

# Hocking-Speight Super Pty Ltd

ACN 168 739 348

Constitution



# Hocking-Speight Super Pty Ltd

## Constitution

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# Hocking-Speight Super Pty Ltd

## Constitution

### Terms

#### 1. SPECIAL PURPOSE COMPANY

- (a) The Company is formed for:
  - (i) the purpose of acting solely as the trustee of the Fund; and
  - (ii) for purposes incidental to that purpose.
- (b) The Company must not be carried on for the purpose of profit or gain and must not at any time make any distribution of the Company's income or property to its Members. Nothing in this clause will prevent the Company from redeeming Shares, issuing new Shares or otherwise restructuring its Share capital.
- (c) To the extent that any provision of this Constitution is inconsistent with any requirement of SIS with which the Fund must comply, this Constitution will be deemed to be modified to the extent necessary to ensure that the Fund is able to comply with SIS.
- (d) To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

#### 2. SHARES

##### 2.1 Rights

Subject to this Constitution and to the terms of issue of Shares, 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.

##### 2.2 Issues of Shares

- (a) Subject to this Constitution and the Corporations Act, the Directors may issue or dispose of the Shares to persons:
  - (i) on terms determined by the Directors;
  - (ii) at the issue price that the Directors determine; and
  - (iii) at the time that the Directors determine.
- (b) The Directors' power under clause 2.2(a) includes the power to:
  - (i) grant options to have Shares issued; and
  - (ii) issue Shares with:
    - (A) any preferential, deferred or special rights, privileges or conditions;
    - (B) any restrictions in regard to voting or otherwise.

##### 2.3 Joint holders

- (a) If two or more persons are registered as the holders of a Share, they are taken to hold the Share as joint tenants with benefits of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.
- (b) Any one of the joint holders of a Share may give effectual receipts for any dividend or return of capital payable to the joint holders.

## 4.2 Transmission

- (a) A person who becomes entitled to a Share in consequence of the death, lunacy or bankruptcy of a Member may, subject to producing to the Directors evidence of its entitlement which is satisfactory to the Directors, elect to:
  - (i) be registered as the holder of the Share; or
  - (ii) transfer the Share to some other person nominated by it.
- (b) If the person who has become entitled to a Share:
  - (i) 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; or
  - (ii) elects to transfer the Share, then the person must execute a transfer of the Share.
- (c) An election to be registered as a holder of a Share under clause 4.2(a)(i) or a transfer of a Share from a Member or deceased Member under this clause 4.2 is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election were a transfer or the transfer were made by the Member or deceased Member itself.
- (d) 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.
- (e) 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. MEMBER RESOLUTIONS WITHOUT MEETINGS

### 5.1 Written Resolutions

- (a) The Company may pass a resolution without a general meeting being held if all Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) Separate copies of the document may be used for signing by members if the wording of the resolution statement is identical on each copy.
- (c) The resolution is passed when the last Member signs.
- (d) If a share is held jointly, each of the joint Members must sign.
- (e) A member may be deemed to have signed a document in accordance with this clause by e-mail (or other means) as determined by the Directors, provided that the Directors are satisfied that the deemed signature is that of the Member. The receipt by the Company of a deemed signature of a Member will be conclusive evidence that the Member has assented to the relevant resolution.

### 5.2 Sole Member Resolutions

If the Company has only one Member, it may pass a resolution by the Member recording the resolution and signing the record.

## 6. GENERAL MEETINGS

### 6.1 Convening general meeting

- (a) Any Director may, at any time, convene a general meeting.
- (b) A Member may only request the Directors to convene a general meeting in accordance with section 249D of the Corporations Act.
- (c) A Member may not convene or join in convening a general meeting except under section 249E or 249F of the Corporations Act.

### 7.3 Chair

- (a) The chair, or in the chair's absence the deputy chair, of Directors' meetings will be the chair at every general meeting.
- (b) If:
  - (i) there is no chair or deputy chair; or
  - (ii) neither the chair nor deputy chair is present within 15 minutes after the time appointed for holding the meeting; or
  - (iii) the chair and deputy chair are unwilling to act as chair of the meeting,
 the Directors present may elect a chair.
- (c) If no election is made under clause 7.3(b), then:
  - (i) the Members may elect one of the Directors present as chairperson; or
  - (ii) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- (d) If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

### 7.4 Adjournment

- (a) The chairperson of a meeting at which a quorum is present:
  - (i) in his or her discretion may adjourn a meeting with the meeting's consent; and
  - (ii) must adjourn a meeting if the meeting directs him or her to do so.
- (b) An adjourned meeting may take place at a different venue to the initial meeting.
- (c) The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.
- (d) If a general meeting has been adjourned for more than 21 days, at least 3 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.

### 7.5 Decision of questions

- (a) Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded, before or on the declaration of the result of the show of hands, by:
  - (i) the chairperson;
  - (ii) at least five Members entitled to vote on the resolution;
  - (iii) Members with at least 5 % of the votes that may be cast on the resolution on a poll.
- (c) The chairperson does not have a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or Representative.
- (d) Unless a poll is demanded:
  - (i) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (ii) an entry to that effect in the minutes of the meeting,
 are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- (e) The demand for a poll may be withdrawn.
- (f) A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the meeting was not entitled to do so.

- (f) 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.
- (g) A proxy's appointment is valid at an adjourned meeting.

### 8.7 Lodgement of proxy

- (a) The written appointment of a proxy or attorney must be received by the Company, not less than 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
  - (i) the time for holding the meeting or adjourned meeting at which the appointee proposes to vote; or
  - (ii) the taking of a poll on which the appointee proposes to vote.
- (b) If the appointment purports to be executed under a power of attorney or other authority, then the original document, or an office copy or a notarially certified copy of it, must be forwarded with the appointment.
- (c) An appointment of a proxy and any power of attorney or other authority under which it was executed are received by the Company at:
  - (i) the Office;
  - (ii) a facsimile number at the Office; or
  - (iii) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

### 8.8 Validity

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:

- (a) died;
- (b) became of unsound mind;
- (c) revoked the proxy or power; or
- (d) transferred 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.

### 8.9 Representatives of corporations

- (a) Any Member which is a corporation may authorise a natural person to act as its representative at any general meeting of the Company or any class of Members. If a Member corporation does so:
  - (i) its representative may exercise at the relevant general meeting all the powers which the Member corporation could exercise if it were a natural person; and
  - (ii) when its representative is present at a meeting, the Member corporation will be considered to be personally present at the meeting.
- (b) The chairperson of a general meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chairperson of the general meeting his or her status as a Representative within a period prescribed by the chairperson of the general meeting.

## 11. PROCEEDINGS OF DIRECTORS

### 11.1 Directors' meetings

- (a) A Director may at any time, and the Secretary must on the request of a Director, convene a Directors' meeting.
- (b) It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia.
- (c) 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.
  - (i) The Directors need not all be physically present in the same place for a Directors' meeting to be held.
  - (ii) A Director who participates in a meeting held in accordance with this clause 11.1(c) is taken to be present and entitled to vote at the meeting.
- (d) Clause 11.1(c) applies to meetings of Directors' committees as if all committee members were Directors.
- (e) The Directors may meet together, adjourn and regulate their meetings as they think fit.
- (f) At a meeting of Directors, a quorum is two Directors unless the Company has only one Director, when the quorum is that Director.

### 11.2 Decision of questions

- (a) Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting.
- (b) The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote if there is an equality of votes.
- (c) An Alternate Director has one vote for each Director for whom he or she is an alternate. If the Alternate Director is a Director, he or she also has a vote as a Director.

### 11.3 Directors' interests

- (a) A Director and any firm, body or entity in which a Director has a direct or indirect interest may in any capacity:
  - (i) enter into any contract or arrangement with the Company;
  - (ii) be appointed to and hold any office or place of profit under the Company, other than the office of Auditor; and
  - (iii) act in a professional capacity, other than as Auditor, for the Company,
 and may receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.
- (b) Each Director must disclose his or her interests to the Company in accordance with the Corporations Act and the Secretary must record all declarations in the minutes of the relevant Directors' meeting.
- (c) 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.
- (d) A Director may vote in respect of a contract or arrangement or proposed contract or arrangement in which the Director has a direct or indirect interest.
- (e) A Director may execute any document relating to a contract or arrangement or proposed contract or arrangement in which the Director has an interest.

- (f) Meetings of any committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

### 11.9 Written resolutions

- (a) 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.
- (b) If the Company has one Director, a decision of the Director recorded in writing is taken to be a resolution passed at a meeting.
- (c) For the purposes of clause 11.9(a), two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents.
- (d) Any document referred to in this clause may be in the form of a facsimile transmission.
- (e) This clause applies to meetings of Directors' committees as if all members of the committee were Directors.

### 11.10 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director, Alternate Director or member of a Directors' committee; or
- (b) a person appointed to one of those positions was disqualified,

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

### 11.11 Minutes and registers

- (a) The Directors must cause minutes to be made of:
- (i) the names of the Directors present at all general meetings, Directors' meetings and meetings of Directors' committees;
  - (ii) all proceedings of general meetings, Directors' meetings and meetings of Directors' committees;
  - (iii) all orders made by the Directors and Directors' committees; and
  - (iv) all disclosures of interests made pursuant to clause 11.3.
- (b) Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body, and if so signed will as between the members be conclusive evidence of the matters stated in such minutes.

## 12. APPOINTMENT OF ATTORNEYS & AGENTS

- (a) The Directors may from time to time by resolution or power of attorney appoint any person to be the attorney or agent of the Company:
- (i) for the purposes;
  - (ii) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (iii) for the period; and
  - (iv) subject to the conditions,
- determined by the Directors.



- (b) A notice sent by post is taken to be served:
  - (i) by properly addressing, prepaying and posting a letter containing the notice; and
  - (ii) on the day after the day on which it was posted.
- (c) A notice sent by facsimile transmission or electronic notification is taken to be served:
  - (i) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (ii) on the day after its despatch.
- (d) A notice posted on a notice board is taken to be served 24 hours after it is posted on the board.
- (e) 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.
- (f) 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.
- (g) A Share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it:
  - (i) in the case of a Member who does not have a registered address in Australia, by airmail post; and
  - (ii) in any other case, by ordinary post,

and is at the risk of the addressee as soon as it is given or posted.
- (h) A Member whose registered address is not in Australia may specify in writing an address in Australia as the Member's registered address within the meaning of this clause.
- (i) A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- (j) Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- (k) All notices sent by post outside Australia must be sent by prepaid airmail post.

## 16.2 Persons entitled to notice

- (a) Notice of every general meeting must be given to:
  - (i) every Member;
  - (ii) every Director and Alternate Director; and
  - (iii) any Auditor.
- (b) No other person is entitled to receive notice of a general meeting.

## 17. COMPANY TO KEEP ACCOUNTS

The Directors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.

## 18. INDEMNITY & INSURANCE

### 18.1 Interpretation

In this clause 18:

**indemnify** includes indemnify indirectly through one or more interposed entities.

**officer** means a Director, secretary or executive officer of the Company.

**pay** includes pay indirectly through one or more interposed entities.

**Fund** means

- (a) the Hocking-Speight Super Fund, which is (or will become following the appointment of the Company as trustee) a Regulated Superannuation Fund; and
- (b) any other Regulated Superannuation Fund of which the Company may become trustee.

**Member** means a person entered in the Register or any branch register as the holder of Shares.

**Office** means the Company's registered office.

**Register** means the register of Members of the Company.

**registered address** means the last known address of a Member as noted in the Register.

**Regulated Superannuation Fund** has the same meaning as in SIS.

**Secretary** means any person appointed by the Directors to perform any of the duties of a secretary of the Company.

**Shares** means shares of the Company.

**SIS** means the *Superannuation Industry (Supervision) Act 1993* (Cth) and the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (as amended, modified or replaced).

**Transfer Form** means, in relation to a transfer of a Share or Shares, a written transfer in any usual or common form or in any other form approved by the Directors.

## 20.2 Interpretation rules


In this Constitution, unless the contrary intention appears:

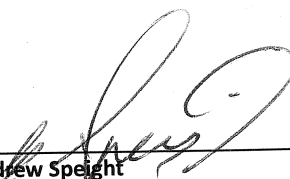
- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all genders;
- (d) words importing natural persons include corporations;
- (e) words and expressions defined in the Corporations Act have the same meaning in this Constitution; and
- (f) headings are for ease of reference only and are not intended to affect the construction of this Constitution.

Signing

The undersigned, being the person(s) specified in the application for the Company's registration as a person who consents to become a Member, hereby agree(s) to the terms of this Constitution.

Date 21 MARCH 2014

x   
Michelle Hocking

x   
Andrew Speight