

# Health Insurance Fund of WA (Inc) ('HIF')

## Summary of New Constitution 2009

*Graeme Gibson*  
*Chief Executive Officer*



*Australia's first certified Carbon Neutral health fund.*

## Overview



- Corporations Act 2001 (Cth) (**Corporations Act**) applies.
- Replaceable rules in Corporations Act displaced.
- Member/Contributor distinction.
- A Member must be a Contributor.
- A Director must be a Member.
- 5 to 9 Directors.
- 12 to 18 Members.
- PHIAC Governance Rules.
- Hold AGM as an incorporated association in 2009.
- AGM in 2010 will be held as Health Insurance Fund of W.A. Limited.

## *Rule 1 – Nature of Company and Liability*



- HIF is a public company limited by guarantee.
- No share capital – only Members, no shareholders.
- Each Member agrees to provide a guarantee of up to \$1.00
- If HIF is wound up any Member at the time the winding up commences, or any person who was a Member in the 12 months prior to commencement of the winding up, must contribute up to \$1.00 to the assets of HIF for payment of certain debts, liabilities and costs etc.

## Rule 2 - Objects



- Objects of HIF:
  - Very general and covers the establishment and operation of health insurance funds and the provision of other services and products such as travel and general insurance and banking services.
  - States that HIF's dominant organisational goal is to help Contributors and their dependants to lead healthy lives.
  - Enables HIF to establish and operate any other lawful business activity.
- Section 124 Corporations Act – a company has the legal capacity and powers of an individual, except a company limited by guarantee does not have the power to issue shares.

## Rule 3 - Membership



- Classes of Membership:
  - Ability of board to create new classes, vary class rights etc.
  - Only one class of Members at date of adoption of constitution – listed in application for registration to ASIC.
- Not less than 12 and not more than 18 Members (can be increased or decreased by resolution of the Directors).
- Members must be Contributors (contributions paid up to date) and 18+ years old. All Directors are automatically Members.
- Candidates for Membership must be nominated by 2 Members in writing with 2 personal references and personal curriculum vitae.
- A candidate for Membership may be admitted as a Member by being:
  - elected by ordinary resolution at a meeting of Contributors; or
  - appointed by the Board to fill a casual vacancy amongst the Members or in addition to the existing number of Members.
- Directors have absolute discretion to put a nominee up for election by Contributors or to be appointed by Directors.

## Rule 3 – Membership (ctd)



- Maintenance of register of Members containing personal details, Members to notify Secretary of any changes.
- One quarter of Members to retire by rotation at each annual meeting of Contributors:
  - Members who are Directors are not subject to retirement by rotation.
  - Members to retire determined by time since last elected.
  - Members appointed to fill casual vacancies or in addition to existing number of Members to be elected at next annual meeting of Contributors.

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



### Ceasing to be a Member

- Members may resign by written notice to Secretary.
- Members cease to be Members on death or bankruptcy, or if that Member ceases to be a Contributor, or if that Member is a Director and ceases to be a Director.
- A Member who is not a Director who has been a Member for a period or cumulative periods of 12 years or more ceases to be a Member at the annual meeting of Contributors at the end of that 12<sup>th</sup> year and cannot be re-elected or otherwise re-appointed as a Member.

## Rule 4 – Removal and Cessation of Membership (ctd)



### Cancellation of Membership

- Board may cancel Membership for any reason by giving Member written notice of intention to cancel Membership not less than 7 days before Board meeting to consider the matter.
- A person whose Membership is cancelled may appeal the Board's decision, in which case their Membership is not cancelled unless and until the decision of the Board is confirmed by Members at a General Meeting (which must be called within 30 days after receipt of notice of the appeal).
- A person appealing cancellation of their Membership may request the Board notify other Members of written representations made by that person.
- A person whose name is removed from the Register of Members is not eligible to become a Member again except with the sanction of a special resolution of Members.

## Rule 5 – No profits for members



- No income or property of HIF to be paid or transferred to any Member. This does not prohibit the payment in good faith by HIF of:
  - Remuneration to officers or employees of HIF (including Directors).
  - An amount to a Member or Contributor in return for services rendered to HIF or goods supplied in the ordinary course of business.
  - Funds to or on behalf of a Member or Contributor for services or treatment covered under an HIF issued insurance policy.
  - Funds to a Member for rendering services or treatment covered under an HIF issued insurance policy.
  - Reasonable and proper interest on money borrowed by HIF from a Member or Contributor.
  - Reasonable and proper rent for premises let by a Member or Contributor.

## Rule 6 – Meetings of Contributors



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- Meeting of Contributors to be held annually, not less than 35 days nor more than 49 days before annual general meeting of Members.
  - Meeting of Contributors may be convened by not less than 20 Contributors.
  - All Contributors to receive notice of meeting of Contributors, published in a magazine or newsletter published by HIF for Contributors or in a regularly circulating WA newspaper at least 14 days before the meeting.
  - Contributors to elect, re-elect or remove Members at annual meeting of Contributors.
  - Quorum requirement of five Contributors.
  - Every Contributor has one vote at meetings of Contributors and may only vote in person (ie not by proxy).

## Rule 7 – General Meetings



- Directors may call General Meetings as they see fit.
- Contributors to receive notice of, and attend and be heard at, General Meetings, but may not vote. This requirement is satisfied by notice published in a magazine or newsletter published by HIF for Contributors or in a regularly circulating WA newspaper at least 14 days before the meeting.
- Quorum requirement of five Members.
- Cancellation or postponement of General Meetings.
- Members entitled to one vote each, may vote in person or by proxy or attorney.
- General Meetings may be held using technology consented to by all Members (ie telephone, video conference).
- Resolutions may be passed in writing if signed by all Members, without the need for a General Meeting.
- Chairman has a casting vote.
- Corporations Act provisions apply to General Meetings and Annual General Meetings.

## Rule 8 - Proxies



- Members may vote by proxy or attorney at General Meetings.
- Requirements for proxy forms - in writing, specify name of proxy etc.
- Proxies and powers of attorney (if applicable) must be either:
  - deposited with HIF (including by fax or email if permitted) at least 48 hours before General Meeting or adjournment thereof; or
  - produced to the chairperson of the meeting before the proxy votes.
- Proxies not received in time are invalid.
- Chairman to act as proxy if a completed form is received but no proxy is named.

## Rule 8 – Proxies (ctd)



- Section 250A(1) of the Corporations Act sets out the minimum requirements for a valid proxy. The proxy must be signed by the Member and must contain:
  - the Member’s name and address;
  - the company’s name;
  - the proxy’s name or the name of the office held by the proxy; and
  - the meetings at which the appointment may be used.
- An appointment of a proxy may be a standing appointment.
- Section 250A(2) of the Corporations Act provides that if a company has a constitution, the constitution may provide that an appointment is valid even if it contains only some of the information referred to above.

## *Rule 9 – Appointment and retirement of Directors*



### Requirements for Directors

- Between 5 and 9 Directors - number may be increased or reduced by resolution of Members.
- Directors must be Contributors.
- Majority of Directors must ordinarily reside in Australia and majority must be Non-Executive Directors.
- Directors may appoint 1 or 2 Executive Directors for a fixed term or without limitation (but not for life) and confer such powers as the Directors have on the Executive Director(s).

Nomination of Directors

- No person is eligible for election or re-election as a Director at an 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.
- The Nomination Notice must be signed by the nominee signifying their consent to the nomination and 2 Directors.
- Any nomination by Directors must be made in conjunction with any nomination committee established by the Company.

Retirement of Directors

- One third of Directors (other than an Executive Director) must retire at each Annual General Meeting.
- Any Director other than an Executive Director who has been in office for three years or more since their election or last re-election must also retire at the next Annual General Meeting.
- Directors appointed to fill casual vacancies or as an addition to existing Directors to be elected at the next Annual General Meeting (such persons and Executive Directors are not to be included when determining the number of Directors to retire).

## *Rule 9 – Appointment and retirement of Directors (ctd)*



### Retirement of Directors

- Subject to the points below, Directors cannot hold office for more than 12 years (cumulative), which in the case of Directors who served as a Director or member of the management committee whilst HIF was an incorporated association, will be calculated from the date they were last appointed, elected or re-elected to that role.
- A Director who was in office at the date of adoption of the Constitution will for the purposes of this rule be deemed to have first assumed office on the day he or she was first appointed, elected or re-elected as a Director or member of the management committee whilst the Company was an incorporated association.
- Each Director in office at the date of adoption of the Constitution and who has already held office for a period or cumulative periods of 12 years or more will not be eligible for further appointment but is eligible for re-election as a Director on one further occasion.

## *Rule 9 – Appointment and retirement of Directors (ctd)*



- Directors may appoint persons to be Directors to fill casual vacancies or in addition to the existing number of Directors. Such appointees hold office only until the next Annual General Meeting and then are eligible for election.
- Members may at General Meeting remove a Director and appoint a replacement.
- Office of a Director immediately becomes vacant if Director:
  - Becomes bankrupt or insolvent etc.
  - Becomes of unsound mind.
  - Is absent from Board meetings for 3 continuous months without the consent of the Directors and the Board resolves to remove the Director.
  - Is prohibited from being a Director under the Corporations Act.
  - Ceases to be a Member or Contributor.

## Rule 10 – Directors Remuneration



- The aggregate amount payable to Directors is to be determined by Members at Annual General Meeting. Until such determination is made the maximum aggregate sum is \$250,000 per annum. The Board may determine the apportionment of that amount between the Directors.
- Aggregate sum of Directors' fees must not be increased except with prior approval of the Members.
- Directors are entitled to be paid for certain travelling & accommodation expenses and for any extra services provided or work undertaken outside the Director's ordinary duties.
- The Board may pay a gratuity, pension or allowance following retirement or vacation of office to a Director or their relative.

## Rule 11 – Powers of Directors



- Broad powers to manage business of HIF including power to borrow or raise money.
- Must not sell or dispose of HIF's main undertaking other than with the approval of the Members in General Meeting.

## Rule 12 – Proceedings of Directors



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- Directors may call meetings of Directors at any time upon at least 24 hours notice (unless notice period is waived by Directors in writing).
  - Use of technology for Directors' meetings.
  - Quorum requirement of four Directors.
  - Chairperson (elected by Directors) has a second or casting vote at meetings of Directors.
  - Obligation to disclose interests to Board however Directors are entitled to be present and vote on matters if and to the extent permitted under the Corporations Act.
  - Contracts of HIF are not void or voidable simply by reason that a Director is interested (directly or indirectly) in it.

## *Rule 12 – Proceedings of Directors (ctd)*



- Directors may delegate powers to other persons or to a committee as they think fit.
- Any committees exercising power delegated by the Directors must act as directed by the Directors.
- Resolutions may be passed in writing signed by all Directors without the need for a meeting.

## Rule 13 – Alternate Directors



- A director may in writing or by email or fax appoint a person approved by a majority of other Directors to act as their alternate.
- An alternate Director has all same powers as a Director including to receive notice of, and attend and vote at, meetings of Directors.
- Alternate Directors are not to be included separately from their appointor in determining the rotation of Directors.
- Alternate Directors are responsible for their own acts and defaults.
- Appointment may be terminated immediately by the appointor or by the other Directors if the other Directors resolve to terminate the appointment after giving the appointor 7 days notice of the intention to remove the alternate Director or if the Directors resolve to remove or suspend the alternate Director from office.

*Rule 14 – Chief Executive Officer*  
*Rule 15 - Secretary*

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Rule 14 – Chief Executive Officer

- Directors may appoint a CEO to be responsible for conduct, administration and organisation of HIF under the direction of the Directors.
- Directors may determine terms and conditions of appointment of CEO
- CEO entitled to attend and speak, but not to vote, at meetings of Directors unless also a Director.

Rule 15 – Secretary

- Directors may appoint one or more Secretary, terminate such appointment and determine terms and conditions of the Secretary's appointment.
- Secretaries to carry out any act or deed required by the HIF constitution, the Corporations Act or any other statute to be carried out by the Secretary.

*Rule 16 – By-laws*

*Rule 17 – Powers of Attorney*

*Rule 18 – Indemnity and Insurance*

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Rule 16 – By-laws

- Directors may make by-laws and regulations not inconsistent with constitution to regulate HIF and the conduct and management of its affairs, activities and business.

Rule 17 – Powers of Attorney

- Directors may appoint an attorney for Company on such terms and with such powers as the Directors think fit.

Rule 18 – Indemnity and Insurance

- Officers of HIF to be indemnified by HIF to maximum extent permitted by law against liability incurred in that role as an officer.
- HIF to pay insurance premiums insuring persons who are or have been Directors to the maximum extent permitted by law.

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

## *Rule 20 – Surplus assets on winding up solutions or dissolution*

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### Rule 19 – Seals and Execution of Documents

- Documents can be executed by two Directors or by a Director and a Secretary (note different rules apply if using the company seal).

### Rule 20 – Surplus Assets on Winding Up or Dissolution

- Any property remaining after satisfaction of the debts and liabilities of HIF in the event of its winding up is to be given or transferred to an entity which has objects similar to HIF and whose constituent documents prohibit the distribution of its income and property amongst members on similar terms to HIF's constitution.
- Identity of recipient to be determined by Members before or at time of winding up or by the Supreme Court of Western Australia if no such determination by Members has been made.

*Rule 21 – Accounts, Audit and Records*

*Rule 22 – Notices*

*Rule 23 – Definitions, Interpretation & General Provisions*

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Rule 21 – Accounts, Audit and Records

- Directors to ensure proper records are maintained and distribute profit and loss accounts and balance sheets as required by the Corporations Act.
- Appointment of a registered company auditor, whose remuneration is fixed and whose duties are prescribed under the Corporations Act.
- Auditor is to receive notice of any meeting of Contributors or Members, and they or their authorised representative are entitled to attend and be heard at any such meetings.

Rule 22 – Notices

- General provisions concerning service of notices, proof of service etc.
- Notice of every General Meeting to be given to every Member, Contributor, Director and the Auditor (if any).

Rule 23 – Definitions, Interpretation & General Provisions

- Glossary and general provisions.



ARBN 128 302 161 | An Association incorporated in Western Australia | A registered private health insurer



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