

[298V: Incorporates alterations of 29/10/2014 [R2013/60]]
(replaces 25/5/2011 [R2011/91] version)

Master Grocers Australia Limited

I CERTIFY under section 161 of the Fair Work (Registered Organisations) Act 2009 that the pages herein numbered 1 to 82 both inclusive contain a true and correct copy of the registered rules of Master Grocers Australia Limited

DELEGATE TO THE GENERAL MANAGER
FAIR WORK COMMISSION

Rules of the Master Grocers Australia Limited

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RULES AND CONSTITUTION OF
MASTER GROCERS AUSTRALIA LIMITED

1 - NAME

- 1.1 The Organisation's name is MASTER GROCERS AUSTRALIA LIMITED.
- 1.2 The Organisation is formed in connection with the retail grocery, liquor and liquor/beverage industry in Victoria and is subject to the provisions of the Act.
- 1.3 The Organisation is a public company limited by guarantee and subject to the provisions of the Corporations Act.
- 1.4 The Replaceable Rules in the Corporations Act do not apply to the Organisation.

2 - DEFINITIONS AND INTERPRETATION

- 2.1 In these Rules and Constitution and in all documents referred to in it, unless the context otherwise requires:-

(a) "Act" means the Workplace Relations Act 1996 (Cth) as amended from time to time;

"AGM" means an annual general meeting;

"Board" means the Organisation's board of directors for the time being and is the committee of management for the purposes of the Act;

"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 business or liquor/beverage business whether conducted by itself or in association with a retail grocery business.

"Business Proprietor" means an individual who has an interest in a Business;

"Company Secretary" is not an officer in terms of the Act and means the Organisation's Secretary in terms of the Corporations Act;

"Corporations Act" means the Corporations Act 2001 (Cth) as amended from time to time;

"Declared person or body" means a person who is a declared person or body if

(i) an officer of the organisation has disclosed a material personal interest under rule 31 and the officer has not notified the organisation that the officer no longer has the interest; and

(ii) the interest relates to, or is in, the person or body; and

(iii) the officer has not notified the organisation that the officer no longer has the interest

2 - DEFINITIONS AND INTERPRETATION

“Disclosure period” for the purpose of these rules means the financial year unless a shorter period is specified;

“Enactment” means:

- (i) a federal or state act of parliament already or in the future to be proclaimed; and
- (ii) any subordinate instruments made pursuant to the particular act of parliament

as they may be consolidated, amended, re-enacted or replaced from time to time;

“Executive Officer” means the person appointed to that position from time to time by the Board;

“Financial duties” includes all duties that relate to the financial management of the organisation;

“General Manager” means the General Manager of the Fair Work Commission;

“general meeting” means a general meeting of members of the Organisation;

“Interest in a Business” means an interest as:

- (i) sole proprietor;
- (ii) partner;
- (iii) shareholder;
- (iv) unit holder;
- (v) beneficiary of a trust; or
- (vi) holder of a chose-in-action or other interest or right whether held beneficially or as a trustee, which entitles the holder to a share in the net assets of the Business on winding up;

“Material Interest” includes rights, advantages, duties, titles and liabilities with respect to a specific thing or matter and may be legal or equitable; a present, future or potential claim, which may be vested, conditional or contingent and may be direct or indirect and “Interest” has a corresponding meaning.

“non-cash benefit” means property or services in any form other than money, but does not include a computer, mobile phone or other electronic device that is used only or mainly for work purposes;

“office” has the same meaning as defined in Section 9 of the Fair Work (Registered Organisations) Act 2009;

“Officer” has the same meaning as defined in Section 6 of the Fair Work (Registered Organisations) Act 2009;

“person” means a body corporate or body politic as well as an individual;

2 - DEFINITIONS AND INTERPRETATION

“related party” has the same meaning as defined by section 9B of the Fair Work (Registered Organisations) Act 2009;

“relative” in relation to a person means:

- (i) parent, step parent, child, step child, grandparent, grandchild, brother or sister of the person; or
- (ii) the spouse of the first mentioned person.

“relevant remuneration” means in relation to an officer of the organisation for a disclosure period is the sum of the following:

- (i) any remuneration disclosed to the organisation by the officer under rule 30 during the disclosure period;
- (ii) any remuneration paid during the disclosure period to the officer by the organisation;

“relevant non cash benefits” in relation to an officer of the organisation for a disclosure period, are the non-cash benefits provided to the officer at any time during the disclosure period, in connection with the performance of the officer’s duties as an officer, by the organisation or by a related party of the organisation;

“remuneration” includes

- (i) pay, wages, salary, fees, leave, benefits or other entitlements; but
- (ii) does not include a non-cash benefit; and
- (iii) does not include the reimbursement or payment of reasonable expenses for the costs incurred in the course of the officer carrying out his or her duties.

“Rules and Constitution” means Rules for purposes of the Act and Constitution for purposes of the Corporations Act”;

“seal” means the Organisation’s common seal;

“special resolution” is a resolution passed at a general meeting or an AGM:

- (i) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution including proxies; and
 - (ii) where the intention to propose a special resolution together with the special resolution have been set out in the notice calling for the meeting.
- (b) words and expressions defined in the Act shall have the meanings so defined;
 - (c) words and expressions defined in the Corporations Act shall have the meanings so defined;
 - (d) words importing the singular number import the plural number and vice-versa;
 - (e) words importing a particular gender import the other genders;

4 - CAPACITY AND POWERS

- (f) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings; and
- (g) headings and highlighting are for convenience only and shall not be taken into account in the interpretation of these Rules and Constitution.

2.2 While the Organisation is registered under Schedule 1 of the Act:

- (a) these Rules and Constitution constitute the Organisation's Rules for the purposes of the Act.

3 – PURPOSE

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

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*
- (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;*

5 - MEMBERSHIP GENERALLY

- (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.*

5 - MEMBERSHIP GENERALLY

- 5.1 All the Organisation's members at the date of the adoption of these Rules and Constitution shall continue as members subject to these Rules and Constitution.
- 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.
- 5.3 A Business Proprietor's eligibility for membership is derived from his interest in a specific Business.
- 5.4 No more than one Business Proprietor whose eligibility for membership is derived from the same Business may be a member of the Organisation at any one time.
- 5.5 Subject to these Rules and Constitution, any Business Proprietor who applies for and is approved for membership in accordance with these Rules and Constitution shall become a member.
- 5.6 Any right, privilege or obligation conferred on a member by reason of his membership of the Organisation:
 - (a) is not capable of being transferred or transmitted to another person; and
 - (b) terminates upon the cessation of his membership for whatever reason.

6 - APPLICATION FOR MEMBERSHIP

- 6.1 An application for membership shall:
- (a) be made in writing in a form approved by the Board from time to time;
 - (b) specify the Business from which the applicant derives eligibility for membership; and
 - (c) be lodged with the Organisation at its office.
- 6.2 Before an application for membership is considered by the Board, the Organisation shall inform the applicant in writing of:
- (a) the financial obligations arising from membership; and
 - (b) the circumstances and manner in which a member may resign as a member of the Organisation.
- 6.3 As soon as is practicable after the receipt of an application for membership, but not less than seven days after the Organisation has served the applicant for membership with the information referred to in the preceding sub-clause, the Board shall:
- (a) consider the application for membership; and
 - (b) determine whether to approve or reject it.
- 6.4 An application for membership may be withdrawn by an applicant at any time before the Board considers it.
- 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 sections 165(4) and (5) of Schedule 1 to the Act which provides as follows:

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.*

7 - ENTRANCE FEE AND ANNUAL SUBSCRIPTION

- (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.*
- 6.6 Within 14 days of being requested to do so by an applicant whose application for membership has been rejected, the Board shall provide the applicant with written reasons for the rejection of his application for membership.
- 6.7 An applicant for membership shall become a member on the day the Board approves his or her application.
- 6.8 As soon as is reasonably practicable after an application for membership has been approved, the Secretary shall :
- (a) notify the applicant in writing that he has become a member; and
 - (b) request payment of:
 - (i) the entrance fee; and
 - (ii) the first year's annual subscription payable by him within a period of 28 days after receipt of the notification.
- 6.9 If a new member's entrance fee and first year's annual subscription are not paid within a period of 28 days after service of the notice referred to in the preceding sub-clause, the membership shall automatically lapse.

7 - ENTRANCE FEE AND ANNUAL SUBSCRIPTION

- 7.1 Until otherwise determined by the Board:
- (a) the entrance fees; and
 - (b) the annual subscriptions
- which are current at the date of the adoption of these Rules and Constitution shall remain the same.
- 7.2 The Board shall determine the amounts of the entrance fees and annual subscriptions payable from time to time.

9 - REGISTER OF MEMBERS

- 7.3 The amount of the annual subscriptions payable by members may be fixed by the Board on a differential basis as between members having regard to:
- (a) the number of persons employed from time to time by the Business from which the member derives eligibility for membership; and
 - (b) the number of locations at which particular Businesses are conducted from time to time.
- 7.4 Unless otherwise determined by the Board:
- (a) annual subscriptions are payable on or before the 1st day of July in each year; and
 - (b) any member who does not pay his annual subscription within six months of the due date for payment shall automatically cease to be a member if the annual subscription is not paid in full within 30 days from the date that the Organisation serves written notice on the member that the member's annual subscription is six months in arrears.
- 7.5 Where a person ceases to be a member by virtue of the preceding sub-rule, the Board may reinstate his membership if all arrears of subscriptions are paid.

8 - MEMBER'S LIABILITY

- 8.1 The liability of members is limited.
- 8.2 If the Organisation is wound up:
- (a) every member at the date of winding up; and
 - (b) every former member who ceased to be a member within one year of the date of winding up shall be liable to contribute an amount not exceeding \$100.00 towards payment of:
 - (1) the Organisation's debts and liabilities;
 - (2) the costs, charges and expenses of winding-up; and
 - (3) the adjustment of the rights of the contributories among themselves
- save that the liability of a former member to contribute towards the Organisation's debts and liabilities shall be limited to those debts and liabilities incurred before the member ceased to be a member.
- 8.3 Any amount payable by a member or former member pursuant to the preceding sub-rule shall be determined by the Organisation's liquidator.

9 - REGISTER OF MEMBERS

- 9.1 The Secretary shall keep and maintain a register of members ("the Register") in which shall be entered:
- (a) the full name, address, telephone number and any fax number of each member;
 - (b) the postal address of each member;

10 - CESSATION OF MEMBERSHIP

- (c) the particulars of the Business from which the member's eligibility for membership is derived;
 - (d) any other information prescribed from time to time by the Board
(collectively "Membership Particulars");
 - (e) the date of approval by the Board of each member's application for membership;
 - (f) the date of payment of each member's entrance fee and first year's annual subscription; and
 - (g) if applicable, the date on which a member ceases to be a member.
- 9.2 The Register shall also include any particulars or information prescribed from time to time by the Act or any regulation made under the Act in addition to the Membership Particulars and information referred to in the preceding sub-clause.
- 9.3 Members shall notify the Secretary of any changes to their Membership Particulars.
- 9.4 On receiving reasonable notice from time to time, the Secretary shall make the Register available for inspection by members at the Organisation's registered office.
- 9.5 Pursuant to section 172 of Schedule 1 to the Act, the Organisation is required to remove non-financial members from the Register.

10 - CESSATION OF MEMBERSHIP

- 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.

- 10.2 A member may resign his membership by giving written notice of resignation of membership ("**a Resignation Notice**") to the Secretary
- 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.*

11 - DISCIPLINE OF MEMBERS

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:*
- (a) *where the member ceases to be eligible to become a member of the organisation:*
- (i) *on the day on which the notice is received by the organisation; or*
- (ii) *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*
- (b) *in any other case:*
- (i) *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*
- (ii) *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.*

11 - DISCIPLINE OF MEMBERS

11.1 If the Board is of the opinion that a member -

- (a) has wilfully refused or neglected to comply with these Rules and Constitution; or
- (b) has been guilty of gross misbehaviour;

the Board may propose a resolution to:

- (1) expel the member from membership of the Organisation;
- (2) suspend the member from membership for a period not exceeding 12 months.

- 11.2 A proposed resolution of the Board under the preceding sub-rule (“**a Disciplinary Resolution**”) must either be put:
- (a) 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-rule 11.3 (“**a Special Board Meeting**”); or
 - (b) to a general meeting convened consequent upon the member exercising his right under these Rules and Constitution to have the Disciplinary Resolution dealt with by a general meeting.
- 11.3 Where the Board proposes a Disciplinary Resolution, as soon as is practicable, the Secretary shall cause written notice to be served on the member concerned which shall:
- (a) set out:
 - (i) the terms of the Disciplinary Resolution; and
 - (ii) the grounds on which it is based;
 - (b) state that the member may:
 - (i) address the Board; and
 - (ii) be represented at a Special Board Meeting;
 - (c) state the date, place and time of the Special Board Meeting; and
 - (d) inform the member that he may do one or more of the following -
 - (i) attend the Special Board Meeting;
 - (ii) before the date of the Special Board Meeting provide the Board with a written statement addressing the grounds upon which the Disciplinary Resolution is based; or
 - (iii) not later than two days before the date of the Special Board Meeting, lodge with the Secretary at the Organisation’s registered office, a notice to the effect that the member wishes the Disciplinary Resolution to be dealt with by a special general meeting (“**Special General Meeting Request**”).
- 11.4 If a Special Board Meeting is held, the Board shall:
- (a) give the member a fair and reasonable opportunity to be heard;
 - (b) allow the member to be represented;
 - (c) give due consideration to any written statement submitted by the member; and
 - (d) by resolution either pass or defeat the Disciplinary Resolution.
- 11.5 Where the Board receives a Special General Meeting Request under sub-rule 11(3)(d)(iii):
- (a) the Special Board Meeting shall be dissolved; and
 - (b) 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.

13 - CONVENING GENERAL MEETINGS

- 11.6 If the Board fails to properly convene a general meeting under the preceding sub-rule, the Disciplinary Resolution shall automatically lapse.
- 11.7 At a Special General Meeting convened under sub-rule 11.5:
- (a) no business other than the Disciplinary Resolution shall be transacted;
 - (b) the Board shall place before the meeting details of the grounds on which the Disciplinary Resolution is based;
 - (c) the member shall be given a fair and reasonable opportunity to be heard;
 - (d) the member shall be entitled to be represented; and
 - (e) 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-rule 11.5:
- (a) 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
 - (b) 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.

12 - ASSOCIATE MEMBERS

- 12.1 Any body corporate which is a supplier to the retail grocery, liquor or liquor/beverage industry and any other business proprietor in, or supplier to, the retail industry may be admitted as an associate member of the Organisation:
- (a) for any period; and
 - (b) on any terms
- the Board thinks fit from time to time.
- 12.2 An associate member:
- (a) shall have no voting rights; and
 - (b) shall not be bound by rule 8 of these Rules and Constitution.
- 12.3 Representatives of associate members may attend general meetings but shall not speak without the invitation of the chairman of the meeting.
- 12.4 Rules 6, 7, 10 and 11 of these Rules and Constitution apply to associate members.

13 - CONVENING GENERAL MEETINGS

- 13.1 The Board may convene a general meeting whenever it thinks fit.
- 13.2 A General Meeting may be convened only as provided by sub-rule 13.1 or as provided by sections 249D-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

- (1) *The directors of a company must call and arrange to hold a general meeting on the request of:*
 - (a) *members with at least 5% of the votes that may be cast at the general meeting; or*
 - (b) *at least 100 members who are entitled to vote at the 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 request must:*
 - (a) *be in writing; and*
 - (b) *state any resolution to be proposed at the meeting; and*
 - (c) *be signed by the members making the request; and*
 - (d) *be given to the company.*
- (3) *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.*
- (4) *The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.*
- (5) *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

- (1) *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.*
- (2) *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.*
- (3) *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.*
- (4) *The company must pay the reasonable expenses the members incurred because the directors failed to call and arrange to hold the meeting.*

(4A) *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.

(5) *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

(1) *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.*

(2) *The meeting must be called in the same way--so far as is possible--in which general meetings of the company may be called.*

(3) *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

(1) *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.*

(2) *The Court may make the order on application by:*

(a) *any director; or*

(b) *any member who would be entitled to vote at the meeting.*

13.3 Section 249Q of the Corporations Act provides that meetings of members may only be held for a proper purpose. Section 249R of the Corporations act provides that a meeting 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 249Q-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.

14 - NOTICE OF GENERAL MEETING

- 14.1 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:*
- (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.*

14.3 Notice of every general meeting shall be given 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.*

16 - PROCEDURE AT GENERAL MEETINGS

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.

15 - QUORUM FOR GENERAL MEETINGS

15.1 No business shall be transacted at any general meeting unless a quorum is present at the time when the meeting proceeds to business.

15.2 A quorum must be present at all times during a general meeting.

15.3 Save as otherwise provided in these Rules and Constitution, a quorum shall be the lesser of:

- (a) 10 members entitled to vote; or
- (b) half the total number of members entitled to vote present in person or by proxy.

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.

15.5 If at any adjourned general meeting a quorum is not present within 15 minutes from the time appointed for the meeting is dissolved.

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.

16 - PROCEDURE AT GENERAL MEETINGS

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.
- 16.2 With the consent of any general meeting at which a quorum is present the chairman may adjourn the meeting from time to time and from place to place.
- 16.3 The chairman shall adjourn a general meeting if the members present with a majority of votes at the meeting direct him to do so.
- 16.4 No business shall be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 16.5 When a general meeting is adjourned for 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.
- 16.6 Unless the Organisation has adopted standing orders for the conduct of general meetings, then subject to these Rules and Constitution, the chairman of any general meeting shall determine the rules of procedure governing the conduct of the meeting.
- 16.7 At any general meeting, if a resolution has been duly proposed as a special resolution, no amendment to it may be considered or voted upon unless:
- (a) the amendment is merely a clerical amendment to correct a patent error; or
 - (b) the moving of the amendment has been agreed to by a two-thirds majority of those present and voting either in person or by proxy.

17 - MEMBERS RESOLUTIONS

- 17.1 Division 4 of Part 2G.2 of Chapter 2G of 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.*

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.*

18 - VOTING AT GENERAL MEETINGS

- (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.*

18 - VOTING AT GENERAL MEETINGS

- 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.

- 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

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

250L When a poll is effectively demanded

- (1) *At a meeting of a company's members, a poll may be demanded by:*
 - (a) *at least 5 members entitled to vote on the resolution; or*
 - (b) *members with at least 5% of the votes that may be cast on the resolution on a poll; or*
 - (c) *the chair.*

Note: A proxy may join in the demand for a poll (see paragraph 249Y(1)(c)).

- (2) *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.*
- (3) *The poll may be demanded:*
 - (a) *before a vote is taken; or*
 - (b) *before the voting results on a show of hands are declared; or*
 - (c) *immediately after the voting results on a show of hands are declared.*
- (4) *The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.*

- 18.3 Unless a poll is demanded:

- (a) a declaration by the chairman that on a show of hands a resolution has been carried or carried unanimously or by a particular majority or lost; and
- (b) an entry to that effect in the Organisation's minute book

shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

- 18.4 A poll may be demanded on any matter except the election of a chair of the meeting or the adjournment of the meeting.

19 - PROXIES

- 18.5 If a poll is duly demanded it shall be taken by a secret ballot either at once or after an interval or adjournment and the result of the poll shall be the resolution of the general meeting at which the poll was demanded.
- 18.6 [Deleted]
- 18.7 In the case of an equality of votes, whether on a show of hands or on a poll in addition to any deliberative vote he may have as a member or as a proxy, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded shall be entitled to a casting vote.
- 18.8 At general meetings:
- (a) each member entitled to vote may vote in person or by proxy;
 - (b) on a show of hands every member present in person or by proxy shall have one vote; and
 - (c) on a poll, every member present in person or by proxy shall have one vote.
- 18.9 No member shall be entitled to vote at any general meeting unless all sums presently payable by him in respect of his membership in the Organisation have been paid.
- 18.10 No objections shall be raised to the qualification of any voter except at the general meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at the meeting shall be valid for all purposes.
- 18.11 Any objections to the qualification of any voter made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive.
- 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 a video conference.

19 - PROXIES

- 19.1 An instrument appointing a proxy shall be in writing 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 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

(1) *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.*

(1A) *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.

(2) *The appointment may specify the proportion or number of votes that the proxy may exercise.*

(3) *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.*

(4) *Disregard any fractions of votes resulting from the application of subsection (2) or (3).*

249Y Rights of proxies

Rights of proxies

(1) *A proxy appointed to attend and vote for a member has the same rights as the member:*

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

Proxy's right to vote

(2) *If a company has a constitution, the constitution may provide that a proxy is not entitled to vote on a show of hands.*

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

(3) *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

- (1) *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:*
 - (a) *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*
 - (b) *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.*
- (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 .

250A Appointing a proxy

- (1) *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:*
 - (a) *the member's name and address;*
 - (b) *the company's name;*
 - (c) *the proxy's name or the name of the office held by the proxy;*
 - (d) *the meetings at which the appointment may be used.*

An appointment may be a standing one.

- (1A) *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).*
- (2) *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).*
- (3) *An undated appointment is taken to have been dated on the day it is given to the company.*
- (4) *An appointment may specify the way the proxy is to vote on a particular resolution. If it does:*
 - (a) *the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and*
 - (b) *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*
 - (c) *if the proxy is the chair--the proxy must vote on a poll, and must vote that way; and*

- (d) *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)).

- (5) *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) *a list of persons willing to act as proxies; or*

(b) *a proxy appointment form holding the person out as being willing to act as a proxy.*

- (5A) *An offence based on subsection (5) is an offence of strict liability.*

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

- (6) *An appointment does not have to be witnessed.*

- (7) *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

- (1) *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:*

(a) *the proxy's appointment;*

(b) *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.*

Documents received following adjournment of meeting

- (2) *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

- (3) A company receives a document referred to in subsection (1):
- (a) when the document is received at any of the following:
 - (i) the company's registered office;
 - (ii) a fax number at the company's registered office;
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting; and
 - (b) 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

- (5) 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

- (1) A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

Proxy vote valid even if member dies, revokes appointment etc. (replaceable rule--see section 135)

- (2) Unless the company 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:
- (a) the appointing member dies; or
 - (b) the member is mentally incapacitated; or
 - (c) the member revokes the proxy's appointment; or
 - (d) the member revokes the authority under which the proxy was appointed by a third party; or
 - (e) the member transfers the share in respect of which the proxy was given.

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

- (1) *A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:*
- (a) *at meetings of a company's members; or*
 - (b) *at meetings of creditors or debenture holders; or*
 - (c) *relating to resolutions to be passed without meetings; or*
 - (d) *in the capacity of a member's proxy appointed under subsection 249X(1).*

The appointment may be a standing one.

- (2) *The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.*
- (3) *A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.*
- (4) *Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.*

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:
- (a) the appointing member dies; or
 - (b) the member's mentally incapacitated; or
 - (c) the member revokes the proxy's appointment; or
 - (d) the member revokes the authority under which the proxy was appointed by a third party; or
 - (e) the member transfers the share in respect of which the proxy was given.

20 - ANNUAL GENERAL MEETINGS

- 20.1 The Organisation must hold an AGM on a date being no earlier than 31 August and no later than 30 November in each calendar year.
- 20.2 At least 21 clear days must be given of an AGM.

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 Chapter 2G 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;*
 - (c) *the appointment of the auditor;*
 - (d) *the fixing of the auditor's remuneration.*
- (2) *At a listed company's AGM, a resolution that the remuneration report be adopted must be put to the vote.*

Note: Under subsection 249L(2), the notice of the AGM must inform members that this resolution will be put at the AGM.

- (3) *The vote on the resolution is advisory only and does not bind the directors or the company.*

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 .

21 - ELECTION AND APPOINTMENT OF DIRECTORS

- 21.1 The directors in office at the date of the adoption of these Rules and Constitution shall continue in office subject to these Rules and Constitution.
- 21.2 There shall be not less than three directors and not more than nine directors.
- 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 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) 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.

21 - ELECTION AND APPOINTMENT OF DIRECTORS

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.*

21.6 At the AGM following the adoption of these Rules and Constitution, and then at each following AGM, one-third of the directors for the time being or if their number is not 3 or a multiple of 3 then the number nearest one third shall retire from office.

21.7 The directors to retire at an AGM shall be those who have been longest in office since their election, but as between persons who become directors on the same day, unless they otherwise agree among themselves, those to retire shall be determined by lot.

21.8 Elections shall be held in accordance with these Rules and Constitution to fill the offices vacated by rotation. Such an election will be held before the AGM at which the offices of directors are vacated by retirement.

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 for 4 years without re-election.

21.10 Subject to the provisions of the Act, a retiring director shall be eligible for re-election.

21.11 Subject to the provisions of the Act, any casual vacancy in the Board may be filled:

- (a) by an ordinary election; or
- (b) by appointment by the Board.

21.12 Any person elected to be a director to fill a casual vacancy in the Board:

- (a) shall be subject to retirement at the same time as if he had become a director on the day on which the director in whose place he is elected was last elected a director; and
- (b) subject to the Act, shall be eligible for re-election.

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-rule (a) above, does not exceed the greater of:-
 - (i) 12 months; or
 - (ii) three-quarters of the term of office.

21 - ELECTION AND APPOINTMENT OF DIRECTORS

- 21.14 Any person appointed by the Board to fill a casual vacancy in the Board, shall be eligible for re-election subject to the Act.
- 21.15 Each director elected to fill an office vacated by rotation shall take up office from the close of the AGM at which the vacation of office by rotation occurs.
- 21.16 Each director appointed by the Board to fill a casual vacancy shall take up office from the close of the meeting at which he is appointed.
- 21.17 Each director elected to fill a casual vacancy shall take up office immediately following the declaration of the election by the returning officer.
- 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.
- 21.19 Notice that nominations are required for the election of a director to fill any office vacated by rotation shall be sent by the returning officer to each member at least 72 days before the AGM. The returning officer must indicate on the said notice the number of nominations required.
- 21.20 Notice that nominations are required for the election of a director to fill a casual vacancy, shall be sent by the returning officer to each member no later than 30 days after such casual vacancy arose.
- 21.21 The notice calling for nominations shall state that members wishing to nominate a candidate for election may do so by applying in writing within 14 days of receipt of the notice to the returning officer for a nomination form.
- 21.22 Within seven days of receiving a written request for a nomination form, the returning officer shall forward a nomination form to the person who has requested it.
- 21.23 Any two members of the Organisation may nominate a member by signing the nomination form. The nomination form shall be consented to in writing by the nominee.
- 21.24 The nomination form signed by the nominators and endorsed with the written consent of the candidate shall be forwarded so as to be received by the returning officer no later than 5 p.m. 21 days after it was sent to the members requesting it.
- 21.25 The returning officer shall inspect the nominations and consents received and satisfy himself/herself, as far as he/she reasonably can, that each of the nominations received is in order.

22 - POWERS OF DIRECTORS AND MANAGEMENT OF THE ORGANISATION BY THE BOARD

- 21.26 If the returning officer finds a nomination to be defective, the returning officer shall, before rejecting the nomination, notify the person concerned of the defect and, where applicable, give the person the opportunity of remedying the defect within not less than 7 days after the person is notified.
- 21.27 If the number of nominations for proposed directors which are in order and received within the time prescribed does not exceed the number of vacancies, the returning officer, shall declare the person or persons nominated as elected.
- 21.28 If there are insufficient nominations for proposed directors which are in order and received within the time prescribed to fill a vacancy, a vacancy shall be left.
- 21.29 If there are more nominations than vacancies a ballot shall be held in terms of these Rules and Constitution.

22 - POWERS OF DIRECTORS AND MANAGEMENT OF THE ORGANISATION BY THE BOARD

- 22.1 The business of the Organisation shall be managed by or under the direction of the Board which may exercise all of the Organisation's powers except those which by virtue of the Act, the Corporations Act or these Rules and Constitution are required to be exercised by a general meeting.
- 22.2 Without limiting the preceding sub-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;
 - (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 undertake the functions 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.

- 22.3 Subject to the Act and the Corporations Act for the time being in force, a director may hold any position or other office or offices in the Organisation (except the position of auditor) together with the office of director and on the conditions of remuneration and otherwise as the Board may arrange. All such arrangements must be recorded by the Company Secretary and made available for inspection by members on request.

22.4 Power to appoint attorneys

- (a) The directors may, by power of attorney, appoint 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 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.

22.5 Signing of documents and cheques

All cheques, promissory notes, drafts, bill of exchange and other negotiable instruments, and all receipts for money paid to the Organisation shall be signed, drawn, accepted, endorsed or otherwise executed in any manner determined by the Board from time to time.

22.6 Industrial Relations

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-rule

22.7 From time to time the Board may appoint any Officer to be the company's representative to exercise all or any of its powers pursuant to the preceding subclause ("an IR Representative").

- 22.8 Any appointment of an IR Representative:
- (a) may be a standing appointment; and
 - (b) may set out restrictions on the IR Representative's powers.
- 22.9 The Board may appoint more than one IR Representative, but only one IR Representative may exercise the Board's powers at any one time in relation to any one matter.
- 22.10 The Board may notify the Australian Industrial Relations Commission of any industrial dispute in any manner allowed by law from time to time.

22.11 Borrowings

The Board may exercise all the powers of the Organisation to:

- (a) borrow money;
 - (b) mortgage or charge the whole or any part of the Organisation's undertaking and property; and
 - (c) issue debentures and other securities whether outright or as security for any debt, liability or obligation of the Organisation.
- 22.12 Engagement of employees

The Board shall appoint employees and determine their remuneration and terms and conditions of employment.

23 - THE COMPANY SECRETARY

- 23.1 The Company Secretary shall be appointed by the Board.
- 23.2 A person need not be a member to qualify for appointment as Company Secretary.
- 23.3 The Company Secretary is not the holder of an office under the 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.*
- 23.5 The salary and conditions of appointment of the Company Secretary will be determined by the Board from time to time.
- 23.6 The Company Secretary shall keep a register of Members and Associate Members.

24 - THE PRESIDENT AND VICE-PRESIDENT

- 24.1 The President and Vice-President of the Board at the date of the adoption of these Rules and Constitution shall continue to hold those positions subject to these Rules and Constitution.
- 24.2 The Board shall annually elect:
- (a) one of its Members to be the President; and
 - (b) one of its Members to be the Vice-President
- in accordance with these Rules and Constitution.
- 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:
- (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.
- 24.4 A retiring President or Vice-President is eligible for re-election as either President or Vice-President as long as they are Directors.
- 24.5 Immediately following each AGM there shall be a meeting of the Board, the business of which shall include but shall not be limited to appointing an acting President and an acting Vice-President pending the declaration of the results of the elections to be held.
- 24.6 Notice that nominations are required for the offices of President and Vice President shall be sent by the returning officer to each Director no more than seven days after each AGM. The notice shall state a closing date for nominations which will be no more than 14 days from the date on which the notice is sent by the returning officer. Each notice shall contain a nomination form.
- 24.7 A director may nominate a candidate (including himself) for election as President or Vice-President. Each nominee shall sign his/her ascent to nomination on the nomination form.
- 24.8 Nominations signed by the nominators and endorsed with the consent of the candidate shall be forwarded so as to be received by the returning officer no later than 5.00 p.m. on the closing date for nominations.
- 24.9 The returning officer shall check all nominations received to see if they comply with the requirements of the Rules and Constitution. If the returning officer discovers a nomination to be defective, he shall, before rejecting the nomination, notify the person concerned and where it is practical to do so, give the person the opportunity to either remedy the defect within where practical seven days of the person being notified.

25 - CONDUCT OF BALLOT

- 24.10 If the number of nominations which are in order received for the positions of President and Vice-President exceed the number of vacancies, a ballot will be held in terms of these Rules and Constitution.
- 24.11 If the number of nominations which are in order received for the positions of President and Vice-President within the time prescribed does not exceed the number of vacancies, the person or persons nominated shall be declared elected to such office as the case requires.
- 24.12 Any casual vacancy in the office of President or Vice-President may be filled by any director appointed by the Board.
- 24.13 It will be the duty of the President and Vice-President to do all such acts and things and exercise all such functions of the Board as may be delegated to it by the Board or by the Organisation in general meeting.

The President and in his absence the Vice-President shall be ex-officio members of:

- (a) all committees of the Board; and
- (b) all Advisory Boards.

25 - CONDUCT OF BALLOT

- 25.1 These Rules and Constitution provide that each election for an Officer shall be conducted by the Australian Electoral Commission. The President (or in his absence, the Vice-President) shall advise the Australian Industrial Registry for the need for an election subject to the provisions of the Act and these Rules and Constitution as soon as a vacancy for a position of an Officer arises.
- 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.
- 25.3 The person appointed by the Australian Electoral Commission shall be the returning officer who shall conduct any election for office holders of the organisation.
- 25.4 The returning officer shall not be:
- (a) an Officer of the Organisation;
 - (b) an employee of the Organisation;
 - (c) candidate for election;
 - (d) a member.
- 25.5 If more nominations are received than there are vacancies, the returning officer must conduct a secret postal ballot.
- 25.6 In the event of a postal ballot being required the returning officer shall cause to be prepared a sufficient number of ballot papers on which shall appear the names of candidates in alphabetical order, the directions for voting and the date and the time of closing of the ballot. The returning officer shall determine the closing date of the ballot, which shall not be less than 14 days from the date that the ballot papers are posted.

- 25.7 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 Magazine together with details of each candidates' personal profile. The Company Secretary shall ensure that such edition of the Independent Retailer Magazine is published and distributed when ballot papers are posted to members.
- 25.8 In the case of the election of the President, Vice-President and the election of directors as a result of vacancies not caused by rotation, the closing date of ballot shall not be later than 21 days from the closing date for nominations and less than seven days after ballot papers were sent to voters.
- 25.9 The Executive Officer shall, prior to the dispatch of ballot papers to voters, furnish the returning officer with a certificate to the effect that the accompanying list of eligible voters and their postal addresses represents members of the Organisation (in the case of election for directors) or directors of the Organisation (in the case of an election for President or Vice-President) 7 days before the opening date of nomination for the position of Officer/s.
- 25.10 The returning officer shall cause to be sent to each member (in the case of an election for Directors) or to each director (in the case of an election for the President or Vice-President) by prepaid post a ballot paper, declaration envelope and another envelope addressed to the returning officer in the form prescribed by the Workplace Relations (Registration and Accountability of Organisations) Regulations 2003. The ballot paper and envelope shall be sent to the addresses as per the list provided by the Executive Officer
- 25.11 Directions for voting shall advise that the voting system is first past the post.
- 25.12 Absent voting shall be provided for by allowing members or directors to notify the returning officer in writing of a nominated address for the forwarding of ballot papers so long as such notification is received by the returning officer at least two days prior to the time ballot papers are posted to members or directors.
- 25.13 All voting papers shall be initialled by the returning officer before they are issued.
- 25.14 The voter must indicate that their vote in accordance with the directions for voting and shall place the completed ballot paper in the declaration envelope. The declaration envelope must then placed in another envelope addressed to the returning officer in the form prescribed by the Workplace Relations (Registration and Accountability of Organisations) Regulations 2003. The voter must, deliver, or cause the envelope to be delivered to the returning officer.
- 25.15 All valid voting papers which are received by the returning officer before the closing of the ballot must be counted.
- 25.16 The returning officer may supply a substitute ballot paper, which must be initialled, to any voter who furnishes the returning officer with a damaged or misused ballot paper or furnishes evidence satisfactory to the returning officer of the destruction or the loss of the ballot paper.

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;
- (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.

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.

25.19 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 sub-rule 25.4, to act for the returning officer.

25.20 Scrutineering of Vote

After the returning officer has counted the votes cast for all candidates, the returning officer must announce the results of the count to the scrutineers in attendance. Any scrutineer present is entitled to examine any ballot paper and to demand a recount if they are not satisfied that the original count was correct. Upon completion of the counting the returning officer must sign a paper certifying the correctness of the totals of the votes cast for each candidate and record it in that paper.

25.21 Duties of the returning officer

The returning officer must:

- (a) be responsible for the safe custody of the ballot papers;
- (b) obtain from the printer a certificate of the number of ballot papers printed;
- (c) initial every ballot paper prior to its distribution;
- (d) issue a ballot paper, declaration envelope and another envelope, in the form prescribed by the Workplace Relations (Registration and Accountability of Organisations) Regulations 2003, for the return of the vote to all Members or Directors entitled to receive a ballot paper;

- (e) control a ballot box for the reception of ballot papers and in the presence of the scrutineers, if they desire to be present, see that the box is emptied immediately prior to the opening of the ballot and thereupon seal the said box and ensure that it remains sealed until the time fixed for the closing of the ballot;
- (f) at the time fixed for the closing of the ballot, open the ballot box in the presence of scrutineers who may be present and count all the votes cast;
- (g) on completion of the counting of votes, the returning officer shall advise the Executive Officer in writing of the results of the election;
- (h) the returning officer shall declare the successful candidates elected and such declaration shall be exhibited in the office of the Organisation and also submitted at the Annual General Meeting of the Organisation in the case of an election for directors or in any other case, to the next ensuing meeting of the Board;
- (i) take all reasonable steps by notification or otherwise to enable each scrutineer to exercise his/her rights.

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.

26 - SCRUTINEERS

26.1 Appointment of Scrutineers

Any candidate in an election required under these Rules and Constitution may, if they so desire, appoint a scrutineer, who need not be a member of the Organisation, to represent the candidate at the ballot. The candidates appointing a scrutineer must, before the commencement of the ballot, notify the returning officer, in writing of the name of such scrutineer.

26.2 Rights and Restrictions of Scrutineer

A scrutineer:

- (a) Is entitled to be present throughout the ballot and may query the inclusion or exclusion of any vote in the count by the returning officer;
- (b) A scrutineer must not remove marks, alter or deface any ballot paper or other document used in connection with the election;
- (c) must not interfere with or attempt to influence any member or director at the time such member or Director is casting their vote;
- (d) may direct the attention of the returning officer to any irregularity in the elections he/she may detect;

- (e) As far as reasonably practicable, scrutineers shall be entitled to inspect all nomination forms and observe:
 - (i) the form and distribution of ballot papers;
 - (ii) collection of ballot papers;
 - (iii) the checking of votes;
 - (iv) the admission and counting of votes;
 - (v) the conduct of any determination of an election by lot; and
 - (vi) the declaration of the ballot.

26.3 No election shall be invalidated by reason of the fact that:

- (a) a scrutineer having had a reasonable opportunity to do so, does not in fact exercise all or any of his/her rights; or
- (b) a candidate does not appoint a scrutineer.

26.4 Scrutineers shall do all things necessary to ensure that the secrecy of the ballot is observed.

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:

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:
- (a) the company's constitution (if any); or
 - (b) an agreement between the company and the director; or
 - (c) 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:
- (a) giving the company a written statement for circulation to members (see subsections (5) and (6)); and
 - (b) 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:
- (a) sending a copy to everyone to whom notice of the meeting is sent if there is time to do so; or
 - (b) 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:*

(a) *the replacement director, or*

(b) *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:

(a) *remove a director from their office; or*

(b) *require a director to vacate their office.*

28 - ORGANISATION POLICIES AND PROCEDURES

28.1 The organisation shall develop and implement policies and procedures relating to the expenditure of the organisation.

29 - REMUNERATION OF OFFICERS

28.1 The remuneration of the Officers shall be determined by the Board from time to time.

28.2 Officers may also be paid all travelling, hotel and other expenses properly incurred by them in connection with:

(a) any meeting of the Board;

(b) any meeting of any committee of the Board;

(c) any general meetings of the Organisation; or

(d) the business of the Organisation.

28.3 A director may not hold any other office or place of profit in or under the Organisation, unless the holding of such office or place is authorised by these Rules and Constitution.

28.4 Any director who:

- (a) serves on any committee of the Board;
- (b) devotes special attention to the business of the Organisation; or
- (c) performs services which in the opinion of the Board are outside the scope of the ordinary duties of a director;

may be paid extra remuneration in an amount to be determined by the Board from time to time.

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 PartD.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) *a benefit is given in connection with a person's retirement from an office if the benefit is given:*
 - (i) *by way of compensation for, or otherwise in connection with, the loss by the person of the office; or*
 - (ii) *in connection with the person's retirement from the office; and*
- (b) *giving a benefit includes:*
 - (i) *if the benefit is a payment--making the payment; and*
 - (ii) *if the benefit is an interest in property--transferring the interest; and*
- (c) *a person gives a benefit even if the person is obliged to give the benefit under a contract; and*
- (d) *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:*
 - (i) *by way of compensation for, or otherwise in connection with, the loss by the person of the office; or*
 - (ii) *in connection with the person's retirement from the office; and*
- (e) *retirement from an office includes:*
 - (i) *loss of the office; and*
 - (ii) *resignation from the office; and*
 - (iii) *death of a person at a time when they hold the office.*

- (2) *For the purposes of this Division, if:*
- (a) *a person (person A) gives another person a benefit (benefit A); and*
 - (b) *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:*
- (a) *the company;*
 - (b) *an associate of the company (other than a body corporate that is related to the company and is itself a company);*
 - (c) *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:*
- (a) *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*
 - (b) *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) *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*

- (b) *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:*

- (a) *holds, or has at any previous time held, a board or managerial office in a company or a related body corporate; or*
- (b) *is the spouse of a person referred to in paragraph (a); or*
- (c) *is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or*
- (d) *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:*

- (a) *holds, or has at any previous time held, a board or managerial office in a company or related body corporate; or*
- (b) *is the spouse of a person referred to in paragraph (a); or*
- (c) *is a relative of a person referred to in paragraph (a) or of the spouse of such a person; or*

- (d) *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:*

- (a) *the company; and*
- (b) *if the company is a subsidiary of a listed domestic corporation--the listed corporation; and*
- (c) *if the company has a holding company that:*
- (i) *is a domestic corporation that is not listed; and*
- (ii) *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:*

- (a) *if the proposed benefit is a payment:*
- (i) *the amount of the payment; or*
- (ii) *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*
- (b) *otherwise:*
- (i) *the money value of the proposed prescribed benefit; or*
- (ii) *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:*

- (a) *the other benefit is given to the person instead of the proposed benefit; and*
- (b) *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) *a benefit given in connection with a person's retirement from an office in relation to a company if the benefit is:*
 - (i) *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*
 - (iv) *a payment made in respect of leave of absence to which the person is entitled under an industrial instrument; or*
 - (aa) *a benefit given under an order of a court; or*
 - (b) *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:*
- (a) *the benefit is:*
 - (i) *a genuine payment by way of damages for breach of contract; or*
 - (ii) *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*
 - (b) *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:*
 - (i) *the amount worked out under subsection (3); and*
 - (ii) *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:*
- (a) *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*
 - (b) *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*
 - (c) *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.*
- (5) *For the purposes of this section, if a person has held an office in relation to a company:*
- (a) *throughout a period; or*
 - (b) *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:*
- (a) *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*
 - (b) *the payment is for past services the person rendered to:*
 - (i) *the company; or*
 - (ii) *a related body corporate; or*
 - (iii) *a body that was a related body corporate of the company when the past services were rendered; and*
 - (c) *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:*

(a) *the amount worked out under subsection (3) if the person:*

(i) *was an eligible employee in relation to the company at the time when the person retired from the relevant office; and*

(ii) *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*

(b) *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) *a contribution made by the person; or*

(b) *a contribution made by a person other than:*

(i) *the company; or*

(ii) *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*

(iii) *an associate of the company, or of a relevant body corporate, in respect of:*

(A) *the payment of the pension, or the making of the lump sum payment, as the case may be; or*

(B) *the making of the contribution.*

30 - DISCLOSURE OF OFFICER'S RELEVANT REMUNERATION AND NON-CASH BENEFITS

(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:*

- (a) *the person was a genuine full-time employee of the company at that time; or*
- (b) *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.

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:*

- (a) *if the benefit is a payment--the amount of the payment; or*
- (b) *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.*

30 - DISCLOSURE OF OFFICER'S RELEVANT REMUNERATION AND NON-CASH BENEFITS

30.1 Each officer of the organisation shall disclose to the organisation any remuneration paid to the officer:

- (a) because the officer is a member of a board, if:
 - (i) the officer is a member of the board only because the officer is an officer of the organisation; or
 - (ii) the officer was nominated for the position as a member of the board by the organisation, or a peak council; or
- (b) by any related party of the organisation, in connection with the performance of the officer's duties an officer.

30.2 The disclosure required by sub-rule 30.1 shall be made to the organisation:

- (a) as soon as practicable after the remuneration is paid to the officer; and
- (b) in writing.

- 30.3 The organisation shall disclose to the members of the organisation:
- (a) the identity of the officers who are the five highest paid in terms of relevant remuneration for the disclosure period, and
 - (b) for those officers
 - (i) the actual amount of the officers who are the five highest paid in terms of relevant remuneration for the disclosure period, and
 - (ii) either the value of the officers' relevant non-cash benefits, or the form of the officers' relevant non-cash benefits, for the disclosure period.
- 30.4 For the purpose of sub-rule 30.3, the disclosure shall be made:
- (a) in relation to each financial year;
 - (b) within six months after the end of the financial year; and
 - (c) in writing.
- 30.5 For the purposes of sub-rule 30.1, board means a group of persons who supervise, govern or otherwise have oversight of a corporation, organisation, association or other like body including a Board of Directors.

31 - DISCLOSURE OF OFFICER'S MATERIAL PERSONAL INTERESTS

- 31.1 Each officer of the organisation shall disclose to the organisation any material personal interest in a matter that:
- (a) the officer has or acquires; or
 - (b) a relative of the officer has or acquires;
- that relates to the affairs of the organisation.
- 31.2 The disclosure required by sub-rule 31.1 shall be made to the organisation:
- (a) as soon as practicable after the interest is acquired; and
 - (b) in writing.
- 31.3 The organisation shall disclose to the members of the organisation any interests disclosed to the organisation pursuant to sub-rule 31.1.
- 31.4 For the purposes of sub-rule 31.3, the disclosures shall be made:
- (a) in relation to each financial year;
 - (b) within six months after the end of the financial year; and
 - (c) in writing.

32 - DISCLOSURE BY ORGANISATION OF PAYMENTS

- 32.1 The organisation shall disclose to the members of the organisation either:
- (a) each payment made by the organisation, during the disclosure period:
 - (i) to a related party of the organisation; or
 - (ii) to a declared person or body of the organisation; or
 - (b) the total of the payments made by the organisation, during the disclosure period:
 - (i) to each related party of the organisation; or
 - (ii) to each declared person or body of the organisation
- 32.2 Sub-rule 32.1 does not apply to a payment made to a related party if the payment consists of amounts deducted by the organisation from remuneration payable to officers or employees of the organisation.
- 32.3 For the purposes of sub-rule 32.1, the disclosure shall be made:
- (a) in relation to each financial year;
 - (b) within six months after the end of the financial year; and
 - (c) in writing.
- 32.4 For the purposes of sub-rule 32.1, disclosure is not required to include remuneration paid to an officer by the organisation, nor reimbursements of expenses reasonably incurred by an officer in performing their duties as an officer.

33 - FINANCIAL TRAINING

- 33.1 Each officer of the organisation whose duties include duties (financial duties) that relate to the financial management of the organisation shall complete training that is:
- (a) approved by the General Manager under section 154C of the Fair Work (Registered Organisations) Act 2009; and
 - (b) that covers each of the officer's financial duties;
- within 6 months after the officer begins to hold the office.
- 33.2 For the avoidance of doubt, item 60 of the Fair Work (Registered Organisations) Amendment Act 2012, "Transitional - approved training", applies to a person if, immediately before the commencement of that item, the person holds an office in the organisation.

34 - CONTRACTS WITH OFFICERS

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:

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:*

(a) *the public company or entity must:*

(i) *obtain the approval of the public company's members in the way set out in sections 217 to 227; and*

(ii) *give the benefit within 15 months after the approval; or*

(b) *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 .

(2) *If:*

(a) *the giving of the benefit is required by a contract; and*

(b) *the making of the contract was approved in accordance with subparagraph (1)(a)(i) as a financial benefit given to the related party; and*

(c) *the contract was made:*

(i) *within 15 months after that approval; or*

(ii) *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:*
- (a) *the contravention does not affect the validity of any contract or transaction connected with the giving of the benefit; and*
 - (b) *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 .

- (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:

- (a) *would be reasonable in the circumstances if the public company or entity and the related party were dealing at arm's length; or*
- (b) *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:*
- (a) *the benefit is remuneration to a related party as an officer or employee of the following:*
 - (i) *the public company;*
 - (ii) *an entity that the public company controls;*
 - (iii) *an entity that controls the public company;*
 - (iv) *an entity that is controlled by an entity that controls the public company;**and*
 - (b) *to give the remuneration would be reasonable given:*
 - (i) *the circumstances of the public company or entity giving the remuneration;*
and
 - (ii) *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:*
- (a) *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:*
 - (i) *the public company;*
 - (ii) *an entity that the public company controls;*
 - (iii) *an entity that controls the public company;*
 - (iv) *an entity that is controlled by an entity that controls the public company; and*
 - (b) *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) *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*
 - (b) *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:*
- (a) *the benefit is for a related party who is an officer of the public company or entity; and*
 - (b) *the benefit is:*
 - (i) *an indemnity, exemption or insurance premium in respect of a liability incurred as an officer of the public company or entity; or*
 - (ii) *an agreement to give an indemnity or exemption, or to pay an insurance premium, of that kind; and*
 - (c) *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:*
- (a) *the benefit is for a related party who is an officer of the public company or entity; and*
 - (b) *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*
 - (c) *either:*
 - (i) *section 199A does not apply to the costs; or*
 - (ii) *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*
 - (d) *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:*
- (a) *assess whether it would be reasonable on the basis of the circumstances existing:*
 - (i) *if the benefit is given under an agreement--at the time when the agreement is or was made; or*
 - (ii) *if the benefit is not given under an agreement--at the time when the benefit is or was given; and*
 - (b) *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:*
- (a) *the amount or value of the financial benefit;*
 - (b) *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):*
- (a) *add in all amounts or values of financial benefits given to the related party in the financial year by:*
 - (i) *the public company or entity; and*
 - (ii) *any entities controlled by the public company or entity; and*
 - (b) *disregard:*
 - (i) *amounts that have been repaid; and*
 - (ii) *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:*
- (a) *by a body corporate to a closely-held subsidiary of the body; or*
 - (b) *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:*
- (a) *the other body; or*
 - (b) *a nominee of the other body; or*
 - (c) *a body corporate that is a closely-held subsidiary of the other body because of any other application or applications of this subsection; or*
 - (d) *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:

- (a) *the benefit is given to the related party in their capacity as a member of the public company; and*
- (b) *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) *a proposed notice of meeting setting out the text of the proposed resolution; and*
- (b) *a proposed explanatory statement satisfying section 219; and*
- (c) *any other document that is proposed to accompany the notice convening the meeting and that relates to the proposed resolution; and*
- (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*
- (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:*
- (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 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;*
 - (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.

35 - VOTING BY INTERESTED DIRECTORS

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:

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 .

(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.

36 - MEETINGS OF THE BOARD

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

31.2 Unless the Board has adopted standing orders for the conduct of its meetings, then subject to these Rules and Constitution, the chairman of any Board meeting shall determine the rules of procedure governing the conduct of the meeting.

31.3 The President may at any time and the Secretary shall on the requisition of 2 directors summon a meeting of the Board.

38 - COMMITTEES OF DIRECTORS

- 31.4 A meeting of the Board may consist of a conference between directors who are not all in one place but of whom each is able to:
- (a) speak to each of the others directly or by telephonic communication; and
 - (b) be heard simultaneously by each of the others.
- 31.5 Subject to these Rules and Constitution, questions arising at any meeting of the Board shall be decided by a majority of votes of board members present at the meeting and a determination by a majority of the Board shall for all purposes be deemed a determination of the Board.
- 31.6 The President, and in his absence the Vice-President, shall chair all Board meetings, but if:
- (a) there is no President or Vice-President; or
 - (b) either the President and the Vice-President is not present within 15 minutes after the time appointment for the holding of the meeting; or
 - (c) both the President and the Vice-President are unable or unwilling to chair the meeting
- the directors present shall elect one of their number present at the meeting to chair it.
- 31.7 In the case of an equality of votes, the chairman shall have a second or casting vote.
- 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.

37 - QUORUM FOR BOARD MEETINGS

- 32.1 The quorum necessary for the transaction of the business of the Board shall be the greater of the following $1/3^{\text{rd}}$ of the Board members or 2 Board members.
- 32.2 The continuing directors may act despite any vacancy in their body, but if and so long as their number is reduced below the number fixed by or pursuant to these Rules and Constitution as the necessary quorum of the Board, the continuing directors or director may act for the purpose of:
- (a) increasing the number of directors to that number; or
 - (b) summoning a general meeting
- but for no other purpose.

38 - COMMITTEES OF DIRECTORS

- 33.1 The Board may delegate any of its powers to committees consisting of any member or members of the Board it thinks fit.
- 33.2 Any committee shall in the exercise of the powers so delegated conform to any regulations which may be imposed on it by the Board.

33.3 A committee may nominate a chairman of its meetings.

33.4 If:

- (a) a committee does not elect a chairman; or
- (b) at any meeting the chairman:
 - (i) is not present within 15 minutes after the time appointed for holding the meeting; or
 - (ii) is unable or unwilling to act,

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

33.5 A committee may meet and adjourn as it thinks proper.

33.6 Questions arising at any committee meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman shall have a second or casting vote.

39 - WRITTEN RESOLUTIONS OF DIRECTORS

34.1 The Board may pass a resolution without a Board meeting being held, if all the members of the Board entitled to vote on the resolution, sign a document containing a statement that they are in favour of the resolution set out in the document.

34.2 Two or more separate documents containing statements in identical terms each of which is signed by one or more of the directors shall together be deemed to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.

34.3 Any document which is attached to a document referred to in sub-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.

40 - LOANS, GRANTS AND DONATIONS

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 of 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.*

41 - MINUTES

- 36.1 The Organisation shall keep minute books in accordance with the Corporations Act in which shall be recorded within one month of the relevant proceedings or the passage of the relevant resolutions, all:
- (a) proceedings and resolutions of general meetings;
 - (b) proceedings and resolutions of Board meetings;
 - (c) proceedings and resolutions of Board committees; and
 - (d) resolutions passed by the Board without a meeting.
- 36.2 Minutes of meetings of members and resolutions of members shall be open for inspection by members free of charge.
- 36.3 Minutes of meetings of the Board and its committees and resolutions of the Board and its committees shall be available for inspection by members:
- (a) at the discretion of the Board; and
 - (b) on any terms the Board thinks fit.

42 - VALIDITY OF ACTS OF THE BOARD

- 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:

- (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 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.

43 - ADVISORY BOARDS

- 38.1 The Organisation may establish one or more advisory boards (“Advisory Boards”) to assist it in making decisions in relation to matters of concern and interest to the Organisation.
- 38.2 The Organisation shall not be bound in any way to accept the advice of any Advisory Board.
- 38.3 The Organisation may appoint and remove or make provision for the appointment and removal of members of Advisory Boards.
- 38.4 Advisory Boards shall consist of the number of persons determined by the Organisation from time to time.
- 38.5 The powers and duties of any Advisory Board shall be determined by the Organisation from time to time.
- 38.6 The Organisation shall have the right to specify:
- (a) the manner in which proceedings of any Advisory Board are to be conducted; and
 - (b) the matters to which any Advisory Board shall have regard in carrying out its functions.
- 38.7 The Organisation may provide any secretarial and administrative support to any Advisory Board which it deems to be appropriate from time to time.

44 - FINANCIAL YEAR

Until otherwise determined according to law, the Organisation’s financial year shall end on 30 June in each year.

45 - AUDITOR

- 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.
- 40.2 In addition to the powers and duties of an auditor under the Corporations Act, while the Organisation is a registered Organisation under the Act, the auditor shall also have the powers and duties conferred on auditors under the Act.
- 40.3 The Organisation’s accounts shall be audited annually.
- 40.4 The auditor or the auditor’s duly appointed representative shall be entitled to attend and be heard at any part of a general meeting of the Organisation or any part of a meeting of the Board at which:
- (a) the auditor’s report or any accounts or statements to which the report relates are to be presented or considered; or

- (b) there is to be conducted any business of the meeting which relates to:
 - (i) the auditor in that capacity; or
 - (ii) the duly authorised representative of the auditor in the capacity of a person so authorised.

46 - THE SEAL

- 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 must 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.

47 - EXECUTION OF DOCUMENTS

- 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, 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.

48 - INSPECTION OF RECORDS

- 43.1 Any member, with the written consent of the Board, shall be permitted to inspect any books, lists of members, documents or records at the offices of the Organisation at such time or times as the Board may direct in the presence of the Executive Officer or such person appointed by the Executive Officer for such purpose.
- 43.2 For avoidance of doubt, rule 43.1 does not limit access by members to financial records pursuant to Division 7 of Chapter 8 of Schedule 1 to the Act.

49 - NOTICES

- 44.1 All notices shall be in writing in legible English.
- 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 provides 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*
 - (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).

When notice by post or fax is given (replaceable rule--see section 135)

- (4) *notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.*

When notice under paragraph (3)(cb) is given (replaceable rule--see section 135)

- (5) *A notice of meeting given to a member under paragraph (3)(cb) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.*
- 44.3 Where a notice is sent by post, service of the notice shall be effected at the time at which a properly addressed prepaid and posted letter containing the notice would be delivered in the ordinary course of post.
- 44.4 Where a notice is given by means of fax, service of the notice shall be deemed to be effected on the production of a transmission report by the machine from which the fax was sent, which indicates that the transmission was:
- (a) sent in its entirety to the fax number of the recipient; and
 - (b) received in its entirety by the recipient's fax machine.
- 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.
- 44.6 The signature to any notice to be given by the Organisation may be written or printed.

50 - WINDING UP

- 45.1 If on the winding up or dissolution of the Organisation, after satisfaction of all its debts and liabilities, any property remains:
- (a) it shall not be paid or distributed among the members; but
 - (b) it shall be given or transferred to some other body corporate
 - (i) which by its constitution prohibits the distribution of its income and property among its members to an extent at least as great as that imposed on the Organisation under or by these Rules and Constitution; and
 - (ii) the objects of which are wholly or partly similar to those of the Organisation.
- 45.2 The body corporate referred to in the preceding sub-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

51 - INDEMNITY

- 46.1 Every person who is or has been a director, agent, auditor, Company Secretary and other Officer 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:
- (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 provide as follows:

Division 1 – Indemnities and insurance for officers and auditors

199A Indemnification and exemption of officers 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:*
- (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, 206E or 206EAA (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.

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.*

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.*

53 - AMENDMENT OF THESE RULES AND CONSTITUTION

- 47.1 Subject to the following sub-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 Sections 136 and 601DH of the Corporations Act as well as Division 5 of Chapter 5 of the Schedule 1 of the Act also provides 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:

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*

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).

END OF RULES