

**CONSOLIDATED CONSTITUTION OF  
ELECTRICITY SUPPLY INDUSTRY SUPERANNUATION  
(QLD) LTD**

**ADOPTED BY SPECIAL RESOLUTION OF MEMBERS 28 MAY 2013**

**AS AMENDED BY:**

- Special Resolution of Members 9 November 2018.

# CONSTITUTION

## OF

### ELECTRICITY SUPPLY INDUSTRY SUPERANNUATION (QLD) LTD

#### 1. **Interpretation**

1.1 In this Constitution unless there is something in the subject or context inconsistent therewith -

"Alternate Director" means, as appropriate, an Employer Alternate Director or a Member Alternate Director;

"Appointment Rules" means the rules and procedures determined by the Directors under Article 14.6A(f) in relation to Employer Directors, as varied from time to time;

"Auditor" or "Auditors" means the auditor or auditors for the time being of the Company;

"Chairperson of Directors" means the chairperson of the directors appointed pursuant to Article 17.8;

"Changeover Date" means 22 March 2011;

"Company" means Electricity Supply Industry Superannuation (Qld) Ltd;

"Commission" means the Australian Securities and Investments Commission;

"Constitution" means the constitution of the Company as amended from time to time;

"Corporations Law" means the Corporations Act 2001 (Cth);

"Deputy Chairperson of Directors" means the deputy chairperson of the directors appointed pursuant to Article 18;

"Director" means a person duly appointed as a director from time to time, and where appropriate, includes a person acting as an Alternate Director or an attorney for a director;

"Disqualified Person" has the meaning ascribed to it in the Superannuation Industry (Supervision) Act 1993 (Cth);

"Directors" and "Board" means the Directors for the time being or such number of them as have authority to act for the Company, acting as a body;

"ECA" means Electrical and Communication Association of Queensland Industrial Union of Employers (ABN 40 669 256 171);

"Employer" means a person who is an Employer under the Governing Rules.

"Employer Director" means a Director appointed under Article 14.6 or 14.6A (as the case may be);

"ETU" means The Electrical Trades Union of Employees Queensland (ABN 71 584 779 039);

"Fit and Proper Policy" means the Fit and Proper Policy adopted by the Board under Article 26.6(a);

"Fund" means Energy Super or any other regulated superannuation fund of which the Company is the trustee;

"Fund Member" means a person who is for the time being a member of the Fund;

"Governing Rules" means the trust deed or any other document governing the Fund, as amended from time to time;

"Independent Director" means a Director appointed under Article 14.7;

"member" means a person who for the time being is a member of the Company in accordance with the provisions of the Superannuation Law;

"Member Director" means a Director appointed under Article 14.5 or 14.5A (as the case may be);

"office" or "office of the Company" means the registered office of the Company for the time being in the State of Registration;

"Officer" has the meaning ascribed to it in the Corporations Law;

"present" when used of a member in relation to a meeting means present in person, or by representative appointed pursuant to this Constitution or by attorney or by proxy or deemed presence in person under Article 9.9 and when used of a Director in relation to a meeting means present in person or deemed presence in person under Article 17.11;

"Principal Unions" means the QSU and the ETU;

"QSU" means Queensland Services Union of Employees (ABN 13 540 483 194);

"register" means the register of members kept pursuant to the Corporations Law;

"registered address" of a member means the address of a member stated in the register, or, if the member has given notice in writing to the Company of a changed address, the last address of which the member has given such notice;

"representative" in relation to a corporation which is a member, means an individual appointed by the corporation as the corporation's representative to exercise any or all of the corporation's rights and powers as a member;

"Responsible Person" has the meaning ascribed to it in the Superannuation Law;

"seal" means the common seal of the Company;

"Secretary" means any person appointed to perform all or any of the duties of a secretary of the Company;

"State of Registration" means the State or Territory of Australia in which the office of the Company is located;

"Superannuation Law" means the requirements set out in -

- (a) the Superannuation Industry (Supervision) Act 1993;
- (b) the Corporations Law;
- (c) the Income Tax Assessment Act 1936;
- (d) the Superannuation Entities (Taxation) Act 1987;
- (e) the Superannuation (Resolution of Complaints) Act 1993; and

- (f) any other present or future law of the Commonwealth of Australia or any State or Territory of Australia which the Company must comply with or satisfy in order for the Fund to remain a complying superannuation fund or to secure a concession for the Fund in respect of taxation or, in the opinion of the Company, to avoid a penalty, detriment or disadvantage to the Company or to the Fund;

“Transitional Rules” means rules and procedures determined by the Directors for the purposes of Article 14.4C.

1.2 In this Constitution unless there is something in the subject or context inconsistent therewith -

- (a) a reference to writing (including a reference to a document or form) includes any mode of representing or reproducing words in tangible and permanently visible form, and includes transmissions by facsimile and electronic mail and writing made available by electronic means;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all genders;
- (d) words importing natural persons include corporations;
- (e) references to notices in Article 23 include not only formal notices of meeting but also all documents and other communications from the Company to its members but do not include cheques;
- (f) references to any Officer of the Company include any person acting for the time being as such Officer; and
- (g) references to any statutory enactment other law or a provision thereof (hereinafter collectively called a “law”) shall include any regulation, rule, by-law, standard, licence condition, rule, class order, modification order, declaration, relief, determination, ruling or any other instruments, made under the authority of such a law and any amendment, re-enactment or replacement of any of them in whole or in part (whether or not passed or approved by the same legislative body or other authority and whether or not incorporating or adopting any law previously in force).

1.3 (a)  
(b) An expression used in a particular Part or Division of the Superannuation Law that is given by that Part or Division a special meaning for the purposes of that or any other Part or Division has, in any of this Constitution that deals with a matter dealt with by the relevant Part or Division, the same meaning as applies in or in respect of that Part or Division.

1.4 The headings and any index shall not affect the construction of this Constitution.

1.5 The Directors may pay out of the moneys of the Company for the time being in their hands all expenses in and about the formation and registration of the Company and the vesting in it of assets acquired by it.

## 2. **Membership**

2.1 Subject to the Superannuation Law, the liability of the members is limited.

- 2.2 Every member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while the member is a member, or within one year of the member ceasing to be a member, for payment of debts and liabilities of the Company contracted before the member ceases to be a member and of the costs, charges and expenses of winding up and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding 1 dollar.
- 2.3 Membership shall be in such classes (with or without separate or differing rights) as the Directors from time to time decide.

### **3. Admission to Membership**

- 3.1 The Directors shall comply with the Superannuation Law and in doing so may from time to time admit any person to membership upon the person agreeing to be bound by the Constitution and in particular shall admit to membership a sufficient number of persons to ensure that the membership of the Company does not fall below 6 or such other number as may be required to meet the Governing Rules and Superannuation Law.

### **4. Cessation of Membership**

- 4.1 A member's membership of the Company terminates with effect from:
- (a) the date of the member's death;
  - (b) the date the member provides the Company with written notice of the member's resignation from membership (or such later date specified in that notice);
  - (c) where a member is also a Director, the date the member ceases to be a Director.
- 4.2 The Directors may, at any time and without assigning any reason therefore, by notice in writing to any member, terminate the member's membership.

### **5. Exercise of Powers**

The Company may by resolution or special resolution as the Corporations Law requires exercise from time to time any power which by the Superannuation Law a company limited by guarantee may exercise if authorised by its constitution.

### **6. General Meetings**

- 6.1 The Company shall in each calendar year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices convening it. Subject to any extension permitted by the Commission, the annual general meeting shall be held within the period prescribed by the Corporations Law. The annual general meeting shall be held at such time and place as the Directors shall appoint.
- 6.2 All general meetings of members of the Company other than the annual general meetings shall be called general meetings.
- 6.3 A general meeting may be convened -
- (a) by the Secretary, with the authority of the Directors; or

- (b) by 4 or more members being at least 5% in number of the members of the Company at that time.

## **7. Notice of General Meetings**

- 7.1 (a) A notice of general meeting shall be given to all members entitled to attend and vote at the meeting and shall specify the place, the day and the hour of meeting and, except as provided by Article 7.1(b), shall state the general nature of the business to be transacted at the meeting.
- (b) It is not necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting includes the consideration of accounts and the reports of the Directors and auditors, the election of Directors in place of those retiring or the appointment and fixing of the remuneration of the auditors.
- 7.2 Subject to the Corporations Law relating to agreements for shorter notice, meetings of the Company or of classes of members that do not relate to the passing of a special resolution, shall be convened by notice in writing of at least 14 days and meetings that do relate to the passing of a special resolution shall be convened by notice in writing of at least 21 days.
- 7.3 Subject to the Corporations Law the omission whether by accident or error to give notice of a meeting to, or the non-receipt of notice of a meeting by, any member shall not invalidate the proceedings of any meeting.

## **8. Business of Meeting**

Anything that under this Constitution or under the Corporations Law may be done by the Company in general meeting may be done either at an annual general or other general meeting provided that due notice is given in accordance with this Constitution.

## **9. Proceedings at General Meetings**

- 9.1 Proceedings at General Meetings shall be regulated in such manner as a  $\frac{2}{3}$  majority of the members present and entitled to vote from time to time determine.
- 9.2 A quorum of members is  $\frac{2}{3}$  of the total number of members, at that time present in person or by a representative, proxy or attorney. A meeting at which a quorum is present shall be competent to transact business.
- 9.3 If a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved.
- 9.4 The Chairperson of Directors shall be entitled to take the chair at every general meeting but if there is no Chairperson of Directors, or if at any meeting that chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the Deputy Chairperson of Directors shall act as the chairperson of the meeting. If the Deputy Chairperson of Directors is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairperson, the members present and entitled to vote shall elect 1 of their number to be chairperson of the meeting.
- 9.5 The chairperson of the meeting may with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place but so that -

- (a) when a meeting is adjourned for 30 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting; and
  - (b) except as provided in paragraph (a), it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- 9.6 All business arising at any general meeting shall be determined only by resolution put to the vote of the meeting.
- 9.7 In the case of an equality of votes the chairperson of the meeting shall not be entitled to a second or casting vote.
- 9.8 Subject to the provisions of the Corporations Law any resolution of the Company determined other than at a general meeting and evidenced by writing under the hand of each member of the Company who for the time being is entitled to vote, or of his attorney appointed as provided in this Constitution, or the member being a corporation of its representative appointed as provided in this Constitution shall be as valid and effectual as a resolution duly passed at a general meeting of the Company.
- 9.9 Any member may participate in a meeting of the members by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.

## 10. **Votes of Members**

- 10.1 Subject to any conditions of a particular class of membership, the Superannuation Law and subject to Article 11.3, at any general meeting every member present in person or by proxy, attorney or representative shall be entitled to 1 vote only.
- 10.2 Votes may be given either personally or by representative appointed pursuant to this Constitution or by attorney or by proxy.
- 10.3 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to, is given or tendered. Any such objection shall be referred to the chairperson of the meeting, whose decision is final. A vote not disallowed pursuant to such an objection is valid for all purposes.

## 11. **Proxies**

- 11.1 The instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an Officer or attorney duly authorised.
- 11.2 A proxy may, but need not, be a member.
- 11.3 A member may not appoint more than 1 proxy.
- 11.4 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- 11.5 An instrument appointing a proxy shall be in a form approved by the Directors.
- 11.6 An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a certified Photostat copy of that power or authority, is or are deposited, not

less than 24 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, at the office of the Company or at such other place within the State of Registration as is specified for that purpose in the notice convening the meeting.

- 11.7 A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed), or the cessation of membership of the member concerned, if no intimation in writing of the death, unsoundness of mind, or transfer or redemption has been received by the Company at the office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## 12. **Corporations acting by Representatives**

Any corporation which is a member may by resolution of its directors or other governing body authorise any person (whether a member or not) whom it thinks fit to act as its representative at any meeting of the Company or of any class of members, and, if the corporation thinks fit, to exercise (whether at a meeting or not) the same powers (including the giving of any consent and the signing of any resolution appointment or other document) as the corporation could exercise if it were an individual member and also to exercise all such other powers as are conferred by the instrument of appointment.

## 13. **Attorneys of Members**

- 13.1 Any member may appoint an attorney (who may, but need not, be a member) to act for or on that member's behalf at all meetings of the Company at which that member is not present and to give any consent and sign any appointment or resolution or other document which the member could give or sign.
- 13.2 Any such appointment shall be made by power of attorney duly executed by the member and attested by 1 or more witness or witnesses, or if the member is a corporation then under its common seal, and the power of attorney shall at least 24 hours before the attorney becomes entitled to act there under be deposited at the office of the Company accompanied by such evidence of its due execution and non-revocation as the Directors require.
- 13.3 The power of attorney shall be in a form approved by the Directors.
- 13.4 No act done or vote given by attorney shall be rendered invalid by the revocation of the appointment of the attorney by death or otherwise unless and until a duly authenticated notice of such revocation is received at the office of the Company.
- 13.5 The attorney so appointed may during the absence of the member and while the power of attorney remains unrevoked attend at and take part in the proceedings and vote at all meetings of the Company and demand or join in the demand for a poll in the same manner as the member could do if personally present, and may give any consent and sign any appointment or resolution or other document which the member could give or sign.

## 14. **Directors**

- 14.1 The provisions of Articles 14.4A to 14.10A inclusive shall apply to the appointment and removal of Directors, from the date of operation of Article 14.4. Prior to that date,



Article 14.3 applies and the Directors may otherwise be appointed by the members in general meeting.

- 14.2 The number of Directors shall be a minimum of 6 and a maximum of 12 unless otherwise determined by the Company in general meeting or required by the Superannuation Law.
- 14.3 Until such time as Article 14.4 operates the Directors of the Company shall be the members of the Queensland Electricity Supply Industry Superannuation Board established under the Queensland Electricity Act 1976 who will continue as Directors notwithstanding the Superannuation Board ceasing to exist under the Queensland Electricity Act 1994.
- 14.4 From the earlier of the date required by the Superannuation Law and the date determined by the Employers the Directors must consist of an equal number of member representatives selected under Article 14.5 ("Member Directors") and employer representatives selected under Article 14.6 ("Employer Directors") but may include an additional director selected under Article 14.7 ("Independent Director"). From the Changeover Date, the Directors must consist of an equal number of member representatives selected under Article 14.5A ("Member Directors") and employer representatives selected under Article 14.6A ("Employer Directors") but may include an additional director selected under Article 14.7 ("Independent Director").
- 14.4A The provisions of this Article 14.4A apply subject to Articles 14.7A and 26.1:
- (a) Persons selected from time to time by the Principal Unions to be a Member Director and Member Alternate Director take office 5 business days after the date of receipt by the Secretary of the Company of notification of their selection.
  - (b) Persons selected by the Fund Members to be Member Directors and Member Alternate Directors take office:
    - (i) where selected to replace a Member Director or Member Alternate Director whose term of office is to expire, on the expiry of that term of office;
    - (ii) otherwise, 5 business days after the date of receipt by the Secretary of the Company of notification of their selection.
  - (c) Persons selected from time to time by the Employers to be Employer Directors and Employer Alternate Directors take office:
    - (i) where selected to replace an Employer Director or Employer Alternate Director whose term of office is to expire, on expiry of that term of office;
    - (ii) otherwise, 5 business days after the date of receipt by the Secretary of the Company of notification of their selection.
  - (d) A person previously holding office as having been selected by the Principal Unions, the Fund Members or the Employers, who is not included in the most recent notification of selection received from the same group, ceases to be a Director unless that person is included in a notification by another group received at the same time.
- 14.4B The provisions of this Article 14.4B apply subject to Articles 14.7A and 26.1:

- (a) From the Changeover Date, Article 14.4A ceases to apply and this Article 14.4B applies instead.
- (b) Persons selected from time to time as a Member Director or Employer Director take office -
  - (i) where selected to replace a Director whose term of office is to expire, on the expiry of that term of office;
  - (ii) otherwise, 5 business days after the date of receipt by the Secretary of the Company of notification of their selection.
- (c) Directors hold office for 3 year terms, other than as set out in Article 14.4B(d).
- (d) A Director who is -
  - (i) in office on the Changeover Date, or whose term of office commences on the Changeover Date, holds office until 30 November 2011;
  - (i) appointed as at 1 December 2011, holds office for a term set out in Transitional Rules;
  - (ii) a Member Director selected by ETU or QSU on a two year rotation under Article 14.5A(e)(iii), holds office for a 2 year term.
- (e) A Director is eligible for re-selection on expiry of their term.
- (f) A Director selected by an organisation may be removed by that organisation (whether or not their term has expired). The removal takes effect on receipt by the Secretary of the Company of notification of their removal.
- (g) A person who is not included in the most recent notification of selection received from the same organisation that selected the person to hold office as a Director, ceases to be a Director unless that person is included in a notification by another organisation received at the same time or is otherwise selected for a new appointment at the same time.
- (h) A Director who is in office on the Changeover Date, or whose term of office commences on the Changeover Date, is deemed selected as a Member Director or Employer Director by an organisation or in accordance with Appointment Rules, as specified in Transitional Rules.

14.4C The Directors must determine rules ("**Transitional Rules**") prescribing -

- (a) in respect of each Director who is in office on the Changeover Date, and each Director whose term of office commences on the Changeover Date, that they are deemed selected as a Member Director or Employer Director by an organisation or in accordance with Appointment Rules; and
- (b) the term of office for Directors appointed in the period from 1 December 2011 to 31 March 2017.

14.5 The provisions of this Article 14.5 apply subject to Articles 14.7A and 26.1:

- (a) Subject to the Superannuation Law, the Principal Unions may jointly select 1 Member Director and 1 Member Alternate Director.
- (b) The remaining Member Directors and Member Alternate Directors must be selected by the Fund Members.

- (c) Subject to the Superannuation Law, any person may be selected as a Member Director or Member Alternate Director.
- (d) The incumbent Directors must determine rules and procedures which apply to the selection and removal of the Member Directors and Member Alternate Directors who are to be selected by the Fund Members.
- (e) The rules and procedures may include such matters as -
  - (i) the date on which a Member Director or Member Alternate Director assumes office;
  - (ii) the term of office of a Member Director or Member Alternate Director, which must be no more than 4 years;
  - (iii) (subject to paragraphs (a), (b) and (c)) eligibility, nominations, electoral groupings and voting; and
  - (iv) the manner in which casual vacancies in the office of Member Director or Member Alternate Director are to be filled;
  - (v) the manner of identifying which Member Alternate Director is to attend a meeting of Directors in the absence of a Member Director.
- (f) The incumbent Directors may vary the rules and procedures.
- (g) Failure to notify any Fund Member of anything relating to the selection of a Member Director has no effect on the selection.

14.5A The provisions of this Article 14.5A apply subject to Articles 14.7A and 26.1:

- (a) From the Changeover Date, Article 14.5 ceases to apply and this Article 14.5A applies instead.
- (b) Subject to the Superannuation Law, from the Changeover Date the selection of Member Directors is in accordance with this Article 14.5A.
- (c) For the period from the Changeover Date to 30 November 2011 -
  - (i) ETU may select three Member Directors;
  - (ii) QSU may select three Member Directors.
- (d) For the period 1 December 2011 to 31 March 2014 -
  - (i) ETU may select three Member Directors;
  - (ii) QSU may select two Member Directors.
- (e) From 1 April 2014 -
  - (i) ETU may select two Member Directors;
  - (ii) QSU may select one Member Director;
  - (iii) ETU and QSU may alternately select one Member Director on two year rotations, with the initial rotation selected by ETU.
- (g) Any person may be selected as a Member Director, subject to -
  - (i) the Superannuation Law; and
  - (ii) any eligibility criteria determined by the Directors.

- (h) The incumbent Directors may determine rules and procedures for appointment and removal of Member Alternate Directors.
- 14.6 The provisions of this Article 14.6 apply subject to Articles 14.7A and 26.1:
- (a) Subject to the Superannuation Law, the Employer Directors and Employer Alternate Directors must be selected, and may be removed, by Employers in accordance with the procedure set out in this Article 14.6.
  - (b) The Employer Directors and Employer Alternate Directors must be selected by Employers.
  - (c) Subject to the Superannuation Law, any person may be selected as an Employer Director or Employer Alternate Director.
  - (d) The incumbent Directors must determine rules and procedures which apply to the selection and removal of the Employer Directors and Employer Alternate Directors who are to be selected by the Employers. Such rules and procedures are subject to the approval of Employers representing a majority of Employers and a majority of Fund Members in employment.
  - (e) The rules and procedures may include such matters as -
    - (i) the date on which an Employer Director or Employer Alternate Director assumes office;
    - (ii) the term of office of an Employer Director or Employer Alternate Director, which must be no more than 4 years;
    - (iii) (subject to paragraphs (a), (b) and (c)) eligibility, nominations, electoral groupings and voting; and
    - (iv) the manner in which casual vacancies in the office of Employer Director or Employer Alternate Director are to be filled;
    - (v) the manner of identifying which Employer Alternate Director is to attend a meeting of Directors in the absence of an Employer Director.
  - (f) The incumbent Directors may vary the rules and procedures, subject to the approval of Employers representing a majority of Employers and a majority of Fund Members in employment.
  - (g) Failure to notify any Employer of anything relating to the selection of an Employer Director has no effect on the selection.
- 14.6A The provisions of this Article 14.6A apply subject to Articles 14.7A and 26.1:
- (a) From the Changeover Date, Article 14.6 ceases to apply and this Article 14.6A applies instead.
  - (b) Subject to the Superannuation Law, from the Changeover Date the appointment of Employer Directors is in accordance with this Article 14.6A.
  - (c) For the period from the Changeover Date to 31 March 2014 –
    - (i) ECA may select two Employer Directors;
    - (ii) the remaining Employer Directors shall be selected in accordance with the Appointment Rules and Transitional Rules.
  - (d) From 1 April 2014 -
    - (i) ECA may select one Employer Director;

- (ii) the remaining Employer Directors shall be selected in accordance with the Appointment Rules.
  - (e) Any person may be selected as an Employer Director, subject to –
    - (i) the Superannuation Law; and
    - (ii) any eligibility criteria determined by the incumbent Directors.
  - (f) The incumbent Directors must determine rules and procedures (“Appointment Rules”) for the selection and removal of the Employer Directors other than Employer Directors selected by ECA, and may vary the rules and procedures from time to time.
  - (g) The Appointment Rules for Employer Directors may include such matters as –
    - (i) the date on which a selected Employer Director assumes office;
    - (ii) eligibility criteria, and other requirements for nominations;
    - (iii) electoral groupings and voting;
    - (iv) the manner in which casual vacancies in the office of Employer Director are to be filled.
  - (h) The incumbent Directors may determine rules and procedures for appointment and removal of Employer Alternate Directors.
  - (i) Failure to notify any Employer of anything relating to the selection of an Employer Director has no effect on the selection.
- 14.7 The provisions of this Article 14.7 apply subject to Articles 14.7A and 26.1:
- (a) The Directors may select an additional Independent Director in accordance with the Superannuation Law.
  - (b) If an Independent Director is to be selected, the incumbent Directors must determine rules and procedures which apply to the selection and removal of Independent Directors.
  - (c) The rules and procedures may include such matters as -
    - (i) the date on which an Independent Director assumes office; and
    - (ii) the term of office of an Independent Director.
  - (d) The incumbent Directors may vary such rules and procedures.
- 14.7A Notwithstanding anything to the contrary in this Article 14, the Company must not appoint a person as a Director unless:
- (a) the person has consented in writing to the appointment;
  - (b) the person has confirmed by statutory declaration, and the Board has resolved, that he or she is not a Disqualified Person;
  - (c) the person has disclosed any material personal interest in a matter that relates to the affairs of the Company and any office or property held by the person by which, directly or indirectly, duties or interests might be created in conflict with his or her duties as Director in accordance with and as required by the Superannuation Law; and
  - (d) the Board has resolved that the person has satisfied the requirements of the Fit and Proper Policy.

- 14.8 (a) A Director holds office until the earliest of -
- (i) that Director becomes a Disqualified Person Superannuation Law;
  - (ii) that Director gives written notice of resignation to the Company;
  - (iii) the date on which that Director's term of office expires (unless the Director is re-selected for a further term);
  - (iv) that Director is disqualified from office by operation of law;
  - (v) that Director's death;
  - (vi) that Director ceases to satisfy any eligibility criteria applicable to that Director, including, but not limited to, the requirements of the Company's Fit and Proper Policy;
  - (vii) that Director is removed from office in accordance with this Constitution.
- (b) A Director who ceases to hold office under this Article and who is otherwise eligible, is entitled to be reselected or reappointed as a Director.
- 14.9 (a) The Company has power to act even when there is not a full complement of Directors.
- (b) A casual vacancy in the number of Employer Directors and Member Directors must be filled in accordance with Article 14.10.
- 14.10 The provisions of this Article 14.10 are subject to Articles 14.7A and 26.1:
- (a) A casual vacancy in the office of a Director who was appointed by an organisation is to be filled by a person selected by that organisation.
  - (b) A casual vacancy in the office of an Employer Director who was selected in accordance with the Appointment Rules is to be filled in accordance with the Appointment Rules.
  - (c) A Director appointed to fill a casual vacancy holds office for the remainder of the term of the Director whose office is vacated, and is eligible for re-selection on expiry of the term.
- 14.10A (a) In the absence of a Member Director from a meeting of Directors, where there is a Member Alternate Director for that Director, the Member Alternate Director is entitled to attend the meeting.
- (b) In the absence of an Employer Director from a meeting of Directors, where there is an Employer Alternate Director for that Director the Employer Alternate Director is entitled to attend the meeting.
- 14.11 The Directors shall not be subject to retirement by rotation and no Director shall be appointed otherwise than as herein provided.
- 14.12 Subject to Article 26.1:
- (a) A Director may be remunerated as determined by the Board, such remuneration to be set after comparison of director fees for directors of trustees administering similar regulated superannuation funds to the Fund, or as otherwise recommended by the remuneration committee appointed by the Board.

- (b) A Director may also be paid all travelling and other expenses properly incurred by the Director in attending and returning from meetings of the Directors or general meetings of the Company or otherwise in connection with the business of the Company.
- 14.13 A Director shall not be required to be a member of the Company by way of qualification unless otherwise determined by the Company in general meeting. A Director who is not a member of the Company shall nevertheless be entitled to attend and speak at general meetings.
- 14.14 A Director must disclose to the Board any material personal interest in a matter that relates to the affairs of the Company and any office or property held by the Director by which, directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as a Director, in accordance with and as required by the Superannuation Law.
- 14.15 Subject to Article 26.1:
- (a) A Director shall not be disqualified from that office by being a Fund Member or from contracting with the Company either as vendor purchaser or otherwise or from being employed by the Company or acting in any capacity professional or other on behalf of the Company (other than that of Auditor).
  - (b) Provided that the Director fully discloses the Director's interest in accordance with Article 14.14 prior to the contract or arrangement (or proposed contract or arrangement) being made or entered into, no contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested shall be avoided or rendered voidable by reason only of such Director holding that office or of the fiduciary relation thereby established.
  - (c) Provided that the Director has made the disclosure required by Article 14.14, no Director so contracting or being so interested shall be liable to account to the Company for any profit realised by any such contract or arrangement (or proposed contract or arrangement) by reason only of such Director holding that office or of the fiduciary relation thereby established.
  - (d) Unless the other Directors decide otherwise, a Director may vote in respect of any contract or arrangement (or proposed contract or arrangement) in which that Director is so interested as aforesaid and shall be entitled to be counted in the quorum at any meeting at which such contract or arrangement is considered and may attest the affixing of the seal and the affixing of the official seal to any deed or document relating thereto.
- 14.16 Notwithstanding Article 14.15 and subject to Article 26.1, a Director who is a Fund Member, shall not be disqualified solely on the basis that the Director is a Fund Member, from voting on contracts or arrangements (or proposed contracts or arrangements) that the Company proposes to enter into which in any way, whether directly or indirectly, relate to the Fund whether or not the Director has disclosed the fact that the Director is a Fund Member.

## 15. **Powers and Duties of Directors**

- 15.1 Subject to the Corporations Law and to any other provisions of this Constitution, the Company shall be managed by the Directors, who may pay all expenses incurred in promoting and forming the Company, and may exercise all the powers of the Company

that are not by the Corporations Law or by this Constitution required to be exercised by the Company in general meeting.

- 15.2 Without limiting the generality of Article 15.1 and without prejudice to the other powers conferred by this Constitution it is hereby expressly declared that the Directors shall have the powers necessary to enable the Company to carry out its trusteeship of the Fund in accordance with the Governing Rules and Superannuation Law.

## 16. **Minutes**

- 16.1 The Directors shall cause minutes to be made of -
- (a) all appointments of Directors and Officers;
  - (b) the names of the Directors present at each:
    - (i) meeting of members and classes of members;
    - (ii) meeting of the Directors; and
    - (iii) meeting of any committee of Directors;
  - (c) all orders made by the Directors;
  - (d) all declarations made or notices given by any Director (either generally or specially) of his or her interest in any contract or arrangement or proposed contract or arrangement or of his or her holding of any office or property whereby any conflict of duty or interest may arise; and
  - (e) all resolutions and proceedings of meetings of members and classes of members, of the Directors and of any committee of Directors.
- 16.2 Any such minutes so entered of any meeting of the Directors or of any general meeting of members, or of any class or classes of members, if purporting to be signed by the chairperson of the meeting or of the next succeeding meeting of the same body, shall be receivable as prima facie evidence of the matters stated in the minutes of that meeting of the meeting having been duly held and convened and of the validity of all proceedings and appointments at such meetings.

## 17. **Proceedings of Directors**

- 17.1 Except as otherwise provided in this Constitution or in the Governing Rules, the Directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings and manner of dispatching business as they think fit and a meeting at which a quorum is present should be competent to exercise all or any of the powers exercisable by the Directors generally.
- 17.2 The number of Directors whose presence is necessary to constitute a quorum necessary for transaction of the business of the Directors shall be  $\frac{2}{3}$  of the total number of Directors in office at that time.
- 17.3 No business shall be transacted at any meeting of Directors unless a quorum of Directors is present throughout the meeting.
- 17.4 All business arising at any meeting of the Directors shall be determined only by resolution and no such resolution shall be effective unless carried by at least a quorum of Directors or such other number or combination of Directors as the Governing Rules or Superannuation Law provide is necessary for the conduct of business.



- 17.5 Each Director present at a meeting of Directors shall have one deliberative vote on any question. No Director shall have a second or casting vote in addition to his deliberative vote.
- 17.6 Four Directors may at any time, and the Secretary shall on the requisition of 4 Directors, convene a meeting of the Directors. Unless a quorum of Directors determine that a meeting of Directors shall be held at shorter notice not less than 7 days prior written notice of a meeting of Directors shall be given to each of the Directors or other Directors, as the case may be.
- 17.7 A vacancy in the office of a Director must be filled within 90 days. However any delay in filling the vacancy does not affect the validity of any subsequent appointment.
- 17.8 The Chairperson of Directors shall be appointed from one of their number in accordance with the Governing Rules and Superannuation Law.
- 17.9 The Chairperson of Directors shall act as chairperson of each meeting of Directors at which the said Chairperson of Directors is in attendance. Where a meeting is held and:
- (a) the Chairperson of Directors is not present within 15 minutes after the time appointed for the holding of the meeting; or
  - (b) if the Chairperson of Directors cannot, or is unwilling to, act (including, but not limited to, because of a conflict of interest or duties); or
  - (c) if no chairperson has been appointed,
- unless the Board otherwise determines, the Deputy Chairperson of Directors shall act as chairperson of that meeting. If the Deputy Chairperson of Directors is not present within 15 minutes after the time appointed for the holding of the meeting, or cannot, or is unwilling to, act (including, but not limited to, because of a conflict of interest or duties), the Directors present shall elect one of their number to be chairperson of the meeting.
- 17.10 Unless the Board otherwise determines, the Deputy Chairperson of Directors:
- (a) may act as chairperson of a meeting of Directors in place of the Chairperson of Directors at the request of the Chairperson of Directors; and
  - (b) shall act as chairperson of a meeting of Directors in place of the Chairperson of Directors where, and for long as, the Chairperson of Directors is temporarily absent from that meeting.
- 17.11 Any Director may participate in a meeting of the Directors by means of conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.
- 17.12 All acts done by any meeting of the Directors or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or to act as a Director, or that a person so appointed was disqualified, as valid as if the person had been duly appointed and was qualified to be a Director.
- 17.13 Subject to Article 26.1, the Directors may delegate any of their powers to:
- (a) a committee of Directors;
  - (b) a Director;
  - (c) an employee of the Company; or

(d) any other person,

but any delegation does not affect the requirements in this Article 17 for passing resolutions of Directors.

- 17.14 Subject to Article 26.1, the Directors may at any time and from time to time by power of attorney appoint any person or persons or body of persons, whether nominated directly or indirectly by the Directors, 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 the Directors may from time to time think fit. Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with such, attorney as the Directors think fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions for the time being so vested.
- 17.15 If all Directors have signed a 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 shall be deemed to have been passed at a meeting of the Directors held on the day and at the time the document was last signed by a Director.
- 17.16 For the purposes of Article 17.15, 2 or more separate documents containing statements in identical terms each of which is signed by 1 or more Directors shall together be deemed to constitute 1 document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.
- 17.17 A reference in Article 17.15 to Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.
- 17.17A For the purposes of Article 17.15, a document is taken to have been signed by a Director if:
- (a) a document containing the terms of the resolution has been signed by the Director either physically or by affixing a signature by electronic means, and the document has been given to the Company; or
  - (b) where the Board has approved a procedure for Directors to vote on a resolution by electronic means, the Director voted in accordance with an approved procedure.
- 17.18 An Employer Alternate Director and Member Alternate Director ("**alternate**"):
- (a) is entitled to receive notice of meetings of the Directors, and to attend and vote at those meetings, where a Director for whom the alternate acts as Alternate Director is not present;
  - (b) may exercise all of the powers of the Director for whom the alternate acts as Alternate Director;
  - (c) whilst acting as a Director, is responsible to the Company for the alternate's own acts and defaults, and the Director for whom the alternate is acting is not responsible for those acts or defaults.

## 18. **Deputy Chairperson of Directors**

- 18.1 A Deputy Chairperson of Directors shall be appointed from one of their number in accordance with the Governing Rules and Superannuation Law for a term of 12 months (or such lesser term determined by the Directors at the time of the appointment).

- 18.2 The appointment of the Deputy Chairperson of Director may be terminated, at any time, by the Board.
- 18.3 Subject to Article 26.1, the Deputy Chairperson of Director is appointed with such responsibilities and on such terms and conditions, as to remuneration and otherwise, as determined by the Board.

## 19. **Secretary**

- (a) The Company must not appoint a person as a Secretary unless:
- (i) the person has consented in writing to the appointment;
  - (ii) the person has confirmed by statutory declaration, and the Board has resolved, that he or she is not a Disqualified Person;
  - (iii) the person has disclosed any material personal interest in a matter that relates to the affairs of the Company and any office or property held by the person by which, directly or indirectly, duties or interests might be created in conflict with his or her duties as Secretary in accordance with and as required by the Superannuation Law, and
  - (iv) the Board has resolved that the person has satisfied the requirements of the Fit and Proper Policy.
- (b) Subject to Article 26.1, the Secretary of the Company holds office on such terms and conditions, as to remuneration and otherwise, as the Directors determine.

## 20. **The Seal and Execution of Documents**

- 20.1 The seal of the Company shall not be affixed to any instrument except by the authority of a resolution of the Board of Directors and every instrument to which the seal is affixed shall be signed by a Director and shall be countersigned by the Secretary or by a second Director or by some other person appointed by the Directors for the purpose.
- 20.2 All documents which of legal necessity need not be under seal and which the Company is capable in law of entering into shall be legally binding on the Company if signed by 1 of the Directors or the Secretary in accordance with a resolution of Directors made under Article 17.4.
- 20.3 The Directors may delegate to the Secretary either generally or with respect to particular types or classes of documents the power to execute such documents on behalf of the Company if such documents are not required by law to be executed under seal. Such delegation will be by resolution of the Directors under Article 17.4.
- 20.4 Promissory notes, cheques or other negotiable instruments shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be, for or on behalf of the Company, by 1, of the Directors and the Secretary or in such other manner as the Directors may from time to time determine.

## 21. **Inspection of Records**

The Directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open for the inspection of members other than Directors, and a member other than a Director does not have the right to inspect any

document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

## 22. **Reserves and Provisions**

- 22.1 The Directors may set aside out of the profits of the Company such sums as they think proper as reserves or provisions to be applied for such purposes as the profits of the Company may be properly applied.
- 22.2 Pending such application the Directors may invest any such reserve or provision or may dispose of all or any part of it for the benefit of the Company.

## 23. **Notices**

- 23.1 A notice may be given by the Company to any member either by serving it on that member personally, by facsimile sent to the member's principal place of business or residential address or by sending it by post to that member at the member's registered address or (if the member has no registered address within the State of Registration) the address, if any, within the State of Registration supplied to the Company for the giving of notices.
- 23.2 When a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting in the State of Registration a letter containing the notice and to have been effected in the case of a notice of a meeting on the day after the date of the posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 23.3 If a member has no registered address within the State of Registration, a notice addressed to that member and advertised in a morning newspaper published in the capital city of the State of Registration shall be deemed to be duly given to that member at noon on the day on which the advertisement appears.
- 23.4 Notice of every general meeting shall be given in any manner hereinbefore authorised to -
- (a) every member except those members who (having no registered address within the State of Registration) have not supplied to the Company an address within the State of Registration for the giving of notices to them;
  - (b) the Auditor; and
  - (c) every Director of the Company.

## 24. **Winding Up**

If the Company is wound up, the liquidator may, with the sanction of a special resolution, vest the whole or any part of any property of the Company in trustees on such trusts as are consistent with a wind up of the Fund under the Governing Rules. No property of the Company shall be divided amongst members except to the extent a member may be a beneficiary under a trust referred to above.

## 25. **Indemnity and insurance**

- 25.1 To the fullest extent permitted by law, every person who is or has been a Director, agent, Secretary other Officer or employee of the Company shall be entitled to be indemnified out of the assets of the Company against all liabilities which may be

sustained or incurred in or about the execution of that office or otherwise in relation thereto except to the extent that that liability is to the Company or a related body corporate or where the liability arose from conduct involving a lack of good faith.

- 25.2 Notwithstanding Article 25.1 and to the fullest extent permitted by law, each person who is or has been a Director, agent, Secretary, other Officer or employee shall be indemnified against any liability for costs and expenses incurred by that person arising out of the execution of that person's office or in relation to the conduct of the Company:
- (a) in defending proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or
  - (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to the person under the Corporations Law.
- 25.3 To the extent permitted by law, the Company may pay any premium in respect of a contract of insurance between an insurer and any person who is or has been a Director, agent, Secretary, other Officer or employee of the Company in respect of liabilities sustained or incurred in or about the execution of that office or otherwise.
- 25.4 Nothing in this Article 25 shall affect any indemnity which any such person may have under the Governing Rules.

## 26. **Paramount Provision**

- 26.1 Notwithstanding anything to the contrary expressed or implied in this Constitution, the Company, the management, administration and operation thereof (whether internal or otherwise) including without limitation the appointment and powers of Directors, transfer, redemption and transmission of shares (if any), the conduct of business of the Company and the amendment of this Constitution shall at all times comply with the Superannuation Law. Application of the Superannuation Law
- 26.2 Notwithstanding anything contained in this Constitution to the contrary, this Article 26.1 applies while the Company is the trustee of any Fund.
- 26.3 This Constitution is to be read subject to the Superannuation Law and to the extent of any inconsistency between a requirement of the Superannuation Law and a provision of this Constitution:
- (a) the Superannuation Law will prevail;
  - (b) where possible, that provision of this Constitution must be read down, changed, construed or severed to avoid the inconsistency; and
  - (c) to the extent the inconsistency cannot be avoided, that provision will be of no effect and will not affect the remainder of this Constitution.
- 26.4 The Company must comply with the requirements of the Superannuation Law to the extent that those requirements apply to the Company or any Fund.
- 26.5 Without limiting the generality of Article 26.4, the Directors must:
- (a) convene meetings of Directors and committee meetings and conduct such meetings; and
  - (b) keep the minutes and records referred to in Article 16.1 in respect of matters affecting the Company and any Fund and all consents given under Articles 14.7A(a) and 19(a)(i),
- in accordance with the requirements of the Superannuation Law.

- 26.6 The Board must (if required by the Superannuation Law), or otherwise may, from time to time:
- (a) **Fit and Proper Policy:** formulate and adopt a policy in relation to the eligibility for a person to be appointed, or to continue, as a Responsible Person, Director, Secretary or other Officer (including, but not limited to, a policy in relation to the requisite fitness and propriety of a person to hold, and continue holding, the office of a Responsible Person, Director, Secretary or other Officer);
  - (b) **Remuneration Policy:** formulate and adopt a policy in relation to remuneration of:
    - (i) Responsible Persons (other than the auditor and actuary appointed in respect of any Fund); and
    - (ii) any other persons required by the Superannuation Law to be covered by the Remuneration Policy;
  - (c) **Conflicts Policy:** formulate and adopt a policy in relation to the management of conflicts of interests and duties of the Company, its Responsible Persons, Directors, Secretaries and any other Officers;
  - (d) **Register of Gifts:** maintain and disclose a register of gifts received by the Company, its Responsible Persons, the Directors, the Secretaries and any other Officers;
  - (e) **Register of Relevant Duties:** maintain and disclose a register of relevant duties of the Company, its Responsible Persons, the Directors, the Secretaries and any other Officers;
  - (f) **Register of Relevant Interests:** maintain and disclose a register of relevant interests of the Company, its Responsible Persons, the Directors, the Secretaries and any other Officers;
  - (g) **other Policies and Registers:** formulate, adopt and maintain additional or replacement policies or registers,
- in accordance with the requirements of the Superannuation Law.

26.7 The Company and each Responsible Person, Director, Secretary and Officer shall be bound to follow, any policies adopted, and the requirements of any registers maintained, by the Board from time to time.

26.8 Without limiting Article 26.7, the Company and each Responsible Person, Director, Secretary and Officer must disclose any gifts and any relevant duties and interests in accordance with any Conflicts Policy adopted, or the requirements of any Register of Gifts, Register of Relevant Interests or Register of Relevant Duties maintained, by the Board