

# Directors Duties: Explanatory Notes

Australian law imposes strict fiduciary, common law and statutory duties on company directors. Subject to its constitution, directors are responsible for the overall management of the company. Understandably, becoming a director carries a range of duties and obligations.

Whilst the law tends to be more accepting of errors of judgment in day-to-day business and commercial risk-taking, the standard expected of directors is high. Assuming directorship is a serious undertaking and directors can be personally liable for failure to carry out their duties.

The following overview is not intended to be exhaustive – the relevant system of laws is complex and it is recommended that you seek legal advice where the need arises.

Directors should also take an active interest in following current legislation.

## Fiduciary Duties

The nature of the relationship between director and company is fiduciary. This means that the director undertakes to act in the best interests of the company and only in its interests – otherwise known as the duty of undivided loyalty.

Other fiduciary duties are listed below:

- to avoid conflicts of interests and duty;
- not to obtain company property for his or her own benefit (or for the benefit of a third party) without the company's fully informed consent;
- to act in good faith and in the best interests of the company;
- to exercise his or her powers for a proper purpose; and
- to exercise discretion and not improperly limit their decision-making authority.

Given the courts' long-standing refusal to intervene the day-to-day management of business, the fiduciary relationship is interpreted in such a way to give directors the flexibility to manage the business and take appropriate risks but restricting them where they are in a position of self-interest or the interests of the primary conflict.

The duties that regulate directors' actions can be viewed in the context of the hypothetical bargain or "contract" between directors and shareholders. Shareholders invest in the company and grant directors a wide discretion as to how to manage a company. As quid pro quo for that discretion, shareholders insist that directors owe duties to not act in their own self-interest but in the interests of the company or, specifically, to maximise shareholder wealth hence also promoting investor confidence.

Such context has given rise to two notable “sub-rules”:

### 1. The “No Conflict” Rule

*A director must not allow his/her personal interests (or engagement with a third party) to conflict with his/her duties to the company, except with the company’s fully informed consent.*

It is not necessary for the company to suffer any detriment or for the director to obtain an advantage in order to breach this duty – a director simply must not place themselves in a position where there is an actual or a real possibility of conflict.

Section 191(1) Corporations Act 2001 (Cth) supplements the civil law sanctions (see s 193) and requires a director with a material personal interest in a matter, that relates to the affairs of the company, to give notice to other directors of the interest.

The following exemptions apply to the general obligation upon a director to disclose her or her interest:

- Where the interest arises because the director is a member of the company and is held in common with the other members of the company;
- Where the interest arises in relation to the director’s remuneration as a director of the company;
- Where the interest relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation upon the company if not approved by the members;
- Where the interest arises merely because the director is a guarantor or has given an indemnity for all or part of a loan to the company or because the director has a right of subrogation in relation to the said guarantee or indemnity;
- Where the interest relates to a contract that insures, or would insure, the director against liabilities that the director incurs as an officer;
- Where the interest relates to any payment under a contract of indemnity in favour of the director which is permitted by the company;
- Where the interest arises because the director is a director of the related body corporate which is in, or proposed to be in, a contract with the company;
- Where the company is a proprietary company and the other directors are aware of the director’s interest and insulation to the affairs of the company; or

- Where all the following conditions are satisfied:
  - i. The director has already given notice of the nature and extent of the interest and its relation to the affairs of the company;
  - ii. Any new directors appointed after the fact are also given notice of the interest at the time of their appointment; and
  - iii. The nature and extent of the interest has not materially increased above that disclosed in the notice;
- Where the director has given a standing notice to the company of the interest - the notice must give details of the nature and extent of the actual or potential interest and be given either at a director's meeting or to the other directors individually in writing. A standing notice will cease to have effect where the nature and extent of the interest has materially increased above that disclosed in the notice.

In all other cases the interest must be declared to the directors' meeting as soon as practicable, and it must give details of:

- the nature and extent of the interest; and
- the relation of the interest to the affairs of the company.

### **Directors' meeting and vote**

Section 195(1) states that a director who has a material personal interest in a matter that is being considered at a directors' meeting must not:

- be present while the matter is being considered at the meeting; nor
- vote on the matter.

However, s 195(2) provides that the director may be present and vote if the other directors who do not have a material personal interest in the matter have passed a resolution stating that they are satisfied that the interest should not disqualify the director from voting or be present.

Under s 195(3), ASIC may also provide a declaration or order under s 196 that approves of the director's presence in the meeting and vote.

### **Interest**

It must clearly be disclosed if a director's personal interest is substantially affected by the outcome of the board's decision. Such interest does not need to be financial and can even exist where a relative of the director might benefit rather than the director personally.

An interest held as a company member that is in common with other members is not a personal interest, but an interest under an executive employee share option scheme will require disclosure.

Even if notice is given and the board allows the director to participate in any resolution on the matter,

the director may be legally prevented from exploiting the opportunity without shareholder approval. Subject to the company's constitution, fully informed shareholders can authorise a director to enter a transaction or exploit an opportunity that the company does not wish to exploit.

### Multiple Directorships

There is no absolute rule against a person being a director of two (or more) companies that are competing against each other. However, given the likelihood for a breach of duty to arise, the contract of employment will often forbid the director from holding directorship in competing companies or it may impose other restrictions e.g. restraint on the use of information.

### Corporate groups and wholly owned subsidiaries

Subject to the case of wholly owned subsidiaries, a director of a company owes duties to that company and not to any related companies in the corporate group. As for a director of a company that is a wholly owned subsidiary of a holding company, a director is considered to act in good faith in the best interests of the subsidiary if:

- the constitution of the subsidiary expressly authorises the director to act in the best interests of the holding company;
- the director acts in good faith in the best interests of the holding company; and
- the subsidiary is not insolvent at that time and does not become insolvent because of the director's actions.

## 2. The "No Profit" Rule

*A director must not misuse their position to advantage themselves or a third party, except with the company's fully informed consent.*

The leading authority on the rule strictly provides 'that a director must not make a profit out of property acquired by reason of his relationship to the company of which he is a director': *Regal (Hastings) Ltd v Gulliver* (1942) 1 All E R 378. However, it appears that the courts have since relaxed this formulation of the "no profit" rule and now refer along the lines of whether there is a 'real sensible possibility of conflict' (*Boardman v Phipps*) or 'significant possibility' of conflict (*Chan v Zacharia*).

This apparent relaxation of the rule has given rise to the following issues which the courts have yet settled on:

- what effect that resignation of the director will have on their fiduciary responsibility;
- whether directors can exploit opportunities of which they become aware in a "private" capacity; and
- whether a director can establish by way of defence that the transaction in question is fair to the company.

However, one key implication of this rule is that a director must not take remuneration or other benefits from the company's resources unless it is:

- authorised by law;
- authorised by the constitution; or
- with the fully informed consent of the company via general meeting.

Directors must not diverge opportunities (that the company is either actively pursuing or have the opportunity to pursue and might reasonably be expected to have an interest in pursuing) away from the company for their own interests or the interests of an engaged third party.

### **Use of position**

Section 182 provides that a director, secretary, other officer or employee of a corporation must not improperly use their position to:

- gain an advantage for themselves or someone else; or
- cause detriment to the corporation.

### **Use of information**

Section 183 provides that a person who obtains information because they are, or have been, a director or other officer or employee of a company must not improperly use the information to:

- gain an advantage for themselves or someone else; or
- cause detriment to the corporation.

Both duties under ss 182 and 183 apply further to anyone who is "involved" (s 182(2), "involved" defined in s 79) and is broader than the equivalent equitable concepts. Sections 182 and 183 are also civil penalty provisions.

Statutory duties sometimes apply to a "director" or an "officer". These terms are defined in s 9. "Director" includes shadow and de facto directors, and "officer" includes director or secretary, receiver, administrator, liquidator etc. or a person who makes or participates in making decisions that affect the whole or a substantial part of the business of the company or who has the capacity to affect the corporation's financial standing, or in accordance with whose instructions or wishes the directors of the company are accustomed to act.

Shadow directors and officers are subject to ss 180-183 duties, whilst the s 588G insolvent trading duty only extends to directors (including shadow and de facto).

Insider Trading Provisions – Part 7.10 Division 3

### **Insider Trading Provisions – Part 7.10 Division 3**

Under these provisions, a person (the insider) is prohibited from dealing in financial products if they possess information that is not generally available or, if the information were generally available, a reasonable person would expect it to have a material effect on the price and value of securities. The prohibition also extends to procuring another person to deal in financial products and communicating the information or cause the information to be communicated to another person if the insider knows, or ought reasonably to know, that the other person would likely deal in the financial products or procure another third party to deal in the financial products.

Contravention of these provisions is an offence and may also attract civil penalties.

### **Duty to act in good faith in the interests of the company and for a proper purpose**

The common law rule that directors must act 'bona fide in what they consider – not what a court may consider – is in the best interests of the company, and not for any collateral purpose' (Re Smith and Fawcett Ltd [1942]) is reflected in s 181.

Directors must act in a way that they honestly believe to be in the company's best interests – but this is also assessed objectively by reference to what a reasonable director would do in the surrounding circumstances.

Furthermore, directors must exercise their powers and discharge their duties for a proper purpose. The company's constitution may expressly or impliedly indicate a "proper purpose", otherwise it would be determined against the surrounding circumstances and usual functions of a power. For example, a proper purpose for the issuing of shares is to raise capital. In contrast, issuing shares to retain control of the company and dilute the value of another shareholder's interest would be an improper exercise of power.

Recently, courts have looked to the "but for" test when contemplating the exercise of power by a director for "mixed purposes" (for a proper and improper purpose) i.e. whether the director would not have exercised the power "but for" the improper purpose (see *Whitehouse v Carlton Hotel* (1987)).

### **Duties of care, skill and diligence**

The common law and equitable duties of reasonable care and skill exist in addition to any contractual provisions.

As set out in s 180(1), a director or other officer of the company must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- were a director or officer of the company in the company's circumstances; and
- occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

The objective “reasonable person” standard is mitigated or modified by considerations of the surrounding circumstances of the company and the skills or role of the director/officer in that company. For example, an executive director or other director with special skills, experience or responsibilities would be held to a higher standard.

Section 180 is a civil penalty provision.

### **Stepping stones liability**

ASIC has argued that a director who allows the company to contravene the law breaches their duty under s 180. This approach is known as the “stepping stones” approach to directors’ liability. The argument was accepted in some cases but more recently, the courts seem to have cautioned against such an approach (See *Mariner* [2015], *Cassimatis (No 8)* [2016]). Nonetheless, directors must exercise reasonable care and take precaution against foreseeable risks of harm to the company and its shareholders.

### **Civil Remedies**

ASIC can enforce directors’ duties by applying to the court for civil penalties and, in the most serious of cases, criminal sanctions. The company can also sue its directors under common law duties, bring an application for compensation for breach of the statutory duties (regardless of whether ASIC is pursuing an action) or, alternatively, plead both.

Some of the potential remedies include:

- Transaction void: the transaction can be voidable at the option of the company.
- Account of profits: account of profits to the company regardless of whether the company has suffered any loss.
- Equitable compensation: where actual loss has been incurred by the company, monetary compensation may be ordered.
- Constructive trust: directors may be liable as constructive trustee where a breach removes an item of the company’s property and the director retains an asset representing that item.
- Disqualification order: an order disqualifying a person from managing a company for a set period of time

### **The Business Judgment Rule**

Directors can resort to the “business judgment” rule as a safe harbour or defence from personal liability in relation to the duty of care and diligence.

Under s 180(2), a director or officer of a company who makes a business judgment is taken to meet the duties of care and diligence (in s 180(1)) if they:

- make the judgment in good faith for a proper purpose; and
- do not have a material personal interest in the subject matter of the judgment; and
- inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- rationally believe that the judgment is in the best interests of the company.

In balancing this “safe harbour” provision, which may allow directors to escape personal liability, the Act provides for the statutory derivative action.

The statutory derivative action is an avenue for enforcing company’s rights by allowing the directors or shareholders of a company to bring proceedings on behalf of the company for a wrong done. As for situations where a director’s statutory breach has been ratified by a general meeting resolution, the court may take it into account when considering relief under s 1317S but is not bound to accept it. Also, general meeting ratifications cannot prevent ASIC from beginning proceedings against the company in the public interest.

The statutory derivative action also permits the courts to allocate costs to the company, therefore encouraging members to pursue directors for breaching their duties and alleviating cost barriers.

## **Delegation and Reliance**

A director can delegate some of their responsibilities and that will absolve the director from liability for the exercise of power by the delegate if:

- they believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors under the Act and the company’s constitution; and
- the director believed on reasonable grounds and in good faith and after making proper inquiry (if the circumstances indicated the need for inquiry) that the delegate was reliable and competent in relation to the power delegated: s 190.

So, although directors may delegate, they must still act reasonably and exercise some oversight.

A director may also be entitled to rely on information or professional or expert advice prepared by certain people if:

- the reliance was made in good faith; and
- after making an independent assessment of the information or advice, having regard to their knowledge of the corporation and the complexity of the structure and operations of the corporation: s 189.

Directors cannot simply “rubberstamp” information or advice. They must make an independent assessment of its reliability, validity and appropriateness.



## **Other considerations**

### **Appointment of directors**

A proprietary company must have at least one (1) director. That director must ordinarily reside in Australia.

A public company must have at least three (3) directors. At least two (2) of the directors must ordinarily reside in Australia.

An individual must be at least 18 years of age to be appointed as a director of a company. Furthermore, a person who is disqualified from managing a company under Part 2D.6 may only be appointed as director if permitted by ASIC under s 206GAB or leave is granted by the Court under s 206G.

### **Execution of documents (including deeds)**

A company may execute a document either by fixing a common seal (s 127(2)) or without a common seal if the document is signed by:

- 2 directors of the company; or
- a director and a company secretary of the company; or
- a sole director who is also the sole company secretary for a proprietary company (s 127(1)).

### **Maintenance of financial records and accounts**

Directors must take reasonable steps to ensure that the company complies with its obligations under the Act in relation to the maintenance of financial records and financial reporting.

Directors must also have the financial literacy to apply their own minds and understand the financial statements so as to satisfy themselves that it is consistent with their knowledge of the company's affairs and to make the directors' declaration required under s 295(4).

### **Misstatements in the context of fundraising**

When securities are issued, the director(s) must ensure that any prospectuses or disclosure documents issued do not contain any misstatements or misleading statements. A director will be personally liable for defective statements unless they can prove that they made all the relevant enquiries that were reasonable in the circumstances and believed on reasonable grounds that the prospectus was not defective.

### **Duty to prevent insolvent trading: s 588G**

Directors must prevent the company from trading whilst insolvent.

A director will breach this duty if:

- the director was a director at the time the company incurred a debt;
- the company was insolvent at the time of incurring the debt or as a result of incurring that debt;
- there were reasonable grounds for suspecting insolvency; and
- the director failed to prevent the company from incurring the debt.

### **Fair Trading Acts, Trade Practices Act**

Directors may be personally liable under the provisions of these Acts if they participate in anti-competitive behaviour or are engaged in making false and misleading statements.

### **Other duties under the Corporations Act**

The director(s) must:

- ensure that dividends are paid from profits and not out of capital (s 254T);
- ensure that the company keeps the various statutory registers;
- provide, to their organisation, certain information relating to themselves (Part 2D.5);
- call the general meeting within 21 days where a requisition is presented under s 249D and not later than 2 months after the request;
- assist auditors in finalising the company audits.

In order to minimise liability, the director(s) should:

- actively participate in the day-to-day running of the company's affairs;
- be actively interested in the behaviour and nuances of fellow directors and the company members (i.e. majority shareholders) – appreciate how they conduct business, their reaction time on legislative requirements and their attitude to the proper observance of their duties; and
- accurately record your position on matters whether it be in minutes, letters or other memoranda and have a copy filed with the company records and keep a copy for yourself.

### **Important Note**

This overview is intended to convey general information only in relation to its subject matter. It is not intended to be, nor should it be treated as, legal advice by the reader. Please direct any specific questions or issues to your accountant or a qualified legal practitioner. We do not provide legal, accounting, taxation, superannuation or investment advice.

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**ABRS**  
Australian Business  
Registry Services

## Important information for company directors

As a company director, under new legislation, you're now required to obtain a director identification number (director ID).

A director ID is a unique identifier that you keep forever. It's free to apply and you only need to apply once.

If you are a company director appointed prior to 1 November 2021, you must obtain your director ID by **30 November 2022**. New directors should apply before they are appointed.

### What you need to do

The fastest way to get a director ID is to apply online using the myGovID app. If you can't get a myGovID, the best way to apply for a director ID will depend on your situation.

Find out how you can apply for a director ID on our website at **[abrs.gov.au/DirectorID](https://abrs.gov.au/DirectorID)**

You must apply for a director ID yourself. No one can apply for you. The reason for this is you need to prove your identity when you apply.

Penalties may be applicable if you don't apply for a director ID. We'll consider the circumstances of those that don't apply on time when deciding what action to take.

### What happens next

Once you have your director ID, keep it safe until you need to use it. It can be shared with your accountant, company secretary, ASIC registered agent or tax professional.

You don't need to provide your director ID to ASIC unless otherwise directed. When the ASIC companies register is transitioned to ABRS in the future, your director ID will need to be linked to the companies that you are a director of. We'll keep you up to date with any changes that may affect you.

### How director ID will help honest businesses

Director ID is the first service delivered by us and will help to:

- › prevent the use of false and fraudulent director identities
- › make it easier for external administrators and regulators to trace directors' relationships with companies over time
- › identify and eliminate director involvement in unlawful activity

For more information about ABRS and director ID, visit **[abrs.gov.au/about-us](https://abrs.gov.au/about-us)**.

#### NEED HELP?

Visit [abrs.gov.au](https://abrs.gov.au) for more information.

Alternatively, you can phone us on 13 62 50 between 8.00am and 6.00pm, Monday to Friday from within Australia.

If you're overseas, you can phone us on +61 2 6216 3440 between 8.00am and 6.00pm AEST, Monday to Friday.

**Michelle Crosby**

Deputy Registrar

Australian Business Registry Services

# Certificate of Registration of a Company

This is to certify that

**KURUVILA SUPER FUND PTY LTD**

**Australian Company Number 659 846 723**

is a registered company under the Corporations Act 2001 and  
is taken to be registered in South Australia.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is  
**the first day of June 2022.**



**ASIC**

Australian Securities & Investments Commission

Issued by the  
Australian Securities and Investments Commission  
on this first day of June, 2022.

A handwritten signature in black ink, appearing to read 'J Longo'.

Joseph Longo  
Chair

CERTIFICATE



**KURUVILA SUPER FUND PTY LTD**

**ACN: 659 846 723**

**SPECIAL PURPOSE CONSTITUTION**

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# CONSTITUTION

## Kuruvila Super Fund Pty Ltd

ACN 659 846 723

### 1. The Company

#### 1.1 Name

The name of the company is **Kuruvila Super Fund Pty Ltd ACN 659 846 723**.

#### 1.2 Purpose of the Company

1.2.1 The sole purpose of the Company is to be a trustee of a Regulated Superannuation Fund that is also a Self Managed Superannuation Fund.

1.2.2 The Company:

- (a) may only be a trustee of one (1) Regulated Superannuation Fund at any particular time;
- (b) must not be a trustee of any other trust estate;
- (c) must not carry on any business, or participate in any investment activities on its own account,

and, for the avoidance of doubt, this **clause 1.2** and **clauses 14** and **15** together are intended to ensure that the Company satisfies the requirements to be a Special Purpose Company and:

- (d) this Constitution must be read and interpreted in accordance with this express intention; and
- (e) to the extent of any inconsistency between any of **clauses 1.2, 14** and **15** and any other provisions of this Constitution, **clauses 1.2, 14** and **15** prevail.

#### 1.3 Legal Capacity

To the extent permitted by the Act, and subject to both the SIS Act and SIS Regulations, the Company has the legal capacity and powers of an individual both in and outside of Australia.

#### 1.4 Replaceable Rules

To the extent permitted by law the replaceable rules in the Act do not apply to the Company.

1.5 **Proprietary Company**

The Company is a proprietary company and must comply with all provisions of the Act in order to remain registered as a proprietary company.

2. **Definitions**

In this Constitution, unless the contrary intention appears:

- 2.1 **'Act'** means the *Corporations Act 2001* (Cth);
- 2.2 **'Beneficiary'** means a member of the Fund;
- 2.3 **'Business Day'** means any day that banks are generally open for business in the Relevant Jurisdiction but not a Saturday, Sunday or a public holiday;
- 2.4 **'Constitution'** means the constitution of the Company as amended from time to time;
- 2.5 **'Company'** means **Kuruvila Super Fund Pty Ltd A.C.N. 659 846 723**;
- 2.6 **'Director'** includes any person occupying the position of director of the Company;
- 2.7 **'Directors'** means all or some of the Directors acting as a board, unless the Company has only one Director, in which case, that Director;
- 2.8 **'Fund'** means the particular Self Managed Superannuation Fund of which the Company is trustee;
- 2.9 **'General Meeting'** means a general meeting of Members;
- 2.10 **'Legal Personal Representative'** means:
  - 2.10.1 an executor of a will or an administrator of an estate of a deceased person;
  - 2.10.2 the trustee of an estate of a person who is under a legal disability; or
  - 2.10.3 a person who holds an enduring power of attorney granted by a person.
- 2.11 **'Member'** means a person who is a member of the Company as provided by section 231 of the Act;
- 2.12 **'Office'** means the Company's registered office;
- 2.13 **'Register'** means the register of Members of the Company;
- 2.14 **'Registered address'** means the last known address of a Member as noted in the Register;
- 2.15 **'Regulated Superannuation Fund'** has the meaning outlined in section 19 of the SIS Act;
- 2.16 **'Relative'** has the meaning given by section 10 of the SIS Act;
- 2.17 **'Relevant Jurisdiction'** means South Australia;

- 2.18 **'Representative'** means a person authorised by a Member to act as its representative under this Constitution;
- 2.19 **'Seal'** means the Company's common seal (if any);
- 2.20 **'Self Managed Superannuation Fund'** has the same meaning as in the SIS Act;
- 2.21 **'SIS Act'** means the *Superannuation Industry (Supervision) Act 1993 (Cth)*;
- 2.22 **'SIS Regulations'** means any regulations made under the SIS Act;
- 2.23 **'Shares'** means shares of the Company.
- 2.24 **'Special Purpose Company'** has the meaning outlined in paragraph (f) of the definition of that term in regulation 3 of the *Corporations (Review Fees) Regulations 2003 (Cth)*.
- 2.25 **'Superannuation Interest'** in relation to a Director who is a Beneficiary or the Legal Personal Representative of a Beneficiary of the Fund generally means the total amount of all superannuation lump sums that could be payable to the Beneficiary by the Fund at any time or it is such other interest as defined in section 995-1(1) of the Tax Act as determined by the Trustee with reference to section 307-200 of the Tax Act;
- 2.26 **'Tax Act'** means the *Income Tax Assessment Act 1997 (Cth)*.

### 3. Interpretation

In this Constitution unless the contrary intention appears:

- 3.1 the **singular** includes the plural and vice versa;
- 3.2 a **gender** includes all other genders;
- 3.3 where a **word** or **phrase** is defined, its other grammatical forms have a corresponding meaning;
- 3.4 a reference to a **person** includes any corporation, partnership, joint venture, trust, association, government, or public authority and vice versa;
- 3.5 a reference to a **part, clause, annexure, exhibit** or **appendix** is to a part, clause, annexure, exhibit or appendix to this Constitution;
- 3.6 a reference to a **request** or **notice** means a request or notice in writing;
- 3.7 a reference to any **party** to this or any other document includes the party's successors and permitted assigns;
- 3.8 a reference to this **Constitution** is to this Constitution as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Constitution or that other agreement or document;
- 3.9 a reference to any **legislation** or legislative provision includes any statutory modification, substitution or re-enactment and any subordinate legislation issued under that legislation or provision;

- 3.10 a reference to **conduct** includes any act, omission, representation, statement or undertaking whether or not in writing;
- 3.11 mentioning anything after **include, includes** or **including** does not limit what else might be included;
- 3.12 a reference to a **person** that comprises two or more persons means those persons jointly and severally;
- 3.13 the **headings** are for convenience only and do not affect the interpretation of this Constitution;
- 3.14 a reference to a **month** means a calendar month;
- 3.15 any thing that is deemed to occur or required to be done by this Constitution on or by a **day** which is not a Business Day, is deemed to occur or must be done on or by the following Business Day;
- 3.16 a reference to **dollars** means Australian dollars;
- 3.17 a reference to **time** means the time in the Relevant Jurisdiction;
- 3.18 an expression in a provision of this Constitution has the same meaning as in a provision of the Act that deals with the same matter as the provision.

#### 4. **Shares**

##### 4.1 **Rights**

4.1.1 Subject to this Constitution, the terms of issue of Shares and the Act, all Shares attract the right to receive notice of and to attend and vote at all general meetings of the Company at one vote per Share.

##### 4.2 **Issue**

Subject to this Constitution and the Act, the Directors may issue or dispose of Shares to persons on such terms, at such issue prices, of such classes and at such times as determined by the Directors.

##### 4.3 **Alteration of Capital**

Subject to the Corporations Act 2001, if the Members agree, the Shares on issue may be converted into a larger or smaller number of Shares on issue.

##### 4.4 **Joint Holders**

If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.

##### 4.5 **Certificate**

4.5.1 Subject to the conditions of issue of any Shares or any class of Shares:

- (a) every Member is entitled free of charge to one certificate for all Shares registered in its name; and
  - (b) a Member may request several certificates in reasonable denominations for different portions of its holding.
- 4.5.2 Subject to the conditions of issue of any Shares or any class of Shares, joint holders are entitled to a single certificate in their joint names in respect of all Shares registered in their joint names.
- 4.5.3 Every certificate for Shares must be issued and dispatched in accordance with the Act.

#### 4.6 **Lost Certificates**

If it is proved to the satisfaction of the Directors that a certificate is lost, worn out or defaced, the Directors may cancel such certificate and replace it with a new certificate (marked as such), subject to such indemnity as the Directors may require.

### 5. **Share Transfer**

#### 5.1 **Transfer**

- 5.1.1 Subject to this Constitution, a Member may transfer its Shares.
- 5.1.2 Shares may be transferred by a written transfer instrument in a form approved by the Directors and must be executed by or on behalf of the transferor and the transferee.
- 5.1.3 A transferor of Shares remains the holder of the Shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the Shares.

#### 5.2 **Closure of Register**

The Register may be closed for up to thirty (30) days in each year.

#### 5.3 **Title on Death**

- 5.3.1 The Legal Personal Representative of a deceased Member who was the sole holder of Shares is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 5.3.2 If a deceased Member was a joint holder of Shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's Shares.
- 5.3.3 The estate of the deceased Member will not be released from any liability to the Company in respect of the Shares.
- 5.3.4 Where two or more persons are jointly entitled to any Share in consequence of the death of the registered holder, they will be considered to be joint holders of the Share.

5.3.5 The Company may register a transfer to a transferee who dies before the transfer is registered.

5.3.6 Any person who is registered under this **clause** must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

**5.4 Transmission of Shares on Death, in Bankruptcy or Legal Disability**

5.4.1 Subject to the *Bankruptcy Act 1966* (Cth), a Legal Personal Representative (except for a trustee in bankruptcy) who becomes entitled to a Share in consequence of the death, legal disability or bankruptcy of a Member may, subject to producing to the Directors evidence of their entitlement approved by the Directors, elect to be registered as the holder of the Share or may transfer the Share to a person nominated by them.

5.4.2 If the person who has become entitled to a Share elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by it.

5.4.3 If the person who has become entitled to a Share elects to transfer the Share, then the person must execute a transfer of the Share and such person is entitled all of the rights of the registered holder of the Share.

5.4.4 Any person who is registered under this **clause** must indemnify the Company against all liabilities, costs, losses and expenses incurred by the Company as a result of registering the person.

5.4.5 For clarity and without limitation, evidence under **clause 5.4.1** may include evidence of a Will of the Member, whether or not probate of that Will has been granted.

**6. General Meetings**

**6.1 Convening General Meeting**

6.1.1 Any Director may, at any time, convene a General Meeting.

6.1.2 The Directors will upon a request from a Member convene a General Meeting in accordance with section 249D of the Act.

**6.2 Notice for General Meetings**

6.2.1 Subject to the provisions of the Act allowing General Meetings to be held with shorter notice, at least twenty-one (21) days written notice of any General Meeting (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members and Directors.

6.2.2 A notice convening a General Meeting:

(a) must specify the place, date and time of the meeting;

- (b) must if the meeting is to be held in two or more places specify, the technology that will be used;
  - (c) must state the general nature of the business to be transacted at the meeting;
  - (d) may specify a place, facsimile number and electronic address for the purposes of proxy appointment; and
  - (e) must contain such other information as required by section 249L of the Act.
- 6.2.3 A notice of an annual General Meeting need not state that the business to be transacted at the meeting includes:
  - (a) the consideration of accounts and the reports of the directors and auditors;
  - (b) the election of directors in the place of those retiring; or
  - (c) the appointment and fixing of the remuneration of the auditor.
- 6.2.4 The Directors may postpone or cancel any General Meeting whenever they think fit (other than a meeting convened as the result of a request under **clause 6.1.2**) but must give notice of the postponement or cancellation to all persons entitled to receive notices from the Company.
- 6.2.5 The failure or accidental omission to send a notice of a General Meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings at or any resolution passed at the General Meeting.
- 6.3 **Member**

In **clauses 6.4, 6.7, and 6.8**, 'Member' includes a Member present in person or by proxy, attorney or Representative.
- 6.4 **Quorum for General Meetings**
  - 6.4.1 No business may be transacted at a General Meeting unless a quorum of Members is present when the meeting proceeds to business.
  - 6.4.2 A quorum of Members is two (2) Members. If the Company has one Member, then **clause 6.9.4** applies.
  - 6.4.3 If a quorum is not present within thirty (30) minutes after the time appointed for a General Meeting:
    - (a) if the meeting was convened on the requisition of Members, it is automatically dissolved; or
    - (b) in any other case:

- (i) it will stand adjourned to the same time and place five (5) Business Days after the meeting, or to another day, time and place determined by the Directors, and
- (ii) if at the adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the General Meeting, it is automatically dissolved.

**6.5 Chair**

- 6.5.1 The chair of Directors' meetings will be the chair at every General Meeting.
- 6.5.2 If there is no chair or the chair is not present within fifteen (15) minutes after the time appointed for holding the General Meeting or the chair is unwilling to act as chair of the General Meeting, the Members present may elect a chair for that General Meeting.
- 6.5.3 If there is a dispute at a General Meeting about a question of procedure, the chair may determine the question.

**6.6 Adjournment**

- 6.6.1 The chair may, with the consent of any General Meeting at which a quorum is present and will if directed by a meeting at which a quorum is present adjourn the meeting.
- 6.6.2 An adjourned General Meeting may take place at a different venue to the initial meeting (and/or via a different technological medium).
- 6.6.3 The only business that can be transacted at an adjourned General Meeting is the unfinished business of the initial meeting.
- 6.6.4 If a General Meeting has been adjourned for more than twenty-one (21) days, at least three (3) Business Days written notice (exclusive of the day on which the notice is served or taken to be served and of the day for which notice is given) of the adjourned meeting must be given to Members.

**6.7 Resolutions**

- 6.7.1 Subject to any requirements in the Act regarding special resolutions, an ordinary resolution is carried if a majority of the votes cast on that resolution are in favour of that resolution.
- 6.7.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by:
  - (a) the chair;
  - (b) at least two (2) Members entitled to vote on the resolution; or
  - (c) Members with at least five percent (5%) of the votes that may be cast on the resolution on a poll.
- 6.7.3 If there is an equality of votes the chair has a casting vote in addition to the chair's votes as a Member, proxy, attorney or Representative.



6.7.4 Unless a poll is demanded a declaration by the chair that a resolution has been carried, carried by a specified majority, or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of that fact without proof of the number or proportion of the votes in favour of or against the resolution.

6.7.5 A poll may be demanded:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

## 6.8 Taking a Poll

6.8.1 A poll will be taken in the manner that the chair directs.

6.8.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

6.8.3 The chair may determine any dispute about the admission or rejection of a vote.

6.8.4 The chair's determination will be final and conclusive.

6.8.5 A poll demanded on the election of the chair or the adjournment of a meeting must be taken immediately.

6.8.6 After a poll has been demanded at a General Meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

## 6.9 Written and Circular Resolutions – Meetings of Members

6.9.1 Subject to the Act, if all the Members have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a General Meeting held on the day on which the document was last signed by a Member.

6.9.2 For the purposes of **clause 6.9.1**, two or more identical documents, each of which is signed by one or more Members, together constitute one document signed by those Members on the days on which they signed the separate documents.

6.9.3 Any document referred to in this **clause** may be in the form of a facsimile transmission or other electronic medium.

6.9.4 If the Company has one Member, a resolution may be passed by the Member recording it and signing the record.

6.9.5 To the extent permitted by law and only in accordance with any relevant procedure relating to same, a written resolution may include an electronic

resolution and may be signed by a Member using any technological and/or electronic medium.

## 7. Members' Voting Rights

### 7.1 Votes of Members

7.1.1 Subject to this Constitution (particularly **clause 7.1.2**) and to any rights or restrictions attaching to any class of Shares:

- (a) every Member has the right to vote;
- (b) on a show of hands every Member has one vote; and
- (c) on a poll every Member has one vote for each Share held by them.

7.1.2 If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.

7.1.3 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.

7.1.4 An objection under **clause 7.1.3** must be referred to the chair of the General Meeting, whose determination is final.

7.1.5 A vote which the chair does not disallow pursuant to an objection is valid for all purposes.

7.1.6 A person who has satisfied the Directors not less than twenty-four (24) hours before a General Meeting that it is entitled to a Share by operation of law may exercise all rights attached to the Share in relation to a General Meeting, as if the person were the registered holder of the Share.

7.1.7 If a Member appoints one proxy, that proxy may vote on a show of hands but if a Member appoints two proxies, neither proxy may vote on a show of hands.

7.1.8 A proxy may demand or join in demanding a poll.

### 7.2 Appointment of proxy

7.2.1 A natural person may appoint one or two proxies by a written appointment signed by the appointor or the appointor's attorney.

7.2.2 A corporation may appoint one or two proxies by a written appointment under the appointor's common seal or signed by a director, secretary or attorney of the appointor.

7.2.3 A proxy need not be a Member.

7.2.4 If a Member appoints two proxies and the appointment does not specify the proportion of the appointor's voting rights to be exercised by each proxy, then, subject to **clause 7.1.7**, each proxy may exercise one-half of the votes.

- 7.2.5 An appointment of a proxy must be in a form approved by the Directors and the following form will be taken to be approved by the Directors unless they resolve to use a different form:

..... Pty Limited

I/We ..... of  
..... being a  
member/members of the abovenamed Company, hereby appoint  
..... of  
..... or failing him,  
....., as my/our proxy to vote for me/us on  
my/our behalf at the general meeting of the Company, to be held on the  
..... day of ....., and at any adjournment thereof.

Signed this        day of

This form is to be used \*in favour of / \*against the resolution.

\* Strike out whichever is not desired. (Unless otherwise instructed, the proxy may vote as he thinks fit.)

- 7.2.6 An instrument appointing a proxy shall be valid if it contains the following information:

- (a) the Member's name and addresses;
- (b) the Company's name;
- (c) the proxy's name and address or the office held by the proxy; and
- (d) the meetings at which the proxy may be used or if it is a standing appointment.

- 7.2.7 An appointment of a proxy may be a standing appointment.

- 7.2.8 An undated proxy shall be taken to be dated on the day that it is received by the Company.

- 7.2.9 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.

- 7.2.10 A proxy's appointment is valid at an adjourned meeting.

- 7.2.11 To the extent permitted by law and only in accordance with any relevant procedure relating to same, a written appointment may include an electronic appointment and may be signed by a Member using any technological and/or electronic medium.

### 7.3 **Deposit of Instruments**

Not less than twenty-four (24) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, the instrument appointing a proxy or attorney (if any) must:

- 7.3.1 be deposited at the Office, or at such other place as is specified for that purpose in the notice convening the meeting; or
- 7.3.2 be transmitted to a facsimile number at the Office or a facsimile number or electronic address specified for that purpose in the notice of meeting.

### 7.4 **Validity of Proxy Votes**

A vote cast in accordance with an appointment of proxy or power of attorney is valid even if, before the vote was cast, the appointor:

- 7.4.1 dies;
- 7.4.2 becomes of unsound mind;
- 7.4.3 revokes the proxy or power; or
- 7.4.4 transfers the Shares in respect of which the vote was cast,

unless any written notification of the death, unsoundness of mind, revocation or transfer was received by the Company before the relevant meeting or adjourned meeting.

## 8. **Directors**

### 8.1 **Number of Directors**

- 8.1.1 The Company must have at least one Director.
- 8.1.2 The Company in General Meeting may subject to this Constitution (in particular **clause 8.2**) the Act, the SIS Act and the SIS Regulations appoint and remove directors and may increase the number of directors in office.
- 8.1.3 The Directors may subject to the SIS Act and **clause 8.2**, appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.

### 8.2 **Requirements to be a Director**

- 8.2.1 Subject to this **clause 8.2**, a person may only be a Director if:
  - (a) that person is a Beneficiary; or
  - (b) if the Fund has only one Beneficiary, the appointment of that person would not cause the Fund to fail to satisfy the applicable requirements of section 17A of the SIS Act.
- 8.2.2 A person must not be appointed as a Director if that person is under a legal disability.

8.2.3 If a Beneficiary is under a legal disability, then the Legal Personal Representative of the Beneficiary may be appointed as a Director for that Beneficiary.

8.2.4 A Director is not required to be a Member.

### 8.3 **Period of Office**

A Director will continue to hold office until they die or until their office is vacated pursuant to **clause 8.4**.

### 8.4 **Vacation of Office**

The office of a Director immediately becomes vacant if the Director:

8.4.1 is prohibited by the Act, the SIS Act or SIS Regulations from continuing as a Director (including if disqualified under section 120A of the SIS Act);

8.4.2 is found to be under a legal disability;

8.4.3 resigns by notice in writing to the Company; or

8.4.4 is removed by a resolution of the Company.

### 8.5 **Automatic Removal from Directorship**

A person who is a Director will be automatically removed as a Director if the continued appointment of that person as Director will cause the Fund not to be a Self Managed Superannuation Fund.

### 8.6 **Remuneration**

8.6.1 The Directors are not entitled to any remuneration.

8.6.2 Directors may be paid all travelling, hotel and other expenses properly incurred by them in attending and returning from meetings of the Directors or General Meetings or otherwise in connection with the Company's business.

## 9. **Directors' Meetings**

### 9.1 **Directors' Meetings**

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

9.1.2 Directors must be given notice of each Directors' meeting unless all the Directors meet without notice and agree to hold a meeting at that time.

9.1.3 A Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. A Director who participates in a meeting held in accordance with this **clause** is taken to be present and entitled to vote at the meeting.

9.1.4 At a meeting of Directors, a quorum is two Directors. If the Company has one Director, then **clause 9.6.2** applies.

## 9.2 Decision of Questions

9.2.1 Subject to this Constitution, questions arising at a meeting of Directors will be decided by a majority of votes of the Directors present and voting.

9.2.2 Unless otherwise agreed, each Director has one vote for every one dollar of their Superannuation Interest attributable to their membership of the Fund.

9.2.3 If there is an equality of votes the chair of a meeting has a casting vote in addition to the chair's vote as a Director.

## 9.3 Directors' Interests

9.3.1 A Director and any firm, body or entity in which a Director has a direct or indirect interest may:

- (a) enter into any contract or arrangement with the Company;
- (b) be appointed to and hold any office or place of profit under the Company, other than the office of the auditor of the Company; and
- (c) act in a professional capacity, other than as the auditor of the Company, for the Company,
- (d) receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.

9.3.2 Each Director must disclose his or her interests to the Company in accordance with the Act.

9.3.3 A Director's failure to make disclosure under this **clause** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

## 9.4 Remaining Directors

9.4.1 The Directors may act if there is a vacancy on the board.

9.4.2 If the number of Directors is not sufficient to constitute a quorum for a Directors' meeting, the Directors may act only to:

- (a) appoint a Director, or
- (b) convene a General Meeting.

## 9.5 Chairperson

9.5.1 The Directors will elect a Director as chair of Directors' meetings and may determine the period for which the chair will hold office.

9.5.2 Where a Director's meeting is held and:

- (a) a chair has not been elected; or
  - (b) the chair is not present within fifteen (15) minutes after the time appointed for the commencement of the meeting; or
  - (c) the chair is unwilling or unable to act,
- the Directors present will elect one of their number to be chair of that meeting.

#### 9.6 **Written and Circular Resolutions of Directors**

- 9.6.1 If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is taken to have been passed at a Directors' meeting held on the day on which the document was last signed by a Director and such resolutions may be executed in counterparts.
- 9.6.2 If the Company has one Director, a decision of the Director recorded in writing is taken to be a resolution passed at a meeting.
- 9.6.3 Any document referred to in this **clause 9.6** may be in the form of a facsimile transmission or other electronic medium.
- 9.6.4 To the extent permitted by law and only in accordance with any relevant procedure relating to same, a document containing a resolution may be in electronic form and signed by one or more Directors using any technological or electronic medium.

#### 9.7 **Validity of Acts of Directors**

If it is discovered that:

- 9.7.1 there was a defect in the appointment of a person as a Director; or
- 9.7.2 a person appointed as Director was disqualified,

all acts of the Directors before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

#### 9.8 **Minutes and Registers**

- 9.8.1 The Directors must cause minutes to be made of:
  - (a) the names of the Directors present at all General Meetings and Directors' meetings;
  - (b) all proceedings of General Meetings and Directors' meetings;
  - (c) all orders made by the Directors; and
  - (d) all disclosures made of Director's interests.

- 9.8.2 Minutes must be signed by the chair of the meeting or by the chair of the next meeting of the relevant body.

## 10. Management of the Company

### 10.1 Management

The management of the business of the Company is vested in the Directors who may exercise all such powers as the Company may by this Constitution and the Act be permitted to exercise provided such powers are not required to be exercised by the Company in general meeting.

### 10.2 Financial accommodation and lending

The Company must not:

10.2.1 lend money of the Company to:

- (a) a Member, Beneficiary or Director;
- (b) a Relative of a Member, Beneficiary or Director; or

10.2.2 give any other financial assistance to:

- (a) a Member, Beneficiary or Director;
- (b) a Relative of a Member, Beneficiary or Director.

### 10.3 Appointment of Attorneys and Agents

10.3.1 The Directors may by resolution or power of attorney appoint any corporation, firm or person or body of persons to be the attorney or agent of the Company for purposes determined by the Directors.

10.3.2 Anyone appointed under **clause 10.3.1** is appointed with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution and the Act), and for the period and subject to any conditions determined by the Directors.

10.3.3 The powers of attorney or agency may contain such provisions for the protection and convenience of persons dealing with an attorney or agent as the Directors think fit.

## 11. Execution of Documents

11.1 The Company may execute any document by any means allowed at law, including by electronic means and approved by the Directors.

11.2 The Company may execute a document by:

- 11.2.1 two Directors or one Director and a secretary each signing the document;
- 11.2.2 if the Company has only one Director who is also the only secretary, that Director signing the document (without the document being countersigned);



- 11.2.3 if the Company has only one Director that Director signing the document (without the document being countersigned); or
- 11.2.4 affixing the Seal, provided that every document to which the Seal is affixed must be signed by;
  - (a) a Director and countersigned by another Director, or another person(s) appointed by the Directors to countersign the document; or
  - (b) if the Company has only one Director that Director (without the document being countersigned).

## 12. **Company Seal**

If the Company has a Seal, the Company must comply with section 123 of the Act and if it has a duplicate Seal, the duplicate Seals:

- 12.1 must be a copy of the Seal with the addition of the words 'Duplicate Seal'; and
- 12.2 must only be used with the authority of the Directors.

## 13. **Accounts and Records of the Company**

- 13.1 The Directors will cause proper accounting and other records (including all supporting documentation) to be kept in accordance with the requirements of the Act, the SIS Act and SIS Regulations.
- 13.2 The Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting and other records of the Company or any of them will be open for inspection by Members other than Directors.
- 13.3 The records and accounts of the Company must be kept for a period of ten (10) years from the end of the financial year to which the records and accounts relate.

## 14. **Dividends and Reserves**

Notwithstanding anything else express or implied in this Constitution, the Company cannot pay dividends, reserves, or any other form of distribution of any income or property to the Members and this **clause 14** cannot be revoked or amended.

## 15. **Winding Up**

- 15.1 The Company will not be wound up whilst it is the trustee of the Fund.
- 15.2 If on winding-up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property, the same shall not be paid to or distributed among its members but shall be given or transferred to some other company or institution having objects similar to the objects of the Company and whose constitution prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution. That company or institution is to be determined by the members at or before the time of the dissolution and in default of this, by application to the appropriate Court for determination.

15.3 This **clause 15** cannot be revoked or amended.

16. **Notices**

16.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution by:

16.1.1 serving it on the person;

16.1.2 sending it by post, facsimile transmission or electronic mail to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices; or

16.1.3 if the notice is to a Member and the Member has no registered address, posting it on a notice board at the Office.

16.2 A notice sent by post is taken to be served 3 Business Days after properly addressing, prepaying and posting an envelope.

16.3 A notice sent by facsimile transmission or electronic mail is taken to be served 1 Business Day after properly addressing the facsimile transmission or electronic mail and transmitting it.

16.4 A notice may be given by the Company to joint holders by giving the notice to the joint holder whose name appears first in the Register.

16.5 Every person who is entitled to a Share by operation of law and who is not registered as the holder of the Share is taken to receive any notice served in accordance with this **clause** on the person from whom it derives its title.

17. **Severance**

Any provision of this Constitution that is invalid, unenforceable or illegal must be read down to the extent necessary to avoid that effect. If that is not possible, that provision must be excluded from this Constitution but only to the extent necessary to avoid that effect. All other provisions of this Constitution continue to be valid and enforceable.

**Execution**

This Constitution signed by all the members is the constitution referred to in the special resolution dated

**Signed:**

**The Members**

---

Signed by Babu Kuruvila and Sheena Kuruvila:



---

**Babu Kuruvila**  
Member

Dated: 17.03.23



---

**Sheena Kuruvila**  
Member

Dated: 17.03.23

## Director resolution

Kuruvila Super Fund Pty Ltd

ACN: 659 846 723

Date: \_\_\_\_\_

### Registration of the Company

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- 1 Attached is the Certificate of Registration for the Company dated 1 June 2022.
- 2 All matters regarding the registration of the Company have been attended to.

### Officers

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- 3 Babu Kuruvila and Sheena Kuruvila were appointed Directors of the Company upon registration.
- 4 Babu Kuruvila was appointed Secretary of the Company upon registration.

### Public Officer of the Company

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- 5 Babu Kuruvila has consented to be appointed as public officer of the Company on 1 June 2022 for the purposes of the Income Tax Assessment Act 1936 (as amended from time to time).
- 6 Resolved that Babu Kuruvila be appointed as public officer of the Company.
- 7 Resolved that this appointment will be effective commencing immediately.
- 8 Resolved to notify the Australian Taxation Office of the appointment.

### Initial Members

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- 9 Babu Kuruvila and Sheena Kuruvila (Initial Members) became the member(s) of the Company upon incorporation.

### Shares

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- 10 Resolved to record the name of the Initial Members in the register of members of the Company and to issue a share certificate to each of the Initial Members in accordance with the Company's application for registration as an Australian company.

### Registered Office

---

- 11 Resolved that the registered office of the Company be C/- Foxton Financial 3 25 MacRobertson Street, MAWSON, ACT 2607.

**Adoption of constitution**

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- 12 Resolved that the attached constitution at Annexure 1 be provided to the Initial Members for signing and adoption as the constitution of the Company.

**Auditors**

---

- 13 Resolved that no auditors be appointed for the time being.

**Signed:**

**The Directors**

---

Signed by Babu Kuruvila and Sheena Kuruvila:



**Babu Kuruvila**  
Director

Dated: 17.03.23



**Sheena Kuruvila**  
Director

Dated: 17.03.23

**CONSENT OF OCCUPIER FOR REGISTERED OFFICE**

**Kuruvila Super Fund Pty Ltd**

Foxton Financial , being the occupier(s) of the following premises:

C/- Foxton Financial 3 25 MacRobertson Street, MAWSON, ACT 2607

hereby consents to the use of this address as the registered office of Kuruvila Super Fund Pty Ltd

SIGNED as a correct record.

**Occupier:** \_\_\_\_\_

\_\_\_\_\_  
**Authorised person for Foxton Financial**

**Dated:** \_\_\_\_\_

## CONSENT TO VARIATION OF CLASS RIGHTS

Kuruvila Super Fund Pty Ltd

ACN 659 846 723

The shares on issue in the Company at the date of this consent are as follows:-

- ORD

Each member holds one or more of the shares on issue and gives their prior written consent to the variation of the rights attaching to their respective shares so that those rights are identical to the rights attaching to shares of the same class (in accordance with the Constitution signed by all the members for identification purposes) as their respective shares.

Signed:

**The Members**

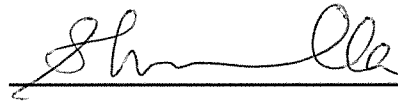
---

Signed by Babu Kuruvila and Sheena Kuruvila:



**Babu Kuruvila**  
Member

Dated: 17.03.23



**Sheena Kuruvila**  
Member

Dated: 17.03.23

## SPECIAL RESOLUTION OF MEMBERS

Kuruvila Super Fund Pty Ltd

ACN 659 846 723

(Section 249A Corporations Act)

All the members of Kuruvila Super Fund Pty Ltd ACN 659 846 723 (the “**Company**”) entitled to vote on the resolution, are in favour of the special resolutions set out in this document in accordance with section 249A of the Corporations Act 2001.

### Noted:

- A. That each member of Kuruvila Super Fund Pty Ltd ACN 659 846 723 (the “**Company**”) has consented to the variation of the rights attaching to their shares so that those rights are identical to the rights attaching to shares of the same class (in accordance with the Constitution signed by all the members for identification purposes) as their respective shares.
- B. That each share issued to the members on registration of the Company was intended to have the same rights as those set out in the Constitution referred to in paragraph A above.

### Special Resolutions:

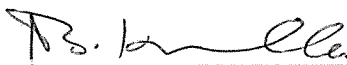
- 1. That the Constitution signed by all the members for identification purposes be adopted as the constitution of the Company.
- 2. That the Constitution takes effect from the date of this special resolution.

### Signed:

#### The Members

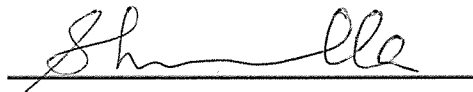
---

Signed by Babu Kuruville and Sheena Kuruville:



Babu Kuruville  
Member

Dated: 17.03.23



Sheena Kuruville  
Member

Dated: 17.03.23



**INCOME TAX ASSESSMENT ACT, 1936  
(AS AMENDED FROM TIME TO TIME)**

The Deputy Commissioner of Taxation  
Australian Taxation Office

**NOTICE OF APPOINTMENT OF PUBLIC OFFICER**

**Date:** 17.03.23

Dear Sir,

In accordance with the Income Tax Assessment Act 1936 (as amended from time to time), Babu Kuruvila, whose signature appears below, has been appointed the Public Officer of Kuruvila Super Fund Pty Ltd ACN 659 846 723.


The address for service of notices is C/- Foxtan Financial 3 25 MacRobertson Street, MAWSON, ACT 2607

**Signed:**

**The Public Officer**

---

Signed by Babu Kuruvila:



**Babu Kuruvila**  
Public Officer

**Dated:** 17.03.23

## CONSENT TO ACT AS A PUBLIC OFFICER

Kuruvila Super Fund Pty Ltd

ACN: 659 846 723

Full name: Babu Kuruvila

Address: 57 Chelmsford St, CRAIGMORE, SA 5114

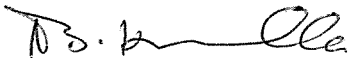
Hereby consents to my appointment as Public Officer of Kuruvila Super Fund Pty Ltd

Signed:

**The Public Officer**

---

Signed by Babu Kuruvila:



---

**Babu Kuruvila**  
Public Officer

Dated: 17.03.23

## CONSENT TO ACT AS A DIRECTOR

Kuruvila Super Fund Pty Ltd

Full name: Babu Kuruvila  
Former names (if any):  
Date of birth: 19 June 1976  
Place of birth: Kerala, India  
Address: 57 Chelmsford St,  
CRAIGMORE, SA, 5114

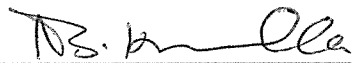
consents to act as a director of the proposed Company.

**Signed:**

**The Director**

---

Signed by Babu Kuruvila:



Babu Kuruvila  
Director

Dated: 17.03.23

## CONSENT TO ACT AS A DIRECTOR

Kuruvila Super Fund Pty Ltd

Full name: Sheena Kuruvila  
Former names (if any):  
Date of birth: 15 May 1974  
Place of birth: Kerala, India  
Address: 57 Chelmsford St,  
CRAIGMORE, SA, 5114

consents to act as a director of the proposed Company.

Signed:

**The Director**

---

Signed by Sheena Kuruvila:



Sheena Kuruvila  
Director

Dated: 17.08.23

## CONSENT TO ACT AS A SECRETARY

Kuruvila Super Fund Pty Ltd

Full name: Babu Kuruvila  
Former name (if any):  
Date of Birth: 19 June 1976  
Place of birth: Kerala, India  
Address: 57 Chelmsford St,  
CRAIGMORE, SA, 5114

consents to act as a secretary of the proposed Company.

Signed:

**The Secretary**

---

Signed by Babu Kuruvila:



Babu Kuruvila  
Secretary

Dated: 17.08.23

## REGISTER OF OFFICERS

Kuruvila Super Fund Pty Ltd

ACN: 659 846 723

| Date of Appointment | Date of Resignation | Full Name       | Residential Address                      | Place of Birth | Date of Birth | Role(s)  |
|---------------------|---------------------|-----------------|--|----------------|---------------|----------|
| 1 June 2022         |                     | Babu Kuruvila   | 57 Chelmsford St,<br>CRAIGMORE, SA, 5114 | Kerala, India  | 19 June 1976  | DIR, SEC |
| 1 June 2022         |                     | Sheena Kuruvila | 57 Chelmsford St,<br>CRAIGMORE, SA, 5114 | Kerala, India  | 15 May 1974   | DIR      |

## CONSENT TO BE A MEMBER AND HOLD SHARES

### Kuruvila Super Fund Pty Ltd

Babu Kuruvila of 57 Chelmsford St, CRAIGMORE, SA 5114 consents to become a MEMBER and agrees to take up the following shares in the proposed Company:

|                               |        |
|-------------------------------|--------|
| Number of Shares:             | 10     |
| Class of Shares:              | ORD    |
| Amount Paid per Share (\$):   | \$1.00 |
| Amount Unpaid per Share (\$): | \$0.00 |

Signed:

**The Member**

---

Signed by Babu Kuruvila:



---

Babu Kuruvila  
Member

Dated: 17.03.23

**SHARE CERTIFICATE #1**

**Kuruvila Super Fund Pty Ltd**

**ACN: 659 846 723**

**Registered under the *Corporations Act 2001*(Cth)**


Date:

Shareholder(s): Babu Kuruvila

Address: 57 Chelmsford St,  
CRAIGMORE, SA, 5114

is/are the registered holder(s)  
of 10 ORD Shares  
(serial numbers 1 - 10 inclusive)  
in the Company issued on 1 June 2022  
\$0.00 remains unpaid per share.

EXECUTED by  
**Kuruvila Super Fund Pty Ltd**  
**ACN: 659 846 723**  
in accordance with subsection 127(1)  
of the Corporations Act 2001



**Babu Kuruvila**  
Director



**Sheena Kuruvila**  
Director

**Dated:** 17.03.23

**Dated:** 17.03.23



## CONSENT TO BE A MEMBER AND HOLD SHARES

### Kuruvila Super Fund Pty Ltd

Sheena Kuruvila of 57 Chelmsford St, CRAIGMORE, SA 5114 consents to become a MEMBER and agrees to take up the following shares in the proposed Company:

|                               |        |
|-------------------------------|--------|
| Number of Shares:             | 10     |
| Class of Shares:              | ORD    |
| Amount Paid per Share (\$):   | \$1.00 |
| Amount Unpaid per Share (\$): | \$0.00 |

Signed:

**The Member**

---

Signed by Sheena Kuruvila:



**Sheena Kuruvila**  
Member

Dated: 17.03.23

## SHARE CERTIFICATE #2

Kuruvila Super Fund Pty Ltd

ACN: 659 846 723

Registered under the *Corporations Act 2001*(Cth)

Date:

Shareholder(s): Sheena Kuruvila

Address: 57 Chelmsford St,  
CRAIGMORE, SA, 5114

is/are the registered holder(s)  
of 10 ORD Shares  
(serial numbers 11 - 20 inclusive)  
in the Company issued on 1 June 2022  
\$0.00 remains unpaid per share.

EXECUTED by  
Kuruvila Super Fund Pty Ltd  
ACN: 659 846 723  
in accordance with subsection 127(1)  
of the Corporations Act 2001

  
\_\_\_\_\_  
**Babu Kuruvila**  
Director

  
\_\_\_\_\_  
**Sheena Kuruvila**  
Director

Dated: 17.03.23

Dated: 17.03.23

# REGISTER OF MEMBERS

Kuruvila Super Fund Pty Ltd

ACN: 659 846 723

| Date of Entry | Member          | Date of Transaction | Transaction Type | Class | Shares   |             |         | Share Serial Number | Cert # | \$ Unpaid per share | \$ Paid per share |
|---------------|-----------------|---------------------|------------------|-------|----------|-------------|---------|---------------------|--------|---------------------|-------------------|
|               |                 |                     |                  |       | Acquired | Transferred | Balance |                     |        |                     |                   |
| 01.06.2022    | Babu Kuruvila   | 01.06.2022          | Allotment        | ORD   | 10       |             | 10      | 1 - 10              | 1      | \$0.00              | \$1.00            |
| 01.06.2022    | Sheena Kuruvila | 01.06.2022          | Allotment        | ORD   | 10       |             | 10      | 11 - 20             | 2      | \$0.00              | \$1.00            |

## ***Legal scope statement – No Review – Kuruvila Super Fund Pty Ltd***

This template has been reviewed and the manner of its implementation in the NowInfinity platform, by DGF Morgan & Associates Pty Ltd ACN 164 257 363 (“**DGF Morgan**”).

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