

Constitution

Media Super Limited

MinterEllison

L A W Y E R S

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Contents

1.	Interpretation	1
	1.1 Definitions	1
	1.2 Interpretation	4
2.	Objects and Purpose	5
	2.1 Objects and purpose	5
3.	Guarantor’s Liability	5
	3.1 Limited liability	5
	3.2 Liability to contribute	5
4.	Powers of the Company	5
	4.1 Application of profits, income and property of the Company	5
	4.2 Procedures on wind-up or dissolution of the Company	6
5.	Modification or Repeal of this Constitution	6
	5.1 Modifying or repealing Constitution	6
	5.2 Date of effect of modification or repeal	6
6.	Guarantors	6
	6.1 Director is a Guarantor	6
	6.2 Director ceasing to be a Guarantor	6
7.	General Meetings	6
	7.1 Annual general meetings	6
	7.2 General meeting	6
	7.3 Notice of general meeting	6
	7.4 Auditor’s right to attend general meetings	7
	7.5 Director’s right to attend general meetings	7
	7.6 Cancellation or postponement of general meeting	7
8.	Proceedings at General Meetings	7
	8.1 Business of annual general meeting	7
	8.2 Special business	7
	8.3 Quorum	7
	8.4 Chairperson	8
	8.5 Voting	8
	8.6 Adjournment	8
	8.7 Written resolution	8
9.	Votes of Guarantors	9
	9.1 Number of votes	9
	9.2 Right to appoint proxy	9
10.	Directors	9
	10.1 Number of directors	9
	10.2 Appointment of Directors	9
	10.3 Removal of Directors	11
	10.4 Vacancies	13
	10.5 Alternate Directors	13
	10.6 Period of Office	14
11.	Remuneration and Expenses	14

11.1	Remuneration of Director	14
11.2	Reimbursement of expenses	14
12.	Directors' Interests	15
12.1	Declaration of interest	15
12.2	Contracts in which Director has a material personal interest	15
13.	Powers of Directors	16
13.1	Powers of Directors	16
14.	Proceedings of Directors	16
14.1	Meetings	16
14.2	Quorum	16
14.3	Convening meetings	16
14.4	Appointment of proxy	16
14.5	Chairperson	17
14.6	Voting	17
14.7	Delegation	17
14.8	Written resolution	17
14.9	Minutes	17
14.10	Validity of acts of Directors	18
15.	Secretary	18
15.1	Appointment of Secretary	18
15.2	Removal of Secretary	18
15.3	Secretary to attend meetings	18
16.	Authentication of Documents	18
16.1	Company seals	19
16.2	Use of common seal	19
17.	Inspection of Books	19
18.	Notices	19
18.1	Service of documents	19
19.	Winding Up	19
19.1	Assets remaining after wind up of the Company	19
19.2	Guarantor does not make any such determination	20
20.	Indemnity and Insurance	20
20.1	Indemnity	20
20.2	Insurance	20
21.	Compliance with the Corporations Act	21
22.	Application of the Superannuation Law	21
22.1	When the Superannuation Law applies	21
22.2	Constitution is subject to the Superannuation Law	21
22.3	Company to comply with the Superannuation Law	21
22.4	Directors' proceeding to be in accordance with the Superannuation Law	21
22.5	Board's power to formulate policies and registers	22
22.6	Persons bound by policies and registers	22

1. Interpretation

1.1 Definitions

The following words have these meanings in this Constitution:

- (1) **Alternate Director** means an alternate director appointed under clause 10.5.
- (2) **AMWU (Printing Division)** means Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union.
- (3) **Auditor** means the auditor (if any) for the time being of the Company.
- (4) **Board** means the Directors for the time being of the Company or such number of them as have authority to act for the Company, acting as a body.
- (5) **Chairperson** means the chairperson of the Board appointed under clause 14.5(a).
- (6) **Committee** means any Director or Directors acting as a committee of Directors appointed under clause 14.7(a).
- (7) **Company** means Media Super Limited.
- (8) **Constitution** means the constitution for the time being of the Company as constituted by this document and any resolutions of the Company modifying this document.
- (9) **Corporations Act** means the Corporations Act 2001 (Cth).
- (10) **Director** means a director for the time being of the Company and includes an Alternate Director only when acting as an alternate to the Director for whom he or she was appointed.
- (11) **Disqualified Person** means a person who is disqualified from office by the Superannuation Law or any other law.
- (12) **Employer Nominee** means a Director appointed under clause 10.2(b)(i).
- (13) **Employer Organisation** means any organisation or association representing the interest of employers in the Fund, other than PIAA, LPA, SPAA or Fairfax.
- (14) **Employer Sponsor** means Fairfax, PIAA, and a Joint Sponsor.
- (15) **Fairfax** means Fairfax Media Limited ACN 008 663 161 or any organisation or association formed in reconstruction or in succession to this company.
- (16) **Fit and Proper Policy** means the Fit and Proper Policy adopted by the Board under clause 22.5(a).

- (17) **Fund** means Media Super, or such other superannuation fund for which the Company is the Trustee.
- (18) **Guarantor** means a person entered in the Register as undertaking to contribute up to \$1.00 to the Company if the Company is wound up.
- (19) **Independent Director** means a Director appointed under clause 10.2(h) (if any).
- (20) **Joint Sponsor** means LPA and SPAA.
- (21) **LPA** means Australian Entertainment Industry Association trading as Live Performance Australia, or any organisation or association formed in reconstruction or in succession to this association.
- (22) **Maximum Tenure** means the 12 year period referred to in clause 10.6(c) or any extended period approved by the Board in accordance with that clause
- (23) **MEAA** means the Media, Entertainment and Arts Alliance.
- (24) **Member Nominee** means a Director appointed under clause 10.2(b)(ii).
- (25) **Member Organisation** means any union, organisation or association representing the interests of members of the Fund, other than the Union.
- (26) **Member Sponsor** means any Sponsor that is defined as the Union.
- (27) **Officer** has the meaning ascribed to it in the Corporations Act.
- (28) **PIAA** means the Printing Industries Association of Australia or any organisation or association formed in reconstruction of or in succession to this association.
- (29) **Register** means the register of members kept in accordance with section 169 of the Corporations Act.
- (30) **Registered Office** means the registered office for the time being of the Company.
- (31) **Regulator** means, as the context requires, the Commissioner of Taxation, the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission.
- (32) **Responsible Person** has the meaning ascribed to it in the Superannuation Law.
- (33) **Rotation Period** means a term equivalent to two (2) years in which Joint Sponsors may exercise their powers of appointment, removal and consent under clause 10.
- (34) **RSE Licensee** means the holder of the RSE licence granted under section 29D of SIS.

- (35) **Rules** means the rules relating to the appointment of a Director by the Joint Sponsor.
- (36) **Secretary** means a person appointed as a secretary of the Company under clause 15, and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Company.
- (37) **SIS** means the Superannuation Industry (Supervision) Act 1993 (Cth).
- (38) **SPAA** means the Screen Producers Association of Australia or any organisation or association formed in reconstruction of or in succession to this association.
- (39) **Sponsor** means the Union, PIAA, LPA, SPAA, Fairfax or any individual, organisation or association formed in reconstruction or in succession to these associations.
- (40) **Sponsor's Representation** means the number of Directors in relation to which each Sponsor may nominate for appointment, request for removal or consent to the appointment or removal. At the commencement of these amendments the Sponsors Representations are as follows:
- | | | |
|-----|--------------------------|------------------|
| (1) | PIAA | three Directors; |
| (2) | Fairfax | one Director; |
| (3) | Joint Sponsors | one Director; |
| (4) | AMWU (Printing Division) | three Directors; |
| (5) | MEAA | two Directors. |

The Board shall reduce the number of Directors from twelve to ten within the first two years of this amendment taking effect, unless otherwise determined to the contrary by the Board. In the event that the Board is reduced within the first two years of the amendment taking effect, the Board shall consist of four Member Sponsors (as determined by agreement between the MEAA and the AMWU (Printing Division)), four Employer Sponsors (including at least one representative from the entertainment sector) and no more than two independent directors (as determined by the Board) of the Company.

- (41) **Superannuation Law** means any requirements under SIS, Corporations Act or any other present or future law, or by a governmental authority responsible for administering the laws or any other rules governing superannuation funds or the availability of income tax concessions to superannuation funds, which:
- (a) are imposed on the Company as RSE Licensee or as trustee of a Fund;

- (b) must be satisfied by the Fund to qualify for the most favourable taxation treatment available to superannuation funds;
 - (c) in the opinion of the Company, must be satisfied to avoid a penalty, detriment or disadvantage to the Company or to a Fund; or
 - (d) are otherwise applicable to the Company.
- (42) **Tenure** means the total period of time that an individual person serves as a Director (including non-continuous service) on the Board.
- (43) **Union** means either or both the AMWU (Printing Division) and the MEAA or any organisation or association formed in reconstruction of or in succession to these unions.

1.2 Interpretation

In this Constitution unless the contrary intention appears:

- (a) the word “person” includes a firm, a body corporate, an unincorporated association or an authority;
- (b) the singular includes the plural and vice versa;
- (c) 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;
- (d) a reference to writing includes typewriting, printing, telegram, facsimile and other modes of representing or reproducing words in a visible form;
- (e) a reference to any statutory enactment, other law or a provision thereof includes any regulations, rules, by-laws, standards, licence conditions, modification orders, class orders, declarations, enforceable determinations, rulings or relief and any other instruments issued under them and consolidations, amendments, extensions, re-enactments or replacements of any of them;
- (f) a reference to a person includes a corporate representative appointed pursuant to section 250D of the Corporations Act;
- (g) headings are inserted for convenience and do not affect the interpretation of this Constitution;
- (h) an expression used in a particular part or division of the Superannuation Law which is given a special meaning for the purposes of that part or division has the same meaning in any clause of this Constitution which deals with the matter dealt with by that part or division; and
- (i) the clauses of this Constitution displace each provision of a section or sub-section of the Corporations Act that applies (or

would apply but for this clause) to the Company, except those which are mandatory under the Corporations Act.

2. Objects and Purpose

2.1 Objects and purpose

The objects for which the Company is established are:

- (a) to promote any Fund formed for or in relation to employees;
- (b) to provide for the welfare of persons in employment or formerly in employment and the wives, husbands, widows, widowers, widowers children and dependants of such persons by grants of money pensions or other payments;
- (c) to undertake and carry on such other business as the Company shall think fit; and
- (d) to act as RSE Licensee and trustee of any Fund.

Notwithstanding the foregoing paragraphs the objects shall be restricted to being exercised for the purpose of promoting commerce, industry charity, pension or superannuation schemes or any other object useful to the community. To the extent that the objects might otherwise be construed to cover other objects or powers the exercise of such objects and any powers of the Company shall be limited to the extent that they are incidental or conducive to the objects to which the Company is by this clause 2 restricted.

3. Guarantor's Liability

3.1 Limited liability

Subject to the Superannuation Law, the liability of the Guarantors is limited.

3.2 Liability to contribute

Each Guarantor of the Company undertakes to contribute to the property of the Company, in the event of its being wound up while that person is a member or within one year after that person ceases to be a member. Such contribution shall be for the payment of the debts and liabilities of the Company contracted before that person ceases to be a Guarantor and the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required not exceeding one dollar.

4. Powers of the Company

4.1 Application of profits, income and property of the Company

The profits, income and property of the Company whenever it is derived shall be applied solely towards the promotion of the objects of the Company as set out in this Constitution. No portion shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to members of the Company. Nothing contained in this

Constitution prevents the payment in good faith of remuneration to any Officers or member of the Company for services actually rendered to the Company, or for goods supplied in the ordinary and usual way of business nor prevent the payment of interest at a rate not exceeding current bank overdraft rates of interest for money lent, or reasonable and proper rent for premises demised or let by any member to the Company.

4.2 Procedures on wind-up or dissolution of the Company

If upon the winding-up or dissolution of the Company there remains after satisfaction of all the debts and liabilities any property, the property shall not be paid to or distributed amongst the members of the Company. It shall be given or transferred to such one or more institutions having objects similar to those of the Company and which prohibit the distribution of their income and property among their members to an extent not less than imposed on the Company by this clause 4.2. If effect cannot be given to this provision, then to some charitable object.

5. Modification or Repeal of this Constitution

5.1 Modifying or repealing Constitution

This Constitution can be modified or repealed only by a special resolution of the Company in a general meeting.

5.2 Date of effect of modification or repeal

Any modification or repeal of this Constitution takes effect on the date the special resolution is passed or any later date specified, or provided for, in the resolution.

6. Guarantors

6.1 Director is a Guarantor

A Director (but not an Alternate Director) automatically becomes a Guarantor on being appointed a Director.

6.2 Director ceasing to be a Guarantor

A Guarantor ceases to be a Guarantor on ceasing to hold office as a Director.

7. General Meetings

7.1 Annual general meetings

Subject to the Corporations Act, the Company must hold an annual general meeting with 18 months of incorporation and thereafter at least once in every calendar year and within 5 months after the end of its financial year.

7.2 General meeting

Any two Guarantors may convene a general meeting at any time.

7.3 Notice of general meeting

Notice of every general meeting must be given in conformity with the Corporations Act.

7.4 Auditor's right to attend general meetings

The Auditor or any authorised agent of the Auditor is entitled to:

- (a) attend any general meeting;
- (b) receive all notices of and other communications relating to any general meeting which a Guarantor is entitled to receive; and
- (c) be heard at any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity (even if the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting).

7.5 Director's right to attend general meetings

A Director is entitled to:

- (a) attend any general meeting;
- (b) receive all notices of and other communications relating to any general meeting which a Guarantor is entitled to receive; and
- (c) be heard at any general meeting on any part of the business of the meeting.

7.6 Cancellation or postponement of general meeting

Any two Guarantors may postpone or cancel any general meeting but must give written notice of, and reasons for, the postponement or cancellation to everyone entitled to receive notices from the Company, at least 3 days before the date of the convened meeting.

8. Proceedings at General Meetings

8.1 Business of annual general meeting

The business of an annual general meeting is to receive and consider the annual financial report, Directors' report and Auditor's report, the election of the Directors, the appointment of the Auditor and the fixing of the Auditor's remuneration.

8.2 Special business

The business referred to in clause 8.1 is ordinary business of an annual general meeting. Otherwise, all business of a general meeting is special business.

8.3 Quorum

- (a) The quorum is the number of Guarantors required to pass a resolution under clause 8.5(a). If a quorum is not present within 15 minutes after the time appointed for a meeting, it shall be adjourned to the same day in the next week at the same time and

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

- (b) A quorum must be present at the beginning of a general meeting and, if so, is deemed present throughout the meeting (unless the Chairperson otherwise declares).

8.4 **Chairperson**

- (a) The Directors may elect any person, including one of their number, as Chairperson at general meetings. If the elected Chairperson is not present within 15 minutes after the time appointed for a meeting or is unable or unwilling to act, the Guarantors present must elect one of them to be Chairperson of that meeting.
- (b) The Chairperson of the meeting is not entitled to a casting vote.

8.5 **Voting**

- (a) Subject to the provisions of the Corporations Act in relation to special resolutions, a resolution is taken to be carried if at least 2/3 of the total number of Guarantors vote in favour of it.
- (b) Subject to the provisions of the Corporations Act in relation to the right to demand a poll, every question put to a meeting is to be decided by a show of hands.
- (c) Objection may not be raised to the right of a person to attend or vote at a meeting except at that meeting, and every vote not disallowed at the meeting is valid.
- (d) If there is a dispute as to the admission or rejection of a vote, the Chairperson must decide it and the Chairperson's decision made in good faith is final and conclusive.

8.6 **Adjournment**

- (a) The Chairperson of a meeting may with the consent of the meeting, and must if so directed by a meeting at which a quorum is present, adjourn the meeting from time to time and place to place.
- (b) No business may be transacted at an adjourned meeting other than business left unfinished at the meeting from which the adjournment took place.
- (c) Notice of an adjourned meeting is required to be given in accordance with clause 7.3 if a meeting is adjourned for more than 14 days.

8.7 **Written resolution**

Subject to the Corporations Act, a statement signed by all the Guarantors that they are in favour of a resolution is effective as if it has been passed at a general meeting at the time the resolution was last signed. A written resolution may consist of several documents in like form each signed by one or more of the Guarantors.

9. Votes of Guarantors

9.1 Number of votes

Subject to the rights and any restrictions attached to or affecting any Guarantor, each Guarantor present in person and each other person present as proxy of a Guarantor has one vote.

9.2 Right to appoint proxy

Appointment of proxies by Guarantors is governed by the Corporations Act.

10. Directors

10.1 Number of directors

The number of Directors must not be less than 7, including an Independent Director but excluding any Alternate Directors.

10.2 Appointment of Directors

- (a) The Board shall appoint all Directors. A person may not be appointed or reappointed as a Director (including an Alternate Director) unless:
 - (i) the person has consented in writing to the appointment;
 - (ii) the person has confirmed by statutory declaration, and the Board has resolved, that the person is not a Disqualified Person;
 - (iii) the person has disclosed any material personal interest in a matter that relates to the affairs of the Company and any office or property held by the person by which, directly or indirectly, duties or interests might be created in conflict with his or her duties as Director in accordance with and as required by the Superannuation Law; and
 - (iv) the Board has resolved that the person has satisfied the requirements of the Company's Fit and Proper Policy and any other policies that may be determined by the Board from time to time.
- (b) Subject to paragraph (h), the Directors must comprise an equal number of people:
 - (i) nominated by each Employer Sponsor, and any Employer Organisation in accordance with the Superannuation Law and paragraph (d) and paragraph (e); and
 - (ii) nominated by each Member Sponsor and any Member Organisation in accordance with the Superannuation law and paragraph (f) and paragraph (g);

in proportion to each Sponsor's Representation provided that:

- (A) a Joint Sponsor is subject to the Rules; and
- (B) a Joint Sponsor may only exercise its powers to nominate for appointment, request the removal or consent under this clause by rotating its powers with the alternate Joint Sponsor such that no individual Joint Sponsor can nominate for appointment or request the removal of both a Director under this clause 10.2 and clause 10.3 and an Alternate Director under clause 10.5; and
- (C) a Joint Sponsor may only exercise its powers to nominate for appointment, request the removal or consent during the relevant Rotation Period.

However, if any Employer Sponsor, Member Sponsor, Employer Organisation or Member Organisation does not nominate a Director who satisfies the requirements of clause 10.2(a) and the Superannuation Law, the Directors must take reasonable steps to make such appointment, subject to clause 10.2(a) and the Superannuation Law.

- (c) Subject to paragraph (d), all Employer Nominees must be nominated respectively by each Employer Sponsor in proportion to each Sponsor's Representation.
- (d) Each Employer Sponsor, with the consent of its respective Member Sponsor, may by written notice give an Employer Organisation the right to nominate such number of Employer Nominees on such terms as specified therein. Each Employer Sponsor may at any time vary or remove the right of an Employer Organisation to nominate Employer Nominees by giving written notice.

For the purposes of this clause 10.2(d) the respective Member Sponsor for each of the Employer Sponsors is as follows:

- (i) for PIAA the Member Sponsor is AMWU (Printing Division)
- (ii) for LPA, Fairfax and SPAA the Member Sponsor is MEAA.
- (e) Subject to paragraph (f), all Member Nominees must be nominated by the respective Member Sponsor.
- (f) The Member Sponsors with the consent of the Employer Sponsors may by written notice give a Member Organisation the right to nominate such number of Member Nominees on such terms as specified therein. The Member Sponsor may at any time vary or remove the right of a Member Organisation to nominate Member Nominees by giving written notice.
- (g) The Member Sponsors may only nominate Directors from persons who are members of the Union. Any Member Organisation may only nominate Directors from persons who are members of the Member Organisation.

- (h) The Employer Sponsors and Member Sponsors may nominate for appointment a maximum of two Independent Directors (within the meaning of the Superannuation Law). Such Independent Directors are in addition to the Directors described in paragraph (b).

10.3 Removal of Directors

- (a) Each Employer Sponsor may at any time request the removal of its respective Employer Nominees by giving written notice to the Company or, subject to clause 10.2, may nominate a person to fill any vacancy amongst its respective Employer Nominees.
- (b) An Employer Nominee may be removed at any time by the Board upon the request of:
 - (i) the Employer Organisation that nominated them; or
 - (ii) if an Employer Sponsor has removed the right of the Employer Organisation that nominate them to nominate Employer Nominees under clause 10.2(d), that respective Employer Sponsor;giving written notice to the Company.
- (c) Each Member Sponsor may at any time request the removal of its Member Nominees or, subject to clause 10.2, nominate a person who is a member of the relevant Union to fill any vacancy amongst its Member Nominees by giving written notice to the Company.
- (d) A Member Organisation may at any time request the removal of its Member Nominees by giving written notice to the Company.
- (e) A Director ceases to hold office if:
 - (i) the Director resigns by notice in writing to the Company;
 - (ii) the Director reaches the end of their term of office under clause 10.6(a) and is not reappointed;
 - (iii) the other Directors resolve that the Director has become mentally ill or incapable of carrying out the responsibilities of a Director;
 - (iv) the Director dies;
 - (v) the Director being an Employer Nominee nominated by an Employer Sponsor is removed by the Board at the request of that respective Employer Sponsor under paragraph 10.3(a), paragraph 10.3(b)(ii), or an Employer Organisation under paragraph 10.3(b)(i);
 - (vi) the Director being a Member Nominee, is removed by the Board at the request of the Union under paragraph 10.3(c) or a Member Organisation under paragraph 10.3(d);

- (vii) the Director being an Independent Director, is removed by the Board at the request of the Employer Sponsor and its respective Member Sponsor by notice in writing;
 - (viii) the Director:
 - (A) is a Disqualified Person or otherwise becomes prohibited from being a Director under Superannuation Law; or
 - (B) no longer satisfies the requirements of the Company's Fit and Proper Policy;
 - (ix) the Director being a Member Nominee, ceases to be a member of the printing division of the Union or the Member Organisation that appointed them (as applicable); or
 - (x) the Director reaches the end of their Maximum Tenure under clause 10.6 and their Maximum Tenure is not extended by the Board in accordance with that clause.
- (f) If a director ceases to hold office under clause 10.3(e)(viii), then the following will apply:
- (i) the directors will hold a directors' meeting within 14 days of notification to confirm the removal of the affected director;
 - (ii) the affected Director will be notified in writing by a notified representative of the Company; and
 - (iii) a replacement Director will then be appointed by the Board in accordance with the procedures set out in clause 10.2.
- (g) An Alternate Director shall cease to hold office if any of the following applies (as relevant):
- (i) the relevant term expires;
 - (ii) the Rotation Period expires;
 - (iii) if the Alternate Director, is acting as an Alternate Director for a Joint Sponsor, when the relevant Sponsor so decides;
 - (iv) if the Alternate Director, is acting as an Alternate Director for any Director (other than a Director nominated by a Joint Sponsor), the Alternate Director ceases to hold office if the relevant Director ceases to hold office;
 - (v) the Alternate Director:
 - (A) is a Disqualified Person; or
 - (B) no longer satisfies the requirements of the Company's Fit and Proper Policy;
 - (vi) as otherwise required by law; or

- (vii) the Director reaches the end of their Maximum Tenure under clause 10.6 and their Maximum Tenure is not extended by the Board in accordance with that clause.

10.4 **Vacancies**

A vacancy among the Member Nominees or Employer Nominees must be filled as soon as is reasonably practicable, but no later than 90 days after it occurs. The remaining Directors may continue to act until the vacancy is filled.

10.5 **Alternate Directors**

- (a) Each of PIAA, Fairfax and the Joint Sponsors may by written notice nominate for appointment by the Board:
 - (i) a minimum of one Alternate Director with respect to all their Employer Nominees; and
 - (ii) a maximum of one Alternate Director for each of their respective Employer Nominees;

and may request the Board to remove from office such Alternate Directors. The appointment and removal of an Alternate Director at the request of the Joint Sponsors is subject to the Rules and clauses 10.2(a) and 10.3(e)(viii).

- (b) Any Employer Organisation may by written notice nominate for appointment by the Board an Alternate Director for each of its Employer Nominees and may request the Board to remove from office that person, subject to clauses 10.2(a) and 10.3(e)(viii).
- (c) Each Member Sponsor may by written notice nominate for appointment by the Board:
 - (i) a minimum of one Alternate Director with respect to all their Member Nominees; and
 - (ii) a maximum of one Alternate Director for each of their respective Member Nominees;

from persons who are members of the Union or the Member Organisation and may request the Board to remove from office such Alternate Directors, subject to clauses 10.2(a) and 10.3(e)(viii).

- (d) Any Member Organisation may by written notice nominate for appointment by the Board an Alternate Director for each of its Member Nominees from persons who are members of the Member Organisation and may request the removal of that person, subject to clauses 10.2(a) and 10.3(e)(viii).
- (e) An Alternate Director:
 - (i) is entitled to receive notice of meetings of the Directors and to attend and vote if the Director for whom the Alternate Director is appointed is not present;

- (ii) may sign a written resolution in place of the relevant Director; and
- (iii) whilst acting as a Director, is responsible to the Company for the Alternate Director's own acts and defaults and the Director for whom the Alternate Director is appointed is not responsible for them.

10.6 **Period of Office**

- (a) Subject to this clause, the term of each Director's appointment to office must not be more than 4 years from the date of the Director's appointment, or any other period determined by the Directors from time to time either generally or in any particular case.
- (b) At the end of the period of office, a Director ceases to be a Director but, subject to this Constitution, is eligible for reappointment.
- (c) Notwithstanding paragraph 10.6(b), a Director's Tenure must not exceed 12 years (the **Maximum Tenure**) commencing on the later of:
 - (i) 1 July 2008; and
 - (ii) the commencement of the Director's first term of office,

provided that, where a Director's Tenure has reached 12 years, the Board may approve extending a Director's Maximum Tenure beyond 12 years where, the Directors are satisfied that it is in the best interests of the members of the Fund to do so.

11. **Remuneration and Expenses**

11.1 **Remuneration of Director**

Subject to clause 22:

- (a) A Director of the Company may be paid remuneration determined by the Company in general meeting for services as a Director. An Officer of the Company (other than a Director) may be paid remuneration determined by the Directors for services as an Officer.
- (b) If a Director or Officer of the Company is requested by the other Directors to perform additional or special duties for the Company, the Company may remunerate that Director or Officer by payment of a fixed sum or salary to be determined by the Directors in addition to or in substitution for that Director's or Officer's remuneration under 11.1(a).

11.2 **Reimbursement of expenses**

Subject to clause 22, the Directors may determine that the Company reimburse a Director or Officer of the Company for such reasonable travelling, accommodation and other expenses as the Director or Officer

may incur when travelling to or from meetings of the Directors, a Committee or the Company or when otherwise engaged on the business of the Company.

12. **Directors' Interests**

12.1 **Declaration of interest**

Each Director must disclose to the Board his or her interests (whether direct or indirect) in a matter that relates to the affairs of the Company, and any office or property held by the Director by which, directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as a Director, in accordance with and as required by the Conflicts Policy adopted under clause 22.5(c), and the Secretary must record the declaration in the minutes of the relevant meeting.

12.2 **Contracts in which Director has a material personal interest**

The following provisions of this clause 12.2 are subject to clause 22:

- (a) Subject to clause 12.1, a Director may only:
 - (i) be present and vote in respect of; and
 - (ii) execute, or attest the affixing of the Company's common seal to,

a contract in which the Director has (directly or indirectly) a material personal interest if this is consistent with and permitted by the Conflicts Policy adopted under clause 22.5(c).
- (b) A Director may, subject to the Conflicts Policy adopted under clause 22.5(c), and despite the Director's office and the fiduciary relationship established by it:
 - (i) hold an office or place of profit (except that of Auditor) under the Company, a Related Body Corporate of the Company or any other body corporate in which the Company is a member or otherwise interested;
 - (ii) enter into a contract with the Company as vendor, purchaser or otherwise and participate in any association, institution, fund, trust or scheme for past or present employees or Directors of the Company, a Related Body Corporate of the Company or any of their respective predecessors in business or their dependants or persons connected with them; and
 - (iii) retain for the Director's own benefit any profit arising from any such office, place of profit or contract and any pension, allowance or other benefit received because of that participation.
- (c) A contract entered into by or on behalf of the Company is not void or voidable by reason only that a Director is in any way directly or indirectly interested in it.

- (d) In this clause 12 where the context admits, "contract" includes an arrangement and a proposed contract or arrangement.

13. **Powers of Directors**

13.1 **Powers of Directors**

- (a) Subject to the Superannuation Law and this Constitution, the management of the business and affairs of the Company is vested in the Directors. They may exercise all the Company's powers which are not, by the Superannuation Law, this Constitution or by rules prescribed by the Company in general meeting required to be exercised or done by the Company in general meeting.
- (b) The Directors may exercise all the Company's powers to borrow and raise money and secure any debts, liabilities, contracts or obligations incurred or undertaken by the Company in such manner and on such terms as they think fit.

14. **Proceedings of Directors**

14.1 **Meetings**

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

14.2 **Quorum**

- (a) The quorum is the number of Directors required to pass a resolution under clause 14.6.
- (b) Subject to clauses 12.1, 12.2(a)(i) and 22, an interested Director is to be counted in a quorum notwithstanding the Director's interest if this is consistent with and permitted by the Superannuation Law.

14.3 **Convening meetings**

- (a) A Director may, and the Secretary on the request of a Director must, convene a meeting of the Directors.
- (b) A director is entitled to notice of a meeting of Directors unless the Director is not in Australia. Accidental failure to give notice to a Director who is entitled to receive it does not invalidate the meeting.

14.4 **Appointment of proxy**

A Director may attend and vote by proxy at a meeting of the Directors if the proxy is a Director and has been appointed by the appointor in writing. Such an appointment may be general or for any particular meeting or meetings.

14.5 **Chairperson**

The following provisions of this clause 14.5 are subject to clause 22.4:

- (a) The Directors may elect or re-elect (as the case may be) one of their number as Chairperson of Directors' Meetings, for a period of 2 years and on such terms as they think fit.
- (b) The Directors may remove the Chairperson at any time. The Chairperson may resign at any time.
- (c) The Chairperson may preside at meetings of the Directors.
- (d) If the Chairperson is not present within 15 minutes after the time appointed for a meeting or is unable or unwilling to act, a Director chosen by a majority of the Directors present may preside.

14.6 **Voting**

Subject to this Constitution, a resolution of a meeting of Directors is valid if at least 2/3 of the total number of Directors vote in favour of it. Each Director, including the Chairperson is entitled to one deliberative vote. Neither the Chairperson nor any other director has a second or casting vote.

14.7 **Delegation**

The following provisions of this clause 14.7 are subject to clause 22:

- (a) The Directors may delegate any of their powers (including the power of delegation) to any person or persons or to any Committee consisting of such persons and on such terms as they think fit, and they may revoke that delegation at any time.
- (b) In the exercise of the powers so delegated, a person or Committee must comply with any regulations imposed by the Directors.

14.8 **Written resolution**

Subject to the Corporations Act and this Constitution, a written resolution signed by all the Directors (excluding Alternate Directors except for an Alternate Director who signs in place of a Director) is effective as if it had been passed at a Directors' meeting duly called and constituted. Such a resolution may consist of several documents in like form each signed by one or more of the Directors.

14.9 **Minutes**

- (a) The Directors must cause proper minutes to be made and kept of:
 - (i) all appointments of all Directors and Officers;
 - (ii) the names of the Directors present at each meeting of the Company, the Directors and any Committee;
 - (iii) all resolutions and proceedings at all meetings of the Company, the Directors and any Committee; and

- (iv) every declaration of interest made by a Director (either generally or specifically) under clause 12.1.
- (b) Minutes of each meeting are sufficient evidence of the proceedings minuted and the observance of all necessary formalities if they are certified by the signature of:
 - (i) the Chairperson of the meeting; or
 - (ii) the Chairperson of the next meeting.

14.10 **Validity of acts of Directors**

All acts of the Directors, a Committee or a person acting as a Director or Committee or member of a Committee are valid even if it is afterwards discovered that:

- (a) there was some defect in the appointment, election or qualification of them or any of them; or
- (b) that they or any of them were disqualified or had vacated office.

15. **Secretary**

15.1 **Appointment of Secretary**

- (a) The Directors must appoint at least one person as Secretary on such terms as they consider appropriate.
- (b) No person may become a Secretary unless:
 - (i) the person has consented in writing to the appointment;
 - (ii) the person has confirmed by statutory declaration, and the Board has resolved that the person, is not a Disqualified Person;
 - (iii) the person has disclosed any material personal interest in a matter that relates to the affairs of the Company and any office or property held by the person by which, directly or indirectly, duties or interests might be created in conflict with his or her duties as Secretary in accordance with and as required by the Superannuation Law; and
 - (iv) the Board has resolved that the person has satisfied the requirements of the Company's Fit and Proper Policy.

15.2 **Removal of Secretary**

The Directors may remove the Secretary at any time.

15.3 **Secretary to attend meetings**

The Secretary may receive notice of and attend all Directors' meetings and general meetings.

16. **Authentication of Documents**

16.1 **Company seals**

The Company may have a common seal. The Directors must provide the safe custody of any seal in such manner as they think fit.

16.2 **Use of common seal**

The common seal may be affixed to a document only by the authority of the Directors in that regard.

Every document to which the common seal is affixed must be signed by a Director and countersigned by the Secretary or a second Director or some other person appointed generally or in a particular case by the Directors for that purpose.

17. **Inspection of Books**

- (a) Subject to the Superannuation Law and any resolution of the Company in general meeting, the Directors may determine whether and to what extent and at what times and places and under what conditions and regulations the books and documents of the Company or any of them will be open to inspection.
- (b) A person other than a Director has no right to inspect any of the books or documents of the Company except as conferred by statute or authorised by the Directors or by a resolution of the Company in general meeting and is not entitled to require or receive any information concerning the affairs of the Company.

18. **Notices**

18.1 **Service of documents**

- (a) Any notice, document or other written communication is delivered to or served on a person if it is:
 - (i) handed to the person;
 - (ii) delivered to the person's last known address;
 - (iii) where the person has no registered address in Australia, posted by ordinary post; or
 - (iv) sent to the fax number or electronic address nominated by the person.
- (b) If the notice, document or communication is posted, it is taken to be received on the second business day after posting.
- (c) If the notice, document or communication is sent by facsimile or electronic transmission, service is taken to be effected on the first business day after properly addressing the facsimile or electronic transmission and transmitting it.

19. **Winding Up**

19.1 **Assets remaining after wind up of the Company**

If on the winding up of the Company there remains any assets (after the satisfaction of all debts and liabilities), those assets must not be paid or distributed among the Guarantors. Instead, the assets must be paid or applied for the promotion of pension or superannuation schemes as the Guarantors determined at or before the time of winding up.

19.2 **Guarantor does not make any such determination**

If the Guarantors do not make any such determination, the assets must be paid or applied for the purpose set out in clause 19.1 in such manner as determined by judge of the Supreme Court or an appropriate judicial or administrative authority.

20. **Indemnity and Insurance**

20.1 **Indemnity**

To the fullest extent permitted by the Superannuation Law, every person who is or has been:

- (a) a Director;
- (b) a Secretary;
- (c) an Officer;
- (d) an employee; or
- (e) an agent,

of the Company, is entitled to be indemnified out of the property of the Company against every liability incurred by the person in that capacity including, but not limited to all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity unless:

- (f) the Company is forbidden by the Superannuation Law to indemnify the person against the liability or legal costs; or
- (g) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by the Superannuation Law.

20.2 **Insurance**

To the fullest extent permitted by the Superannuation Law, the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been an Officer, Director, Secretary, employee or agent of the Company against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the Company is forbidden by the Superannuation Law to pay or agree to pay the premium; or

- (b) the contract would, if the company paid the premium, be made void by the Superannuation Law.

21. Compliance with the Corporations Act

- (a) The Company must comply with and observe the provisions of the Corporations Act and any lawful direction given pursuant to the Corporations Act.
- (b) Where the Corporations Act authorises or permits a company to do any matter or thing if so authorised by its constitution, the Company is authorised or permitted to do that matter or things despite any other clause of this Constitution.

22. Application of the Superannuation Law

22.1 When the Superannuation Law applies

Notwithstanding anything contained in this Constitution to the contrary, this clause 22 applies while the Company is the trustee of any Fund.

22.2 Constitution is subject to the Superannuation Law

This Constitution is to be read subject to the Superannuation Law and to the extent of any inconsistency between a requirement of the Superannuation Law and a provision of this Constitution:

- (a) the Superannuation Law will prevail;
- (b) where possible, that provision of this Constitution must be read down, changed, construed or severed to avoid the inconsistency; and
- (c) to the extent the inconsistency cannot be avoided, that provision will be of no effect and will not affect the remainder of this Constitution.

22.3 Company to comply with the Superannuation Law

The Company must comply with the requirements of the Superannuation Law to the extent that those requirements apply to the Company or any Fund.

22.4 Directors' proceeding to be in accordance with the Superannuation Law

Without limiting the generality of clause 22.3, the Directors must:

- (a) convene meetings of Directors and Committee meetings and conduct such meetings; and
- (b) keep the minutes and records referred to in clause 14.9 in respect of matters affecting the Company and any Fund and all consents given under clauses 10.2(a)(i) and 15.1(b)(i),

in accordance with the requirements of the Superannuation Law.

22.5 Board's power to formulate policies and registers

The Board must (if required by the Superannuation Law), or otherwise may, from time to time:

- (a) **Fit and Proper Policy:** formulate and adopt a policy in relation to the eligibility for a person to be appointed, or to continue, as a Responsible Person, Director, Secretary or other Officer (including, but not limited to, a policy in relation to the requisite fitness and propriety of a person to hold, and continue holding, the office of a Responsible Person, Director, Secretary or other Officer);
- (b) **Remuneration Policy:** formulate and adopt a policy in relation to remuneration of:
 - (i) Responsible Persons (other than the auditors and actuaries appointed in respect of any Fund); and
 - (ii) any other persons required by the Superannuation Law to be covered by the Remuneration Policy;
- (c) **Conflicts Policy:** formulate and adopt a policy in relation to the management of conflicts of interests and duties of the Company, its Responsible Persons, Directors, Secretaries and any other Officers;
- (d) **Register of Gifts:** maintain and disclose a register of gifts received by the Company, its Responsible Persons, the Directors, the Secretaries and any other Officers;
- (e) **Register of Relevant Duties:** maintain and disclose a register of relevant duties of the Company, its Responsible Persons, the Directors, the Secretaries and any other Officers;
- (f) **Register of Relevant Interests:** maintain and disclose a register of relevant interests of the Company, its Responsible Persons, the Directors, the Secretaries and any other Officers;
- (g) **other Policies and Registers:** formulate, adopt and maintain additional or replacement policies or registers,

in accordance with the requirements of the Superannuation Law.

22.6 Persons bound by policies and registers

- (a) The Company and each Responsible Person, Director, Secretary and Officer shall be bound to follow, any policies adopted, and the requirements of any registers maintained, by the Board from time to time.
- (b) Without limiting clause 22.6(a), the Company and each Responsible Person, Director, Secretary and Officer must disclose any gifts and any relevant duties and interests in accordance with any Conflicts Policy adopted, or the requirements of any Register of Gifts, Register of Relevant Interests or Register of Relevant Duties maintained, by the Board.

