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Constitution of Aboriginal Legal Service of
Western Australia Limited

ABN 61532930441

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CONSTITUTION OF ABORIGINAL LEGAL SERVICE OF WESTERN AUSTRALIA LIMITED

Aboriginal Legal Service of Western Australia Limited (Company)

ABN 61532930441

1. PRELIMINARY

1.1 Type of Company

- (a) The Company is a not-for-profit public company limited by guarantee that is established to be, and to continue as, a charity.
- (b) The liability of members is limited to the amount of the guarantee in Rule 2.3.

1.2 Objects of the Company

The Objects of the Company are to pursue the following charitable purposes:

- (a) to provide direct relief to all Aboriginal persons from poverty, suffering, destitution, misfortune, distress and helplessness caused directly or indirectly by their involvement with the laws of the Commonwealth or States of Australia and all ancillary matters, including:
 - (i) provision of legal assistance to Aboriginal persons in Western Australia;
 - (ii) to co-operate and liaise with public and private legal aid services to ensure that Aboriginal persons derive full benefit and advantage from such services;
 - (iii) to provide a legal service for Aboriginal persons to supplement other services, and to avoid duplication of services unless some specialisation requires such duplications;
 - (iv) to operate offices with a telephone service to enable Aboriginal persons to avail themselves of and have access to the Service;
 - (v) to collect data and instigate and assist with research concerning the relations of Aboriginal persons with the law, the police, the Courts and Department of Corrective Services, institutions and administration of justice with respect to Aboriginal persons and make submissions for law reform as considered necessary or desirable, and without breaching professional confidentiality;
 - (vi) to direct matters concerning the legal rights of Aboriginal persons to the appropriate authorities and to the general public where considered necessary or desirable and to be involved in all legal aspects of Aboriginal affairs;
 - (vii) to liaise with officers of the judicial system, the police and the Department of Corrective Services and any other authority and endeavour to promote understanding of the special problems of Aboriginal persons and promote the introduction of measures within such authorities to improve relations with Aboriginal persons;
 - (viii) to seek, receive and disseminate information among Aboriginal persons and Aboriginal and Torres Strait Islander organisations as to their own legal rights and obligations, of the functions, duties, and powers of police, judicial and other relevant authorities;
 - (ix) to assist Aboriginal persons to promote their claims for justice including in the areas of land, deaths in custody, Stolen Wages and the Stolen Generations;

- (x) to conduct training courses for employees for the Company or volunteers or others to enable them to be better qualified and more confident to assist in carrying out the Objects;
 - (xi) subject to Rule 1.6, to provide legal assistance and mutual support to organisations affiliated with or having similar Objects and purposes to the Company;
 - (xii) to establish and maintain trust accounts to facilitate the carrying out of the Objects;
 - (xiii) to undertake and execute any trusts that may be deemed desirable or conducive to the Objects;
 - (xiv) to request, raise, borrow, invest, and expend funds, acquire and dispose of any form of property, employ staff, enter into contracts and establish companies;
 - (xv) subject to Rule 1.6, to promote or procure changes in law or practice in the interest of Aboriginal persons;
 - (xvi) to support the social development of its members;
 - (xvii) to help and encourage its members to keep and renew and propagate their traditional culture including, subject to Rule 1.6, promoting judicial recognition of traditional Aboriginal and Torres Strait Islander law;
 - (xviii) to receive and spend grants of money from the Government of the Commonwealth or of the State of Western Australia or from other sources;
 - (xix) to set up through its Legal Practitioners and Elected Directors advisory committees throughout the State of Western Australia to facilitate the carrying out of the Objects;
 - (xx) to represent and advance the interests of members by engaging with, and pursuing opportunities for developing and maintaining relationships with, others having an interest in the Objects, including:
 - (A) First Nations Organisations; and
 - (B) other not-for-profit or for-profit government or non-government organisations in Australia or overseas.
- (b) subject to Rule 1.5 and provided that the Company's activities are always predominately carried on for the purposes in Rule 1.2(a):
- (i) to provide for-profit education, cultural legal services and engage in other business and/or social enterprise opportunities (whether through the Company or its officers, employees, agents or servants or through one or more related bodies corporate of the Company) to individuals, corporations and other organisations throughout Australia, regardless of their background, and apply the surplus funds from these services solely towards promoting the Objects in Rule 1.2(a);
 - (ii) to undertake fundraising activities (whether through the Company or its officers, employees, agents or servants or through one or more related bodies corporate of the Company) throughout Australia and apply the surplus funds from these activities solely towards promoting the Objects in Rule 1.2(a);

(c) to do such other things as are ancillary to the Objects in Rules 1.2(a) and 1.2(b).

1.3 **Powers of the Company**

Subject to Rule 1.5, the Company has the following powers, which may only be used to promote its Objects:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Act.

1.4 **Amending this document**

- (a) Subject to Rule 1.4(b), the members may amend this document by passing a special resolution.
- (b) The members must not pass a special resolution that amends this document if passing it causes the Company to no longer be a charity, and any resolution that purports to do so will be invalid.

1.5 **Not-for-profit**

Subject to Rules 1.7, 10 and 24, the Company must apply its income and assets solely towards promoting the Objects as stated in Rule 1.2. No part of the Company's income or assets may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members.

1.6 **Promotion and advocacy**

The Company may promote or oppose a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, if:

- (a) in the case of promoting a change – the change is in furtherance or in aid of one or more of the Objects mentioned in Rule 1.2(a); or
- (b) in the case of opposing a change – the change is in opposition to, or in hindrance of, one or more of the Objects mentioned in Rule 1.2(a).

However, the Company must not pursue any "disqualifying purpose" (as that term is defined in the Charities Act).

1.7 **Certain payments allowed**

Rule 1.5 does not prevent the Company from doing the following things, provided they are done in good faith:

- (a) paying a member for goods or services (including the lending of money or a lease of premises) they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
- (b) making a payment to a member in carrying out the Company's charitable purposes.

1.8 **Reading this document with the Act**

- (a) 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.
- (b) While the Company is a registered charity, the ACNC Act and the Act override any Rule in this document that is inconsistent with those Acts.

- (c) If the Company is not a registered charity (even if it remains a charity), the Act overrides any Rule in this document that is inconsistent with the Act.

1.9 Definitions

The following definitions apply in this document.

Aboriginal person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an indigenous inhabitant of the Torres Strait Islands.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

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

Alternate means an alternate Director appointed under Rule 4.

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

Associate Membership means the category of membership described at Rule 2.2(c).

Board means the Directors acting collectively under this document.

CC Act means the *Competition and Consumer Act 2010* (Cth).

Chairman means the person who is, for the time being, the Chairman of the Company under Rule 3.12.

Charities Act means the *Charities Act 2013* (Cth).

Chief Executive Officer means the Chief Executive Officer of the Company.

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

Co-Opted Director means a person who is, for the time being, a Director appointed in accordance with Rule 3.12.

Corporate Member means the category of membership described at Rule 2.2(d).

Director means a person who is, for the time being, a director of the Company, including the Managing Director, an Elected Director, a Co-Opted Director and, where appropriate, an Alternate.

Director of Legal Services means the person who is, for the time being, the Director of Legal Services of the Company under Rule 12(b).

Elected Director means a Director appointed in accordance with Rule 3.3 or elected in accordance with Rule 3.4.

First Nations Organisations means any not-for-profit or for-profit government or non-government organisations in Australia or overseas which advance or represent the interests of indigenous peoples.

Initial Directors has the meaning given to that term in Rule 3.4(a).

Initial Members means the people whose names are entered in the Register as a member of the Company on the date this document is approved by the members, and who have consented to be a member of the Company under and in accordance with this document.

ITA Act means the *Income Tax Assessment Act 1997* (Cth).

Legal Practice Board has the meaning given to the term "Board" in the LP Act.

Legal Practitioner means a person registered as an "Australian Legal Practitioner", a "Local Legal Practitioner" or an "Interstate Legal Practitioner" in accordance with, and within the meanings given to those terms in, the LP Act.

legal services has the meaning given to that term in the LP Act.

Life Membership means the category of membership described at Rule 2.2(a).

LP Act means the *Legal Profession Act 2008* (WA).

Managing Director means a managing director appointed under Rule 7.

member means a person whose name is entered in the Register as a member of the Company, and includes the Chairman and any Director who is registered as a member.

Member Fee means:

- (a) in the case of Ordinary Members and Associate Members: \$10; and
- (b) in the case of Corporate Members : \$100.

Objects mean the objects of the Company as stated in Rule 1.2.

Ordinary Membership means the category of membership described at Rule 2.2(b).

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

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, which as at the date of this document means a resolution of which notice as set out in section 249L(1)(c) has been given, and that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

Vice Chairman means the person who is, for the time being, the Vice Chairman of the Company under Rule 3.12.

1.10 **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 1.9) 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.
 - (l) A reference to **\$** is to an amount in Australian currency.

2. **MEMBERSHIP**

2.1 **Membership**

- (a) Subject to the other provisions of this Rule 2, the members are:
 - (i) the Initial Members; and
 - (ii) any new person admitted to membership of the Company in accordance with this document,within the categories of membership set out in Rule 2.2.
- (b) The Company must have at least one member.

- (c) The rights and obligations of members are personal and non-transferable.

2.2 Categories of membership and eligibility

- (a) **Life Membership:** Any person aged 18 years or more (whether or not the person is eligible to be a member of the Company) who in the opinion of the Board has given outstanding service to the Company may, by ordinary resolution at an annual general meeting, be appointed to be a Life Member. Life Members remain so until death or expulsion in accordance with the Rules. Life Members are entitled to attend and speak at general meetings as if they are Ordinary Members, but are not entitled to vote or to be elected to the Board unless they are registered as an Ordinary Member.
- (b) **Ordinary Membership:** Any Aboriginal person aged 18 years or more who is ordinarily resident in Western Australia and whose application for membership has been approved by ordinary resolution at a general meeting or by the Directors at a meeting of the Board. Ordinary Members are entitled to attend, speak and vote at general meetings of the Company and are eligible for election to the Board.
- (c) **Associate Membership:** Any person not otherwise eligible to be a member of the Company and whose application for membership has been approved by ordinary resolution by the Directors at a meeting of the Board. Associate Members are entitled to attend and speak at general meetings as if they are Ordinary Members, but are not entitled to vote or to be elected to the Board unless they are registered as an Ordinary Member.
- (d) **Corporate Membership:**

Any person, whether eligible or not to be a member of the Company, whose application for corporate membership has been approved by ordinary resolution by the Directors at a meeting of the Board. Corporate Members are entitled to attend and speak at general meetings as if they are Ordinary Members, but are not entitled to vote or to be elected to the Board unless they are registered as an Ordinary Member.

2.3 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 \$10 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.

2.4 Resigning as a member

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

2.5 Expelling a member

- (a) 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; or
 - (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company,

and remove that member's name from the Register.

- (b) At least 21 days before the Board holds a meeting to expel a member, the Board must give a written notice to the member that states:
 - (i) the allegations against the member;
 - (ii) the proposed resolution for the member's 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 expulsion dealt with by the Company in general meeting.
- (c) The Company must expel a member and remove the member's name from the Register if a resolution is passed at the general 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.
- (d) A member expelled from the Company does not have any claim on the Company, its funds or property.

2.6 **When a person stops being a member**

A person immediately ceases to be a member if they:

- (a) die;
- (b) resign in accordance with Rule 2.4;
- (c) are expelled under Rule 2.5;
- (d) fail to pay any Member Fee in accordance with Rule 2.7; or
- (e) have not responded within three months of a written request from the Secretary that they confirm in writing that they want to remain a member.

2.7 **Payment of Member Fee**

Each member must, within 20 Business Days of becoming a member, pay the Member Fee to the Company in the manner reasonably directed by the Company.

3. **DIRECTORS**

3.1 **Number of Directors and composition of Board**

- (a) Not including Alternates, the Company must have at least three Directors and, until otherwise decided by ordinary resolution, not more than seven Directors.
- (b) The Board is intended to ordinarily comprise seven Directors, being:
 - (i) five Elected Directors; and
 - (ii) two Co-Opted Directors.

3.2 **Eligibility**

- (a) An Elected Director must:
 - (i) be an Aboriginal person;

- (ii) have an understanding of Aboriginal culture;
 - (iii) have experience working with or for:
 - (A) an Aboriginal organisation; and
 - (B) a not-for-profit organisation which is also a registered charity;
 - (iv) unless otherwise determined by the Board, be ordinarily resident in Western Australia; and
 - (v) be an Ordinary Member.
- (b) An Elected Director must not be:
- (i) an employee the Company; or
 - (ii) the auditor of the Company or any partner, director or employee of the auditor.

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 an Elected Director at any time except during a general meeting. Any Elected Director so appointed automatically retires at the next annual general meeting and is eligible for election by that general meeting.

3.4 **Election and appointment of Directors by general meeting**

- (a) The Initial Directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company, being:
- (i) the initial Elected Directors:
 - (A) Michael Blurton;
 - (B) Glen Colbung;
 - (C) Preston Thomas;
 - (D) Kathy Watson; and
 - (E) Don Abdullah; and
 - (ii) the initial Co-Opted Directors:
 - (A) Paul Barron; and
 - (B) Jim Lewis.

Replaces
section 201G

- (b) Apart from the Initial Directors set out in Rule 3.4(a)(i), and 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 Elected Directors by ordinary resolution. A Director appointed to replace one removed from office under Rule 3.10 must retire when the Elected 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 an Elected 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 an Elected Director at least seven days before the relevant general meeting.

3.6 **Retirement of Elected Directors**

- (a) An Elected Director (other than an initial Elected Director) must retire from office at the third annual general meeting after the Elected Director was elected or last re-elected.
- (b) Two of the initial Elected Directors set out in Rule 3.4(a)(i) must retire from office, and may stand for re-election as Elected Directors, at the first annual general meeting after the Company was first registered as a company under the Act. The remaining three initial Elected Directors set out in Rule 3.4(a)(i) must retire from office, and may stand for re-election as Elected Directors, at the second annual general meeting after the Company was first registered as a company under the Act. Unless the Directors otherwise agree, the initial Elected Directors must draw lots to decide which two initial Elected Directors must retire and may seek re-election at the first annual general meeting and the remaining two initial Elected Directors must retire and may seek re-election at the second annual general meeting.
- (c) An Elected 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 Elected Director has given the Board notice of their intention to do so. If the Elected Director gives such a notice, the Elected Director must then retire from office at the relevant annual general meeting.
- (d) An election of Elected Directors must be held at each annual general meeting. If no election of Elected Directors is scheduled to occur at an annual general meeting under Rules 3.3, 3.6(a) or 3.6(c), then one Elected Director must retire from office at the annual general meeting.
- (e) None of Rules 3.6(a), 3.6(c) and 3.6(d) applies to a Managing Director, Co-Opted Director or Alternates.
- (f) An Elected Director who retires under this Rule 3.6 is eligible for re-election.

3.7 **Selection of Elected Directors to retire**

Subject to Rule 3.4, unless the Directors otherwise agree on who shall retire and seek re-election under Rule 3.6(c), the Elected Director who retires under Rule 3.6(d) is the Elected Director who has held office the longest since last being elected. If two or more Elected Directors have been in office for the same period, those Elected Directors may agree which

of them will retire and elect to retire under Rule 3.6(c). If they do not agree, they must draw lots to decide which of them must retire.

3.8 **Time of retirement**

An Elected Director's retirement under Rules 3.3 or 3.6 takes effect at the end of the relevant annual general meeting unless the Elected 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), or by any other applicable law, 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;
- (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.

Rule 3.9(e)
replaces
section 203A

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.

3.12 **Co-Opted Directors**

- (a) The Board may at any time appoint any person, who the Board determines will bring required skills and experience to the Board to enable the Board to advance the Objects, to be a Co-Opted Director to fill the positions provided for in Rule 3.1(b)(ii).
- (b) The initial Co-Opted Directors will be the persons set out in Rule 3.4(a)(ii).

- (c) A Co-Opted Director will hold office for such term as the Board may determine of up to three years, but will be eligible for reappointment for a further term of up to three years.
- (d) A Co-Opted Director is not:
 - (i) subject to automatic retirement under Rule 3.3; or
 - (ii) required to retire under Rule 3.6,
 but (subject to any contract between the Company and that Co-Opted Director) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Directors.
- (e) A Co-Opted Director:
 - (i) may, but need not necessarily be, an Aboriginal person; and
 - (ii) must not be the auditor of the Company or any partner, director or employee of the auditor.

3.13 **Office bearers**

The Directors will elect from among their number the following office bearers:

- (a) Chairman; and
- (b) Vice Chairman.

4. **ALTERNATE DIRECTORS**

4.1 **Appointment of Alternates**

- (a) Subject to Rule 4.1(b), an Elected Director (other than an Alternate or a Co-Opted Director) 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.
- (b) An Alternate must satisfy the eligibility requirements set out in Rule 3.2.

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

Replaces
section 201

- (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 13; or
- (b) in accordance with a delegation of the power under Rule 12.

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:

- (a) two Directors;
- (b) one Director and one Secretary; or
- (c) in such other manner (including the use of facsimile signatures if thought appropriate) as the Board may decide,

and in each case, if a Managing Director has been appointed, the signatories must include the Managing Director.

7. **MANAGING DIRECTOR**

7.1 **Appointment and power of Managing Director**

Replaces
section 198C
and 201J

- (a) The Board may appoint a Director 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.
- (b) The Board may delegate any of the powers of the Board to a Managing Director:
 - (i) on the terms and subject to any restrictions the Board decides; and
 - (ii) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time.
- (c) This Rule 7.1 does not limit Rule 8.

7.2 **Eligibility**

- (a) The Managing Director must:
 - (i) be a Director;
 - (ii) be an Aboriginal person;
 - (iii) have an understanding of Aboriginal culture;
 - (iv) have experience working with or for:
 - (A) an Aboriginal organisation; and
 - (B) a not-for-profit organisation which is also a registered charity;
 - (v) be ordinarily resident in Perth, Western Australia; and
 - (vi) be an Ordinary Member.
- (b) The Managing Director must not be the auditor of the Company or any partner, director or employee of the auditor.

7.3 **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.

7.4 **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

Replaces
section 203F

- (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.

8. DELEGATION OF POWERS OF THE BOARD

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) A delegation of powers under Rule 8.1 may be made:
 - (i) for a specified period or without specifying a period; and
 - (ii) on the terms (including power to further delegate) and subject to any restrictions the Board decides.
- (b) 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.
- (c) A delegation must be recorded in the Company's minute book.

8.4 Proceedings of committees

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.

9. DUTIES AND INTERESTS OF DIRECTORS

9.1 Compliance with duties under the Act, general law and the ACNC Act

Each Director must comply with his or her duties under the Act and under the general law, and with the duties described in Governance Standard 5 of the regulations made under the ACNC Act, which include:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purposes of the Company set out in Rule 1.2;
- (c) not to misuse their position as a Director;
- (d) not to misuse information they gain in their role as a Director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in Rule 9.3;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and

- (g) not to allow the Company to operate while it is insolvent.

9.2 **Directors can hold other offices**

A Director may:

- (a) be a member of any corporation (including the Company) or partnership other than the Company's auditor;
- (b) be a creditor of any corporation (including the Company) or partnership; or
- (c) enter into any agreement with the Company.

9.3 **Disclosure of interests**

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.

9.4 **Director interested in a matter**

- (a) 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:
 - (i) 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;
 - (ii) 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;
 - (iii) the Director may retain any benefits accruing to the Director under the transaction; and
 - (iv) the Company cannot avoid the transaction merely because of the existence of the Director's interest or conflict of duty.
- (b) 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 the 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 **Payments to Directors with Board approval**

- (a) With the approval of the Board, the Company may:
- (i) subject to rule 10.1(b), pay each Director (other than the Managing Director) such reasonable and proper remuneration for acting as a Director as may be approved by the Board. Such remuneration is to be paid by the Company and may consist of salary and bonuses;
 - (ii) subject to rule 10.1(b), pay the Managing Director such reasonable and proper remuneration for acting as Managing Director as may be approved by the Board. Such remuneration is to be paid by the Company and may consist of salary and bonuses;
 - (iii) pay a Director for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; and
 - (iv) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.
- (b) The remuneration referred to in rules 10.1(a)(i) and 10.1(a)(ii) may not include:
- (i) a payment made as compensation for loss of office or in connection with retirement from office (which includes resignation from office and death while in office); or
 - (ii) an insurance premium paid by the Company or indemnity under rule 11.

11. **OFFICERS' INDEMNITY AND INSURANCE**

11.1 **Indemnity**

- (a) Subject to and so far as permitted by Act, the CC Act and any other applicable law:
- (i) 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
 - (ii) 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.
- (b) In this Rule 11, **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 CC Act 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. **ADMINISTRATION OF THE COMPANY**

(a) The Chief Executive Officer will manage the day to day affairs of the Company. The Chief Executive Officer:

- (i) must be an Aboriginal person;
- (ii) may be delegated any of the powers of the Board under Rule 8 on the terms and subject to any restrictions the Board decides (which delegations may be revoked by the Board at any time); and
- (iii) must act in accordance with any policies approved, or direction given, by the Board.

(b) The head of the Legal Services division of the Company shall be the Director of Legal Services. The Director of Legal Services:

- (i) must be a Legal Practitioner;
- (ii) shall operate a trust account in accordance with the rules prescribed from time to time by the Legal Practice Board;
- (iii) shall be responsible for the professional conduct of all lawyers and court officers employed by the Company;
- (iv) shall be a member of the senior management of the Company; and
- (v) shall be appointed by and responsible to the Chief Executive Officer.

13. **BOARD MEETINGS**

13.1 **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.

13.2 **Meeting frequency**

The Board will meet at least once each quarter, unless otherwise determined by the Board.

13.3 **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; 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; and
- (b) may give that notice orally (including by telephone) or in writing (including by electronic mail or facsimile),

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

13.4 **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.

13.5 **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 the Chairman is present, the Chairman will chair the meeting. If the Chairman is not present, the Vice Chairman will chair the meeting. If neither the Chairman nor the Vice Chairman are present within 30 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.

13.6 **Quorum**

Replaces
section 248F

Unless the Board decides otherwise, the quorum for a Board meeting is three Directors and the Secretary, 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. Directors and the Secretary are treated as present at a meeting held by audio or audio-visual communication if they are 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 and the Secretary are treated as present.

13.7 **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. The chairman of a Board meeting does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

13.8 **Procedural rules**

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

13.9 **Written resolution**

Replaces
section 248A

If all the Directors entitled to receive notice of a Board meeting and to vote on a resolution receive a document containing the resolution, and a majority of the Directors for the time being sign the document stating 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 required to constitute a majority of the Directors for the time being signs the document.

13.10 **Additional provisions concerning written resolutions**

For the purpose of Rule 13.9:

- (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.

13.11 **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.

13.12 **Other attendees at Board meetings**

- (a) In addition to the Directors, Board meetings may be attended by:
 - (i) the Chief Executive Officer;
 - (ii) the Director of Legal Services; and
 - (iii) such other employees of the Company who may from time to time be called on to provide advice to the Board.
- (b) These attendees may speak at Board meetings but may not vote and will not form part of the quorum.

14. **MEETINGS OF MEMBERS**

14.1 **Annual general meeting**

The Company must hold an annual general meeting:

- (a) within 18 months after its registration as a company; and thereafter
- (b) as required by section 250N.

14.2 **Calling meetings of members**

A meeting of members:

Rule 13.2(a)
replaces
section 249C

- (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.

14.3 **Notice of meeting**

- (a) Subject to Rule 14.4, at least 21 days' written notice of a meeting of members must be given individually to:
 - (i) each member (whether or not the member is entitled to vote at the meeting);
 - (ii) each Director (other than an Alternate); and
 - (iii) to the auditor.
- (b) 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).

14.4 **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.

14.5 **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.

14.6 **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.

14.7 **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.

14.8 **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.

15. **PROCEEDINGS AT MEETINGS OF MEMBERS**

15.1 **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.

15.2 **Quorum**

Replaces sections 249T(1) and (2)

The quorum for a meeting of members is 10 Ordinary 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.

15.3 **Quorum not present**

Replaces sections 249T(3) and (4)

If a quorum is not present within 30 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 within 30 minutes after the time for the adjourned meeting, the members present and entitled to vote at the adjourned meeting constitute the quorum for the adjourned meeting.

15.4 **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.

15.5 **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.

15.6 **Adjournment**

Replaces
section
249U(4)

Subject to Rule 14.6, 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.

15.7 **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.

16. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

16.1 **Appointment of proxies**

See section
249X

Each 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.

16.2 **Member's attorney**

A 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.

16.3 **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 or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated 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 in accordance with section 250B(3) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

16.4 **Corporate representatives**

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

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

A 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 member.

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

The appointment of a proxy or attorney is not revoked by the 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.

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

If more than one attorney or representative appointed by a 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 16.7(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.

16.8 **More than one current proxy appointments**

An appointment of proxy by a 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 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.

16.9 **Continuing authority**

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 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.

Replaces
section
250C(2)

17. ENTITLEMENT TO VOTE

17.1 Number of votes

Replaces
section
250E(2)

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

- (a) each member has one vote on a show of hands or a poll; and
- (b) a 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.

17.2 Casting vote of chairman

If an equal number of votes is for and against a resolution at a meeting of members and:

Replaces
section 250E(3)

- (a) the chairman of the meeting is a member, the chairman has a casting vote; or
- (b) the chairman of the meeting is not a member, the matter is decided in the negative.

17.3 Voting restrictions

If:

- (a) the Act requires that some members are not to vote on a resolution, or that votes cast by some 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 members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those 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 18.3(c) applies.

17.4 Decision on right to vote

Replaces
section 250G

A 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.

18. HOW VOTING IS CARRIED OUT

18.1 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 unless a poll is demanded under Rule 18.2 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.

18.2 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 of the meeting.

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

18.3 **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 18.3(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 18.3(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.

19. **SECRETARY**

19.1 **Appointment of Secretary**

See section
204D

- (a) The Board:
 - (i) must appoint at least one individual; and
 - (ii) may appoint more than one individual,to be a Secretary either for a specified term or without specifying a term.
- (b) Subject to Rule 19.1(a), the office of Secretary may (but need not necessarily) be held by a Co-Opted Director, the Director of Legal Services or the Chief Financial Officer of the Company from time to time.

19.2 **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.

19.3 **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 19.4.

19.4 **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.

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. **EXECUTION OF DOCUMENTS**

The Company may execute documents, agreements and any other instrument without the use of any common seal of the Company (even if the Company has a common seal), with the approval of the Board, by signing of such documents, agreements or other instruments by:

- (a) two Directors; or
- (b) one Director and one Secretary (provided that a person may not sign in his or her dual capacity as both Director and Secretary).

22. **FINANCIAL REPORTS, AUDIT, FINANCIAL YEAR AND RESERVES**

22.1 **Company must keep financial records**

- (a) The Board must cause the Company to keep written financial records that:
 - (i) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
 - (ii) 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.

- (b) The Company must retain its records for at least 7 years.
- (c) The Directors must take reasonable steps to ensure that the Company's records are kept safe.

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.

22.5 **Reserves**

The Board may resolve that the Company retain any amount of any of the Company's profits that is not required for the conduct of the Company, which amounts may be applied at the discretion of the Directors in the pursuit of the Objects and in a manner consistent with Rule 1.5.

22.6 **Financial year**

The Company's financial year is from 1 July to 30 June, unless the Directors pass a resolution to change the financial year.

23. **REGISTER OF MEMBERS**

- (a) The Company must set up and maintain a register of members.
- (b) In accordance with section 169, the Register (as amended from time to time) must contain the following information:
 - (i) the name and address of each member;
 - (ii) the date on which the entry of the member's name in the Register is made;
 - (iii) the name and details of each person who stopped being a member within the last seven years;
 - (iv) the date on which the person stopped being a member; and
 - (v) 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. **DISTRIBUTION OF SURPLUS ASSETS**

- (a) Subject to the Act and any other applicable law, and any court order, any surplus assets (including "gift funds" as defined in Rule 24(d)) that remain after the Company is wound up must be distributed to one or more charities:
 - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in Rule 1.2;
 - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company; and
 - (iii) that is or are deductible gift recipients within the meaning of the ITA Act.
- (b) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.
- (c) If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any surplus gift funds must be transferred to one or more charities that meet the requirements of Rules 24(a)(i), 24(a)(ii) and 24(a)(iii)(c), as decided by the Directors.
- (d) For the purpose of this Rule 24:
 - (i) **gift funds** means:
 - (A) gifts of money or property for the principal purpose of the Company;
 - (B) contributions made in relation to a fund-raising event held for the principal purpose of the Company; and
 - (C) money received by the Company because of such gifts and contributions.
 - (ii) **contributions** and **fund-raising event** have the same meaning as in Division 30 of the ITA Act.

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.

Replaces
section
249J(4)

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.

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.

26. **DISPUTE RESOLUTION**

- (a) Subject to Rule 26(d), the dispute resolution procedure in Rule 26(c) applies to all disputes and disagreements under this document between a member or Director and:
 - (i) one or more members;
 - (ii) one or more Directors, or
 - (iii) the Company.
- (b) A member must not start a dispute resolution procedure under Rule 26(c) in relation to a matter which is the subject of any expulsion procedure under Rule 2.5 until that expulsion procedure under Rule 2.5 has been completed.
- (c) Prior to commencing any proceedings in a court or tribunal or before any authority or board, the following must occur:
 - (i) those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it;
 - (ii) if those involved in the dispute do not resolve it under Rule 26(c), they must within 14 days:
 - (A) tell the Directors about the dispute in writing;
 - (B) agree or request that a mediator be appointed; and
 - (C) attempt in good faith to settle the dispute by mediation;
 - (iii) the mediator must:
 - (A) be chosen by agreement of those involved; or
 - (B) where those involved do not agree:
 - (aa) for disputes between members, a person chosen by the Directors; or
 - (bb) for all other disputes, a person chosen by either the Commissioner for the time being of the Australian Charities and Not-for-profits Commission or the President for the time being of the law institute or society in the state or territory in which the Company has its registered office;
 - (iv) a mediator chosen by the Directors under Rule 26(c)(iii)(B)(aa):
 - (A) may be a member or former member of the Company;
 - (B) must not have a personal interest in the dispute; and
 - (C) must not be biased towards or against anyone involved in the dispute;
 - (v) when conducting the mediation, the mediator must:

- (A) allow those involved a reasonable chance to be heard;
 - (B) allow those involved a reasonable chance to review any written statements;
 - (C) ensure that those involved are given natural justice; and
 - (D) not make a decision on the dispute;
- (vi) the costs of the mediation will be shared equally between the parties to it; and
- (vii) where:
- (A) the mediation has not occurred within six weeks of the date the mediator is appointed under Rule 26(c)(iii); or
 - (B) the mediation fails to resolve the Dispute,
- then a party will be entitled to commence proceedings in a court or tribunal or before any authority or board.
- (d) This Rule 26 does not apply in respect of proceedings for urgent or interlocutory relief.