



**MASTER GROCERS ASSOCIATION OF VICTORIA LIMITED**  
**ACN 004 063 263**

## **NOTICE OF ANNUAL GENERAL MEETING**

**Notice is hereby given** of the Annual General Meeting of Members of the Company, to be held at ***Kooyong Tennis Reception Centre, 489 Glenferrie Road, Kooyong, Victoria*** on Tuesday 18<sup>th</sup> of November 2008 at 9.15 a.m.

### **BUSINESS**

#### **1. Reports**

Consideration of:

- (a) the Annual Financial Report;
  - (b) the Directors' Report;
  - (c) the Auditor's Report
- for the financial year ended 30<sup>th</sup> June 2008.

#### **2. Election of Directors**

There were 2 vacant board positions by way of rotation under the MGAV constitution.

After receiving 2 nominations, the Australian Electoral Commission (AEC) has declared the results of the election of directors.

*"Results of the election for the following offices conducted in accordance with the provisions of the Workplace Relations Act 1996 and the rules of the organisation."*

Directors (2)

Candidates:

DALY, Michael Andrew  
GARRETT, Leigh Paul

The AEC returning officer, Mr Michael Pryor has declared Mr Michael Daly and Mr Leigh Garret elected.

#### **3. Appointment of Auditor**

Being eligible, the Company's current auditor, Mr Norman Cobain, offers himself for re-appointment.

#### **4. Fixing of Auditor's Remuneration**

The Auditor's remuneration shall be fixed at the Annual General Meeting.

#### **5. Changes to Rules and Constitution**

There are 3 matters that are required to be resolved.

- 1. Alteration to Eligibility Rules
- 2. Alteration to Other Rules
- 3. Change of Name

## **1. Alteration to Eligibility Rules**

### **The Master Grocers' Association of Victoria Ltd**

#### **Special Resolution – Eligibility Rules**

**Draft: 15 October 2008**

WHEREAS it is the intention of the Members to alter the eligibility rules of the Rules and Constitution of The Master Grocers' Association of Victoria Limited in the form attached hereto as *Exhibit A*;

AND WHEREAS notice of this resolution was sent to all Members by prepaid post addressed to the Member at his or her address as shown in The Master Grocers' Association of Victoria Limited's records or his or her address for service by the Notice of Annual General Meeting dated 18<sup>th</sup> November 2008;

AND WHEREAS it is more than 21 clear days since that notice was given.

NOW THEREFORE, it is hereby:

RESOLVED, that the eligibility rules in the Rules and Constitution attached hereto as *Exhibit A* are hereby approved and adopted by the Members; and

FURTHER RESOLVED that the Rules and Constitution of The Master Grocers' Association of Victoria Limited are amended in accordance with the preceding resolution and as so amended are approved and adopted by the Members.

See attached Exhibit A showing proposed Eligibility Rules alterations.

## **2. Alteration to Other Rules**

### **The Master Grocers' Association of Victoria Ltd**

#### **Special Resolution – Other Rules**

**Draft: 15 October 2008**

WHEREAS it is the intention of the Members to alter the other rules of the Rules and Constitution of The Master Grocers' Association of Victoria Limited in the form attached hereto as Exhibit A;

AND WHEREAS notice of this resolution was sent to all Members by prepaid post addressed to the Member at his or her address as shown in The Master Grocers' Association of Victoria Limited's records or his or her address for service by the Notice of Annual General Meeting dated 18<sup>th</sup> November 2008;

AND WHEREAS it is more than 21 clear days since that notice was given.

NOW THEREFORE, it is hereby:

RESOLVED, that the other rules in the Rules and Constitution attached hereto as Exhibit A are hereby approved and adopted by the Members; and

FURTHER RESOLVED that the Rules and Constitution of The Master Grocers' Association of Victoria Limited are amended in accordance with the preceding resolution and as so amended are approved and adopted by the Members; and

FURTHER RESOLVED that the President may agree with the Registrar of the Australian Industrial Registry such further or other amendments to the other rules in the Rules and Constitution as the Registrar may require for the purposes of the Registrar certifying the other rules pursuant to section 159 of Schedule 1 of the WORKPLACE RELATIONS ACT 1996.

See attached Exhibit A showing proposed alterations to Other Rules.

This document can also be found for full viewing on MGA's website – [www.mga.asn.au](http://www.mga.asn.au).

### **3. Change of Name**

#### **The Master Grocers' Association of Victoria Limited**

#### **Special Resolution – Change of Name**

**Draft: 15 October 2008**

WHEREAS it is the intention of the Members to change the name of The Master Grocers' Association of Victoria Limited and to make consequential amendments to the Rules and Constitution of The Master Grocers' Association of Victoria Limited in the form attached hereto as Exhibit A;

AND WHEREAS notice of this resolution was sent to all Members by prepaid post addressed to the Member at his or her address as shown in The Master Grocers' Association of Victoria Limited's records or his or her address for service by the Notice of Annual General Meeting dated 18<sup>th</sup> November 2008;

AND WHEREAS it is more than 21 clear days since that notice was given.

NOW THEREFORE, it is hereby:

RESOLVED, that the name of The Master Grocers' Association of Victoria Limited is changed to Master Grocers Australia Limited; and

FURTHER RESOLVED that the Rules and Constitution of The Master Grocers' Association of Victoria Limited are amended in accordance with the preceding resolution in the form attached hereto as Exhibit A and as so amended are approved and adopted by the Members.

See attached Exhibit A showing proposed Change of Name.

**By order of the Board.**

*Phillip Ibbotson*  
Phillip Ibbotson  
Secretary

# Exhibits

## Point 1. Exhibit A - Eligibility Rules alterations

(Underlining indicates new text, strike through indicates deleted text)

### A. The definition of “Business” in rule 2.1(a):

“Business” means a business enterprise or undertaking conducted anywhere in Australia, however it is structured, which:

- (i) is an employer; and
- (ii) is:
  - (A) a retail grocery business; or
  - (B) a retail liquor or liquor/beverage business whether conducted by itself or in association with a retail grocery business; and
- ~~(iii) is not owned or controlled by:~~
  - ~~(A) a corporation listed on the Australian Stock Exchange, the principal activity of which is retailing;~~
  - ~~(B) a recognised life insurance company; or~~
  - (C) a statutory authority of the Commonwealth of Australia or any State or Territory of Australia

### B. Rule 5.2:

5.2 Any Business Proprietor may be a member of the Organisation provided that the Board may refuse an application for membership –

- (i) in any case where the Board is of the opinion that the Business Proprietor becoming a member would be inconsistent with the purpose of the Organisation; or
- (ii) as provided for in rule 6.

### C. Rules 5.5 and 5.6:

~~5.5 Where a Business Proprietor has an interest in two or more Businesses, eligibility for membership shall only be derived from an interest in one of those Businesses.~~

~~5.6 Where two or more Business Proprietors have interests in two or more Businesses, each Business Proprietor shall derive eligibility for membership from only one of those Businesses.~~

### D. Rules 5.7 and 5.8: Renumber existing rules 5.7 and 5.8 as rules 5.5 and 5.6.

## Point 2. Exhibit A – Other Rules alterations

(Underlining or italics indicates new text, strike through indicates deleted text)

**Refer to next page for full alterations to Other Rules**

## Point 3. Exhibit A - showing proposed Change of Name

(Underlining or italics indicates new text, strike through indicates deleted text)

### Heading

RULES AND CONSTITUTION OF  
~~THE MASTER GROCERS' ASSOCIATION OF VICTORIA~~ AUSTRALIA LIMITED

### Rule 1.1:

(1)

1.1 The Organisation's name is ~~THE MASTER GROCERS' ASSOCIATION OF VICTORIA~~ AUSTRALIA LIMITED.

## Point 2. Exhibit A – Other Rules alterations

(Underlining or italics indicates new text, strike through indicates deleted text)

(Underlining or italics indicates new text, strike through indicates deleted text)

### Sub-rule 1.2:

- 1.2 The Organisation is formed in connection with the retail grocery, and liquor and liquor/beverage industry in Victoria and is subject to the provisions of the Act.

### Sub-rule 2.2:

- 2.2 While the Organisation is registered under ~~Part IX~~ Schedule 1 of the Act:
- (a) these Rules and Constitution constitute the Organisation's Rules for the purposes of the Act; ~~and~~
- (b) ~~where there is a conflict between the requirements of the Act and the requirements of the Corporations Act and the Act provides for:~~
- (i) ~~higher obligations than are required by the Corporations Act; or~~
- (ii) ~~obligations which are not imposed on companies by the Corporations Act,~~  
the requirements of the Act shall prevail.

### Rule 3:

#### 3 – OBJECTS/PURPOSE

The purpose of the Organisation is to represent and promote the interests of independent grocery and liquor/beverage retailers in Australia.

#### 3.1 The Organisation's objects are:

- (a) ~~to further and protect the legitimate commercial and industrial relations interests of its members and of Businesses generally;~~
- (b) ~~to foster co-operation and understanding between Businesses, trade unions, government and the public;~~
- (c) ~~to exercise all such powers permitted under Corporations Act in respect of companies limited by guarantee consistent with the Act and these Rules and Constitution;~~
- (d) ~~to further the objects of the Act;~~
- (e) ~~to bring any industrial disputes or other industrial relations issues, matters or claims before any competent court, commissioner, committee, inquiry, board or tribunal or other person; and~~
- (f) ~~to do all things incidental or conducive to attaining the objects referred to in paragraphs (a) (b), (c), (d) and (e) of this sub-clause.~~

### Rule 4:

#### 4 - CAPACITY AND POWERS

Note: Both as a company and by virtue of its registration as an organisation the Organisation has all the capacity and powers of a body corporate. See section 27 of Schedule 1 to the Act and section 124 of the Corporations Act which provide as follows:

#### "27 Incorporation

*An organisation:*

- (a) *is a body corporate; and*

1

2

- (b) *has perpetual succession; and*
- (c) *has power to purchase, take on lease, hold, sell, lease, mortgage, exchange and otherwise own, possess and deal with, any real or personal property; and*
- (d) *must have a common seal; and*
- (e) *may sue or be sued in its registered name.*

#### **124 Legal capacity and powers of a company**

- (1) A company has the legal capacity and powers of an individual both in and outside this jurisdiction. A company also has all the powers of a body corporate, including the power to:
- (a) issue and cancel shares in the company;
- (b) issue debentures (despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable only at the end of a period, however long);
- (c) grant options over unissued shares in the company;
- (d) distribute any of the company's property among the members, in kind or otherwise;
- (e) give security by charging uncalled capital;
- (f) grant a floating charge over the company's property;
- (g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction;
- (h) do anything that it is authorised to do by any other law (including a law of a foreign country).
- A company limited by guarantee does not have the power to issue shares.
- Note: For a company's power to issue bonus, partly-paid, preference and redeemable preference shares, see section 254A.
- (2) A company's legal capacity to do something is not affected by the fact that the company's interests are not, or would not be, served by doing it.
- (3) For the avoidance of doubt, this section does not:
- (a) authorise a company to do an act that is prohibited by a law of a State or Territory; or
- (b) give a company a right that a law of a State or Territory denies to the company."

#### 4.1 The Organisation shall have the legal capacity and powers of:

- (a) ~~an individual; and~~
- (b) ~~a body corporate~~  
both inside and outside Australia;

#### 4.2 Without limiting the generality of the preceding sub-clause and not in derogation from it, the Organisation shall have the power to:

- (a) ~~issue debentures;~~
- (b) ~~grant a floating charge over its property;~~
- (c) ~~arrange its registration or recognition as a body corporate in any place outside Australia; and~~
- (d) ~~do anything that it is authorised to do by any law including but not limited to a law of a foreign country.~~

#### Sub-rules 4.3 and 4.4: Renumber existing sub-rules 4.3 and 4.4 as sub-rules 4.1 and 4.2.

#### Sub-rule 6.5:

- 6.5 The Board may reject an application for membership if the applicant:
- (a) is not eligible to be a member; or
- (b) is a person who is of general bad character; or
- (c) is a body corporate whose constituent documents make provisions inconsistent with the purposes for which the Organisation was formed.

Note: see also sections 165(4) and (5) of Schedule 1 to the Act which provide as follows:

3

#### "Employer organisations

- (4) Subject to subsection (5) and to any award or order of the Commission, an employer who is eligible to become a member of an organisation of employers is entitled, subject to payment of any amount properly payable in relation to membership:
- (a) to be admitted as a member of the organisation; and
- (b) to remain a member so long as the employer complies with the rules of the organisation.
- (5) Subsection (4) does not entitle an employer:
- (a) to become a member of an organisation if the employer is:
- (i) a natural person who is of general bad character; or
- (ii) a body corporate whose constituent documents make provisions inconsistent with the purposes for which the organisation was formed; or
- (b) to remain a member of an organisation if the employer ceases to be eligible to become a member and the rules of the organisation do not permit the employer to remain a member."

#### Sub-rule 6.7:

- 6.7 ~~Nothing in this Constitution shall exclude or be deemed to exclude the operation of the provisions of section 261 of the Act.~~

#### Sub-rules 6.8, 6.9 and 6.10: Renumber existing sub-rules 6.8, 6.9 and 6.10 as sub-rules 6.7, 6.8 and 6.9 respectively.

#### Sub-rule 7.5:

- 7.5 Where a person ceases to be a member by virtue of the preceding sub-~~clause~~rule, the Board may reinstate his membership if all arrears of subscriptions are paid.

#### Sub-rule 8.3:

- 8.3 Any amount payable by a member or former member pursuant to the preceding sub-~~clause~~rule shall be determined by the Organisation's liquidator.

#### Sub-rule 9.5:

- 9.5 Pursuant to section 172 of Schedule 1 to the Act, the Organisation is required to remove non-financial members from the Register.

#### Sub-rule 10.1:

- 10.1 A member's membership shall cease:
- (a) on the member:
- (i) resigning his membership in accordance with these Rules and Constitution; or
- (ii) ceasing to be eligible to be a member for a continuous period of nine months; or
- (b) as otherwise provided in these Rules and Constitution or the Act.

Note: Rule 7.4 of these Rules and Constitution provides that membership also ceases if subscriptions are not paid.

#### Sub-rules 10.3 – 10.7:

- 10.3 Section 174 of Schedule 1 to the Act also provides for resignation of membership.

Note: Section 174 provides as follows:

#### "174 Resignation from membership

- (1) A member of an organisation may resign from membership by written notice addressed and delivered to a person designated for the purpose in the rules of the organisation or a branch of the organisation.

4

Note: The notice of resignation can be given electronically if the organisation's rules allow for this (see section 9 of the Electronic Transactions Act 1999).

- (2) A notice of resignation from membership of an organisation takes effect:
- where the member ceases to be eligible to become a member of the organisation:
    - on the day on which the notice is received by the organisation; or
    - on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member;whichever is later; or
  - in any other case:
    - at the end of 2 weeks, or such shorter period as is specified in the rules of the organisation, after the notice is received by the organisation; or
    - on the day specified in the notice;whichever is later.
- (3) Any dues payable but not paid by a former member of an organisation, in relation to a period before the member's resignation from the organisation took effect, may be sued for and recovered in the name of the organisation, in a court of competent jurisdiction, as a debt due to the organisation.
- (4) A notice delivered to the person mentioned in subsection (1) is taken to have been received by the organisation when it was delivered.
- (5) A notice of resignation that has been received by the organisation is not invalid because it was not addressed and delivered in accordance with subsection (1).
- (6) A resignation from membership of an organisation is valid even if it is not effected in accordance with this section if the member is informed in writing by or on behalf of the organisation that the resignation has been accepted."

**10.3 A Resignation Notice takes effect:**

- ~~where the member ceases to be eligible to become a member of the Organisation:~~
  - ~~on the day on which the Resignation Notice is received by the Secretary; or~~
  - ~~on the day specified in the Resignation Notice which is a day not earlier than the day when the member ceases to be eligible to become a member~~ whichever is later; or
- ~~in any other case:~~
  - ~~at the end of two days after the Resignation Notice is received by the Secretary; or~~
  - ~~on the day specified in the Resignation Notice~~ whichever is later.

**10.4 A Resignation Notice:**

- ~~delivered to the Secretary shall be taken to have been received by the Organisation when it was delivered; and~~
- ~~is not invalid because although actually received by the Organisation it was not addressed and delivered to the Secretary.~~

~~10.5 A member's resignation is valid even if not effected in accordance with these Rules and Constitution, if the member is informed in writing by or on behalf of the Organisation that the resignation has been accepted.~~

**10.6 On cessation of membership, a member shall continue to be liable for:**

- ~~any annual subscription and arrears of annual subscription; and~~
- ~~any other money due to the Organisation~~ unpaid at the date of cessation.

~~10.7 Legal proceedings for the recovery of an amount payable by a member in relation to membership of the Organisation must not be commenced after the end of the period of 12 months starting on the day on which the amount became payable and the amount ceases to be payable at the end of the period if legal proceedings to recover it have not been commenced by then.~~

5

- shall have no voting rights; and
- shall not be bound by clause rule 8 of these Rules and Constitution

**Sub-rule 12.4:**

12.4 Rules 6, 7, 10 and 11 of these Rules and Constitution apply to associate members.

**Sub-rules 13.2 – 13.13:**

13.2 A general meeting may be convened only as provided by sub-rule 13.1 or as provided by sections 249D to 249G of the Corporations Act.

Note: Sections 249D – 249G of the Corporations Act provide as follows:

**"249D Calling of general meeting by directors when requested by members**

- The directors of a company must call and arrange to hold a general meeting on the request of:
  - members with at least 5% of the votes that may be cast at the general meeting; or
  - at least 100 members who are entitled to vote at the general meeting.
- The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:
  - a particular company; or
  - a particular class of company.Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.
- The request must:
  - be in writing; and
  - state any resolution to be proposed at the meeting; and
  - be signed by the members making the request; and
  - be given to the company.
- Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.
- The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

**249E Failure of directors to call general meeting**

- Members with more than 50% of the votes of all of the members who make a request under section 249D may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.
- The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called. The meeting must be held not later than 3 months after the request is given to the company.
- To call the meeting the members requesting the meeting may ask the company under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the company must give the members the copy of the register without charge.
- The company must pay the reasonable expenses the members incurred because the directors failed to call and arrange to hold the meeting.
- An offence based on subsection (3) or (4) is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the Criminal Code.
- The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with section 249D. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.

**249F Calling of general meetings by members**

- Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.
- The meeting must be called in the same way—so far as is possible—in which general meetings of the company may be called.

7

**Sub-rules 11.1 & 11.2:**

- 11.1 If the Board is of the opinion that a member -
- has wilfully refused or neglected to comply with these Rules and Constitution; or
  - ~~is~~ has been guilty of gross misbehaviour;
- the Board may propose a resolution to:
- expel the member from membership of the Organisation; or
  - suspend the member from membership for a period not exceeding 12 months; ~~or~~
  - ~~fine the member in a sum not exceeding five times the member's annual subscription.~~

11.2 A proposed resolution of the Board under the preceding sub-clause rule ("a Disciplinary Resolution") must either be put:

- to the Board at a special Board meeting held not earlier than 14 days and not later than 28 days after the service on the member of written notice under sub-clause rule 11.3 ("a Special Board Meeting"); or

**Sub-rules 11.5 – 11.8:**

11.5 Where the Board receives a Special General Meeting Request under sub-clause rule 11(3)(d)(iii):

- the Special Board Meeting shall be dissolved; and
- the Board shall convene a Special General Meeting to be held within 42 days after the date on which the Board received the Special General Meeting Request.

11.6 If the Board fails to properly convene a general meeting under the preceding sub-clause rule, the Disciplinary Resolution shall automatically lapse.

11.7 At a Special General Meeting convened under sub-clause rule 11.5:

- no business other than the Disciplinary Resolution shall be transacted;
- the Board shall place before the meeting details of the grounds on which the Disciplinary Resolution is based;
- the member shall be given a fair and reasonable opportunity to be heard;
- the member shall be entitled to be represented; and
- the members present shall vote by secret ballot as to whether the Disciplinary Resolution should be passed.

11.8 If at the Special General Meeting convened under sub-clause rule 11.5:

- two-thirds of the members present and voting in person or by proxy, vote in favour of the Disciplinary Resolution then it shall be passed; but if
- less than two-thirds of the members present and voting in person or by proxy vote in favour of the Disciplinary Resolution, then it shall lapse.

**Sub-rules 12.1 & 12.2:**

12.1 Any body corporate which is a supplier to the retail grocery, and liquor or liquor/beverage industry may be admitted as an associate member of the Organisation:

- for any period; and
- on any terms

the Board thinks fit from time to time.

12.2 An associate member:

- The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

**249G Calling of meetings of members by the Court**

- The Court may order a meeting of the company's members to be called if it is impracticable to call the meeting in any other way.
- The Court may make the order on application by:
  - any director; or
  - any member who would be entitled to vote at the meeting."

~~13.3~~ Section 249O of the Corporations Act provides that meetings of members may only be held for a proper purpose. Section 249R thereof provides that meetings must be held at a reasonable time and place. And section 249S of the Corporations Act provides that a meeting may be held at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Note: Sections 249O – 249S of the Corporations Act provide as follows:

**"249Q Purpose**

A meeting of a company's members must be held for a proper purpose.

**249R Time and place for meetings of members**

A meeting of a company's members must be held at a reasonable time and place.

**249S Technology**

A company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate."

13.4 The Board may postpone, cancel or change the venue for a general meeting, but a general meeting convened under section 249D of the Corporations Act may not be postponed beyond the date by which section 249D requires it to be held and may not be cancelled without the consent of the requisitioning member or members. The directors may at their discretion give notice of cancellation but not giving notice does not affect the validity of the cancellation.

Note: See text of section 249D supra.

13.2 The Board must call and arrange to hold a general meeting on the request of members holding at least 5% of the votes which may be cast on a resolution of members ("a Requisition").

13.3 A Requisition must:

- ~~be in writing;~~
- ~~state any resolution to be proposed at the meeting;~~
- ~~be signed by the members making the Requisition ("the Requisitioners"); and~~
- ~~be given to the Organisation.~~

13.4 Separate copies of a document setting out the Requisition may be used for signing by members if the wording of the Requisition is identical in each copy.

13.5 The eligibility of members to sign a Requisition shall be determined as at the midnight before the Requisition is given to the Organisation.

13.6 The Board must call a general meeting within 21 days after the Requisition is given to the Organisation and the meeting must be held no later than 2 months after the Requisition is given to the Organisation.

13.7 A majority of the members who have signed the Requisition may call and arrange to hold a general meeting if the Board does not do so within 21 days after the Requisition is given to the Organisation.

13.8 The meeting referred to in the preceding sub-clause ("the Requisitioned Meeting"):

8

- (a) must be called as far as is possible in the same way in which general meetings of the Organisation may be called; and
- (b) must be held no later than 3 months after the Requisition is given to the Organisation.
- 13.9 To call a Requisitioned Meeting, the Requisitioners may require the Organisation to provide a copy of the Register which must be given to them without charge.
- 13.10 The Organisation:
- (a) must pay the reasonable expenses of the Requisitioners incurred because the Board failed to call and arrange to hold a meeting in accordance with a Requisition; and
- (b) may recover the amount of the expenses from the Board members jointly and severally, save that a Board member will not be liable for any amount of money if he proves that he took all reasonable steps under the circumstances to ensure that the Board complied with the Requisition.
- 13.11 Despite anything contained in these Rules and Constitution:
- (a) members holding at least 5% of the votes which may be cast on a resolution of members may call and arrange to hold a general meeting; and
- (b) as far as is possible, the meeting must be called in the same way in which general meetings of the Organisation may be called.
- 13.12 A general meeting must be held at a reasonable time and place.
- 13.13 A general meeting may be held at 2 or more venues using any technology which gives the members as a whole a reasonable opportunity to participate.

**Sub-rules 14.1 – 14.4:**

- 14.1 At least 21 clear days notice must be given of a general meeting. Notice of a general meeting must be given within the time limits prescribed by and otherwise in accordance with the Corporations Act.
- 14.2 Section 249H of the Corporations Act specifies the amount of notice for general meetings. Section 249L of the Corporations Act specifies what must be contained in a notice of meeting.

Note: Sections 249H and 249L of the Corporations Act provide as follows:

**“249H Amount of notice of meetings**

- General rule*
- (1) Subject to subsection (2), at least 21 days notice must be given of a meeting of a company's members. However, if a company has a constitution, it may specify a longer minimum period of notice.
- Calling meetings on shorter notice*
- (2) A company may call on shorter notice:
- (a) an AGM, if all the members entitled to attend and vote at the AGM agree beforehand; and
- (b) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- A company cannot call an AGM or other general meeting on shorter notice if it is a meeting of the kind referred to in subsection (3) or (4).
- Shorter notice not allowed—removing or appointing director*
- (3) At least 21 days notice must be given of a meeting of the members of a public company at which a resolution will be moved to:
- (a) remove a director under section 203D; or
- (b) appoint a director in place of a director removed under that section.
- Shorter notice not allowed—removing auditor*
- (4) At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to remove an auditor under section 329.

**249L Contents of notice of meetings of members**

- (1) A notice of a meeting of a company's members must:

9

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting—set out an intention to propose the special resolution and state the resolution; and
- (d) if a member is entitled to appoint a proxy—contain a statement setting out the following information:
- (i) that the member has a right to appoint a proxy;
- (ii) whether or not the proxy needs to be a member of the company;
- (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
- Note: There may be other requirements for disclosure to members.
- (2) The notice of the AGM of a listed company must also inform members that the resolution referred to in subsection 250R(2) (resolution on remuneration report) will be put at the AGM.
- (3) The information included in the notice of meeting must be worded and presented in a clear, concise and effective manner.”

14.2 Notice of a general meeting shall:

- (a) specify the place the day and the time of the meeting;
- (b) state the nature of the business to be transacted at the meeting;
- (c) specify the technology to be used to facilitate the meeting if it is to be held in 2 or more venues;
- (d) set out the precise terms of any resolution proposed to be put as a special resolution and state specifically that the resolution is to be proposed as a special resolution; and
- (e) contain a statement setting out the following information, namely:
- (i) that each member has the right to appoint a proxy; and
- (ii) that a proxy need not be a representative of a member.

14.3 Notice of every general meeting shall be given in any manner authorised by these Rules and Constitution to:

- (a) every Officer;
- (b) every member; and
- (c) the auditor for the time being.

14.4 Section 249K of the Corporations Act provides that the auditor is entitled to receive both notice of the general meeting and any other communications relating to the general meeting that a member is entitled to receive.

Note: Section 249K of the Corporations Act provides as follows:

**“249K Auditor entitled to notice and other communications**

- (1) A company must give its auditor:
- (a) notice of a general meeting in the same way that a member of the company is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a member of the company is entitled to receive.
- Note 1: For when a company must have an auditor, see Part 2M.3.
- Note 2: An auditor may appoint a representative to attend a meeting (see subsection 249V(4)).
- (2) An offence based on subsection (1) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the Criminal Code.”

**Sub-rule 15.4:**

- 15.4 If within 15 minutes from the time appointed for a general meeting a quorum is not present:
- (a) the meeting, if convened by the Board upon a requisition of members is dissolved; and
- (b) in any other case it shall stand adjourned to:
- (i) the same day in the next week at the same time and place; or
- (ii) any other day and at any other time and place determined by the Board.

10

**Sub-rule 15.6:**

- 15.6 Members may be present at the general meeting by phone or by video conference.

Note: See section 249S of the Corporations Act supra.

**Sub-rule 16.1:**

- 16.1 The President shall chair every general meeting, but if:
- (a) there is no President; or
- (b) the President is not present within 15 minutes after the time appointed for the holding of the meeting; or
- (c) the President is unable or unwilling to chair the meeting, the Vice-President shall chair the meeting, but if:
- (1) there is no Vice-President; or
- (2) the Vice-President is not present within 20 minutes after the time appointed for the holding of the meeting; or
- (3) the Vice-President is unable or unwilling to chair the meeting the members present shall elect another director present at the meeting to chair the meeting or if no director is able or willing to chair the meeting, another person present at the meeting who is able and willing to chair the meeting.

**Sub-rule 16.5:**

- 16.5 When a general meeting is adjourned for 20 days 1 month or more, notice of the adjourned meeting shall be given as in the case of an original meeting, but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

**Sub-rules 17.1 – 17.9:**

- 17.1 Division 4 of Part 2G.2 of Chapter 2G the Corporations Act provides for members' rights to put resolutions at general meetings.

Note: Division 4 of Part 2G.2 of the Corporations Act provides as follows:

**“Division 4—Members' rights to put resolutions etc. at general meetings**

- 249N Members' resolutions**
- (1) The following members may give a company notice of a resolution that they propose to move at a general meeting:
- (a) members with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 members who are entitled to vote at a general meeting.
- (1A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:
- (a) a particular company; or
- (b) a particular class of company.
- Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.
- (2) The notice must:
- (a) be in writing; and
- (b) set out the wording of the proposed resolution; and
- (c) be signed by the members proposing to move the resolution.
- (3) Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.
- (4) The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.

11

**249O Company giving notice of members' resolutions**

- (1) If a company has been given notice of a resolution under section 249N, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.
- (2) The company must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (3) The company is responsible for the cost of giving members notice of the resolution if the company receives the notice in time to send it out to members with the notice of meeting.
- (4) The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving members notice of the resolution if the company does not receive the members' notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.
- (5) The company need not give notice of the resolution:
- (a) if it is more than 1,000 words long or defamatory; or
- (b) if the members making the request are to bear the expenses of sending the notice out—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

**249P Members' statements to be distributed**

- (1) Members may request a company to give to all its members a statement provided by the members making the request about:
- (a) a resolution that is proposed to be moved at a general meeting; or
- (b) any other matter that may be properly considered at a general meeting.
- (2) The request must be made by:
- (a) members with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 members who are entitled to vote at the meeting.
- (2A) The regulations may prescribe a different number of members for the purposes of the application of paragraph (2)(b) to:
- (a) a particular company; or
- (b) a particular class of company.
- Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.
- (3) The request must be:
- (a) in writing; and
- (b) signed by the members making the request; and
- (c) given to the company.
- (4) Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.
- (5) The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.
- (6) After receiving the request, the company must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.
- (7) The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to members with the notice of meeting.
- (8) The members making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.
- (9) The company need not comply with the request:
- (a) if the statement is more than 1,000 words long or defamatory; or
- (b) if the members making the request are responsible for the expenses of the distribution—unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.”

- 17.1 Five percent of members entitled to vote at a general meeting may give the Organisation notice of a resolution they propose to move at a general meeting (“Notice of Resolution”).

17.2 A Notice of Resolution must:

- (a) be in writing;
- (b) set out the wording of the proposed resolution; and
- (c) be signed by the members proposing to move the resolution.

- 17.3 Separate copies of the document setting out the Notice of Resolution may be used for signing by

12

members if the wording of the Notice of Resolution is identical in each copy.

- 17.4 The qualification of members to sign a Notice of Resolution is to be worked out as at the midnight before the Notice of Resolution is given to the Organisation.
- 17.5 If the Organisation has been given Notice of Resolution, the resolution shall be considered at the next general meeting which occurs more than 2 months after the Notice of Resolution is given.
- 17.6 The Organisation must give all members copies of the Notice of Resolution at the same time or as soon as is practicable afterwards and in the same way as it gives notice of a general meeting.
- 17.7 The members signing a Notice of Resolution are jointly and severally liable for the expenses reasonably incurred by the Organisation in giving members copies of the Notice of Resolution, if the Organisation does not receive it in time to send it out with the notice of the meeting.
- 17.8 Despite anything contained in the preceding sub-clause, at a general meeting the members may resolve that the Organisation shall meet the expenses referred to in the preceding sub-clause.
- 17.9 The Organisation need not give copies of the Notice of Resolution to members:
- if it is more than 1,000 words long;
  - if it is defamatory; or
  - where the members signing the Notice of Resolution are to bear the expenses of sending copies of it out, if those members do not give the Organisation a sum reasonably sufficient to meet the expenses it will reasonably incur in sending out the notice.

#### Sub-rules 18.1 & 18.2:

- 18.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded as allowed by section 250L of the Corporations Act:
- by the chairman; or
  - by at least 2 members present in person or by proxy.

18.2 A poll may be demanded before or immediately on the declaration of a result of a show of hands.

18.2 Sections 250K and 250L of the Corporations Act sets out who may demand a poll and when it may be demanded and when a demand for a poll may be withdrawn.

Note: Sections 250K and 250L of the Corporations Act provide as follows:

#### “250K Matters on which a poll may be demanded

- A poll may be demanded on any resolution.
- If a company has a constitution, the constitution may provide that a poll cannot be demanded on any resolution concerning:
  - the election of the chair of a meeting; or
  - the adjournment of a meeting.
- A demand for a poll may be withdrawn.

#### 250L When a poll is effectively demanded

- At a meeting of a company's members, a poll may be demanded by:
  - at least 5 members entitled to vote on the resolution; or
  - members with at least 5% of the votes that may be cast on the resolution on a poll; or
  - the chair.
- If a company has a constitution, the constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll.
- The poll may be demanded:
  - before a vote is taken; or
  - before the voting results on a show of hands are declared; or
  - immediately after the voting results on a show of hands are declared.

13

Note: Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll.

Effect of member's presence on proxy's authority

- A company's constitution (if any) may provide for the effect that a member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the member. However, if the constitution does not deal with this, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

#### 249Z Company sending appointment forms or lists of proxies must send to all members

- If a company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
  - 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
  - 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.
- An offence based on subsection (1) is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the Criminal Code.

#### 250A Appointing a proxy

- An appointment of a proxy is valid if it is signed, or otherwise authenticated in a manner prescribed by the regulations, by the member of the company making the appointment and contains the following information:
  - the member's name and address;
  - the company's name;
  - the proxy's name or the name of the office held by the proxy;
  - the meetings at which the appointment may be used.An appointment may be a standing one.
- The regulations made for the purposes of subsection (1) may prescribe different requirements for the authentication of an appointment given to the company by different means (electronic or otherwise).
- If a company has a constitution, the constitution may provide that an appointment is valid even if it contains only some of the information required by subsection (1).
- An undated appointment is taken to have been dated on the day it is given to the company.
- An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
  - the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
  - if the proxy has 2 or more appointments that specify different ways to vote on the resolution—the proxy must not vote on a show of hands; and
  - if the proxy is the chair—the proxy must vote on a poll, and must vote that way; and
  - 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 subsection does not affect the way that the person can cast any votes they hold as a member.  
Note: A company's constitution may provide that a proxy is not entitled to vote on a show of hands (see subsection 249Y(2)).
- A person who contravenes subsection (4) is guilty of an offence, but only if their appointment as a proxy resulted from the company sending to members:
  - a list of persons willing to act as proxies; or
  - a proxy appointment form holding the person out as being willing to act as a proxy.
- An offence based on subsection (5) is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the Criminal Code.
- An appointment does not have to be witnessed.
- A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

#### 250B Proxy documents

Documents to be received by company before meeting

- For an appointment of a proxy for a meeting of a company's members to be effective, the following documents must be received by the company at least 48 hours before the meeting:
  - the proxy's appointment;
  - if the appointment is signed, or otherwise authenticated in a manner prescribed by regulations made for the purposes of subsection 250A(1), by the appointor's attorney—the authority under which the appointment was signed or authenticated or a certified copy of the authority.

15

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

#### Sub-rule 18.4:

18.4 The demand for a poll may be withdrawn. A poll may be demanded on any matter except the election of a chair of the meeting or the adjournment of the meeting.

#### Sub-rule 18.6:

18.6 A poll demanded on:

- the election of a chairman of the meeting; or
  - a question of adjournment
- shall be taken immediately.

#### Sub-rule 18.11: Insert the following rule after sub-rule 18.11:

18.12 In this rule, “on a show of hands” includes, where members are present at the meeting by video conference, by show of hands on the video screen in the case of those members who are present by video conference.

#### Sub-rules 19.1 – 19.5:

19.1 An instrument appointing a proxy shall be in writing in a common or usual form containing the information required by section 250A(1) of the Corporations Act and executed by or on behalf of a member.

Note: Section 250A(1) of the Corporations Act is set out after rule 19.4.

19.2 A proxy need not be a representative of a member may be accepted even though it does not contain all the information required by section 250A(1) of the Corporations Act.

19.3 The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

19.4 Division 6 of Part 2G.2 of Chapter 2G of the Corporations Act provides (inter alia) who may appoint a proxy, how proxies may be appointed, the rights of proxies, the receipt of proxies and the validity of proxy votes.

Note: Division 6 of Part 2G.2 of the Corporations Act relevantly provides as follows:

#### “Division 6—Proxies and body corporate representatives

##### 249X Who can appoint a proxy

- A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
  - The person appointed as the member's proxy may be an individual or a body corporate.  
Note: A body corporate may appoint a representative to exercise the powers that the body corporate may exercise as the member's proxy; see section 250D.
  - The appointment may specify the proportion or number of votes that the proxy may exercise.
  - Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 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.
  - Disregard any fractions of votes resulting from the application of subsection (2) or (3).

##### 249Y Rights of proxies

- Rights of proxies
  - A proxy appointed to attend and vote for a member has the same rights as the member:
    - to speak at the meeting; and
    - to vote (but only to the extent allowed by the appointment); and
    - to join in a demand for a poll.
  - Proxy's right to vote
- If a company has a constitution, the constitution may provide that a proxy is not entitled to vote on a show of hands.

Documents received following adjournment of meeting

- If a meeting of a 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.
- Receipt of documents
  - A company receives a document referred to in subsection (1):
    - when the document is received at any of the following:
      - the company's registered office;
      - a fax number at the company's registered office;
      - a place, fax number or electronic address specified for the purpose in the notice of meeting; and
    - 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 as prescribed by the regulations.
- Constitution or notice of meeting may provide for different notification period
- The company's constitution (if any) or the notice of meeting may reduce the period of 48 hours referred to in subsection (1) or (2).

#### 250C Validity of proxy vote

- Proxy vote valid even if proxy cannot vote as member
- 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 their appointment specifies the way they are to vote on the resolution and they vote that way.
- Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 249Y(3)).

#### 250D Body corporate representative

- A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:
  - at meetings of a company's members; or
  - at meetings of creditors or debenture holders; or
  - relating to resolutions to be passed without meetings; or
  - in the capacity of a member's proxy appointed under subsection 249X(1).The appointment may be a standing one.
- 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.
- A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.
- 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.  
Note: For resolutions of members without meetings, see sections 249A and 249B.”

19.5 Unless the Organisation has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- the appointing member dies; or
- the member is mentally incapacitated; or
- the member revokes the proxy's appointment; or
- the member revokes the authority under which the proxy was appointed by a third party; or
- the member transfers the share in respect of which the proxy was given.

19.4 The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a duly certified copy of that power of attorney or authority must be received by the Organisation:

- at the Organisation's registered office;
- at a fax number at the Organisation's registered office; or
- at a place, fax number or electronic address specified for the purpose in the notice of meeting

16

not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

19.5 A vote given in accordance with the terms of an instrument of proxy shall be valid despite:

- (a) ~~the previous dissolution or winding up of the member; or~~
- (b) ~~the revocation of the instrument or of the authority under which the instrument or proxy was executed; if no intimation in writing of the dissolution, winding up or revocation has been received by the Organisation at the registered office before the commencement of the meeting or adjourned meeting at which the instrument of proxy is used.~~

**Sub-rules 20.3 – 20.5:**

20.3 The business of an AGM shall include:

- (a) consideration of:
  - (i) the financial report;
  - (ii) the directors' report and operating report; and
  - (iii) the auditor's report

for the last financial year which ended before the AGM;

- (b) the election of any Officers who are to be elected at the AGM;
- (c) the appointment of an auditor; and
- (d) the fixing of the auditor's remuneration.

20.4 Rule 20.3 does not limit the business of an AGM.

20.5 Sections 250N to 250T of Division 8 of Part 2G.2 of Chapter 2G of the Corporations Act also contains provisions with respect to Annual General Meetings which apply to the Organisation.

Note: Sections 250N to 250T of Division 8 of Part 2G.2 of the Corporations Act relevantly provides as follows:

**"Division 8—AGMs of public companies**

**250N Public company must hold AGM**

- (1) A public company must hold an annual general meeting (AGM) within 18 months after its registration.
- (2) A public company must hold an AGM at least once in each calendar year and within 5 months after the end of its financial year.  
Note: An AGM held to satisfy this subsection may also satisfy subsection (1).
- (2A) An offence based on subsection (1) or (2) is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the Criminal Code.
- (3) An AGM is to be held in addition to any other meetings held by a public company in the year.  
Note 1: The company's annual financial report, directors' report and auditor's report must be laid before the AGM (see section 317).  
Note 2: The rules in sections 249C-250M apply to an AGM.
- (4) A public company that has only 1 member is not required to hold an AGM under this section.

**250P Extension of time for holding AGM**

- (1) A public company may lodge an application with ASIC to extend the period within which section 250N requires the company to hold an AGM.
- (2) If the company applies before the end of the period within which the company would otherwise be required to hold an AGM, ASIC may extend the period in writing. ASIC must specify the period of the extension.
- (3) A company granted an extension under subsection (2) must hold its AGM within the extended period.
- (4) ASIC may impose conditions on the extension and the company must comply with those conditions.
- (5) An offence based on subsection (3) or (4) is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the Criminal Code.

**250R Business of AGM**

- (1) The business of an AGM may include any of the following, even if not referred to in the notice of meeting:
  - (a) the consideration of the annual financial report, directors' report and auditor's report;
  - (b) the election of directors;

17

21.9 With effect from the date of the adoption of these Rules and Constitution, no person shall hold office as a director for more than 4 years without re-election.

Note: Section 145(1) of Schedule 1 to the Act limits director's terms to 4 years without re-election.

**Sub-rule 21.13:**

21.13 The Board may only appoint a person to fill a casual vacancy:-

- (a) until such time as the term of the director in whose place the appointment is made, expires; and
- (b) in circumstances where such unexpired term referred to in sub-clause rule (a) above, does not exceed the greater of:-
  - (i) 12 months; or
  - (ii) three-quarters of the term of office.

**Sub-rule 21.18:**

21.18 The office of director shall become vacant if the director:-

- (a) becomes disqualified from holding office under the Act;
- (b) becomes prohibited from being a director by reason of any order made under the Act;
- (c) becomes disqualified or prohibited from holding office or being a director or secretary under these Rules and Constitution;
- (d) resigns his office by notice in writing to the Organisation;
- (e) ceases to be a member ~~where being a member was a requirement for appointment;~~
- (f) is removed from office in accordance with these Rules and Constitution.

**Sub-rule 22.2:**

22.2 Without limiting the preceding sub-clause rule, the Board may:

- (a) determine the manner in which the Organisation's property is to be controlled;
- (b) determine the manner in which the Organisation's funds are invested;
- (c) determine the conditions under which the Organisation's funds may be spent;
- (d) ~~carry into effect the objects of the Organisation;~~
- (e) delegate to a person so appointed any of the powers vested in the Board or a director on such terms as the Board thinks fit, including removing a person so appointed and revoking or varying such delegation (such delegation shall be recorded by the Secretary);
- (f) authorise any delegate or attorney appointed by the Board under these Rules and Constitution to sub-delegate all or any of the powers vested in that person;
- (g) authorise a director to perform the prescribed ~~undertake the functions and keep the records under section 268 of the Act~~ necessary in order to enable the Organisation to comply with Part 3 of Chapter 8 of Schedule 1 to the Act.

Note: See also section 243 of the Act.

**Sub-rule 22.4:**

22.4 **Power to appoint attorneys**

- (a) The directors may, by power of attorney, appoint ~~any~~ a person to be attorney of the Organisation. ~~No person may be appointed as an attorney unless that person is an Officer.~~ An attorney may be appointed for such purposes, with the power, authority or discretion (being power, authority or discretion vested in

17

- (c) the appointment of the auditor;
- (d) the fixing of the auditor's remuneration.

**250S Questions and comments by members on company management at AGM**

- (1) The chair of an AGM 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.
- (2) An offence based on subsection (1) is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the Criminal Code.

**250T Questions by members of auditors at AGM**

- (1) If the company's auditor or their representative is at the meeting, the chair of an AGM must:
  - (a) allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or the auditor's representative questions relevant to:
    - (i) the conduct of the audit; and
    - (ii) the preparation and content of the auditor's report; and
    - (iii) the accounting policies adopted by the company in relation to the preparation of the financial statements; and
    - (iv) the independence of the auditor in relation to the conduct of the audit; and
  - (b) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA.
- (2) An offence based on subsection (1) is an offence of strict liability.  
Note: For strict liability, see section 6.1 of the Criminal Code.

~~20.4 The chairman of an AGM shall allow a reasonable opportunity for the persons present at the meeting to ask questions about or make comments on the management of the Organisation.~~

~~20.5 If the Organisation's auditor or the auditor's representative is present at the meeting, the chairman of the AGM shall allow a reasonable opportunity for the persons present at the meeting to ask questions of the auditor or the auditor's representative in relation to the conduct of the audit and the preparation and content of the auditor's report.~~

**Sub-rules 21.3 – 21.5:**

21.3 Subject to these Rules and Constitution, at any AGM the Board or the members may propose a resolution increasing or reducing the number of directors to hold office with effect from the next following AGM, provided that no resolution of that nature shall operate to remove a director from office before the expiration of his term.

21.4 A person ~~must need not~~ be a member to qualify for election or appointment to office as a director, provided that at no time may there be a majority of non-members as directors nor may there be more than three non-members as directors.

21.5 In order to serve as an officer of the Organisation a member or non-member must:

- (a) not be an insolvent under administration;
- (b) ~~not be of unsound mind or a person whose estate is liable to be dealt with in any way under the law relating to mental health~~
- (eb) be able to serve as a director under the Corporations Act.
- (c) has not been disqualified from office pursuant to Part 4 of Schedule 1 to the Act.

Note: See also section 201B of the Corporations Act which provides as follows:

**"201B Who can be a director**

- (1) Only an individual who is at least 18 may be appointed as a director of a company.
- (2) A person who is disqualified from managing corporations under Part 2D.6 may only be appointed as director of a company if the appointment is made with permission granted by ASIC under section 206F or leave granted by the Court under section 206G."

**Sub-rule 21.9:**

or exercisable by the directors), for such periods and subject to such conditions as the directors determine.

- (b) Any power of attorney may contain any provision for protection and convenience of persons dealing with the attorney as the directors think fit. The power of attorney may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

**Sub-rule 22.5:**

~~22.5 Remuneration~~

~~(a) The directors may be paid or provided with remuneration for their services in accordance with the Corporations Act. Remuneration may take the form of an allowance paid to directors in anticipation of expected expenses. The amount paid to individual directors will be as determined by the directors, providing that such amount is reasonable taking into account the circumstances of the Organisation and "individual director" in each case. Directors remuneration must be recorded by the Company Secretary and such record shall be made available for inspection by a member upon request. Directors remuneration must be fully disclosed in the Organisation's financial reports.~~

~~(b) Remuneration of directors is deemed to accrue from day to day.~~

~~(c) Remuneration includes salary, wages, bonuses and allowances paid for the sole purposes of meeting expenses incurred in connection with performing services as a director holding their respective office.~~

~~(d) The directors may also be paid all travelling and other expenses properly incurred by them in attending and returning from meetings of directors or any committee of the directors or general meetings of the Organisation or otherwise in connection with the business of the Organisation.~~

**Existing sub-rule 22.7.1:**

~~22.7.1—The Board:~~

- (a) may give the Organisation's consent to the lodging of any document under any enactment relating to industrial relations, including but not limited to documents relating to:
  - (i) the submission of any industrial dispute to conciliation or arbitration; and
  - (ii) any objection to:
    - (A) The registration of any Organisation under the Act; and
    - (B) Any application to amend the rules of any Organisation registered under the Act;
- (b) shall have power to bring any industrial disputes or other industrial relations issues, matters or claims before any competent court, commissioner, inquiry, board, tribunal or other person;
- (c) may enter into agreements about:
  - (i) industrial disputes and industrial situations; and
  - (ii) any other matter provided for or contemplated by the Act; and
- (d) may do all things ancillary or incidental to the exercise of all or any of the powers set out in paragraphs (a), (b) and (c) of this sub-clause rule.

**Existing sub-rule 22.8: Insert at the start of the rule the heading "Borrowings".**

**Existing sub-rule 22.9: Insert at the start of the Rule the heading "Engagement of employees".**

**Sub-rules 22.6, 22.7, 22.7.2, 22.7.3, 22.7.4, 22.7.5, 22.8 and 22.9: Renumber existing sub-rules as 22.5, 22.6, 22.7, 22.8, 22.9, 22.10, 22.11 and 22.12 respectively.**

**Sub-rules 23.3 & 23.4:**

20

23.3 The Company Secretary is not the holder of an office under the Act. A person may only be appointed as Company Secretary and remain in such position if the person is able to function as Secretary and Officer under the Corporations Act.

23.4 Section 204B of the Corporations Act provides for who may be a Company Secretary.

Note: Section 204B of the Corporations Act provides as follows:

**“204B Who can be a secretary**

- (1) Only an individual who is at least 18 may be appointed as a secretary of a company.  
(2) A person who is disqualified from managing corporations under Part 2D.6 may only be appointed as a secretary of a company if the appointment is made with permission granted by ASIC under section 206F or leave granted by the Court under section 206G.”

23.4 The duties of the Company Secretary are to:

- (a) Act as Secretary to the Organisation in respect of its functions and obligations under the Corporations Act;  
(b) Ensure that all books and financial statements show a true and correct record of financial transactions of the Organisation;  
(c) Be responsible for the general administration of the Organisation under the Corporations Act;  
(d) Prepare and present the Treasurer’s report;  
(e) Make all financial documents available to the auditors when required;  
(f) Sign any instruments or documents when requested to do so by the Board;  
(g) Invest funds as directed by the Board;  
(h) Carry out directions of the Board;  
(i) Maintain a Register of Members and Associate Members;  
(j) Arrange and attend all general meetings of Members and Associate Members and Board Meetings;  
(k) Keep accurate minutes of proceedings; and  
(l) Perform all such duties that the President on the instruction of the Board or Organisation may from time to time direct.

Sub-rule 23.5: Insert after sub-rule 23.5 the following sub-rule:

23.6 The Company Secretary shall keep a register of Members and Associate Members.

Sub-rule 24.3:

24.3 The President and Vice-President must remain in office until the next President and Vice-President are elected provided that neither the President nor the Vice-President shall remain in office for more than 14 months and provided that the offices of President or Vice-President shall become vacant if the President or Vice-President:

- (a) if the President or Vice-President becomes disqualified from being a director under the Act, or the Corporations Act, or these Rules and Constitution;  
(b) if the President or Vice-President resigns the office of President or Vice-President by notice in writing to the Organisation;  
(c) if the President or Vice-President is removed from the Office in accordance with these Rules and Constitution;  
(d) an acting President or Vice-President is appointed after an AGM.

Chapeau to sub-rule 25: Renumber existing chapeau as sub-rule 25.1 and amend as follows:

21

- (b) the ballot paper does not bear the initials of the returning officer;  
(c) the ballot paper does not comply with the printed instructions for the ballot.

Existing sub-rules 25.16 – 25.19: delete and substitute the following sub-rule:

25.18 First Past the Post Voting

- (a) The voting system shall be the first past-the-post system as detailed in this Rule.  
(b) Members must vote for the number of candidates to be elected.  
(c) The candidates with the highest number of votes shall be elected.  
(d) If two or more candidates each receive the same number of votes the Returning Officer shall decide by lot which candidate is to be elected.

25.16 In the case of an election of one candidate to fill a single vacancy, the procedure for the counting of votes shall be as follows:

- (a) A candidate must poll an absolute majority, (that is, in excess of 50%) of all formal votes to be elected.  
(b) If after all first preference votes are counted, no candidate has obtained an absolute majority of all formal votes, then the candidate with the fewest number of first preference votes shall be excluded. That excluded candidate’s second preference votes shall then be distributed to the remaining candidates.  
(c) If after that exclusion no candidate has obtained an absolute majority of formal votes, the next remaining candidate with the fewest votes shall be excluded and all of his or her votes (that is, first preference votes plus any votes reserved from the first excluded candidate) distributed to the remaining candidates according to that candidate’s second preferences.  
(d) The above process shall be continued until one candidate obtains an absolute majority of formal votes and is thereby elected.  
(e) If at any exclusion, the next available preference is for a previously excluded candidate, then that preference shall be disregarded and the vote distributed to the next continuing candidate for whom the next available preference is shown.

25.17 Where the election of more than one candidate is required, the first candidate shall be elected in accordance with the procedure set out in clause 25.16 above and the election of additional candidates shall proceed as follows:

- (a) Following the election of the first candidate, all ballot papers shall be sorted back to first preference votes and all ballot papers containing a first preference vote for the first elected candidate shall then be distributed to the remaining candidates according to the second preference votes on such ballot papers and any candidates thus obtaining an absolute majority of votes is thereby elected.  
(b) If no candidate has then received an absolute majority, the candidate with the fewest votes shall be excluded and his or her votes (that is, first preference votes plus any votes received from the previously elected candidate) distributed to the next available preference among the remaining candidates. This process shall be continued until a candidate has obtained an absolute majority of votes and is thereby elected as the second successful candidate.

23

25.1 These Rules and Constitution provide that each election for an Officer shall be conducted by the Australian Electoral Commission. The Executive Officer President (or in his absence, the Vice-President) shall advise the Australian Electoral Commission Industrial Registry for the need for an election subject to the provisions of the Act and these Rules and Constitutions as soon as a vacancy for a position of an Officer arises.

New sub-rule 25.2 inserted:

25.2 If an exemption is granted the Organisation pursuant to section 186 of Schedule 1 to the Act, then all references in this rule to the “Australian Electoral Commission” shall be read as references to the Company Secretary.

Renumber existing sub-rule 25.1 as sub-rule 25.3 and amend as follows:

25.4 The Electoral official person appointed by the Australian Electoral Commission shall be the returning officer who shall conduct any election for office holders of the organisation.

Renumber existing sub-rules 25.2, 25.3 and 25.4 as sub-rules 25.4, 25.5 and 25.6 respectively.

Sub-rule 25.5: renumber existing sub-rule 25.5 as sub-rule 25.7 and amend as follows:

25.5 In the case of election of directors as a result of vacancies caused by rotation, the closing date of the ballot shall furthermore be no later than noon on the second day before the AGM. Notice of the closing date of the ballot in the event of vacancies for the offices of directors caused by rotation shall also be published in the Independent Retailer Trade Magazine together with details of each candidates’ personal profile. The Executive Officer Company Secretary shall ensure that such edition of the Independent Retailer Magazine is published and distributed when ballot papers are posted to members.

Sub-rules 25.6, 25.7 and 25.8: renumber existing sub-rules 25.6, 25.7 and 25.8 as sub-rules 25.8, 25.9 and 25.10 respectively.

Existing sub-rule 25.9:

25.9 Directions for voting shall instruct the voter to mark an order of preference for all candidates for a particular position by using the numbers 1, 2, 3 and so on up to the total number of candidates. The returning officer shall not treat as invalid a ballot paper on which the voter has voted for at least the number of candidates to be elected.

New sub-rule 25.11: Insert new sub-rule 25.11

25.11 Directions for voting shall advise that the voting system is first past the post.

Sub-rules 25.10, 25.11, 25.12, 25.13 and 25.14: renumber existing sub-rules 25.10, 25.11, 25.12, 25.13 and 25.14 as sub-rules 25.12, 25.13, 25.14, 25.15 and 25.16 respectively.

Existing sub-rule 25.15: renumber as sub-rule 25.17 and amend as follows:

25.17 Election Irregularities and Informal Votes

The returning officer must take such action and give such directions as are reasonably necessary in order to ensure that no irregularities occur in or in connection with the election and in order to remedy any procedural defects.

A vote in an election will be informal if:

- (a) the ballot paper is received by the returning officer after the notified hour on the closing date;

22

(c) Following the election of the first and second candidates, all ballot papers shall be sorted back to first preference vote as described in paragraph (a) of the section and all ballot papers showing a first preference for the two elected candidates shall be sorted to the next available preference and shall be distributed among the remaining non-elected candidates and a candidate thus obtaining an absolute majority of votes shall be the third elected candidate.

(d) If no candidate has received an absolute majority, the candidate with the fewest votes shall be excluded and his or her votes (that is, first preference votes plus any votes received from the previously elected candidates) shall be distributed to the next available preference amongst the remaining non-elected candidates. This process shall be continued until a candidate has obtained an absolute majority and is thereby elected.

(e) If there are more than three candidates to be elected, the above process shall be repeated until the required number of candidates have been elected.

Existing sub-rule 25.18: renumber as sub-rule 25.19 and amend as follows:

25.19 Returning Officer Unable to Act

In the event of the returning officer being at any time unable to act, the Australian Electoral Commission may appoint some other person, not being a person referred to in ~~clause sub-rule 25.4.6-3~~, to act for the returning officer.

Existing sub-rules 25.19 and 25.20: renumber as sub-rules 25.20 and 25.21.

New sub-rule 25.22: Insert new sub-rule 25.22

25.22 For the purposes of sections 192 and 198 of Schedule 1 to the Act, the prescribed officer is:

- (a) the President if it is not the President who is being elected;  
(b) any director who is not being elected if the President is disqualified pursuant to paragraph (a) of this rule.

Sub-rule 27:

## 27 - REMOVAL OF OFFICERS

27.1 An Officer must not be removed from office under the Rules and Constitution unless:

- (a) such Officer has been found guilty under the Rules and Constitution of the Organisation of:  
(i) misappropriation of the funds of the Organisation;  
(ii) a substantial breach of these Rules and Constitution;  
(iii) gross misbehaviour or gross neglect of duty; or  
(b) ceased according to these Rules and Constitution or the act to be eligible to hold office.

27.2 An Officer may be removed from office pursuant to sub-rule 27.1(a) in accordance with sections 203D and 203E of the Corporations Act. The Notice of Intention to move a resolution for removal of an Officer must:

- (i) state the offence or offences in sub-rule 27.1(a) that is or are relied upon;  
(ii) state the facts relied upon in support; and  
(iii) set out the text of the resolution that seeks removal of the Officer.

Note: Sections 203D and 203E provide as follows:

24

### 203D Removal by members—public companies

#### Resolution for removal of director

- (1) A public company may by resolution remove a director from office despite anything in:
- the company's constitution (if any); or
  - an agreement between the company and the director; or
  - an agreement between any or all members of the company and the director.
- If the director was appointed to represent the interests of particular shareholders or debenture holders, the resolution to remove the director does not take effect until a replacement to represent their interests has been appointed.
- Note: See sections 249C to 249G for the rules on who may call meetings, sections 249H to 249M on how to call meetings and sections 249N to 249Q for rules on members' resolutions.
- Notice of intention to move resolution for removal of director
- (2) Notice of intention to move the resolution must be given to the company at least 2 months before the meeting is to be held. However, if the company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.
- Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(3)).
- Director to be informed
- (3) The company must give the director a copy of the notice as soon as practicable after it is received.
- Director's right to put case to members
- (4) The director is entitled to put their case to members by:
- giving the company a written statement for circulation to members (see subsections (5) and (6)); and
  - speaking to the motion at the meeting (whether or not the director is a member of the company).
- (5) The written statement is to be circulated by the company to members by:
- sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
  - if there is not time to comply with paragraph (a)—having the statement distributed to members attending the meeting and read out at the meeting before the resolution is voted on.
- (6) The director's statement does not have to be circulated to members if it is more than 1,000 words long or defamatory.
- Time of retirement
- (7) If a person is appointed to replace a director removed under this section, the time at which:
- the replacement director; or
  - any other director;
- is to retire is to be worked out as if the replacement director had become director on the day on which the replaced director was last appointed a director.
- Strict liability offences
- (8) An offence based on subsection (3) or (5) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the Criminal Code.

### 203E Director cannot be removed by other directors—public companies

A resolution, request or notice of any or all of the directors of a public company is void to the extent that it purports to:

- remove a director from their office; or
- require a director to vacate their office."

### 27.2 Process of Removal

A member or associate member may provide the Board with a notice in writing alleging that an Officer:

- has contravened these Rules and Constitution;
  - has ceased, according to these Rules and Constitution, to be eligible to hold office;
  - has misappropriated any funds of the Organisation; or
  - has grossly misbehaved or grossly neglected his or her duty.
- The Board must inform the officer holder in writing of the allegation(s) made pursuant to this clause and such officer holder shall be called before the Board and given a reasonable opportunity to be heard.
- 27.3 If, after a reasonable consideration of the matter, the Board, by a majority resolution of the directors present and voting at the meeting, finds the Officer:

- has contravened these Rules and Constitution;
- has ceased, according to these Rules and Constitution, to be eligible to hold the office;
- has misappropriated any funds of the Organisation; or
- has grossly misbehaved or grossly neglected his or her duty, the officer holder will be dismissed from and cease to hold the office and their membership of the Board (if applicable).

### Sub-rule 28.5:

28.5 Subject to and in accordance with Division 2 of Part 2D.2 of Chapter 2D of the Corporations Act, a director may be paid a retirement benefit in an amount to be determined by the Board.

Note: Division 2 of Part 2D.2 of Chapter 2D of the Corporations Act provides as follows:

### "Division 2—Termination payments

#### 200A When benefit given in connection with retirement from office

- (1) For the purposes of this Division:
- a benefit is given in connection with a person's retirement from an office if the benefit is given:
    - by way of compensation for, or otherwise in connection with, the loss by the person of the office; or
    - in connection with the person's retirement from the office; and
  - giving a benefit includes:
    - if the benefit is a payment—making the payment; and
    - if the benefit is an interest in property—transferring the interest; and
  - a person gives a benefit even if the person is obliged to give the benefit under a contract; and
  - a pension or lump sum is paid or payable in connection with the person's retirement from an office if the pension or lump sum is paid or payable:
    - by way of compensation for, or otherwise in connection with, the loss by the person of the office; or
    - in connection with the person's retirement from the office; and
  - retirement from an office includes:
    - loss of the office; and
    - resignation from the office; and
    - death of a person at a time when they hold the office.
- (2) For the purposes of this Division, if:
- a person (person A) gives another person a benefit (benefit A); and
  - person A gives benefit A for the purpose, or for purposes including the purpose, of enabling or assisting someone to give a person a benefit in connection with the retirement of a person (person B) from an office;
- person A is taken to give benefit A in connection with the person B's retirement from that office.

#### 200B Retirement benefits generally need membership approval

Benefits in connection with retirement from board or managerial office

- (1) The following must not give a person a benefit in connection with that person's, or someone else's, retirement from a board or managerial office in a company, or a related body corporate, without member approval under section 200E:
- the company;
  - an associate of the company (other than a body corporate that is related to the company and is itself a company);
  - a prescribed superannuation fund in relation to the company.
- Note 1: Sections 200F, 200G and 200H provide for exceptions to this rule.
- Note 2: Section 9 defines board or managerial office.
- (1A) For an offence based on subsection (1), strict liability applies to the circumstance, that the benefit is in connection with the person's, or someone else's, retirement.
- Note: For strict liability, see section 6.1 of the Criminal Code.
- Prescribed superannuation funds
- (2) For the purposes of this section:

25

26

- a superannuation fund is taken to be a prescribed superannuation fund in relation to a company if the company, or an associate of the company, gives a benefit to the superannuation fund in prescribed circumstances; and
  - if a prescribed superannuation fund in relation to a company gives a benefit to another superannuation fund in prescribed circumstances, the other superannuation fund is taken to be a prescribed superannuation fund in relation to the company.
- Prescribed circumstances
- (3) For the purposes of this section, if:
- a company, or an associate of a company, gives a benefit to a superannuation fund solely for the purpose of enabling or assisting the superannuation fund to give to a person a benefit in connection with a person's retirement from an office in the company or a related body corporate; or
  - a superannuation fund gives a benefit to another superannuation fund solely for the purpose of enabling or assisting the other superannuation fund to give to a person a benefit in connection with a person's retirement from an office in a company or a related body corporate;
- the benefit first referred to in paragraph (a) or (b) is taken to be given in prescribed circumstances.
- (4) In this section:
- superannuation fund means a provident, benefit, superannuation or retirement fund.

### 200C Benefits on transfer of undertaking or property need membership approval

- (1) A person must not give a benefit to a person who:
- holds, or has at any previous time held, a board or managerial office in a company or a related body corporate; or
  - is the spouse of a person referred to in paragraph (a); or
  - is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or
  - is an associate of a person referred to in paragraph (a) or the spouse of an associate of such a person;
- in connection with the transfer of the whole or any part of the undertaking or property of the company.
- Note: Section 9 defines board or managerial office.
- (2) For an offence based on subsection (1), strict liability applies to the circumstance, that the transfer is in connection with the transfer of the whole or any part of the undertaking or property of the company.
- Note: For strict liability, see section 6.1 of the Criminal Code.
- (3) Subsection (1) does not apply to the extent that there is member approval under section 200E.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (3), see subsection 13.3(3) of the Criminal Code.

### 200D Contravention to receive benefit without member approval

- (1) A person who:
- holds, or has at any previous time held, a board or managerial office in a company or related body corporate; or
  - is the spouse of a person referred to in paragraph (a); or
  - is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or
  - is an associate of a person referred to in paragraph (a) or the spouse of an associate of such a person;
- must not receive a benefit if the giving of the benefit contravenes section 200B or 200C.
- Note: Section 9 defines board or managerial office.
- (2) An offence based on subsection (1) is an offence of strict liability.
- Note: For strict liability, see section 6.1 of the Criminal Code.

### 200E Approval by members

- (1) If section 200B or 200C requires member approval for giving a person a benefit, it must be approved by a resolution passed at a general meeting of:
- the company; and
  - if the company is a subsidiary of a listed domestic corporation—the listed corporation; and
  - if the company has a holding company that:
    - is a domestic corporation that is not listed; and
    - is not itself a subsidiary of a domestic corporation—the holding company.
- (2) Details of the benefit must be set out in, or accompany, the notice of the meeting at which the resolution is to be considered. The details must include:
- if the proposed benefit is a payment:

27

- the amount of the payment; or
  - if that amount cannot be ascertained at the time of the disclosure—the manner in which that amount is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that amount; and
- otherwise:
    - the money value of the proposed prescribed benefit; or
    - if that value cannot be ascertained at the time of the disclosure—the manner in which that value is to be calculated and any matter, event or circumstance that will, or is likely to, affect the calculation of that value.
- These requirements are in addition to, and not in derogation of, any other law that requires disclosure to be made with respect to giving or receiving a benefit.
- (3) The approval extends to the giving of another benefit to the person if:
- the other benefit is given to the person instead of the proposed benefit; and
  - the amount or money value of the benefit is less than the amount or money value of the proposed benefit.
- (4) The approval does not relieve a director of a body corporate from any duty to the body corporate (whether under section 180, 181, 182, 183 or 184 or otherwise and whether of a fiduciary nature or not) in connection with the giving of the benefit.

### 200F Exempt benefits and benefits given in certain circumstances

- (1) Subsection 200B(1) does not apply to:
- a benefit given in connection with a person's retirement from an office in relation to a company if the benefit is:
    - given under an agreement entered into before 1 January 1991 if giving the benefit in accordance with the agreement would have been lawful if the benefit were given when the agreement was entered into; or
    - a payment made in respect of leave of absence to which the person is entitled under an industrial instrument; or
  - a benefit given under an order of a court; or
  - a benefit given in prescribed circumstances.
- (2) Subsection 200B(1) does not apply to a benefit given in connection with a person's retirement from an office in relation to a company if:
- the benefit is:
    - a genuine payment by way of damages for breach of contract; or
    - given to the person under an agreement made between the company and the person before the person became the holder of the office as the consideration, or part of the consideration, for the person agreeing to hold the office; and
  - the value of the benefit, when added to the value of all other payments (if any) already made or payable in connection with the person's retirement from board or managerial offices in the company and related bodies corporate, does not exceed the greater of:
    - the amount worked out under subsection (3); and
    - the amount worked out under subsection (4).
- (3) The amount worked out under this subsection is the amount worked out using the formula:

$$\frac{\text{Total remuneration} \times \text{Relevant period}}{3}$$

where:

relevant period is the number of years in the relevant period or 7, whichever is the lesser number.

total remuneration is the amount of the total remuneration of the person from the company and related bodies corporate during the last 3 years of the relevant period.

Note: Relevant period is defined in subsection (5).

- (4) The amount worked out under this subsection is:
- if the relevant period for the person is less than 12 months—a reasonable estimate of the total remuneration that the person would have received from the company and related bodies corporate during the relevant period if the relevant period had been 12 months; or
  - if the relevant period for the person is 12 months—the total remuneration that the person received from the company and related bodies corporate in the relevant period; or
  - if the relevant period for the person is more than 12 months—the total remuneration that the person received from the company and related bodies corporate in the last 12 months of the relevant period.

28

- (5) For the purposes of this section, if a person has held an office in relation to a company:
- throughout a period, or
  - throughout a number of periods;
- the **relevant period** for that person is that period or the period consisting of those periods.

#### 200G Genuine payments of pension and lump sum

- (1) Subsection 200B(1) does not apply to a benefit if:
- the benefit is a payment in connection with a person's retirement from a board or managerial office (the **relevant office**) in a company or a related body corporate; and the payment is for past services the person rendered to:
    - the company; or
    - a related body corporate; or
    - a body that was a related body corporate of the company when the past services were rendered; and
  - the value of the benefit, when added to the value of all other payments (if any) already made or payable in connection with the person's retirement from board or managerial offices in the company and related bodies corporate does not exceed the payment limit set by subsection (2).
- In applying paragraph (c), disregard any pensions or lump sums that section 200F applies to.
- (2) The payment limit is:
- the amount worked out under subsection (3) if the person:
    - was an eligible employee in relation to the company at the time when the person retired from the relevant office; and
    - has been an eligible employee in relation to the company throughout a period (the relevant period), or throughout periods totalling a period (also the relevant period), of more than 3 years; or
  - otherwise—the total remuneration of the person from the company and related bodies corporate during the period of 3 years ending when the person retired from the relevant office.
- Note: Section 9 defines **remuneration**.
- (3) The amount worked out under this subsection is the amount worked out using the formula:

$$\frac{\text{Total remuneration} \times \text{Relevant period}}{3}$$

where:

**relevant period** is the number of years in the relevant period or 7, whichever is the lesser number.

**total remuneration** is the amount of the total remuneration of the person from the company and related bodies corporate during the last 3 years of the relevant period.

- (4) In determining for the purposes of paragraph (1)(c) the value of a pension or lump sum payment, disregard any part of the pension or lump sum payment that is attributable to:
- a contribution made by the person; or
  - a contribution made by a person other than:
    - the company; or
    - a body corporate (a relevant body corporate) that is a related body corporate of the company, or that was, when the contribution was made, such a related body corporate; or
    - an associate of the company, or of a relevant body corporate, in respect of:
      - the payment of the pension, or the making of the lump sum payment, as the case may be; or
      - the making of the contribution.
- (5) For the purposes of subparagraph (2)(a), a person is taken to have been an eligible employee in relation to a company at a particular time if:
- the person was a genuine full-time employee of the company at that time; or
  - the person was a genuine full-time employee of a body corporate at that time and the body corporate was related to the company at that time.
- (6) In this section:
- payment** means a payment by way of pension or lump sum and includes a superannuation, retiring allowance, superannuation gratuity or similar payment.

29

- (3) A person commits an offence if they are involved in a contravention of section 208 by a public company or entity and the involvement is dishonest.

#### Division 2—Exceptions to the requirement for member approval

##### 210 Arm's length terms

Member approval is not needed to give a financial benefit on terms that:

- would be reasonable in the circumstances if the public company or entity and the related party were dealing at arm's length; or
- are less favourable to the related party than the terms referred to in paragraph (a).

##### 211 Remuneration and reimbursement for officer or employee

Benefits that are reasonable remuneration

(1) Member approval is not needed to give a financial benefit if:

- the benefit is remuneration to a related party as an officer or employee of the following:
  - the public company;
  - an entity that the public company controls;
  - an entity that controls the public company;
  - an entity that is controlled by an entity that controls the public company; and
- to give the remuneration would be reasonable given:
  - the circumstances of the public company or entity giving the remuneration; and
  - the related party's circumstances (including the responsibilities involved in the office or employment).

Benefits that are payments of expenses incurred

(2) Member approval is not needed to give a financial benefit if:

- the benefit is payment of expenses incurred or to be incurred, or reimbursement for expenses incurred, by a related party in performing duties as an officer or employee of the following:
  - the public company;
  - an entity that the public company controls;
  - an entity that controls the public company;
  - an entity that is controlled by an entity that controls the public company; and
- to give the benefit would be reasonable in the circumstances of the public company or entity giving the remuneration.

(3) For the purposes of this section:

- a contribution made by a body corporate to a fund for the purpose of making provision for, or obtaining, superannuation benefits for an officer of the body, or for dependants of an officer of the body, is remuneration provided by the body to the officer of the body; and
- a financial benefit given to a person because of the person ceasing to hold an office or employment as an officer or employee of a body corporate is remuneration paid or provided to the person in a capacity as an officer of the body.

##### 212 Indemnities, exemptions, insurance premiums and payment for legal costs for officers

Indemnities, exemptions and insurance premiums

(1) Member approval is not needed to give a financial benefit if:

- the benefit is for a related party who is an officer of the public company or entity; and
- the benefit is:
  - an indemnity, exemption or insurance premium in respect of a liability incurred as an officer of the public company or entity; or
  - an agreement to give an indemnity or exemption, or to pay an insurance premium, of that kind; and
- to give the benefit would be reasonable in the circumstances of the public company or entity giving the benefit.

Note: Sections 199A to 199C may prohibit giving an indemnity or exemption or paying an insurance premium for an officer.

Payments in respect of legal costs

(2) Member approval is not needed to give a financial benefit if:

- the benefit is for a related party who is an officer of the public company or entity; and
- the benefit is the making of, or an agreement to make, a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by the officer in defending an action for a liability incurred as an officer of the public company or entity; and
- either:
  - section 199A does not apply to the costs; or

31

#### 200H Benefits required by law

Subsection 200B(1) does not apply to a benefit given by a person if failure to give the benefit would constitute a contravention of a law in force in Australia or elsewhere (otherwise than because of breach of contract or breach of trust).

#### 200J Benefits to be held in trust for company

- (1) If giving a benefit to a person contravenes section 200B, then:
- if the benefit is a payment—the amount of the payment; or
  - otherwise—the money value of the prescribed benefit;
- is taken to be received by the person in trust for the company concerned.
- (2) Subsection (1) applies to the whole of the amount of a payment or of the money value of the benefit even though giving the benefit would not have contravened section 200B if that amount or value of the benefit had been less."

#### Sub-rule 29.1:

29.1 Chapter 2E of the Corporations Act applies to related party transactions involving any Officer.

Note: Chapter 2E of the Corporations Act provides as follows:

##### "Chapter 2E—Related party transactions

###### 207 Purpose

The rules in this Chapter are designed to protect the interests of a public company's members as a whole, by requiring member approval for giving financial benefits to related parties that could endanger those interests.

###### Part 2E.1—Member approval needed for related party benefit

###### Division 1—Need for member approval

###### 208 Need for member approval for financial benefit

- (1) For a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company:
- the public company or entity must:
    - obtain the approval of the public company's members in the way set out in sections 217 to 227; and
    - give the benefit within 15 months after the approval; or the giving of the benefit must fall within an exception set out in sections 210 to 216.

Note: Section 228 defines **related party**, section 9 defines **entity**, section 50AA defines **control** and section 229 affects the meaning of **giving a financial benefit**.
  - If:
    - the giving of the benefit is required by a contract; and
    - the making of the contract was approved in accordance with subparagraph (1)(a)(i) as a financial benefit given to the related party; and
    - the contract was made:
      - within 15 months after that approval; or
      - before that approval, if the contract was conditional on the approval being obtained; member approval for the giving of the benefit is taken to have been given and the benefit need not be given within the 15 months.

###### 209 Consequences of breach

- (1) If the public company or entity contravenes section 208:
- the contravention does not affect the validity of any contract or transaction connected with the giving of the benefit; and
  - the public company or entity is not guilty of an offence.
- Note: A Court may order an injunction to stop the company or entity giving the benefit to the related party (see section 1324).
- (2) A person contravenes this subsection if they are involved in a contravention of section 208 by a public company or entity.
- Note 1: This subsection is a civil penalty provision.
- Note 2: Section 79 defines **involved**.

30

- if section 199A applies to the costs—the officer must repay the amount paid if the costs become costs for which the company must not give the officer an indemnity under that section; and
  - to give the benefit would be reasonable in the circumstances of the public company or entity giving the benefit.
- (3) In working out for the purposes of subsection (1) or (2) whether giving the benefit is reasonable in the circumstances:
- assess whether it would be reasonable on the basis of the circumstances existing:
    - if the benefit is given under an agreement—at the time when the agreement is or was made; or
    - if the benefit is not given under an agreement—at the time when the benefit is or was given; and
  - disregard any other financial benefit given or payable to the officer by the public company or entity.

###### 213 Small amounts given to related entity

- (1) Member approval is not needed to give a financial benefit to a related party in a financial year if the total of the following amounts or values is less than or equal to the amount prescribed by the regulations for the purposes of this section:
- the amount or value of the financial benefit;
  - the total of all other amounts or values of financial benefits given to the related party, in the financial year, for which member approval was not needed because of this section.
- (2) In working out the total of the amounts or values referred to in paragraphs (1)(a) and (b):
- add in all amounts or values of financial benefits given to the related party in the financial year by:
    - the public company or entity; and
    - any entities controlled by the public company or entity; and
  - disregard:
    - amounts that have been repaid; and
    - amounts that fall under any other exception in this Part.
- For the purposes of this subsection, the time at which the entity must be controlled by the public company is the time at which the financial benefit is given.

###### 214 Benefit to or by closely-held subsidiary

- (1) Member approval is not needed to give a financial benefit if the benefit is given:
- by a body corporate to a closely-held subsidiary of the body; or
  - by a closely-held subsidiary of a body corporate to the body or an entity it controls.
- (2) For the purposes of this section, a body corporate is a closely-held subsidiary of another body corporate if, and only if, no member of the first-mentioned body is a person other than:
- the other body; or
  - a nominee of the other body; or
  - a body corporate that is a closely-held subsidiary of the other body because of any other application or applications of this subsection; or
  - a nominee of a body referred to in paragraph (c).
- (3) For the purposes of subsection (2), disregard shares that are not voting shares.

###### 215 Benefits to members that do not discriminate unfairly

- Member approval is not needed to give a financial benefit if:
- the benefit is given to the related party in their capacity as a member of the public company; and
  - giving the benefit does not discriminate unfairly against the other members of the public company.

###### 216 Court order

Member approval is not needed to give a financial benefit under an order of a court.

###### Division 3—Procedure for obtaining member approval

###### 217 Resolution may specify matters by class or kind

A resolution under this Division may specify anything either in particular or by reference to class or kind.

###### 218 Company must lodge material that will be put to members with ASIC

- (1) At least 14 days before the notice convening the relevant meeting is given, the public company must lodge:
- a proposed notice of meeting setting out the text of the proposed resolution; and
  - a proposed explanatory statement satisfying section 219; and
  - any other document that is proposed to accompany the notice convening the meeting and that relates to the proposed resolution; and

32

- (d) any other document that any of the following proposes to give to members of the public company before or at the meeting:
  - (i) the company;
  - (ii) a related party of the company to whom the proposed resolution would permit a financial benefit to be given;
  - (iii) an associate of the company or of such a related party; and can reasonably be expected to be material to a member in deciding how to vote on the proposed resolution.
- (2) If, when the notice convening the meeting is given, ASIC:
  - (a) has approved in writing a period of less than 14 days for the purposes of subsection (1); and
  - (b) has not revoked the approval by written notice to the public company;
 subsection (1) applies as if the reference to 14 days were a reference to the approved period.
- (3) ASIC may give and revoke approvals for the purposes of subsection (2).

**219 Requirements for explanatory statement to members**

- (1) The proposed explanatory statement lodged under section 218 must be in writing and set out:
  - (a) the related parties to whom the proposed resolution would permit financial benefits to be given; and
  - (b) the nature of the financial benefits; and
  - (c) in relation to each director of the company:
    - (i) if the director wanted to make a recommendation to members about the proposed resolution—the recommendation and his or her reasons for it; or
    - (ii) if not—why not; or
    - (iii) if the director was not available to consider the proposed resolution—why not; and
  - (d) in relation to each such director:
    - (i) whether the director had an interest in the outcome of the proposed resolution; and
    - (ii) if so—what it was; and
  - (e) all other information that:
    - (i) is reasonably required by members in order to decide whether or not it is in the company's interests to pass the proposed resolution; and
    - (ii) is known to the company or to any of its directors.
- (2) An example of the kind of information referred to in paragraph (1)(e) is information about what, from an economic and commercial point of view, are the true potential costs and detriments of, or resulting from, giving financial benefits as permitted by the proposed resolution, including (without limitation):
  - (a) opportunity costs; and
  - (b) taxation consequences (such as liability to fringe benefits tax); and
  - (c) benefits forgone by whoever would give the benefits.
 Note: Sections 180 and 181 require an officer of a corporation to act honestly and to exercise care and diligence. These duties extend to preparing an explanatory statement under this section. Section 1309 creates offences where false and misleading material relating to a corporation's affairs is made available or furnished to members.

**220 ASIC may comment on proposed resolution**

- (1) Within 14 days after a public company lodges documents under section 218, ASIC may give to the company written comments on those documents (other than comments about whether the proposed resolution is in the company's best interests).
- (2) If the company is listed, ASIC may consult with the relevant market operator for the purposes of giving comments to the company.
- (3) Subsection (2) does not limit the persons with whom ASIC may consult.
- (4) ASIC must keep a copy of the written comments it gives to a company under subsection (1), and subsections 1274(2) and (5) apply to the copy as if it were a document lodged with ASIC.
- (5) The fact that ASIC has given particular comments, or has declined to give comments, under subsection (1) does not in any way affect the performance or exercise of any of ASIC's functions and powers.

**221 Requirements for notice of meeting**

- The notice convening the meeting:
- (a) must be the same, in all material respects, as the proposed notice lodged under section 218; and
  - (b) must be accompanied by an explanatory statement that is the same, in all material respects, as the proposed explanatory statement lodged under that section; and
  - (c) must be accompanied by a document that is, or documents that are, the same, in all material respects, as the document or documents (if any) lodged under paragraph 218(1)(c); and
  - (d) if ASIC has given to the public company, under section 220, comments on the documents lodged under section 218—must be accompanied by a copy of those comments; and

- (a) the member's name; and
  - (b) in relation to each person who voted as proxy, or as such a representative, for the member:
    - (i) the person's name; and
    - (ii) how many votes the person cast on the resolution as proxy, or as such a representative, for the member; and
    - (iii) how many of those votes the person cast for the resolution and how many against.
  - (5) For 7 years after the day when a resolution under this Division is passed, the public company must retain the records it made under this section in relation to the resolution.
  - (6) An offence based on subsection (3), (4) or (5) is an offence of strict liability.
- Note: For **strict liability**, see section 6.1 of the Criminal Code.

**226 Notice of resolution to be lodged**

The public company must lodge a notice setting out the text of the resolution within 14 days after the resolution is passed.

**227 Declaration by court of substantial compliance**

- (1) The Court may declare that the conditions prescribed by this Division have been satisfied if it finds that they have been substantially satisfied.
- (2) A declaration may be made only on the application of an interested person.

**Part 2E.2—Related parties and financial benefits**

**228 Related parties**

**Controlling entities**

(1) An entity that controls a public company is a related party of the public company.

**Directors and their spouses**

(2) The following persons are related parties of a public company:

- (a) directors of the public company;
- (b) directors (if any) of an entity that controls the public company;
- (c) if the public company is controlled by an entity that is not a body corporate—each of the persons making up the controlling entity;
- (d) spouses and de facto spouses of the persons referred to in paragraphs (a), (b) and (c).

**Relatives of directors and spouses**

(3) The following relatives of persons referred to in subsection (2) are related parties of the public company:

- (a) parents;
- (b) children.

**Entities controlled by other related parties**

(4) An entity controlled by a related party referred to in subsection (1), (2) or (3) is a related party of the public company unless the entity is also controlled by the public company.

**Related party in previous 6 months**

(5) An entity is a related party of a public company at a particular time if the entity was a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.

**Entity has reasonable grounds to believe it will become related party in future**

(6) An entity is a related party of a public company at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.

**Acting in concert with related party**

(7) An entity is a related party of a public company if the entity acts in concert with a related party of the public company on the understanding that the related party will receive a financial benefit if the public company gives the entity a financial benefit.

**229 Giving a financial benefit**

- (1) In determining whether a financial benefit is given for the purposes of this Chapter:
  - (a) give a broad interpretation to financial benefits being given, even if criminal or civil penalties may be involved; and
  - (b) the economic and commercial substance of conduct is to prevail over its legal form; and
  - (c) disregard any consideration that is or may be given for the benefit, even if the consideration is adequate.
- (2) Giving a financial benefit includes the following:
  - (a) giving a financial benefit indirectly, for example, through 1 or more interposed entities;
  - (b) giving a financial benefit by making an informal agreement, oral agreement or an agreement that has no binding force;

- (e) must not be accompanied by any other documents.

**222 Other material put to members**

Each document (if any) that:

- (a) did not accompany the notice convening the meeting; and
- (b) was given to members of the public company before or at the meeting by:
  - (i) the public company; or
  - (ii) a related party of the public company to whom the proposed resolution would permit a financial benefit to be given; or
  - (iii) an associate of the public company or of such a related party; and
- (c) can reasonably be expected to have been material to a member in deciding how to vote on the proposed resolution; must be the same, in all material respects, as a document lodged under paragraph 218(1)(d).

**223 Proposed resolution cannot be varied**

The resolution must be the same as the proposed resolution set out in the proposed notice lodged under section 218.

**224 Voting by or on behalf of related party interested in proposed resolution**

- (1) At a general meeting, a vote on a proposed resolution under this Division must not be cast (in any capacity) by or on behalf of:
  - (a) a related party of the public company to whom the resolution would permit a financial benefit to be given; or
  - (b) an associate of such a related party.
- (2) Subsection (1) does not prevent the casting of a vote if:
  - (a) it is cast by a person as a proxy appointed by writing that specifies how the proxy is to vote on the proposed resolution; and
  - (b) it is not cast on behalf of a related party or associate of a kind referred to in subsection (1).
- (3) The regulations may prescribe cases where subsection (1) does not apply.
- (4) ASIC may by writing declare that:
  - (a) subsection (1) does not apply to a specified proposed resolution; or
  - (b) subsection (1) does not prevent the casting of a vote, on a specified proposed resolution, by a specified entity, or on behalf of a specified entity; but may only do so if satisfied that the declaration will not cause unfair prejudice to the interests of any member of the public company.
- (5) A declaration in force under subsection (4) has effect accordingly.
- (6) If a vote is cast in contravention of subsection (1), the related party or associate, as the case may be, contravenes this subsection, whether or not the proposed resolution is passed.
- (7) For the purposes of this section, a vote is cast on behalf of an entity if, and only if, it is cast:
  - (a) as proxy for the entity; or
  - (b) otherwise on behalf of the entity; or
  - (c) in respect of a share in respect of which the entity has:
    - (i) power to vote; or
    - (ii) power to exercise, or control the exercise of, a right to vote.
- (8) Subject to subsection 225(1), a contravention of this section does not affect the validity of a resolution.
- (9) Subject to Part 1.1A, this section has effect despite:
  - (a) anything else in:
    - (i) this Act; or
    - (ii) any other law (including the general law) of a State or Territory; or
  - (b) anything in a body corporate's constitution.

**225 Voting on the resolution**

- (1) If any votes on the resolution are cast in contravention of subsection 224(1), it must be the case that the resolution would still be passed even if those votes were disregarded.
- (2) If a poll was duly demanded on the question that the resolution be passed, subsections (3) and (4) apply in relation to voting on the poll.
- (3) In relation to each member of the public company who voted on the resolution in person, the public company must record in writing:
  - (a) the member's name; and
  - (b) how many votes the member cast for the resolution and how many against.
- (4) In relation to each member of the public company who voted on the resolution by proxy, or by a representative authorised under section 250D, the public company must record in writing:

- (c) giving a financial benefit that does not involve paying money (for example by conferring a financial advantage).
- (3) The following are examples of giving a financial benefit to a related party:
  - (a) giving or providing the related party finance or property;
  - (b) buying an asset from or selling an asset to the related party;
  - (c) leasing an asset from or to the related party;
  - (d) supplying services to or receiving services from the related party;
  - (e) issuing securities or granting an option to the related party;
  - (f) taking up or releasing an obligation of the related party.

**Part 2E.3—Interaction with other rules**

**230 General duties still apply**

A director is not relieved from any of their duties under this Act (including sections 180 and 184), or their fiduciary duties, in connection with a transaction merely because the transaction is authorised by a provision of this Chapter or is approved by a resolution of members under a provision of this Chapter."

**29.1 Subject to the provisions of the Corporations Act concerning disclosure of interests by Officers—**

- ~~(a) an Officer shall not be disqualified by his office from contracting with the Organisation either as vendor, purchaser or otherwise;~~
- ~~(b) no contract or arrangement (collectively "an Arrangement"):~~
  - ~~(i) made by an Officer with the Organisation; or~~
  - ~~(ii) entered into by or on behalf of the Organisation~~
- ~~with any company or partnership in which the Officer is in any way interested shall be avoided by reason only of the person holding his office or of the fiduciary relation thereby established; and~~
- ~~(c) no Officer shall be liable to account to the Organisation for any profit realised from any Arrangement by reason only of the person holding his office or of the fiduciary relation thereby established.~~

**Sub-rules 30.1 & 30.2:**

30.1 Section 195 of the Corporations Act applies where a director has a material personal interest in a matter that is being considered at a directors meeting.

Note: Section 195 of the Corporations Act provides as follows:

**"195 Restrictions on voting—directors of public companies only**

**Restrictions on voting and being present**

- (1) A director of a public company who has a material personal interest in a matter that is being considered at a directors' meeting must not:
  - (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter.
- (1A) Subsection (1) does not apply if:
  - (a) subsection (2) or (3) allows the director to be present; or
  - (b) the interest does not need to be disclosed under section 191.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the Criminal Code.
- (1B) An offence based on subsection (1) is an offence of strict liability.
- Note: For **strict liability**, see section 6.1 of the Criminal Code.

**Participation with approval of other directors**

- (2) The director may be present and vote if directors who do not have a material personal interest in the matter have passed a resolution that:
  - (a) identifies the director, the nature and extent of the director's interest in the matter and its relation to the affairs of the company; and
  - (b) states that those directors are satisfied that the interest should not disqualify the director from voting or being present.

**Participation with ASIC approval**

- (3) The director may be present and vote if they are so entitled under a declaration or order made by ASIC under section 196.

Director may consider or vote on resolution to deal with matter at general meeting

(4) If there are not enough directors to form a quorum for a directors' meeting because of subsection (1), 1 or more of the directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

Effect of contravention by director

(5) A contravention by a director of:

- (a) this section; or
- (b) a condition attached to a declaration or order made by ASIC under section 196; does not affect the validity of any resolution."

30.1 Subject to the Corporations Act, a director who has a material interest in a matter which is being considered at a meeting of the Board or of a committee of the Board:

(a) shall not vote:

- (i) on the matter; or
  - (ii) on a proposed resolution under the next sub-clause; and
- (b) shall not be present while:
- (i) the matter; or
  - (ii) a proposed resolution under the next sub-clause

is being considered at the meeting.

30.2 The preceding sub-clause shall not apply if the Board has at any time passed a resolution which:

- (a) specifies the director, the interest and the matter; and
- (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

Sub-rule 31.1:

31.1 In addition to any special meetings of the Board pursuant to clause rule 11, the Board shall meet at least 6 times in each calendar year, but in any event shall meet at least quarterly.

Sub-rules 31.8 and 31.9:

31.8 The Company Secretary shall attend each meeting of the Board and shall be entitled to speak, but shall not be entitled to vote.

31.9 The failure of the Company Secretary to attend a meeting of the Board shall not prevent the meeting taking place.

Sub-rule 32.1:

32.1 The quorum necessary for the transaction of the business of the Board shall be the greater of the following: 1/3<sup>rd</sup> of the Board members or 2 Board members, but no meeting shall be quorate unless at least half the members of the Board are present at all times during the meeting.

Sub-rule 33.3:

33.3 A committee may elect nominate a chairman of its meetings and determine the period for which the chairman is to hold office.

Sub-rule 34.3:

34.3 Any document which is attached to a document referred to in sub-clauses rules 34.1 and 34.2 and which is signed by the director or directors who signed the last mentioned document shall for all purposes be deemed to have been laid before the Board.

37

- (a) a member, or each of 2 or more of the members, of a collective body of an organisation or branch of an organisation, or one of the persons, or each of 2 or more of the persons, purporting to act as the members of such a collective body, or a person, or each of 2 or more persons, holding or purporting to hold an office or position in an organisation or branch:
  - (i) has not been elected or appointed or duly elected or appointed; or
  - (ii) has purported to be elected or appointed by an election or appointment that was a nullity; or
  - (iii) was not entitled to be elected or appointed or to hold office; or
  - (iv) was not a member of the organisation; or
  - (v) was elected or appointed or purported to be elected or appointed, in a case where one or more of the persons who took part in the election or appointment or the purported election or appointment was or were not entitled to do so or was or were not members of the organisation; or
- (b) persons who were not entitled to do so, or were not members of the organisation, took part in the making or purported making or the alteration or purported alteration of the rules of an organisation or branch, as officers or voters or otherwise.

319 Validation of certain acts done in good faith

Acts relating to elections, appointments, organisation's rules

(1) Subject to this section and section 321, all acts done in good faith by a collective body of an organisation or branch of an organisation, or by persons purporting to act as such a collective body, are valid in spite of any invalidity that may later be discovered in:

- (a) the election or appointment of the collective body, any member of the collective body or the persons or any of the persons purporting to act as the collective body; or
- (b) the making or alteration of a rule of the organisation or branch.

Acts done by person holding or purporting to hold office

(2) Subject to this section and section 321, all acts done in good faith by a person holding or purporting to hold an office or position in an organisation or branch are valid in spite of any invalidity that may later be discovered in:

- (a) the election or appointment of the person; or
- (b) the making or alteration of a rule of the organisation or branch.

Meaning of purporting to be member or office holder

(3) For the purposes of this section:

- (a) a person is not to be treated as purporting to act as a member of a collective body of an organisation or as the holder of an office or position in an organisation unless the person has, in good faith, purported to be, and has been treated by officers or members of the organisation as being, such a member or the holder of the office or position; and
- (b) a person is not to be treated as purporting to act as a member of a collective body of a branch of an organisation or as the holder of an office or position in the branch unless the person has, in good faith, purported to be, and has been treated by officers or members of the branch as being, such a member or the holder of the office or position.

Meaning of good faith

(4) For the purposes of this section:

- (a) an act is to be treated as done in good faith until the contrary is proved; and
- (b) a person who has purported to be a member of a collective body of an organisation or branch is to be treated as having done so in good faith until the contrary is proved; and
- (c) knowledge of facts from which an invalidity arises is not of itself to be treated as knowledge that the invalidity exists; and
- (d) an invalidity in:
  - (i) the election or appointment of a collective body of a branch of an organisation or any member of such a collective body; or
  - (ii) the election or appointment of the persons or any of the persons purporting to act as a collective body of a branch; or
  - (iii) the election or appointment of a person holding or purporting to hold an office or position in a branch; or
  - (iv) the making or alteration of a rule of a branch; is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of management of the branch or to a majority of the persons purporting to act as the committee of management; and
- (e) an invalidity in any other election or appointment or in the making or alteration of a rule to which this section applies is not to be treated as discovered before the earliest time proved to be a time when the existence of the invalidity was known to a majority of the members of the committee of

39

Sub-rule 35.1:

35.1 The Company shall not make a loan, grant or donation of an amount exceeding \$1,000.00 unless the Board has:

(a) satisfied itself:

- (i) that the making of the loan, grant or donation would be in accordance with these Rules and Constitution;
- (ii) in the case of a loan, that in the circumstances:
  - (A) the security proposed to be given for the repayment of the loan is adequate; and
  - (B) the proposed arrangements for the repayment of the loan are satisfactory; and

(b) approved the making of the loan, grant or donation.

Note: see section 149 of Schedule 1 to the Act which provides as follows:

"149 Rules to provide conditions for loans, grants and donations by organisations

(1) The rules of an organisation must provide that a loan, grant or donation of an amount exceeding \$1,000 must not be made by the organisation unless the committee of management:

- (a) has satisfied itself:
    - (i) that the making of the loan, grant or donation would be in accordance with the other rules of the organisation; and
    - (ii) in the case of a loan—that, in the circumstances, the security proposed to be given for the repayment of the loan is adequate and the proposed arrangements for the repayment of the loan are satisfactory; and
  - (b) has approved the making of the loan, grant or donation.
- (2) In spite of subsection (1), the rules of an organisation may provide for a person authorised by the rules to make a loan, grant or donation of an amount not exceeding \$3,000 to a member of the organisation if the loan, grant or donation:
- (a) is for the purpose of relieving the member or any of the member's dependants from severe financial hardship; and
  - (b) is subject to a condition to the effect that, if the committee of management, at the next meeting of the committee, does not approve the loan, grant or donation, it must be repaid as determined by the committee.
- (3) In considering whether to approve a loan, grant or donation made under subsection (2), the committee of management must have regard to:
- (a) whether the loan, grant or donation was made under the rules of the organisation; and
  - (b) in the case of a loan:
    - (i) whether the security (if any) given for the repayment of the loan is adequate; and
    - (ii) whether the arrangements for the repayment of the loan are satisfactory.
- (4) Nothing in subsection (1) requires the rules of an organisation to make provision of the kind referred to in that subsection in relation to payments made by the organisation by way of provision for, or reimbursement of, out-of-pocket expenses incurred by persons for the benefit of the organisation.
- (5) In this section, a reference to an organisation includes a reference to a branch of an organisation.
- (6) For the purposes of the application of this Division to a branch of an organisation, the members of the organisation constituting the branch are taken to be members of the branch."

Sub-rule 37.1:

37.1 Part 2 of chapter 11 of Schedule 1 to the Act and section 201M of the Corporations Act apply to validate certain invalidities in relation to the Organisation.

Note: Part 2 of chapter 11 of Schedule 1 to the Act and section 201M of the Corporations Act relevantly provide as follows:

"Part 2—Validating provisions for organisations

318 Definition

In this Part:

invalidity includes nullity and also includes but is not limited to any invalidity or nullity resulting from an omission, defect, error, irregularity or absence of a quorum or caused by the fact that:

management of the organisation or to a majority of the persons purporting to act as that committee of management.

Actions to which this section applies

(5) This section applies:

- (a) to an act whenever done (including an act done before the commencement of this section); and
- (b) to an act done in relation to an association before it became an organisation.

Certain invalid actions not validated by this section

(6) Nothing in this section validates the expulsion or suspension of, or the imposition of a fine or any other penalty on, a member of an organisation that would not have been valid if this section had not been enacted.

Relationship between this section and Part 3 of Chapter 7

(7) Nothing in this section affects the operation of Part 3 of Chapter 7 (Inquiries into elections).

320 Validation of certain acts after 4 years

(1) Subject to this section and section 321, after the end of 4 years from:

- (a) the doing of an act:
    - (i) by, or by persons purporting to act as, a collective body of an organisation or branch of an organisation and purporting to exercise power conferred by or under the rules of the organisation or branch; or
    - (ii) by a person holding or purporting to hold an office or position in an organisation or branch and purporting to exercise power conferred by or under the rules of the organisation or branch; or
  - (b) the election or purported election, or the appointment or purported appointment of a person, to an office or position in an organisation or branch; or
  - (c) the making or purported making, or the alteration or purported alteration, of a rule of an organisation or branch;
- the act, election or purported election, appointment or purported appointment, or the making or purported making or alteration or purported alteration of the rule, is taken to have been done in compliance with the rules of the organisation or branch.

(2) The operation of this section does not affect the validity or operation of an order, judgment, decree, declaration, direction, verdict, sentence, decision or similar judicial act of the Federal Court or any other court made before the end of the 4 years referred to in subsection (1).

(3) This section extends to an act, election or purported election, appointment or purported appointment, and to the making or purported making or alteration or purported alteration of a rule:

- (a) done or occurring before the commencement of this section; or
- (b) done or occurring in relation to an association before it became an organisation."

"201M Effectiveness of acts by directors

(1) An act done by a director is effective even if their appointment, or the continuance of their appointment, is invalid because the company or director did not comply with the company's constitution (if any) or any provision of this Act.

(2) Subsection (1) does not deal with the question whether an effective act by a director:

- (a) binds the company in its dealings with other people; or
- (b) makes the company liable to another person.

Note: The kinds of acts that this section validates are those that are only legally effective if the person doing them is a director (for example, calling a meeting of the company's members or signing a document to be lodged with ASIC or minutes of a meeting). Sections 128-130 contain rules about the assumptions people are entitled to make when dealing with a company and its officers."

37.1 Subject to the provisions of the Act and in particular s226 all acts done by:

- (a) any meeting of the Board;
- (b) a committee of the Board; or
- (c) any person acting as a director

shall be valid even though it is afterwards discovered that there was some defect in the appointment of any director or person acting as a director, or that they or any of them were disqualified.

40

**Sub-rule 40.1:**

40.1 The Organisation shall have an auditor (who must be an approved auditor within the meaning of regulation 4 of the *Workplace Relations (Registration and Accountability of Organisations) Regulations 2003*) who shall be appointed or elected in accordance with the Corporations Act.

**Sub-rules 41.1 – 41.4:**

- 41.1 The Organisation shall have a common seal.
- 41.2 The Board shall provide for the safe custody of the common seal.
- 41.3 The common seal shall only be used by the authority of the Board or of a committee of the Board authorised by the Board in that regard. The authority may be given before or after the seal is used.
- 41.4 Every instrument to which the common seal is affixed shall be signed by a director and shall be countersigned by:
- (a) the Company Secretary;
  - (b) a second director; or
  - (c) some other person appointed by the Board for the purpose.

**Sub-rule 42:**

- 42.1 The Organisation may execute a document, including but not limited to a deed, without using the seal if the deed is signed by:
- (a) 2 directors; or
  - (b) a director and the Company Secretary.
- 42.2 Despite anything contained in these Rules and Constitution, documents relating to industrial disputes or any other industrial relations matters an application or notice lodged in the Industrial Registry may be executed and lodged on behalf of the Organisation by the Organisation's IR Representative if written authority (which may be general or limited to a particular case) has been given by the Organisation to the IR Representative to execute and lodge the same.

**Sub-rule 43.2:**

- 43.2 For avoidance of doubt, rule 43.1 does not limit access by members to prescribed information under section 274 of the Act financial records pursuant to Division 7 of Chapter 8 of Schedule 1 to the Act.

**Sub-rule 44.2:**

- 44.2 A notice may be given to any member, prospective member, director, auditor or any other person:
- (a) personally;
  - (b) by fax to any fax number provided by the person to the Organisation for the purpose of receiving faxes; or
  - (c) by sending it by post to the person at the person's address as shown in the Organisation's records or to any address provided by the person to the Organisation for the giving of notices; or
  - (d) in the case of a general meeting, by any of the other means permitted by section 249J(3) and (3A) of the Corporations Act.

Note: Section 249J(3) and (3A) of the Corporations Act provide as follows:

"How notice is given

(3) A company may give the notice of meeting to a member:

- (a) personally; or
- (b) 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; or

41

- (a) a liability owed to the company or a related body corporate;
- (b) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H or 1317HA;
- (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.

This subsection does not apply to a liability for legal costs.

When indemnity for legal costs not allowed

(3) A company or related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer or auditor 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 subsection (2); or
- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in defending or resisting proceedings brought by ASIC 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 this Act in which the Court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

Note 1: Paragraph (c)—This includes proceedings by ASIC for an order under section 206C, 206D or 206E (disqualification), section 232 (oppression), section 1317E, 1317G, 1317H or 1317HA (civil penalties) or section 1324 (injunction).

Note 2: The company may be able to give the person a loan or advance in respect of the legal costs (see section 212).

(4) For the purposes of subsection (3), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

**199B Insurance premiums for certain liabilities of director, secretary, other officer or auditor**

(1) A company or a related body corporate must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer or auditor of the company against a liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the company; or
- (b) a contravention of section 182 or 183.

This section applies to a premium whether it is paid directly or through an interposed entity.

(2) An offence based on subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

**199C Certain indemnities, exemptions, payments and agreements not authorised and certain documents void**

- (1) Sections 199A and 199B do not authorise anything that would otherwise be unlawful.
- (2) Anything that purports to indemnify or insure a person against a liability, or exempt them from a liability, is void to the extent that it contravenes section 199A or 199B."

**Sub-rules 47.1 & 47.2:**

- 47.1 Subject to the following sub-clause rule, these Rules and Constitution or any part of it may be amended, modified or repealed by a special resolution passed at a general meeting.
- 47.2 An alteration to these Rules and Constitution shall not take effect unless particulars of the alteration have been lodged in the Industrial Registry and a Registrar has certified that in his opinion the alteration:
- (a) complies with and is not contrary to the Act or any awards or certified agreements;
  - (b) is not otherwise contrary to law; and
  - (c) has been made in accordance with these Rules and Constitution.
- 47.2 Sections 136 and 601DH of the Corporations Act as well as Division 5 of Chapter 5 of Schedule 1 of the Act also provide for how the name of the Organisation and its Rules and Constitution may be changed.

Note: sections 158(1) and 159 (both of which are in Division 5 of Chapter 5 of Schedule 1 of the Act) relevantly provide as follows:

43

- (c) by sending it to the fax number or electronic address (if any) nominated by the member; or
- (ca) by sending it to the member by other electronic means (if any) nominated by the member; or
- (cb) by notifying the member in accordance with subsection (3A); or
- (d) by any other means that the company's constitution (if any) permits.

Note: A defect in the notice given may not invalidate a meeting (see section 1322).

(3A) If the member nominates:

- (a) an electronic means (the nominated notification means) by which the member may be notified that notices of meeting are available; and
  - (b) an electronic means (the 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):
- (c) that the notice of meeting is available; and
  - (d) how the member may use the nominated access means to access the notice of meeting.
- This subsection does not limit subsection (3)."

**Sub-rule 44.5:**

44.5 Where a notice is given by electronic means, service of the notice shall be deemed to be effected on the day after the notice was sent.

**Sub-rule 44.5: Renumber the existing sub-rule 44.5 as sub-rule 44.6.**

**Sub-rule 45.2:**

45.2 The body corporate referred to in the preceding sub-clause rule shall be determined:

- (a) by the members at or before the time of winding up or dissolution; and
- (b) in default, by the Supreme Court of Victoria

**Sub-rules 46.1 & 46.2:**

46.1 Every person who is or has been a director, agent, auditor, Company Secretary and other Officer for the time being of the Organisation shall be indemnified to the maximum extent permitted by Division 1 of Part 2D.2 of Chapter 2D of the Corporations Act out of the assets of the Organisation against any liability incurred in his or her capacity as a director, agent, auditor, Company Secretary and other Officer of the Organisation by him in performing any of his functions under these Rules and Constitution.

- (a) in defending any civil or criminal proceedings, in which judgement is given in his favour or in which he is acquitted in connection with any application under the Corporations Act; or
- (b) where relief is granted to him by the court in respect of any negligence, default, breach of duty or breach of trust.

46.2 Subject to Division 1 of Part 2D.2 of Chapter 2D of the Corporations Act, the Organisation may purchase and maintain for any director, Secretary or other Officer of the Organisation insurance against any liability which by virtue of any rule of law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust of which he may be guilty in relation to the Organisation.

Note: Division 1 of Part 2D.2 of Chapter 2D of the Corporations Act provides as follows:

**"Division 1—Indemnities and insurance for officers and auditors**

**199A Indemnification and exemption of officer or auditor**

Exemptions not allowed

(1) A company or a related body corporate must not exempt a person (whether directly or through an interposed entity) from a liability to the company incurred as an officer or auditor of the company.

When indemnity for liability (other than for legal costs) not allowed

(2) A company or a related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the company:

42

**"158 Change of name or alteration of eligibility rules of organisation**

(1) A change in the name of an organisation, or an alteration of the eligibility rules of an organisation, does not take effect unless the Commission consents to the change or alteration."

**"159 Alteration of other rules of organisation**

(1) An alteration of the rules (other than the eligibility rules) of an organisation does not take effect unless particulars of the alteration have been lodged in the Industrial Registry and a Registrar has certified that, in his or her opinion, the alteration:

- (a) complies with, and is not contrary to, this Schedule, the Workplace Relations Act, awards and collective agreements; and
- (b) is not otherwise contrary to law; and
- (c) has been made under the rules of the organisation.

(2) Where particulars of an alteration of the rules (other than the eligibility rules) of an organisation have been lodged in the Industrial Registry, a Registrar may, with the consent of the organisation, amend the alteration for the purpose of correcting a typographical, clerical or formal error.

(3) An alteration of rules that has been certified under subsection (1) takes effect on the day of certification."

Sections 136 and 601DH of the Corporations Act provide as follows:

**"136 Constitution of a company**

(1) A company adopts a constitution:

- (a) on registration—if each person specified in the application for the company's registration as a person who consents to become a member agrees in writing to the terms of a constitution before the application is lodged; or
- (b) after registration—if the company passes a special resolution adopting a constitution or a court order is made under section 233 that requires the company to adopt the constitution.

Note: The Life Insurance Act 1995 has rules about how benefit fund rules become part of a company's constitution and about amending those rules. They override this Act (see section 1348 of this Act). Consequential amendments to the rest of the company's constitution can be made under that Act or this Act (see Subdivision 2 of Division 4 of Part 2A of that Act).

(2) The company may modify or repeal its constitution, or a provision of its constitution, by special resolution. Note: The company may need leave of the Court to modify or repeal its constitution if it was adopted as the result of a Court order (see subsection 233(3)).

(3) The company's constitution may provide that the special resolution does not have any effect unless a further requirement specified in the constitution relating to that modification or repeal has been complied with.

(4) Unless the constitution provides otherwise, the company may modify or repeal a further requirement described in subsection (3) only if the further requirement is itself complied with.

(5) A public company must lodge with ASIC a copy of a special resolution adopting, modifying or repealing its constitution within 14 days after it is passed. The company must also lodge with ASIC within that period:

- (a) if the company adopts a constitution—a copy of that constitution; or
- (b) if the company modifies its constitution—a copy of that modification.

This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.

(6) An offence based on subsection (5) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code."

**"601DH Notice of name change must be given to ASIC**

(1) A registered Australian body or a registered foreign company must give ASIC written notice of a change to its name within 14 days after the date the change occurred.

(1A) An offence based on subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

(2) If the proposed name is available, ASIC must alter the details of the body's or foreign company's registration to reflect the change. For the purposes of this Act (other than subsection (1)), the change of name takes effect when ASIC alters the details of the body's or foreign company's registration.

Note 1: For the reservation of names, see section 601DA.

Note 2: For available names, see section 601DC.

Note 3: ASIC must issue a new certificate reflecting the name change (see section 601CU)."

44