



Murray Irrigation Limited

Constitution

Incorporating amendments up to and including all amendments passed at the Annual General Meeting on 29 November 2012

Registered office

443 Charlotte Street
(PO Box 528)
Deniliquin NSW 2710

Phone : 03 5898 3300

Fax : 03 5898 3301

www.murrayirrigation.com.au

Contents

Introduction	1
1. Replaceable rules excluded.....	1
2. Definitions and interpretation.....	1
Appointment of directors	3
3. Number of directors.....	3
4. Directors' qualifications.....	3
5. Appointment of directors.....	3
6. Election of member directors.....	4
Appointment of directors between AGMs	5
7. Casual vacancies.....	5
8. Insufficient directors.....	5
Powers of directors	5
9. Validation of acts of directors and secretaries.....	5
10. General business management.....	5
11. Borrowing powers.....	6
12. Appointment of attorney.....	6
13. Negotiable instruments.....	6
14. Delegation.....	6
15. Committee of directors.....	7
Removal and resignation of directors	7
16. Removal of directors.....	7
17. Resignation of director.....	7
18. Vacation of office of director.....	7
Directors' interests	8
19. Prohibition on being present or voting.....	8
20. Director to disclose interests.....	8
21. Standing notice of interest.....	8
22. Other directorships and shareholdings.....	9
23. Directors must not be employees.....	9
24. Temporary executive director.....	9
Remuneration of directors	10
25. Payment of remuneration.....	10
26. Payment of expenses.....	10
27. Information about directors' remuneration.....	10
28. Payment for extra services.....	10
29. Cancellation, suspension, reduction or postponement.....	11
30. Financial benefit.....	11
Secretary	11
31. Terms of office of secretary.....	11
Indemnity and insurance	11
32. Indemnity.....	11
33. Insurance.....	13
34. Director voting on contract of indemnity or insurance.....	13
35. Liability.....	13
36. Meaning of "officer".....	13
Inspection of records	13
37. Rights of inspection.....	13
38. Confidential information.....	14

Directors' meetings	14
39. Circulating resolutions	14
40. Meetings of directors	14
41. Calling directors' meetings.....	15
42. Notice of meeting	15
43. Waiver of notice	15
44. Technology meeting of directors.....	15
45. Chairing directors' meetings	16
46. Quorum	16
47. Passing of directors' resolutions	16
Meetings of members.....	16
48. Calling of general meeting	16
49. Amount of notice of meeting	16
50. Persons entitled to notice of general meeting	16
51. Notice upon transmission	17
52. How notice is given	17
53. When notice is given.....	18
54. Period of notice	18
55. Contents of notice	18
56. Constructive notice	19
57. Notice of adjourned meeting.....	19
58. Accidental omission to give notice.....	19
59. Postponement of general meeting.....	19
60. Technology	19
61. Quorum	19
62. Chair at general meetings.....	20
63. Business at adjourned meetings.....	20
Proxies and body corporate representatives	20
64. Who can appoint a proxy	20
65. Rights of proxies	21
66. When proxy form must be sent to all members	21
67. Appointing a proxy	21
68. Form of proxy sent out by Company.....	22
69. Receipt of proxy documents	22
70. Validity of proxy vote.....	23
71. Body corporate representative.....	24
72. Attorney of member	24
Voting at meetings of members	24
73. How many votes a member has	24
74. Jointly held shares	25
75. Objections to right to vote	25
76. Votes need not all be cast in the same way	25
77. How voting is carried out	25
78. Matters on which a poll may be demanded	25
79. When a poll is effectively demanded	26
80. When and how polls must be taken.....	26
81. Chair's casting vote.....	26
82. Voting rights of persons entitled under transmission rule.....	26
Annual general meeting	27
83. Business of an annual general meeting	27
84. Resolutions proposed by members	27

Minutes	27
85. Minutes to be kept.....	27
Accounts, audit and records	28
86. Accounts	28
87. Audit.....	28
Shares	28
88. Qualification to hold shares	28
89. Control of issue of shares	29
90. Ordinary shares	29
91. Right to lien	29
92. Imposition of a liability.....	29
93. Sale of shares the subject of lien.....	30
94. Surrender of shares	31
95. Cancellation of shares	31
96. Joint holders.....	32
Dividends and reserves	33
97. No dividends	33
98. Reserves.....	33
Title to and transfer of shares	33
99. Entitlement to share certificates.....	33
100. Replacement of certificates	33
101. Recognition of ownership	34
102. Transfer of shares.....	34
103. Registration of transfers – directors’ discretion	34
104. Registration of transfers – procedure	34
105. Transmission of shares.....	35
Execution of documents	35
106. Common seal.....	35
107. Share seal.....	36
108. Use of common seal	36
109. Execution of documents without common seal	36
110. Execution of document as a deed	36
111. Execution – general	36
Inadvertent omissions	37
112. Formalities omitted.....	37
Notices	37
113. Notices other than notices of meeting	37
Entitlements Contract	37
114. Entitlements contract binding.....	37
Winding up	37
115. Transfer of property	37

Constitution

of

Murray Irrigation Limited

Introduction

1. Replaceable rules excluded

- 1.1 The replaceable rules contained in the Act do not apply to the Company.
-

2. Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001* (Cth) and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **Annual Allocation** has the meaning given to that term in the Entitlements Contract;
- (3) **Area of Operations** has the meaning given to that term in the Entitlements Contract;
- (4) **auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (5) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (6) **Charges** has the meaning given to that term in the Entitlements Contract;
- (7) **Company** means Murray Irrigation Limited ACN 067 197 933;
- (8) **Delivery Entitlement** has the meaning given to that term in the Entitlements Contract;
- (9) **directors** means the directors for the time being of the Company or the directors assembled as a board;
- (10) **Entitlements Contract** means a contract between the Company and a person in substantially the form of the Entitlements Contract published on the Company's web site;
- (11) **executive director** means a director employed by the Company;
- (12) **Joint Water Supply Scheme** has the meaning given to that term in the Entitlements Contract;
- (13) **Key Decision** means a decision about any of the following matters:

- (a) a determination, increase or decrease of Annual Allocation;
 - (b) a determination of an application by a customer to convert Water Entitlements from one class to another;
 - (c) a determination of Charges; and
 - (d) the investment of Reserves;
- (14) **Landholding** has the meaning given to that term in the Entitlements Contract;
- (15) **Landholding Reference Number** has the meaning given to that term in the Entitlements Contract;
- (16) **Member Director** means a director who is either a member or an authorised representative of a member which is a body corporate;
- (17) **Non-Member Director** means a director who:
- (a) is not a member;
 - (b) is not an officeholder or a shareholder of any member which is a body corporate; and
 - (c) has a tertiary qualification and not less than ten years' experience in an appropriate profession;
- (18) **Operating Licence** means the licence held by the Company under section 122 of the *Water Management Act 2000* (NSW);
- (19) **Reserves** means sums of money set aside by the Company to satisfy the requirements of its Operating Licence;
- (20) **secretary** means any person appointed to perform the duties of secretary of the Company and any person appointed to act temporarily as secretary; and
- (21) **Water Entitlement** has the meaning given to that term in the Entitlements Contract.

2.2 Interpretation

- (1) Reference to:
- (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
- (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

Appointment of directors

3. Number of directors

[compare section 201A]

3.1 The number of the directors must be not less than six nor more than nine.

4. Directors' qualifications

4.1 Not more than six directors must be Member Directors.

4.2 Not more than three directors must be Non-Member Directors.

4.3 Each director must be qualified under either rule 4.1 or rule 4.2.

4.4 The Company in general meeting may by special resolution vary the qualifications set out in this rule 4.

5. Appointment of directors

5.1 Directors may only be appointed as follows:

- (1) Member Directors are appointed in accordance with the process set out in rule 6;
- (2) the directors may appoint Non-Member Directors but only with effect from immediately after the completion of the next annual general meeting; and
- (3) the directors may appoint Member Directors and Non-Member Directors under rule 7 or 8.

5.2 If a person is appointed by the other directors as a director, the Company must confirm the appointment by resolution at the Company's next annual general meeting. If the appointment is not confirmed, the person either does not take office or ceases to be a director immediately after the completion of the annual general meeting (as the case requires).

5.3 Directors who are appointed, or whose appointment is confirmed, at an annual general meeting take office immediately after the completion of the meeting.

5.4 Unless the office of a director becomes vacant earlier under the Act or this constitution, the director holds office:

- (1) in the case of a Member Director appointed under rule 5.1(1) – until the completion of the fourth annual general meeting held after he or she takes office;
- (2) in the case of a Non-Member Director appointed under rule 5.1(2) – subject to rule 5.2, until the completion of the fourth annual general meeting held after he or she takes office, unless a shorter period is determined by the directors before the time of appointment under rule 5.1(2);
- (3) in the case of a director appointed under rule 7 – subject to rule 5.2, until the completion of the annual general meeting upon completion of which the director who created the casual vacancy would have ceased to hold office; and
- (4) in the case of a director appointed under rule 8 – until the completion of the next annual general meeting;

and is eligible for re-election at that annual general meeting.

6. Election of member directors

[compare section 201E]

- 6.1 Each candidate for election as a Member Director must be qualified to be a Member Director and must be nominated by a member. A member may nominate themselves.
- 6.2 A nomination of a candidate for election must be:
- (1) in writing;
 - (2) in the form prescribed by the directors (if any);
 - (3) signed by the candidate; and
 - (4) signed by the proposer.
- 6.3 A nomination of a candidate for election must be received at the registered office of the Company not later than the first day of September immediately prior to the annual general meeting at which the results of the election are to be declared.
- 6.4 A nomination of a candidate for election will be invalid unless all Charges presently payable by:
- (1) if the candidate is a member – the candidate; or
 - (2) if the candidate is an authorised representative of a member which is a body corporate – the body corporate;
- have been paid on or before the date on which the nomination of the candidate for election is received at the registered office of the Company.
- 6.5 If the number of candidates for election as Member Directors is equal to or less than the number of vacancies on the board for Member Directors, at the next annual general meeting, those candidates must be declared by the chair of the meeting to be duly elected as Member Directors.
- 6.6 If the number of candidates for election as Member Directors is greater than the number of vacancies on the board for Member Directors, a postal ballot must be held for the election of the candidates.
- 6.7 The returning officer for a postal ballot must be the secretary or the secretary's nominee.
- 6.8 Each ballot paper must include the names of all candidates. The returning officer must determine the order in which the names of the candidates will appear on the ballot paper by drawing lots.
- 6.9 At least 21 days before the closing of the postal ballot, each member entitled to vote on the election of Member Directors must be given one ballot paper for each vote the member is entitled to exercise by sending the ballot paper by post to the address for the member in the register of members.
- 6.10 If a share is held jointly, a ballot paper need only be given to one of the members, being the joint member named first in the register of members.
- 6.11 In a postal ballot, each Member entitled to vote may vote for a number of candidates under an optional preferential system.
- 6.12 To cast a valid vote, a member's ballot paper must:
- (1) be completed in accordance with any instructions which accompanied the ballot paper; and

- (2) be received by the Company at the place, and before the time and date, specified by the Company for the purpose.
- 6.13 As soon as practicable after the closing of the postal ballot, the returning officer must supervise the counting of the votes, applying an optional preferential system.
- 6.14 At the next annual general meeting after the postal ballot is held, the candidates elected in the postal ballot must be declared by the chair of the meeting to be elected as Member Directors.
- 6.15 The directors may determine rules, not inconsistent with this constitution, in relation to the conduct of postal ballots.

Appointment of directors between AGMs

7. Casual vacancies

[compare replaceable rules 201G and 201H]

- 7.1 The directors may:
 - (1) appoint a person qualified to be a director; or
 - (2) determine that a postal ballot be held;to fill a casual vacancy.

8. Insufficient directors

[compare replaceable rule 201H]

- 8.1 In the event of a vacancy in the office of a director, the remaining directors may act, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

Powers of directors

9. Validation of acts of directors and secretaries

[compare sections 201M and 204E]

- 9.1 An act done by a director or secretary is effective even if his or her appointment, or the continuance of his or her appointment, is invalid because the Company, the director or secretary did not comply with this constitution or any provision of the Act.
- 9.2 Rule 9.1 does not deal with the question whether an effective act by a director or secretary:
 - (1) binds the Company in its dealings with other people; or
 - (2) makes the Company liable to another person.

10. General business management

[compare replaceable rule 198A]

- 10.1 The business of the Company is to be managed by or under the direction of the directors.
- 10.2 The directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.

- 10.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.

11. Borrowing powers

- 11.1 Without limiting the generality of rule 10, the directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

12. Appointment of attorney

- 12.1 The directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- 12.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

13. Negotiable instruments

[compare replaceable rule 198B]

- 13.1 Any two directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 13.2 The directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

14. Delegation

[compare replaceable rule 198D]

- 14.1 Subject to rule 14.2, the directors may delegate any of their powers to:
- (1) a committee of directors;
 - (2) a director;
 - (3) an employee of the Company; or
 - (4) any other person;
- and may revoke the delegation.
- 14.2 The directors may not delegate their powers to make Key Decisions.
- 14.3 The delegate must exercise the powers delegated in accordance with any directions of the directors.
- 14.4 The exercise of the power by the delegate is as effective as if the directors had exercised it.

15. Committee of directors

- 15.1 The meetings and proceedings of any committee of directors are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.

Removal and resignation of directors

16. Removal of directors

[compare section 203D]

- 16.1 Subject to the Act, the Company may by resolution remove a director from office.

17. Resignation of director

[replaceable rule 203A]

- 17.1 A director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office.

18. Vacation of office of director

[compare section 203B and Part 2D.6, being sections 206A and 206H]

- 18.1 In addition to any other circumstances in which the office of a director becomes vacant under the Act the office of a director becomes vacant if the director:
- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
 - (2) 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;
 - (3) is not present at any meetings of directors in any consecutive period of six months without special leave of absence from the directors and the directors declare his or her seat to be vacant;
 - (4) ceases to be qualified as a director under rule 4;
 - (5) becomes disqualified from being a director under the Act or any order made under the Act;
 - (6) is removed from office in accordance with rule 16;
 - (7) resigns from office in accordance with rule 17;
 - (8) is adjudicated to have contravened the Act, or the director's duties, as a director of the Company;
 - (9) is convicted of any criminal offence with a maximum penalty greater than 100 penalty units or 12 months' imprisonment;
 - (10) is incapable, by reason of injury or illness, of performing the director's duties as a director of the Company for a period exceeding sixty days in any period of twelve months;
 - (11) subject to rule 24, without the consent of the Company given by resolution in general meeting, becomes an employee of the Company; or
 - (12) is a member director and any Charges presently payable by:

- (a) if the member director is a member – the member director; or
- (b) if the member director is an authorised representative of a member which is a body corporate – the body corporate;

are not paid at least 72 hours before a general meeting and the member director or the body corporate (as the case may be) is not entitled to vote at the general meeting because of rule 73.4.

Directors' interests

19. Prohibition on being present or voting

[compare section 195]

- 19.1 Except where permitted by the Act, a director who has a material personal interest in a matter that is being considered at a meeting of directors:
- (1) must not be counted in a quorum;
 - (2) must not vote on the matter; and
 - (3) must not be present while the matter is being considered at the meeting.

20. Director to disclose interests

[compare section 191]

- 20.1 A director who has a material personal interest in a matter that relates to the affairs of the Company (**interest**) must give the other directors notice of the interest as soon as practicable after the director becomes aware of the interest, in the manner required by section 191(3) of the Act.
- 20.2 The requirements of rule 20.1 are subject to the limitations and qualifications set out in section 191 of the Act.
- 20.3 A director may enter into, or be interested in, a contract, arrangement or understanding between the director and the Company, and notwithstanding the director's position as director of the Company:
- (1) the contract, arrangement or understanding is valid and effective; and
 - (2) the director is not liable, by reason only of the director's position as director of the Company or the director's fiduciary duty owed to the Company, to account to the Company for any profit obtained by the director under the contract, arrangement or understanding.
- 20.4 Nothing in this rule 20 imposes a greater duty of disclosure on a director than section 191 of the Act and disclosure in accordance with this rule 20 is sufficient for all purposes despite any rule of general law with respect to disclosure of directors' interests.

21. Standing notice of interest

[compare section 192]

- 21.1 A director who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.

21.2 A notice under rule 21.1 may be given:

- (1) at a directors' meeting (either orally or in writing); or
- (2) to the other directors individually in writing.

21.3 If the standing notice is given to the other directors individually in writing:

- (1) the notice is effective when it has been given to every director; and
- (2) the notice must be tabled at the next directors' meeting after it is given.

21.4 The director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

22. Other directorships and shareholdings

22.1 A director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

22.2 Subject to the Act:

- (1) the directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (2) any director of the Company may vote at a meeting of directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that director as a director or other officer of the other company;
- (3) any director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that director as a director or other officer of the other company; and
- (4) a director of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the director to any other office in the other company and a resolution appointing any other directors of the Company as directors or other officers of the other company.

23. Directors must not be employees

23.1 Other than in accordance with rule 24, no director may be an employee of the Company.

24. Temporary executive director

24.1 If the general manager of the Company is unable to perform his or her functions in that capacity for any reason, the directors may appoint:

- (1) the chairman of directors; or
- (2) if the chairman of directors refuses or is unable to accept the appointment, a director;

to act temporarily as an executive director to perform the functions of the general manager in his or her absence.

24.2 No appointment under rule 24.1 may extend beyond the earlier of:

- (1) three months after the date of the appointment;
- (2) the date the general manager recommences his or her functions; and
- (3) the date on which a new general manager is appointed.

24.3 If an appointment expires under rule 24.2(1), rule 24.1 applies.

24.4 The remuneration of the temporary executive director (if any) will be determined by the directors, but must not exceed the remuneration (pro rata for the duration of the appointment) paid to the general manager.

Remuneration of directors

25. Payment of remuneration

[compare replaceable rule 202A(1)]

25.1 The directors (including the chairman of directors) are to be paid the remuneration that the Company determines by resolution.

25.2 The remuneration of directors accrues daily.

25.3 The expression “remuneration” in rule 25 does not include any amount which may be paid by the Company under rules 26, 28 or 33.

26. Payment of expenses

[compare replaceable rule 202A(2)]

26.1 The Company may also pay the directors’ travelling and other expenses that they properly incur:

- (1) in attending directors’ meetings or any meetings of committees of directors;
- (2) in attending any general meetings of the Company; and
- (3) in connection with the Company’s business.

27. Information about directors’ remuneration

[compare section 202B]

27.1 If required by the Act, the Company must comply with a direction by members to disclose the remuneration paid to each director by the Company (whether paid to the director in his or her capacity as a director or another capacity).

28. Payment for extra services

28.1 Subject to the Act, any director called upon to:

- (1) perform extra services; or
- (2) undertake any executive or other work for the Company beyond his or her general duties;

may be remunerated either by a fixed sum or a salary as determined by the directors.

- 28.2 Remuneration under rule 28.1 may be either in addition to or in substitution for the director's remuneration provided by rule 25.

29. Cancellation, suspension, reduction or postponement

- 29.1 The Company may by resolution cancel, suspend, reduce or postpone payment of any remuneration of any director.

30. Financial benefit

[compare Chapter 2E – sections 208 and following]

- 30.1 A director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the director or to any other related party of the director.
- 30.2 The Company must not make loans to directors or provide guarantees or security for obligations undertaken by directors except as may be permitted by the Act.

Secretary

[compare Part 2D.4 being sections 204A to 204G]

31. Terms of office of secretary

[compare section 204D]

- 31.1 A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.
- 31.2 A secretary may attend all directors' meetings and meetings of members and may be heard on any matter.

Indemnity and insurance

32. Indemnity

[compare section 199A]

- 32.1 To the extent permitted by the Act, the Company indemnifies:
- (1) every person who is or has been an officer of the Company; and
 - (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;
- against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be), except to the extent that the person is indemnified under any contract of insurance and is able to claim.
- 32.2 In accordance with section 199A of the Act, the Company must not indemnify a person against:
- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;

- (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 32.2(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 32.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for the court order.

- (3) For the purposes of rule 32.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

32.3 An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under rule 32.1;
- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

32.4 In rule 32.3 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 32.4(1) or 32.4(2) may be initiated.

32.5 The benefit of any indemnity given under this rule 32 survives subsequent modification or deletion of this rule 32 in relation to any liability arising from any fact or action occurring prior to that modification or deletion.

33. Insurance

[compare section 199B]

33.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or 183 of the Act.

34. Director voting on contract of indemnity or insurance

[compare sections 191 and 195]

34.1 Despite anything in this constitution, a director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance merely because the contract indemnifies or insures or would indemnify or insure the director against a liability incurred by the director as an officer of the Company or of a related body corporate.

35. Liability

35.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

36. Meaning of “officer”

36.1 For the purposes of rules 32, 33, 34 and 35, **officer** means a director or secretary.

Inspection of records

37. Rights of inspection

[compare replaceable rule 247D and sections 173, 198F, 247A and 251B]

37.1 The directors, or the Company by a resolution passed at a general meeting, may authorise a member to inspect books of the Company.

37.2 A member other than a director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its members and for resolutions of members passed without meetings, except as provided by law or authorised by the directors or by the Company in general meeting.

37.3 Directors have the rights of inspection and access provided by section 198F of the Act.

38. Confidential information

38.1 Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Directors' meetings

[compare sections 248A to 248G]

39. Circulating resolutions

[compare replaceable rule 248A]

39.1 The directors may pass a resolution without a directors' meeting being held if a number of directors who would be sufficient to constitute a quorum at a directors' meeting:

- (1) sign a document containing a statement that they are in favour of the resolution set out in the document; or
- (2) give notice by electronic mail to the Company that they are in favour of the resolution set out in the notice.

39.2 For resolutions passed in accordance with rule 39.1(1):

- (1) separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy;
- (2) the resolution is passed when the last director sufficient to constitute a quorum signs; and
- (3) a facsimile addressed to or received by the Company and purporting to be signed or sent by a director for the purpose of this rule 39.1(1) must be treated as a document in writing signed by that director.

39.3 For resolutions passed in accordance with rule 39.1(2):

- (1) the wording of the resolution set out in the notice given by each of the directors must be identical; and
- (2) the resolution is passed when the notice is received by the Company from the last director sufficient to constitute a quorum.

40. Meetings of directors

40.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

41. Calling directors' meetings

[compare replaceable rule 248C]

41.1 A director may at any time, and a secretary must on the requisition of a director, call a meeting of the directors.

42. Notice of meeting

[compare replaceable rule 248C]

42.1 Reasonable notice of every directors' meeting must be given to each director except that it is not necessary to give notice of a meeting of directors to any director who:

- (1) has been given special leave of absence; or
- (2) is absent from Australia and has not left a facsimile number at which he or she may be given notice.

42.2 A notice of a meeting of directors may be given in writing or orally, by facsimile, telephone, electronic mail or any other means of communication.

43. Waiver of notice

43.1 All resolutions of the directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all directors if each director to whom notice was not given subsequently agrees to waive the notice.

44. Technology meeting of directors

[compare section 248D]

44.1 A directors' meeting may be held using telephone or, if consented to by all directors, other technology. The consent may be a standing one. A director may only withdraw the consent within a reasonable period before the meeting.

44.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

44.3 The following provisions apply to a technology meeting:

- (1) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part in the meeting; and
- (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.

44.4 If the secretary is not present at a technology meeting one of the directors present must take minutes of the meeting.

44.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.

44.6 A director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that director has previously obtained the express consent of the chair to leave the meeting.

45. Chairing directors' meetings

[compare replaceable rule 248E]

- 45.1 The directors must elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.
- 45.2 The directors may elect up to two directors as deputy chairmen who in the absence of the chair at a meeting of the directors may exercise all the powers and authorities of the chair.
- 45.3 The directors must elect a director present to chair a meeting if neither the chairman of directors nor a deputy chairman is present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act for the meeting or the part of the meeting.

46. Quorum

[compare replaceable rule 248F]

- 46.1 The quorum for a directors' meeting is a majority of the directors entitled to vote or a different number determined by the directors. The quorum must be present at all times during the meeting.

47. Passing of directors' resolutions

[compare replaceable rule 248G]

- 47.1 A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- 47.2 The chair does not have a casting vote in addition to any vote he or she has as a director.

Meetings of members

48. Calling of general meeting

[compare replaceable rule 249C and section 249D]

- 48.1 A director may call a meeting of the Company's members.
- 48.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.
- 48.3 Except as provided in the Act, no member or members may call a general meeting.

49. Amount of notice of meeting

[compare section 249H]

- 49.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

50. Persons entitled to notice of general meeting

[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]

- 50.1 Written notice of a meeting of the Company's members must be given individually to:
 - (1) each member;
 - (2) each director;

- (3) the Company's auditor; and
- (4) subject to rule 51.1, every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his or her death or bankruptcy, would be entitled to receive notice of the meeting.

50.2 No other person is entitled to receive notice of general meetings.

50.3 If a share is held jointly, notice need only be given to one of the members, being the joint member named first in the register of members.

51. Notice upon transmission

51.1 A person entitled to a share in consequence of the death or bankruptcy of a member is not entitled to notice of meetings until the person has produced all information as to the person's entitlement to the share that the directors properly require.

51.2 A notice may be given by the Company to a person entitled to a share in consequence of the death or bankruptcy of a member:

- (1) by serving it on the person personally; or
- (2) by sending it to the person by post addressed to the person by name, or by the title of representative of the deceased or assignee of the bankrupt, or by any like description:
 - (a) at the address (if any) in Australia supplied for the purpose by the person; or
 - (b) if an address has not been supplied, at the address to which the notice might have been sent if the death or bankruptcy had not occurred.

52. How notice is given

[compare sections 249J(3) and 249J(3A)]

52.1 The Company may give the notice of meeting to a member:

- (1) personally;
- (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
- (3) by sending it to the facsimile number or electronic address (if any) nominated by the member;
- (4) by sending it by other electronic means (if any) nominated by the member; or
- (5) by notifying the member in accordance with rule 52.2.

52.2 If the member nominates:

- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

the Company may give the member notice of the meeting by notifying the member (using the nominated notification means):

- (3) that the notice of meeting is available; and

- (4) how the member may use the nominated access means to access the notice of meeting.

53. When notice is given

[compare replaceable rules 249J(4) and 249j(5)]

- 53.1 A notice of meeting sent by post is taken to be given three days after it is posted.
- 53.2 Except as provided by rule 53.3, a notice of meeting given to a member under rule 52.1(3) is taken to be given on the business day after it is sent.
- 53.3 A notice of meeting given to a member under rule 52.1(3) is not effective if:
- (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
 - (2) in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
 - (3) in either case, the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- 53.4 A notice of meeting given to a member under rule 52.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.
- 53.5 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 53 is conclusive evidence of the matter.

54. Period of notice

- 54.1 Subject to the Act and this constitution, where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

55. Contents of notice

[compare section 249L]

- 55.1 A notice of a general meeting must:
- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used);
 - (2) state the general nature of the meeting's business;
 - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
 - (4) be worded and presented in a clear, concise and effective manner; and
 - (5) contain a statement setting out the following information:
 - (a) that the member has a right to appoint a proxy;
 - (b) that the proxy need not be a member of the Company; and
 - (c) that a member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

56. Constructive notice

- 56.1 Every person who by operation of law, transfer or any other means becomes entitled to any share is bound by every notice in respect of the share which, before his or her name and address is entered on the register of members, has been duly given to the person from whom he or she derives title or to any previous holder of the share.

57. Notice of adjourned meeting

[replaceable rule 249M]

- 57.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

58. Accidental omission to give notice

[compare section 1322(3)]

- 58.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not automatically invalidate the proceedings at or any resolution passed at the meeting.

59. Postponement of general meeting

- 59.1 The directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 59.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 61.3 or rule 62.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

60. Technology

[section 249S]

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

61. Quorum

[compare replaceable rule 249T]

- 61.1 The quorum for a meeting of the Company's members is either:

- (1) half of the Member Directors plus 10 other members; or
- (2) 50 members;

and the quorum must be present at all times during the meeting.

- 61.2 In determining whether a quorum is present, individuals attending as proxies, attorneys or body corporate representatives are counted. However, if a member has appointed more than one proxy, attorney or representative, only one of them is counted. If an individual is attending both as a member and as a proxy, attorney or body corporate representative, the individual is counted only once.

- 61.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:

- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
- (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify one or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;
 - (b) if the time is not specified – the same time; and
 - (c) if the place is not specified – the same place.

61.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

62. Chair at general meetings

[compare replaceable rule 249U]

- 62.1 Subject to rule 62.2, if the directors have appointed one of their number as chair of their meetings, the person appointed presides as chair at every general meeting.
- 62.2 Where a general meeting is held and either a chair has not been appointed as referred to in rule 62.1 or the chair is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act:
- (1) the directors present may appoint one of their number to be chair of the meeting; and
 - (2) in default of the directors doing so, the members present must appoint another director, or if no director is present or willing to act then the members present may appoint any one of their number, to be chair of the meeting.
- 62.3 The chair must adjourn a meeting of the Company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

63. Business at adjourned meetings

[replaceable rule 249W(2)]

- 63.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Proxies and body corporate representatives

64. Who can appoint a proxy

[compare mandatory rule 249X]

- 64.1 A member who is entitled to attend and cast a vote at a meeting of the Company's members or at a meeting of the holders of a class of shares may appoint an individual or a body corporate as the member's proxy to attend and vote for the member at the meeting. The proxy need not be a member.
- 64.2 The appointment may specify the proportion or number of votes that the proxy may exercise.
- 64.3 If the member is entitled to cast two or more votes at the meeting, the member may appoint two proxies. If the member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.
- 64.4 Any fractions of votes resulting from the application of rule 64.2 or rule 64.3 are disregarded.

65. Rights of proxies

[compare section 249Y]

65.1 A proxy appointed to attend and vote for a member has the same rights as the member:

- (1) to speak at the meeting;
- (2) to vote (but only to the extent allowed by the appointment); and
- (3) to join in a demand for a poll.

65.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

65.3 A proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

65.4 A proxy may be revoked at any time by notice in writing to the Company.

66. When proxy form must be sent to all members

[section 249Z]

66.1 If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (1) if the member requested the form or list – the Company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (2) otherwise – the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

67. Appointing a proxy

[compare section 250A and Corporations Regulations 2001 reg 2G.2.01]

67.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001* (Cth), and in rules 67.2 and 67.3) by the member making the appointment and contains the following information:

- (1) the member's name and address;
- (2) the Company's name;
- (3) the proxy's name or the name of the office held by the proxy; and
- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

67.2 An electronically authenticated appointment of a proxy must in addition to rule 67.1:

- (1) include a method of identifying the member; and
- (2) include an indication of the member's approval of the information communicated.

67.3 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:

- (1) the member must be identified by personal details such as the member's name, personal address and date of birth; and
- (2) the member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

67.4 An undated appointment is taken to have been dated on the day it is given to the Company.

67.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (2) if the proxy has two or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
- (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
- (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this rule 67.5 does not affect the way that the person can cast any votes the person holds as a member.

67.6 An appointment does not have to be witnessed.

67.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

68. Form of proxy sent out by Company

68.1 A form of proxy sent out by the Company may be in a form determined by the directors but must:

- (1) enable the member to specify the manner in which the proxy must vote in respect of a particular resolution; and
- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.

68.2 The form may provide that if the member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.

69. Receipt of proxy documents

[compare section 250B]

69.1 For an appointment of a proxy for a meeting of the Company's members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

- (1) the proxy's appointment; and
- (2) if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.

- 69.2 If a meeting of the Company's members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- 69.3 The Company receives an appointment or authority:
- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic address specified for the purpose in the notice of meeting; or
 - (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Company and complies with rules 67.2 and 67.3.
- 69.4 An appointment of a proxy is ineffective if:
- (1) the Company receives either or both the appointment or authority at a facsimile number or electronic address; and
 - (2) a requirement (if any) in the notice of meeting that:
 - (a) the transmission be verified in a way specified in the notice; or
 - (b) the proxy produce the appointment and authority (if any) at the meeting;is not complied with.

70. Validity of proxy vote

[section 250C(1) and replaceable rule 250C(2)]

- 70.1 A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- 70.2 A vote cast by a proxy is valid although, before the proxy votes:
- (1) the appointing member dies;
 - (2) the member is mentally incapacitated;
 - (3) the member revokes the proxy's appointment;
 - (4) the member revokes the authority under which the proxy was appointed by a third party; or
 - (5) the member transfers the share in respect of which the proxy was given;
- unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

71. Body corporate representative

[section 250D]

71.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (1) at meetings of the Company's members;
- (2) at meetings of creditors or debenture holders;
- (3) relating to resolutions to be passed without meetings; or
- (4) in the capacity of a member's proxy appointed under rule 64.

The appointment may be a standing one.

71.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

71.3 A body corporate may appoint more than one representative but only one representative may exercise the body's powers at any one time.

71.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

72. Attorney of member

72.1 An attorney for a member may do whatever the member could do personally as a member, but if the attorney is to vote at a meeting of members or a class of members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

Voting at meetings of members

73. How many votes a member has

[compare replaceable rule 250E]

73.1 Subject to rule 95.10:

- (1) on a show of hands at a meeting of members, each member has one vote; and
- (2) in a postal ballot or on a poll at a meeting of members, each member has one vote for each Landholding of which the member is the registered proprietor, irrespective of the number of shares held by the member.

73.2 For the purposes of rule 73.1(2), "Landholding" includes a parcel of land which had a separate distinctive Landholding Reference Number as at 3 March 1995 and has been subsequently amalgamated with another Landholding.

73.3 At a meeting of members, the vote may be exercised in person or by proxy, body corporate representative or attorney.

73.4 A member is not entitled to:

- (1) receive a ballot paper or vote in a postal ballot unless, at least 72 hours before the ballot papers are sent to members; or

- (2) vote at a general meeting unless, at least 72 hours before the general meeting; the member has paid all Charges presently payable by the member.

74. Jointly held shares

[compare replaceable rule 250F]

- 74.1 If a share is held jointly and more than one member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.
- 74.2 Rule 74.1 applies whether the vote is cast in person or by proxy or by attorney.
- 74.3 Several executors or administrators of a deceased member are treated, for the purposes of rule 74.1, as joint holders.

75. Objections to right to vote

[compare replaceable rule 250G]

- 75.1 A challenge to a right to vote at a meeting of members:
- (1) may only be made at the meeting; and
 - (2) must be determined by the chair, whose decision is final.
- 75.2 A vote not disallowed following the challenge is valid for all purposes.

76. Votes need not all be cast in the same way

[section 250H]

- 76.1 On a poll a person voting who is entitled to two or more votes:
- (1) need not cast all the votes; and
 - (2) may cast the votes in different ways.

77. How voting is carried out

[compare replaceable rule 250J, section 251A]

- 77.1 A resolution put to the vote at a meeting of the Company's members must be decided on a show of hands unless a poll is demanded.
- 77.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 77.3 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

78. Matters on which a poll may be demanded

[compare section 250K]

- 78.1 A poll may be demanded on any resolution.
- 78.2 A demand for a poll may be withdrawn.

79. When a poll is effectively demanded

[compare section 250L]

79.1 At a meeting of the Company's members, a poll may be demanded by:

- (1) at least 5 members entitled to vote on the resolution;
- (2) a member or members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (3) the chair.

79.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or
- (3) immediately after the voting results on a show of hands are declared.

79.3 The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.

80. When and how polls must be taken

[compare replaceable rule 250M]

80.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

80.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.

80.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

80.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

81. Chair's casting vote

[compare replaceable rule 250E(3)]

81.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting does not have a casting vote.

82. Voting rights of persons entitled under transmission rule

82.1 A person entitled under the transmission rule (rule 105) to any shares may not vote at a meeting or adjourned meeting in respect of the shares unless:

- (1) 48 hours at least before the time of holding the meeting or adjourned meeting there is lodged at the registered office of the Company documentation of entitlement which satisfies the chair of the meeting or adjourned meeting of the entitlement; or
- (2) the directors have previously admitted the person's right to vote at the meeting in respect of the shares.

Annual general meeting

[compare section 250N]

83. Business of an annual general meeting

[compare sections 250R, 250S and 250T]

- 83.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- (1) the consideration of the annual financial report, directors' report and auditor's report;
 - (2) the election of directors;
 - (3) the appointment of the auditor; and
 - (4) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

- 83.2 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.
- 83.3 The chair of the annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 83.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

84. Resolutions proposed by members

[compare sections 249N and 249O]

- 84.1 A member may not at any meeting move any resolution relating to special business unless:
- (1) members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and two months has elapsed since the notice was given; or
 - (2) the resolution has previously been approved by the directors.

Minutes

85. Minutes to be kept

[compare section 251A]

- 85.1 The directors must keep minute books in which they record within one month:
- (1) proceedings and resolutions of meetings of the Company's members;
 - (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
 - (3) resolutions passed by members without a meeting; and

- (4) resolutions passed by directors without a meeting.
- 85.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
- (1) the chair of the meeting; or
 - (2) the chair of the next meeting.
- 85.3 The directors must ensure that minutes of the passing of a resolution without a meeting are signed by a director within a reasonable time after the resolution is passed.
- 85.4 Without limiting rule 85.1 the directors must record in the minute books:
- (1) all appointments of officers;
 - (2) the names of the directors present at all meetings of directors and the Company;
 - (3) in the case of a technology meeting, the nature of the technology; and
 - (4) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

Accounts, audit and records

86. Accounts

[compare sections 285-297, 314-317]

- 86.1 The directors must cause proper accounting and other records to be kept in accordance with the Act.
- 86.2 The directors must distribute copies of every profit and loss account and balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.

87. Audit

[compare sections 301, 327-331]

- 87.1 A registered company auditor must be appointed.
- 87.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

Shares

88. Qualification to hold shares

- 88.1 Subject to rule 88.2, shares may only be issued or transferred to a person who:
- (1) holds Delivery Entitlements; and
 - (2) is the registered proprietor of a Landholding or a parcel of land within a Joint Water Supply Scheme.
- 88.2 Rule 88.1 does not prevent or restrict the Company from carrying out a share capital reduction or share buy-back.

89. Control of issue of shares

[compare sections 254A and 254B]

- 89.1 Subject to the Act, the issue of shares in the Company is under the control of the directors.
- 89.2 Subject to the Act and this rule 89, the directors may issue shares to persons at times and on terms and conditions the directors see fit.
- 89.3 No preference shares may be issued by the Company.
- 89.4 No partly-paid shares may be issued by the Company.

90. Ordinary shares

- 90.1 All shares of the Company which are not issued upon special terms and conditions are fully paid ordinary shares and confer on the holders the right to attend meetings of the Company and to exercise the number of votes determined under rule 73.

91. Right to lien

- 91.1 The Company has a paramount lien on all shares registered in the name of a member (whether solely or jointly with others) for all money presently payable by the member or the member's estate to the Company.
- 91.2 The directors may at any time exempt a share wholly or in part from the provisions of this rule 91.

92. Imposition of a liability

- 92.1 This rule 92 applies where any law for the time being of any country, State or place:
- (1) imposes or purports to impose any immediate or future or possible liability upon the Company to make any payment in respect of a member; or
 - (2) empowers any government or taxing authority or government official to require the Company to make any payment in respect of a share registered in the register of members as held either jointly or solely by a member or in respect of any money which is or may become due or payable or is accruing due to the member by the Company on or in respect of the share;

whether in consequence of:

- (3) the death of the member;
 - (4) the liability of the member for income tax or other tax;
 - (5) the liability of the executor or administrator of the member or of the member's estate for any estate, probate, succession, death, stamp or other duty; or
 - (6) anything else.
- 92.2 If any liability contemplated by rule 92.1 is imposed on the Company, the Company:
- (1) must be fully indemnified by the member or the member's executor or administrator from all liability;
 - (2) has a paramount lien upon all shares registered in the register of members as held either jointly or solely by the member and upon all money payable in respect of the

shares for any liability arising under that law and for any amount paid in complete or partial satisfaction of the liability and for interest on any amount so paid at the rate per annum set by the directors from the date of payment to the date of repayment; the Company may deduct from or set off against the money payable any money so paid or payable by the Company together with interest;

- (3) may recover as a debt due from the member or the member's executor or administrator wherever situated any money paid by the Company under that law and interest at the rate and for the period referred to in rule 92.2(2) in excess of any money then due or payable by the Company to the member; and
- (4) may, if the money is paid or payable by the Company under that law, refuse to register a transfer of the shares by the member or the member's executor or administrator until the money with interest is set off or deducted or where that amount exceeds the amount of the money then due or payable by the Company to the member, until the excess is paid to the Company.

92.3 This rule 92 does not affect any right or remedy which that law may confer on the Company and the right or remedy is enforceable by the Company against the member and the member's executors, administrators and estate wherever situated.

93. Sale of shares the subject of lien

93.1 Subject to rule 93.2, the Company may sell, in the manner the directors see fit, any shares on which the Company has a lien.

93.2 A share on which the Company has a lien may not be sold unless:

- (1) a sum in respect of which the lien exists is presently payable; and
- (2) the Company has, not less than 14 days before the date of the sale, given to the registered holder for the time being of the share or the person entitled to the share by reason of the death or bankruptcy of the registered holder a notice in writing setting out, and demanding payment of, the sum presently payable in respect of which the lien exists.

93.3 To give effect to a sale of shares under rule 93, the directors may authorise a person to transfer the shares sold to the purchaser of the shares.

93.4 The Company must register the purchaser as the holder of the shares comprised in the transfer and the purchaser is not bound to see to the application of the purchase money.

93.5 The title of the purchaser to the shares is not affected by any irregularity or invalidity in connection with the sale.

93.6 The proceeds of a sale under rule 93 must be applied by the Company as follows:

- (1) in payment of the sum presently payable in respect of which the lien existed;
- (2) if there was a lien on the shares for sums not presently payable, the Company may retain any residue of the proceeds of sale and apply the residue to pay those sums when they become presently payable;
- (3) subject to rule 93.6(2), the Company must pay the residue to the person entitled to the shares immediately before the sale.

94. Surrender of shares

94.1 The directors may accept the surrender of any paid-up share by way of compromise of any question as to the holder being properly registered in respect of the share. Any share so surrendered may be disposed of in the same manner as a forfeited share.

95. Cancellation of shares

95.1 If:

- (1) a member does not hold, or no longer holds, any Delivery Entitlements; or
- (2) a member is not, or is no longer, the registered proprietor of a Landholding or a parcel of land within a Joint Water Supply Scheme;

the member, by this rule 95.1, applies for, and authorises, the cancellation of the member's shares and the member cannot alter or withdraw this application and authorisation without the prior written agreement of the Company. If requested by the Company, the member must do all things (including executing or producing documents, getting documents executed or produced by others and obtaining consents) necessary or desirable to give full effect to this application and authorisation and the transactions contemplated by it.

95.2 If:

- (1) a member does not hold, or no longer holds, any Delivery Entitlements; or
- (2) a member is not, or is no longer, the registered proprietor of a Landholding or a parcel of land within a Joint Water Supply Scheme;

the member, by this rule 95.2, irrevocably appoints the secretary to be the member's attorney until the shares are cancelled.

95.3 The secretary may do in the name of the member and on the member's behalf everything necessary or expedient, in the secretary's sole discretion, to cancel the shares including the following:

- (1) exercise any rights attaching to the shares, including rights to appoint a proxy or representative, rights to attend and speak at meetings of members and agree to them being called on short notice, and voting rights;
- (2) exercise any powers the member has in the member's capacity as the registered holder of the shares; and
- (3) do any other act or thing in respect of the shares or the Company.

95.4 The secretary may:

- (1) appoint or remove any substitute, delegate or sub-attorney at any time; and
- (2) exercise his or her powers under rule 95.3:
 - (a) in his or her own name or in the name of the member; and
 - (b) even if he or she benefits from the exercise of the power.

95.5 The member declares that all acts and things done by the secretary and his or her substitutes, delegates and sub-attorneys in exercising powers under this rule 95 will be as good and valid as if they had been done by the member and agrees to ratify and confirm whatever the secretary and his or her substitutes, delegates and sub-attorneys do in exercising their powers under this rule 95.

- 95.6 If the secretary requests, the member must execute an instrument confirming the appointment of the secretary as the member's attorney with the rights and powers set out in rule 95.3.
- 95.7 The appointment under this rule 95 is exclusive and the secretary has authority to represent the member in respect of the shares to the exclusion of the member. The member is not permitted to interfere with the secretary's exercise of his or her rights as attorney (whether by casting a vote, attending meetings or otherwise).
- 95.8 The member declares that the powers granted to the secretary under this rule 95 are given for valuable consideration and are irrevocable until the shares are cancelled.
- 95.9 The Company must seek member approval in accordance with the Act for any reduction in share capital arising in connection with the cancellation of any shares under this rule 95.
- 95.10 Despite rule 73.1, on any resolution with respect to the cancellation of a member's shares which must, under subsection 256C(2) of the Act, be approved by a special resolution passed at a meeting of the members whose shares are to be cancelled, the member has, on a show of hands, one vote and, on a poll, one vote. Subject to rule 95.7, the votes may be exercised in person or by proxy, body corporate representative or attorney.

96. Joint holders

- 96.1 Where two or more persons who are parties to a Joint Water Supply Scheme are registered as the holders of a share, the Company is not bound to treat them other than as tenants in common in equal shares, subject to rule 96.3 and to the following:
- (1) the Company is not bound to register more than three persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the share;
 - (2) the joint holders of the share are liable severally as well as jointly in respect of all payments which ought to be made in respect of the share;
 - (3) on the death of any one of the joint holders, rules 105.1 to 105.4 apply, but the directors may require such evidence of death as they see fit;
 - (4) any one of the joint holders may give effective receipts for any bonus or return of capital payable to the joint holders; and
 - (5) only the person whose name stands first in the register of members as one of the joint holders of the share is entitled to delivery of the certificate relating to the share or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.
- 96.2 Except as provided in rule 96.1, where two or more persons are registered as the holders of a share, the Company is not bound to treat them other than as holding the share as joint tenants with benefits of survivorship, subject to rule 96.3 and to the following:
- (1) the Company is not bound to register more than three persons (not being the trustees, executors or administrators of a deceased holder) as the holder of the share;
 - (2) the joint holders of the share are liable severally as well as jointly in respect of all payments which ought to be made in respect of the share;
 - (3) on the death of any one of the joint holders, the survivor or survivors are the only person or persons recognised by the Company as having any title to the share, but the directors may require such evidence of death as they see fit;
 - (4) any one of the joint holders may give effective receipts for any bonus or return of capital payable to the joint holders; and

- (5) only the person whose name stands first in the register of members as one of the joint holders of the share is entitled to delivery of the certificate relating to the share or to receive notices from the Company and a notice given to that person must be treated as notice to all the joint holders.

96.3 Where three or more persons are registered holders of a share in the register of members (or a request is made to register more than three persons) only the first three named persons are regarded as holders of the share and all other named persons must be disregarded for all purposes except in the case of executors or trustees of a deceased member.

Dividends and reserves

97. No dividends

[section 254T]

97.1 The Company must not pay a dividend.

98. Reserves

98.1 The directors may set aside Reserves, to be applied, at the discretion of the directors, for any purpose to which the Reserves may be properly applied, subject to satisfying the requirements of the Operating Licence.

98.2 Subject to rule 98.1, the directors may carry forward so much of the profits of the Company as they consider desirable without transferring those profits to a reserve.

Title to and transfer of shares

99. Entitlement to share certificates

[compare sections 1070B and 1070C]

99.1 Subject to rules 96.1(5) and 96.2(5), a person whose name is entered as a member in the register of members is entitled without payment to one certificate for the shares registered in the member's name or to several certificates in reasonable denominations.

99.2 A certificate must state:

- (1) the name of the Company and the fact that it is registered under the Act;
- (2) the number of the certificate;
- (3) the number and class of shares for which the certificate is issued; and
- (4) the amount unpaid on the shares.

100. Replacement of certificates

[compare section 1070D]

100.1 If any certificate or other document of title to shares is worn out or defaced the directors may, upon production of the certificate or document, order it to be cancelled and issue a new certificate in its place upon the conditions prescribed by the Act.

100.2 If any certificate or other document of title to shares is stolen, lost or destroyed then the directors must issue a duplicate of the certificate or document upon the conditions prescribed by the Act.

101. Recognition of ownership

- 101.1 Except as required by law, the Company is not bound to recognise a person as holding a share upon any trust.
- 101.2 The Company is not bound to recognise any equitable, contingent, future or partial interest or any other right in respect of a share except an absolute right of ownership in the registered holder.
- 101.3 Rule 101.2:
- (1) applies whether or not the Company has notice of the interest or right; but
 - (2) does not apply where the Company is bound to recognise the interest or right by another provision of this constitution or by law.

102. Transfer of shares

[compare section 1071B]

- 102.1 Subject to this constitution, a member may transfer all or any of the member's shares by instrument in writing in any form that the directors approve.

103. Registration of transfers – directors' discretion

[compare replaceable rule 1072G]

- 103.1 The directors may in their discretion refuse to register a transfer of shares if they consider that the refusal is in the best interests of the Company.
- 103.2 Without limiting rule 103.1, the directors must refuse to register a transfer that:
- (1) does not comply with rule 88.1 or any Entitlements Contract between the transferor and the Company;
 - (2) would give any member more than 5% by number of the issued shares; or
 - (3) would give any member a voting power of greater than 5%.

104. Registration of transfers – procedure

[compare replaceable rule 1072F]

- 104.1 A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.
- 104.2 Before a transfer of shares is registered:
- (1) the transfer must be lodged at the Company's registered office or any other place the directors allow;
 - (2) any fee payable on registration of the transfer must be paid; and
 - (3) the directors must be given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.
- 104.3 The directors may suspend the registration of transfers of shares in the Company for any periods they determine, not exceeding a total of 30 days in any one calendar year.
- 104.4 The directors may in their discretion dispense with any of the requirements of rule 104.2.

- 104.5 The instrument of transfer must be executed by or on behalf of both the transferor and the transferee.
- 104.6 All powers of attorney granted by members which may be used for the purpose of transferring shares and which are lodged, produced or exhibited to the Company are deemed as between the Company and the grantor of the powers to remain in full force and may be acted upon until express notice in writing of their revocation or of the death of the grantor is lodged at the registered office of the Company.
- 104.7 If a transfer is registered, the Company must retain the instrument of transfer for a period of seven years. If the directors refuse to register a transfer, the Company must return the instrument of transfer to the person requesting registration of the transfer.

105. Transmission of shares

[compare replaceable rules 1072A, 1072B and 1072D and section 1072C]

- 105.1 If a shareholder dies, and the shareholder is not a joint holder or rule 96.1 applies, the Company is not obliged to recognise anyone except the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.
- 105.2 If the person entitled to shares as the personal representative of a deceased shareholder or because of the bankruptcy or mental incapacity of a shareholder (**successor**) gives the directors the information they reasonably require to establish the successor's entitlement to be registered as holder of the shares:
- (1) the successor may:
 - (a) by giving a signed notice to the Company, elect to be registered as the holder of the shares; or
 - (b) by giving a completed transfer form to the Company, transfer the shares to another person; and
 - (2) the successor, whether or not registered as the holder of the shares, is entitled to the same rights, and is subject to the same liabilities, as if the successor were registered as holder of the shares.
- 105.3 On receiving an election under rule 105.2(1)(a), the Company must register the successor as the holder of the shares.
- 105.4 A transfer under rule 105.2(1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- 105.5 If a shareholder dies, and the shareholder is a joint holder and rule 96.1 does not apply, the Company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.
- 105.6 This rule 105 has effect subject to rule 88 and the *Bankruptcy Act 1966* (Cth).

Execution of documents

106. Common seal

- 106.1 The Company may have a common seal.

107. Share seal

[compare section 123(2)]

- 107.1 The Company may have a duplicate common seal. It must be a copy of the common seal with the words **duplicate seal**, **share seal** or **certificate seal** added.
- 107.2 Any certificate may be issued under the share seal.
- 107.3 The signature of any director or secretary and the share seal may be fixed to a certificate by some mechanical or other means but if the signatures are fixed by mechanical or other means, the certificate must bear evidence of examination by the auditor, or other person appointed for that purpose by the Company.
- 107.4 For the purposes of the rules 107.2 and 107.3 **certificate** means a certificate in respect of shares, debentures, registered unsecured notes, convertible notes, certificates of debenture or any certificate or other document evidencing any options or rights to take up shares or other interests in the Company.

108. Use of common seal

[compare sections 127(2) and 129(6)]

- 108.1 The directors must provide for the safe custody of the common seal.
- 108.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.
- 108.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) two directors of the Company; or
 - (2) a director and a secretary.

109. Execution of documents without common seal

[compare section 127(1) and 129(5)]

- 109.1 The Company may execute a document without using a common seal if the document is signed by:
- (1) two directors of the Company; or
 - (2) a director and a secretary.

110. Execution of document as a deed

[compare section 127(3)]

- 110.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 108 or rule 109.

111. Execution – general

[compare sections 129(5), 129(6) and 127(4)]

- 111.1 A director may sign any document as director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.

111.2 Rules 108 and 109 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Company.

Inadvertent omissions

112. Formalities omitted

[compare section 1322]

112.1 If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

Notices

113. Notices other than notices of meeting

113.1 Any notice by the Company to a member may be given in the same way as a notice of meeting may be given under rule 52, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 53.

113.2 The references in rule 51.2 to notices to persons entitled to a share in consequence of the death or bankruptcy of a member, and in rules 96.1(5) and 96.2(5) to notices to joint holders of a share apply to any notice given by the Company.

Entitlements Contract

114. Entitlements contract binding

114.1 The terms and conditions of the Entitlements Contract bind the Company and each member, notwithstanding the absence of a separate Entitlements Contract being executed by the Company and each member.

Winding up

115. Transfer of property

115.1 If upon the winding up or dissolution of the Company there remains, after the satisfaction of all debts and liabilities, any property whatsoever, it must not be paid or distributed among members but must be given or transferred to:

- (1) an irrigation corporation (as defined in the *Water Management Act 2000* (NSW)) in respect of the whole or the majority of the Area of Operations established permanently for the purposes of carrying on the business of water reticulation formerly carried on by the Company; or
- (2) some other institution or institutions having objects wholly or partly similar to the objects of the Company and which prohibits the distribution of its or their property amongst its or their members. Such institution shall be determined by the members at or before the time of dissolution or in default thereof by the chief judge of such court as may have or acquire jurisdiction on the matter.