

# **CONSOLIDATED CONSTITUTION**

of

## **BUSS (QUEENSLAND) PTY LTD ACN 065 081 281**

*COMPRISING:*

### **MEMORANDUM OF ASSOCIATION**

Dated **17 June 1994** (Adopted from incorporation)

#### **AS AMENDED BY:**

- Special resolution of shareholders on **[Date Unknown] 2005**

### **ARTICLES OF ASSOCIATION**

Adopted by special resolution of shareholders on **12 July 1994**

#### **AS AMENDED BY:**

- Special resolution of shareholders **5 December 2007**
- Special resolution of shareholders **18 August 2020**
- Special resolution of shareholders **31 March 2022**
- Special resolution of shareholders **6 September 2022**

CORPORATIONS LAW  
MEMORANDUM OF ASSOCIATION

- of -

BUSS (QUEENSLAND) PTY LTD  
AC.N. 065 081 281

1. The name of the Company is BUSS (QUEENSLAND) PTY LTD
2. [Deleted]
3. The liability of the members is limited.
4. The Company –
  - (a) Restricts the right to transfer its shares in that the Directors may refuse to register any transfer of a share without being bound to assign any reason for such refusal provided that this provision shall be without prejudice to any further provisions relating to transfers of shares which may from time to time be imposed by the Articles of Association of the Company; -
  - (b) Limits to not more than fifty the number of its members (counting joint holders of shares as one person and not counting any person in the employment of the Company or of its subsidiary or any person who while previously in the employment of the Company or of its subsidiary was and thereafter has continued to be a member of the Company);
  - (c) Prohibits any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for any shares in, or debentures of, the Company; and
  - (d) Prohibits any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the Company for fixed periods or payable at call, whether bearing or not bearing interest.
5. The capital of the company is TEN THOUSAND DOLLARS divided into ten thousand shares (10,000) of one dollar (\$1) each.

We, the persons whose names and addresses and occupations are subscribed, wish to form a Company to this Memorandum of Association.

DATED this 17th day of June 1994.

17 July 1994 as amended

ARTICLES OF ASSOCIATION

BUSS (QUEENSLAND) PTY LTD

A.C.N. 065 081 281

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**Corporations Law**  
**A Company Limited by Shares**

**ARTICLES OF ASSOCIATION**  
**OF**  
**BUSS (QUEENSLAND) PTY LTD**  
**A.C.N. 065 081 281**

**1 Table "A" Not Applicable**

The regulations contained in Table A in Schedule 1 to the Corporations Law shall not apply to the company.

**2 Proprietary Company**

The company is a proprietary company and therefore:

- (a) The number of members for the time being of the company (exclusive of persons who are in the employment of the company or of any subsidiary of the company and of persons who, having been formerly in the employment of the company or of any subsidiary of the company, were, while in that employment and have continued after that employment to be, members of the company) is not to exceed fifty, but where two or more persons hold one or more shares in the company jointly, they shall for the purposes of this article be treated as a single member.
- (b) Any invitation to the public to subscribe for or to accept subscriptions for any shares in or debentures of the company or to deposit money with or to accept deposits of money with the company for fixed periods or payable at call, whether bearing or not bearing interest, is hereby prohibited.
- (c) The directors in their absolute and uncontrolled discretion may refuse to register any transfer of shares without assigning any reason therefor and shall refuse to register any such transfer if to do so would breach the Relevant Requirements.

**3 Interpretation - Definitions**

**3.1 In these articles:**

"Business Day" means a day other than Saturday and Sunday or a public holiday in Queensland;

"Complying Superannuation Scheme" in relation to a year of income means a scheme which is a regulated superannuation scheme which complies with the Relevant Requirements;

"Corporations Law" means the Corporations Law as amended and includes reference to the regulations and the application orders;

"Dispute" has the meaning given in article 51.1;

"Employer" means the Employer as defined in the Trust Deed;

"Employer Body" means the Queensland Master Builders Association, Industrial Organisation of Employers, being an organisation representing the interests of an Employer or Employers in accordance with the Relevant Requirements;

"Equal Representation" means an equal number of Employer Body directors and Scheme Member Body directors as directors of the company;

"Expert Determination" means a determination by an Expert by way of Referral to an Expert for determination in accordance with article 51.5;

"Expert" means a person who has accepted appointment in accordance with article 51.5(b) to determine the Dispute in accordance with the Rules for Expert Determination;

"member" means a shareholder of the company;

"Relevant Requirements" means the Relevant Requirements as defined in the Trust Deed;

"Resolution Institute" means the Resolution Institute of Australia (ACN 008 651 232) of Suite 602, Level 6 Tower B, Zenith Centre, 821-843 Pacific Hwy, Chatswood NSW 2067;

"Rules for Expert Determination" means the rules which the board (or other governing body of the Resolution Institute) of the Resolution Institute publish, from time to time, as the 'Resolution Institute Determination Rules' (including any appendices and schedules) and any other expert determination rules which may replace those rules (howsoever described);

"Rules for Mediation" means the rules which the board (or other governing body of the Resolution Institute) of the Resolution Institute publish, from time to time, as the 'Mediation Rules' (including any appendices and schedules) and any other mediation rules which may replace those rules (howsoever described);

"Scheme" means the Scheme known as the BUILDING UNIONS SUPERANNUATION SCHEME (QUEENSLAND);



"Scheme Member" means a person who is admitted to membership of the Scheme in accordance with the Trust Deed and has not ceased to be a Member of the Scheme in accordance with the Trust Deed;

"Scheme Member Body" means the Construction, Forestry, Mining & Energy, Industrial Union of Employees. Queensland, being a union representing the interests of Scheme Members in accordance with the Relevant Requirements;

"seal" means the common seal of the company and includes any official seal of the company;

"secretary" means any person appointed to perform the duties of a secretary of the company;

"Trust Deed" means the deed dated 30th day of November 1984, as amended from time to time, by which the Scheme was established;

Unless the contrary intention appears, words and expressions defined in the Trust Deed shall have the same meaning when used in the memorandum of association and these articles of association.

- 3.2 Division 10 of Part 1.2 of the Corporations Law applies in relation to these articles as if they were an instrument made under the Corporations Law as in force on the date on which these articles become binding on the company.
- 3.3 Except so far as the contrary intention appears in these articles, an expression has, in a provision of these articles that deals with a matter dealt with by a particular provision of the Corporations Law, the same meaning as in that provision of the Corporations Law.

#### **4 Articles Subject to Relevant Requirements**

These articles shall be read and construed on the basis that the provisions of the Relevant Requirements are incorporated into these articles to the extent that they impose covenants or obligations on the company to enable the Scheme to qualify as a Complying Superannuation Scheme and these articles shall be further read and construed on the basis that where there is any inconsistency between a provision in these articles and a provision under the Relevant Requirements the latter shall prevail PROVIDED THAT these articles shall not be so read or construed and no such provision of the Relevant Requirements shall be so incorporated if to do so would contravene the Corporations Law.

## **5 Exercise of Powers**

The company is to act as trustee of the Scheme but nothing in this article shall be taken to restrict or limit in any way the powers of the company, other than as provided in the memorandum of association and to ensure compliance with the Relevant Requirements.

## **6 Share Capital and Variation of Rights**

- 6.1 The capital of the company shall be divided into 100 "A" Class shares of \$1.00 each 100 "B" Class shares of \$1.00 each and the remaining shares shall be unclassified.
- 6.2 Each holder of an "A" Class share shall be a Scheme Member Body whose membership is in accordance with the Relevant Requirements.
- 6.3 Each holder of a "B" Class share shall be an Employer Body whose membership is in accordance with the Relevant Requirements.
- 6.4 The rights, privileges and conditions attached to the shares of the company include the following.
- (a) the "A" Class shares and "B" Class shares of the company shall confer on their holders the right to vote at general meetings of the company and shall be the only voting shares,
  - (b) the shares of the company shall carry no right to a dividend.
- 6.5 In circumstances where a member ceases to be eligible to be a member in accordance with article 6.2 and article 6.3 that member must transfer the shares in that member's name in accordance with the provisions of these articles as soon as practicable after ceasing to be eligible to continue as a member.
- 6.6 The holders of the "A" Class shares and the "B" Class shares are the following shareholders, subject to article 6.7:

### **Number of Shares**

Two "A" Class shares

Two "B" Class shares

### **Shareholders**

Construction, Forestry, Mining & Energy,  
Industrial Union of Employees,  
Queensland

Queensland Master Builders Association,  
Industrial Organisation of Employers

- 6.7 In the event of an existing member ceasing to be an Employer Body or a Scheme Member Body, that member must transfer its shares to another organisation which the directors acknowledge to be an Employer Body or a Scheme Member Body.

- 6.8 Save as otherwise provided in these articles, "A" Class shares and "B" Class shares shall be ordinary shares and shall rank equally with regard to voting rights and return of capital.

## **7 Shares Issued by the Directors**

Where it is determined appropriate to issue additional shares in the company, the directors may issue those shares but only to those persons set out in articles 6.2 and 6.3 and subject to the Relevant Requirements.

## **8 Share Certificates**

- 8.1 A person whose name is entered as a member in the register of members shall be entitled without payment to receive a certificate under the seal of the company in accordance with the Corporations Law but, in respect of a share or shares held jointly by several persons, the company shall not be bound to issue more than one certificate.
- 8.2 Delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

## **9 Transfer of Shares**

- 9.1 Subject to these articles, a member may transfer all or any of the member's shares by instrument in writing in any usual or common form or in any other form that the directors approve.
- 9.2 An instalment of transfer referred to in article 9.1 shall be executed by or on behalf of both the transferor and the transferee.
- 9.3 A transferor of shares shall remain the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the register of members in respect of the shares.
- 9.4 The directors may in their absolute discretion decline to register any transfer or transmission of shares without assigning any reason therefor.
- 9.5 If, in any case, a proposing transferor member after having become bound to execute the transfer defaults in executing the transfer or completing the transfer of a share as is required under these articles, the company may receive the purchase money for that share and shall thereupon cause the name of the transferee to be entered in the register as the holder of the share. The receipt by the company of the purchase money shall be a good discharge to the transferee. After the transferee's name has been entered in the register in purported exercise of the aforesaid power the validity of the proceedings shall not be questioned by any person.

## **10 Instrument of Transfer**

The instrument of transfer must be left for registration at the registered office of the company, together with such fee (if any) not exceeding \$1.00 as the directors require, accompanied by the certificates of the shares to which it relates and such other information as the directors properly require to show the right of the transferor to make the transfer, and thereupon the company shall, subject to the powers vested in the directors by these articles, register the transferee as a shareholder.

## **11 Suspended Registration of Transfers**

The registration of transfers may be suspended at such times and for such periods as the directors from time to time determine not exceeding in the whole thirty days in any year.

## **12 Restriction on Transfer of Shares**

No transfer of shares shall be permitted unless any share which is offered for transfer is transferred to a person described in article 6.2 and article 6.3. This article shall have effect notwithstanding the provisions of article 11.

## **13 Transmission of Shares**

- 13.1 In the case of the death, bankruptcy, insolvency or other incapacity of a member, that - member shall be deemed to have offered their shares for transfer to such a person nominated by the directors who qualifies as a person eligible to be a member under article and article 6.3 the day before the death, bankruptcy, insolvency or other incapacity of the member. The provisions of articles 9, 10 and 11 shall then apply in respect of the transfer of those shares.
- 13.2 This article does not release the estate or legal personal representative of a deceased, bankrupt, insolvent or incapacitated member from any liability in respect of the share attributable to the period of membership prior to the death, bankruptcy, insolvency or other incapacity of the member.

## **14 Alteration of Capital by Resolution**

The company may by resolution increase its authorised share capital by increasing the ordinary shares to such number as is specified in the resolution PROVIDED THAT to do so shall not breach the Relevant Requirements.

## **15 Alteration of Capital by Special Resolution**

Subject to the Corporations Law the company may, by special resolution, reduce its share capital, PROVIDED THAT to do so shall not breach the Relevant Requirements.

## **16 General Meetings**

- 16.1 The company shall in each calendar year hold an annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it. Subject to any extension permitted under the Corporations Law the annual general meeting shall be held within the period prescribed by the Corporations Law.
- 16.2 Subject to article 16.1 the annual general meeting shall be held at such time and place as the directors determine.
- 16.3 All general meetings of members of the company other than the annual general meetings shall be called general meetings.
- 16.4 Subject to the Corporations Law the omission (whether by accident or error) to give notice of a meeting to, or the non-receipt of notice of a meeting by any member shall not invalidate the proceedings of any meeting.
- 16.5 Any director may whenever that director thinks fit convene a general meeting and general meetings shall be convened on requisition by one or more members of the company.

## **17 Notice of General Meetings**

- 17.1 A notice of a general meeting shall specify the place, the day and the hour of the meeting and, except as provided by article 17.2 of this article, shall state the general nature of the business to be transacted at the meeting.
- 17.2 It shall not be necessary for a notice of an annual general meeting to state that the business to be transacted at the meeting will include the declaring of a dividend, the consideration of accounts and the reports of the directors and auditors or the appointment and fixing of the remuneration of the auditors.

## **18 Quorum at General Meetings**

- 18.1 No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and at the time when the business' of the meeting is voted upon.
- 18.2 Two members being one "A" Class share holder and one "B" Class share holder present shall constitute a quorum.

- 18.3 For the purpose of determining whether a quorum is present, a person attending as a proxy, or as representing a corporation that is a member, shall be deemed to be a member.
- 18.4 If a quorum is not present within half an hour from the time appointed for the meeting:
- (a) where the meeting was convened upon the requisition of members - the meeting shall be dissolved; or
  - (b) in any other case - the meeting shall stand adjourned to such day, and at such time and place, as the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall be dissolved.

## **19 Chairman at General Meetings**

- 19.1 The Chairman of directors shall be the chairman.
- 19.2 Where a general meeting is held and the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present shall elect one of their number to be chairman of the meeting.

## **20 Adjournment of General Meetings**

- 20.1 The chairman may with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 20.2 When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- 20.3 Except as provided by article 20.2, it shall not be necessary to give any notice of any adjournment or of the business to be transacted at an adjourned meeting.

## **21 Resolutions of General Meetings**

- 21.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on declaration of the result of the show of hands) demanded by -
- (a) the chairman;
  - (b) by at least two members present in person or by proxy; or

- (c) by a member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having a right to vote at the meeting.
- 21.2 No resolution at any general meeting shall be effective unless carried by two-thirds of the members representing not less than all of the total voting rights of all the members having a right to vote at the meeting.
- 21.3 Unless a poll is so demanded, a declaration by the chairman shall be made 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 shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 21.4 The demand for a poll may be withdrawn.

## **22 Demand for Poll**

- 22.1 If a poll is duly demanded, it shall be taken in such manner and subject to article 22.2 either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded.
- 22.2 A poll demanded on the election of a chairman or on a question of adjournment shall be taken forthwith.

## **23 No Casting Vote**

Whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall not have a casting vote.

## **24 Voting Entitlement**

At meetings of members each member entitled to vote may vote in person or by proxy or attorney and on a show of hands or on a poll. Every person present who is a member or a representative of a member shall be entitled to one vote for each share held by that member.

## **25 Exercise of Member's Rights**

If a member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the committee or trustee of the member or such other person as properly has the management of the estate of the member

may exercise any rights of the member in relation to a general meeting as if the committee, trustee or other person were the member.

## **26 Voting Objections**

- 26.1 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 26.2 Any such objection shall be referred to the chairman of the meeting, whose decision shall be final.
- 26.3 A vote not disallowed pursuant to such an objection shall be valid for all purposes.

## **27 Proxies**

- 27.1 An instrument appointing a proxy shall be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- 27.2 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy shall not be entitled to vote on the resolution except as specified in the instrument.
- 27.3 An instrument appointing a proxy shall be deemed to confer authority to vote on a show of hands and demand or join in demanding a poll.
- 27.4 A proxy may, but need not be, a member of the company.
- 27.5 An instrument appointing a proxy shall be in the following form or in a form that is as similar to the following form as the circumstances allow:

BUSS (QUEENSLAND) PTY. LTD.

I, [ ] of [ ] being a member of the abovenamed company, hereby appoint [ ] of [ ] or, in his or her absence [ ] of [ ] as my proxy for me on my behalf at the \* annual general/general meeting of the company to be held on the [ ] days of [ ] 19 and at any adjournment of that meeting.

#This form is to be used \*in favour of/\*against the resolution.

Signed this day of 19

\* Strike out whichever is not desired.



# To be inserted if desired.

## **28 Deposit of Proxy**

An instrument appointing a proxy shall not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a copy of that power or authority certified notarially or otherwise in accordance with law, is or are deposited, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, at the registered office of the company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

## **29 Proxy Valid**

A vote given in accordance with the terms of an instrument of proxy or of a power of attorney shall be valid notwithstanding the death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, or the transfer of the share in respect of which the instrument or power was given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the company at the registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## **30 Number of Directors**

The number of the directors shall not be less than 6 in number and may be any larger number as the directors may from time to time determine which shall enable Equal Representation on the board of directors and shall subject to that qualification also include an appointment of an independent director in accordance with article 35.

## **31 Qualifications of Director**

A director shall not be required to hold any share qualification.

## **32 Appointment and Removal of Employer Body Directors**

- 32.1 The Employer Body shall be entitled to appoint one director for each "B" Class share that it holds.

32.2 The Employer Body may from time to time fill a casual vacancy occurring in the office of one of its appointees as a director and may from time to time remove any of its appointees and appoint a replacement.

32.2A The holders of "B" Class shares may collectively appoint one director in addition to directors appointed under Article 32.1, and may from time to time fill a casual vacancy occurring in the office of that appointee as a director and may from time to time remove that appointee and appoint a replacement.

32.3 Removals and appointments under this Article 32 shall be in writing and executed by the appointor or by its duly authorised attorney or agent and shall take effect upon delivery at the registered office of the company.

### **33 Appointment and Removal of Scheme Member Body Directors**

33.1 The Scheme Member Body shall be entitled to appoint one director for each "A" Class share that it holds.

33.2 The Scheme Member Body may from time to time fill a casual vacancy occurring in the office of one of its appointees as a director and may from time to time remove any of its appointees and appoint a replacement.

33.2A The holders of "A" Class shares may collectively appoint one director in addition to directors appointed under Article 33.1, and may from time to time fill a casual vacancy occurring in the office of that appointee as a director and may from time to time remove that appointee and appoint a replacement

33.3 Removals and appointments under this Article 33 shall be in writing and executed by the appointor or by its duly authorised attorney or agent and shall take effect upon delivery at the registered office of the company.

### **34 Equal Representation**

34.1 The number of directors appointed by the Employer Body and the number of directors appointed by the Scheme Member Body shall be equal.

### **35 [Deleted]**

### **36 Remuneration of Directors**

The remuneration for the services of any director shall be fixed by the directors from time to time having regard to the Relevant Requirements.

### **37 Office of Director Shall Become Vacant**

In addition to the circumstances in which the office of a director becomes vacant by virtue of the Corporations Law, the office of a director (which for this purpose shall also include an independent director appointed pursuant to article 35) shall become vacant if the director:

- (a) dies;
- (b) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (c) becomes physically incapacitated to such a degree that all other directors resolve that such director is not able to carry out its duties as a director;
- (d) resigns from the office of director by notice in writing to the board;
- (e) is removed by the Employer Bodies which appointed him or her or by any previous holder of that share;
- (f) is removed by the Scheme Member Bodies which appointed him or her or by any previous holder of that share;
- (g) is absent without the consent of the directors from meetings of the directors held during a period of three consecutive months;
- (h) is classified as a disqualified person or becomes prohibited from being a director by reason of an order or notice made pursuant to the Corporations Law or the Relevant Requirements; or
- (i) becomes an insolvent under administration;

PROVIDED THAT to do so is in accordance with the Relevant Requirements.

### **38 Vacancy in the Board of Directors**

- 38.1 Subject to articles 38.2 and 38.3 any vacancy arising in the board of directors shall be filled within the time period required under the Relevant Requirements by a person or persons so that Equal Representation is maintained.
- 38.2 In the event of a vacancy of an Employer Body director, a new Employer Body director shall be appointed in accordance with article 32 to fill that vacancy within the time period required under the Relevant Requirements after the date on which the vacancy occurs so that Equal Representation is maintained.

- 38.3 In the event of a vacancy in the office of a Scheme Member Body director, a new Scheme Member Body director shall be appointed in accordance with article 33 to fill the vacancy, within the time period required under the Relevant Requirements after the date on which the vacancy occurs so that Equal Representation is maintained.
- 38.4 Notwithstanding any vacancy in the office of a director, the remaining directors may act but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of,
- (a) increasing the number of directors in accordance with this article 38 to a number sufficient to constitute such a quorum; or
  - (b) convening a general meeting of the company.

### **39 Powers and Duties of Directors**

- 39.1 Subject to the Corporations Law, the Relevant Requirements and any other provision of these articles, the business of the company shall be managed by the directors, who may pay all expenses incurred in promoting and forming the company, and may exercise all such powers of the company as are not, by the Corporations Law or by these articles, required to be exercised by the company in general meeting PROVIDED THAT to do so shall not breach the Relevant Requirements.
- 39.2 Without limiting the generality of article 39.1, the directors may exercise all the powers of the company to borrow and raise money, to charge any property or business of the company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person PROVIDED THAT to do so shall not breach the Relevant Requirements.
- 39.3 Without limiting the generality of article 39.1 the directors may insure themselves against any liability that by law would otherwise attach to the director in respect of any negligence, default, breach of duty or breach of trust PROVIDED THAT to do so shall not breach the Relevant Requirements and or the Corporations Law.
- 39.4 An Employer Body director is at liberty to:
- (a) discuss with the Employer Body, and the Employer Body may discuss with the Employer Body director, any and all matters relating to meetings of the directors and management of the company; and
  - (b) release, subject to article 39.6, to the Employer Body:
    - (i) notices, proposed resolutions minutes or papers of meetings of the directors or committee meetings or sub-committee meetings;

- (ii) documents relating to the management of the company, including any externally prepared reports into the management of company; and
- (iii) documents or material relating to the strategic plan of the company and the implementation of the strategic plan.

39.5 A Scheme Member Body director is at liberty to:

- (a) discuss with the Employer Body, and the Employer Body may discuss with the Employer Body director, any and all matters relating to meetings of the directors and management of the company; and
- (b) release, subject to article 39.6, to the Scheme Member Body:
  - (i) notices, proposed resolutions minutes or papers of meetings of the directors or committee meetings or sub-committee meetings;
  - (ii) documents relating to the management of the company, including any externally prepared reports into the management of company; and
  - (iii) documents or material relating to the strategic plan of the company and the implementation of the strategic plan.

39.6 Despite articles 39.4(b) and 39.5(b), a director is prohibited from releasing:

- (a) a document, or part of a document, that is subject to legal advice to the company unless expressly permitted by a decision of the directors; and
- (b) a document that is not expressly provided for in articles 39.4(b) and 39.5(b).

## **40 Power of Attorney**

- 40.1 The directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors), for such period and subject to such conditions as they think fit.
- 40.2 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

## **41 Negotiable Instruments**

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the company, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by such persons and in such manner as the directors may from time to time determine provided such is in accordance with the provisions of the Trust Deed of the Scheme.

## **42 Proceedings of Directors**

- 42.1 The directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 42.2 A director may at any time, and a secretary shall on the requisition of a director, convene a meeting of the directors.
- 42.3 (a) Provided that all of the directors agree, the directors may participate in a meeting of the directors by means of a telephone conference, closed circuit television or other communications equipment allowing all persons participating in the meeting to hear each other at the same time. Any director participating in such a meeting shall for the purposes of these articles be deemed to be personally present at the meeting.
- (b) Each of the directors taking part in the meeting by electronic communication devices must be able to hear each of the other directors taking part during the meeting.
- (c) At the commencement of the meeting, each director must acknowledge their presence for the purposes of the meeting to all the other directors taking part.
- (d) A director may not leave the meeting by disconnecting his or her electronic communications devices monitor unless the director has previously obtained the consent of the chairman of the meeting.
- (e) A meeting of directors by electronic communications devices shall not be invalidated by any voluntary or involuntary disconnection of a participant, provided there shall remain or be reconnected sufficient directors able to hear each other as constitutes a quorum.
- (f) A minute of the proceedings of meeting by electronic communication devices shall be prepared and shall be prima facie evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairman of the meeting.

- (g) The provisions of this article shall apply mutatis mutandis to meetings of any committee of directors established under article 50 and shall apply to the same extent where one or more directors are linked up by electronic communications devices with the body of directors convened in person at a particular place as to where all directors take part by electronic communications devices.

### **43 Alternate Directors**

- 43.1 Subject to the Corporations Law, an Employer Body or Scheme Member Body may by writing under the common seal of the Employer Body or Scheme Member Body or the hand of its representative or by facsimile transmission so sealed or signed or other form of visible communication duly authenticated, appoint a person to act as an alternate director in the place of a director nominated by that Employer Body or Scheme Member Body whether for a stated period or periods or until the happening of a specified event or from time to time.
- 43.2 An alternate director -
  - (a) may be removed or suspended from office by writing under the common seal of the Employer Body or Scheme Member Body by whom he or she was appointed or under the hand of its representative or by facsimile transmission so sealed or signed or other form of visible communication duly authenticated;
  - (b) is entitled to receive notice of meetings of the directors and to attend and vote thereat if the director in whose place he was appointed is not present and, where he is also a director in his own right or alternate director for another director as well, to have a separate vote on behalf of the director he is representing in addition to his own or that other director's vote;
  - (c) may exercise all the powers and, subject to the Corporations Law, perform all the duties of the director in whose place he or she was appointed insofar as the latter has not exercised or performed them;
  - (d) automatically ceases to be an alternate director if the director in whose place he or she was appointed ceases to be a director;
  - (e) whilst acting as a director is responsible to the company for his or her own acts and defaults and the director in whose place he or she was appointed is not responsible therefor; and
  - (f) is entitled to receive such remuneration (if any) from the company as the directors determine from time to time.

#### **44 Quorum**

At a meeting of directors, the number of directors whose presence is necessary to constitute a quorum shall be not less than two-thirds of the total number of directors.

#### **45 Chairman**

- 45.1 The directors shall elect one of their number as chairman of their meetings and may determine the period for which that director is to hold office.
- 45.2 Where such a meeting is held and:
- (a) a chairman has not been elected as provided by article 45.1; or
  - (b) the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act,

the directors present shall elect one of their number to be chairman of the meeting.

#### **46 Resolutions**

- 46.1 Subject to these articles, questions arising at a meeting of directors shall be decided by a resolution of directors PROVIDED THAT no such resolution shall be effective unless carried by two-thirds of the total number of directors.
- 46.2 The chairman of the meeting shall not have a casting vote.

#### **47 Resolutions in Documents**

- 47.1 If two-thirds or more of the directors have signed a document containing a statement that they are in favour of a resolution of the directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the directors; held on the day on which and at the time at which the document was last signed by a director.
- 47.2 For the purposes of article 47.1, two or more separate documents containing statements in identical terms each of which is signed by one or more directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.
- 47.3 A reference in article 47.1 to all the directors does not include a reference to a director who, at a meeting of directors, would not be entitled to vote on the resolution.



- 47.4 In this article a reference to a document shall include a reference to a facsimile copy of a document.

#### **48 Resolutions of a Defectively Constituted Board**

All acts done by any meeting of the directors or of a committee of directors or by any person acting as a director shall, (notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a director or a member of the committee, or to act as a director, or that a person so appointed was disqualified), be as valid as if the person had been duly appointed and was qualified to be a director or to be a member of the committee.

#### **49 Directors Holding Other Offices**

- 49.1 Notwithstanding any rule of law or equity to the contrary, no director shall be disqualified by his or her office from holding any other office or place of profit under the company (other than as auditor) or from contracting with the company, either as vendor, purchaser or otherwise, nor shall any such contract or any contract or arrangement entered into by or on behalf of the company in which any director shall be in any way interested be avoided, nor shall any director be liable to account to the company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of such director holding that office or of the fiduciary relationship thereby established, but it is declared that the nature of the director's interest must be disclosed by the director at the meeting of the directors at which the contract or arrangement is determined on, if the director's interest then exists, or in any other case at the first meeting of the directors after the acquisition of the interest.
- 49.2 A director may not as a director vote in respect of any contract or arrangement in which the director is interested as aforesaid.
- 49.3 A general notice that a director is a member of or otherwise interested in any specified firm or company and is to be regarded as interested in all transactions with that firm or company shall be a sufficient disclosure under this article as regards such director and the said transactions, and after such general notice it shall not be necessary for such director to give a special notice relating to any particular transaction with that firm or company.
- 49.4 The fact that a director who was in any way interested in any contract or arrangement affixed the company's seal to the document evidencing that contract or arrangement shall not in any way affect the validity of the said document, but disclosure of that director's interest shall be made as herein provided.
- 49.5 Failure to make or record any such disclosure shall not operate so as to avoid or render voidable any such contract or arrangement.

## **50 Committees**

- 50.1 The directors may delegate any of their powers to a committee or committees consisting of such of their number as they think fit.
- 50.2 A committee to which any powers have been so delegated shall exercise the powers delegated in accordance with any directions of the directors and a power so exercised shall be deemed to have been exercised by the directors.
- 50.3 The members of such a committee may elect one of their number as chairman of their meetings.
- 50.4 Where such a meeting is held and:
- (a) a chairman has not been elected as provided by article 50.3; or
  - (b) the chairman is not present within fifteen minutes after the time appointed for the holding of the meeting or is unwilling to act, the members present may elect one of their number to be chairman of the meeting.
- 50.5 A committee may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.
- 50.6 Questions arising at a meeting of a committee shall be determined by a resolution of the committee members present and voting and no such resolution shall be effective unless carried by two thirds of the total number of committee members.
- 50.7 The chairman shall not have a casting vote.
- 50.8 Provided that all of the members of a committee agree, the members may participate in a meeting of the committee by means of a telephone conference, closed circuit television or other communications equipment allowing all persons participating in the meeting to hear each other at the same time. Any member of a committee participating in such a meeting shall for the purposes of these articles be deemed to be personally present at the meeting. Article 42.3 shall apply as far as practicable to such a meeting
- 50.9 If two-thirds or more of the total number of the members of a committee have signed a document containing a statement that they are in favour of a resolution of the committee in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the members of the committee held on the day on which and at the time at which the document was last signed by a member of the committee.
- 50.10 For the purposes of article 50.9, two or more separate documents containing statements in identical terms each of which is signed by one or more of the members of the committee shall together be deemed to constitute one document containing a statement in those terms

signed by those members of the committee on the respective days on which they signed the separate documents.

- 50.11 A reference in article 50.9 to all of the members of the committee does not include a reference to a member of the committee who, at a meeting of the committee, would not be entitled to vote on the resolution.
- 50.12 References to a document in this article 50 shall include references to a facsimile copy of the document.

## **51 Dispute Resolution**

51.1 For the purpose of this article 51, a Dispute:

- (a) means a dispute, including a threatened or probably dispute, relating to or arising out of these articles; and
- (b) includes a situation where all of the directors, appointed pursuant to article 32.1 and 32.2A, are deadlocked with all of the directors, appointed pursuant to 33.1 and 33.2A, in relation to the same motion of the board of directors on two (2) occasions.

51.2 Dispute

- (a) In the event of any Dispute:
  - (i) then a member may only deal with that dispute in the manner set out in this article 51; and
  - (ii) a member may give a notice (**Dispute Notice**) to the other member that there is a dispute, setting out in detail the matter which is the subject of the dispute.
- (b) No member may commence legal proceedings in any court or tribunal in respect of any matter that is the subject of a Dispute, except to obtain urgent injunctive or declaratory relief.

51.3 Procedure

- (a) When a Dispute exists:
  - (i) a nominee of each member with authority to resolve the Dispute will meet to discuss a resolution of the Dispute;

- (ii) if the nominees of each member resolve the Dispute, then the resolution will be set out in a statement signed by each nominee of each member; and
- (iii) if there is no resolution of the Dispute within 10 Business Days or such longer period as agreed in writing by the parties after the Dispute Notice has been given to all parties (**Notice Date**) then the Dispute must be referred to mediation in accordance with, and subject to, the Rules for Mediation of the Resolution Institute current at the time of the Dispute.

#### 51.4 Place of mediation

All mediation proceedings are to be held in Brisbane, Queensland (or in any other place agreed to in writing between the parties to the Dispute).

#### 51.5 Expert Determination

- (a) If there is no resolution of the Dispute within 30 Business Days of the Notice Date, then any party may submit the Dispute for Expert Determination in accordance with, and subject to, the Rules for Expert Determination of the Resolution Institute current at the time of the Dispute (**Referral**).
- (b) The Expert must be:
  - (i) a person agreed to by the members within 5 Business Days after the Referral who accepts the appointment and for the purpose of reaching agreement:
    - (A) the member who issued the Referral in accordance with article 51.5(a) will nominate three Experts within two (2) days; and
    - (B) within a further three (3) days, the other party will select from that panel and communicate their selection to the other party; and
  - (ii) failing agreement within that time, a person nominated by the Resolution Institute, at the request of any member, and who accepts the appointment.
- (c) All Expert Determination proceedings are to be held in Brisbane, Queensland (or in any other place agreed to in writing between the parties to the Referral).
- (d) The Expert Determination is final and binding on the parties.
- (e) The Expert Determination concludes on the first to occur of:
  - (i) the members reaching agreement in writing; or
  - (ii) the Expert providing the members with a determination.

**51.6 Costs of dispute resolution**

- (a) The costs and disbursements of the mediator will be paid equally by the members.
- (b) Each member will pay its own costs and disbursements in respect of any procedure referred to in article 51.3 and article 51.5.

**51.7 Continuing obligations**

Notwithstanding the foregoing provisions of this article 51, pending the resolution of any Dispute, the members must without delay continue to perform their respective obligations under this Constitution except, provided that a party has acted reasonably and bona fide in relation to the Dispute (including without limitation in respect to its subject matter and the circumstances giving rise to it), to the extent that the matter the subject of the Dispute and matters necessarily dependent on it cannot be proceeded with until the Dispute has been determined.

**52 Secretary**

A secretary of the company shall hold office on such terms and conditions, as to remuneration and otherwise, as the directors determine.

**53 Seal**

53.1 The directors shall provide for the safe custody of the seal.

53.2 The seal shall be used only by the authority of the directors, or of a committee of the directors authorised by the directors to authorise the use of the seal, and every document to which the seal is affixed shall be signed by a director and be countersigned by another director, a secretary or another person appointed by the directors to countersign that document or a class of documents in which that document is included.

**54 Inspection of Records**

The directors shall determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the company or any of them will be open for inspection PROVIDED THAT such records and documents of the company shall be open for inspection as required by law or the Relevant Requirements.

## **55 Notices**

- 55.1 A notice may be given by the company to any member either by serving it on the member personally or by sending it by post to the member at the member's address as shown in the register of members or the address supplied by the member to the company for the purpose- of the giving of notices.
- 55.2 Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the second day after the date of its posting and, in any other case, at the time at which the letter would be delivered in the ordinary course of post,
- 55.3 A notice may be given by the company to a person entitled to a share in consequence of the death or bankruptcy of a member by serving it on the person personally or by sending it by post addressed to that person by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description, at the address (if any) in Australia supplied for the purpose by the person or, if such an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.
- 55.4 Notwithstanding the foregoing, if a person to whom a notice is to be given by the company has supplied to the company a facsimile number for the service of notices, then any notice may be served by the company on that person by facsimile.
- 55.5 A notice sent by facsimile (provided a status report is received by the sender which shows the notice has been transmitted) shall be deemed served immediately upon completion of sending if such completion is within business hours in the place where the addressee's facsimile machine is located, but if not, then at 9.00 am next occurring during business hours at such place.
- 55.6 For the purposes of this article, "business hours" means from 9.00 am to 5.00 pm on a day on which the major trading banks are open for business at the place or in the postal district where the addressee's facsimile machine is located.
- 55.7 A notice to be given by the company to any Scheme Member must be given in accordance with the requirements if any as contained in the Trust Deed and, where the context allows, also in accordance with this article.
- 55.8 Notice of every general meeting shall be given in the manner authorised by this article to:
- (a) every member;
  - (b) the Employer (if any); and

- (c) the auditor for the time being of the company.

No other person shall be entitled to receive notices of general meetings.

## **56 Winding Up**

- 56.1 If the company is wound up, the liquidator must vest the whole or any part of any property vested in the company in a new trustee upon such trusts identical to those existing prior to the liquidation of the company.
- 56.2 If, on the winding up of the company, there remain any assets after the satisfaction of all debts and liabilities, any such assets:
  - (a) must not be paid or distributed among the members; and
  - (b) must be paid or applied into the Scheme, its successor fund or the trustee of its successor fund.

## **57 Indemnity and Insurance**

- 57.1 Every director or officer of the company and past director or officer of the company shall be indemnified out of the property of the company whether held as trustee or otherwise against all liability incurred by him or her as a director or officer of the company to another person (other than the company or related body corporate), unless the liability arises out of conduct involving a lack of good faith or would breach the Relevant Requirements.
- 57.2 Every director or officer of the company and past director or officer of the company shall be indemnified against a liability for costs and expenses incurred by him or her:
  - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of him or her, or in which he or she is acquitted; or
  - (b) in connection with an application, in relation to such proceedings, in which the Court grants relief to him or her under the Corporations Law.
- 57.3 The company may pay, at the relevant intervals, a premium in respect of a contract insuring all or any one or more of the directors or officers of the company or past directors or officers of the company against liability incurred by him or her as a director or officer of the company, but excluding liability for a wilful breach of a duty to the company, a contravention of the Corporations Law or any matter not permissible under the Relevant Requirements.
- 57.4 Subject to the Relevant Requirements, the company may pay, at the relevant intervals, a premium in respect of a contract insuring all or any one or more of the directors or

officers of the company or past directors or officers of the company against a liability for costs and expenses incurred by him or her in defending proceedings, whether civil or criminal and whatever their outcome, arising out of his or her role as a director or officer of the company.

- 57.5 Nothing contained in these Articles shall be construed to lessen or abrogate any indemnity or protection given or authorised to directors or officers of the company by the Corporations Law or under the Relevant Requirements.

## **58 Minutes and Records**

- 58.1 The directors shall ensure that proper minutes are kept of all meetings of members and the Board.
- 58.2 In addition to all records required to be maintained by the company pursuant to the Corporations Law the directors shall ensure that the company retains copies of all minutes affecting the Scheme and other records required to be kept and notices given by the company under or pursuant to the Relevant Requirements for such periods as may be required under the Relevant Requirements.