

# SunWater Limited

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## Constitution



**Adopted 1 July 2008**

**Amended October 2015 (Replaced Item 10)**

## CONTENTS

<b>1.</b>	<b>PRELIMINARY</b>	<b>1</b>
1.1	Replaceable rules	1
1.2	Definitions	1
1.3	Interpretation of this document	2
1.4	GOC Act prevails	3
<b>2.</b>	<b>OBJECTS OF COMPANY</b>	<b>4</b>
2.1	Objects	4
2.2	Interpretation	4
<b>3.</b>	<b>DIRECTORS</b>	<b>4</b>
3.1	Number of Directors	4
3.2	Public Service Officers not eligible	5
3.3	Appointment of Directors	5
3.4	Retirement by rotation	5
3.5	Cessation of Director's appointment	5
3.6	Removal from office	5
<b>4.</b>	<b>POWERS OF THE BOARD</b>	<b>5</b>
4.1	Powers generally	5
4.2	Statement of Corporate Intent	6
4.3	Exercise of powers	6
4.4	Responsibilities under the GOC Act	6
<b>5.</b>	<b>COMMITTEES AND DELEGATES</b>	<b>6</b>
5.1	Power to delegate	6
5.2	Power to revoke delegation	6
5.3	Terms of delegation	6
5.4	Proceedings of committees	6
<b>6.</b>	<b>ATTORNEY OR AGENT</b>	<b>7</b>
6.1	Power to appoint	7
6.2	Power to revoke or vary	7
<b>7.</b>	<b>DIRECTORS' DUTIES AND INTERESTS</b>	<b>7</b>
7.1	Compliance with duties under the Act	7
7.2	Degree of care and diligence required	7
7.3	Director can hold other offices etc	7
7.4	Disclosure of interests	7
7.5	Director interested in a matter	8
7.6	Register of Interests	8

---

7.7	Agreements with third parties	8
7.8	Obligation of secrecy	8
<b>8.</b>	<b>DIRECTORS' REMUNERATION</b>	<b>9</b>
8.1	Remuneration of Directors	9
8.2	Additional remuneration for extra services	9
8.3	Expenses of Directors	9
<b>9.</b>	<b>OFFICERS' INDEMNITY AND INSURANCE</b>	<b>9</b>
9.1	Indemnity	9
9.2	Insurance	10
9.3	Former officers	10
9.4	Deeds	10
<b>10.</b>	<b>CHIEF EXECUTIVE OFFICER AND SENIOR EXECUTIVES</b>	<b>ERROR! BOOKMARK NOT DEFINED.</b>
10.1	Appointment	<b>Error! Bookmark not defined.</b>
10.2	Terms and conditions	<b>Error! Bookmark not defined.</b>
<b>11.</b>	<b>BOARD MEETINGS</b>	<b>10</b>
11.1	Convening Board meetings	11
11.2	Notice of Board meeting	11
11.3	Use of technology	11
11.4	Chairing Board meetings	11
11.5	Quorum	11
11.6	Majority decisions	12
11.7	Procedural rules	12
11.8	Written resolution	12
11.9	Additional provisions concerning written resolutions	12
11.10	Valid proceedings	12
<b>12.</b>	<b>MEETINGS OF MEMBERS</b>	<b>13</b>
12.1	Annual general meeting	13
12.2	Calling meetings of Members	13
12.3	Notice of meeting	13
12.4	Short notice	13
<b>13.</b>	<b>WRITTEN RESOLUTIONS OF MEMBERS</b>	<b>13</b>
13.1	Resolutions without a meeting	13
13.2	Signature of resolutions	14
<b>14.</b>	<b>SECRETARY</b>	<b>14</b>
14.1	Appointment of Secretary	14
14.2	Terms and conditions of office	14
14.3	Cessation of Secretary's appointment	14

---

---

14.4	Removal from office	14
<b>15.</b>	<b>MINUTES</b>	<b>15</b>
15.1	Minutes must be kept	15
15.2	Minutes as evidence	15
15.3	Inspection of minute books	15
<b>16.</b>	<b>COMPANY SEALS</b>	<b>15</b>
16.1	Common seal	15
16.2	Use of seals	16
16.3	Fixing seals to documents	16
<b>17.</b>	<b>FINANCIAL REPORTS AND AUDIT</b>	<b>16</b>
17.1	Company must keep financial records	16
17.2	Annual report	16
17.3	Quarterly reports	16
17.4	Information	16
17.5	Audit	17
<b>18.</b>	<b>SHARES</b>	<b>17</b>
18.1	Power to issue shares	17
18.2	Permitted Members	17
18.3	Members rights	17
<b>19.</b>	<b>CERTIFICATES</b>	<b>17</b>
19.1	Issue of share certificate	17
19.2	Lost and worn out certificates	17
<b>20.</b>	<b>DIVIDENDS</b>	<b>18</b>
20.1	Dividends must be paid out of profits	18
20.2	Applicable law	18
20.3	Payment of dividends	18
20.4	Method of payment	18
20.5	No interest on dividends	18
<b>21.</b>	<b>TRANSFER OF SHARES</b>	<b>18</b>
21.1	Transfer to Shareholding Minister	18
21.2	Transfer on Member ceasing to be Shareholding Minister	19
21.3	Mode of transfer	19
21.4	Premier may execute transfer	19
21.5	Provisions of the GOC Act	19
21.6	Delivery of transfer and certificate	19
21.7	Refusal to register transfer	20
21.8	Transfers directed by Shareholding Ministers	20

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21.9	Transferor remains holder until transfer registered	20
<b>22.</b>	<b>TRANSMISSION OF SHARES</b>	<b>20</b>
<b>23.</b>	<b>ALTERATION OF SHARE CAPITAL</b>	<b>20</b>
23.1	Reduction of capital	20
23.2	Payments in kind	20
<b>24.</b>	<b>WINDING UP</b>	<b>21</b>
24.1	Entitlement of Members	21
24.2	Distribution of assets generally	21
24.3	No compulsory distribution of liabilities	21
24.4	Distribution not in accordance with legal rights	21
<b>25.</b>	<b>NOTICES</b>	<b>21</b>
25.1	Notices by Company	21
25.2	When notice is given	22
25.3	Business days	22
25.4	Counting days	23
<b>26.</b>	<b>AMENDMENT OF THIS DOCUMENT</b>	<b>23</b>
26.1	Amendment by Shareholding Ministers	23
26.2	Consent of Shareholding Ministers required	23

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## CONSTITUTION OF SUNWATER LIMITED

### 1. PRELIMINARY

#### 1.1 Replaceable rules

The replaceable rules referred to in section 141 do not apply to the Company and are replaced by the rules set out in this document.

#### 1.2 Definitions

The following definitions apply in this document.

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

**Affiliate** means:

- (a) a Relative or defacto spouse of a Director;
- (b) any entity (such as body corporate, partnership or trust) which a Director or a Relative or defacto spouse of a Director controls (within the meaning of section 50AA);
- (c) a body corporate in which a Director or a Relative or defacto spouse of a Director owns or holds in the aggregate more than 20% of the voting shares (as defined in the Act).

**Auditor-General** means the Queensland Auditor-General, appointed under the *Financial Administration and Audit Act 1977 (Qld)*.

**Board** means the Directors acting collectively under this document.

**Company** means the company named at the beginning of this document whatever its name is for the time being.

**Corporate Plan** means the corporate plan of the company for the relevant financial year prepared in accordance with the GOC Act.

**Director** means a person who is, for the time being, a director of the Company including, where appropriate, an alternate.

**dividend** includes an interim dividend and a final dividend.

**GOC Act** means the *Government Owned Corporations Act 1993* (Qld) and its regulations.

**GOC Minister** has the meaning given to that term under the GOC Act.

**Governor in Council** has the meaning given to that term under the Acts Interpretation Act 1954 (Qld).

**Indirect Interest** includes an interest of an Affiliate of a Director.

**Member** means a person whose name is entered in the Register as the holder of a share and means a Shareholding Minister.

**Ordinary Resolution** means a resolution passed at a meeting of Members by a majority of the votes cast by Members entitled to vote on the resolution.

**Portfolio Minister** has the meaning given to that term under the GOC Act.

**Premier** means the Premier of the State of Queensland.

**Public Service Officer** has the meaning given by the *Public Service Act 1996 (Qld)*.

**Register** means the register of Members kept as required by sections 168 and 169.

**Relative** has the meaning given by section 9.

**Secretary** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

**Shareholding Ministers** means the GOC Minister and the Portfolio Minister.

**Special Resolution** has the meaning given by section 9.

**Statement of Corporate Intent** has the meaning given by the GOC Act.

**Voting Member** in relation to a general meeting, or meeting of a class of Members, means a Member who has the right to be present and to vote on at least 1 item of business to be considered at the meeting.

### 1.3 Interpretation of this document

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

- (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests 1 gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.2) which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
- (k) A reference to a Chapter, Part, Division or section is a reference to a Chapter, Part, Division or section of the Act.

#### **1.4 GOC Act prevails**

- (a) This document is to be read subject to the GOC Act.
- (b) To the extent of any inconsistency between the GOC Act and the Act regarding this document, the GOC Act will prevail.
- (c) To the extent of any inconsistency between the GOC Act and this document, the GOC Act will prevail.
- (d) To the extent of any inconsistency between the Act and this document, subject to rule 1.4(b), the Act will prevail.



## **2. OBJECTS OF COMPANY**

### **2.1 Objects**

The Company's objects are:

- (a) bulk water storage and distribution;
- (b) water treatment, reticulation and drainage;
- (c) water infrastructure development;
- (d) engineering consultancy services;
- (e) operations and maintenance services;
- (f) water business management services;
- (g) carrying out any activity that is incidental to or doing anything likely to complement or enhance the objects set out in this rule 2.1, including but not limited to hydro-electricity development associated with the Company's bulk water storage; and
- (h) to perform any other functions and exercise any other powers conferred on it under:
  - (i) any act;
  - (ii) any regulation;
  - (iii) the Company's Statement of Corporate Intent; or
  - (iv) the Company's Corporate Plan.

The Company must not undertake any activities which do not come within the scope of the objects contained in this rule.

### **2.2 Interpretation**

The Company's objects are to be interpreted independently and not as limiting any other object.

## **3. DIRECTORS**

### **3.1 Number of Directors**

The number of Directors of the Company is the number of Directors that are appointed from time to time by the Governor in Council in accordance with the GOC Act. At all times the Company must have no less than three Directors.

### **3.2 Public Service Officers not eligible**

In accordance with the GOC Act a Public Service Officer is not eligible for appointment as a Director of the Company.

### **3.3 Appointment of Directors**

All Directors of the Company must be appointed by the Governor in Council in accordance with the GOC Act.

### **3.4 Retirement by rotation**

No Director is subject to retirement by rotation.

### **3.5 Cessation of Director's appointment**

A person automatically ceases to be a Director if the term of the Director's appointment expires, or if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a Director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 3.6.

### **3.6 Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Governor in Council may remove a Director from office.

## **4. POWERS OF THE BOARD**

### **4.1 Powers generally**

Except as otherwise required by the Act, the GOC Act, and any other applicable law or this document, the Board:

- (a) has power to manage the business of the Company and the attainment and performance of the Company's objects; and
- (b) may exercise every right, power or capacity of the Company.

#### **4.2 Statement of Corporate Intent**

Rule 4.1 is subject to any prior undertaking the Company has given to the Shareholding Ministers in its Statement of Corporate Intent.

#### **4.3 Exercise of powers**

A power of the Board can be exercised only by resolution passed at a meeting of the Board or otherwise in accordance with rule 10.

#### **4.4 Responsibilities under the GOC Act**

The roles, responsibilities and duties of the Directors include those required of them under the GOC Act.

### **5. COMMITTEES AND DELEGATES**

#### **5.1 Power to delegate**

The Board may delegate any of its powers as permitted by section 198D.

#### **5.2 Power to revoke delegation**

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

#### **5.3 Terms of delegation**

A delegation of powers under rule 5.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain any provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

#### **5.4 Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

## **6. ATTORNEY OR AGENT**

### **6.1 Power to appoint**

The Directors may appoint any person from the Company's executive to act for any purpose, for any period and on any terms (including as to remuneration) the Directors resolve. The appointment is to be of the person's position title rather than the individual holding that position at the time of the appointment.

### **6.2 Power to revoke or vary**

The Directors may revoke or vary an appointment under rule 6.1.

## **7. DIRECTORS' DUTIES AND INTERESTS**

### **7.1 Compliance with duties under the Act**

Each Director must comply with sections 180 to 183.

### **7.2 Degree of care and diligence required**

In determining, for the purposes of the Act the degree of care and diligence that a reasonable person in a like position in a Company would exercise in the circumstances of the Company, regard must be had to:

- (a) the application of the GOC Act to the Company; and
- (b) relevant matters required or permitted to be done under the GOC Act in relation to the Company.

### **7.3 Director can hold other offices etc**

A Director may:

- (a) be a member of any corporation (other than the Company) or partnership; or
- (b) hold any office or place of profit or employment other than that of:
  - (i) the Company's auditor; or
  - (ii) a Public Service Officer.

### **7.4 Disclosure of interests**

Each Director must comply with section 191 and section 192.

## **7.5 Director interested in a matter**

If a Director has an interest (whether that interest is a direct interest or an Indirect Interest) in a matter that is required to be disclosed under section 191:

- (a) the Director must not be present, and is not entitled to vote, at a Board meeting that considers the matter;
- (b) if the interest has been disclosed by the Director, the Company may proceed with any transaction to which the Director's interest is relevant;
- (c) if the interest has been disclosed by the Director before the transaction is entered into, the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) the Company cannot avoid the transaction merely because of the existence of the interest.

## **7.6 Register of Interests**

- (a) The Company must
  - (i) record every declaration of interest made by a Director in the minutes of the meeting at which it is made; and
  - (ii) maintain a register of interests disclosed under section 191 and section 192.
- (b) The Shareholding Ministers may request the Company to provide them with a copy of the register maintained under paragraph (a) and the Company must provide the register as requested by the Shareholding Ministers.

## **7.7 Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

## **7.8 Obligation of secrecy**

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Company;
- (b) by the Board or the Company in general meeting; or

- (c) by law.

The Company may require a Director, Secretary, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

## **8. DIRECTORS' REMUNERATION**

### **8.1 Remuneration of Directors**

The Directors of the Company are to be paid by way of fees for their services the amounts, if any, approved by the Company in general meeting.

### **8.2 Additional remuneration for extra services**

If a Director, at the request of the Board and for the purposes of the Company, performs extra services or makes special exertions (including going or living away from the Director's usual residential address), the Company may pay that Director a fixed sum set by the Board, with the prior approval of the Shareholding Ministers, for doing so. Remuneration under this rule may be either in addition to or in substitution for any remuneration to which that Director is entitled under rule 8.1.

### **8.3 Expenses of Directors**

The Company must pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

## **9. OFFICERS' INDEMNITY AND INSURANCE**

### **9.1 Indemnity**

Subject to and so far as permitted by the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company against a Liability incurred as such an officer to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith and or involves a pecuniary penalty;

- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee in defending an action for a Liability incurred as such an officer or employee or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

## **9.2 Insurance**

Subject to the Act and any other applicable law, the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company except a liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty; or
- (b) a contravention of section 182 or 183.

## **9.3 Former officers**

The indemnity in favour of officers under rule 9.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company even though the person is not an officer at the time the claim is made.

## **9.4 Deeds**

Subject to the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 9, enter into an agreement with a person who is or has been an officer of the Company, to give effect to the rights of the person under this rule 9 on any terms and conditions that the Board thinks fit.

# **10. CHIEF EXECUTIVE OFFICER AND SENIOR EXECUTIVES**

## **10.1 Appointment**

- a) The chief executive officer must be appointed by the Board with the prior written approval of the Shareholding Ministers.
- b) Senior executives may be appointed by the Board under the GOC Act without consulting Shareholding Ministers.

## **10.2 Terms and conditions**

Subject to relevant Government policies applicable to SunWater, the terms and conditions of appointment (including remuneration) of the chief executive officer and other senior executives of the Company shall be determined by the Board.

## **11. BOARD MEETINGS**

### **11.1 Convening Board meetings**

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

### **11.2 Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing;

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### **11.3 Use of technology**

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of 2 or more places, at the place where the chair of the meeting is located.

### **11.4 Chairing Board meetings**

The Governor in Council may nominate a Director to chair meetings of the Board and decide the period for which that Director holds that office. If there is no chair of Directors or the chair is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

### **11.5 Quorum**

Unless the Board decides otherwise, the quorum for a Board meeting is half the number of Directors appointed to the Board and if that number is not a whole number, the next highest whole number. A quorum must be present for the whole meeting. A Director is



treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

#### **11.6 Majority decisions**

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution, the chair of the Board meeting also has a casting vote.

#### **11.7 Procedural rules**

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

#### **11.8 Written resolution**

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

#### **11.9 Additional provisions concerning written resolutions**

For the purpose of rule 11.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

#### **11.10 Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

## **12. MEETINGS OF MEMBERS**

### **12.1 Annual general meeting**

The Company must hold an annual general meeting as required by section 250N.

### **12.2 Calling meetings of Members**

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

### **12.3 Notice of meeting**

Subject to rule 12.4, at least 21 days' written notice of a meeting of Members must be given individually to:

- (a) each Member (whether or not the Member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

### **12.4 Short notice**

Subject to sections 249H(3) and (4):

- (a) if the Company has elected to convene a meeting of Members as the annual general meeting, if all the Members entitled to attend and vote agree; or
- (b) otherwise, if Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

## **13. WRITTEN RESOLUTIONS OF MEMBERS**

### **13.1 Resolutions without a meeting**

In accordance with section 81 of the GOC Act, the Company may pass a resolution without a general meeting being called or held if the resolution set out in a document is signed

and dated by the Shareholding Ministers containing a statement that they are in favour of the resolution set out in the document.

### **13.2 Signature of resolutions**

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a Member in a manner satisfactory to the Board as being signed by that Member.

## **14. SECRETARY**

### **14.1 Appointment of Secretary**

The Board:

- (a) must appoint at least 1 individual; and
- (b) may appoint more than 1 individual,

to be a Secretary either for a specified term or without specifying a term.

### **14.2 Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

### **14.3 Cessation of Secretary's appointment**

A person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 14.4.

### **14.4 Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## **15. MINUTES**

### **15.1 Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's Members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee of Directors);
- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A.

### **15.2 Minutes as evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

### **15.3 Inspection of minute books**

The Company must:

- (a) allow Members to inspect; and
  - (b) upon request from a Member, provide copies of,
- the minute books for the meetings of Members in accordance with section 251B.

## **16. COMPANY SEALS**

### **16.1 Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

## **16.2 Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

## **16.3 Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Directors;
- (b) by 1 Director and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

## **17. FINANCIAL REPORTS AND AUDIT**

### **17.1 Company must keep financial records**

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director and the auditor to inspect those records at all reasonable times.

### **17.2 Annual report**

The Board must cause the Company to prepare an annual report that complies with the GOC Act, the Act or another applicable law.

### **17.3 Quarterly reports**

The Board must cause the Company to prepare and give the Shareholding Ministers a report on the operations of the Company in accordance with the GOC Act.

### **17.4 Information**

The Board must provide information (including report and information of the operations, financial performance and financial position of the Company and its subsidiaries) in accordance with the GOC Act.

## **17.5 Audit**

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report. The Auditor-General will be the auditor of the company. The remuneration of the auditor will be in accordance with the GOC Act.

## **18. SHARES**

### **18.1 Power to issue shares**

The Board may, on behalf of the Company, issue or otherwise dispose of shares only to those persons permitted by the GOC Act.

### **18.2 Permitted Members**

Unless otherwise provided by the GOC Act only a Shareholding Minister may hold shares in the Company and be entered in the Register as a Member of the Company.

### **18.3 Members rights**

Unless otherwise provided by the GOC Act:

- (a) each Shareholding Minister must at all times have an equal number of voting shares in the Company;
- (b) each Shareholding Minister must at all times be entitled to voting rights equal to those to which the other Shareholding Minister is entitled; and
- (c) each Shareholding Minister may hold non-voting shares and need not hold an equal number of non-voting shares.

## **19. CERTIFICATES**

### **19.1 Issue of share certificate**

The Company must issue a certificate of title to shares that complies with section 1070C and deliver it to the holder of those shares in accordance with section 1071H.

### **19.2 Lost and worn out certificates**

If a certificate:

- (a) is lost or destroyed and the owner of the relevant securities applies in accordance with section 1070D(5), the Company must; or
- (b) is defaced or worn out and is produced to the Company, the Company may,

issue a new certificate in its place.

## **20. DIVIDENDS**

### **20.1 Dividends must be paid out of profits**

The Company must not pay a dividend except out of profits of the Company. The Company does not incur a debt merely by fixing the amount or time for payment of a dividend. A debt arises only when the time fixed for payment arrives. A resolution of the Board as to the amount of the Company's profits and the amount of them available for dividend is conclusive.

### **20.2 Applicable law**

Before declaring a dividend or interim dividend the Directors must fully comply with the procedures and consider the matters set out in the GOC Act, the Act or another applicable law.

### **20.3 Payment of dividends**

Subject to the Act, the GOC Act, rule 20.1 and the terms of issue of shares, the Board may resolve to pay any dividend it thinks appropriate and fix the time for payment.

### **20.4 Method of payment**

The Company may pay any cash dividend, interest or other money payable in respect of shares by cheque sent, and may distribute assets by sending the certificates or other evidence of title to them, through the post directed to:

- (a) the address of the Member; or
- (b) to any other address the Member directs in writing,

or by any other method of payment or distribution as advised by the Shareholding Ministers.

### **20.5 No interest on dividends**

No Member may claim, and the Company must not pay, interest on a dividend (either in money or kind).

## **21. TRANSFER OF SHARES**

### **21.1 Transfer to Shareholding Minister**

A Member may not transfer shares otherwise than to a Shareholding Minister.

## **21.2 Transfer on Member ceasing to be Shareholding Minister**

- (a) A Member shall cease to be eligible to hold shares in the Company if the Member ceases to be a Shareholding Minister.
- (b) The shares held by a Member ceasing to be a Shareholding Minister must be transferred by the Member in accordance with the GOC Act.
- (c) If a Member ceases to be a Shareholding Minister that Member must not exercise any rights as a Member under this document (except to transfer shares in accordance with the GOC Act).

## **21.3 Mode of transfer**

Subject to rules 21.1, 21.6 and 21.8, and the GOC Act, a Member may transfer a share by a document the form of which is permitted by law and which is signed by or on behalf of both the transferor and the transferee. The Company must not register a transfer that does not comply with this rule.

## **21.4 Premier may execute transfer**

In accordance with the GOC Act the Premier may execute a transfer on behalf of either or both the transferor and transferee.

## **21.5 Provisions of the GOC Act**

Notwithstanding any contrary rules in this document or the Act, the Directors:

- (a) must register a transfer of shares which is permitted by the GOC Act; and
- (b) must not register a transfer of shares unless the provisions of the GOC Act concerning the transfer of shares are fully complied with.

## **21.6 Delivery of transfer and certificate**

A document of transfer under rule 21.3 must be:

- (a) delivered to the registered office of the Company or the address of the Register last notified to Members by the Company;
- (b) accompanied by the certificate (if any) for the shares to be transferred or evidence satisfactory to the Board of its loss or destruction; and
- (c) marked with payment of any stamp duty payable.

Property in and title to a document of transfer that is delivered to the Company (but not the shares to which it relates) passes to the Company on delivery.



### **21.7 Refusal to register transfer**

Subject to rule 21.8, the Board, without giving any reason, may refuse to register a transfer of shares and, subject to section 259C and insofar the GOC Act permits such refusal, must not register a transfer to a subsidiary of the Company. If the Board refuses to register a transfer, the Company must give the transferee notice of the refusal within 2 months after the date on which the transfer was delivered to it.

### **21.8 Transfers directed by Shareholding Ministers**

The Directors must register any share transfer notified in writing to them by the Shareholding Ministers or the Premier.

### **21.9 Transferor remains holder until transfer registered**

The transferor of a share remains the holder of it until the transfer is registered and the name of the transferee is entered in the Register in respect of it.

## **22. TRANSMISSION OF SHARES**

In the event of the death, bankruptcy or mental incapacity of a Member, the provisions of rules 21.2, 21.3 and 21.4 apply.

## **23. ALTERATION OF SHARE CAPITAL**

### **23.1 Reduction of capital**

The Company may reduce its share capital:

- (a) by reduction of capital in accordance with Division 1 of Part 2J.1;
- (b) by buying back shares in accordance with Division 2 of Part 2J.1;
- (c) in the ways permitted by sections 258E and 258F; or
- (d) in any other way for the time being permitted by the Act.

### **23.2 Payments in kind**

Where the Company reduces its share capital in accordance with Division 1 of Part 2J.1, it may do so by way of payment of cash, distribution of specific assets (including shares or other securities in another corporation), or in any other manner permitted by law. If the reduction is by distribution of specific assets, the Board may:

- (a) fix the value of any assets distributed;

- (b) make cash payments to Members on the basis of the value fixed so as to adjust the rights of Members between themselves; and
- (c) vest an asset in trustees.

## **24. WINDING UP**

### **24.1 Entitlement of Members**

Subject to the terms of issue of shares, the surplus assets of the Company remaining after payment of its debts are divisible among the Members in proportion to the number of fully paid shares held by them and, for this purpose, a partly paid share is counted as a fraction of a fully paid share equal to the proportion which the amount paid on it bears to the total issue price of the share.

### **24.2 Distribution of assets generally**

If the Company is wound up, the liquidator may, with the sanction of a Special Resolution:

- (a) divide the assets of the Company among the Members in kind;
- (b) for that purpose fix the value of assets and decide how the division is to be carried out as between the Members and different classes of Members; and
- (c) vest assets of the Company in trustees on any trusts for the benefit of the Members as the liquidator thinks appropriate.

### **24.3 No compulsory distribution of liabilities**

The liquidator cannot compel a Member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.

### **24.4 Distribution not in accordance with legal rights**

If the liquidator decides on a division or vesting of assets of the Company under rule 24.2 which does not accord with the legal rights of the contributories, any contributory who would be prejudiced by it may dissent and has ancillary rights as if that decision were a special resolution passed under section 507.

## **25. NOTICES**

### **25.1 Notices by Company**

A notice is properly given by the Company to a person if it is:

- (a) in writing signed on behalf of the Company (by original or printed signature);

- (b) addressed to the person to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address;
  - (iii) sent by fax to the fax number (if any) nominated by that person; or
  - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

## **25.2 When notice is given**

A notice to a person by the Company is regarded as given and received:

- (a) if it is delivered personally:
  - (i) by 5 pm (local time in the place of receipt) on a business day - on that day; or
  - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
- (b) if it is sent by fax or electronic message:
  - (i) by 5 pm (local time in the place from which it is sent or given) on a business day – on that day; or
  - (ii) after 5 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
- (c) if it is sent by mail:
  - (i) within Australia - 1 business day after posting; or
  - (ii) to a place outside Australia - 3 business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

## **25.3 Business days**

For the purposes of rule 25.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

#### **25.4 Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

### **26. AMENDMENT OF THIS DOCUMENT**

#### **26.1 Amendment by Shareholding Ministers**

Notwithstanding any contrary rules in this document or in the Act, the Shareholding Ministers may at any time amend this document.

#### **26.2 Consent of Shareholding Ministers required**

Notwithstanding any contrary rules in this document or the Act, this document must not be amended without the prior written consent of the Shareholding Ministers.