

# **Constitution**

Health Insurance Fund of W.A. Limited

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***Corporations Act 2001 (Cth)***

**Public company limited by guarantee**

**Health Insurance Fund of W.A. Limited**

ACN [ACN number]

**1 Nature of Company and Liability**

**Nature of Company**

1.1 The Company is a public company limited by guarantee.

**Liability of Members and guarantee on winding up**

1.2 The liability of the Members is limited. If the Company is wound up every person:

1.2.1 who was a Member when winding up commenced; or

1.2.2 who had been a Member within 12 months before winding up commenced,

undertakes to contribute up to \$1 to the assets of the Company, as may be required:

1.2.3 for payment of the debts and liabilities of the Company (contracted before the Member ceases to be a Member);

1.2.4 for payment of the costs, charges and expenses of winding up; and

1.2.5 for the adjustment of the rights of the contributories amongst themselves.

**2 Objects**

Without limiting the generality of the Company's right to conduct business or its powers under the Corporations Act, the Company may become involved in a variety of business activities consistent with the Company's dominant organisational goal to help Contributors and their dependants to lead healthy lives. Such activities may include establishing and operating health insurance funds registered under the *Private Health Insurance Act 2007* (Cth) and owning and operating facilities involved in the provision of health services and products. The Company may also provide other services and products, including but not limited to travel and general insurance and banking for the benefit of Contributors, their dependants and others. The Company may establish and operate any other lawful business activity.

**3 Membership**

**Classes of Membership**

3.1 Subject to this Constitution and the Corporations Act, the Directors may:

- 3.1.1 establish any new class of Members and prescribe the qualifications, rights, restrictions and obligations of Members in that class; and
- 3.1.2 vary or abrogate the qualifications, rights, restrictions or obligations of Members in any new or existing class, with the consent in writing of 75% of those Members, or with the sanction of a special resolution passed at a separate meeting of those Members, and the provisions of this Constitution relating to General Meetings apply so far as they are capable of application and with the necessary changes to every such separate meeting.

3.2 As at the date of adoption of this Constitution there is only one (1) class of Members.

### **Membership**

3.3 The Members are the initial Members as identified and named in the application for registration of the Company to the Australian Securities and Investments Commission, and such other persons as the Company admits to Membership in accordance with this Constitution.

### **Members**

3.4 The number of Members must be not less than 12 and not more than 18. The Company may by resolution of the Directors increase the maximum number of Members to more than 18 or decrease the minimum number of Members to less than 12.

3.5 Members must be Contributors.

### **Nomination for Membership**

3.6 Any individual who is at least 18 years old at the date of nomination and who is a Contributor may be nominated to be a Member by two other Members and the nomination must be in accordance with rule 3.7.

### **Form of Nomination**

3.7 A nomination for Membership will be in the form determined by the Directors from time to time and must comply with the following requirements:

- 3.7.1 it must be signed by the nominee and by the two Members who are nominating the nominee;
- 3.7.2 it must be accompanied by a written signed undertaking pursuant to rule 1.2; and
- 3.7.3 it must be accompanied by two personal references together with a personal curriculum vitae of the nominee and such other documents or evidence as the Directors determine.

### **Admission to Membership**

3.8 The Directors must consider a nomination for Membership after its receipt and determine, in their absolute discretion, whether the nominee is approved by the Directors to be put up for election before the next meeting of Contributors in accordance with rule 3.9.1 or appointed by the Directors in accordance with rule 3.9.2 .

- 3.9 A person who has been nominated for Membership in accordance with this Constitution and approved by the Directors in accordance with rule 3.8 may be admitted as a Member by being:
- 3.9.1 elected by ordinary resolution at a duly constituted meeting of Contributors of which notice of the proposed election of the Member has been duly given; or
  - 3.9.2 appointed by the Board to fill a casual vacancy amongst the Members arising from time to time or as an addition to the existing number of Members.
- 3.10 Where a nominee for Membership has been duly admitted as a Member notice to that effect will be sent to the nominee.
- 3.11 The rights and privileges of every Member will be personal to them and will not be transferable by their own act or by operation of law and will cease on termination of Membership.
- 3.12 Despite anything in this Constitution, every Director will be automatically admitted as a Member upon assuming office as a Director.

#### **Register of Members**

- 3.13 A register of the Members must be kept in accordance with the Corporations Act.
- 3.14 The following details must be entered in the Register in respect of each Member upon being duly admitted as a Member:
- 3.14.1 the full name of the Member;
  - 3.14.2 the postal address, residential address, email address, telephone number and facsimile number, if any, of the Member;
  - 3.14.3 the date of admission to, and cessation of, Membership; and
  - 3.14.4 such other information as the Directors require.
- 3.15 Each Member must notify the Secretary in writing of any change in that person's name, postal address, residential address, email address, telephone number or facsimile number within 14 days after the change.

#### **Election of Members**

- 3.16 A Member, while continuing as a Director, is not subject to retirement by rotation of Members or to be taken into account in determining the rotation or retirement of Members or the number of Members to retire but, subject to the provisions of any contract with the Company, is subject to the same provisions as to resignation and removal as the other Members.
- 3.17 At each annual meeting of Contributors one quarter of the Members shall retire. The Members to retire each year shall be those who have been Members the longest since their last election. If two or more persons became Members on the same day, those to retire must be determined by lot unless they otherwise agree among themselves. A Member appointed to fill a casual vacancy amongst the Members or as an addition to the existing number of Members shall continue as a Member only until the next annual meeting of Contributors after the appointment and is then eligible for election as a Member. If more than one third of Members

were elected or are deemed to have been elected on the same day then those to retire shall be determined by lot. Subject to rule 4.4, a retiring Member shall be eligible for re-election.

- 3.18 In determining the number of Members to retire at an annual meeting of Contributors, no account is to be taken of:
- 3.18.1 a Member appointed by the Directors to fill a casual vacancy or as an addition to the existing number of Members and who only continues as a Member until the meeting; or
  - 3.18.2 a Director who is exempt from retirement by rotation.
- 3.19 If the number of nominations for Membership received is equal to or less than the number of vacancies then the persons nominated shall be deemed to be elected unless the Contributors resolve otherwise.
- 3.20 If the number of nominations for Membership exceeds the number of vacancies a ballot of Contributors shall be held. The ballot for election of Members shall be conducted in such manner as the chairperson of the annual meeting of Contributors shall determine.

## **4 Removal and Cessation of Membership**

### **Resignation**

- 4.1 A Member may resign from Membership by giving written notice to the Secretary.
- 4.2 The resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice occurring not more than three (3) months after the service of the notice.

### **Other Cessation of Membership**

- 4.3 A Member ceases to be a Member on any Termination Event occurring in respect of the Member.
- 4.4 A Member (who is not a Director) who has held that position for a period or cumulative periods of 12 years or more ceases to be a Member at the annual meeting of Contributors that follows the end of that period or periods of 12 years, and is not eligible for re-election or further appointment as a Member. Any period during which that Member was also a Director will not be counted in calculating the number of years that a Member has held that position.

### **Removal from Membership**

- 4.5 If the Board considers that a Member should have their Membership cancelled and be removed as a Member from the Register for any reason including due to conduct which is in the opinion of the Board detrimental or prejudicial to the interests of the Company or unbecoming of a Member, the Board shall give written notice to the Member of:
- 4.5.1 the proposed cancellation and removal;
  - 4.5.2 the time, date and place of the Board meeting at which the question of that cancellation and removal will be decided;

- 4.5.3 the reasons or the conduct; and
- 4.5.4 advice that the Member is able to provide any written representations to the Board, not less than seven (7) days before the date of the Board meeting referred to in rule 4.5.2.
- 4.6 At the Board meeting referred to in a notice under rule 4.5.2, the Board may decide to cancel or decline to cancel the Membership of that Member and remove or decline to remove the person from the Register and must forthwith notify that decision in writing to the Member.
- 4.7 Subject to rule 4.8, a Member who is expelled under rule 4.6 ceases to be a Member 14 days after the day on which the decision to expel him or her is received or deemed to be received by him or her.
- 4.8 A Member whose Membership is cancelled and is removed from the Register under rule 4.6 must, if he or she wishes to appeal against that decision, give notice in writing to the Secretary of his or her intention to do so within the period of 14 days referred to in rule 4.7.
- 4.9 When a notice is given under rule 4.8:
- 4.9.1 the Members at a General Meeting, which must be called within 30 days after the notice is received by the Company, may confirm or set aside the decision of the Board to cancel the Membership of that Member and remove the Member from the Register; and
- 4.9.2 the Member who gave that notice does not cease to be a Member unless and until the decision of the Board to cancel his or her Membership and remove him or her from the Register is confirmed under this rule 4.9.
- 4.10 Where any written representations are made by the Member who appeals under rule 4.8 and the Member requests that the representations be notified to Members, the Company must do both of the following:
- 4.10.1 state, in any notice of the resolution given to Members, that the representations have been made; and
- 4.10.2 send a copy of the representations to every Member to whom the notice of the meeting has been or is sent.
- 4.11 The requirements in rule 4.10 do not apply to the Company if the representations are received by it too late for it to satisfy those requirements.
- 4.12 If a copy of the representations is not so sent because they were received too late or because of the Company's default, the Member may, without affecting any right to be heard orally, require the representations be read out at the General Meeting.
- 4.13 Copies of the representations need not be sent out and the representations need not be read out at the General Meeting if the Directors are satisfied on reasonable grounds that the rights conferred by rule 4.10 are being abused to secure needless publicity for defamatory matter.

- 4.14 A Member whose Membership has been cancelled and whose name has been removed from the Register is not eligible to again become a Member other than with the sanction of a special resolution of Members.

## **5 No profits for Members**

### **Transfer of Income or Property**

- 5.1 No income or property of the Company may be paid or transferred, directly or indirectly to any Member.

### **Payments, Services and Information**

- 5.2 Nothing in this rule 5 prevents the payment in good faith of any of the following:
- 5.2.1 remuneration to any officers or employees of the Company for services rendered to the Company or goods supplied in the ordinary and usual course of business (including payment of Directors' fees in accordance with rule 10.1);
  - 5.2.2 an amount to any Member or Contributor in return for any services rendered to the Company or for goods supplied in the ordinary and usual course of business;
  - 5.2.3 the payment out of the funds of the Company to or on behalf of any Member, Contributor or the dependants of any of those persons in respect of any hospital, medical, surgical, health or other associated services the risk of occurrence of which is covered under an insurance policy issued by the Company;
  - 5.2.4 the Company making payment to any Member for rendering any such hospital, medical, surgical, health or other associated services the risk of occurrence of which is covered under an insurance policy issued by the Company;
  - 5.2.5 reasonable and proper interest on money borrowed from any Member or Contributor; or
  - 5.2.6 reasonable and proper rent for premises let by any Member or Contributor.
- 5.3 Nothing in this rule 5 prevents the Company from providing services or information to the Members on terms which are different from the terms on which services or information are provided to persons who are not Members.

## **6 Meetings of Contributors**

- 6.1 The Board:
- 6.1.1 must call and arrange to hold an annual meeting of Contributors at least once in every calendar year to be held not less than 35 days nor more than 49 days before the Annual General Meeting.
  - 6.1.2 may at any time call and arrange to hold a meeting of Contributors.

- 6.1.3 must within 30 days of receiving a request in writing to do so from not less than 20 Contributors, call a meeting of Contributors only for the purpose specified in that request.
- 6.2 There shall be no power for Contributors to remove, elect or re-elect Members at a meeting of Contributors requested pursuant to rule 6.1.3. To the extent that a request for a meeting of Contributors made under rule 6.1.3 relates to the removal, election or re-election of Members, the Board will not be required to call a meeting of Contributors under rule 6.1.3 and no such meeting can be called by the Contributors under rule 6.4.
- 6.3 The Contributors making the request referred to in rule 6.1.3 shall:
- 6.3.1 state in that request the purpose for which the meeting of Contributors is required; and
- 6.3.2 sign that request.
- 6.4 If a meeting of Contributors is not called by the Board within the relevant period of 30 days referred to in rule 6.1.3, the Contributors who made the request may themselves call a meeting of Contributors.
- 6.5 When a meeting of Contributors is called under rule 6.4 the Company must pay the reasonable expenses of calling and holding the meeting of Contributors.
- 6.6 Notice of a meeting of Contributors will be given to all Contributors.
- 6.7 The requirements of rule 6.6 will be satisfied by either:
- 6.7.1 providing prior notice of the meeting in any magazine or newsletter for Contributors published by the Company from time to time at least 14 days before the date on which the meeting is to be held specifying the date, time and place of the meeting and the business to be transacted; or
- 6.7.2 publishing notice of the meeting once in a newspaper regularly circulating throughout Western Australia at least 14 days before the date on which the meeting is to be held specifying the date, time and place of the meeting and the business to be transacted.
- 6.8 The business of the annual meeting of Contributors shall be:
- 6.8.1 to elect or re-elect Members; and
- 6.8.2 any other business requiring consideration by that meeting.
- 6.9 If the Directors have elected one of their number as chairperson of their meetings, that person is entitled to preside as chairperson, or in his or her absence a person appointed by the Directors shall preside, over all meetings of Contributors.
- 6.10 Rules 7.23 to 7.46 apply so far as they are consistent with this rule 6 and are capable of application (and with all necessary changes) to a meeting of Contributors, subject to the following:

- 6.10.1 business can only be transacted at a meeting of Contributors if a quorum of Contributors is present when the meeting proceeds to business. A quorum consists of five (5) Contributors;
- 6.10.2 a demand for a poll on a resolution put to the vote of a meeting of Contributors can only be made by the chairperson or at least five (5) Contributors who are present and can vote on the resolution;
- 6.10.3 at a meeting of Contributors every Contributor has one (1) vote on a show of hands and on a poll;
- 6.10.4 a Contributor can only vote in person at a meeting of Contributors;
- 6.10.5 a minute of a meeting of Contributors signed by the chairperson of the meeting is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is provided;
- 6.10.6 if within 15 minutes of the time specified for the holding of a meeting of Contributors in a notice of meeting given as a result of rule 6.1 or rule 6.4:
  - (a) as a result of a notice of meeting given as a result of rule 6.1.3 or as a result of action taken under rule 6.4 a quorum is not present, the meeting lapses; or
  - (b) otherwise than as a result of a notice of meeting referred to in rule 6.10.6(a), the meeting stands adjourned to the same time on the same day in the following week and to the same venue; and
- 6.10.7 if within 15 minutes of the time appointed by rule 6.10.6 for the resumption of an adjourned meeting a quorum is not present, the meeting must be dissolved.

## **7 General Meetings**

### **Calling of Meetings by Directors**

- 7.1 Any Director may call a General Meeting whenever the Director thinks fit.
- 7.2 A Contributor has the right to receive notice of a General Meeting in accordance with this Constitution and attend and be heard at any General Meeting but a Contributor will not be entitled to vote at any General Meeting.

### **Calling of Meetings by Members**

- 7.3 The Directors must call and arrange to hold a General Meeting if required to do so under the Corporations Act.

### **Notice of General Meeting**

- 7.4 Subject to the provisions of the Corporations Act as to short notice, not less than 21 days' notice of a General Meeting must be given in writing to each Member.

- 7.5 A notice of a General Meeting may be given by any form of communication permitted by the Corporations Act.
- 7.6 The accidental omission to give notice of any General Meeting to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the General Meeting.
- 7.7 Notification of a General Meeting (not being notice pursuant to rule 7.4) will be given to all Contributors.
- 7.8 The requirements of rule 7.7 will be satisfied by either:
- 7.8.1 providing prior notice of the General Meeting in any magazine or newsletter for Contributors published by the Company from time to time at least 14 days before the date on which the meeting is to be held specifying the date, time and place of the meeting and the business to be transacted and, in the case of an Annual General Meeting, by also providing an abridged version of the annual report of the Company in an edition of the magazine or newsletter after the Annual General Meeting and advising how to obtain a copy of the latest annual report of the Company; or
- 7.8.2 publishing notice of the meeting once in a newspaper regularly circulating throughout Western Australia at least 14 days before the date on which the meeting is to be held specifying the date, time and place of the meeting and the business to be transacted and, in the case of an Annual General Meeting, by also advising how to obtain a copy of the latest annual report of the Company.

#### **Cancellation or Postponement of General Meetings**

- 7.9 The Directors may cancel or postpone a General Meeting, other than a General Meeting which they are required to call and hold under the Corporations Act.
- 7.10 A General Meeting may only be cancelled in accordance with rule 7.9 if notice of the cancellation is given to all persons entitled to receive notice of the General Meeting at least two (2) business days prior to the time of the meeting as specified in the notice of meeting.
- 7.11 Written notice of postponement of a General Meeting must be given to all persons entitled to receive notices of General Meetings from the Company at least two (2) business days prior to the time of the meeting as specified in the notice of meeting.
- 7.12 A notice postponing the holding of a General Meeting must specify:
- 7.12.1 a date and time for the holding of the meeting; and
- 7.12.2 a place for the holding of the meeting, which may be either the same as or different from the place specified in the notice calling the meeting.
- 7.13 The number of days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the meeting may not be less than the number of days' notice of the General Meeting required to be given by this Constitution or the Corporations Act.

- 7.14 The only business that may be transacted at a General Meeting which is postponed is the business specified in the notice calling the meeting.

**Quorum at General Meetings**

- 7.15 Business may not be transacted at a General Meeting unless a quorum of Members is present at the time when the meeting proceeds to business.
- 7.16 Except as otherwise set out in this Constitution, five (5) Members present in person, or by proxy or attorney is a quorum.
- 7.17 If a quorum is not present within 15 minutes from the time appointed for the General Meeting or a longer period allowed by the chairperson:
- 7.17.1 if the meeting was called by or on the requisition of Members, it must be dissolved; and
  - 7.17.2 otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.
- 7.18 If a General Meeting has been adjourned to another time and place determined by the Directors, not less than seven (7) days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.

**Quorum at Adjourned General Meetings**

- 7.19 At the adjourned General Meeting four (4) Members present is a quorum but if a quorum is not present within 15 minutes after the time appointed for the meeting, the meeting must be dissolved.

**Appointment of Chairperson**

- 7.20 If the Directors have elected one of their number as chairperson of their meetings, that person is entitled to preside as chairperson at every General Meeting.
- 7.21 The Directors present at a General Meeting must elect one of their number to chair the meeting if either of the following applies:
- 7.21.1 a Director has not been elected as the chairperson of Directors' meetings; or
  - 7.21.2 the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or he is unwilling to act.
- 7.22 The Members present at a General Meeting must elect one of their number to chair the meeting if there are no Directors present within 15 minutes after the time appointed for the holding of the meeting or all Directors present decline to take the chair.

**Chairperson's Powers**

- 7.23 Subject to the terms of this Constitution dealing with adjournment of General Meetings, the ruling of the chairperson on all matters relating to the order of business, procedure and conduct of the General Meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

- 7.24 The chairperson, in their discretion may expel any Member or Director from a General Meeting if the chairperson reasonably considers that the Member's or Director's conduct is inappropriate behaviour. Without limiting the generality of the chairperson's powers under this rule 7.24, any of the following conduct may be considered inappropriate in a General Meeting:
- 7.24.1 the use of offensive or abusive language which is directed at any person, object or thing;
  - 7.24.2 attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance; or
  - 7.24.3 the use or consumption of any drug (including but not limited to any alcoholic substance) by a person at the meeting.

#### **Adjournment of General Meetings**

- 7.25 The chairperson may, with the consent of any General Meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and to another place.
- 7.26 The only business that may be transacted at any adjourned General Meeting is the business left unfinished at the meeting from which the adjournment took place.
- 7.27 When a General Meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- 7.28 Except when a General Meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **Voting on Show of Hands**

- 7.29 At a General Meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- 7.30 If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

#### **Demand for a Poll**

- 7.31 A poll may be demanded by:
- 7.31.1 the chairperson;
  - 7.31.2 at least one (1) Member present in person or by proxy or attorney and entitled to vote on the resolution; or
  - 7.31.3 a Member or Members so present representing not less than 5% of the total voting rights of all Members having the right to vote at the General Meeting.

- 7.32 The demand for a poll may be withdrawn.
- 7.33 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- 7.34 If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- 7.35 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

#### **Voting Rights of Members**

- 7.36 On a show of hands every Member entitled to vote present in person, and each other person present as proxy or attorney of a Member entitled to vote, has one (1) vote.
- 7.37 On a poll every Member entitled to vote present, and each person present as proxy or attorney of a Member entitled to vote, has one (1) vote for each Member that the person represents.

#### **Vote of the Chairperson at General Meetings**

- 7.38 In a case of an equality of votes, whether on a show of hands or on a poll, the chairperson of a General Meeting has a casting vote in addition to their deliberative vote (if any) as a Member.

#### **Objections to Voter Qualification**

- 7.39 No objection may be raised to the qualification of a voter except at the General Meeting or adjourned General Meeting at which the vote objected to is given or tendered.
- 7.40 An objection to the qualification of a voter must be referred to the chairperson, whose decision is final and conclusive.
- 7.41 A vote not disallowed according to an objection as provided in this Constitution is valid for all purposes.

#### **Mode of General Meetings**

- 7.42 A General Meeting may be called or held using any technology consented to by all the Members. The consent may be a standing one. A Member may only withdraw their consent within a reasonable period before the meeting. The Members may otherwise regulate their meetings as they think fit.

#### **Resolution in Writing**

- 7.43 A resolution in writing signed by all Members, excluding Members who have been given leave of absence, is to be treated as a determination of the Members passed at a General Meeting duly called and held.

#### **Form of Resolution in Writing**

- 7.44 A resolution in writing may consist of several documents in like form, each signed by one or more Members and if so signed it takes effect on the latest date on which a Member signs one of the documents.

- 7.45 If a resolution in writing is signed by a proxy or attorney of a Member, it must not also be signed by the appointing Member and vice versa.
- 7.46 In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

## **8 Proxies**

### **Proxies of Members**

- 8.1 At a General Meeting each Member entitled to vote may vote in person or by proxy or by attorney.
- 8.2 Subject to the terms of their appointment, a person attending a General Meeting as a proxy or as the attorney of a Member has all the powers of a Member, except where expressly stated to the contrary.

### **Appointment of Proxies**

- 8.3 A Member may appoint another person as their proxy to attend and vote instead of the Member. A proxy need not be a Member.
- 8.4 A document appointing a proxy must be in writing, in any form permitted by the Corporations Act and signed by the Member making the appointment. Where the document intended for the appointment of a proxy does not specify the name of the proxy, the document is not for that reason invalid and is taken to be given in favour of the chairperson of the General Meeting.

### **Authority of Proxies**

- 8.5 A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document but:
- 8.5.1 the appointment confers authority on the proxy to agree to a meeting being called by shorter notice than is required by the Corporations Act or by this Constitution, to speak to any proposed resolution on which the person may vote or to demand or join in demanding a poll on any resolution on which the person may vote; and
- 8.5.2 if the instrument refers to specific resolutions and directs the proxy on how to vote on those resolutions, then the appointment confers authority to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or on any similar motion, to vote on any procedural motion and to act generally at the meeting.
- 8.6 Except as expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a General Meeting, and the proxy is entitled to vote on a show of hands.

**Right to Appoint Attorney**

- 8.7 A Member may by power of attorney duly executed in the presence of at least one (1) witness and (if necessary) duly stamped appoint an attorney to act on the Member's behalf at all or any General Meetings or meetings of any class of Members.

**Verification of Proxies**

- 8.8 Before the time for holding the General Meeting or adjourned General Meeting at which a proxy proposes to vote, both of the following documents must be deposited with the Company at least 48 hours before the meeting:
- 8.8.1 the document appointing the proxy; and
  - 8.8.2 if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- 8.9 Those documents referred to in rule 8.8 must be either:
- 8.9.1 received at the Office, at a fax number at the Office or at another place, fax number or e-mail address specified for that purpose in the notice of meeting not less than 48 hours before the time for holding the meeting or adjourned meeting; or
  - 8.9.2 produced to the chairperson of the meeting before the proxy votes.
- 8.10 If a General Meeting has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

**Validity of Proxies**

- 8.11 A proxy document is invalid if it is not deposited or produced prior to a General Meeting or a vote being taken as required by this Constitution.

**Revocation of Appointment of Proxy**

- 8.12 A vote given in accordance with the terms of a proxy document or power of attorney is valid despite the occurrence of any one or more of the following events if no intimation in writing of any of those events has been received by the Secretary at the Office before the commencement of the General Meeting or adjourned General Meeting at which the document is used:
- 8.12.1 the previous death or unsoundness of mind of the principal; and
  - 8.12.2 the revocation of the instrument or of the authority under which the instrument was executed.

## **9 Appointment and retirement of directors**

### **Initial Directors**

- 9.1 The initial Directors to be appointed on the day the Company is registered will be the Directors as identified and named in the application for registration of the Company to the Australian Securities and Investments Commission.

### **Number of Directors**

- 9.2 Until otherwise determined in accordance with this Constitution, the number of Directors must not be less than five (5) nor more than nine (9).
- 9.3 The Company may, by resolution of the Members, increase or reduce the number of Directors and may also determine in what rotation the increased or reduced number is to go out of office.
- 9.4 Alternate Directors are not to be treated as Directors for the purpose of determining the minimum or maximum number of Directors holding office.

### **Qualifications of Directors**

- 9.5 A person is only eligible for appointment as a Director if the person is a Contributor.
- 9.6 The majority of Directors must ordinarily reside in Australia.
- 9.7 The Board must at all times have a majority of Non-Executive Directors.

### **Appointment and Removal of Executive Director**

- 9.8 The Directors may appoint one (1) and a maximum of two (2) Executive Directors either for a fixed term or without limitation as to period of appointment but not for life, and may remove a person so appointed and appoint another instead.
- 9.9 An Executive Director while continuing to hold that office is not subject to retirement by rotation or to be taken into account in determining the rotation or retirement of Directors or the number of Directors to retire but, subject to the provisions of any contract with the Company, is subject to the same provisions as to resignation and removal as the other Directors and automatically ceases to be a Director on ceasing to be an Executive Director.

### **Powers of Executive Director**

- 9.10 The Directors may confer on an Executive Director such of the powers conferred on the Directors by this Constitution, for such time, to be exercised for such purposes, and on such terms and with such restrictions as they think fit and all or any of those powers may be conferred collaterally with but not to the exclusion of the powers of the Directors and may be revoked or varied by the Directors.

### **Nomination of Directors**

- 9.11 No person shall be eligible for election or re-election to the office of Director at any Annual General Meeting unless they have been nominated by the Directors by notice in writing (**Nomination Notice**) 45 clear days before the Annual General Meeting in accordance with rule 9.12.

- 9.12 The Nomination Notice must be signed by the nominee signifying their consent to the nomination and two (2) Directors. Any nomination by Directors must be made in conjunction with any nomination committee established by the Company.

### **Retirement of Directors**

- 9.13 At each Annual General Meeting the following Directors must retire from office:
- 9.13.1 one third of the Directors for the time being, or, if their number is not three (3) or a multiple of three (3), then the number nearest one third; and
  - 9.13.2 any other Director, except an Executive Director, who has been in office for three (3) years or more since that Director's election or last re-election as a Director.
- 9.14 The Directors who were in office as at the date of adoption of this Constitution shall, only for the purposes of determining the period they have held office as a Director for the purpose of rule 9.13, be deemed to have assumed office on the date they were last appointed, elected or re-elected as a Director or member of the management committee whilst the Company was an association incorporated under the *Associations Incorporation Act 1987* (WA).
- 9.15 In determining the number of Directors to retire at an Annual General Meeting, no account is to be taken of:
- 9.15.1 a Director appointed by the Directors to fill a casual vacancy or as an addition to the existing number of Directors and who only holds office until the meeting; or
  - 9.15.2 an Executive Director who is exempt from retirement by rotation.
- 9.16 The Directors to retire at an Annual General Meeting are those who have been longest in office since their last election. If two (2) or more persons became Directors on the same day, those to retire must be determined by lot (in any manner determined by the chairperson) unless they otherwise agree among themselves.
- 9.17 Subject to rule 9.11, a Director retiring at an Annual General Meeting or the subject of a removal resolution at a General Meeting who is not disqualified by law from being reappointed is eligible for election or re-election and may act as a Director throughout the meeting at which that Director retires or is the subject of a removal resolution.
- 9.18 A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time which is the later of the time of giving the notice to the Company and the expiration of the period, if any, specified in the notice occurring not more than 3 months after the service of the notice.
- 9.19 Subject to rule 9.20, if the place of a Director retiring by rotation is not so filled, the Director continues in office if willing to do so until the next Annual General Meeting and so on from Annual General Meeting to Annual General Meeting until the Director's place is filled, unless prior to an Annual General Meeting the Directors determine or at an Annual General Meeting the Company determines, expressly to reduce the number of Directors in office or a resolution for the re-election of the Director is put to the meeting and lost.
- 9.20 Subject to rule 9.21, a person who has held the office of a Director for a period or cumulative periods of 12 years or more (excluding any period of office held as an Executive Director),

ceases to be, and to hold office as, a Director at the Annual General Meeting that follows the end of that period or periods of 12 years and is not eligible for re-election or further appointment as a Director.

- 9.21 A Director who is in office as at the date of adoption of this Constitution shall, only for the purposes of determining the period he or she has held office as a Director for the purpose of rule 9.20 and to the extent that it is applicable, be deemed to have first assumed office on the date that he or she was first appointed, elected or re-elected as a Director or member of the management committee whilst the Company was an association incorporated under the *Associations Incorporation Act 1987* (WA). Each Director who is in office as at the date of adoption of this Constitution and who has already held office for a period or cumulative periods of 12 years or more will not be eligible for further re-appointment as a Director but will be eligible for re-election as a Director on two further occasions.

### **Casual Vacancies**

- 9.22 The Directors or the surviving Director may at any time appoint a person to be a Director, either to fill a casual vacancy or as an addition to the existing number of Directors. The total number of Directors may not exceed the maximum number fixed in accordance with this Constitution.
- 9.23 A Director (other than an Executive Director) appointed under rule 9.22 holds office only until the next Annual General Meeting after the appointment and is then eligible for election.
- 9.24 A Director appointed under rule 9.22 must not be taken into account in determining the Directors who are to retire by rotation at that Annual General Meeting.

### **Removal from Office**

- 9.25 The Company may by ordinary resolution passed at a General Meeting remove a Director from office and may by ordinary resolution elect another person as a replacement.
- 9.26 A person elected to replace a Director removed from office must retire as a Director at the time ascertained as if the person became a Director on the day on which the Director removed from office was elected or last re-elected a Director.

### **Vacation of Office**

- 9.27 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act or another provision of this Constitution, the office of Director automatically becomes vacant if any of the following occurs:
- 9.27.1 if the Director becomes a bankrupt or insolvent or makes an arrangement or composition with creditors of the Director's joint or separate estate generally;
- 9.27.2 if the Director becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- 9.27.3 if the Director is absent without the consent of the Directors from the meetings of the Directors held during a continuous period of three (3) months and the Board resolves that the office of that Director be vacated;

- 9.27.4 if the Director becomes prohibited from being a Director by reason of an order made under the Corporations Act;
- 9.27.5 if the Director ceases to be a Member; or
- 9.27.6 if the Director ceases to be a Contributor.

## **10 Directors' Remuneration**

### **Determination of Fees**

- 10.1 The Directors must be paid by way of fees for their services the aggregate sum determined from time to time by the Members at an Annual General Meeting. Before such a determination is made by the Members, the aggregate sum of the fees payable by the Company to the Non-Executive Directors is a maximum of \$250,000 per annum.
- 10.2 The aggregate sum must be divided among the Directors in the proportions and in the manner from time to time agreed by the Board. If they do not agree it must be divided equally.
- 10.3 The aggregate sum of the Directors' fees must not be increased except with the prior approval of the Members.
- 10.4 Directors' fees accrue from day to day.

### **Payment for Expenses**

- 10.5 The Directors must be paid all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or General Meetings or otherwise in the execution of their duties as Directors.

### **Payment for Services**

- 10.6 A Director who is called upon to perform extra services or duties or to make a special exertion or to undertake executive or other work for the Company beyond or outside of the Director's ordinary duties or is engaged to provide any other service, may be paid a fee for those services, duties, exertions or work.
- 10.7 The additional amount may be paid either by fixed sum or salary determined by the Directors and either in addition to or in substitution for the fees otherwise payable to the Director.

### **Payments to Former Directors**

- 10.8 Subject to the Corporations Act, the Board may determine that the Company pay a gratuity, pension or allowance, at the time of or following retirement or other vacation of office to a Director or to a relative of a Director and make contributions to any fund and pay any premiums for the purchase or provision of that gratuity, pension or allowance.

### **Payment must be in Good Faith**

- 10.9 Any payment made to a Director by the Company under this rule 10 must be made in good faith.

## **11 Powers of Directors**

- 11.1 The business of the Company is to be managed by or under the direction of the Directors who may exercise all those powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Members in General Meeting or otherwise.
- 11.2 Notwithstanding rule 11.1:
- 11.2.1 the Directors may not sell or dispose of the Company's main undertaking unless the sale or disposal is subject to ratification by the Company in General Meeting; and
- 11.2.2 on a sale or disposal of the Company's main undertaking a commission or fee may not be paid to a Director unless the payment has also been ratified, and prior notice of the amount of the proposed payment has been given to Members in the notice of the General Meeting at which it is proposed to be ratified.
- 11.3 The Directors may borrow or raise money for the Company and secure the repayment, satisfaction or performance thereof or of any debts, liabilities, contracts or obligations incurred or undertaken by the Company in such manner and on such terms in all respects as they think fit.

## **12 Proceedings of Directors**

### **Calling of Directors' Meetings**

- 12.1 A Director may at any time, and a Secretary must on the requisition of a Director, call a meeting of the Directors.

### **Notice of Directors' Meetings**

- 12.2 Notice of each meeting of the Directors must be given to each Director at least 24 hours before the meeting or at another time determined by resolution of the Directors.
- 12.3 Despite the requirement in rule 12.2, all Directors may waive in writing the required period of notice for a particular meeting. It is not necessary to give a notice of a meeting of Directors to a Director who is out of Australia or who has been given leave of absence.
- 12.4 Every Director must nominate by notice in writing to the Secretary an address for service of notice of a meeting of Directors.

### **Mode of Meeting for Directors**

- 12.5 A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.
- 12.6 Where a meeting of Directors is conducted using technology pursuant to rule 12.5 each of the Directors taking part must be able to hear each of the other Directors taking part at the commencement of the meeting and must acknowledge their presence for the purposes of a meeting of the Directors to all other Directors taking part. Notice of the meeting conducted using any such technology may be given by that same technology.

- 12.7 A Director may not leave the meeting by disconnecting their telephone or other technology unless they have previously obtained the express consent of the chairperson of the meeting and a Director shall be conclusively presumed to have been present at and to have formed part of the quorum at all times during the meeting by telephone or other technology unless they have previously obtained the express consent of the chairperson to leave the meeting.
- 12.8 A minute of the proceedings and such meeting by telephone or other technology shall be sufficient evidence of such proceedings and of the observance of all necessary formalities certified to be a correct minute by the chairperson of the meeting.

#### **Quorum at Directors' Meetings**

- 12.9 At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is four or another number determined by the Directors.
- 12.10 If the number of Directors is reduced below the number necessary for a quorum of Directors, the continuing Director or Directors may act only to appoint additional Directors to the number necessary for a quorum or to call a General Meeting.

#### **Voting at Directors' Meetings**

- 12.11 Questions arising at a meeting of Directors must be decided by a majority of votes of Directors present and voting. A decision of the majority is for all purposes a decision of the Directors.

#### **Appointment of Chairperson of Directors**

- 12.12 The Directors may elect a Director to chair their meetings and determine the period for which the person elected is to hold office.
- 12.13 If a chairperson has not been elected, or if at any meeting the chairperson is not present within 10 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present may choose one of their number to chair the meeting.

#### **Chairperson's Vote at Directors meetings**

- 12.14 In a case of an equality of votes the chairperson of a meeting of Directors has a casting vote in addition to their deliberative vote (if any) as a Director.

#### **Participation where Directors Interested**

- 12.15 A Director must declare to the Board any interest he or she has in a matter before the Board, prior to the commencement the meeting at which the issue is to be considered.
- 12.16 A Director may be present and may vote on a matter before the Board if and to the extent that they are permitted to do so under the Corporations Act.
- 12.17 If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting then one or more of the Directors (including those who have the disqualifying interest in the matter) may call a General Meeting and the General Meeting may pass a resolution to deal with the matter.
- 12.18 Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would

insure the Director against a liability incurred by the Director as an officer of the Company or a Related Body Corporate.

- 12.19 A Director may, notwithstanding the Director's office and the fiduciary relationship established by it:
- 12.19.1 hold an office or place of profit (except that of Auditor) under the Company or under a body corporate in which the Company is a member or otherwise interested;
  - 12.19.2 enter into a contract with the Company as a vendor, purchaser, broker, banker, solicitor, commission agent or otherwise and participate in any association, institution, fund, trust or scheme for past or present employees of Directors or any of its predecessors or their dependants or persons connected with them; and
  - 12.19.3 retain for the Director's own benefit any profit arising from any such office, place of profit or contract and any pension, allowance or other benefit received because of that participation.
- 12.20 Any contract entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.
- 12.21 An interested Director may attest the affixing of the Seal to a contract or any other document.
- 12.22 In rule 12, where the context admits, "contract" includes an arrangement and a proposed contract or arrangement.

#### **Delegation of Powers to a Committee**

- 12.23 The Directors may delegate any of their powers to a person or persons or to committees consisting of Directors or other persons as they think fit to act in Australia or elsewhere.
- 12.24 The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Directors.
- 12.25 In the exercise of any powers delegated to it, a committee formed by the Directors must conform to the directions of the Directors.

#### **Proceedings of Committees**

- 12.26 Except as provided in a direction of the Directors, the meetings and proceedings of a committee formed by the Directors must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Directors.

#### **Validity of Acts of Directors**

- 12.27 All acts done by a meeting of the Directors or of a committee of Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

**Minutes**

- 12.28 The Directors must cause minutes of all proceedings of General Meetings, of meetings of the Contributors, of meetings of the Directors and of committees formed by the Directors to be entered, within one month after the relevant meeting is held, in books kept for the purpose.
- 12.29 The Directors must cause all minutes, except resolutions in writing treated as determinations of the Directors, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

**Resolution in Writing**

- 12.30 Subject to the Corporations Act, a resolution in writing signed by all Directors, excluding Directors who have been given leave of absence or are not in Australia, or all the members of a committee excluding members of the committee who have been given a leave of absence or are not in Australia, is to be treated as a determination of the Directors or committee passed at a meeting of the Directors or committee (as applicable) duly called and held.

**Form of Resolution in Writing**

- 12.31 A resolution in writing may consist of several documents in like form, each signed by one or more Directors or committee members and if so signed it takes effect on the latest date on which a Director or committee member (as applicable) signs one of the documents.
- 12.32 If a resolution in writing is signed by an alternate Director, it must not also be signed by the appointor of the alternate Director and vice versa.
- 12.33 In relation to a resolution in writing a document generated by electronic means which purports to be a facsimile of a resolution of Directors or committee members is to be treated as a resolution in writing and a document bearing a facsimile of a signature is to be treated as signed.

**13 Alternate Directors****Appointment of Alternate Directors**

- 13.1 Subject to the Corporations Act, a Director (**appointor**) may by writing under the appointor's hand or by email, facsimile or other form of visible communication, appoint a person approved by a majority of the other Directors to act as an alternate in the appointor's place whether for a stated period or periods or until the happening of a specified event or from time to time.
- 13.2 The appointment of an alternate Director takes effect immediately on the signing of the notice of appointment by the appointor.

**Powers of Alternate Director**

- 13.3 Except as expressly provided in this Constitution, an alternate Director is subject in all respects to the terms and conditions applying to the other Directors except for the provisions of this Constitution which relate to the election of Directors, their fees and remuneration and the power to appoint an alternate Director.
- 13.4 An alternate Director has all of the following entitlements:

- 13.4.1 to perform all the duties of a Director while the appointor is not exercising or performing them;
  - 13.4.2 to receive notice of meetings of the Directors; and
  - 13.4.3 to attend and vote at meetings of the Directors if the appointor is not present and if also a Director in the alternate Director's own right or if alternate Director for another Director as well, to have a separate vote on behalf of the appointor in addition to the alternate Director's own or that other Director's vote.
- 13.5 An alternate Director:
- 13.5.1 whilst acting as a Director is responsible to the Company for the alternate Director's own acts and defaults and the appointor is not responsible for them; and
  - 13.5.2 may not be taken into account separately from the appointor in determining the number of Directors or the rotation of Directors.

#### **Termination of Appointment of Alternate Directors**

- 13.6 The appointment of an alternate Director is immediately terminated if any of the following circumstances occurs:
- 13.6.1 the appointor ceases for any reason to be a Director;
  - 13.6.2 the appointor gives notice of termination of the appointment to the Company;
  - 13.6.3 the Directors resolve to terminate the appointment after giving seven (7) days notice of intention to remove the alternate Director to the appointor; or
  - 13.6.4 the Directors resolve to remove or suspend the alternate Director from office.
- 13.7 The appointor shall give a copy of the notice of appointment, removal or suspension of the alternate Director to the Company.
- 13.8 If the appointor retires by rotation but is re-elected by the meeting at which the appointor retires or continues in office in accordance with rule 9.19, the appointment of the alternate Director continues to operate as if the appointor had not retired.

### **14 Chief Executive Officer**

- 14.1 The Directors may appoint a chief executive officer (**CEO**) who shall, subject to the control and direction of the Directors, be responsible for the general conduct, administration and organisation of the Company.
- 14.2 The CEO shall be a salaried officer employed by the Company upon such terms and conditions as the Directors may from time to time determine.
- 14.3 The CEO shall be entitled ex officio to attend and speak, but not to vote, at meetings of Directors unless the CEO is also a Director.

## **15 Secretary**

The Directors may appoint one or more Secretaries and may at any time terminate the appointment or appointments. The Directors may determine the terms and conditions of appointment of a Secretary, including remuneration. Any one of the Secretaries may carry out any act or deed required by this Constitution, the Corporations Act or by any other statute to be carried out by the Secretary.

## **16 By-laws**

The Directors shall have power from time to time to make by-laws, rules and regulations not being inconsistent with this Constitution for the regulation of the Company and the conduct and management of its affairs, activities and business and for the purpose of fulfilling and carrying out the objects for which the Company is established or any of them and may from time to time alter, vary, cancel, repeal or annul any by-laws, rules or regulations so made and all by-laws, rules or regulations so made will be binding on the Members and the Contributors and will have full effect accordingly and without limiting the generality of the foregoing the following things may be dealt with by by-laws, rules or regulations:

- 16.1 the conditions and circumstances under which persons may become and/or remain Contributors;
- 16.2 the amounts or scales of contributions to be paid by Contributors;
- 16.3 the classification of Contributors and dependants of Contributors;
- 16.4 the nature, extent and manner of granting an amount or value of the rights, benefits or privileges which shall be accorded to Contributors and/or their dependants;
- 16.5 the conditions and circumstances under which and the services in respect of which Contributors will be accorded rights, benefits and privileges by the Company;
- 16.6 the disposal and application of the funds of the Company;
- 16.7 arrangements with other bodies, associations, corporations, funds, committees, societies, hospitals or persons for reciprocal benefits or otherwise;
- 16.8 regulating the proceedings and the conduct of meetings of the Board, Members and Contributors, prescribing protocols for the conduct of ballots and polls at any such meeting and prescribing protocols and procedures for the conduct of elections amongst Contributors for the purpose of the election of Members;
- 16.9 the committees and the appointment, removal, qualifications, duties, functions, powers and privileges of any such committees;
- 16.10 the duties of officers and servants of the Company;
- 16.11 corporate governance policies and practices for the Company and the Board and its operations;
- 16.12 particulars of any qualifying status, criteria and procedural requirements for admission or removal as a Contributor;

- 16.13 the rights and privileges, other than those (if any) expressly or by necessary implication provided for in these Rules, and other than any rights and privileges to be enjoyed by Contributors in their capacity as Contributors including any differentiation in the rights and privileges based on their qualifying status or compliance criteria for admission, and the exercise of the power to delegate the specification of certain of those rights and privileges;
- 16.14 the manner of exercise of any rights conferred upon Members in the terms of this Constitution; and
- 16.15 any other matter or thing which by this Constitution is required or permitted to be dealt with or prescribed by the by-laws, rules or regulations.

## **17 Powers of Attorney**

- 17.1 The Directors may by revocable or irrevocable power of attorney under the Seal or otherwise, as determined by the Directors, appoint a person to be the attorney of the Company for such purposes and with such powers (not exceeding those conferred on the Directors by this Constitution) and for such period and subject to such conditions as the Directors think fit.
- 17.2 Any such appointment may be made in favour of the Members or in favour of a body corporate or of the members, directors, nominees or managers of a body corporate or firm or in favour of a fluctuating body of persons whether nominated directly or indirectly by the Directors and any such power of attorney may contain such provisions for the protection and convenience of the persons dealing with the attorney as the Directors think fit.
- 17.3 Any such delegate or attorney may be authorised to sub-delegate all or any of the powers vested in that person.

## **18 Indemnity and Insurance**

### **Indemnity**

- 18.1 Every officer and past officer of the Company may be indemnified by the Company, to the fullest extent permitted by law, against a liability incurred by that person as an officer of the Company or a Related Body Corporate, including without limitation legal costs and expenses incurred in defending an action.

### **Insurance Premiums**

- 18.2 The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company to the fullest extent permitted by law.
- 18.3 In the case of a Director, any premium paid under rule 18.2 is not remuneration for the purpose of rule 10.1.

## **19 Seals and Execution of Documents**

### **Custody of Seal**

19.1 If the Company has one, the Directors must provide for the safe custody of the Seal.

### **Execution of Documents**

19.2 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by any of the following:

19.2.1 by two (2) Directors;

19.2.2 by a Director and the Secretary; or

19.2.3 by a Director and some other person appointed by the Directors for the purpose.

19.3 The Company may execute a document without the use of a seal if the document is signed by either of the following:

19.3.1 by two (2) Directors; or

19.3.2 by a Director and a Secretary.

19.4 The Directors may give express or implied general authority for particular types of instruments to be executed on behalf of the Company by officers or employees of the Company, without requiring that a special authority is given to execute a particular document of that type.

19.5 A Director may sign an instrument referred to in rule 19.4 as a Director on behalf of the Company although the instrument relates to a contract, arrangement or another person appointed by the Directors to countersign that document or a class of documents in which that document is included, but the same person is unable to sign in the dual capacities of Director and Secretary.

19.6 Cheques, bills of exchange, promissory notes and other negotiable instruments may be signed, accepted, drawn, made or endorsed on behalf of the Company in such manner and by such persons (whether Directors or officers of the Company or not) as the Directors determine but not otherwise.

### **Official Seals**

19.7 The Company may have for use in place of the Seal outside the jurisdiction where the Seal is kept one or more official seals, to be used in accordance with procedures approved by the Directors.

## **20 Surplus Assets on Winding Up or Dissolution**

20.1 Upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities, will not be paid to or distributed among the Members, but will be given or transferred to some other institution or company which satisfies both of the following requirements:

- 20.1.1 it has objects similar to the objects of the Company; and
  - 20.1.2 its constituent documents prohibit the distribution of its income and property among its members on terms substantially to the effect of rule 5.
- 20.2 This is to be determined by the Members at or before the time of winding up or dissolution of the Company and, in default of any determination, by the Supreme Court of Western Australia.

## **21 Accounts, Audit and Records**

### **Accounts**

- 21.1 The Directors must cause proper accounting and other records to be kept in accordance with the Corporations Act. The Directors must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached thereto) as required by the Corporations Act.

### **Audit**

- 21.2 A registered company auditor must be appointed. The remuneration of the Auditor must be fixed and the Auditor's duties regulated in accordance with the Corporations Act.

### **Rights of Inspection**

- 21.3 Subject to the Corporations Act the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other books and documents of the Company or any of them will be open to the inspection of Members or other persons, not being Directors. A Member or other person, not being 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 and is not entitled to require or receive any information concerning the affairs of the Company.

### **Auditor's Right to Attend Meetings**

- 21.4 The Company must give the Auditor:
- 21.4.1 a notice of a meeting of Contributors or a meeting of the Members in the same way that a Contributor or a Member respectively is entitled to receive notice; and
  - 21.4.2 any other communications relating to the meeting of Contributors or a meeting of the Members that a Contributor or Member respectively is entitled to receive.
- 21.5 The Auditor is entitled to attend any meeting of Contributors or General Meeting.
- 21.6 The Auditor is entitled to be heard to such a meeting:
- 21.6.1 on any part of the business of the meeting that concerns the Auditor in its capacity as Auditor; and
  - 21.6.2 even if:
    - (a) the Auditor retires at the meeting; or

(b) the meeting passes a resolution to remove the Auditor from office.

21.7 The Auditor may authorise a person in writing as its representative for the purpose of attending and speaking at any meeting of Contributors or General Meeting.

## **22 Notices**

### **Persons Authorised to give Notices**

22.1 A notice by either the Company, a Member or a Contributor in connection with this Constitution may be given on behalf of the Company, Member or Contributor by a solicitor, Director or Secretary, Member or Contributor.

22.2 Subject to the Corporations Act, the signature of a person on a notice given by the Company may be written, printed or stamped.

### **Method of giving Notices**

22.3 In addition to the method for giving notices permitted by statute, a notice by the Company, a Member or a Contributor in connection with this Constitution may be given to the addressee by any of the following means:

22.3.1 by delivering it to a residential address of the addressee;

22.3.2 by sending it by prepaid ordinary post (airmail if outside Australia) to a residential or postal address of the addressee; or

22.3.3 by sending it by facsimile or email to the facsimile number or email address of the addressee.

### **Addresses for giving Notices to Members**

22.4 The residential address or postal address of a Member is the residential or postal address of the Member shown in the Register.

22.5 The facsimile number or email address of a Member is the number or email address shown in the Register or if not shown in the Register, which the Member may specify by written notice to the Company as the facsimile number or email address to which notices may be sent to the Member.

### **Addresses for giving Notices to Contributors**

22.6 The residential address or postal address of a Contributor is the street or postal address of the Contributor shown in the Register of Contributors.

22.7 The facsimile number or email address of a Contributor is the number or email address shown in the Register of Contributors or if not shown in the Register of Contributors, which the Contributor may specify by written notice to the Company as the facsimile number or email address to which notices may be sent to the Contributor.

### **Address for giving Notices to the Company**

22.8 The residential address and postal address of the Company is the Office.

- 22.9 The facsimile number or email address of the Company is the number which the Company may specify by written notice to the Members as the facsimile number or email address to which notices may be sent to the Company.

**Time Notice of Meeting is Given**

- 22.10 Unless otherwise provided in this Constitution, a notice of meeting given in accordance with this Constitution is to be taken as given, served and received at the following times:
- 22.10.1 if delivered in writing to the residential address of the addressee, at the time of delivery;
  - 22.10.2 if it is sent by post to the residential address or postal address of the addressee, on the business day after posting; or
  - 22.10.3 if sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

**Time other Notices are Given**

- 22.11 Unless otherwise provided in this Constitution, a notice given in accordance with this Constitution is to be taken as given, served and received at the following times:
- 22.11.1 if delivered in writing to the residential address of the addressee, at the time of delivery;
  - 22.11.2 if it is sent by post to the residential address or postal address of the addressee, on the 2<sup>nd</sup> (7<sup>th</sup> if outside Australia) business day after posting; or
  - 22.11.3 if sent by facsimile or email to the facsimile number or email address of the addressee, at the time transmission is completed.

**Proof of Giving Notices**

- 22.12 In providing delivery or service of a document by post it is sufficient to prove that the envelope or wrapper was properly addressed and stamped and was posted. A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was properly addressed and stamped and was posted is conclusive evidence of those facts.
- 22.13 The sending of a notice by facsimile or email and the time of completion of transmission may be proved conclusively by production of the relevant one of the following:
- 22.13.1 a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
  - 22.13.2 a print out of an acknowledgment of receipt of the email.

**Persons Entitled to Notice of Meeting**

- 22.14 Notice of every General Meeting must be given by a method authorised by this Constitution to all of the following persons:

- 22.14.1 every Member;
  - 22.14.2 every Contributor;
  - 22.14.3 every Director; and
  - 22.14.4 the Auditor, if any.
- 22.15 Except as otherwise expressly provided for in this Constitution, no other person is entitled to receive notices of General Meetings.
- 22.16 Subject to the Corporations Act:
- 22.16.1 if a given number of days' notice or notice extending over any other period is required to be given, the day on which the notice is to be deemed served and in case of a notice calling a meeting the day on which the meeting is to be held are to be excluded in calculating the number of days or other period; and
  - 22.16.2 if this Constitution requires or permits a notice to be given by the Company, the Directors, a Director or the Secretary, neither accidental omission to give the notice nor non-receipt of the notice invalidates the meeting, resolution, procedure or matter to which the notice relates.
- 22.17 The accidental omission to give notice of any meeting of Contributors, any General Meeting, any Board meeting or any meeting of any committee formed by the Board in accordance with this Constitution or the Corporations Act to, or the non receipt of a notice by, a person entitled to receive such notice does not invalidate a resolution passed at the respective meeting.

## 23 Definitions, Interpretation and General Provisions

### Definitions

- 23.1 In this Constitution the following definitions apply:

**Annual General Meeting** means the annual general meeting of Members required to be held by and in accordance with the Corporations Act;

**Auditor** means the auditor for the time being of the Company;

**Board** means the board of Directors;

**CEO** is defined in rule 14.1;

**Company** means Health Insurance Fund of W.A. Limited ACN [ACN number];

**Constitution** means this document;

**Contributor** means:

- (a) a contributor to the Fund whose contributions are paid up to date in respect of his or her health insurance policy issued by the Fund and who has attained, or is over,

the age of eighteen years, and whose name is entered in the Register of Contributors; and

- (b) in the case of a health insurance policy issued by the Fund which covers more than one contributor to the Fund whose contributions are paid up to date, all contributors covered by that insurance policy who have attained, or are over, the age of eighteen years, and whose names are entered in the Register of Contributors;

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

**Council** means the Private Health Insurance Administration Council, established pursuant to the *Private Health Insurance Act 2007* (Cth);

**Department** means the Commonwealth Department of Health and Ageing or its successor from time to time;

**Director** means a person appointed to perform the duties of a director of the Company;

**Executive Director** means a Director who is an employee of the Company;

**Fund** means any health fund operated by the Company;

**General Meeting** means a general meeting of Members and, unless the context otherwise requires, includes an Annual General Meeting;

**Member** means a person whose name is entered in the Register as a member of the Company and **Membership** has a corresponding meaning;

**Non-Executive Director** means a Director who is not an employee of the Company;

**Office** means the registered office of the Company;

**Register** means the register of Members kept by the Company under the Corporations Act;

**Register of Contributors** means the register of Contributors kept by the Company;

**Related Body Corporate** has the meaning given to that term in the Corporations Act;

**Related Entity** has the meaning given to that term in the Corporations Act;

**Seal** means, if the Company has one, the common seal of the Company;

**Secretary** means a person appointed as a secretary of the Company, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company; and

**Termination Event** means:

- (a) if a Member is an individual, the death or bankruptcy of that Member or that Member becoming of unsound mind or becoming a person whose property is liable to be dealt with under a law about mental health or that Member becoming

- ineligible to act as a director of a public listed company under the Corporations Act;
- (b) the Member ceasing to be a Contributor; or
- (c) if a Member is a Director, upon the Member no longer being a Director or occupying the office of a Director.

### **Interpretation**

23.2 In this Constitution, unless the context otherwise requires:

- 23.2.1 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this Constitution;
- 23.2.2 a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- 23.2.3 a reference to a rule, part, schedule or attachment is a reference to a rule, part, schedule or attachment of or to this Constitution;
- 23.2.4 where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- 23.2.5 a word which indicates the singular indicates the plural, a word which indicates the plural indicates the singular, and a reference to any gender indicates the other genders;
- 23.2.6 an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or public authority;
- 23.2.7 a reference to 'dollars' or '\$' means Australian dollars;
- 23.2.8 references to the word 'include' or 'including' are to be interpreted without limitation;
- 23.2.9 a reference to a time of day means that time of day in the place where the Office is located;
- 23.2.10 a reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located;
- 23.2.11 where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day;
- 23.2.12 a term of this Constitution which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day;

- 23.2.13 a reference to writing includes typewriting, printing, telex, telegram, facsimile and other modes of representing or reproducing words in a visible form;
- 23.2.14 where a specified number of "clear" days notice is required to be given the day of service and the day on which such notice will expire shall not be counted in such number of days; and
- 23.2.15 a reference in this Constitution to the word 'email' or 'email address' means electronic mail or electronic mail address, as the case requires.

### **Headings**

- 23.3 Headings are inserted for convenience and do not affect the interpretation of this Constitution.

### **References to this Constitution**

- 23.4 A reference to this Constitution, where amended, means this Constitution as so amended.

### **Replaceable Rules**

- 23.5 Each of the provisions of the Corporations Act which would but for this rule apply to the Company as a replaceable rule within the meaning of the Corporations Act are displaced and do not apply to the Company.

### **Application of Corporations Act**

- 23.6 The Corporations Act applies in relation to this Constitution as if it was an instrument made under the Corporations Act as in force on the day when this Constitution became the constitution of the Company.

### **Exercise of Powers**

- 23.7 Except as specifically contemplated to the contrary in this Constitution, the Company may, in any manner permitted by the Corporations Act exercise any power, take any action or engage in any conduct or procedure which under the Corporations Act a company limited by guarantee may exercise, take or engage in if authorised by this Constitution.