

**AUSTRALIAN HEALTH AND NUTRITION ASSOCIATION  
LIMITED**

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**AUSTRALIAN HEALTH & NUTRITION ASSOCIATION LIMITED**

(a company limited by guarantee)

**CONSTITUTION**

*General*

1. The name of the Company is **Australian Health & Nutrition Association Limited** and in this Constitution, “the Company” means Australian Health & Nutrition Association Limited.
2. The registered office of the Company shall be situated in the State of New South Wales in the Commonwealth of Australia.

*Definitions*

3. In this Constitution, unless there is something in the subject or context of any rule or sub-rule inconsistent therewith:

“Act” means the Corporations Act 2001.

“Affiliated Entity” means any corporation established by the South Pacific Division, the union conferences or any of their constituent conferences and designated as an affiliated entity by the SPDEC;

“Board” means the members for the time being of the board of directors of the Company;

“Church” means the Seventh-day Adventist Church;

“Directors’ Term” means a period of approximately five years from either the general meeting of members immediately following the next First Annual Meeting of the SPDEC or the members meeting after that which appoints approximately half of the directors on a rotational basis;

“First Annual Meeting of the SPDEC” means the first scheduled meeting of the SPDEC following a quinquennial session of the General Conference at which all members of the SPDEC are invited to attend;

“for cause” when used in connection with removal from an elected or appointed position shall include incompetence and/or conduct which in the opinion of the members at a general meeting of members or of the Board, or of the SPDEC as the case may be amounts to, but is not limited to, persistent failure to co-operate with duly constituted authority in substantive matters and with relevant employment and Church principles, and/or actions which may be susceptible to discipline within the Church in accordance with Church principles at the relevant time;

“General Conference” means the General Conference of Seventh-day Adventists;

“General Conference Constitution” means the constitution and bylaws of the General Conference as amended from time to time;

"month" means the calendar month;

“Officer” when used in rule 51 of this Constitution, means “a director” or “secretary” or “chief executive officer” of the Company;

"Regulations" means any regulations made by the Company and all supplementary substituted or amended regulations for the time being in force;

“session of the General Conference” means the meeting of delegates held in accordance with the General Conference Constitution;

“South Pacific Division” is a division of the Church with geographical territory as defined by the Church from time to time but which includes Australia;

“South Pacific Division Working Policy” means the policies adopted from time to time by the SPDEC and/or by such entity affiliated with the South Pacific Division as the SPDEC may determine;

“SPDEC” means the Executive Committee of the South Pacific Division;

“SPD Officers” means the President, General Secretary and Chief Financial Officer, the Special Assistant to the President, Associate/Assistant General Secretaries and Associate/Assistant Chief Financial Officers of the South Pacific Division;

“Term” means the period of approximately five years between First Annual Meetings of the SPDEC;

The word "secretary" (of the Company) shall include the secretary, the assistant/associate secretary and the acting secretary for the time being of the Company.

The words "rules" and "sub-rules" in reference to this Constitution means the rules and sub-rules contained in the Constitution.

This Constitution is intended to be gender neutral. To avoid any misunderstanding words importing masculine gender only shall include females.

Words importing persons include corporations.

Words importing the singular number only include the plural, and vice versa.

“writing” shall include printing and other modes of reproducing words in visible form.

### ***Objects & Powers***

- 4.1 The Company is established by the South Pacific Division for the purposes of exercising, carrying out and assuming, as the case may be, the activities, duties, liabilities, responsibilities, powers, rights and entitlements of the Health Food department of the Church in Australia operating as Sanitarium Health Food Company. The Sanitarium Health Food Company is and has been a department of the South Pacific Division of the Church, assisting in the proclamation of the gospel through its health ministry. The

Church believes in a health food ministry which recognises the interdependence of spiritual and physical wellbeing, and the mission of the Company is to aid and forward the work of the Church in teaching the gospel, in particular (within the framework of the policies and principles of the Church), by assisting those who teach the gospel and the community in general in avoiding illnesses caused by a violation of health principles. This distinctive health food ministry involves:-

- (i) nutrition and related health education whereby the basic laws of healthful living are better understood and accepted as being essential in preserving health and vitality;
- (ii) preparation and distribution of nutritious foods from readily available raw materials or otherwise which are palatable, nourishing and economical.

4.2 The objects of the Company are as follows:

- (a) To carry on religious charitable and educational work.
- (b) To work in harmony with the policies and principles of the Church.
- (c) To complement the health education program of the Church.
- (d) To produce foods which are in harmony with the dietary beliefs and principles of the Church.
- (e) To ensure that (subject to d.) through continuing research the range and quality of such foods meets the needs of the consumer.
- (f) To co-operate with other agencies of the Church in the promulgation of the health and health food messages of the Church.
- (g) To take the initiative in educating and encouraging the general consumer toward a better way of health and in particular through better knowledge in nutrition and the use of good food.
- (h) To support generally the program of the Church financially so as to relieve human suffering.
- (i) To manage the affairs of the Company as a not-for-profit charitable organisation on a sound and efficient financial basis.

5.1 In pursuance of the foregoing objects, the Company has the powers set out in s.124 of the Act, except s.124 (1) (a), (c), (d), (e), (g) and (h).

5.2 Without limiting the generality of sub-rule 5.1, the Company may, in harmony with the South Pacific Division Working Policy:

- (a) Carry on religious charitable and educational work.
- (b) apply to the Commonwealth Commissioner of Taxation for registration as a deductible gift recipient, but only if it establishes a "Gift Fund" for the purposes

of Division 30 of the *Income Tax Assessment Act 1997* in accordance with sub-rule (c) below.

- (c) establish, maintain and operate an endorsed gift fund or gift funds within the meaning of Division 30 of the *Income Tax Assessment Act 1997* provided that:
  - (i) the Company opens a bank account to hold or opens as many bank accounts as are necessary to hold money in a separate bank account for each fund;
  - (ii) all money received for the purposes of a gift fund must be deposited to the relevant gift fund;
  - (iii) no other money or property may be credited to a gift fund;
  - (iv) all donations to each fund are properly received by the Company for or on behalf of the fund or funds;
  - (v) subject to sub-rule 5.2 (c)(vi) below, money credited to a bank account in respect of a gift fund may only be applied to the principal purpose of the relevant gift fund; and
  - (vi) In the event that any endorsed gift fund operated by the company is wound up or if the endorsement of the Company as a deductible gift recipient is revoked, then any surplus assets of the fund remaining after the payment of liabilities has been made shall be transferred to an Australian fund, authority or institution, with similar objects, to which income tax deductible gifts can be made as recommended by not less than a two-third majority of the SPDEC and in default of any such recommendation to an Australian fund, authority or institution to which tax deductible gifts can be made operated by the Church as determined by the Supreme Court having jurisdiction in the matter.
- (d) Carry on the Health Food Department of the Church in Australia (as delegated by instrument in writing).
- (e) Distribute income in accordance with the charitable directions of the South Pacific Division.
- (f) Make appointments or terminate or vary any such appointment or remove for cause any person appointed by the Company, after consideration of the recommendation (if any) of the SPDEC.
- (g) Acquire take and hold real and personal property [including shares and including intellectual property] upon trusts either general or specific and either alone or in conjunction with any other person or company.
- (h) Acquire any rights or privileges which the Company may regard as necessary desirable or expedient for the primary objects hereof or for promoting its interests or those of the Church.

- (i) Purchase take on lease or exchange hire or otherwise acquire any real or personal property and maintain erect or alter any buildings or works necessary or convenient for the carrying out of any or all of the objects of the Company, after consideration of the recommendation (if any) of the SPDEC.
- (j) Sell improve lease or otherwise deal with all or any part of the property of the Company.
- (k) Invest any moneys of the Company not immediately required by the Company upon such securities as may from time to time be determined.
- (l) Receive income from trusts grants donations legacies and bequests under wills or otherwise and raise money required for the Company in such manner as the Company shall think fit.
- (m) Borrow money or receive money on deposit with the approval of and/or in the manner approved by the SPDEC.
- (n) Lend money for such purposes as may be germane to the objects of the Company and/or the Church and as approved by or in a manner approved by the SPDEC.
- (o) Draw make accept endorse discount execute or issue promissory notes bills of exchange bills of lading warrants debentures deposit receipts and other transferable instruments.
- (p) Obtain any order or Act of Parliament for enabling the Company to carry any of its objects into effect or for effecting any alteration of the Company's Constitution or for any other purpose which may seem expedient and oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the interests or objects of the Company or any of them.
- (q) Make by-laws and Regulations and do all such other things as may be incidental or conducive to the attainment of the objects of, or to the government and maintenance of the Company or the South Pacific Division or any of them, in harmony with the policies and principles of the Church.
- (r) Sell or dispose of the assets of the Company or any part thereof for such consideration as the Company may think fit and in particular for debentures or securities of any other company or association having similar objects and activities.
- (s) Do all or any of the above things in any part of the world as principals agents trustees or otherwise and by or through agents trustees or otherwise and either alone or in conjunction with others either in the name of the Company or any other name or names.
- (t) Do all such other things as are or may be incidental or conducive to the attainment of any of the above objects.

***Income and Property of the Company***

- 6.1 Subject to any specific trusts, the income and property of the Company shall be held and applied solely for the purposes and for the benefit of the Church.
- 6.2 No portion of such income or property shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever called by way of profit to the persons who at any time or times are or have been members of the Company or the Church or to any person claiming through any of them.
- 6.3 Notwithstanding the terms of sub-rule 6.2:-
- (a) nothing shall prevent the payment in good faith of specified remuneration, wages, and/or allowances to any members, officers or employees of the Company or the Church in return for any services actually rendered to the Company or the Church;
  - (b) nothing shall be deemed to exclude any members, officers or employees of the Company or the Church or their family members or relations from the benefit of any grant made in furtherance of any of the objects of the Company.
- 6.4 The Company's right of indemnity:
- (a) is limited to income and property received and held for application pursuant to sub-rule 6.1;
  - (b) does not permit personal recovery from any recipient of income and/or property pursuant to sub-rule 6.1.

***Dissolution***

7. Every member of the Company undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that he or she is a member or within one year afterwards for the payment of the debts and liabilities of the Company contracted before the time at which he or she ceases to be a member and of the costs charges and expenses of winding up the same and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding two dollars.
- 8.1 If the Company should at any time by reason of statutory proceedings or from any other cause whatsoever be placed in liquidation or in the course of winding up and if upon the winding-up or dissolution of the Company there remains after the satisfaction of all debts and liabilities any property and assets whatsoever the same should not be paid to or distributed amongst the then members of the Company but shall be paid given or transferred to or to trustees for and to be nominated by or on behalf of an income tax-exempt legal entity within Australia that has rules prohibiting the distribution of its assets and income to its members, as recommended by not less than a two-third majority of the SPDEC; and in default of any such recommendation by the Supreme Court of New South Wales having jurisdiction in the matter.

- 8.2 If the Company operates a gift fund (within the meaning contained in the *Income Tax Assessment Act 1997*, as amended) and if the gift fund is wound up or if the endorsement (if any) of the Company as a deductible gift recipient is revoked, any surplus assets of the gift fund remaining after payment of liabilities attributable to it shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made as recommended by not less than a two-third majority of the SPDEC.

### ***Members of the Company***

- 9.1 The qualification of a member of the Company shall be that he or she:-
- (a) be a member of the Church in regular standing, and
  - (b) be a member of the SPDEC, and
  - (c) not be an insolvent under administration, and
  - (d) not be mentally incapacitated, and
  - (e) not be disqualified from managing corporations under Part 2D.6 of the Act (or under any similar or corresponding provision in any amending legislation), and
  - (f) be a member for the time being of one of the two categories described as follows:

#### 9.1.1 ***Ex Officio Members***

The ex officio members of the Company shall be persons who consent to become members, in accordance with sub-rule 9.2, from among persons occupying the following positions: -

- (a) the President of the South Pacific Division;
- (b) the General Secretary of the South Pacific Division;
- (c) the Chief Financial Officer of the South Pacific Division;
- (d) the Associate/ General Secretary of the South Pacific Division; and
- (e) the Associate Chief Financial Officers of the South Pacific Division.

Provided that where one person holds any two of the positions named above, that person shall have the rights and responsibilities of a single ex officio member only.

#### 9.1.2 ***Elected Members***

- (a) Subject to sub-rule 9.1.2(b) persons shall be elected by the SPDEC from among its own membership at the First Annual Meeting of the SPDEC a minimum of fifteen members, to serve for a Term provided that the non-Australian resident members does not exceed 25% of the total members.
- (b) Between sessions of the General Conference, the SPDEC may fill by nomination any vacancies in the elected members category whether such vacancies are created by resignation or removal or other reason and the period of membership



of any such nomination shall expire at the end of the Term in which they were nominated or earlier in accordance with this Constitution. Such nominations shall be by resolution passed at a meeting of the SPDEC.

- 9.2 When any person holding such qualification as aforesaid agrees to be admitted to membership of the Company he or she must sign and deliver to the secretary of the Company an application for admission in the terms following, that is to say:

“To Australian Health & Nutrition Association Limited:

I, .....of  
 ..... being a member of the Seventh-day Adventist Church and a member of the South Pacific Division Executive Committee, hereby request you to enter my name in the register of members of the Company subject to your Constitution, the obligations of which I hereby accept. I declare that, in all respects, I conform to the qualifications required by sub-rule 9.1.

Dated this ..... 20.....”

- 9.3 The Board upon receiving any such application as is mentioned in the last preceding sub-rule and upon being satisfied that the applicant is qualified for membership shall enter the name of such applicant in the register of the members of the Company.
- 9.4 Members may serve for more than one Term and may serve in consecutive Terms.
10. The rights of a member as such shall be personal, and shall not be transferable, and shall cease at his/her death or on loss of membership.
- 11.1 A member of the elected members category shall cease to be a member of that category if a two-thirds majority of those present and voting at a meeting of the SPDEC, after consideration of the recommendation (if any) of the members or of the Board of the Company, so determine. Any such determination may be made only “for cause”.
- 11.2 (a) Any elected member who ceases to be a member of the elected members category, or
- (b) any member who, being a member of the ex officio members category according to sub-rule 9.1.1. (g), ceases to be an Australian resident, or
- (c) any other ex officio member who ceases to hold the relevant office
- ipso facto loses qualification for membership of the Company.
12. In case any member shall lose qualification for membership, that person shall thereupon ipso facto cease to be a member of the Company.
13. Any member may withdraw from the Company by giving one month's notice in writing to the Board of intention so to do, and upon the expiration of such notice the person shall cease to be a member.
14. Any person who –

- (a) ceases to be a member of the Church in regular standing, or;
- (b) ceases to be a member of the SPDEC, or;
- (c) becomes an insolvent under administration, or;
- (d) becomes mentally incapacitated, or;
- (e) is or becomes or has become disqualified from managing corporations under Part 2D.6 of the Act (or under any similar or corresponding provision in any amending legislation);

ceases to be qualified for membership of the Company.

### ***Board of Directors***

- 15.1 The management of the business and affairs of the Company shall be vested in a Board of directors.
- 15.2 The Company shall not have a managing director.
- 15.3 The qualification of a director of the Company shall be that the person:-
- (a) be a member of the Church in regular standing, and
  - (b) not be an insolvent under administration, and
  - (c) not be mentally incapacitated, and
  - (d) has not been disqualified from managing corporations under Part 2D.6 of the Act (or under any similar or corresponding provision in any amending legislation), and
  - (e) has not been convicted of an offence punishable by imprisonment for a term of more than 12 months or, where convicted of any lesser offence punishable by a term of imprisonment of less than 12 months, has his/her qualification confirmed by a resolution of a general meeting of members, and
  - (f) be a member of either category set out in rule 16.
- 16.1 The directors of the Company shall be composed of ex officio directors as set out in sub-rule 16.2 hereof and appointed directors as set out in sub-rule 16.3 provided that three quarters of the directors are Australian residents.
- 16.2 The ex officio directors shall be persons who consent to become directors from among the following persons:
- (a) the President of the South Pacific Division;
  - (b) the General Secretary of the South Pacific Division;

- (c) the Chief Financial Officer of the South Pacific Division;
  - (d) another SPD Officer if nominated by the President of the South Pacific Division;
  - (e) the Director of the Health Food Department of the South Pacific Division upon appointment to that position.
- 16.3 The appointed directors shall be up to six persons appointed by resolution passed by the members of the Company. To enable a rotation of appointed directors and to provide an overlap of directors approximately half will be appointed at the first general meeting of members immediately following the First Annual Meeting of the SPDEC, the other half approximately mid-way between the First Annual Meeting of the SPDEC and the next scheduled session of the General Conference or at such other times as the members of the Company determine;-
- 16.4 The members may determine that appointed directors are appointed as persons belonging to a specified group.
- 16.5 Between sessions of the General Conference, the members of the Company may fill by appointment any vacancy or vacancies in the appointed directors category. Such appointment shall be by resolution passed at a general meeting of members.
- 16.6 If two or more persons are proposed for appointment as directors, a separate resolution is required in respect of each.
- 16.7 The President of the South Pacific Division may at any time withdraw a nomination made in accordance with sub-rule 16.2 (a) and assume the position of director himself by providing to the secretary a letter of intention and consent in accordance with the Act.
- 17.1 No person, whether an ex officio director or an appointed director, shall assume the role of director unless the person has first given the Company a written consent to act as director. Such consent must include a declaration attesting that the person conforms to the qualifications required by sub-rule 15.3.
- 17.2 The term of appointment for appointed directors expires at the end of the Directors' Term in which they were appointed, or earlier in accordance with this Constitution.
18. Directors may serve for more than one Directors' Term and may serve in consecutive Directors' Terms.
19. A director shall vacate his/her office if he or she —
- (a) ceases to be a member of the Church in regular standing; or
  - (b) becomes an insolvent under administration; or
  - (c) becomes mentally incapacitated; or
  - (d) is or becomes or has become disqualified from managing corporations under Part 2D.6 of the Act (or under any similar or corresponding provision in any amending legislation); or

- (e) has been convicted of an offence punishable by imprisonment for a term of more than 12 months or, where convicted of any lesser offence punishable by a term of imprisonment of less than 12 months, has not had his/her qualification as a director confirmed by a resolution of a general meeting of members.
20. Any director who, being:
- (a) an ex officio director, ceases to hold the relevant office, or
  - (b) a director appointed to a specified group in accordance with sub-rule 16.4, ceases to be a member of that group,
- shall vacate the office of director.
21. A director of the Company may resign as a director by giving a written notice of resignation to the Company at its registered office.
22. The members of the Company may, by ordinary resolution, remove a director before the end of the Directors' Term.
23. The Company shall not have alternate directors.
24. No vacancy or vacancies in the office of a member of the Board shall affect the authority or powers of the Board and subject to the provisions as to a quorum such authority and powers may be exercised by the members for the time being holding office.

### ***General Meetings of Members***

25. An annual general meeting shall be held in accordance with the Act at such time and place (or places in accordance with sub-rule 26.2) either in or outside New South Wales as may be prescribed by the Company in a general meeting of members and if no time or place is so prescribed such time and place either in or outside of New South Wales may be determined upon by the Board. The annual general meeting and all other meetings of the Company's members shall be called "general meetings of members".
26. This rule replaces the replaceable rule of the Act entitled "Calling of meetings of members by a director".
- 26.1 In addition to the annual general meeting referred to in rule 25, the Board may call other general meetings of members at any time and for any purpose connected with Company business.
- 26.2 The Company may hold general meetings of members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.
27. A general meeting of members shall be held on requisition of members in accordance with the provisions of the Act.
28. Not less than thirty days' notice (if given by advertisement) or less than twenty one days' notice (if given otherwise than by advertisement) of any general meeting of members

(exclusive both of the day on which the notice is served or deemed to be served and of the day of the meeting) specifying those matters required to be specified by the Act, including the day, hour, place or places of the meeting, and general nature of the business to be transacted, shall be given in manner hereinafter mentioned or in such other manner as may from time to time be prescribed by the Company in a general meeting of members; but the accidental omission to give notice of any meeting to or the non-receipt of such notice by any of the members shall not invalidate any resolution passed at any general meeting of members. A general meeting of members may be convened at shorter notice only in accordance with the Act.

***Proceedings at General Meetings of Members***

29. The business of an annual general meeting shall be to receive and consider the balance sheet, income and expenditure account, and the reports of the Board and the auditors; to appoint members of the Board in the place of those retiring and, if necessary, auditors; and to transact any other business which under these presents ought to be transacted at an annual general meeting.
30. Rule 31 replaces the replaceable rule of the Act entitled “Quorum”.
- 31.1 No business shall be transacted at a general meeting of members unless a quorum of members is present at the time for the meeting to proceed to business, and such quorum shall be ascertained as set out in sub-rule 31.2.
- 31.2 If the members of the Company at the time of the meeting do not exceed twenty in number the quorum shall be ten; if they exceed twenty and do not exceed forty the quorum shall be eleven; if they exceed forty and do not exceed sixty the quorum shall be twelve, and thereafter one shall be added to the quorum for every twenty additional members.
- 31.3 A quorum must be present at all times during the meeting.
32. If within one hour after the time appointed for the meeting a quorum is not present, the meeting if convened upon the requisition of members shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place or to such other day, time and place as the chairperson of the meeting, or in the chairperson’s default a majority in number of the members present, may then appoint; and if at such adjourned meeting a quorum is not present, it shall be adjourned, sine die, but no notice of any such adjournment shall be required to be given to the members and no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
33. This rule replaces the replaceable rule of the Act entitled “Chairing meetings of members”.
- 33.1 The President of the South Pacific Division shall be entitled to preside as chairperson at every general meeting of members.
- 33.2 If at any general meeting of members the President of the South Pacific Division be not present or be present but before or during the meeting elect not to act as chairperson, the General Secretary of the South Pacific Division, if present, shall be the chairperson. If

both the President and the General Secretary be absent or elect not to act as chairperson the Chief Financial Officer of the South Pacific Division shall chair the meeting.

- 33.3 If all of the President, General Secretary and Chief Financial Officer of the South Pacific Division are absent or elect not to chair the meeting, the President must choose a member present to act as chairperson during such absence.
34. The chairperson may with the consent of the meeting adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
35. This rule replaces the replaceable rule of the Act entitled “How voting is carried out”.
- 35.1 A resolution is carried by a majority of votes of those present entitled to vote, save where otherwise stipulated by this Constitution or the Act.
- 35.2 At any general meeting of members, unless a poll is demanded by at least five members, a declaration by the chairperson that a resolution has been carried on a show of hands and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 35.3 If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairperson directs, and the result of such poll shall be deemed to be the resolution of the Company in a general meeting of members.
- 35.4 The company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard. Anyone using this technology is taken to be present in person at the meeting.

#### *Votes of Members*

- 36.1 Subject to sub-rule 36.2, every member shall have one vote, and no more, both on a show of hands and a poll.
- 36.2 The chairperson has a casting vote both on a show of hands and a poll.
- 37.1 A member may appoint in writing another person who must also be—
- (i) a member, and
  - (ii) approved by the Board as a proxy prior to the meeting,
- as the member’s proxy or attorney to attend and vote instead of the member at the meeting, save that a proxy is not entitled to vote on a show of hands.
- 37.2 Where a meeting is adjourned, and the appointment of the proxy has not been revoked, either the member or the member’s proxy in the person’s stead may exercise that member’s vote at the adjourned meeting.

38. A challenge to a right to vote at a general meeting of members:
- (a) may only be made at the meeting; and
  - (b) must be determined by the chairperson at the meeting and the chairperson's decision is final.

***Proceedings of the Board of Directors***

39. This rule replaces the replaceable rules of the Act entitled "Quorum at directors' meetings" and "Passing of directors' resolutions".
- 39.1 The members of the Board may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit. The quorum of members of the Board necessary for the transaction of business shall be four. Questions arising at any meeting of the Board shall be decided by a majority of votes of those entitled to vote on the resolution, and each member of the Board shall have one vote only; and in case of an equality of votes the chairperson shall have a second or casting vote.
40. This rule replaces the replaceable rule of the Act entitled "Chairing directors' meetings".
- 40.1 The directors shall elect one of the consenting ex officio directors chosen in accordance with sub-rule 16.2 (a) – (d) to chair directors' meetings as the Board chairperson. These meetings may be held in one place or by means of a technology consented to by all of the directors of the Company as allowed by the Act.
- 40.2 The Board chairperson may designate another ex officio director in accordance with sub-rule 16.2 (a) – (d) to chair directors' meetings in his/her stead and may cancel that designation at any time.
41. This rule replaces the replaceable rule of the Act entitled "Calling directors' meetings".
- 41.1 The chairperson or any seven members of the Board may at any time (and the secretary shall upon the request in writing of the said seven members of the Board) convene a meeting of the Board. The meetings of the Board shall ordinarily be held in such place or places in the State of New South Wales as the Board shall from time to time determine, but any of such meetings may be held in any other place in the Commonwealth of Australia or elsewhere which the Board may from time to time determine upon.
42. This rule replaces the replaceable rule of the Act entitled "Remuneration of directors".
- 42.1 Subject to rule 6 above, the directors of the company are to be paid the remuneration that the Company determines by resolution passed at a general meeting of members. The Company may also pay the directors' travelling and other expenses that they properly incur:
- (a) in attending directors' meetings or any meetings of committees of directors; and
  - (b) in attending any general meetings of members; and

- (c) in connection with the Company's business.
43. This rule replaces the replaceable rule of the Act entitled "Delegation".
- 43.1 The Board may delegate any of its powers to committees consisting of such member or members as it thinks fit (and such delegation must be recorded in the Company's minute book), and any committee so formed
- (a) shall include (but not be limited to) a member or members of the Board;
  - (b) shall in exercise of the powers so delegated conform to any regulations that may be imposed on them by the Board (and the effect of the committee exercising a power in this way is the same as if the directors had exercised the power);
  - (c) may obtain and consider the advice of a person or persons with relevant expertise (as determined by the Board on reasonable grounds), whether or not such persons are members of the Board, at any meeting(s) of the said committee;
  - (d) shall, in considering the advice referred to in (c), make by the individual directors constituting the committee, an independent assessment of the information or advice.
44. A committee shall have as chairperson of its meetings such person as is designated by the Board as chairperson of the committee, and if no such chairperson is designated the holding of a committee meeting shall be deferred, or if the designated chairperson is unable to be not present at the time appointed for the holding of a committee meeting, the committee meeting chairperson may designate another member of the committee to chair the meeting in his/her stead and may cancel that designation at any time. In the event that the chairperson becomes incapacitated to chair, or unable to designate another member to chair the committee, the members of the committee may appoint a chairperson from among their number to be effective until the next Board meeting.
45. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chairperson shall have a second or casting vote.
46. All acts done by any meeting of the Board or of a committee or a member or members of the Board or by any person acting as a member of the Board, shall notwithstanding that it be afterwards discovered that there was some defect in the appointment of any member or members of the Board or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Board.
47. This rule the replaces replaceable rule of the Act entitled "Circulating resolutions of companies with more than 1 director".
- 47.1 A resolution in writing (other than a resolution modifying or repealing any rule or sub-rule of this Constitution and other than a resolution reserved for the determination of members at a general meeting of members) signed by two-thirds of the members of the Board and containing a statement that they are in favour of the resolution set out in the



document shall be as valid as if it had been passed at a meeting of the Board duly-called and constituted.

47.2 For the purpose of sub-rule 47.1, separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

47.3 For the purpose of sub-rule 47.1, a director may signify assent to a resolution in writing by: -

- (a) signing the document in which the resolution is set out and providing it to the Company by:
  - (i) personal delivery; or
  - (ii) post or facsimile; or
- (b) notifying the director's assent by sending:
  - (i) an electronic message from the electronic address notified to the Company by the director; or
  - (ii) such other form of electronic communication consented to by the Board of directors

and which contains a statement that the director is in favour of the resolution set out in the document and which complies with any other verification of the transmission that the Board of directors may require from time to time.

47.4 For the purpose of sub-rule 47.1, if a director signifies

- (a) a desire for the resolution to be discussed at a meeting of the Board; or
- (b) a response not indicating assent

the resolution shall be held over to the next meeting of the Board.

47.5 The minutes of resolutions recorded applying rule 47 shall outline the directors who have indicated assent and shall be confirmed at the next meeting of the Board.

48. The secretary shall cause minutes to be entered:

- (a) of all appointments of officers;
- (b) of the delegation of any of the Board's powers to a committee of the Board;
- (c) of the names of the members of the Board present at each meeting of the Board and any committee of members of the Board;
- (d) of all orders made by the Board and committees of members of the Board;

- (e) of all resolutions and proceedings of general meetings of the Board and committees and any such minutes of any such meetings of the Board or of any committee or of the Company, if purporting to be signed by the chairperson of such meeting or by the chairperson of the next succeeding meeting, shall be received as prima facie evidence of the matters stated in such minutes.
49. A member of the Board shall not be disqualified from holding any office or employment with the Company (other than that of auditor) and at any meeting of the Board the person shall, in accordance with the Act:
- (a) notify the Board when the person becomes aware of a material personal interest; and
  - (b) not be present while the matter involving the material personal interest is being considered; and
  - (c) not vote upon the matter involving the material personal interest.

***Alteration of this Constitution***

50. A resolution altering or repealing any rule or sub-rule of this Constitution (including this rule) must be passed by at least 75% of all members.

***Indemnity***

- 51.1 In rule 51:

“legal action” means any legal proceeding or action whatsoever, and, without limiting the generality of the above, includes a threatened or prospective legal action, a quasijudicial proceeding and investigative or disciplinary proceeding conducted by a Government authority or pursuant to statute against an Officer of the Company, but does not include a legal proceeding to which—

- the Company itself or a related body corporate is or is proposed to be a party, or
- the Church or any of its administrative entities, Affiliated Entities, institutions, agencies or services is or is proposed to be a party;

having an interest adverse to that of the Officer.

“liabilities” include, but are not limited to, expenses, awards of damages and compensation, amounts paid in settlement, fines, penalties, interest, legal costs (on a solicitor and client basis) and disbursements, but “liabilities” do not include a liability to the Company itself or to a related body corporate, other than a liability for costs and expenses incurred by the Officer—

- in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
- in connection with an application, in relation to such proceedings, in which the Court grants relief to the Officer under the Act;

and “liabilities” do not include liability for a pecuniary penalty order under the Act or liability for a compensation order in relation to an application for a pecuniary penalty order under the Act.

“performance of duties” includes an attempt to perform duties and a failure to perform duties.

- 51.2 Subject to sub-rule 51.3 and to the Act, the Company shall indemnify an Officer against all liabilities incurred in consequence of any legal action to which the person is a party or to which it is proposed that the person be a party arising out of or in connection with the Officer’s performance of his/her duties as an Officer.
- 51.3 The indemnity granted by sub-rule 51.2 does not extend to liabilities incurred as a result of:
- (a) legal action initiated or threatened by the Officer without the prior written consent of the Board, unless the Board in its absolute discretion, otherwise determines;
  - (b) the deliberate commission of a tort or other civil wrong, or dishonest or malicious conduct by the Officer;
  - (c) the commission of a criminal offence by the Officer—  
unless the Officer did not intentionally commit the acts or omissions constituting the offence; or,  
where the liability is to the Company itself or to a related body corporate, unless the liability is for costs and expenses incurred by the Officer—
    - in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer or in which the Officer is acquitted; or
    - in connection with an application, in relation to such proceedings, in which the Court grants relief to the Officer under the Act;
  - (d) conduct (including omissions) of the Officer, where the Officer fails to satisfy the Board that he or she held an honest and reasonable belief that the conduct would further the legitimate interests of the Company;
  - (e) liabilities (other than those imposed by a court or other public authority without the consent of the Officer) incurred by the Officer without the prior written consent of the Board, such consent not to be unreasonably withheld, unless the Board, in its absolute discretion, otherwise determines.
- 51.4 No indemnity shall be granted under sub-rule 51.2 unless the Officer gives notice in writing to the Board as soon as is reasonably practicable after becoming aware of any occurrence which may result in an indemnity being sought under sub-rule 51.2, unless the Board, in its absolute discretion, otherwise determines.
- 51.5 It is a condition of the grant of an indemnity under sub-rule 51.2 that the Company or its nominee shall be entitled to take over and conduct in the name of the Officer the conduct

and settlement of the legal proceeding (other than the defence to a criminal prosecution), and that the Officer shall not admit any civil liability or settle any claim against him without the consent of the Board.

- 51.6 (a) Where the Officer is not eligible for an indemnity under sub-rule 51.2, the Board may, in its absolute discretion but subject to the Act, pay all or part of the legal costs (on a solicitor and client basis) of an Officer who is in name or substance a defendant to any legal action, whether civil or criminal, where the Board considers, in its absolute discretion, that the reasons the Officer has been made a defendant include the fact that he or she is an Officer, and that it would be just and proper for this Company to make the payment;
- (b) The Board shall be under no legal obligation to make a payment authorised by paragraph a. or to consider whether a payment should be made in any individual case;
- (c) The Board may impose such conditions as in its absolute discretion it sees fit on the making of a payment under paragraph (a).
- 51.7 Nothing in rule 51 is intended to prevent ratification in a general meeting of members of an Officer's abuse of power or an Officer's exceeding power, where such ratification does not offend the Act.

#### ***Powers of the Board***

52. In accordance with sub-rule 15.1 the Board, in addition to the powers and authorities by this Constitution expressly conferred upon it, may exercise all such powers and do all such acts and things as may be exercised or done by the Company and are not hereby or by statute expressly directed or required to be exercised or done by the Company in a general meeting of members, but subject nevertheless to any Regulations from time to time made by the Company in a general meeting of members. Provided that no Regulation shall invalidate any prior act of the Board which would have been valid if such Regulation had not been made. The Board may without any further authority carry out all or any of the objects of the Company contained in this Constitution and do all other acts and things in relation thereto as it shall deem expedient.
53. Without prejudice to the general powers conferred by the last preceding rule and of the other powers conferred by this Constitution, the Board may:
- (a) from time to time to make, vary, and repeal by-laws for the regulation of the business of the Company, its officers, servants, and agents;
- (b) determine who shall be entitled to sign on the Company's behalf, bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts, and all other documents and deeds;
- (c) make and give receipts, releases, and other discharges for money payable to the Company and for the claims and demands of the Company;
- (d) enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute and do all such acts, deeds, and things in the name and on

behalf of the Company as they may consider expedient for or in relation to the purposes of the Company;

- (e) take steps to protect intellectual property rights including the registration of trademarks;
  - (f) Adopt all such other measures and do all such acts as they may consider advisable for the purposes of the Company.
54. The Board may from time to time entrust to and confer upon those SPD Officers who are directors for the time being, or upon the chief executive officer, such of the powers exercisable by the Board as it may think fit, and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions (if any) as it thinks expedient, and may from time to time revoke, withdraw, alter, or vary all or any of such powers.
- 55.1 The Board may establish branch offices and agencies at places in or out of New South Wales and appoint any person or persons to be representatives or agents local boards or members of such local boards in any country or place out of the said state with such powers and authorities upon such terms and with such remuneration as the Board shall think fit and from time to time delegate to such representatives agents local boards of advice or members of such local boards all or any of the powers authorities and discretions of the Board.
- 55.2 The Board may at any time and from time to time by power of attorney under the Company's seal appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the Board under these presents) and for such period and subject to such conditions as the Board may from time to time think fit and any such appointment may (if the Board thinks fit) be made in favour of the members or any of the members of any local board established as aforesaid or in favour of any fluctuating body of persons whether nominated directly or indirectly by the Board; and any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney or attorneys as the Board may think fit.
- 55.3 Any such delegates or attorneys as aforesaid may be authorised by the Board to sub-delegate all or any of the powers authorities and discretions for the time being vested in them.
- 55.4 The Company may have for use in place of its common seal outside the State or Territory where its common seal is kept, one or more official seals, each of which shall be a facsimile of the common seal of the Company with the addition on its face of the name of every place where it is to be used.

### *The Seal*

56. The Board shall provide a common seal of the Company and such seal shall be kept by such person and in such place and in such manner as the Board may think fit, and the Board shall have power to use such seal in the execution of all or any of the powers hereby vested in it; but it shall not be affixed to any document except pursuant to a

resolution of the Board. The affixing of the seal shall be attested by the chairperson of the Board or secretary and at least one other member of the Board, or in such other way as the Board may from time to time determine, and such attestation shall be sufficient evidence of the authority to affix the seal. Documents not requiring the seal to be affixed may be signed by the chairperson of the Board or the secretary or if approved by a resolution of the Board by at least two members of the Board.

### *Accounts*

57. The Board shall cause true accounts to be kept of the sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place, and of all the property, assets, credits, and liabilities of the Company.
58. The books of accounts shall be kept at the registered office of the Company, or at such other office or offices as the Board may from time to time think fit.
59. The Board shall from time to time determine at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of the members.
60. The Board shall lay before the Company at each annual general meeting a Profit and Loss Account for the period since the preceding account made up for a period ending on a date not earlier than six months before the date of the meeting, and shall cause to be made up and to be laid before the Company at each annual general meeting with the Profit and Loss Account a balance sheet as at the date to which the Profit and Loss Account is made up.
61. There shall be attached to the accounts of the Company statements made and signed in accordance with the provisions of the Act.
62. The accounts and report shall lie for inspection of the members of the Company at the office of the Company for a period of seven days previously to the meeting to which they are to be submitted and all accounts of the Company required by the Act or by this Constitution to be laid before the Company at each annual general meeting accompanied by copies of the statements and of the reports referred to in the Act shall not less than twenty-one days before each annual general meeting after the end of the financial year or four months after the end of the financial year (whichever is the earlier) be sent to all persons entitled to receive notice of general meetings of members.

### *Annual Returns*

63. The Company shall make an annual return in accordance with the Act.

### *Audit*

64. The Company shall, by ordinary resolution at a general meeting of members, appoint an auditor or auditors in harmony with the South Pacific Division Working Policy and the Act, and their qualification appointment remuneration rights and duties shall be regulated by the Act.