

Constitution of  
Royal Flying Doctor Service South Eastern  
Section Medical Services Pty Ltd

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**CONSTITUTION OF  
ROYAL FLYING DOCTOR SERVICE SOUTH EASTERN SECTION MEDICAL SERVICES PTY  
LTD**

**1. PRELIMINARY**

**1.1 Proprietary company**

The Company is a proprietary company and must comply with section 113.

**1.2 Company Objects**

- (a) The objects of the Company are to provide benevolent relief to people in need by:
- (i) providing education and support services for medical professionals, nursing and health and management personnel, and providing facilities for and to foster the provision of medical residents in rural and remote areas of the Commonwealth of Australia, its dependencies and mandated territories, in order to facilitate the provision of Health Services to individuals suffering from disease and sickness in those areas;
  - (ii) acquiring or constructing and operating Health Facilities in rural and remote areas of the Commonwealth of Australia, its dependencies and mandated territories, in order to facilitate the provision of Health Services to individuals suffering from disease and sickness in those areas;
  - (iii) providing financial assistance (including by making gifts and donations) and other support to charities with objects similar to those of the Company;
  - (iv) providing Health Services to residents in rural and remote areas and failed markets of the Commonwealth of Australia, its dependencies and mandated territories;
  - (v) providing aero-medical services and Health Services in locations where Health Services are considered by the Company to be required;
  - (vi) co-operating with the Royal Flying Doctor Service of Australia and its member organisations to promote the efficient allocation and use of resources and to achieve the provision of quality Health Services;
  - (vii) establishing and/or assisting in the establishment of Health Services;
  - (viii) fostering, promoting, assisting and conducting research in medicine, aviation communications and other matters relating to health, morale and physical and mental well-being of individuals in rural and remote areas;
  - (ix) promoting the interests of doctors, nurses, pilots, engineers, communications officers and others serving in rural and remote areas;
  - (x) representing generally the views of persons connected with the provision of Health Services in rural and remote areas, and considering, originating and promoting reforms and improvements therein;
  - (xi) establishing and maintaining relations with bodies having similar objects elsewhere in Australia or overseas;
  - (xii) establishing and assisting in the establishment of libraries and providing and acquiring for them copies of reports and other papers bearing on Health

Services, particularly in rural and remote areas throughout the world, and publishing information relating thereto;

- (xiii) taking such steps by personal or written appeals, public meetings, representations to Parliament and other persons to promote any of the Company Objects;
  - (xiv) providing opportunities and assistance for study and research;
  - (xv) undertaking any type of fundraising activities;
  - (xvi) taking or accepting any gifts, contributions or donation of moneys or property;
  - (xvii) assisting in providing medical aid for philanthropic societies and other organisations caring for the health or well-being of Aboriginal and Torres Strait Islander people;
  - (xviii) promoting the use of all manner of communication services by residents in rural and remote areas and purchasing, hiring, selling, making or providing equipment for this purpose, and providing or assisting in providing services necessary for the efficient maintenance thereof;
  - (xix) assisting in providing and maintaining at suitable centres, proper equipment for the use of parties searching for persons who are lost, and assisting in such searches; and
  - (xx) doing all things incidental and conducive to achieving the Company Objects.
- (b) The interpretation of any object of the Company stated in rule 1.2(a) must not be restricted by any reference to or inference from any other object.

### 1.3 **Application of income and property**

Subject to rules 27 and 28, the Company must apply its income and property solely towards promoting the Company Objects.

### 1.4 **Replaceable rules**

The replaceable rules referred to in section 141 do not apply to the Company and are replaced by the rules set out in this document.

### 1.5 **Compliance with the Act and the ACNC Act**

Unless provided otherwise, references in this document to the Act are taken to apply to the Company even if, as a result of the Company being a Registered Entity, the relevant provisions of the Act would otherwise no longer apply.

### 1.6 **Definitions**

The following definitions apply in this document.

**ACNC** means the Australian Charities and Not-for-profits Commission.

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and the *Australian Charities and Not-for-profits Commission Regulation 2013* (Cth).

**Act** means the *Corporations Act 2001* (Cth).

**Approved Fees** for a Director (other than an Executive Director) means fees, salary, bonuses, fringe benefits and superannuation contributions provided by the Company, but does not include:

- (a) a payment as compensation for loss of office or in connection with retirement from office (which includes resignation from office and death while in office);
- (b) an insurance premium paid by the Company or indemnity under rule 9; or
- (c) any issue or acquisition of securities.

**Board** means the Directors acting collectively under this document.

**Company** means the company named at the beginning of this document whatever its name is for the time being.

**Company Objects** means the objects of the Company set out in rule 1.2.

**DGR** means a fund, authority or institution in Australia that is endorsed by the Commissioner of Taxation as a deductible gift recipient (within the meaning of Division 30 of the Tax Act).

**Director** means a person who is, for the time being, a director of the Company.

**disqualified** has the meaning given in rule 2.7

**Executive Director** means a Director who is an employee of the Company or acts in an executive capacity for the Company under a contract for services and includes a Managing Director.

**Health Facility** means health care facilities which provide Health Services.

**Health Services** all manner of services relating to the physical, mental and social well being of individuals including the provision of medical, nursing, primary health services, preventative, ill health and public health services and health education and without limiting the foregoing, includes the treatment of sick or injured individuals, the provision of the services of trained personnel, ambulance services, medical facilities and accommodation, the supply of pharmaceutical and therapeutic goods, the provision of health education and preventative public health services.

**Interest Rate** means, in respect of each rule in which that term is used:

- (a) the rate for the time being prescribed by the Board in respect of that rule; or
- (b) if no rate is prescribed, 15% each year.

**Managing Director** means a managing director appointed under rule 5.1.

**member** means a person whose name is entered in the Register as the holder of a share.

**ordinary resolution** means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

**Recognised Assessment Activity** has the meaning given to it in the ACNC Act.

**Register** means the register of members kept as required by sections 168 and 169 of the Act.

**Registered Entity** has the meaning given to that term in the ACNC Act.



**Responsible Entity** has the meaning given to that term in the ACNC Act.

**Secretary** means, during the term of that appointment, a person appointed as a secretary of the Company in accordance with this document.

**special resolution** has the meaning given by section 9 of the Act.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth).

**Voting Member** in relation to a general meeting means a member who has the right to be present and to vote on at least one item of business to be considered at that meeting.

## 1.7 Interpretation of this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement, or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
- (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- (h) A reference to a power is also a reference to authority or discretion.
- (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
- (j) A word (other than a word defined in rule 1.6) which is defined by the Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Act.

- (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

## **2. DIRECTORS**

### **2.1 Number of Directors**

- (a) The Company must have at least three Directors.
- (b) Until otherwise decided by ordinary resolution, the Company must have not more than six Directors.

### **2.2 Appointment of Directors**

Subject to the maximum number of Directors for the time being fixed under rule 2.1 not being exceeded:

- (a) the Company by ordinary resolution; or
- (b) members holding a majority of the issued shares of the Company conferring the right to vote, by writing delivered to the Company; or
- (c) the Board (except during a general meeting),

may appoint a person to be a Director either to fill a casual vacancy or as an addition to the Board.

### **2.3 No share qualification**

A Director need not be a member.

### **2.4 Cessation of Director's appointment**

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;
- (c) is suspended or removed as a Director by the ACNC Commissioner under Division 100 of the ACNC Act;
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (e) resigns by notice in writing to the Company; or

is removed from office under rule 2.5, or if the person was appointed to the office for a specified period and that period expires.

### **2.5 Removal from office**

Whether or not a Director's appointment was expressed to be for a specified period,

- (a) the Company by ordinary resolution; or
- (b) members holding a majority of the issued shares of the Company conferring the right to vote, by writing delivered to the Company,

may remove a Director from office.

## **2.6 Too few Directors**

If the number of Directors is reduced below the minimum required by rule 2.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

## **2.7 Suitability of Directors under the ACNC Act**

Without limiting clause 2.4, if the Company is a Registered Entity, the Company must comply with the ACNC Act by:

- (a) taking reasonable steps to ensure that each of its Directors is not disqualified; and
- (b) being and remaining satisfied that each of its Directors is not disqualified.

If the Company is not satisfied that a particular Director is not disqualified, the Company must take reasonable steps to remove the Director.

For the purpose of this rule 2.7, disqualified means disqualified under Part 2D.6 or suspended or removed as a director by the ACNC Commissioner under Division 100 of the ACNC Act.

## **2.8 Notification of Responsible Entities to the ACNC Commissioner**

If the Company is a Registered Entity, the Company must notify the ACNC if an entity has ceased to be, or has become, a Responsible Entity of the Company, in accordance with Division 65 of the ACNC Act.

# **3. POWERS OF THE BOARD**

## **3.1 Powers generally**

Except as otherwise required by the Act, any other applicable law, or this document, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company to the exclusion of the Company in general meeting and the members.

## **3.2 Exercise of powers**

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 10; or
- (b) in accordance with a delegation of the power under rules 5 or 6.

# **4. EXECUTING NEGOTIABLE INSTRUMENTS**

- (a) Any two Directors of the Company may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

- (b) The Board may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way (including by other persons or by the use of facsimile or electronic signatures).

## **5. MANAGING DIRECTOR**

### **5.1 Appointment and power of Managing Director**

The Board may appoint one or more persons to be a Managing Director either for a specified term or without specifying a term. Subject to this document, a Managing Director has all the duties, and can exercise all the powers and rights, of a Director.

The Board may delegate any of the powers of the Board to a Managing Director:

- (a) on the terms and subject to any restrictions the Board decides; and
  - (b) so as to be concurrent with, or to the exclusion of, the powers of the Board,
- and may revoke the delegation at any time.

This rule does not limit rule 6.

### **5.2 Termination of appointment of Managing Director**

The appointment of a Managing Director terminates if:

- (a) the Managing Director ceases for any reason to be a Director; or
- (b) the Board removes the Managing Director from the office of Managing Director (which, without affecting the rights of the Managing Director under any contract between the Company and the Managing Director, the Board has power to do),

whether or not the appointment was expressed to be for a specified term.

## **6. DELEGATION OF BOARD POWERS**

### **6.1 Power to delegate**

The Board may delegate any of its powers as permitted by section 198D.

### **6.2 Power to revoke delegation**

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

### **6.3 Terms of delegation**

A delegation of powers under rule 6.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

#### 6.4 **Proceedings of committees**

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

### 7. **DIRECTORS' DUTIES AND INTERESTS**

#### 7.1 **Compliance with duties under the Act, the ACNC Act and general law**

- (a) Each Director must comply with his or her duties under the Act and under the general law.
- (b) If the Company is a Registered Entity, each Director:
  - (i) must continue to comply with his or her duties under the general law;
  - (ii) must comply with each duty described in Governance Standard 5 of the regulations made under the ACNC Act as if it applied to the Director personally (and not the Company), including the duty:
    - (A) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
    - (B) to act in good faith in the best interests of the Company and to further the Company Objects;
    - (C) not to misuse their position as a Director;
    - (D) not to misuse information they gain in their role as a Director;
    - (E) to disclose any perceived or actual material conflicts of interest in the manner set out in rule 7.3;
    - (F) to ensure that the financial affairs of the Company are managed responsibly; and
    - (G) not to allow the Company to operate while it is insolvent; and
  - (iii) will no longer be required to comply with his or her duties to the extent permitted under section 111L of the Act.

#### 7.2 **Director can hold other offices etc**

A Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor;
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

### 7.3 **Disclosure of interests**

Each Director must comply with the general law in respect of disclosure of conflicts of interest and:

- (a) while the Company is a Registered Entity, disclose any actual or perceived material conflict of interest to:
  - (i) the other Directors at a Board meeting as soon as practicable after the Director becomes aware of their interest in the matter; or
  - (ii) if the other Directors have the same conflict of interest, to the Members at:
    - (A) the next meeting of members; or
    - (B) any earlier time, if reasonable to do so,providing details of the nature and extent of the interest and the relation of the interest to the affairs of the Company and ensuring those details are recorded in the minutes of the meeting; or
- (b) if the Company ceases to be a Registered Entity, comply with section 191 in respect of disclosure of material personal interests.

### 7.4 **Director interested in a matter**

- (a) While the Company is a Registered Entity, if a Director has an actual or perceived material conflict of interest, the Director must not be present at the board meeting that considers any matter that relates to the interest and must not vote on the matter unless:
  - (i) the Director's interest arises because they are a member, and the other members have the same interest;
  - (ii) the Director's interest relates to a payment by the Company under clause 9.1, or any contract relating to an indemnity that is allowed under the Act;
  - (iii) the Australian Securities and Investments Commission makes an order allowing the Director to vote on the matter; or
  - (iv) the Directors who do not have a material personal interest in the matter pass a resolution that:
    - (A) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
    - (B) states that those Directors are satisfied that the interest should not stop the Director from voting or being present.
- (b) Otherwise, if the Company ceases to be a Registered Entity, if a Director has an interest in a matter that relates to the affairs of the Company and either the Director discloses the interest under section 191 or it is not required to be disclosed under section 191:
  - (i) the Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter that relates to the interest;

- (ii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
- (iii) the Director may retain benefits under the transaction even though the Director has the interest; and

the Company cannot avoid the transaction merely because of the existence of the interest. If the interest is required to be disclosed under section 191, paragraph (iii) applies only if it is disclosed before the transaction is entered into.

## **7.5 Agreements with third parties**

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers, votes on, or participates in the execution of, that agreement.

## **8. DIRECTORS' REMUNERATION AND PAYMENT TO DIRECTORS**

### **8.1 Restrictions on payments to Directors**

Except as provided for in this rule 8, the Company must not pay fees or other remuneration to a Director.

### **8.2 Remuneration of Executive Directors**

- (a) Subject to any contract with the Company, and subject to rule 8.2(b), the Board may fix the remuneration of each Executive Director. That remuneration may consist of salary and/or bonuses.
- (b) Any remuneration fixed in accordance with clause 8.2(a) must be appropriate in furtherance of the Company Objects, and the Company must not pay remuneration to any Executive Director if, as a result:
  - (i) the Company will cease to be a Registered Entity; or
  - (ii) the Company would no longer be eligible to be registered as a Registered Entity or endorsed as a DGR.

### **8.3 Remuneration of non-executive Directors**

- (a) The Directors (other than the Executive Directors) are entitled to be paid, out of the funds of the Company, an amount of Approved Fees which:
  - (i) does not in any year exceed in aggregate the amount last fixed by ordinary resolution;
  - (ii) is allocated among them:
    - (A) on an equal basis having regard to the proportion of the relevant year for which each Director held office; or
    - (B) as otherwise decided by the Board; and
  - (iii) is provided in the manner the Board decides, which may include provision of non-cash benefits.

- (b) If the Board decides to include non-cash benefits in the Approved Fees of a Director, the Board must also decide the manner in which the value of those benefits is to be calculated for the purposes of this rule.
- (c) An amount of Approved Fees determined by the Board in accordance with rule 8.3(a) must be appropriate in furtherance of the Company Objects, and the Company must not pay the Directors an amount of Approved Fees if, as a result:
  - (i) the Company will cease to be a Registered Entity; or
  - (ii) the Company would no longer be eligible to be registered as a Registered Entity or endorsed as a DGR.

#### **8.4 Additional Remuneration for extra services**

If a Director, at the request of the Board and for the purposes of the Company, performs extra services or makes special exertions (including going or living away from the Director's usual residential address), the Company may remunerate that Director for doing so. Remuneration under this rule may be either in addition to or in substitution for any remuneration to which that Director is entitled under rule 8.1 or 8.3, and is subject to rules 8.2(b) and 8.3(c) (as applicable).

#### **8.5 Expenses of Directors**

The Company may pay a Director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the Director:

- (a) in attending meetings of the Company, the Board, or a committee of the Board;
- (b) on the business of the Company; or
- (c) in carrying out duties as a Director.

#### **8.6 Payments to Directors with Board approval**

- (a) With the approval of the Board, the Company may pay to a Director:
  - (i) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
  - (ii) reasonable remuneration for any service rendered to the Company by the Director in a professional or technical capacity where the amount payable is approved by the Board and is on reasonable commercial terms;
  - (iii) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
  - (iv) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
  - (v) reasonable rent for premises leased by the Director to the Company.
- (b) With the approval of the members (by way of ordinary resolution), the Company may pay to a Director reasonable Director's fees for undertaking the role of a Director consistent with any guidelines issued by the ACNC.



## 8.7 **Approved fees and remuneration**

- (a) The aggregate amount of fees or other remuneration payable to the Company to the Directors in any financial year must be approved by the members.
- (b) The aggregate amount of fees or other remuneration payable to Directors in a financial year:
  - (i) may only be paid to those Directors who are not employees of the Company or of the Service; and
  - (ii) must be allocated between those Directors as determined by the Board.

## 9. **OFFICERS' INDEMNITY AND INSURANCE**

### 9.1 **Indemnity**

Subject to and so far as permitted by the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law:

- (a) the Company must indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against any Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

### 9.2 **Insurance**

Subject to the Act and any other applicable law, the Company may enter into, and pay premiums on, a contract of insurance in respect of any person.

### 9.3 **Former officers**

The indemnity in favour of officers under rule 9.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

### 9.4 **Deeds**

Subject to the Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law, the Company may, without limiting a person's rights under this rule 9, enter into an agreement with or execute a deed in favour of a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this rule 9 on any terms and conditions that the Board thinks fit.

## **10. BOARD MEETINGS**

### **10.1 Convening Board meetings**

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

### **10.2 Notice of Board meeting**

The convenor of each Board meeting:

(a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director; and

(b) may give that notice orally (including by telephone) or in writing,

but accidental failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

### **10.3 Use of technology**

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

### **10.4 Chairing Board meetings**

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairman of Directors or the chairman is not present at the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

### **10.5 Quorum**

Unless the Board decides otherwise, the quorum for a Board meeting is two Directors and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

### **10.6 Majority decisions**

A resolution of the Board is passed if a majority of the votes cast by Directors entitled to vote on the resolution are in favour of it. The chairman of a Board meeting does not have a second or casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

### **10.7 Procedural rules**

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

### **10.8 Written resolution**

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in

the document, a Board resolution in those terms is passed at the time when the last Director signs.

#### 10.9 **Additional provisions concerning written resolutions**

For the purpose of rule 10.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) a facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

#### 10.10 **Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

### 11. **MEETINGS OF MEMBERS**

#### 11.1 **Calling meetings of members**

A meeting of members:

- (a) may be convened at any time by the Board or a Director, provided that one meeting shall be held at least once in every calendar year (**Annual General Meeting**); and
- (b) must be convened by the Board when required by section 249D or by order made under section 249G.

#### 11.2 **Notice of meeting**

- (a) Subject to rules 11.3 and 11.6, at least 21 days' written notice of a meeting of members must be given individually to each member entitled to vote at the meeting, to each Director and to the auditor (if any).
- (b) Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

#### 11.3 **Short notice**

Subject to section 249H(4):

- (a) if the Company has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

#### **11.4 Postponement or cancellation**

Subject to section 249D(5), the Board may postpone or cancel a meeting of members by written notice given individually to each person entitled to be given notice of the meeting.

#### **11.5 Fresh notice**

If a meeting of members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

#### **11.6 Notice to joint holders of shares**

If a share is held jointly, the Company need only give notice of a meeting of members (or of its cancellation or postponement) to the joint holder who is named first in the Register.

#### **11.7 How meetings of members may be held**

The Company may hold a meeting of its members:

- (a) at one or more physical venues; or
- (b) at one or more physical venues and using virtual meeting technology; or
- (c) using virtual meeting technology only,

as determined by the convenor of the meeting.

#### **11.8 Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

### **12. PROCEEDINGS AT MEETINGS OF MEMBERS**

#### **12.1 Member present at meeting**

- (a) A member who attends the meeting (whether at a physical venue or by using virtual meeting technology) is taken for all purposes to be present in person at the meeting while so attending.
- (b) If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

#### **12.2 Quorum**

Subject to section 249B, the quorum for a meeting of members is two Voting Members. Each individual present may only be counted once toward a quorum. If a member has appointed more than one proxy or representative only one of them may be counted toward a quorum.

#### **12.3 Quorum not present**

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

#### **12.4 Chairing meetings of members**

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

- (a) there is no Director who the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the Voting Members present must elect a member or Director present to chair the meeting.

#### **12.5 Attendance by auditor and Directors**

Every Director and the auditor (if any) has the right to attend and speak at all meetings of members whether or not a member.

#### **12.6 Adjournment**

Subject to rule 11.5, the chairman of a meeting of members at which a quorum is present:

- (a) may, with the consent of the meeting; and
- (b) must, if directed by ordinary resolution of the meeting,

adjourn it to another time and place.

#### **12.7 Business at adjourned meetings**

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

### **13. PROXIES, ATTORNEYS AND REPRESENTATIVES**

#### **13.1 Appointment of proxies**

Each member may appoint a proxy to attend and act for the member at a meeting of members. If the member is entitled to cast two or more votes at the meeting, the member may appoint two proxies to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Company that:

- (a) complies with section 250A(1); or
- (b) is in a form and mode, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Board.

If a member appoints two proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of those votes.

### **13.2 Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointor is an individual, the power of attorney must be signed in the presence of at least one witness.

### **13.3 Deposit of proxy appointment forms and powers of attorney**

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Company at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

### **13.4 Corporate representatives**

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

### **13.5 Appointment for particular meeting, standing appointment and revocation**

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

### **13.6 Position of proxy or attorney if member present**

The appointment of a proxy or attorney is not revoked by the member attending and taking part in the general meeting, but if the member votes on a resolution, the proxy or attorney is not entitled to vote, and must not vote, as the member's proxy or attorney on the resolution.

### **13.7 Priority of conflicting appointments of attorney or representative**

If more than one attorney or representative appointed by a member is present at a meeting of members and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 13.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

### 13.8 **More than two current proxy appointments**

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that member which would result in there being more than two proxies of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

### 13.9 **Continuing authority**

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up;
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party; or
- (d) transfers the share to which the appointment relates,

unless the Company has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

## 14. **ENTITLEMENT TO VOTE**

### 14.1 **Number of votes**

Subject to sections 250BB(1) and 250BC, rules 13, 14.2 and 14.3 and the terms on which shares are issued:

- (a) on a show of hands:
  - (i) if a member has appointed two proxies, neither of those proxies may vote;
  - (ii) a member who is present and entitled to vote and is also a proxy, attorney or representative of another member has one vote; and
  - (iii) subject to paragraphs (a)(i) and (a)(ii), every individual present who is a member, or a proxy, attorney or representative of a member, entitled to vote has one vote; and
- (b) on a poll, a member has one vote for every share held.

The chairman of a meeting of members does not have a second or casting vote. If an equal number of votes is cast for and against a resolution the matter is decided in the negative.

### 14.2 **Votes of joint holders**

If there are joint holders of a share, any one of them may vote at a meeting of members, in person or by proxy, attorney or representative, as if that holder were the sole owner of the share. If more than one of the joint holders of a share (including, for the purposes of this rule, joint legal personal representatives of a dead member) are present at a meeting of members, in person or by proxy, attorney or representative, and tender a vote in respect of the share, the Company may only count the vote cast by, or on behalf of, the most senior joint holder who tenders a vote. For this purpose, seniority depends on the order in which the names of the joint holders are listed in the Register.

### 14.3 **Voting restrictions**

If:

- (a) the Act requires that some members do not vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those members have no right to vote on that resolution and the Company must not count any votes purported to be cast by those members. If a proxy purports to vote in a way or in circumstances that contravene section 250BB(1), on a show of hands the vote is invalid and the Company must not count it and on a poll rule 15.3(c) applies.

### 14.4 **Decision on right to vote**

A Voting Member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

## 15. **HOW VOTING IS CARRIED OUT**

### 15.1 **Method of voting**

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 15.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

### 15.2 **Demand for a poll**

A poll may be demanded on any resolution (except a resolution concerning the election of the chairman of a meeting) by:

- (a) a member entitled to vote on the resolution; or
- (b) members entitled to cast at least 5% of the votes that may be cast on the resolution on a poll (worked out as at the midnight before the poll is demanded); or
- (c) the chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

### 15.3 **When and how polls must be taken**

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 15.3(c), in the manner that the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 15.3(c), in the manner that the chairman of the meeting directs;
- (c) votes which sections 250BB(1) or 250BC require to be cast in a given way must be treated as cast in that way;



(d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and

(e) the result of the poll is the resolution of the meeting at which the poll was demanded.

## **16. RESOLUTIONS WITHOUT MEETINGS**

### **16.1 Written resolutions**

Subject to section 249A(1), the Company may pass a resolution without a general meeting being called or held if the resolution is set out in a document:

(a) if the Company has only one member, signed in the manner set out in section 249B; or

(b) if the Company has more than one member, signed in the manner set out in section 249A.

### **16.2 Signature of resolutions**

The Company may treat a document on which a facsimile or electronic signature appears or which is otherwise acknowledged by a member in a manner satisfactory to the Board as being signed by that member.

## **17. SECRETARY**

### **17.1 Appointment of Secretary**

The Board may appoint one or more individuals to be a Secretary either for a specified term or without specifying a term.

### **17.2 Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

### **17.3 Cessation of Secretary's appointment**

A person automatically ceases to be a Secretary if the person:

(a) is not permitted by the Act (or an order made under the Act) to be a secretary of a company;

(b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Company under section 206F or 206G;

(c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;

(d) resigns by notice in writing to the Company; or

(e) is removed from office under rule 17.4.

### **17.4 Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

## **18. MINUTES**

### **18.1 Minutes must be kept**

The Board must cause minutes of:

- (a) proceedings and resolutions of meetings of the Company's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 6);
- (d) resolutions passed by members without a meeting;
- (e) resolutions passed by Directors without a meeting; and
- (f) disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A.

### **18.2 Minutes as evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

### **18.3 Inspection of minute books**

The Company must allow members to inspect, and provide copies of, the minute books for the meetings of members and for resolutions of members passed without meetings in accordance with section 251B.

## **19. EXECUTION OF DOCUMENTS**

### **19.1 General**

- (a) The Company may sign or execute a document (including a deed) as set out in section 127.
- (b) Without limiting the ways a person may sign a document, a document to which Division 1 of Part 1.2AA of the Act applies may be signed by a person in accordance with that Division.

### **19.2 Common seal**

The Board:

- (a) may decide whether or not the Company has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

### **19.3 Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

#### 19.4 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) as set out in section 127(2); or
- (b) as otherwise authorised by the Board.

### 20. **FINANCIAL REPORTS AND AUDIT**

#### 20.1 **Company to keep financial records**

- (a) The Board must cause the Company to keep:
  - (i) written financial records that:
    - (A) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
    - (B) would enable true and fair financial statements to be prepared and audited and, if required by Division 60 of the ACNC Act or Part 2M.3, reviewed or audited; and
  - (ii) written records that correctly record its operations,  
so as to enable any Recognised Assessment Activity to be carried out in relation to the Company.
- (b) The Board must allow a Director and, where the financial statements are required by Division 60 of the ACNC Act or Part 2M.3 to be audited or reviewed, the auditor, to inspect those records at all reasonable times.
- (c) The Company must retain records kept pursuant to rule 20.1(a) for seven years after the transactions, operations or acts covered by the records are completed.

#### 20.2 **Financial reporting**

If required by:

- (a) Part 2M.3, the Board must cause the Company to prepare a financial report and a directors' report that comply with that Part and must report to members in accordance with section 316A; or
- (b) Division 60 of the ACNC Act, the Board must cause the Company to prepare a financial report and an information statement that comply with that Division.

#### 20.3 **Audit or review**

If required by Division 60 of the ACNC Act or Part 2M.3, the Board must cause the Company's financial report (if any) for each financial year to be audited or reviewed and obtain an auditor's or reviewer's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor (if any) are regulated by Division 60 of the ACNC Act or Division 3 of Part 2M.3 (whichever is applicable), Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

## 20.4 **Inspection of financial records and books**

Subject to rule 18.3 and section 247A, a member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by a resolution of members.

## 21. **SHARES**

### 21.1 **Issue at discretion of Board**

Subject to section 259C, the Board may, on behalf of the Company, issue, grant options over or otherwise dispose of unissued shares to any person on the terms, with the rights, and at the times that the Board decides.

## 22. **CERTIFICATES**

### 22.1 **Issue of share certificate**

The Company must issue a certificate of title to shares that complies with section 1070C and deliver it to the holder of those shares in accordance with section 1071H.

### 22.2 **Multiple certificates and joint holders**

If a member requests the Company to issue several certificates each for a part of the shares registered in the member's name, the Company must do so. For this purpose, joint holders of shares are a single member. The Company may issue only one certificate that relates to each share registered in the names of two or more joint holders and may deliver the certificate to any of those joint holders.

### 22.3 **Lost and worn out certificates**

If a certificate:

(a) is lost or destroyed and the owner of the relevant securities applies in accordance with section 1070D(5), the Company must; or

(b) is defaced or worn out and is produced to the Company, the Company may, issue a new certificate in its place.

## 23. **REGISTER**

### 23.1 **Joint holders**

If the Register names two or more joint holders of a share, the Company must treat the person named first in the Register in respect of that share as the sole owner of it for all purposes (including the giving of notice) except in relation to:

(a) delivery of certificates (to which rule 22.2 applies);

(b) the right to vote (to which rule 14.2 applies);

(c) liability for instalments or calls (which, subject to section 1072E(8), is joint and several); and

(d) transfer.

## 23.2 **Nominee holders**

A registered holder of shares who holds them as trustee for, or otherwise on behalf of or on account of, a body corporate, must give the Company written notice of that fact in accordance with section 1072E(11).

## 23.3 **Non-beneficial holders**

Subject to sections 169(5A) and 1072E, unless otherwise ordered by a court of competent jurisdiction or required by statute, the Company:

- (a) may treat the registered holder of any share as the absolute owner of it; and
- (b) need not recognise any equitable or other claim to or interest in a share by any person except a registered holder.

## 24. **DIVIDENDS**

### 24.1 **Payment of dividends**

The Company must not pay a dividend.

## 25. **TRANSFER OF SHARES**

A member may not transfer shares and the Board must not register a transfer of shares.

## 26. **SHARE CAPITAL**

### 26.1 **Only one class of shares to be issued**

The Company must not issue different classes of shares.

### 26.2 **Reduction of capital**

The Company must not reduce its share capital or buy back shares (including, without limitation, by way of any distribution to members).

### 26.3 **Variation of rights**

- (a) The rights attached to shares may (subject to sections 246C and 246D and clause (b)) be varied or cancelled only:
  - (i) with the written consent of 75% of the members of the Company; or
  - (ii) by special resolution passed at a separate meeting of the members of the Company.
- (b) The Company may not vary or cancel the rights attached to shares if such variation or cancellation would cause the Company to no longer be eligible to be registered as a Registered Entity.

## 27. **ASSETS OF THE COMPANY**

### 27.1 **Application of income and property**

Subject to this rule 27, the Company must apply its property and income solely towards promoting the Company Objects and no part of the Company's property and income may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to members.

## **27.2 Payments to members**

- (a) Rule 27.1 does not prevent payment of the following amounts, provided that each such payment is made on an arm's length basis in furtherance of the Company Objects:
  - (i) the payment of remuneration to any officer or employee of the Company or to any member of the Company or other person in return for services rendered to the Company;
  - (ii) the payment or reimbursement of reasonable out-of-pocket expenses incurred by a member on behalf of the Company where the payable amount does not exceed an amount approved by the Directors, and where the expenses were incurred by the member on an arm's length basis;
  - (iii) the Company paying to a member interest on money lent by the member to the Company at a rate not exceeding the maximum rate approved by the Board from time to time;
  - (iv) the Company paying to a member remuneration for goods supplied by the member to the Company in the ordinary course of business; and
  - (v) the Company paying to a member rent for premises leased by the member to the Company.
- (b) An amount paid to a member under this rule 27.2 must be appropriate in furtherance of the Company Objects, and the Company must not pay a member any amount if, as a result:
  - (i) the Company will cease to be a Registered Entity; or
  - (ii) the Company would no longer be eligible to be registered as a Registered Entity or endorsed as a DGR.

## **27.3 Provision of financial assistance and other support**

Notwithstanding rule 27.1, the Company may, in accordance with the Company Objects, provide financial assistance (including by the making of gifts and donations) and other support to a charity or charities that is charitable at law and is registered as a charity with the ACNC, and the constituent documents of which:

- (a) require the charity or charities to pursue objects similar to those of the Company and to apply its income solely towards promoting those objects; and
- (b) prohibit the charity or charities from making distributions to its members and paying fees to its directors to at least the same extent as the Company,

the charity or charities to be determined by the Directors.

## **28. WINDING UP OR REVOCATION OF DGR ENDORSEMENT**

### **28.1 Winding up**

- (a) In the event of the winding up of the Company, any surplus property remaining after satisfaction of all the Company's debts and liabilities must not be paid to, or distributed among, the members, but must be paid or transferred to:
  - (i) a charity or charities in Australia that is charitable at law and is registered as a charity with the ACNC;

- (ii) if the company is a DGR, a charity or charities that is charitable at law and is registered as a charity with the ACNC and that is endorsed as a DGR,

and, in each case, the constituent documents of which:

- (A) require the charity or charities to pursue objects similar to those of the Company and to apply its income solely towards promoting those objects; and
- (B) prohibit the charity or charities from making distributions to its members and paying fees to its directors to at least the same extent as the Company,

the charity or charities to be determined by the Directors, or failing determination, by the liquidator of the Company.

- (b) If a member of the Company satisfies the requirements in rule 28.1(a), the Directors may resolve to transfer surplus property to that member, or to another charity or charities that satisfies the requirements in rule 28.1(a). If none of the members of the Company satisfy the requirements in rule 28.1(a), surplus property must not be distributed to any member.

## 28.2 **Revocation of tax endorsements**

- (a) In the event that the Company is a DGR and that endorsement is subsequently revoked, any surplus:

- (i) gifts of money or property for the Company Objects;
- (ii) contributions made in relation to an eligible fund-raising event held for the Company Objects; and
- (iii) money received by the organisation because of such gifts and contributions,

must not be paid to, or distributed among, the members, but must be paid or transferred to a fund, authority or institution in Australia which is endorsed by the Commissioner of Taxation as a DGR and the constituent documents of which:

- (iv) require the fund, authority or institution to pursue objects similar to those of the Company and to apply its income solely towards promoting those objects;
- (v) prohibit the fund, authority or institution from making distributions to its members and paying fees to its directors to at least the same extent as the Company,

the fund, authority or institution to be determined by the Directors.

- (b) If a member of the Company satisfies the requirements in rule 28.2(a), the Directors may resolve to transfer surplus gifts, contributions or money received by the Company to that member, or to another fund, authority or institution in Australia that satisfies the requirements in rule 28.2(a). If none of the members of the Company satisfy the requirements in rule 28.2(a), surplus gifts, contributions or money received by the Company must not be distributed to any member.
- (c) In this clause 28.2, "contributions" and "fundraising event" have the same meaning as in Division 30 of the Tax Act.

## 29. **NOTICES**

### 29.1 **Overseas members**

A member whose registered address is not in Australia may notify the Company in writing of an address in Australia to which notices may be sent.

### 29.2 **When notice is given**

A notice of meeting is taken to be given to a member:

- (a) if it is sent by post – on the second business days after it is posted; or
- (b) if it is sent by sending the member information in accordance with section 110D(1)(b) by post – on the second business after the information is posted; or
- (c) if it is sent by means of an electronic communication in accordance with section 110D(1)(c) on a business day:
  - (i) at or before 5.00 pm (local time in the place from which it is sent) - on that business day; or
  - (ii) after 5.00 pm (local time in the place from which it is sent), or on a day that is not a business day - on the next business day; or
- (d) if it is sent by giving the member information in accordance with section 110D(1)(d) on a business day:
  - (i) at or before 5.00 pm (local time in the place from which it is sent) - on that business day; or
  - (ii) after 5.00 pm (local time in the place from which it is sent), or on a day that is not a business day - on the next business day.

A certificate in writing signed by a Director or Secretary stating that a notice was sent, and setting out the means by which and date on which it was sent, is conclusive evidence of those facts.

### 29.3 **Business days**

For the purposes of rule 29.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

### 29.4 **Notice to joint holders**

Notice to joint holders of shares must be given to the joint member named first in the Register. Every person who becomes entitled to a share is bound by every notice in respect of that share that was properly given to a person registered as the holder the share before the transfer or transmission of the share was entered in the Register.

### 29.5 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.