any goods supplied or service rendered to the Company by a member, director or officer (including in a professional or technical capacity), where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the directors; or
- (d) as an employee of the Company, where the terms of employment are on reasonable commercial terms and have been previously approved by a resolution of the directors.

5. USE OF PROPERTY ON MERGER OR WINDING UP

5.1 Surplus

If, on the merger, winding up or dissolution of the Company, after the satisfaction of all its debts and liabilities, any property of the Company remains (*surplus*), the surplus must not be paid or distributed among the members of the Company.

5.2 Transfer of surplus

The surplus under clause 5.1 (if any) must be given or transferred to some other institution or institutions chosen by the directors in office at the time of the commencement of the merger, winding up or dissolution of the Company:

- (a) having objects generally similar to one or more of the objects of the Company; and
- (b) complying with any applicable requirement for the continuation of the Company's taxation status under any applicable law; and
- (c) whose constituent document prohibits the distribution of its or their income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of clauses 4 and 5.

The commencement of the merger, winding up or dissolution of the Company is taken to be the earliest of:

- (a) the time at which the directors resolve to merge, wind up or dissolve the Company; or
- (b) the time at which the members resolve to merge, wind up or dissolve the Company; or
- (c) the time at which any court of competent jurisdiction makes an order for the merger, winding up or dissolution of the Company.

6. SHARES AND OTHER CAPITAL

6.1 Issue at the discretion of the Board

The Board may, on behalf of the Company, issue shares but only to persons who satisfy the membership qualifications. A person must not hold more than one (1) share in the Company.

6.2 Classes of shares

Subject to this clause, the capital of the Company is divided into redeemable preference shares. The rights, privileges and restrictions attaching to the redeemable preference shares are set out in Schedule 1. If the directors determine that the capital of the Company should be divided into further classes of shares as permitted by clause 6.3 or the Corporations Act, the rights, privileges and restrictions attaching to those shares must be approved by special resolution and by a simple majority of Fund Employer Entities and a simple majority of Fund Member Entities prior to their issue.

6.3 Control of the directors

Subject to clause 6.2 and the other provisions of this Constitution and the Corporations Act, and without prejudice to any special rights previously conferred on the holders of any existing shares, the shares in the Company are under the control of the directors.

6.4 Recognition of third party interests

Except as required by law or this Constitution, the Company must not recognise any person as holding any share upon any trust. The Company is not bound by, or compelled in any way to recognise (even when having notice of it), any equitable, contingent, future or partial interest in any share or unit of a share or (except only as otherwise provided by this Constitution or by law) any other right in respect of any share except an absolute right of ownership of it by the registered holder.

6.5 Limited liability

The liability of each member is limited to the amount unpaid (if any) on the share held by that member.

7. CERTIFICATES

7.1 Entitlement of member to certificate

A member is entitled, upon written request and without charge, to one (1) certificate for the share of the Company registered in the member's sole name. Otherwise, the Company is not obliged to issue certificates of title to shares of the Company.

7.2 Replacement of certificates

If a certificate is lost, destroyed, worn out or defaced, then upon production of the document (if available) to the directors they may order it to be cancelled and may issue a new certificate in substitution subject to the conditions prescribed by the Corporations Act.

8. NO TRANSFER OF SHARES

Shares in the Company are not transferable.

9. CIRCULATING RESOLUTIONS OF MEMBERS

If two thirds of the members of the Company entitled to vote on the resolution have signed a document (or counterparts of the same document) containing a statement that they are in favour of a resolution of members in terms set out in the document (other than to remove an auditor under section 329 of the Corporations Act), a resolution in those terms is deemed (under section 249A of the Corporations Act) to have been passed. The resolution is passed when the last member required under this clause 9 signs the document. The document constitutes a minute and must be entered into the minute book.

A resolution may be expressed to take effect at, or earlier or later than, the time when it was passed.

10. MEETINGS OF MEMBERS

10.1 No annual general meetings

The Company need not hold annual general meetings unless required by the Corporations Act.

10.2 Calling of meetings

The directors may at any time call a meeting of members.

10.3 Requisition of meetings

Except as provided in section 249D or 249F of the Corporations Act, no member or members may call a meeting of members.

10.4 Period of notice

Subject to clause 10.5, at least twenty one (21) days' notice must be given of a meeting of members.

10.5 Consent to short notice

A meeting where a resolution will be moved to remove an auditor under section 329 of the Corporations Act may not be called on short notice. With the written consent of members who, between them, hold at least ninety five percent (95%) of the votes that may be cast at the meeting, any other meeting of members may be called on short notice and in any manner the members think fit (and all provisions of this Constitution are modified accordingly).

10.6 Notice of meeting

Every notice of a meeting of members must:

- (a) set out the place, date and time of meeting (and if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (d) contain a statement of the right to appoint a proxy, being to the effect that:
 - i) a member entitled to attend and vote has a right to appoint a proxy; and
 - ii) a proxy need not be a member.

10.7 Entitlement to notice

Written notice of a meeting of members must be given individually to:

- (a) each member; and

- (b) the auditor; and
- (c) each director.

10.8 Entitlement to proxy form

A proxy form must be given to each member entitled to attend and vote at the meeting of members.

10.9 Omission to give notice

The accidental omission to give notice of a meeting of members (or proxy form) to, or the non-receipt of any such notice (or proxy form) by, a person entitled to receive it, or the accidental omission to advertise (if necessary) such meeting, does not invalidate the proceedings at, or any resolution passed at, any such meeting.

10.10 Cancellation or postponement of meeting

The directors may:

- (a) for a meeting called by requisitioning members or in response to a requisition by members, cancel or postpone the holding of it with the consent of a majority of the requisitioning members; or
- (b) for any other meeting, cancel or postpone the holding of that meeting of members.

The directors may notify the members of such cancellation or postponement by such means as they see fit. If any meeting is postponed for one (1) month or more then no less than five (5) days' notice must be sent to the members of the postponed meeting but it is not necessary to specify in such notice the nature of the business to be transacted at the postponed meeting.

11. REPRESENTATION AT MEETINGS

11.1 Persons entitled to attend

The right to attend a meeting of members is as follows:

- (a) each member may attend (except where under this Constitution or by the terms of issue of any share that member is not entitled to attend); and
- (b) each director, Secretary and auditor may attend; and
- (c) each person who is a proxy of a member may attend; and
- (d) other persons may attend only with leave of the meeting or its chairman and then only while the leave is on foot and in accordance with the terms of the leave.

The right to attend is subject to the powers of the chairman of the meeting both at law and under this Constitution.

11.2 Proxy eligibility

A proxy can only be a director.

11.3 Proxy recognition

A proxy is recognised as having been duly appointed by a member and entitled to act as a proxy for that member only if the proxy form complies with the requirements of this Constitution in relation to form, execution and lodgement.

11.4 Proxy form

The proxy form:

- (a) must contain the member's name and address; and
- (b) must contain the proxy's name or the office held by the proxy; and
- (c) may make provision for the chairman of the meeting of members to act as the proxy either in the absence of any other appointment or if the proxy primarily appointed fails to attend the meeting of members; and
- (d) must contain the Company's name and either identify the meetings of members at which the proxy form may be used or be identified as a standing one; and
- (e) may enable the member to instruct the proxy to vote for or against each notified resolution; and
- (f) may be in the form set out in Schedule 2, or in any other form approved by the directors.

11.5 Chairman as fall-back proxy

If a proxy form is otherwise effective except that it does not specify the proxy, the member is treated as validly appointing the chairman of the meeting of members in respect of the share of that member.

11.6 Proxy execution

A proxy form must be executed under the hand of the member.

11.7 Proxy lodgement

A proxy form must be lodged:

- (a) as an original, at the registered office (or at such other place as is specified for that purpose in the notice calling the meeting of members), not less than forty eight (48) hours before the start of the meeting; or
- (b) as a facsimile transmission, at a fax number at the registered office (or at such other place as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members), not less than forty eight (48) hours before the start of the meeting; or
- (c) as some other form of electronic transmission, at such electronic address as is, at the election of the directors, specified for that purpose in the notice calling the meeting of members, not less than forty eight (48) hours before the start of the meeting.

12. PROCEEDINGS AT MEETINGS OF MEMBERS

12.1 Quorum

No business may be transacted at any meeting of members unless a quorum of members is present either in person or by proxy at the time when the meeting proceeds to business. Except as provided in SIS or clause 12.2, two thirds of all members of the Company present (who must include at least two (2) members who are Employer Representative Directors and at least two (2) members who are Member Representative Directors) are a quorum.

12.2 Failure of quorum

If a quorum is not present within fifteen (15) minutes from the time appointed for a meeting of members:

- (a) where the meeting was called by, or in response to, the requisition of members made under the Corporations Act, the meeting is dissolved; or
- (b) in any other case the meeting stands adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the second week following at the same time and place. If at the adjourned meeting a quorum is not present within fifteen (15) minutes from the time appointed for the meeting, the meeting is dissolved.

12.3 Special business

No special business may be transacted at any meeting of members other than that stated in the notice calling the meeting unless it is a matter that is required by this Constitution or the Corporations Act to be transacted at such meeting.

12.4 Chairman of meeting

The chairman of the Board, or in that person's absence the deputy chairman of the Board (if any), is entitled to take the chair at each meeting of members. If neither of those persons is present at any meeting of members within fifteen (15) minutes after the time appointed for holding such meeting, or neither of them is willing to take the chair, the directors present may choose one (1) of their number as a chairman and if no director present is willing to take the chair the directors may choose a person, whether a member or not, as chairman of the meeting, failing which the members present must elect a person, whether a member or not, to be chairman of the meeting.

12.5 Passing the chair

If the chairman of a meeting of members is unwilling or unable to be the chairman for any part of the business of the meeting:

- (a) that chairman may withdraw as chairman for that part of the business and may nominate any person (whether or not they would be entitled under clause 12.4) to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominated must cease to chair the meeting upon the request of the prior chairman and the prior chairman is entitled to resume as the chairman of the meeting.

12.6 Responsibilities of chairman

The chairman of a meeting of members is responsible for the general conduct of the meeting and to ascertain the sense of the meeting in relation to the business transacted at it. For these purposes the chairman of the meeting may, without limitation:

- (a) delay the commencement of the meeting if that person determines it is desirable for the better conduct of the meeting; and
- (b) make, vary or rescind rulings; and
- (c) prescribe, vary or revoke procedures; and
- (d) in addition to other powers, adjourn the meeting, or any item of business of the meeting, without the concurrence of the meeting if that person determines it is desirable for the orderly conduct of the meeting or the conduct of a poll; and
- (e) determine conclusively any dispute concerning the admission, validity or rejection of a vote.

12.7 Admission to meetings

The chairman of a meeting of members may refuse admission to the meeting to any person (or require the person to leave and remain out of, the meeting) in respect of any person:

- (a) in possession of a pictorial-recording or sound-recording device; or
- (b) in possession of a placard or banner; or
- (c) in possession of an article considered by the chairman to be dangerous, offensive or liable to cause disruption; or
- (d) who refuses to produce or to permit examination of any article, or the contents of any article, in the persons possession; or
- (e) who behaves or threatens to behave in a dangerous, offensive or disruptive manner.

This power may be exercised in respect of a person regardless of whether or not that person otherwise would have been entitled to attend the meeting.

12.8 Adjournment of meeting

The chairman of a meeting of members at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the chairman determines.

12.9 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for one (1) month or more, in which event notice of the adjourned meeting must be given.

13. VOTING AT MEETINGS OF MEMBERS

13.1 Entitlement to vote

Subject to this Constitution and the terms of issue of any share, each person who is present at a meeting of members may vote if he or she is a member or a recognised proxy of a member.

13.2 Number of votes

Each person who is, under clause 13.1, entitled to vote has:

- (a) on a show of hands (or on the voices) only one (1) vote, regardless of how many members the person may represent; and
- (b) on a poll one (1) vote for each share held by the person or held by members for whom the person is the recognised proxy.

13.3 Voting restrictions

If, to ensure that a resolution on which SIS or the Corporations Act requires that particular persons do not cast a vote so that the resolution has a specified effect under SIS or the Corporations Act, the notice of a meeting of members specifies that, in relation to particular business to be considered at that meeting, votes cast by particular persons (whether specified by name or by description of particular classes of persons) are to be disregarded by the Company, the Company must take no account, in determining the votes cast on a resolution relating to that business (whether a special resolution or an ordinary resolution) or for any other purpose, of any vote cast or purported to be cast by or on behalf of any of those persons (whether on a show of hands or on a poll) in relation to that resolution. However, a person who is not entitled to vote on a resolution as a member, may vote as a recognised proxy for another member who can vote if the proxy form specifies the way the recognised proxy is to vote on the resolution and the recognised proxy votes that way.

13.4 Attendance of member suspends the proxy

If a member is present at any meeting of members in person the proxy of that member may not exercise the voting rights of the member while the member is present.

13.5 Revocation of proxies

A vote given or act done in accordance with the terms of a proxy form is valid despite the previous death or mental incapacity of the principal, or revocation of the proxy, or transfer of the share in respect of which the vote is given, or act done, provided no intimation in writing of the death or mental incapacity, revocation or transfer has been received at the registered office or by the chairman of the meeting before the vote is given or act done. Any proxy may be revoked at any time. A later appointment revokes an earlier one if both appointments would not be validly exercised at the meeting. The decision of the chairman as to whether a proxy has been revoked is final and conclusive.

13.6 Proxy must vote on a poll as directed

A proxy form may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands (or on the voices), but if the proxy does so, the proxy must vote that way; and

- (b) if the proxy is the chairman, the proxy must vote on a poll, and must vote that way; and
- (c) 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.

Nothing in this clause 13.6 affects the way that the person who is a proxy can cast any votes they hold as a member.

13.7 Proxy must abstain if directed

A proxy form may specify that the proxy is to abstain from voting on a particular resolution. If it does the proxy must not vote on that resolution.

13.8 Method of voting

Every resolution put to a vote at a meeting of members must be determined by the voices or a show of hands (as determined by the chairman of the meeting) unless a poll is properly demanded.

13.9 Who may demand a poll

At a meeting of members a demand for a poll may be made by:

- (a) the chairman of the meeting; or
- (b) at least two (2) persons present having the right to vote on the resolution; or
- (c) any person or persons present having the right to vote at least five percent (5%) of the votes that may be cast on the resolution on a poll.

13.10 When poll may be demanded

The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

13.11 Declaring result of vote on show of hands

At any meeting of members (unless a poll is so demanded) a declaration by the chairman of the meeting that a resolution has been carried, or carried by a particular majority, or lost, or has not been carried by a particular majority and an entry in the book containing the minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

13.12 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chairman of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment.

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

13.13 No casting vote of chairman

If, on a show of hands or on a poll, the votes are equal, the chairman of the meeting does not have a casting vote.

13.14 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the register held in the registered office must be adopted and acted on as the voting roll in respect of members and their shares on such register.

13.15 Ruling on votes

The chairman of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chairman is final and conclusive.

14. APPOINTMENT AND REMOVAL OF DIRECTORS

14.1 Number of directors

- (a) The number of directors must be not less than two (2) nor more than the number determined from time to time by directors, but not exceeding thirteen (13) ("**Approved Number**").
- (b) Subject to clause 14.2, the directors may increase the Approved Number of directors up to a maximum of seventeen (17) to meet business needs. Any increase to the Approved Number of directors made under this sub clause, must be reduced back to the Approved Number set out in sub clause (a), within five (5) years of any increase taking effect.

14.2 Appointment of directors – overriding rule

All appointments of directors must satisfy at all times the equal representation rules in respect of the Initial Fund and any other applicable requirements under SIS. For the avoidance of doubt, a person who does not satisfy a policy or a procedure established by the directors from time to time in respect of a requirement of the Regulator (including in respect of who may be appointed as a director), or who is a Disqualified Person, must not be appointed as a director. A policy or procedure may allow some matters to be satisfied by a director within a period after the director has taken office on such terms as the policy or procedure may specify.

14.3 Appointment of directors

The directors are to be as follows:

- (a) fifty percent (50%) of the directors (other than any Independent Directors) are to be appointed by the Fund Employer Entities as Employer Representative Directors; and
- (b) fifty percent (50%) of the directors (other than any Independent Directors) are to be appointed by the Fund Member Entities as Member Representative Directors; and

- (c) subject to SIS, a person may be appointed by the other directors as an Independent Director (although there is no obligation to appoint an Independent Director).

Each appointment takes effect upon and by virtue of the events set out above and does not require any action by members. If at any time there are no directors, no Fund Employer Entities and no Fund Member Entities, the Regulator may appoint two (2) directors solely for the purpose of appointing an interim Fund Employer Entity and an interim Fund Member Entity.

Subject to clauses 14.6 and 14.7, upon completion of a term by a director, the director may be appointed for a further term, with that appointment to take place according to the process set out above and to take effect upon and by virtue of that process.

14.4 Initial Directors - Clause deleted

14.5 Term of appointment

Subject to the terms of appointment referred to in clauses 14.6, 14.7, 14.15 and 14.16:

- (a) An Employer Representative Director is appointed for a term of three (3) years; and
- (b) A Member Representative Director is appointed for a term of three (3) years; and
- (c) An Independent Director (if any) is appointed for a term set by the other directors at the time of appointment (not exceeding a term of three (3) years).

14.6 Maximum number of terms

Subject to clause 14.7, a director may serve a maximum of three (3) terms (not exceeding nine years). If a director's ninth (or later) anniversary as a director occurs before completing a third term, the Board may approve the director completing their current term.

14.7 Extension of final term

Subject to clause 14.7(b) the Board may resolve to extend the final term of a director by a further period not exceeding three (3) years if the Board considers that;

- (a) It would be in the best interests of the members of the Fund that the particular director's final term be extended by that period. Any resolution under this clause will constitute approval for the purposes of clause 14.6.
- (b) Any resolution of the Board under clause 14.7(a) to extend the final term of a director must be passed by a majority of the directors in accordance with clause 17.9. The director in respect of whose term the resolution relates, is ineligible to vote.

14.8 Review of Fund Employer Entity and Fund Member Entity

At any time the directors think fit, but at least once in each three (3) years, and promptly following the retirement or removal of a Fund Employer Entity or a Fund Member Entity, the directors must consider the characteristics of the membership of the Fund and determine the entity or entities that, having regard to the purposes of the Fund as a whole:

- (a) represent the interests of employers of members of the Initial Fund and any Other Fund and are appropriate to be appointed as a Fund Employer Entity; and
- (b) represent the interests of members of the Initial Fund and any Other Fund and are appropriate to be appointed as a Fund Member Entity.

In making the determination, the directors must take into account the views of the Fund Employer Entities and the Fund Member Entities then in office.

14.9 Appointment of Fund Employer Entities

As soon as practicable after any of the following events:

- (a) the retirement or removal of a Fund Employer Entity; or
- (b) whenever a review under clause 14.8 requires,

the directors must appoint such entity or entities determined under clause 14.8 to be appropriate to be the Fund Employer Entity or Fund Employer Entities. If there is more than one (1) Fund Employer Entity appointed, the directors must specify the basis on which each such entity is to appoint Employer Representative Directors (including without limitation, the number of Employer Representative Directors to be appointed by that Fund Employer Entity and any class of employers of members of the Fund to which they relate).

14.10 Termination of Fund Employer Entities

Each Fund Employer Entity continues to hold its position until:

- (a) The Fund Employer Entity retires from that position by giving the Company ninety (90) days prior written notice of retirement (or such shorter period of notice allowed by the directors);
- (b) the Fund Employer Entity fails to replace an Employer Representative Director appointed by the Fund Employer Entity (or a predecessor Fund Employer Entity) within forty five (45) days (or such longer period allowed by the directors) of the Employer Representative Director vacating office, in which case the Fund Employer Entity will be removed as a Fund Employer Entity, except where the Fund Employer Entity is entitled to appoint more than one (1) Employer Representative Director, in which case the Fund Employer Entity will only be removed in respect of the number of Employer Representative Directors that it fails to replace; or
- (c) the Fund Employer Entity is replaced by an appointment made under clause 14.9.

14.11 Appointment of Fund Member Entities

As soon as practicable after any of the following events:

- (a) the retirement or removal of a Fund Member Entity; or
- (b) whenever a review under clause 14.8 requires,

the directors must appoint such entity or entities determined under clause 14.8 to be appropriate to be the Fund Member Entity or Fund Member Entities. If there is more than one (1) Fund Member Entity appointed, the directors must specify the basis on which each such entity is to appoint Member Representative Directors (including, without limitation, the number of Member Representative Directors to be appointed by that Fund Member Entity and any class of members of the Fund to which they relate).

14.12 Termination of Fund Member Entities

Each Fund Member Entity continues to hold its position until:

- (a) the Fund Member Entity retires from that position by giving the Company ninety (90) days prior written notice of retirement (or such shorter period of notice allowed by the directors); or
- (b) the Fund Member Entity fails to replace a Member Representative Director appointed by the Fund Member Entity (or a predecessor Fund Member Entity) within forty five (45) days (or such longer period allowed by the directors) of the Member Representative Director vacating office, in which case the Fund Member Entity will be removed as a Fund Member Entity, except where the Fund Member Entity is entitled to appoint more than one (1) Member Representative Director, in which case the Fund Member Entity will only be removed in respect of the number of Member Representative Directors that it fails to replace; or
- (c) the Fund Member Entity is replaced by an appointment made under clause 14.11.

provided that, subject to SIS and clauses 14.8 and 14.12, Unions NSW must be the Fund Member Entity until Unions NSW retires from that position.

14.13 Independent Director

A person cannot be appointed or continue as the Independent Director unless they meet the requirements to be an independent director as set out in SIS.

14.14 Resignation of director

Any director may retire from office by giving notice in writing to the Company of the director's intention to do so. Such resignation takes effect immediately unless the resignation is stated in the notice to take effect at some future time in which event the resignation takes effect upon the expiration of such time or the date three (3) months from the giving of the notice, whichever is the earlier.

14.15 Vacation of office

In addition to the circumstances in which the office of director becomes vacant by virtue of the Corporations Act or other provisions of this Constitution, the office of director, by the very fact, is vacated if the director:

- (a) is or becomes a Disqualified Person; or
- (b) fails, or ceases to satisfy, any requirement of any policy, guideline or procedure adopted or established by the directors from time to time in respect of any requirement of SIS or the Regulator and, if the non-compliance is capable of rectification, does not rectify the non-compliance to the reasonable satisfaction of the other directors within the time stipulated in the policy, guideline or procedure and if no time is stipulated within forty five (45) days of being given written notice to do so by the other directors; or
- (c) is or becomes an insolvent under administration; or
- (d) cannot manage the company because of their mental incapacity and/or is a person whose estate or property has had a personal representative or trustee appointed to administer it; or

- (e) is absent from meetings of directors for a continuous period of six (6) months without leave of absence from the directors; or
- (f) being a Employer Representative Director, is removed from office on forty five (45) days notice (or such lesser period as specified by the Fund Employer Entity) by the Fund Employer Entity who appointed him or her (or a successor Fund Employer Entity); or
- (g) being a Member Representative Director, is removed from office on forty five (45) days notice (or such lesser period as specified by the Fund Member Entity) by the Fund Member Entity who appointed him or her (or a successor Fund Member Entity).

14.16 Replacement of directors

If:

- (a) an Employer Representative Director vacates office, the Fund Employer Entity who appointed him or her (or a successor Fund Employer Entity) may appoint a replacement director; or
- (b) a Member Representative Director vacates office, the Fund Member Entity who appointed him or her (or a successor Fund Member Entity) may appoint a replacement director,

and the replacement director is appointed for a term of three (3) years.

If the Independent Director vacates office, the other directors may replace the Independent Director.

14.17 Less than minimum number of directors

The continuing directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this Constitution, the directors may act only:

- (a) if there is no Fund Employer Entity, to appoint an interim Fund Employer Entity; or
- (b) if there is no Fund Member Entity, to appoint an interim Fund Member Entity; or
- (c) if a Fund Employer Entity fails to replace a Employer Representative Director appointed by the Fund Employer Entity (or a predecessor Fund Employer Entity) within forty five (45) days (or such longer period allowed by the directors) of the Employer Representative Director vacating office, to replace the Fund Employer Entity; or
- (d) if a Fund Member Entity fails to replace a Member Representative Director appointed by the Fund Member Entity (or a predecessor Fund Member Entity) within forty five (45) days (or such longer period allowed by the directors) of the Member Representative Director vacating office, to replace the Fund Member Entity; or
- (e) in any other circumstances which the directors determine are emergencies.

14.18 Publishing rules for appointing

The Company must, in accordance with SIS, publish the rules for appointing and removing:

- (a) an Independent Director (if the directors have determined, under clause 14.3(c), that an Independent Director is to be appointed); and
- (b) Member Representative Directors.

The Company must, in accordance with SIS, provide a copy of those rules to any member of the Fund who requests a copy of those rules. Those rules may incorporate this Constitution by reference.

14.19 Amendment of Clause 14

Subject to clause 14.21, clause 14 cannot be amended without the prior written approval of all Fund Employer Entities and all Fund Member Entities then in office.

14.20 Record of Directors

The Secretary must specify and maintain in the Company's records held at the Company's Registered Office, details of the following:

- (a) for each Employer Representative Director:
 - i) which Fund Employer Entity (if more than one (1)) appointed the relevant Employer Representative Director (that entity being the entity able to remove that representative); and
 - ii) the term of appointment of that representative; and
 - iii) if the representative is appointed to replace another representative, his or her status as a replacement representative; and
- (b) for each Member Representative Director:
 - i) which Fund Member Entity (if more than one (1)) appointed the relevant Member Representative Director (that entity also being the entity able to remove that representative); and
 - ii) the term of appointment of that representative; and
 - iii) if the representative is appointed to replace another representative, his or her status as a replacement representative.

14.21 SIS requirements

Without limiting clause 3 or clause 14.15(b) or both of them, the provisions of this clause 14 must be read subject to any requirement of any policy, guideline or procedure adopted or established by the Board from time to time in respect of any requirement of SIS or the Regulator. To the extent that there is any inconsistency between any provision of clause 14 and any requirement of a policy, guideline or procedure (as described), the policy, guideline or procedure prevails.

15. REMUNERATION OF DIRECTORS**15.1 Application**

- (a) Clause 16 applies to the extent that amounts payable to the directors are reimbursed from the Initial Fund.
- (b) This clause 15 applies to the extent that amounts payable to the directors are reimbursed from any Other Fund or paid by the Company without reimbursement.

15.2 Remuneration

- (a) The directors shall be paid such remuneration for their services as directors, and on such basis, as the Board shall determine having regard to advice from an independent external expert.
- (b) The remuneration of directors shall accrue from day to day.

15.3 Expenses

In addition to any remuneration payable under clause 15.2, a director is entitled to be paid all reasonable travelling and other expenses incurred, or to be incurred, in connection with attendance at Board meetings, Committee meetings and meetings of members or otherwise in connection with the business of the Company.

15.4 Extra services

In addition to any remuneration payable under clause 15.2, any director who performs extra services or undertakes additional work for the Company beyond the director's ordinary duties is entitled to receive such additional remuneration (whether by way of salary, fixed sum or otherwise) as is approved by the Board.

15.5 No recovery from Initial Fund

Amounts payable to directors under this clause 15 must not be reimbursed from the Initial Fund.

16. REMUNERATION OF DIRECTORS PAYABLE FROM INITIAL FUND

16.1 Directors' fees

The members in general meeting must set a maximum fixed sum that may be paid in any financial year of the Company as the aggregate of all directors' fees. The maximum fixed sum must be calculated so that it includes superannuation contributions that the Company agrees to pay in respect of directors.

From time to time, the members if requested to do so by the directors, may review and amend the maximum fixed sum under this clause 16.1. In reviewing and amending the maximum fixed sum, the members must obtain the advice of an independent external expert. The members may determine a lesser maximum fixed sum than that recommended by the independent external expert, but cannot determine a higher sum.

At any time that the members increase the maximum fixed sum under this clause 16.1, the members must give not less than 1 month's notice in writing to each of the Fund Employer Entities and Fund Member Entities representing the Initial Fund of the sum so determined, prior to the date of implementation.

16.2 Fees for ordinary services of directors

The directors must be paid (in respect of each financial year) such remuneration as the Board determines from time to time for their ordinary services as directors of the Company inclusive of superannuation contributions that the Company agrees to pay in respect of directors (***aggregate annual remuneration***). The aggregate annual remuneration so determined under this clause 16.2 must not exceed the maximum fixed sum last determined under clause 16.1.

The aggregate annual remuneration determined under this clause 16.2 must be divided among the directors in such proportion and manner as the Board may at any time determine (taking into account such things as the added responsibilities of Chairman of the Board, Chairman and Members of Committees, etc) or, in default of determination, equally.

In determining to increase the aggregate annual remuneration under this clause, 16.2, the Board must obtain the advice of an independent external expert. The Board must not determine an amount as the aggregate annual remuneration that is higher than the aggregate annual amount recommended by the independent external expert.

Whenever the Board determines to increase the aggregate annual remuneration under this clause 16.2, it must:

- (a) give not less than 1 month's notice in writing to each of the Fund Employer Entities and the Fund Member Entities representing the Initial Fund of the increased aggregate annual remuneration and the basis of that determination, prior to the date of implementation; and
- (b) have the process that determined the increase audited by the Company's auditor and forward the report provided by the auditor to each of the Fund Employer Entities and the Fund Member Entities representing the Initial Fund.

16.3 Fees for ordinary services of directors of other group companies

The Company, through its control of its wholly-owned subsidiaries (if any), must ensure that, after taking into account the sum determined under clause 16.2, the directors' fees paid in each financial year do not exceed that last fixed under clause 16.1.

16.4 Expenses of directors

In addition to any remuneration payable under clause 16.2, each director is entitled to be paid all reasonable travelling and other expenses incurred, or to be incurred, by him or her in connection with his or her attendance at Board meetings and meetings of members or otherwise in connection with the business of the Company. Any payment(s) made to a Director under this clause is in addition to the maximum fixed sum determined under clause 16.1.

16.5 Additional payment for extra services

In addition to any remuneration payable under clause 16.2, any director who, being willing, is called upon to perform extra services or to make any special exertions or to undertake any executive or other work for the Company beyond the director's ordinary duties or to go or reside abroad or otherwise for any of the purposes of the Company is entitled to be remunerated either by a fixed sum or a salary as approved by the Board. Any payment(s) made to a Director under this clause is in addition to the maximum fixed sum determined under clause 16.1.

16.6 Daily accrual

The remuneration of each director for ordinary services accrues from day to day and is apportionable accordingly. A resolution of directors cancelling, suspending, reducing or postponing payment of such remuneration or any part of it binds all the directors for the time being.

16.7 Payment of retirement benefit

Upon a director ceasing, or at any time after ceasing whether by retirement or otherwise, to hold that office, the directors may pay to the former director, or in the case of death to the former director's legal personal representative, or to the director's dependants or any of them, a lump sum payment in respect of past services of such director (either in that capacity or as an officer of a related body corporate of the Company) of an amount as may be approved with the prior written approval of all Fund Employer Entities and all Fund Member Entities representing the Initial Fund but not exceeding the amount permitted by the Corporations Act. The Company may contract with any director to secure payment of any such sum to him or her, to the director's legal personal representative, dependants or any of them.

16.8 Payment by the Company and recovery from the Initial Fund

Although all amounts payable to directors under this clause 16 are obligations of the Company, the directors must use reasonable endeavours to ensure that, to the maximum extent that SIS and the Corporations Act allows it, the Initial Fund reimburses the Company for those amounts (or pays those amounts directly to the directors).

17. MEETINGS OF DIRECTORS

17.1 Mode of meeting

The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit. The directors may conduct their meetings by telephone or other form of communication without a director being in the physical presence of another director or other directors.

17.2 Quorum

A quorum for a meeting of the directors is at least two thirds of all directors then in office (who must include at least two (2) Employer Representative Directors and at least two (2) Member Representative Directors) unless there are fewer than six (6) directors in office, in which case a quorum consists of all directors then in office.

17.3 Chairman calling a meeting

The chairman of the directors may at any time call a meeting of the directors to be held at such time and place as the chairman chooses and such meeting is not invalidated by reason only of lack of convenience if a quorum of directors forms.

17.4 Secretary calling a meeting

The Secretary, upon the request of any director, must call a meeting of the directors to be held at such time and place as is convenient to the directors.

17.5 Notice of meeting

Notice of each meeting of the directors:

- (a) may be given by such means as is convenient, including by telephone or electronic transmission; and
- (b) must be given to all eligible directors.

17.6 Recipients of notice

For the purposes of clause 17.5:

- (a) the “**eligible directors**” are all directors for the time being but excluding those who in the belief of the person calling the meeting are absent from Australia; and
- (b) except in emergencies or where all eligible directors agree otherwise, at least five (5) days’ notice must be given of the meeting; and
- (c) the accidental omission to give notice of any meeting of the directors to, or the non-receipt of any such notice by, a person entitled to receive that notice does not invalidate the calling of the meeting or any resolution passed at any such meeting.

17.7 Appointment of chairman

The directors may elect one (1) of their number to be chairman of their meetings and may determine the period for which that person is to hold that office. Such person is entitled to use the title "chairman". If no chairman is elected or if at any meeting of the directors the chairman is not present within fifteen (15) minutes of the time appointed for holding the meeting, subject to the next clause, the directors present must choose one (1) of their number to be chairman of such meeting.

17.8 Appointment of deputy chairman

The directors may elect one (1) of their number to be the deputy chairman of their meetings and may determine the period for which that person is to hold that office. Such person is entitled to use the title "deputy chairman". In the absence of the chairman at a meeting of the directors, the deputy chairman may exercise all the powers and authorities of the chairman.

17.9 Votes of directors

Questions arising at any meeting of the directors must be decided by a majority of two thirds of all votes that could be cast by directors where each director has one (1) vote. A director who is authorised in writing by another director to vote on behalf of that director is entitled (in addition to his or her own vote as a director) to one (1) vote on behalf of each such other director provided that director is not or those directors are not personally present. The chairman of the meeting does not have a casting vote.

17.10 Circulating resolution of directors

If two thirds of all eligible directors have signed a document (or counterparts of the same document) containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms is deemed to have been passed. The resolution is passed when the last director required under this clause 17 signs the document. The document constitutes a minute and must be entered into the minute book. A resolution may be expressed to take effect at, or earlier or later than, the time when it was passed.

17.11 Signing of circulating resolution

For the purposes of clause 17.10:

- (a) the "**eligible directors**" are all directors for the time being but excluding, first, those given leave of absence, and second, those who in the belief of the person initiating the document are absent from Australia; and
- (b) each director, other than one not entitled to vote on the resolution, may sign the document; and
- (c) if a person who is not entitled to vote on the resolution signs the document, it does not invalidate the resolution if it is otherwise valid;
- (d) an electronic transmission purporting to be signed by a director is treated as being in writing signed by such person; and
- (e) an email purportedly originating from a director is sufficient evidence that the director has responded to and is taken to have signed the circulating resolution.

17.12 Validity of acts of directors

Despite any defect in the appointment or continuance in office of a director or attorney under power of the Company, or disqualification to hold office or to vote, all acts done in good faith at any meeting of the directors or of a committee of directors or by the attorney are valid as if every such person had been duly appointed or had duly continued in office and was qualified to be a director or attorney and was entitled to vote.

17.13 Non-compliance with a Board policy

If a director is given time to rectify an item or event of non-compliance as described in clause 14.15(b), the Board may direct the director not to attend a specific meeting or specific meetings during the period in which the rectification is to take place or not to attend any meetings during that period. During that period, the director is not entitled to vote on any matter to be decided by the Board. Without limiting the above, the Board may determine the terms on which a leave of absence is granted or is directed to be taken.

17.14 Leave of Absence of Director

The Board may grant leave of absence to any director from attending any Board or Committee meeting for such period of time as specified by the Board provided that the absence does not adversely affect the efficient operation of the Board.

18. MATERIAL PERSONAL INTERESTS OF DIRECTORS**18.1 Director's duty to notify**

A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice of the interest unless clause 18.2 says otherwise.

18.2 Exemptions

Subject to any requirement of any policy, guideline or procedure adopted or established by the Board from time to time in respect of any requirement of SIS or the Regulator, the director does not need to give notice of an interest under clause 18.1 if:

- (a) the interest:
 - i) arises in relation to the director's remuneration as a director of the Company; or
 - ii) arises in relation to the directors membership of the Fund (in common with other members of the Fund); or
 - iii) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company; or
 - iv) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in clause 18.2(a)(iii); or
 - v) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the Company (but only if the contract does not make the Company or a related body corporate the insurer); or

- vi) relates to any payment by the Company or a related body corporate in respect of an indemnity permitted under the Corporations Act or any contract relating to such an indemnity; or
 - vii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or
- (b) the other directors are aware of the nature and extent of the interest and its relation to the affairs of the Company; or
 - (c) all of the following conditions are satisfied:
 - i) the director has already given a notice under clause 18.1; and
 - ii) if a new director has been appointed since the time when the notice under clause 18.1 was given, a copy of the notice is given by anyone to the new director; and
 - iii) the nature and extent of the interest has not materially increased above that disclosed in the notice under clause 18.1; or
 - (d) the director has given a standing notice under clause 18.4 and the standing notice is still effective in relation to the interest.

18.3 Notice of material personal interest

The notice required by clause 18.1 must:

- (a) give details of:
 - i) the nature and extent of the interest; and
 - ii) the relation of the interest to the affairs of the Company; and
- (b) be given at a meeting of the directors as soon as practicable after the director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

18.4 Standing notice about an interest

A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with clause 18.5. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given. The standing notice may be given to the other directors before the interest becomes a material personal interest.

18.5 Form of standing notice

The notice under clause 18.4:

- (a) must give details of the nature and extent of the interest; and

- (b) may be given either:
 - i) at a meeting of the directors, either orally or in writing whether or not all directors are present; or
 - ii) at any other time, by written notice to all other directors.

18.6 Standing notice must be disclosed if given to directors individually

If the standing notice is given to the other directors individually in writing, it must be disclosed at the next meeting of the directors after it is given.

18.7 Nature and extent of interest must be recorded in minutes

The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or disclosed.

18.8 Dates of effect and expiry of standing notice

The standing notice:

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if a new director is appointed since the time when the notice was given until a copy of the notice is given by anyone to the new director.

18.9 Effect of material increase in nature or extent of interest

A standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the standing notice.

18.10 Board may make exceptions regarding directors' interests in issues

Despite any other provision of this Constitution, provided SIS and the Corporations Act do not prohibit it, the Board may make rules regarding directors with an interest in an issue participating in the decision making of the Board, including, without limitation:

- (a) permitting a director who is otherwise prohibited from doing all or any of the following to do all or any of them; or
- (b) prohibiting a director who is otherwise permitted to do any or all of the following from doing all or any of them,

namely:

- (c) attending a meeting at which the issue is to be discussed; or
- (d) receiving material in respect of the issue; or
- (e) participating in discussions regarding the issue; or
- (f) voting on the issue; or
- (g) doing anything else in respect of the issue.

18.11 Effect of contravention

A contravention of any of the clauses in this clause 18 by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

19. POWERS AND DUTIES OF DIRECTORS

19.1 Powers generally

Subject to SIS and the Corporations Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the directors. The directors may exercise all such powers of the Company and do all such acts or things unless, by this Constitution or by the Corporations Act, they are expressly required to be exercised or done by a meeting of members. No ordinary resolution, special resolution, or change in this Constitution, invalidates any prior act of the directors which would have been valid if that resolution or change in this Constitution had not been adopted or passed.

19.2 Borrowing

Subject to SIS, the directors have the power to raise or borrow any sum or sums of money and to secure the payment or repayment of such moneys and any other obligation or liability of the Company in such manner and on such terms in all respects as they think fit. This includes upon the security of any mortgage or by the issue of debentures or debenture stock of the Company charged upon all or any of the property of the Company (both present and future) including its goodwill, undertaking and uncalled capital for the time being or upon bills of exchange, promissory notes or other obligations or otherwise.

19.3 Arrangements for satisfying licensing requirement

Subject to SIS, the directors have the power to enter into any arrangement with the Fund or any service provider to the Fund in such manner and on such terms in all respects as they think fit for the purpose of ensuring that the Company satisfies any approval or licensing requirement to act as trustee of the Fund. Without limitation, the Company may accept on deposit from the Fund or a service provider to the Fund any amount on any terms as to repayment, interest or otherwise as the directors think fit.

19.4 Security

Without limiting the generality of clause 19.2, the directors have the power to make such loans to, and to provide such guarantees and security for obligations undertaken by, directors of the Company as may be permitted by SIS or the Corporations Act and resolution of the Company in accordance with SIS and the Corporations Act.

19.5 Execution of negotiable instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed as the case may be in such manner as the directors at any time determine.

19.6 Appointment of attorney

The directors may at any time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the directors under this Constitution) and for such period and subject to such conditions as they may

think fit. Any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in the attorney.

19.7 Delegation

The directors may at any time confer upon any director, or such other person as they may select, such of the powers exercisable under this Constitution by the directors as they may think fit for such time and to be exercised for such objects and purposes and upon such terms and with such restrictions as they think expedient. They may confer such powers whether collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the directors in that respect. They may at any time revoke, withdraw, alter or vary all or any of such powers.

19.8 Validity of acts

Despite anything contained in this Constitution, if it is found that some formality required by this Constitution to be done has been inadvertently omitted or has not been carried out, such omission does not invalidate any resolution, act, matter or thing which but for such omission would have been valid unless it is proved to the satisfaction of the directors or a majority of them that such omission has directly prejudiced any member financially. The decision of the directors is conclusive and final and binds all members.

20. COMMITTEES

20.1 Delegation to committee

The directors may:

- (a) delegate any of their powers to committees consisting of such one (1) or more persons, whether directors or not, as they think fit; and
- (b) establish advisory committees (or other committees not having delegated power of directors) consisting of such person or persons as they think fit.

20.2 Committee powers

- (a) Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions that may at any time be given or imposed by the directors.
- (b) All committees of the Board are required to function under a Board approved charter which sets out details of the authority that the Board has delegated to the committee.

20.3 Committee meetings

The meetings and proceedings of any committee consisting of two (2) or more persons are governed by the provisions in this Constitution for regulating the meetings and proceedings of the directors so far as they are capable of application and not affected by any resolution made, or direction given, by the directors under clause 20.2.

20.4 Committee members as officers

Each person appointed to a committee under clause 20.1(a), if not otherwise an officer of the Company, is when exercising the powers so delegated or functions entrusted, an officer of the Company.

21. SECRETARY

21.1 Appointment of Secretary

The Secretary must be appointed by the directors and holds office until the Secretary's services are terminated by the directors.

21.2 Duties of Secretary

The Secretary must perform such duties as are required of that person by SIS and the Corporations Act and this Constitution and, in addition, must perform such duties and exercise such powers as may at any time be directed by the directors.

21.3 Assistant Secretary

The directors may also appoint an assistant Secretary or assistant Secretaries and temporary substitutes for the Secretary. Any such assistant Secretary or temporary substitute is, for the purposes of this Constitution, treated as and may fulfil the duty of the Secretary subject to any limitation prescribed by the directors.

22. MINUTES

Any minutes of a meeting of members or of the directors, if purporting to be signed by any person purporting to be either the chairman of such meeting, or the chairman of the next succeeding meeting, must be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or appearing and of the regularity of those things in all respects and that the same took place at a meeting duly called and held.

23. COMMON SEAL

23.1 Optional

The Company may at any time have a common seal (but is not obliged to have one).

23.2 Use of common seal

The common seal must not be affixed to any document unless it is done by the authority of the directors or of a committee of them with delegated authority in that respect.

23.3 Mode of execution by common seal

Every document to which the common seal is fixed must be signed, to witness the fixing of the seal, by two (2) persons. One (1) must be a director. The other must be the Secretary, a second director, or such other person as the directors may appoint for that purpose. No person may sign in more than one (1) capacity.

23.4 Presence during execution

It is not necessary for a person signing under either of clauses 23.2 or 23.3 to be present either when the common seal is fixed or when another person signs the document under either clauses 23.2 or 23.3.

23.5 Delegation of authority to use common seal

The directors may delegate to any director power and authority to fix the common seal to such documents as the directors may at any time by resolution determine. When so fixed

and signed by the director, it is binding on the Company in all respects as if it were duly signed by two (2) directors.

24. EXECUTION OF DOCUMENT WITHOUT A COMMON SEAL

24.1 Use of common seal optional

This clause 24 operates regardless of whether the Company has a common seal.

24.2 Mode of execution

While the Company is not a single director company, the Company may execute a document (including a deed if it is expressed to be executed as a deed) without using a common seal if the document is signed by two (2) persons. One (1) must be a director. The other must be the Secretary or a second director. No person may sign in more than one (1) capacity.

25. DIVIDENDS

The directors must not at any time declare a dividend to be paid to members.

26. AUDITOR

The Company's financial statements must be audited each year by an auditor appointed in accordance with the Corporations Act.

27. NOTICES

27.1 Service of notices

Where this Constitution, SIS, the Corporations Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this clause 27.1 referred to as "served"), the document may be served on the person:

- (a) by delivering it to the person personally; or
- (b) by dispatching it, whether by post, contractor, agent, electronic means or otherwise, to the address of the place of residence or business of the person last known to the person serving the document or, in the case of a member, to the address of the member entered in the register and the document, by such dispatch, is regarded as left at that address; or
- (c) subject to SIS and the Corporations Act, by publication in a newspaper circulating generally in the State in which the registered office is located.

27.2 Date of deemed service

A document served under clause 27.1 is treated as having been duly served, irrespective of whether it is actually received:

- (a) where clause 27.1(b) applies - on the day following the day when dispatch occurred; and
- (b) where clause 27.1(c) applies - on the day the newspaper is first published.

27.3 Overseas members

Where the Company proposes to send a document to a member by pre-paid post and the notice is to be sent outside Australia, the Company may send the notice by airmail or by electronic means.

27.4 Counting of days

Subject to SIS and the Corporations Act, where a specified number of days' notice or notice extending over any period is required to be given, both the day of service and the day upon which such notice will expire are excluded in such number of days or other period.

27.5 Binding on others

Every person who by operation of law or other means whatever, becomes entitled to any share is bound by every notice in respect of such share which, previous to that person's name and address being entered on the register, has been duly given to the person from whom that person derives that person's title and to every previous holder of such share.

27.6 Service on Company or its officers

Every document required to be served upon the Company or upon any officer of the Company may be served by leaving it at the registered office.

27.7 Signature

The signature to any document to be given by the Company may be written, printed or stamped.

28. INDEMNITY AND INSURANCE**28.1 Indemnity for officers**

To the maximum extent that SIS and the Corporations Act allows, each officer of the Company and each officer of any wholly-owned entity must be indemnified by the Company against any liability incurred by that person in that capacity and the cost of defending such claims against that person.

28.2 Insurance premiums

The directors may, at any time, cause the Company to pay premiums in respect of a contract insuring a person (whether with others or not) who is an officer of the Company or who is an officer of a wholly-owned entity against a liability incurred by the person as such an officer and the cost of defending such claims against that person. The liability insured against must not include that which SIS or the Corporations Act prohibits. Any such premium in relation to a director is in addition to, and not regarded as part of, the remuneration of directors.

28.3 Contract

The Company may contract with any officer of the Company or with any officer of any wholly-owned entity in relation to the matters referred to in clauses 28.1 and 28.2 not only during that person's directorship but also after that person has ceased to be a director.

28.4 Indemnity and insurance by the Fund

The directors must use reasonable endeavours to ensure that, to the maximum extent that SIS and the Corporations Act allows, at all times, each Fund:

- (a) indemnifies each officer of the Company and each officer of any wholly-owned entity against any liability incurred by the officer in respect of the Fund and the cost of defending such claims against the officer; and
- (b) pays the premiums in respect of a contract insuring each officer of the Company and each officer of any wholly-owned entity (whether with others or not) against a liability incurred by the officer in respect of the Fund and the cost of defending such claims against the officer.

SCHEDULE 1

Terms of Issue – Redeemable Preference Shares

Redeemable preference shares have rights and privileges and are subject to restrictions as follows.

1. GENERAL

1.1 Issue price

Each redeemable preference share must be issued for a total issue price of one dollar (\$1) and must be fully paid on issue.

1.2 Limitation on transfer

Redeemable preference shares are not transferable in any circumstances.

1.3 Some changes to rights to Constitution of limited effect

Unless the redeemable preference members pass a special resolution to the contrary intention, any change to the Constitution or these terms of issue that would have a direct, material and detrimental effect on the rights, privileges or restrictions of redeemable preference shares, does not bind redeemable preference members (solely in their capacity as redeemable preference members).

1.4 These terms of issue

A copy of these terms of issue is to be attached to the share certificate (if any) for a redeemable preference share.

2. VOTING

Redeemable preference members have the right to notice of, to attend and to vote at any meetings of members in respect of each redeemable preference share.

3. DIVIDENDS

Redeemable preference members have no rights to dividends in respect of any redeemable preference share.

4. RIGHTS AND OBLIGATIONS ON WINDING UP

4.1 Rights on winding up

Redeemable preference members rank in priority to any distribution to another institution under clause 5.2 of the Constitution for the amount actually paid on their redeemable preference shares but otherwise have no rights in respect of any surplus assets on merger, winding up or dissolution of the Company.

4.2 Obligations on winding up

A redeemable preference member has no obligations in respect of any shortfall in assets on merger, winding up or dissolution of the Company beyond the amount unpaid (if any) on the redeemable preference shares held by that redeemable preference member.

5. REDEMPTION

5.1 Redemption

On and by virtue of a redeemable preference member vacating office as a director, all redeemable preference shares held by the redeemable preference member are redeemed. If redemption of a redeemable preference share would result in the Company having no shares on issue at a particular time, the redemption is postponed until immediately after another redeemable preference share has been issued.

5.2 Redemption value and payment

The redemption value of a redeemable preference share to be redeemed is the amount actually paid on that redeemable preference share and is payable within thirty(30) days after redemption of the redeemable preference share.

5.3 Cancellation on redemption

Redeemable preference shares are cancelled on and by virtue of redemption.

6. DICTIONARY AND INTERPRETATION

6.1 Dictionary

In the construction of these terms of issue, unless the contrary intention appears:

Constitution means the constitution of the Company from time to time.

redeemable preference member means a holder of a redeemable preference share.

redeemable preference share means a redeemable preference share in the capital of the Company.

6.2 Rules of interpretation

In the construction of these terms of issue, unless the contrary intention appears:

- (a) terms given a defined meaning in the Constitution have the same meaning when used in these terms of issue; and
- (b) the rules of interpretation of the Constitution apply to these terms of issue.

SCHEDULE 2

Proxy Form

**Aware Super Pty Ltd
ACN 118 202 672**

PROXY FORM

Member

.....
(full name of member – please print)

.....
(address)

Appoints

.....
(name, or office held, of Proxy – please print)
Please note that a proxy must be a director of the Company.

.....
(address)

or failing such appointment or the absence of that person, **the Chairman of the Meeting**, as my Proxy to vote for me on my behalf (with discretion as to any business not referred to below) at the annual general meeting of the Company to be held on *insert date*, and at any adjournment of that meeting.

(Voting instructions to be indicated by a tick in the appropriate box. If no instruction is given the Proxy may vote as that person thinks fit, or abstain).

Business	For	Against	Abstain
1. [caption]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. [caption]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SIGNATURE

.....

.....