KING&WOOD MALLESONS
金杜律师事务所

Constitution

Australian Retirement Trust Pty Limited (ABN 88 010 720 840)
("Company")

A proprietary company limited by shares

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Constitution
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Constitution

1 Interpretation

1.1 Definitions

In this Constitution unless the contrary intention appears:

Alternate Director means a person appointed as an alternate director under article 11.8.

Business Day means a day that is not a Saturday, Sunday or public holiday in Brisbane, Queensland.

Committee means a committee of Directors constituted under article 10.6.

Company means Australian Retirement Trust Pty Limited (ABN 88 010 720 840), as that name may be changed from time to time.

Constitution means this constitution, and a reference to an article is a reference to an article of this constitution.

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

Director means a person holding office as a director of the Company and where appropriate includes an Alternate Director.

Directors means all or some of the Directors acting as a board.

Employer Body means an organisation representing the interests of one or more employers of Fund members.

Employer Representative Director means a Director who is an employer representative as defined in the SIS Act and who is appointed following their nomination by the Group B Nominating Body.

Fund means:

(a) the RSE of which the Company is the trustee; and

(b) if the Company is the trustee of more than one RSE, one or more RSEs of which the Company is the trustee and that the Company nominates for the purpose of this definition.

Fund Operations means the Company's operations relating to the administration of the superannuation fund known as the Australian Retirement Trust (ABN 60 905 115 063).

Group A Director means a Director who is a member representative director, as that term is defined by the SIS Act, appointed following their nomination by the Group A Nominating Body.

Group A Nominating Body means Member Representative Nominees Pty Limited, established for the purpose of nominating a person to be considered for

appointment as a Group A Director under article 9.4, or a replacement body determined under article 9.4(d).

Group B Director means a Director who is an Employer Representative Director or an Independent Director and is appointed following their nomination by the Group B Nominating Body.

Group B Nominating Body means the Superannuation Fund Nominees Panel.

Independent Director means an independent director, as that term is defined by the SIS Act, who is appointed following their nomination by the Group B Nominating Body and who satisfies the requirements (if any) for an independent director under the Company's governance framework.

Member Body means a Trade Union, or other organisation, representing the interests of Fund members.

Member Representative Director has the same meaning as a Group A Director.

Register means the register of Shareholders of the Company under the Corporations Act.

Registered Office means the registered office of the Company.

RSE means a registrable superannuation entity that is a standard employer sponsored fund, as those terms are defined by the SIS Act.

Secretary means a person appointed under article 12.1 as a secretary of the Company and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.

Shareholder a person entered in the Register as a holder of shares in the capital of the Company.

SIS Act means the *Superannuation Industry (Supervision) Act 1993* (Cth).

Superannuation Fund Nominees Panel means the panel (or a replacement body) that is convened and operated under article 8 for the purpose of nominating a person to be considered for appointment as a Group B Director under article 9.5.

Superannuation Law means the SIS Act (including any Prudential Standards made under that Act), the Corporations Act, the *Income Tax Assessment Act 1936* (Cth), the *Income Tax Assessment Act 1997* (Cth) and any law of Australia or a State or Territory of Australia which:

(a) must be satisfied for an RSE of which the Company is the trustee to secure or better secure a tax concession or benefit for the RSE or to avoid a penalty, detriment or disadvantage to the RSE or the Company; or

(b) applies to the Company as a trustee of an RSE.

Trade Union means an employee association registered under the *Fair Work Act 2009* (Cth) or, to the extent applicable, *the Industrial Relations Act 2016* (Qld).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this Constitution:

(a) the singular includes the plural and vice versa;

(b) words importing any gender include all other genders;

(c) a reference to a document includes any variation or replacement of it;

(d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;

(e) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;

(f) a reference to "**law**" includes common law, principles of equity and legislation (including regulations);

(g) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacement of any of them;

(h) a reference to "**regulations"** includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);

(i) a power, an authority or a discretion given to a Director, the Directors, the Company in general meeting or a Shareholder may be exercised at any time and from time to time;

(j) a reference to "**writing**" or "**written**" includes printing, typing and other modes of reproducing words in a visible form including any representation of words in a physical document or in an electronic communication or form or otherwise;

(k) a reference to a person being "**present**" or "**present in person**" at a meeting includes participating using technology approved by the Directors in accordance with this Constitution;

(l) a reference to a resolution being passed by a specified proportion of Directors or Shareholders means that proportion rounded up to the next whole number and, subject to article 11.4 (in the case of a resolution of Directors), refers to the proportion of the number of Directors or Shareholders, as applicable, who are present and entitled to vote;

(m) where a document (including a notice or consent) is required to be **"signed"**, the requirement may be satisfied in relation to an electronic communication of the document in any manner:

  (i) permitted by relevant law relating to electronic transmissions (including electronic signature); or

  (ii) approved by the Directors (which could include authentication by providing an allocated code or specified personal information);

(n) a provision of this Constitution that is included to comply with Superannuation Law ceases to apply if the Company ceases to be the trustee of an RSE; and

(o) at all times while the Company is a trustee of an RSE, if any provision of the Constitution is inconsistent with Superannuation Law, Superannuation Law prevails to the extent of that inconsistency.

1.3 Corporations Act

In this Constitution unless the contrary intention appears:

(a) a word or expression defined or used in the Corporations Act has the same meaning when used in this Constitution in a similar context; and

(b) "section" means a section of the Corporations Act.

1.4 Replaceable rules not to apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and do not apply to the Company.

2 Objective and location

2.1 Objective

The objective of the Company is to act as the trustee of registerable superannuation entities.

2.2 Location

(a) The Company's Fund Operations must be based in Queensland.

(b) For the purpose of article 2.2(a), the Company's Fund Operations are based in Queensland only if:

(i) the Company's registered office, and principal place of business, under the Corporations Act is in Queensland;

(ii) each of the following persons ordinarily reside in Queensland:

(A) subject to any transitional period that applies under the *Superannuation (State Public Sector) Act 1990* (Qld), the Company's chief executive officer (however called);

(B) a majority of the Company's Directors; and

(C) a majority of the Company's key management personnel (as defined in section 9 of the Corporations Act) who are not mentioned in articles 2.2(b)(ii)(A) or 2.2(b)(ii)(B); and

(iii) the main office of a majority of the Company's business areas for the Fund Operations is in Queensland.

3 Share capital

3.1 Directors to issue shares

The issue of shares in the Company is under the control of the Directors who may:

(a) issue, allot, cancel and otherwise dispose of shares in the Company;

(b) grant options over unissued shares in the Company; and

(c) settle the manner in which fractions of a share, however arising, are to be dealt with,

subject to the Corporations Act and Superannuation Law.

3.2 Classes of shares

There must only be one class of shares in the Company.

3.3 Rights, privileges and conditions of shares

The rights, privileges and conditions attached to the shares of the Company include the following:

(a) the shares of the Company carry no right to a dividend;

(b) each Shareholder must exercise its rights as a Shareholder in a manner that is consistent with the interests of Fund beneficiaries;

(c) each Shareholder can only hold one share;

(d) each Shareholder can only vote at a general meeting of the Company if they are also a Director at the time of the vote; and

(e) each Shareholder irrevocably:

(i) appoints each other Shareholder and the Secretary severally as their agent and attorney to transfer shares in accordance with article 5.2 and, to give effect to that article, must execute a power of attorney or a replacement power of attorney in a form (and when requested) by the Company; and

(ii) directs that any amount that is payable under article 17.1(a) to or in relation to their Shareholding is to be paid into the assets of a Fund that the Company was the trustee of and must execute a direction in a form (and when requested) by the Company; and

(f) a Shareholder's share is forfeited:

(i) on the Shareholder's death;

(ii) on the Shareholder becoming bankrupt, insolvent or mentally incompetent; or

(iii) on the revocation of a power of attorney that has been provided by the Shareholder under article 3.3(e)(i) without the Shareholder providing a replacement power of attorney in a form (and when requested) by the Company.

3.4 Eligibility to be a Shareholder

Each Shareholder must be a Director.

3.5 Variation of rights

Subject to this Constitution and the terms on which any shares in the Company are issued, the rights attaching to shares may only be varied or shares cancelled by a unanimous resolution of the Company.

3.6 Redemption in accordance with terms of issue of shares

The terms of article 3.5 do not apply and consent is not required for a redemption of any shares or variation of rights attaching to any shares in compliance with the terms of issue of those shares.

3.7 No variation

The rights attaching to shares will not be taken to be varied by the issue of further shares, unless expressly provided by their respective terms of issue or the Corporations Act.

3.8 Non-recognition of interests

Except as required by law, the Company is not required to recognise:

(a) a person as holding a share on any trust; or

(b) any other interest in any share or any other right in respect of a share except an absolute right of ownership in the registered holder,

whether or not it has notice of the trust, interest or right.

4 Transfer of shares

4.1 Restriction on transfer

A share in the Company is only transferable to a Director who does not hold a share.

4.2 Forms of instrument of transfer

Subject to this Constitution, a share in the Company is transferable by any method of transfer required or permitted by the Corporations Act.

4.3 Execution and delivery of transfer

If the requirements in article 4.1 have been complied with and a duly completed instrument of transfer:

(a) is used to transfer a share in accordance with article 4.2; and

(b) is left for registration at the share registry of the Company, accompanied by any information that the Directors properly require to show the right of the transferor to make the transfer,

the Company must, subject to the powers vested in the Directors by this Constitution, register the transferee as the holder of the share.

4.4 Effect of registration

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

4.5 Consideration for the transfer of a share

A Shareholder, for themselves or a third party, must only receive directly or indirectly consideration of $1 for the transfer of a share.

4.6 Company to retain instrument of transfer

The Company must retain every instrument of transfer which is registered for the period required by any applicable law.

4.7 Directors' powers to refuse to register

The Directors may refuse to register a transfer of shares, without having to give any reason.

5 Ceasing to be eligible to be a Shareholder

5.1 Transfer of shares

(a) Subject to article 5.1(b), if a Shareholder ceases to be eligible to hold a share of the Company, that Shareholder must transfer that share in that Shareholder's name to the person that the Company has nominated in writing as soon as practicable after:

(i) ceasing to be eligible to continue as a Shareholder; and

(ii) receiving written notice from the Company of the recipient of the Shareholder's share.

(b) The Company must notify the Shareholder of the person to whom their share is to be transferred.

5.2 Attorney to transfer shares

(a) If a person who is required by this Constitution to transfer a share does not transfer that share as soon as is practicable after first becoming required to transfer those shares and in any event does not do so within 10 Business Days of first becoming required to do so, that person is treated as having appointed each other Shareholder and the Secretary severally to be the agent and attorney of that person to execute a transfer of shares of the Company on their behalf.

(b) A transfer by a Shareholder or the Secretary is as effective as if it was executed by the person who is required by this Constitution to transfer a share.

6 General meetings

6.1 Convening a general meeting

The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.

6.2 Use of technology at general meetings

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

6.3 Notice of general meeting

Notice of a general meeting must be given in accordance with article 15 and the Corporations Act.

6.4 Calculation of period of notice

In computing the period of notice under article 6.3, both the day on which the last notice to Shareholders is given or taken to be given and the day of the meeting convened by it are to be disregarded.

6.5 Cancellation or postponement of a meeting

(a) Where a general meeting is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them or change the place for the meeting.

(b) This article 6.5 does not apply to a meeting convened in accordance with the Corporations Act by Shareholders, by the Directors on the request of Shareholders or to a meeting convened by a court.

6.6 Notice of cancellation or postponement of a meeting

Notice of cancellation or postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

(a) to each Shareholder; and

(b) to each other person entitled to be given notice of a general meeting.

6.7 Contents of notice of postponement of meeting

A notice of postponement of a general meeting must specify:

(a) the postponed date and time for the holding of the meeting;

(b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and

(c) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

6.8 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

6.9 Business at postponed meeting

The only business that may be transacted at a postponed general meeting is the business specified in the original notice convening the meeting.

6.10 Proxy or attorney at postponed meeting

Where, by the terms of an instrument appointing a proxy or attorney:

(a) the appointed person is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and

(b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy or power of attorney,

then, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy or power of attorney unless the Shareholder appointing the proxy or attorney gives to the Company at its Registered Office written notice to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

6.11 Non-receipt of notice

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

6.12 Director entitled to notice of meeting

A Director is entitled to receive notice of and to attend all general meetings and is entitled to speak at those meetings.

6.13 Appointment of proxy or attorney

Subject to the Corporations Act, a Shareholder who is entitled to participate in and vote at a meeting of the Company may appoint a person as the Shareholder's proxy, or may appoint an attorney, to participate in and vote at the meeting for the Shareholder.

6.14 Circulating resolutions

(a) The Company may pass a resolution without a general meeting being held if all the Shareholders entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

(b) Separate copies of the document may be used for signing by Shareholders if the wording of the resolution and statement is identical in each copy.

(c) The resolution is passed when the last Shareholder signs.

7 Proceedings at general meetings

7.1 Number for a quorum

(a) Subject to article 7.4, the quorum for a general meeting is 9 Shareholders present in person or by proxy or attorney.

(b) If an individual is attending both as a Shareholder and as a proxy or attorney, that individual is to be counted once for that Shareholder and once for each Shareholder for whom that individual is attending as proxy or attorney.

7.2 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it.

7.3 If quorum not present

If within 15 minutes after the time appointed for a meeting a quorum is not present, the meeting:

(a) if convened by a Director, or at the request of Shareholders, is dissolved; and

(b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Shareholders and others entitled to notice of the meeting.

7.4 Adjourned meeting

(a) At a meeting adjourned under article 7.3(b), the quorum is 9 persons each being a Shareholder (or the proxy or attorney of a Shareholder) present at the meeting.

(b) If a quorum is not present within 15 minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

7.5 Appointment of chair of general meeting

If the Directors have elected one of their number as chair of their meetings, that person is entitled to preside as chair at a general meeting.

7.6 Absence of chair at general meeting

If a general meeting is held and:

(a) there is no person who can act as a chair of the general meeting under article 7.5; or

(b) the person who can act as a chair of the general meeting under article 7.5 is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the following may preside as chair of the meeting (in order of precedence):

(c) a Director chosen by a majority of the Directors present; or

(d) the only Director present.

7.7 Conduct of general meetings

The chair of a general meeting:

(a) has charge of the general conduct of the meeting and the procedures to be adopted at the meeting;

(b) may require the adoption of any procedure which is in the chair's opinion necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

(c) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the chair considers it necessary or desirable for the proper conduct of the meeting,

and a decision by the chair under this article is final.

7.8 Adjournment of general meeting

(a) The chair of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and place, but:

(i) in exercising the discretion to do so, the chair may, but need not, seek the approval of the Shareholders present in person or by proxy or attorney; and

(ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

(b) Unless required by the chair, a vote may not be taken or demanded by the Shareholders present in person or by proxy or attorney in respect of any adjournment.

7.9 Notice of adjourned meeting

(a) It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more.

(b) If a meeting is adjourned for one month or more, notice of the adjourned meeting must be given as in the case of an original meeting.

7.10 Questions decided by a two-thirds majority

Subject to the requirements of the Corporations Act and this Constitution, a resolution is taken to be carried if two thirds of the votes cast on the resolution are in favour of it.[1]

[1] The voting requirements for amending the Constitution is addressed in article 15

7.11 No casting vote for chair

The chair of the general meeting is not entitled to a casting vote in addition to any votes to which the chair is entitled as a Shareholder or proxy or attorney.

7.12 Voting on show of hands

(a) At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is effectively demanded and the demand is not withdrawn.

(b) A declaration by the chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact.

(c) Neither the chair nor the minutes need state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.

7.13 Poll

If a poll is effectively demanded:

(a) it must be taken in the manner and at the date and time directed by the chair and the result of the poll is a resolution of the meeting at which the poll was demanded;

(b) on the election of a chair or on a question of adjournment, it must be taken immediately;

(c) the demand may be withdrawn; and

(d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

7.14 Entitlement to vote

Subject to this Constitution and the Corporations Act:

(a) on a show of hands*,* each Shareholder present in person and each other person present as a proxy or attorney of a Shareholder has one vote; and

(b) on a poll, each Shareholder present in person has one vote for each fully paid share held by the Shareholder and each person present as proxy or attorney of a Shareholder has one vote for each fully paid share held by the Shareholder that the person represents.

7.15 Validity of vote in certain circumstances

Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy or attorney, a vote cast by that person is valid even if, before the person votes:

(a) the appointing Shareholder dies;

(b) the Shareholder is mentally incapacitated;

(c) the Shareholder revokes the appointment or authority;

(d) the Shareholder revokes the authority under which the appointment was made by a third party; or

(e) the Shareholder transfers the share in respect of which the appointment or authority was given.

7.16 Objection to voting qualification

(a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

(i) may not be raised except at that meeting or adjourned meeting; and

(ii) must be referred to the chair of the meeting, whose decision is final.

(b) A vote not disallowed under the objection is valid for all purposes.

8 Superannuation Fund Nominees Panel

8.1 Membership

(a) The Company must have a Superannuation Fund Nominees Panel, that consists of 5 members and is made up as follows:

(i) 2 nominees of the Queensland Treasurer or their delegate;

(ii) 2 nominees of the Queensland Chamber of Commerce and Industry Limited (ABN 55 009 662 060); and

(iii) the chair of the Company (or their nominee who is a Director).

(b) The nominator under article 8.1(a)(i), can nominate himself or herself to become a member of the Superannuation Fund Nominees Panel.

(c) If a nominee is nominated under article 8.1(a), they become a member of the Superannuation Fund Nominees Panel when the Company receives written notice of the nominee's nomination.

(d) A member's membership of the Superannuation Fund Nominees Panel ceases if:

(i) the member ceases to hold the position (if any) that entitled the member to be appointed to the Superannuation Fund Nominees Panel;

(ii) the person who nominated a nominee for that member's position, revokes the member's nomination, that is effective when the Company receives written notice of the revocation;

(iii) the member becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health; or

(iv) the Company receives written notice from the member that they wish to cease being a member of Superannuation Fund Nominees Panel,

in which case the relevant nominator under article 8.1(a) must nominate a new nominee to replace that member.

8.2 Operation of the Superannuation Fund Nominees Panel

(a) The Company must, with the consent of the Queensland Treasurer (or their delegate) and the Queensland Chamber of Commerce and Industry Limited (ABN 55 009 662 060), determine:

(i) the initial rules for the operation of the Superannuation Fund Nominees Panel; and

(ii) subject to article 8.2(c), any amendments to the rules for operation of the Superannuation Fund Nominees Panel.

(b) The quorum for a meeting of the Superannuation Fund Nominees Panel is 4 members with at least:

(i) one member being a nominee of the Queensland Treasurer or their delegate;

(ii) one member being a nominee of the Queensland Chamber of Commerce and Industry Limited (ABN 55 009 662 060); and

(iii) one member being the chair of the Company (or their nominee who is a Director).

(c) The Company may amend the rules for the operation of the Superannuation Fund Nominees Panel in relation to the nomination of independent directors without the consent of the Queensland Treasurer (or their delegate) and the Queensland Chamber of Commerce and Industry Limited (ABN 55 009 662 060).

(d) If permitted by the rules of the Superannuation Fund Nominees Panel, a member of the Superannuation Fund Nominees Panel may appoint a proxy to attend meetings of the Superannuation Fund Nominees Panel and vote on any resolution being considered by Superannuation Fund Nominees Panel.

8.3 Expenses

A member of the Superannuation Fund Nominees Panel is entitled to be reimbursed for such reasonable travelling, accommodation and other expenses as the member may incur when travelling to or from meetings of the Superannuation Fund Nominees Panel or when otherwise performing services as a member of the Superannuation Fund Nominees Panel.

9 The Directors

9.1 Number of Directors

The Company must have no more than 13 Directors.[2]

[2] To continue to comply with the basic equal representation rules, if a vacancy occurs in the membership of the board of Directors, for the Company to continue to comply with the equal representation rules in Part 9 of the SIS Act, that vacancy must be filled within 90 days (or such longer period as permitted by APRA).

9.2 Term of office

(a) Subject to articles 9.2(b) and 9.12 below, a Director is appointed for a term not exceeding 3 years (and a director may be appointed to complete a former Director's term).

(b) At the end of a Director's term of appointment, the Group A Nominating Body or the Group B Nominating Body, as applicable, may nominate the Director for a further term provided that, subject to article 9.2(c), the total terms of appointment of the Director does not exceed 12 years.

(c) The Directors may approve an extension of the total terms of appointment of a Director permitted under article 9.2(b) by up to 1 year, if the Directors consider there are special circumstances that warrant the extension.

9.3 Composition of Directors

(a) The number of Group A Directors and Group B Directors must comply with the requirements of Superannuation Law.

(b) The composition of the Directors will be:

(i) 6 Member Representative Directors (being Group A Directors) nominated under article 9.4; and

(ii) subject to 9.3(c), 4 Employer Representative Directors and 3 Independent Directors (being Group B Directors) nominated under article 9.5.

(c) In the four years on and from the merger of QSuper and the Sunsuper Superannuation Fund, there will be 5 Employer Representative Directors and 2 Independent Directors (being Group B Directors) nominated under article 9.5 until the first time the Group B Directors are 4 Employer Representative Directors and 3 Independent Directors.

9.4 Nomination of Group A Directors

(a) Subject to article 9.4(d) below, the Group A Nominating Body has the right to nominate a person for appointment as a Group A Director in accordance with article 9.4(b).

(b) Within 60 days of being notified by the Company of a vacancy (or anticipated vacancy) in the Group A Directors, the Group A Nominating Body, must (in writing to the Company):

(i) nominate a person to be considered for appointment as a Group A Director; and

(ii) provide any information or documentation required by the Company's governance framework to support the nomination.

(c) The Company may reimburse the Group A Nominating Body for such reasonable expenses that it incurs in performing its role under this Constitution, including such reasonable travelling, accommodation and other expenses of a director of the Group A Nominating Body that are paid by the Group A Nominating Body.

(d) If the Group A Nominating Body does not satisfy or ceases to satisfy one of the following requirements:

(i) have shareholders who are each a Member Body; or

(ii) itself be a Member Body,

then, the Directors may appoint another person that is to be the Group A Nominating Body.

9.5 Nomination of Group B Directors

(a) The Group B Nominating Body has the right to nominate a person for appointment as a Group B Director in accordance with article 9.5(b).

(b) Within 60 days of being notified by the Company of a vacancy (or anticipated vacancy) in the Group B Directors, the Group B Nominating Body, must (in writing to the Company):

(i) nominate a person to be considered for appointment as a Group B Director; and

(ii) provide any information or documentation required by the Company's governance framework to support the nomination.

9.6 Appointment of directors

(a) The Company by a unanimous resolution of the Directors (excluding, in the case of reappointment, the Director being considered for reappointment) may (but is not required to) appoint a person as a Director who has been nominated under article 9.4 or 9.5.

(b) Without limiting the matters that the Company can consider in determining whether to appoint a person as a Director who has been nominated under article 9.4 or 9.5, the Company must consider:

(i) the requirements of Superannuation Law that the Director and the Company must satisfy and any relevant guidance issued by a regulator of Superannuation Law;

(ii) the Company's governance framework; and

(iii) the skills, knowledge and experience that it would like a person who is appointed as a Director to have.

(c) If the Company does not appoint a person as a Director who has been nominated under article 9.4 or 9.5 to be a Director:

(i) the Company must notify the Group A Nominating Body or the Group B Nominating Body (as relevant) and request that they nominate another person; and

(ii) the Group A Nominating Body or the Group B Nominating Body (as relevant) must consult with the Company about the Company's requirements for a person to be appointed as a Director and act promptly to enable the Company to continue to comply with article 9.3(a).

9.7 Remuneration of Directors

(a) The Directors are to be remunerated for their services as Directors as determined by the Company and the remuneration is taken to accrue from day to day.

(b) The Directors must:

(i) before making a determination under article 9.7(a), receive and consider independent advice that must include an

opinion about whether the proposed remuneration of the Directors is fair and reasonable for directors of an Australian superannuation trustee that is the trustee of an RSE of similar size; and in making a determination under article 9.7(a), comply with relevant Superannuation Law (including Prudential Standards made under the SIS Act).

9.8 Additional or special duties

If a Director at the request of the Directors performs additional or special duties for the Company, the Company may remunerate that Director as determined by the Directors (in an amount and for a specified period as determined by the Directors) and that remuneration may be either in addition to or in substitution for that Director's remuneration under article 9.7.

9.9 Expenses

A Director is entitled to be reimbursed for such reasonable travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Company.

9.10 Director's interests

(a) A Director must as soon as is reasonably practicable after being appointed by the Company as a Director, hold one share in the Company until they cease being a Director.

(b) Subject to complying with the Corporations Act regarding disclosure of and voting on matters involving material personal interests, their statutory covenants under the SIS Act, articles 9.10(c) and 9.10(d) and the Directors' unanimous approval, a Director may:

(i) if the Directors consider that there are exceptional circumstances, hold any office or place of profit in the Company, except that of auditor or actuary;

(ii) if the Directors consider that there are exceptional circumstances, hold any office or place of profit in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest of any kind (other than an investment made in accordance with a Fund's investment strategy);

(iii) other than a contract or arrangement that is usually entered into by a director with a company, if the Directors consider that there are exceptional circumstances, enter into any contract or arrangement with the Company;

(iv) participate in any association, institution, fund, trust or scheme for past or present employees of the Company or Directors or persons dependent on or connected with them;

(v) if the Directors consider that there are exceptional circumstances, act in a professional capacity (or be a member of a firm or an officer or employee of a body corporate which acts in a professional capacity) for the Company, except as auditor or actuary;

(vi) if the director has a personal interest in the signing or execution of the document, sign or participate in the execution of a document by or on behalf of the Company;

(vii) do any of the above despite the fiduciary relationship of the Director's office:

(A) without any liability to account to the Company for any direct or indirect benefit accruing to the Director; and

(B) without affecting the validity of any contract or arrangement; and

(viii) exercise the voting power conferred by securities in any entity held by the Company, in accordance with the terms of their appointment, even in circumstances where a Director may be interested in the exercise (such as a resolution appointing a Director as an officer of the entity or providing for the payment of remuneration to officers of the entity).

(c) Without the consent of the Company, a Director may not be:

(i) an officer or employee; or

(ii) a member of a committee,

of another superannuation trustee (other than a trustee of a self-managed superannuation fund) or a material service provider to the Company (other than a related body corporate of the Company).

(d) Without the consent of the Company, a Director may not participate in, vote on and be counted in a quorum for any meeting, resolution or decision of the Directors and may not be present at any part of a meeting where any matter involving material personal interest of the Director is being considered by the Directors.

(e) A reference to the Company in article 9.10(b) is also a reference to each related body corporate of the Company.

9.11 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act and Superannuation Law, the office of a Director becomes vacant on expiry of the Director's term of office or earlier if the Director:

(a) dies;

(b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;

(c) resigns from the office by notice in writing to the Company;

(d) is removed from office by a unanimous resolution of the Directors (excluding the relevant Director); or

(e) ceases to satisfy a condition that the Director was required to satisfy to be eligible for appointment as a Director.

10 Powers and duties of Directors

10.1 Directors to manage Company

The Directors:

(a) are responsible for overseeing the proper management of the business of the Company; and

(b) may exercise all the powers of the Company as are not, by the Corporations Act or by this Constitution, required to be exercised by the Company in general meeting.

10.2 Specific powers of Directors

Without limiting the generality of article 10.1 but subject to any limitations on the exercise of these powers under Superannuation Law, the Directors may exercise all the powers of the Company to borrow or 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.

10.3 Appointment of attorney

The Directors may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for the purposes and with the powers, authorities and discretions vested in or exercisable by the Directors for such period and subject to such conditions as they think fit.

10.4 Provisions in power of attorney

A power of attorney granted under article 10.3 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 (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

10.5 Signing of receipts and negotiable instruments

The Directors may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable instruments, and receipts for money paid to the Company, may be signed, drawn, accepted, endorsed or otherwise executed.

10.6 Committees

The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a Committee or Committees consisting of one or more of their number and other persons as they think fit.

10.7 Powers delegated to Committees

A Committee to which any powers have been delegated under article 10.6 must exercise those powers in accordance with any directions of the Directors.

10.8 Delegation of Directors' powers

(a) The Directors may delegate any of their powers to any persons they select for any period, to be exercised for any objects and purposes on any terms and subject to any conditions and restrictions as they think fit,

and may revoke, withdraw, alter or vary the delegation of any of those powers.

(b) The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by section 198D of the Corporations Act.

11 Proceedings of Directors

11.1 Directors' meetings

The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.

11.2 Director may convene a meeting

A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

11.3 Use of technology for Directors' meetings

(a) A Directors' meeting may be called or held using any technology consented to by all the Directors (that may be a standing consent).

(b) A Director may only withdraw their consent within a reasonable period before the meeting.

11.4 Passing of Directors' resolutions

A question arising at a meeting of Directors is to be decided by a resolution of Directors present and entitled to vote and that decision is for all purposes a decision of the Directors provided that at least two-thirds of the total number of Directors (including those who are not present) have voted in favour of the resolution.

11.5 Alternate Director and voting

A person who is present at a meeting of Directors as an Alternate Director for another Director has one vote for the absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Director.

11.6 Chair and deputy chair of Directors

(a) The Directors:

(i) must (with at least 85% of votes) elect one of the Directors as chair of their meetings and must also determine a period of up to 3 years for which the person elected as chair is to hold office as chair; and

(ii) may (with at least 85% of votes) elect one of the Directors as deputy chair of their meetings and may also determine a period of up to 3 years for which the person elected as deputy chair is to hold office as deputy chair.

(b) At the end of a Director's term (or any subsequent term) as chair or deputy chair, they can be re-elected for another term as chair or deputy chair, as applicable.

11.7 Absence of chair at Directors' meeting

(a) If a Directors' meeting is held and:

(i) a chair has not been elected under article 11.6(a)(i); or

(ii) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the deputy chair will be the chair of the meeting.

(b) If the deputy chair is to be the chair of the meeting under article 11.7(a) but:

(i) a deputy chair has not been elected under article 11.6(a)(ii); or

(ii) the deputy chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the Directors present must elect (with at least a two-thirds majority) one of their number to be a chair of the meeting.

11.8 Appointment of Alternate Director

(a) Subject to the Corporations Act and article 11.8(b), a Director may appoint a person approved by at least 85% of the Directors to be an Alternate Director in the Director's place during any period determined by the chair in their absolute discretion.

(b) Before a person is appointed as an Alternate Director, the Company must consult with:

(i) if the Director appointing the person as an Alternate Director is a Group A Director, the Group A Nominating Body; and

(ii) if the Director appointing the person as an Alternate Director is a Group B Director, the Group B Nominating Body.

11.9 Alternate Director and meetings

An Alternate Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Director is entitled to participate and vote in the appointor's place.

11.10 Alternate Director's powers

An Alternate Director may exercise all the powers of the appointor except the power to appoint an Alternate Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

11.11 Alternate Director responsible for own acts and defaults

While acting as a Director, an Alternate Director:

(a) is an officer of the Company and not the agent of the appointor; and

(b) is responsible to the exclusion of the appointor for the Alternate Director's own acts and defaults.

11.12 Alternate Director and remuneration

An Alternate Director is entitled to receive from the Company any remuneration under articles 9.7, 9.8 or 9.9.

11.13 Termination of appointment of Alternate Director

The appointment of an Alternate Director may be terminated at any time by the appointor even if the period of the appointment of the Alternate Director has not expired, and terminates in any event if:

(a) the appointor ceases to be a Director for any reason; or

(b) the Directors (excluding the Alternate Director and the appointer) resolve (with at least 85% of Directors in favour of the resolution) to terminate the appointment of the Alternate Director.

11.14 Appointment or termination

An appointment, or the termination of an appointment, by the Director who makes or made the appointment of an Alternate Director must be effected by a notice signed by the Director who makes or made the appointment and delivered to the Company.

11.15 Alternate Director and number of Directors

An Alternate Director is not to be taken into account separately from the appointor in determining the number of Directors.

11.16 Quorum for Directors' meeting

At a meeting of Directors, unless otherwise determined by the Directors, the number of Directors whose presence in person is necessary to constitute a quorum is at least two-thirds of the total number of Directors (including those who are not present).

11.17 Continuing Directors may act

The continuing Directors may act despite a vacancy in their number.

11.18 Chair of Committee

Subject to the charter of the relevant Committee and Superannuation Law:

(a) the board of Directors may appoint one of the members of a Committee as chair of the Committee's meetings; and

(b) if a meeting of a Committee is held and:

(i) a chair has not been appointed; or

(ii) the chair is not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the members present may elect one of their number to be chair of the meeting.

11.19 Meetings of Committee

Subject to the charter of the relevant Committee, a Committee may meet and adjourn as it thinks proper.

11.20 Circulating resolutions

(a) The Directors may pass a resolution without a Directors' meeting being held if all of the Directors entitled to vote on the resolution have consented to the resolution in accordance with this article 11.20.

(b) The resolution is passed when the last participating Director consents to the resolution in accordance with this article 11.20.

(c) The resolution is not invalidated if it is consented to by a Director who is not entitled to vote.

(d) A Director may consent to a resolution by:

(i) signing a document that sets out the terms of the resolution and contains a statement to the effect that the Director is in favour of the resolution; or

(ii) giving the Company a written notice (including by email, fax or other electronic means) addressed to and received by the Secretary or the chair:

(A) that signifies the Director's assent to the resolution;

(B) that sets out the terms of the resolution or identifies those terms; and

(C) if the Director has notified the Company in writing of a specified means by which his or her consent must be authenticated (including by providing particular personal information or an allocated code), that authenticates the Director's consent by those specified means.

(e) Any document referred to in this article may be in the form of an email, fax or electronic notification.

(f) Separate copies of a document (including in electronic form) may be signed by the Directors if the wording of the resolution and statement is identical in each copy.

(g) This article 11.20 applies to resolutions of Committees as if the references to Directors were references to Committee members.

11.21 Validity of acts of Directors

All acts done at a meeting of the Directors or of a Committee, or by a person acting as a Director are, even if it is afterwards discovered that:

(a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or

(b) a person acting as a Director was disqualified or was not entitled to vote,

as valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

12 Secretary

12.1 Appointment of Secretary

The Company may, but need not, have one or more Secretaries who are to be appointed by the Directors.

12.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

12.3 Powers, duties and authorities of Secretary

(a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors.

(b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Directors.

13 Seals

13.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Company (if it has one).

13.2 Use of common seal

If the Company has a common seal or duplicate common seal:

(a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and

(b) every document to which it is affixed must be signed by a Director and be countersigned by another Director or a Secretary.

14 Inspection of records

14.1 Inspection by Shareholders

Subject to the Corporations Act, the Directors may determine whether, to what extent, 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 to the inspection of Shareholders (other than Directors and, if relevant, a holding company of the Company).

14.2 Right of a Shareholder or other person to inspect

A Shareholder or other person (other than a Director or, if relevant, a holding company of the Company) does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in general meeting.

15 Service of documents

15.1 Document includes notice

In this article 15, a reference to a document includes a notice and a notification by electronic means.

15.2 Form of document

Unless expressly stated otherwise in this Constitution, all notices, certificates, statements, demands, appointments, directions and other documents referred to in this Constitution must be in writing.

15.3 Methods of service

The Company may give a document to a Shareholder:

(a) personally;

(b) by delivering it or sending it by post to the address for the Shareholder in the Register or an alternative address nominated by the Shareholder;

(c) by sending it to an email address, fax number or electronic address nominated by the Shareholder; or

(d) by notifying the Shareholder by an electronic means nominated by the Shareholder that:

(i) the document is available; and

(ii) how the Shareholder may use the nominated access means to access the document.

15.4 Post

A document sent by post:

(a) if sent to an address in Australia, may be sent by ordinary post; and

(b) if sent to an address outside Australia, must be sent by airmail,

and, in either case, is taken to have been given and received on the day after the Business Day of its posting.

15.5 Fax or other electronic means

A document sent or given by email, fax or other electronic means:

(a) is taken to be effected by properly addressing and transmitting the email, fax or other electronic transmission; and

(b) is taken to have been given and received on the Business Day after the date of its transmission.

15.6 Evidence of service

A certificate signed by a Director or a Secretary stating that a document was sent, delivered or given to a Shareholder personally, by post, email, fax or other electronic means on a particular date is evidence that the document was sent, delivered or given on that date and by that means.

15.7 Persons entitled to shares

A person who by operation of law, transfer or other means whatsoever becomes entitled to any share is absolutely bound by every document given in accordance with this article 15 to the person from whom that person derives title prior to registration of that person's title in the Register.

16 Amendment of Constitution

(a) Subject to article 16(b) below, this Constitution may be amended by at least 85% of the Shareholders voting in favour of the resolution.

(b) No amendment to the following articles of this Constitution takes effect unless it is unanimously approved by the Shareholders:

(i) article 2 (Objective and location);

(ii) article 3.2 (Classes of shares);

(iii) article 3.3 (Rights, privileges and conditions of shares);

(iv) article 3.4 (Eligibility to be a Shareholder);

(v) article 3.5 (Variation of rights);

(vi) article 4.1 (Restriction on transfer);

(vii) article 4.5 (Consideration for the transfer of a share);

(viii) article 5 (Ceasing to be eligible to be a Shareholder);

(ix) article 7.10 (Questions decided by a two-thirds majority);

(x) article 8 (Superannuation Fund Nominees Panel);

(xi) article 9.1 (Number of Directors);

(xii) article 9.3 (Composition of Directors);

(xiii) article 9.4 (Nomination of Group A Directors);

(xiv) article 9.5 (Nomination of Group B Directors);

(xv) article 9.6 (Appointment of directors);

(xvi) article 11.4 (Passing of Directors' resolutions);

(xvii) article 16 (Amendment of Constitution); and

(xviii) article 17 (Winding up).

17 Winding up

17.1 Distribution of assets

(a) If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide among the Shareholders in kind the whole or any part of the property of the Company and may for that purpose set such value as the liquidator considers fair on any

property to be so divided and may determine how the division is to be carried out as between the Shareholders.

(b) Any payment made to a Shareholder under article 17.1(a) must be paid to a Fund in accordance with the Shareholder's irrevocable direction under article 3.3(e)(ii).

17.2 Powers of liquidator to vest property

The liquidator may, with the sanction of a special resolution of the Company, vest the whole or any part of any such property in trustees on such trusts for the benefit of the contributories as the liquidator thinks fit, but so that no Shareholder is compelled to accept any shares or other securities in respect of which there is any liability.

17.3 Shares issued on special terms

Articles 17.1 and 17.2 do not prejudice or affect the rights of a Shareholder holding shares issued on special terms and conditions.

18 Indemnity and insurance

18.1 Indemnity

The Company will indemnify any current or former Director or Secretary of the Company or a subsidiary of the Company out of the property of the Company against:

(a) any liability incurred by the person in that capacity (other than a liability for legal costs for which a current or former Director or Secretary of the Company will not be indemnified except as provided for under article 18.1(b) or 18.1(c));

(b) legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity; and

(c) legal costs incurred in good faith in obtaining legal advice on issues relevant to the performance of their functions and discharge of their duties as an officer of the Company or a subsidiary, if that expenditure has been approved in accordance with the Company's policy,

except to the extent that:

(d) the Company is forbidden by law to indemnify the person against the liability or legal costs; or

(e) an indemnity by the Company of the person against the liability or legal costs, if given, would be made void by law.

18.2 Insurance

The Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary of the Company or of a subsidiary of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

(a) the Company is forbidden by law to pay or agree to pay the premium; or

(b) the contract would, if the Company paid the premium, be made void by law.

18.3 Validity of decisions

A Director or Shareholder may be involved in a decision by the Company to indemnify a current or former Director of the Company under article 18.1 or to pay a premium for a contract insuring a person who is or has been a Director of the Company under article 18.2.

19 Proprietary Company

The Company is a proprietary company and accordingly:

(a) the number of Shareholders:

(i) counting joint holders of a particular parcel of shares in the Company as one person; and

(ii) excluding:

(A) each Shareholder who is an employee of the Company or of a subsidiary of the Company; and

(B) each Shareholder who became a Shareholder at a time when that shareholder was an employee of the Company or of a subsidiary of the Company

must not exceed 50; and

(b) the Company may not engage in anything that would require disclosure to investors under Chapter 6D of the Corporations Act, other than an offer of shares to:

(i) a Shareholder; or

(ii) a person in the employment of the Company or of a subsidiary of the Company.