

# Constitution of EduGrowth Limited

ACN 612 800 594

2016

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# CONSTITUTION OF EDUGROWTH LIMITED

## **EduGrowth Limited**

**ACN 612 800 594**

### 1. **PRELIMINARY**

#### 1.1 **Company limited by guarantee**

The Company is limited by guarantee and the liability of members is limited as provided in this document.

#### 1.2 **Objects of the Company**

The main purpose of the Company is to promote the development of Australian information and communications technology resources in the area of education technology (the **Core Objective**).

#### 1.3 **Application of income and property**

Subject to rules 1.4 and 10.1, the Company must apply its income solely towards promoting the objects of the Company as stated in rule 1.2. No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members.

#### 1.4 **Certain payments allowed**

Rule 1.3 does not prevent the payment of reasonable remuneration to any officer or employee of the Company or to any member of the Company or other person in return for services rendered to the Company. In addition rule 1.3 does not prevent the Company paying to a member:

- (a) interest on money lent by the member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (b) reasonable remuneration for goods supplied by the member to the Company in the ordinary course of business; and
- (c) reasonable rent for premises leased by the member to the Company.

#### 1.5 **Replaceable rules**

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

#### 1.6 **Definitions**

The following definitions apply in this document.

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

**Alternate** means an alternate Director appointed under rule 4.1.

**Appointor** in relation to an Alternate, means the Director who appointed the Alternate.

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

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

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

**Founding Member** means a member appointed as a Founding Member under rule 2.8.

**Managing Director** means a managing director appointed under rule 7.1.

**member** means a person whose name is entered in the Register as a member of the Company.

**ordinary resolution** means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

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

See sections  
168 and 169

**Representative** means an individual appointed under rule 15.4.

**Voting member** means a Founding Member.

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

**special resolution** has the meaning given by section 9.

**voting member** means a member who the Board has determined, prior to their becoming a member, has the right to receive notice of, be present at and to vote on an item of business to be considered at a general meeting of the Company for the purposes of this constitution.

## 1.7 Interpretation of this document

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

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.

- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.6) which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.
- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

## **2. MEMBERSHIP**

### **2.1 Membership**

- (a) Subject to rules 2.6 and 2.7, the members are:
  - (i) the initial members named in the application for the Company's registration; and
  - (ii) any other person the Board admits to membership.
- (b) The Board may determine a maximum number of members for each membership class.

### **2.2 Limited liability of members**

If the Company is wound up each member undertakes to contribute to the assets of the Company up to an amount not exceeding \$1.00 for payment of the debts and liabilities of the Company including the costs of the winding up. This undertaking continues for one year after a person ceases to be a member.

### **2.3 Classes of members**

The Board may, in its sole discretion:

- (a) establish or remove classes of members and may prescribe (and, if it deems it appropriate, vary) the eligibility criteria, rights, restrictions and obligations of members in each class; and
- (b) prescribe different rights for members within a class.

### **2.4 Membership Fees**

The Board may from time to time establish membership fees for each of the classes of members described in rule 2.3.

## 2.5 **Membership Fees**

The membership fee for each class of membership:

- (a) is the amount determined by the Board , from time to time;
- (b) is applied towards the objects of the Company;
- (c) is payable when, if and in the way, the Board decides; and

is not refundable in any circumstances, other than at the discretion of the Board.

## 2.6 **Resigning as a member**

A member may resign from the Company by giving written notice to the Board.

## 2.7 **Disciplining a member**

- (a) The Board may, by resolution, suspend the membership rights of any member (including by suspending their appointment as a Founding Member or strategic partner) whose membership fees are in arrears for more than one (1) month;
- (b) The Board may, by resolution, expel from the Company any member:
  - (i) who does not comply with this document or any by-laws, rules or regulations of the Company;
  - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company; or
  - (iii) whose membership fees are in arrears for more than two (2) months;and remove that member's name from the Register.
- (c) At least 21 days before the Board holds a meeting to suspend or expel a member, the Board must give a written notice to the member which states:
  - (i) the allegations against the member;
  - (ii) the proposed resolution for the member's suspension or expulsion;
  - (iii) that the member has an opportunity at the meeting to address the allegations either orally or in writing; and
  - (iv) that if the member notifies the Secretary in writing at least 48 hours before the meeting, the member may elect to have the question of that member's suspension or expulsion dealt with by the Company in general meeting.
- (d) The Company must expel a member and remove the member's name from the Register where:
  - (i) a general meeting is held to expel a member; and
  - (ii) a resolution is passed at the meeting by a majority of two-thirds of those present and voting for the member to be expelled. The vote must be taken by ballot.
- (e) A member expelled from the Company does not have any claim on the Company, its funds or property.



## 2.8 **Founding Members**

- (a) The initial members named in the application for registration of the Company will be Founding Members.
- (b) The Board may, in its sole discretion, appoint additional members as Founding Members, provided:
  - (i) those members agree to maintain membership (and pay the associated membership fees) for a period of at least five years; and
  - (ii) the total number of Founding Members does not exceed eleven (11).

## 3. **DIRECTORS**

### 3.1 **Number of Directors**

Not counting Alternates, the Company must have at least three Directors and, until otherwise decided by ordinary resolution, not more than eight Directors.

### 3.2 **Eligibility**

- (a) A Director must be a member or representative.
- (b) Neither the auditor of the Company nor any partner, director or employee of the auditor is eligible to act as a Director.
- (c) The Board may, from time to time and at its discretion, determine eligibility criteria applicable to candidates for appointment or election as a Director under this constitution.

### 3.3 **Appointment by the Board**

Replaces  
sections 201H

Subject to this document, and to the number of Directors for the time being fixed under rule 3.1 not being exceeded, the Board may appoint a person to be a Director at any time except during a general meeting. Any Director so appointed automatically retires at the next annual general meeting and is eligible for election by that general meeting.

### 3.4 **Election by general meeting**

Replaces  
section 201G

Subject to this document, section 201E and to the number of Directors for the time being fixed under rule 3.1 not being exceeded, the Company may elect Directors by ordinary resolution. A Director appointed to replace one removed from office under rule 3.10 must retire when the Director replaced would have been required to retire if not removed and is eligible for re-election.

### 3.5 **Eligible candidates**

The Company in general meeting cannot validly elect a person as a Director unless:

- (a) the person retires under rule 3.3, 3.4 or 3.6 and seeks re-election;
- (b) the Board recommends the appointment; or
- (c) at least 30 business days (or any other period fixed by the Board) before the date of the meeting at which election is to occur, the Company receives both:
  - (i) a nomination of the person by a member (other than the person); and

- (ii) a consent to act as a Director signed by the person.

The Company must notify members of every candidate for election as a Director at least seven days before the relevant general meeting.

### 3.6 **Retirement of Directors**

- (a) A Director must retire from office at the third annual general meeting after the Director was elected or last re-elected.
- (b) A Director may elect to retire and seek re-election at an annual general meeting before the time required by rule 3.6(a), provided at least 30 business days (or any other period as the Board may determine) before the annual general meeting the Director has given the Board notice of their intention to do so. If the Director gives such a notice, the Director must then retire from office at the relevant annual general meeting.
- (c) An election of Directors must be held at each annual general meeting. If no election of Directors is scheduled to occur at an annual general meeting under rule 3.3, 3.6(a) or 3.6(b), then one Director must retire from office at the annual general meeting.
- (d) None of rules 3.6(a), 3.6(b) and 3.6(c) applies to a Managing Director and Alternates.
- (e) A Director who retires under this rule 3.6 is eligible for re-election.

### 3.7 **Selection of Directors to retire**

Subject to rule 3.4, the Director who retires under rule 3.6(c) is the Director who has held office the longest since last being elected. If two or more Directors have been in office for the same period, those Directors may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

### 3.8 **Time of retirement**

A Director's retirement under rule 3.3 or 3.6 takes effect at the end of the relevant annual general meeting unless the Director is re-elected at that meeting.

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

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

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend (either personally or by an Alternate) three consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (e) resigns by notice in writing to the Company;
- (f) is removed from office under rule 3.10; or

Rule 3.9(e)  
replaces  
section 203A

- (g) ceases to be eligible to act as a Director under rule 3.2.; or
- (h) is a Managing Director and ceases to hold that office.

### 3.10 **Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period, the Company by ordinary resolution, and subject to section 203D, may remove a Director from office

### 3.11 **Too few Directors**

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

## **4. ALTERNATE DIRECTORS**

### 4.1 **Appointment of Alternates**

Replaces  
section 201

Subject to rule 3.2, a Director (other than an Alternate) may appoint a person who is approved by the Board (without the vote of the Appointor) to act as Alternate for a specified period or each time the Appointor is unable to attend a Board meeting or act as a Director.

### 4.2 **Notice of Board meetings**

If the Appointor requests the Company to give the Alternate notice of Board meetings, the Company must do so. Unless the Appointor has requested it, the Company need not give notice of Board meetings to an Alternate.

### 4.3 **Obligations and entitlements of Alternates**

An Alternate:

- (a) may attend and vote in place of the Appointor at a Board meeting at which the Appointor is not present;
- (b) if also a Director, has a separate right to vote as Alternate;
- (c) if Alternate for more than one Appointor, has a separate right to vote in place of each Appointor;
- (d) when acting as Alternate, is an officer of the Company and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Director; and
- (e) with the approval of the Board, is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Board or of the Company or while otherwise engaged on the business of the Company on the same basis as other Directors but is not entitled to any other remuneration from the Company (but the Appointor may further remunerate the Alternate).

#### 4.4 **Termination of appointment**

The Appointor may at any time revoke the appointment of a person as an Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) the Appointor ceases to be a Director; or
- (b) an event occurs which would cause the Alternate to cease to be a Director under rule 3.9 if the Alternate were a Director.

#### 4.5 **Appointments and revocations in writing**

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Company.

### 5. **POWERS OF THE BOARD**

#### 5.1 **Powers generally**

Replaces  
section 198A

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

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

#### 5.2 **Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 12; or
- (b) in accordance with a delegation of the power under rule 7 or 8.

### 6. **EXECUTING NEGOTIABLE INSTRUMENTS**

Replaces  
section 198B

Negotiable instruments can be executed, accepted or endorsed for and on behalf of the Company by being signed by two Directors or a Director and Secretary or in such other manner (including the use of facsimile signatures if thought appropriate) as the Board may decide.

### 7. **MANAGING DIRECTOR**

#### 7.1 **Appointment and power of Managing Director**

Replaces  
section 198C  
and 201J

The Board may appoint one or more persons to be a Managing Director either for a specified term (but not for life) or without specifying a term. Subject to this document, a Managing Director has all the duties, and can exercise all the powers and rights, of a Director.

The Board may delegate any of the powers of the Board to a Managing Director:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time.

This rule does not limit rule 8.

## 7.2 **Retirement and removal of Managing Director**

A Managing Director is not:

- (a) subject to automatic retirement under rule 3.3; or
- (b) required to retire under rule 3.6,

but (subject to any contract between the Company and that Managing Director) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Directors.

## 7.3 **Termination of appointment of Managing Director**

The appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, without affecting the rights of the Managing Director under any contract between the Company and the Managing Director, the Board has power to do),

whether or not the appointment was expressed to be for a specified term.

Replaces  
section 203F

## **8. DELEGATION OF BOARD POWERS**

### 8.1 **Power to delegate**

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

### 8.2 **Power to revoke delegation**

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

### 8.3 **Terms of delegation**

A delegation of powers under rule 8.1 may be made:

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

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

### 8.4 **Committees**

- (a) Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.
- (b) Committees (including member network executive committees) must be comprised solely of Directors, individual members or representatives.
- (c) Committee members must declare any actual or perceived conflict of interest.

- (d) The chair of a committee must maintain a register of conflicts of interests declared by committee members.

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

### **9.1 Compliance with duties under the Act and general law**

Each Director must comply with his or her duties under the Act and under the general law.

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

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

### **9.3 Disclosure of interests**

- (a) Each Director must comply with the general law in respect of disclosure of conflicts of interest or duty and with section 191 in respect of disclosure of material personal interests.
- (b) The Secretary must maintain a register of conflicts of interest declared by Board members.

### **9.4 Director interested in a matter**

Each Director must comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in relation to which that Director has a conflict of interest or duty;
- (b) the Company may proceed with any transaction in relation to which a Director has an interest or conflict of duty and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (c) the Director may retain any benefits accruing to the Director under the transaction; and
- (d) the Company cannot avoid the transaction merely because of the existence of the Director's interest or conflict of duty.

If the interest is required to be disclosed under section 191, paragraph (c) applies only if it is disclosed before the transaction is entered into.

### **9.5 Agreements with third parties**

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

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

#### 9.6 **Obligation of secrecy**

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

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

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

### **10. DIRECTORS' REMUNERATION**

#### 10.1 **Restrictions on payments to Directors**

Subject to rule 10.2 and rule 11 the Company must not pay fees or other remuneration to a Director.

#### 10.2 **Payments to Directors with Board approval**

With the approval of the Board the Company may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered to the Company by the Director in a professional or technical capacity where the amount payable is approved by the Board and is on reasonable commercial terms;
- (c) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (e) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- (f) reasonable rent for premises leased by the Director to the Company.

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

#### 11.1 **Indemnity**

Subject to and so far as permitted by Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law:

- (a) the Company must indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against any Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate)

including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and

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

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

## 11.2 **Insurance**

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

## 11.3 **Former officers**

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

## 11.4 **Deeds**

Subject to the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 11, enter into an agreement with or execute a deed in favour of a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 11 on any terms and conditions that the Board thinks fit.

# 12. **BOARD MEETINGS**

## 12.1 **Convening Board meetings**

Replaces  
section 248C

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

## 12.2 **Notice of Board meeting**

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to:
  - (i) each Director who is in Australia; and
  - (ii) each Alternate in respect of whom the Appointor has given notice under rule 4.2 requiring notice of Board meetings to be given to that Alternate or whose Appointor is not given notice due to being outside Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

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



### 12.3 **Use of technology**

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

### 12.4 **Chairing Board meetings**

Replaces  
section 248E

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

### 12.5 **Quorum**

Replaces  
section 248F

Unless the Board decides otherwise, the quorum for a Board meeting is three Directors and a quorum must be present for the whole meeting. An Alternate who is also a Director or a person who is an Alternate for more than one Appointor may only be counted once toward a quorum. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

### 12.6 **Majority decisions**

Replaces  
section 248G

A resolution of the Board is passed if a majority of the votes cast by Directors entitled to vote on the resolution are in favour of it.

If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

### 12.7 **Procedural rules**

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

### 12.8 **Written resolution**

Replaces  
section 248A

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

### 12.9 **Additional provisions concerning written resolutions**

For the purpose of rule 12.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document;
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and

- (d) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

#### 12.10 **Valid proceedings**

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

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

### 13. **MEETINGS OF MEMBERS**

#### 13.1 **Annual general meeting**

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

#### 13.2 **Calling meetings of members**

A meeting of members:

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

Rule 13.2(a)  
replaces  
section 249C

#### 13.3 **Notice of meeting**

Subject to rule 13.4, at least 21 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director (other than an Alternate); and
- (c) to the auditor.

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

#### 13.4 **Short notice**

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

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

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

#### 13.5 **Postponement or cancellation**

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

#### 13.6 **Fresh notice**

Replaces section 249M

If a meeting of members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

#### 13.7 **Technology**

See section 249S

The Company may hold a meeting of members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

#### 13.8 **Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

### 14. **PROCEEDINGS AT MEETINGS OF MEMBERS**

#### 14.1 **Member present at meeting**

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

#### 14.2 **Quorum**

Replaces sections 249T(1) and (2)

The quorum for a meeting of members is three members. Each individual present may only be counted once toward a quorum. If a member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

#### 14.3 **Quorum not present**

Replaces sections 249T(3) and (4)

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

#### 14.4 **Chairing meetings of members**

Replaces sections 249U(1) to (3)

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

#### 14.5 **Attendance at general meetings**

See  
section 249V

- (a) Every member has the right to attend all meetings of members.
- (b) Every Director has the right to attend and speak at all meetings of members.
- (c) The auditor has the right to attend any meeting of members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

#### 14.6 **Adjournment**

Replaces  
section  
249U(4)

Subject to rule 13.6, the chairman of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place.

#### 14.7 **Business at adjourned meetings**

Replaces  
section  
249W(2)

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

### 15. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

#### 15.1 **Appointment of proxies**

See section  
249X

Each voting member may appoint a proxy to attend and act for the member at a meeting of members. If the member is entitled to cast two or more votes at the meeting, the member may appoint two proxies to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company that:

- (a) complies with section 250A(1); or
- (b) is in a form and mode, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Board.

#### 15.2 **Member's attorney**

A voting member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

**15.3 Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities**

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

**15.4 Corporate representatives**

A voting member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

**15.5 Appointment for particular meeting, standing appointment and revocation**

A voting member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a voting member.

**15.6 Position of proxy or attorney if member present**

The appointment of a proxy or attorney is not revoked by the voting member attending and taking part in the general meeting, but if the member votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the member's proxy or attorney on the resolution.

**15.7 Priority of conflicting appointments of attorney or representative**

If more than one attorney or representative appointed by a voting member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 15.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

**15.8 More than one current proxy appointments**

An appointment of proxy by a voting member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that voting member which would result in there being more than one proxy of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

## 15.9 **Continuing authority**

Replaces  
section  
250C(2)

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing voting member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

## 16. **ENTITLEMENT TO VOTE**

### 16.1 **Number of votes**

Replaces  
section  
250E(2)

Subject to sections 250BB(1) and 250BC:

- (a) each voting member has one vote on a show of hands or a poll; and
- (b) a voting member who is present and entitled to vote and is also a proxy, attorney or representative of another member has one vote on a show of hands.

### 16.2 **Casting vote of chairman**

Replaces  
section 250E(3)

If an equal number of votes is cast for and against a resolution at a meeting of members, the chairman has a casting vote.

### 16.3 **Voting restrictions**

If:

- (a) the Act requires that some voting members are not to vote on a resolution, or that votes cast by some voting members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those voting members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those voting members. If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1), on a show of hands the vote is invalid and the Company must not count it and on a poll rule 17.3(c) applies.

### 16.4 **Decision on right to vote**

Replaces  
section 250G

A voting member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

## 17. **HOW VOTING IS CARRIED OUT**

### 17.1 **Method of voting**

Replaces  
sections  
250J(1) and  
(2)

A resolution put to the vote at a meeting of members must be decided on a show of hands of voting members unless a poll is demanded under rule 17.2 either before or on

declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

## 17.2 **Demand for a poll**

See section  
250L

A poll may be demanded on any resolution (except a resolution concerning the election of the chairman of a meeting) by:

- (a) at least three members entitled to vote on the resolution; or
- (b) the chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

## 17.3 **When and how polls must be taken**

Replaces  
section 250M

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 17.3(c), in the manner that the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 17.3(c), in the manner that the chairman of the meeting directs;
- (c) votes which sections 250BB(1) or 250BC require to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

## 18. **SECRETARY**

### 18.1 **Appointment of Secretary**

See section  
204D

The Board:

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

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

### 18.2 **Terms and conditions of office**

Replaces  
section 204F

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

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

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

- (a) is not permitted by Act (or an order made under the Act) to be a secretary of a company;

- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 18.4.

#### 18.4 **Removal from office**

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

### 19. **ADVISORY COUNCIL**

#### 19.1 **Establishment and termination**

- (a) The Board may, from time to time, establish an Advisory Council for a purpose (or purposes) and period of time that the Board deems appropriate.
- (b) The Board may appoint and remove, or make provision for the appointment and removal of, members of an Advisory Council.
- (c) Each Advisory Council must consist of at least twenty and no more than thirty members representing all membership classes.
- (d) The Board may terminate an Advisory Council at any time.

#### 19.2 **Terms of reference**

- (a) The Board must provide terms of reference to each Advisory Council.
- (b) The terms of reference must specify (without limitation):
  - (i) the role, purpose and period of operation of the Advisory Council;
  - (ii) the manner in which proceedings of the Advisory Council are to be conducted;
  - (iii) the matters which the Advisory Council must consider in carrying out its functions; and
  - (iv) any other matters concerning the Advisory Council or its functions that the Board deems appropriate.

### 20. **MINUTES**

#### 20.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 8);



- (d) resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests,

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

## 20.2 **Minutes as evidence**

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

## 20.3 **Inspection of minute books**

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B.

## 21. **COMPANY SEALS**

### 21.1 **Common seal**

The Board:

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

### 21.2 **Use of seals**

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

### 21.3 **Fixing seals to documents**

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

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

## 22. **FINANCIAL REPORTS AND AUDIT**

### 22.1 **Company must keep financial records**

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

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and, if required by Part 2M.3, audited,

and must allow a Director and, where the financial statements are required by Part 2M.3 to be audited or reviewed, the auditor to inspect those records at all reasonable times.

## 22.2 **Financial reporting**

If required by Part 2M.3, the Board must cause the Company to prepare a financial report and a directors' report that comply with that Part and must report to members in accordance with section 316A.

## 22.3 **Audit or review**

If required by Part 2M.3, the Board must cause the Company's financial report for each financial year to be audited or reviewed and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

## 22.4 **Inspection of financial records and books**

Replaces  
section 247D

Subject to rule 20.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by ordinary resolution.

## **23. REGISTER OF MEMBERS**

The Company must set up and maintain a register of members.

In accordance with section 169, the Register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the Register is made;
- (c) the name and details of each person who stopped being a member within the last seven years;
- (d) the date on which the person stopped being a member; and
- (e) an index of members' names if the Company has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

## **24. WINDING UP**

In the event of the winding up of the Company, any surplus property remaining after satisfaction of all the Company's debts and liabilities must not be paid to, or distributed amongst, the members, but must be paid or transferred to a corporation or institution in Australia, the constituent documents of which:

- (a) require the corporation or institution to pursue objects similar to those of the Company and to apply its income solely towards promoting those objects; and
- (b) prohibit the corporation or institution from making distributions to its members and paying fees to its directors,

the corporation or institution to be determined by the Directors, or failing determination, by the liquidator of the Company.

## **25. NOTICES**

### 25.1 **Notices by Company**

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

- (a) in writing signed on behalf of the Company (by original or printed signature);
- (b) addressed to the member to whom it is to be given; and
- (c) either:
  - (i) delivered personally;
  - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that member's address; or
  - (iii) sent by fax to the fax number (if any) nominated by that member; or
  - (iv) sent by electronic message to the electronic address (if any) nominated by that member.

## 25.2 **Overseas members**

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

## 25.3 **When notice is given**

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

- (a) if it is delivered personally:
  - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
- (b) if it is sent by fax or electronic message:
  - (i) by 5.00 pm (local time in the place from which it is sent or given) on a business day - on that day; or
  - (ii) after 5.00 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day - on the next business day; and
- (c) if it is sent by mail:
  - (i) within Australia - one business day after posting; or
  - (ii) to a place outside Australia - three business days after posting.

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

## 25.4 **Business days**

For the purposes of rule 25.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

Replaces  
section  
249J(4)

25.5 **Counting days**

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

25.6 **Notices to "lost" members**

If:

- (a) on two or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Company under rule 25.2,

the Company may give effective notice to that member by exhibiting the notice at the Company's registered office for at least 48 hours.

This rule ceases to apply if the member gives the Company notice of a new address.