

# Constitution of Railway and Transport Health Fund Ltd

ABN 93 087 648 744

## **SPECIAL RESOLUTIONS 1 and 2**

[This Constitution is that approved by over 75%  
of voting members at the 2013 AGM and  
includes changes to Board composition.]

**Approval dated 20 November 2013.  
ON BEHALF OF MEMBERS – JOHN E. HARTIGAN,  
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Railway & Transport Health Fund Ltd  
ABN 93 087 648 744

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# Constitution of Railway and Transport Health Fund Ltd

## 1. OBJECTS

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### 1.1 Objects of the Company

The objects for which the Company is established are:

- (a) to provide health and welfare facilities and services for Members and their dependants, including but not limited to hospital, medical, dental, pharmaceutical, optical and physiotherapy benefits;
- (b) to provide facilities and benefits for the relief and maintenance of Members and their dependants in the case of death, sickness, disability, accident, retirement, old age and unemployment;
- (c) to provide services and benefits for the education of Members and their dependants;
- (d) to provide funeral benefits for Members and their dependants;
- (e) to provide annuities, life insurance and superannuation for Members and their dependants;
- (f) to improve the standard of living of Members and their dependants;
- (g) to provide health and related insurances and health related business to Members and their dependants which the Company may from time to time deem beneficial to such persons;
- (h) to promote the principles of mutual aid and co-operation and good health;
- (i) to act as trustee;
- (j) to operate as a private health insurer and to conduct a health benefits fund or funds for the purposes of carrying on health insurance and health related business; and
- (k) to act in any manner conducive to further these objects.

### 1.2 Separate objects

Each of the objects in Article 1.1 constitutes a separate object of the Company, and no one object may be construed by reference to any other object.

## 2. NON-PROFIT STATUS OF THE COMPANY

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### 2.1 Application of Company Property

The Company must exercise its powers solely for the purpose of carrying out the objects of the Company and:

- (a) may carry out activities which are incidental or conducive to the objects as stated in this Constitution;
- (b) may invest monies of the Health Benefits Fund in accordance with the Private Health Legislation;
- (c) may carry out activities that are not prohibited under the Private Health Legislation; and
- (d) must only provide insurance subject to any conditions of its registration under the Private Health Legislation.

## **2.2 Tax Exempt Status**

Any alteration to the Constitution which may affect the tax-exempt status of the income of the Company shall not take effect until the Company has received written confirmation from the Commissioner of Taxation that the Commissioner does not object to the alteration.

## **2.3 No distribution of surplus to Members on winding up**

No part of the income and property of the Company shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to Members.

## **2.4 Transfer of surpluses**

- (a) On the winding up of the Company, Members are not entitled to any surplus assets that would otherwise be available for distribution to Members.
- (b) If the Company is wound up any surplus assets remaining after the payment of outstanding claims, debts and liabilities shall be applied as the Members in a General Meeting direct, providing that the direction is consistent with the conditions of Article 2.5 and any order of a Court having jurisdiction in this matter.

## **2.5 Choice of transferee**

The Company must pay the surplus to another body corporate incorporated in an Australian state or territory that has:

- (a) objects similar or in part similar to the objects of the Company and to objects incidental or conducive to those so specified, but no other objects; and
- (b) a Constitution which prohibits the distribution of its income and property among its members or contributors to at least as great as that imposed on the Company under this Constitution.

## **3. LIMITED LIABILITY**

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### **3.1 Members' liability**

The liability of Members is limited.

### **3.2 Amount of Members' contributions**

Each Member agrees that if the Company is wound up during the time they are a Member, or within one year after ceasing to be a Member, they will contribute a monetary amount to the assets of the Company, being such an amount as may be required but not exceeding \$10, for payment of the debts and liabilities of the Company (contracted before ceasing to be a Member) and of the costs, charges and expenses of winding up.

## **4. MEMBERSHIP**

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### **4.1 Members of the Health Benefits Fund**

- (a) The Board has the power, by an ordinary resolution, to adopt or amend the Health Fund Rules for the administration and membership of the Health Benefits Fund. Without limiting the generality of this Article 4.1(a), such rules may prescribe terms relating to:
  - (i) subject to Article 4.1(b), membership of the Health Benefits Fund;

- (ii) subject to Article 4.1(b), the terms upon which persons the subject of a corporate policy issued or to be issued by the Company holds or will hold membership of the Health Benefits Fund;
  - (iii) contributions payable by Members to the Health Benefits Fund;
  - (iv) benefits to be paid to Members of the Health Benefits Fund; and
  - (v) such other matters as the Board may resolve to be provided for by the Health Fund Rules.
- (b) Membership of the Health Benefits Fund is only available to those persons who satisfy the eligibility requirements of the Private Health Legislation (the *Restricted Access Group*).
- (c) The Company is prohibited from:
- (i) issuing a complying health insurance product to a person who does not belong to the Restricted Access Group; and
  - (ii) ceasing to insure a person for the reason that the person has ceased to belong to the Restricted Access Group.

## 4.2 Members of the Company

- (a) Subject to Article 4.2(b), a person is entitled to become a Member if a person:
- (i) is a member of the Restricted Access Group; and
  - (ii) is not otherwise prevented from becoming a Member by any other provision of this Constitution.
- (b) Where a person seeking membership of the Company is insured by the Company as part of an insured group comprising two or more adults, only one adult from the insured group is eligible to be a Member.
- (c) Subject to any other Article allowing admission of Members, the Company may admit a person as a Member only if the person makes an application, in a form the Company requires.
- (d) When the Company admits a person as a Member, the Company must:
- (i) enter the person's particulars in the Register of Members as required by the Corporations Act, and
  - (ii) give the person notice that it has admitted the person as a Member.
- (e) If an application to become a Member is rejected, the Company must:
- (i) give written notice of the rejection to the applicant; and
  - (ii) refund in full any contributions paid by the applicant.
- (f) When the Company admits a person as a Member, that person agrees to be bound by the Constitution of the Company.

## 4.3 Automatic termination of Company membership

- (a) A Member ceases to be a Member:
- (i) on receipt by the Company of the Member's written resignation; or

- (ii) if the person ceases to be a member of the Health Benefits Fund in accordance with the provisions of the Health Fund Rules or this Constitution; or
  - (iii) if the Member's membership is terminated in accordance with Article 4.4.
- (b) The Company may remove a Member's name from the register of Members if the Member dies.

#### **4.4 Termination of Company membership by the Board**

- (a) The Company may terminate a person's membership by Board resolution if:
- (i) the Member fails to discharge the Member's obligations to the Company under this Constitution or the Health Fund Rules; or
  - (ii) the Member is guilty of conduct which in the opinion of the Board is conduct that is considered to be detrimental to the Company; or
  - (iii) the Member obtains membership by misrepresentation or mistake.
- (b) Before the Board considers the proposed resolution, the Company must give notice of the proposed resolution under Article 4.4(a) to the Member at least 14 days prior to the meeting.
- (c) At the time the Board considers the proposed resolution and prior to the Board voting on the resolution, the Member shall have had an opportunity of giving orally or in writing any explanation or defence they might think fit and is entitled:
- (i) to be present with or without the Member's legal representative; and
  - (ii) to be heard, either in person or through the Member's legal representative.
- (d) The Company must give notice to a Member of a Board meeting at which the proposed resolution to terminate that person's membership will be considered:
- (i) setting out the place, date and time of the meeting; and
  - (ii) setting out the proposed resolution and the grounds for the proposed termination of that person's membership; and
  - (iii) informing the Member that they may submit written submissions or make oral submissions in accordance with Article 4.4(c)(ii) to the Board before the resolution is put to a vote.

#### **4.5 Effect of cessation of membership**

- (a) Subject to Article 4.4, a person who ceases to be a Member shall continue to be liable for all moneys due by the Member to the Company as were incurred before the Member ceased to be a Member.
- (b) If a person ceases to be a Member of the Company, then that person's name will be removed from the Register of Members as a Member.

### **5. MEETINGS OF MEMBERS**

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#### **5.1 Calling a meeting of Members**

Subject to the Corporations Act:

- (a) the Board may call a General Meeting at a time and place as the Board decides;



- (b) the Board must call and arrange to hold a General Meeting on the request of Members; or
- (c) the Members may call and arrange to hold a General Meeting.

## **5.2 Annual General Meetings**

The Company must hold an AGM in accordance with the Corporations Act. An AGM is to be held in addition to any other General Meetings held by the Company in each financial year.

## **5.3 Notification of a meeting of Members**

Subject to the Corporations Act, at least 21 days' written notice of a meeting must be given to:

- (a) each Member;
- (b) each Director; and
- (c) the auditor.

The notice of meeting must comply with the Corporations Act and may be given in any manner permitted by the Corporations Act.

## **5.4 Accidental omission**

The non-receipt of notice of a General Meeting by a person entitled to receive that notice, or the accidental omission to give notice of a General Meeting to a person entitled to receive that notice, does not invalidate any resolution passed at the General Meeting.

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

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### **6.1 Meetings at more than one place**

- (a) A meeting of Members may be held in two or more places linked together by any technology that:
  - (i) gives the Members as a whole in those places a reasonable opportunity to participate in proceedings;
  - (ii) enables the chair of the meeting to be aware of proceedings in each place; and
  - (iii) enables the Members in each place to vote on a show of hands and on a poll.
- (b) If a meeting of Members is held in two or more places under Article 6.1(a):
  - (i) a Member present at one of the places is taken to be present at the meeting; and
  - (ii) the chair of that meeting may determine at which place the meeting is taken to have been held.

### **6.2 Adjourning meetings of Members**

- (a) The chair of a meeting of Members at which a quorum is present:
  - (i) may adjourn the meeting with the consent of the meeting by ordinary resolution; and
  - (ii) must adjourn the meeting if directed by ordinary resolution.

- (b) Subject to Article 6.2(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting of Members adjourned under this Article 6.2.
- (c) If a General Meeting is adjourned for thirty (30) days or more, the Company must give new notice of the resumed or adjourned meeting in accordance with the requirements of Article 5.3.
- (d) The only business that an adjourned meeting of Members may deal with is business unfinished at the meeting that was adjourned.

### **6.3 Quorum**

- (a) No business shall be transacted at any General Meeting of Members unless a quorum of Members is present at the time when the meeting proceeds to the business. A quorum shall consist of:
  - (i) ten (10) Members present in person or by proxy as determined by Article 6.3(b); or
  - (ii) if less than twenty (20) Members are eligible to attend and vote at a meeting of Members, 50% of the Members eligible to attend and vote at the Members' meeting.
- (b) In determining whether a quorum is present individuals attending as a proxy or attorney for a Member shall be counted. However, if a Member has appointed more than one proxy or representative, only one of them shall be counted. If an individual is attending both as a Member and as a proxy or as an attorney, then that person will be counted as present in each capacity.

### **6.4 Commencement of a meeting of Members**

- (a) If within fifteen (15) minutes from the time appointed for the meeting a quorum is not present, the Members' meeting is adjourned to the date, time and place the Board specifies in a resolution of the majority of Directors and as conveyed in a notice to the Members. If the Board does not specify one or more of those things, the meeting is adjourned to:
  - (i) the same day in the next week, if the date is not specified;
  - (ii) the same time, if the time is not specified; and
  - (iii) the same place, if the place is not specified.
- (b) If no quorum is present at the resumed meeting within thirty (30) minutes after the time for the meeting, the meeting is to be dissolved.

### **6.5 Chair of meetings of Members**

- (a) The Chair must (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) chair each General Meeting.
- (b) If at a meeting of Members:
  - (i) the Chair is not present, then the Deputy Chair (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) shall chair the meeting unless the Chair arrives within fifteen (15) minutes after the time appointed for the holding of the General Meeting and is willing to act as chair of that meeting;

- (ii) the Chair is not present within fifteen (15) minutes after the time appointed for the holding of the General Meeting, then the Deputy Chair (if present within fifteen (15) minutes after the time appointed for the holding of the meeting and willing to act) shall chair the meeting; or
  - (iii) the Chair is present within that time but is not willing to chair all or part of that General Meeting and the Deputy Chair is not present or the Deputy Chair is present but is not willing to chair that meeting, then the Directors present may, by majority vote, elect another Director or another person present to chair all or part of the General Meeting.
- (c) Subject to Article 6.5(a), if at a meeting of Members:
- (i) a chair of that meeting has not been elected by the Directors present under Article 6.5(b); or
  - (ii) the chair elected by the Directors present is not willing to chair all or part of a meeting of Members,
- the Members present must elect another person, present and willing to act, to chair all or part of that meeting.
- (d) If a person is only elected to chair a part of that meeting then the Members present must elect another person, present and willing to act, to chair the remainder of that meeting. If no other person can be found, then the meeting is to be dissolved when there is no person willing to act in the position of the chair of that meeting.
  - (e) Subject to the Corporations Act, the dissolution of any General Meeting of the Members in the circumstances described by Article 6.5(d) does not affect the validity of any resolution passed by the Members at that meeting prior to its dissolution.

## **6.6 General conduct of meetings**

- (a) Subject to the Corporations Act, the chair of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chair of a meeting of Members may delegate any power conferred by this Article to any person.
- (c) The powers conferred on the chair of a meeting of Members under this Article 6.6 do not limit the powers conferred by law.

## **7. PROXIES AND ATTORNEYS**

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### **7.1 Appointment of a proxy**

- (a) Any Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person, which person may but need not be a Member, as the Member's proxy to attend and vote for the Member at the meeting.
- (b) An appointment of a proxy must be made by written notice to the Company or by notice to the Company by an electronic means specified by the Company:
  - (i) that complies with section 250A(1) of the Corporations Act; or
  - (ii) in any other form and mode satisfactory to the Board that is signed or otherwise authenticated by the Member in a manner satisfactory to the Board.

## **7.2 Appointment of an attorney**

A Member may appoint an attorney to act, or to appoint a proxy to act, at a General Meeting. The power of attorney must be signed in a manner satisfactory to the Board.

## **7.3 Notification of appointments to the Company**

For an appointment of a proxy or an attorney to be effective:

- (a) in the case of a proxy, the proxy appointment form;
- (b) in the case of a proxy executed or otherwise authenticated in a manner prescribed by a regulation made for the purposes of section 250A(1) of the Corporations Act by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it; and
- (c) in the case of an attorney, the power of attorney or a certified copy of it,

is received by the Company in accordance with section 250B(3) of the Corporations Act at least forty-eight (48) hours before the start of the relevant meeting or the resumption of an adjourned meeting.

## **7.4 Nature of appointment**

A Member may appoint a proxy or attorney to act at a particular General Meeting or making a standing appointment and may revoke any appointment. A proxy or attorney may, but need not be, a Member.

## **7.5 Suspension of proxy or attorney's powers if Member present**

- (a) A proxy or attorney has no power to act for a Member at a General Meeting at which the Member is present in person.
- (b) A proxy has no power to act for a Member at a General Meeting at which the Member is present by attorney.

## **7.6 Priority of conflicting appointment of attorney**

If more than one attorney appointed by a Member is present at a General Meeting and the Company has not received notice of revocation of any of the appointments:

- (a) an attorney appointed to act at that particular meeting may act to the exclusion of an attorney appointed under a standing appointment; and
- (b) subject to Article 7.6(a), an attorney appointed under a more recent appointment may act to the exclusion of an attorney appointed earlier in time.

## **7.7 More than one current proxy appointments**

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

## **7.8 Validity of proxy votes**

At a General Meeting where a proxy votes, the proxy's vote at that meeting will be valid unless the Company receives notice of any of the following before the meeting starts or resumes:

- (a) the appointing Member dies; or

- (b) the Member revokes the proxy's appointment.

## **8. ENTITLEMENT TO VOTE**

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### **8.1 Number of votes**

Subject to the Corporations Act:

- (a) each Member has one (1) vote in their own right on a show of hands or on a poll; and
- (b) a Member who also acts as a proxyholder or is an appointee under a power of attorney has such additional voting rights as conferred upon them by a valid proxy or power of attorney and may exercise those rights in respect of any resolution determined by a show of hands or on a poll.

### **8.2 Casting vote of chair**

In the case of an equality of votes on a resolution at a meeting of Members, the chair of that meeting has a casting vote on that resolution both on a show of hands and on a poll, in addition to any vote the chair of that meeting has in respect of that resolution. The chair has discretion whether or not to use its casting vote.

### **8.3 Voting restrictions**

- (a) No Member shall be entitled to vote at any General Meeting if the relevant contributions of the Member are in arrears at the date of the meeting, nor shall any person be entitled to vote on behalf of any such Member.
- (b) A Member present at a General Meeting is not entitled to vote on a resolution at that meeting where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (c) The Company must disregard any vote on a resolution purported to be cast by a Member present at a meeting of Members if that person is not entitled to vote on that resolution.
- (d) If a proxy purports to vote in a way or in circumstances that contravenes the Corporations Act, then on a show of hands the vote is invalid and the Company must not count it, and on a poll, Article 8.3(c) applies.

### **8.4 Objections to qualification to vote**

- (a) An objection to the qualification of a voter:
  - (i) may be made prior to the meeting or the adjourned meeting at which the vote objected is to be cast; or
  - (ii) at the meeting or the adjourned meeting at which the vote objected to is cast; and
  - (iii) must be determined by the chair of the meeting, whose decision shall be final.
- (b) If the chair of the meeting determines the qualification of a voter, the chair shall inform the meeting as to the reasons for its determination.

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

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### **9.1 Method of Voting**

- (a) A resolution put to the vote at a General Meeting must be decided on a show of hands and the votes of the proxies received unless a poll is demanded under Article 9.2 before or immediately after declaration of the result of the vote on a show of hands and the votes of the proxies received.
- (b) Unless a poll is demanded, a declaration by the chair of the meeting is conclusive evidence of the result, provided the declaration reflects the show of hands and the votes of the proxies received.
- (c) Neither the chair of the meeting nor the minutes of the General Meeting need to state the number of or the proportion of the votes recorded in favour or against on a show of hands and the votes of the proxies received.

## **9.2 Demand for a poll**

A poll may be demanded on any resolution (except a resolution concerning the election of the chair of a meeting) in accordance with section 250L of the Corporations Act. The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

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

If a poll is demanded:

- (a) if the resolution is for the adjournment of the General Meeting, the poll must be taken immediately and, subject to Article 9.3(c), in the manner that the chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to Article 9.3(c), in the manner that the chair of the meeting directs;
- (c) votes which the Corporations Act requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

## **10. DISTRIBUTION OF NOTICES AND DOCUMENTS**

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### **10.1 Distribution of notices and documents**

- (a) This Article applies to all notices and documents that the Corporations Act or this Constitution requires a party to this Constitution to send to another party to this Constitution.
- (b) A Member sending a notice to the Company must do so in writing and must address it to the registered office or to such other address as the Company specifies to Members from time-to-time.
- (c) The Company sending a notice to the Member must do so in writing and must address it to the Member's address appearing on the Register of Members from time-to-time.
- (d) A person may send a notice or other document to a recipient in any of the ways set out in this Articles 10.

## **10.2 Hand delivering the notice personally**

- (a) If hand delivered before 4:00pm on a Business Day, the recipient is deemed to have received the notice on that Business Day.
- (b) If hand delivered after 4:00pm on a Business Day, the recipient is deemed to have received the notice on the next Business Day.
- (c) If hand delivered on a day other than a Business Day, the recipient is deemed to have received the notice on the next Business Day.

## **10.3 Sending the notice by pre-paid post**

The recipient is deemed to have received the notice on the third Business Day after posting unless it is actually delivered earlier.

## **10.4 Sending the notice by facsimile transmission**

- (a) If sent before 4:00pm on a Business Day, the recipient is deemed to have received the notice on that Business Day.
- (b) If sent after 4:00pm on a Business Day, the recipient is deemed to have received the notice on the next Business Day.
- (c) If sent on a day other than a Business Day, the recipient is deemed to have received the notice on the next Business Day.

## **10.5 Sending the notice or document by electronic means other than by facsimile transmission**

- (a) If a Member nominates to receive notices and documents by electronic means the Company may provide the Member with such notices and documents in accordance with the Corporations Act.
- (b) If a notice or document is sent electronically before 4:00pm on a Business Day, the recipient is deemed to have received the notice or document on that Business Day.
- (c) If a notice or document is sent electronically after 4:00pm on a Business Day the recipient is deemed to have received the notice or document on the next Business Day.
- (d) If a notice or document is sent electronically on a day other than a Business Day the recipient is deemed to have received the notice or document on the next Business Day.

## **10.6 Notice of failed or non-delivery**

Article 10.5 does not apply where the person sending the notice or document by electronic means has evidence that the notice or document did not reach the recipient's electronic address.

# **11. BOARD SIZE, COMPOSITION AND GOVERNANCE**

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## **11.1 Board size**

Subject to the Corporations Act, the Members may from time to time by ordinary resolution increase or reduce the number of Directors. However, until the Members pass such a resolution there shall be a maximum of nine (9) Directors at any one time.

## **11.2 Board composition**

- (a) Subject to Article 11.1, the Board must have a minimum of six (6) and a maximum of nine (9) Directors, of which:

- (i) there must be at least three (3) Elected Directors; and
  - (ii) there may be up to six (6) Appointed Directors.
- (b) Subject to Article 11.2(a), the Board may, in its absolute discretion, resolve by simple majority to change its size and composition by any or all of the following:
- (i) holding an election at the next AGM for such number of Elected Director positions as it determines; and
  - (ii) appointing up to six (6) persons as Appointed Directors provided that there are at least three (3) Elected Directors.

### 11.3 Chair and Deputy Chair

- (a) Subject to Article 13.2 and 14.1, the Board must:
- (i) elect a Director as the Chair of the Board for a term being the lesser of:
    - (A) not exceeding their then current term of office as a Director, or
    - (B) until that person ceases to be a Director; and
  - (ii) elect a Director as the Deputy Chair of the Board, for a term being the lesser of:
    - (A) not exceeding their then current term of office as a Director, or
    - (B) until that person ceases to be a Director.
- (b) The Board may at any time remove the Chair or Deputy Chair by resolution.

## 12. DIRECTORS

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### 12.1 Type

The Board will be constituted by Elected Directors and Appointed Directors, as well as by any person appointed to fill a casual vacancy that arises from time to time.

### 12.2 Eligibility criteria

A person is not eligible to be elected or appointed as a Director:

- (a) unless the person is at least eighteen (18) years of age; or
- (b) for an Elected Director position, if that person ceases to be a Member; or
- (c) if they are of unsound mind or physically or mentally incapable of performing the functions of that office; or
- (d) if the person is prohibited from acting as a director under the Corporations Act or the Private Health Legislation or does not satisfy any guidelines or criteria for suitability for appointment as a director under the Private Health Legislation; or
- (e) if the person is a current employee of the Company; or
- (f) if, in accordance with criteria expressly specified by the Private Health Legislation or by the Board, the person is insufficiently qualified to be a Director or is not a fit and proper person to be a Director.



Criteria expressly specified by the Board as necessary qualifications to be a Director of the Company or for the purpose of assessing whether a person is a fit and proper person to be a Director may be disallowed by ordinary resolution of the Company in General Meeting.

### **12.3 Maximum term**

Subject to Article 13.2, a Director shall not serve on the Board for a period in total exceeding twelve (12) years.

### **12.4 Resignation**

- (a) A Director may resign by giving the Company notice of the Director's resignation.
- (b) The Director's office becomes vacant:
  - (i) if the notice of resignation specifies a date of resignation, on the date of resignation; or
  - (ii) otherwise, on the date the Company receives the notice of resignation.

### **12.5 Removal**

Whether or not a Director's appointment was expressed to be for a specified period, the Members may by ordinary resolution in a General Meeting remove a Director from office. The power to remove a Director under this Article is in addition to section 203D of the Corporations Act.

### **12.6 Automatic vacation of office**

- (a) The office of a Director shall automatically become vacant on the first to occur of the following events, if the Director:
  - (i) dies; or
  - (ii) ceases to hold any relevant appointment or qualification; or
  - (iii) ceases to be eligible to be a Director under Article 12.2 or Article 13.1; or
  - (iv) is disqualified from acting as a Director of the Company in accordance with the Corporations Act or the Private Health Legislation including by reason of bankruptcy; or
  - (v) cannot manage the Company because of their mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it; or
  - (vi) is absent without permission of the Board from:
    - (A) three (3) consecutive meetings of the Board; or
    - (B) three (3) meetings of the Board held in any financial year;
  - (vii) ceases to be a Member for any reason, except in the case of an Appointed Director;
  - (viii) in the case of an Appointed Director, in the circumstances described by Article 14.2; or
  - (ix) a proven breach of any obligation of confidentiality owed to the Company including, but not limited to, Article 12.9.

- (b) A Director whose office is vacated under Articles 12.6(a)(ii), 12.6(a)(iv) or 12.6(a)(v) will not be eligible for re-election until the disability (or disabilities) referred to is (or are) removed.

## **12.7 Casual Vacancy**

- (a) The Board may appoint a person to be a casual director:
  - (i) if a Director's office becomes vacant other than because the Director's term of office has ended; or
  - (ii) if for any reason, the number of Directors is less than the maximum or minimum number of Directors contemplated by Articles 11.1 and 11.2.
- (b) The Board may only appoint a person to fill a casual vacancy on the Board of Elected Directors who meets the criteria set out in Articles 12.2 and 13.1.
- (c) The term of office for a Director appointed to fill a vacancy in Article 12.7(a)(i) ends:
  - (i) if a General Meeting approves the appointment before the end of the next AGM after the Director's appointment, at the end of the term of office of the Director whose office has become vacant; and
  - (ii) otherwise, at the end of the next AGM after the Director's appointment.
- (d) The term of office for a Director appointed to fill a vacancy in Article 12.7(a)(ii) ends at the end of the next AGM after the Director's appointment.

## **12.8 Remuneration of Directors**

- (a) The aggregate sum of remuneration of the Board is determined or varied by ordinary resolution of Members at the AGM.
- (b) The individual Directors of the Company are to be paid the remuneration that the Board determines by resolution:
  - (i) in attending meetings of Directors or any meetings of committees of Directors;
  - (ii) in attending any meetings of Members of the Company including the AGM.
- (c) The Board may determine that the Company shall pay the Director's expenses that they properly incur:
  - (i) in attending meetings of Directors or any meetings of committees of Directors;
  - (ii) in attending any meetings of Members of the Company including the AGM; and
  - (iii) in connection with the Company's business.
- (d) The Board may by resolution cancel, suspend, reduce or postpone a Director's remuneration.

## **12.9 Confidentiality**

Each Director must keep all Confidential Information of the Company confidential and must not disclose that information, unless required to do so by law.

## 13. ELECTED DIRECTORS

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### 13.1 Additional eligibility criteria

Subject to complying with all applicable laws, the Board may from time to time adopt eligibility requirements additional to clause 12.2 which any candidate for any forthcoming election for an Elected Director position must satisfy.

### 13.2 Term of office

- (a) An Elected Director shall hold office from the conclusion of the AGM following their election for a period not exceeding the conclusion of the third AGM thereafter.
- (b) A retiring Elected Director who satisfies the eligibility requirements to act as an Elected Director as set out in this Constitution and as then determined by the Board may stand for re-election.
- (c) If an Elected Director is due to retire at the next AGM, for that Elected Director to be re-elected then they must be nominated for re-election as an Elected Director.

### 13.3 Nomination procedure

- (a) A nomination for an Elected Director on the Board under this Article must be:
  - (i) signed by at least two (2) Members of the Company who must not be related to the candidate whether by birth, marriage or a de-facto relationship; and
  - (ii) accepted in writing by the nominee.
- (b) Following nomination under this Article, a candidate for election as an Elected Director must submit to the Company:
  - (i) a nomination made in writing, signed by the candidate and in such form as the Board requires;
  - (ii) a declaration in such form as the Board requires that sets out:
    - (A) their qualifications and eligibility to be an Elected Director;
    - (B) their skills, knowledge and experience and their relevance to discharging their duties as a director of the Company;
    - (C) whether they have any interest or are aware of any matter which would affect their independence (including any matter relevant to the assessment of independence under the Private Health Legislation or Prudential Standards or the Company's "Fit and Proper Person" policy);
    - (D) whether they hold an office or have an interest in property whereby, whether directly or indirectly, duties or interests may be created that could conflict with the interests of a Director of the Company;
    - (E) any other matter the Board reasonably requires; and
  - (iii) a written consent to act as an Elected Director, signed by the candidate.
- (c) A nomination and declaration submitted by a candidate in accordance with Article 13.3(b) must be made available to Members at the registered office of the Company from the time of the closure of nominations according to Article 13.3(d) until the time of the closure of the ballot in which the candidate is seeking election.

- (d) A nomination, declaration and consent of a candidate made in accordance with Article 13.3(b) must be received at the registered office of the Company not later than 4:00pm on the day the Board specifies which is at least 90 days prior to the date of the AGM at which the candidate seeks election.
- (e) Any candidate may withdraw their nomination by written notice delivered to the Returning Officer before the time set for close of nominations.
- (f) The Company Secretary or, in their absence a person appointed by the Board, will serve as the returning officer for the election of the available Elected Directors positions (**Returning Officer**).
- (g) The Returning Officer must scrutinise nominations, declarations and consents immediately upon their receipt. The Returning Officer must reject a candidate's nomination if:
  - (i) the Returning Officer is not satisfied that the candidate is qualified or eligible to be a Director having regard to the criteria for an Elected Director listed in this Constitution; or
  - (ii) the candidate has not submitted a complete declaration or consent.

If the Returning Officer rejects a candidate's nomination, the Returning Officer must promptly notify the candidate of that decision and their rights of appeal.

- (h) The Returning Officer may require candidates to undergo the checks set out in the Company's "Fit and Proper Person" policy (or any replacement thereof) made in accordance with this Constitution.
- (i) The Returning Officer may require candidates to provide further information and/or attend interviews conducted by the Remuneration and Nominations Committee for the purpose of determining eligibility or their ability to complement the existing skills, experience and qualifications of the Board. A failure or refusal of a candidate to reasonably co-operate automatically disqualifies that person from the election or filling a casual vacancy of an Elected Director position.
- (j) The Remuneration and Nominations Committee has the power to rule that a candidate is ineligible to stand or serve as a Director no later than the time a ballot is conducted if that Committee is satisfied that person is not eligible to do so in accordance with this Constitution.
- (k) Any dispute with respect to a candidate's qualifications or eligibility for election must be referred to the Remuneration and Nominations Committee for determination. The candidate whose qualifications or eligibility for election is in dispute shall have an opportunity of giving orally or in writing any explanation or defence to the Committee meeting as they may think fit. The candidate in dispute and any other Director who is standing for election is not entitled to be present for the relevant Committee's deliberations and is not entitled to vote in respect of the Committee's determination. The Remuneration and Nominations Committee's determination on the matter is final.
- (l) The Board has the power to exclude a candidate from participating in the election for the available Elected Director positions by written notice to that candidate, if prior to the conduct of that ballot:
  - (i) the candidate is found to have provided false or misleading information to the Company in respect of their qualifications or eligibility to be an Elected Director; or
  - (ii) an event or any circumstance occurs which adversely affects or is likely to adversely affect the candidate's eligibility to stand and serve as an Elected Director including, but not limited to, being charged with a criminal offence.

- (m) Nominated candidates may prepare a statement in support of their candidacy for circulation to the Members. A candidate's statement must be reasonable in length, must address any matters specified by the Board including, but not limited to, the eligibility criteria and must not include any statement or assertion that is demonstrably false, misleading, or defamatory. The Returning Officer has the discretion to remove any content provided by candidates which it considers inappropriate.
- (n) The Returning Officer has the discretion to require candidates to resubmit statements before the close of nominations or omit candidate statements which do not satisfy the requirements of Article 13.3(m).

#### **13.4 Election procedure**

- (a) The Elected Directors are declared elected by the Returning Officer at the AGM.
- (b) If the number of candidates for election as Elected Directors is equal to or less than the number of then current vacancies for Elected Directors on the Board, the Returning Officer must declare those candidates to be duly elected as Elected Directors and need not conduct an election.
- (c) If the number of candidates for election as Elected Directors is greater than the number of then current vacancies for the available Elected Director positions determined by the Board, then an election for the available Elected Director positions will be undertaken by postal ballot or using such other means as determined by the Board. Each Member eligible to vote at the General Meeting at which the election of the available Elected Director positions is to be declared is entitled to lodge a direct vote in respect of that ballot.
- (d) The Directors may determine that a completed ballot paper may be lodged with the Company by hand, by post or by electronic means specified by the Directors. The Directors may specify procedures and rules for conducting a ballot.
- (e) The Company will use a preferential voting system for the election of the available Elected Director positions, unless the Board determines otherwise before the call for nominations for that election is made.
- (f) Each candidate may nominate one scrutineer and the Board may appoint a maximum of three scrutineers of a ballot. The nominations must be lodged by the deadline determined by the Returning Officer, which deadline must not be later than 4:00pm on the day before the count of the ballots. Candidates for election as Elected Directors and employees of the Company are not eligible to be scrutineers.
- (g) A scrutineer may:
  - (i) observe the sorting, counting and recording of votes lodged including, where voting by electronic means is allowed, the system for receiving and recording votes lodged;
  - (ii) ensure that the votes lodged, other than informal votes, are correctly credited to the candidates; and
  - (iii) raise any query with the Returning Officer regarding the ballot.
- (h) After the closure of nominations in accordance with Article 13.3(d), the Returning Officer must prepare for the ballot, including preparing ballot papers for the election.
- (i) The Returning Officer must determine the order in which candidates appear on the ballot paper by drawing of lots. If the ballot is conducted in part by electronic means, the order in which the candidates appear on the ballot paper must be reflected in the electronic message or electronic form which is seen by the Member when lodging a vote in the ballot by electronic means.

- (j) Ballot papers, or the equivalent electronic message or electronic form, must include instructions for completing the ballot and lodging a vote.
- (k) The Returning Officer must send to each Member eligible to vote at the AGM at which the election of Directors is to be declared, at the time determined by the Board and at least 21 days prior to that meeting:
  - (i) if the Member has nominated an electronic address or other electronic means to receive notices given by the Company under Article 10.5:
    - (A) an electronic message, or equivalent notification by electronic means, which will enable the Member to lodge a vote in the ballot by electronic means; and
    - (B) an electronic copy of the statement prepared by each candidate under Article 13.3(m); or
  - (ii) in all other cases:
    - (A) a ballot paper;
    - (B) a reply paid postal envelope addressed to the Returning Officer; and
    - (C) a copy of the statement prepared by each candidate under Article 13.3(m).
- (l) The ballot for an election of Elected Directors closes at 4:00pm the time that is 48 hours before the start of the AGM at which the election is to be declared.
- (m) The Returning Officer must cause the votes lodged to be scrutinised under their supervision if a scrutineer has been appointed in accordance with Article 13.4(f).
- (n) The Returning Officer must reject all informal votes. A vote is informal if:
  - (i) the Returning Officer cannot be satisfied that the vote is authenticated in the manner prescribed in this Article 13.4 or the procedures and rules for the ballot specified by the Board; or
  - (ii) it does not indicate a vote of the Member made in accordance with the instructions for the ballot.
- (o) The Returning Officer must declare the result of a ballot at the AGM. If there is one vacancy on the Board for an Elected Director, the candidate who receives the highest number of votes in the ballot is duly elected as an Elected Director. If there are two (2) vacancies on the Board of Elected Directors, the two candidates who receive the highest numbers of votes are duly elected as Elected Directors.
- (p) In the event of an equality of votes after all preferences are exhausted, the candidate or candidates to be elected will be determined by the candidate who has or candidates who have received the greatest number of first preference votes.
- (q) Any candidate who is dissatisfied with the manner in which the ballot was conducted may demand a recount of the votes cast by lodging a written application to the Returning Officer within seven (7) days after the closing date of the ballot. The written application must state the particulars of any allegedly irregularity.
- (r) The Returning Officer must retain the ballot papers and such other records (including electronic records) necessary to authenticate the ballot securely at the registered office of the Company for a minimum period of three months after the declaration of the ballot.
- (s) An accidental error or omission by the Returning Officer that does not materially affect the result of a ballot does not invalidate an election of a Director made as a result of a ballot.

- (t) A decision by the Board, the Remuneration and Nominations Committee, the Company Secretary or the Returning Officer in relation to the matters set out in this Article 13 does not invalidate the election process for the available Elected Director positions, nor does it give rise to any liability on the part of the Company, the Directors, the Committee, the Company Secretary, or the Returning Officer.

### **13.5 Casual Vacancies**

If a casual vacancy arises in relation to an Elected Director, then the Board may consider if the candidate who received the next highest vote in the election for that position should be appointed to fill the casual vacancy provided that person gives the Company:

- (a) a declaration (in the form required by the Company) that they continue to satisfy the eligibility requirements of Article 12.2; and
- (b) a written consent to act as a Director.

## **14. APPOINTED DIRECTORS**

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### **14.1 Term of office**

- (a) An Appointed Director shall be appointed by an ordinary resolution of the Board on such terms as agreed by the Directors and for a term of up to three (3) years.
- (b) After the appointment of an Appointed Director is made, the Company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the Company at the end of the AGM at which the resolution is considered.

### **14.2 Automatic vacation**

If at any time during the term of office of an Appointed Director that person ceases to hold or possess those qualifications or satisfy the criteria set out in their letter of appointment, then that position shall automatically become vacant unless:

- (a) the Board requires that Appointed Director within a reasonable period of time to show cause why they should remain in that position; and
- (b) the Appointed Director in question can satisfy the Board they continue to meet the eligibility requirements of Article 12.2.

## **15. GENERAL POWERS OF THE BOARD OF DIRECTORS**

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### **15.1 The Board**

- (a) The Board of the Company:
  - (i) governs the business of the Company;
  - (ii) subject to the Corporations Act and this Constitution, may exercise all the powers of the Company; and
  - (iii) subject to Private Health Legislation, may exercise all the powers of the Company to manage any Health Benefits Fund operated by the Company and make, rescind and vary Health Fund Rules.

## 15.2 Delegation

- (a) The Board may delegate any of its powers to any Committee or to any other person any of the powers conferred on the Board by the Constitution or the Corporations Act, provided that:
  - (i) any delegation of a power to expend money shall be limited to a sum to be determined by the Board;
  - (ii) the Board may permit the delegate to sub-delegate any powers delegated to them subject to any limitations imposed by the Board;
  - (iii) the Committee or the person to whom the Board delegates any of its powers reports back to the Board in a timely manner on the exercise of those powers; and
  - (iv) the Board complies with the requirements of this Constitution.
- (b) The Board must establish policies for the guidance of delegates in the exercise of any powers so delegated.

## 15.3 Negotiable instruments

The Board may authorise a person or persons to sign, draw, accept, endorse or otherwise execute negotiable instruments for the Company. The Board may authorise the application of signatures to negotiable instruments by machine or other facsimile method.

## 15A. LIMITATION OF THE POWERS OF THE BOARD

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### 15A.1 Unsolicited proposal to acquire control of the Company

- (a) The Board must not cause an application to be made under Part 5.1 of the Corporations Act for an order for a meeting of Members in respect of a compromise or arrangement proposed between the Company and the Members in connection with an unsolicited proposal to:
  - (i) acquire control of the Company; or
  - (ii) merge or amalgamate the Company with another company,

unless the decision to make the application is ratified by the Company in General Meeting in accordance with Article 15A.1(c).
- (b) The Board must not:
  - (i) sell or dispose of the main undertaking of the Company;
  - (ii) enter into an arrangement with a private health insurer under which private health insurance policies referable to a Health Benefits Fund of the Company become referable to a health benefits fund of the other private health insurer pursuant to section 146-5 of the Private Health Insurance Act 2007 (Cth);
  - (iii) cause an application to be made under section 126-42 of the Private Health Insurance Act 2007 (Cth) for approval to convert to being registered as a for-profit insurer; or
  - (iv) cause an application to be made under Part 5.1 of the Corporations Act for an order for a meeting of Members in respect of a compromise or arrangement proposed between the Company and the Members which would have the effect of



transferring the main undertaking of the Company to another company or companies,

in connection with an unsolicited proposal to acquire the main undertaking of the Company unless the Board's decision is ratified by the Company in General Meeting in accordance with Article 15A.1(c).

- (c) The Company cannot pass a resolution to ratify a decision of the Board under Article 15A.1(a) or 15A.1(b) at a meeting of Members unless:
- (i) at least 21 days' notice of the meeting has been given;
  - (ii) at least 45% of the Members eligible to vote on the resolution cast a vote on the resolution (whether in person or by proxy); and
  - (iii) the resolution has been passed by at least 85% of the votes cast by Members.

## **15A.2 Proposal to acquire control of the Company**

- (a) The Board must not cause an application to be made under Part 5.1 of the Corporations Act for an order for a meeting of Members in respect of a compromise or arrangement proposed between the Company and the Members in connection with a proposal (other than a proposal described in Article 15A.1(a)) to:

- (i) acquire control of the Company;
- (ii) merge or amalgamate the Company with another company;

unless the decision to make the application is ratified by ordinary resolution of the Company in General Meeting in accordance with Article 15A.2(c).

- (b) The Board must not:
- (i) sell or dispose of the main undertaking of the Company;
  - (ii) enter into an arrangement with a private health insurer under which private health insurance policies referable to a health benefits fund of the Company become referable to a health benefits fund of the other private health insurer pursuant to section 146-5 of the Private Health Insurance Act 2007 (Cth);
  - (iii) cause an application to be made under section 126-42 of the Private Health Insurance Act 2007 (Cth) for approval to convert to being registered as a for-profit insurer; or
  - (iv) cause an application to be made under Part 5.1 of the Corporations Act for an order for a meeting of Members in respect of a compromise or arrangement proposed between the Company and the Members which would have the effect of transferring the main undertaking of the Company to another company or companies,

in connection with a proposal (other than a proposal described in Article 15A.1(b)) to acquire the main undertaking of the Company unless the Board's decision is ratified by ordinary resolution of the Company in General Meeting in accordance with Article 15A.2(c).

- (c) The Company cannot pass a resolution to ratify a decision of the Board under Article 15A.2(a) or 15A.2(b) at a meeting of Members unless:
- (i) at least 21 days' notice of the meeting has been given;

- (ii) at least 25% of the Members eligible to vote on the resolution cast a vote on the resolution (whether in person or by proxy).

### **15A.3 Changing the company type**

- (a) An application must not be made under section 163 of the Corporations Act to change to a company of a different type unless a special resolution has been passed by the Company in accordance with section 162 of the Corporations Act in a General Meeting satisfying the requirements of Article 15A.3(b).
- (b) The Company cannot pass a special resolution under Article 15A.3(a) unless:
  - (i) at least 21 days' notice of the meeting has been given;
  - (ii) at least 45% of the Members eligible to vote on the resolution cast a vote on the resolution (whether in person or by proxy).

### **15B. AMENDMENT OF THE CONSTITUTION**

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- (a) The Company cannot:
  - (i) modify or repeal Articles 2.2, 2.3, 4.2, 15.1, 15A, 15B or 15C;
  - (ii) adopt any rule which is inconsistent with Articles 2.2, 2.3, 4.2, 15.1, 15A, 15B or 15C; or
  - (iii) adopt a constitution which does not include provisions which are of equivalent effect to each of Articles 2.2, 2.3, 4.2, 15.1, 15A, 15B and 15C,

unless a special resolution has been passed by the Company in a General Meeting satisfying the requirements of Article 15B(b).
- (b) The Company cannot pass a special resolution under Article 15B(a) unless:
  - (i) at least 21 days' notice of the meeting has been given;
  - (ii) at least 45% of the Members eligible to vote on the resolution cast a vote on the resolution (whether in person or by proxy); and
  - (iii) the resolution has been passed by at least 85% of the votes cast by Members entitled to vote on the resolution.
- (c) The requirements of this Article 15B are a further requirement of the kind specified in section 136(3) of the Corporations Act.

### **15C. SUNSET**

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- (a) Articles 15A and 15B cease to apply at the end of three (3) years from the date upon which Articles 15A and 15B were inserted in the Constitution.
- (b) Articles 15A and 15B may be continued for further periods of no more than three (3) years in duration by special resolution of the Company in General Meeting.

## **16. MEETINGS OF DIRECTORS**

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### **16.1 Calling and conduct of Board meetings**

- (a) The Board shall meet as and when necessary to carry out the efficient operation of the Company.
- (b) The Board may adjourn and otherwise regulate its meetings as it thinks fit providing that the Board shall meet at least four (4) times every calendar year.
- (c) A Director or the Secretary (upon the authority of a Director) may call a Board meeting by giving reasonable notice to every other Director.

### **16.2 Board resolutions**

- (a) A resolution of the Board must be passed by a majority of the votes cast by the Directors present or deemed to be present and entitled to vote on the resolution.
- (b) Each Director shall have one (1) vote. In the case of an equality of votes, the chair of the meeting shall have a second or casting vote.
- (c) A document generated by electronic means which purports to be a resolution of the Board is to be treated as a resolution in writing and a document generated electronically bearing a copy of an electronic signature is to be treated as signed.

### **16.3 Quorum of Board meetings**

- (a) Subject to the Corporations Act, a quorum for a meeting of the Board of Directors is a majority of the total number of Directors.
- (b) A quorum for a meeting of the Directors must be present at all times during the meeting.
- (c) If there are not enough persons to form a quorum for a meeting of the Directors, the meeting is to be dissolved and transferred to an alternate date.
- (d) If, at any time, the number of Directors is less than the quorum:
  - (i) the Board may meet only for the purpose of filling any casual vacancies or for calling a General Meeting of Members; and
  - (ii) the Board may conduct business by circulating a resolution under Article 16.6.

### **16.4 Chair of Board meetings**

- (a) The Chair elected under Article 11.3 will preside as chair at every meeting of the Board, or if there is no Chair, or if the Chair is not present within ten (10) minutes after the time appointed for holding the meeting, then the Deputy Chair shall preside over the meeting and if there is no Deputy Chair elected under Article 11.3 or if the Deputy Chair is not present within ten (10) minutes after the time appointed for holding the meeting, then the Directors present may choose one of their number to chair the meeting.
- (b) The Board must elect a Director present to chair a meeting, or part of it, if:
  - (i) a Director has not already been appointed to chair the meeting; or
  - (ii) a previously appointed Chair or Deputy Chair is not available, or declines to act, for the meeting, or part of it.

## 16.5 Committees of Directors

- (a) The Board may delegate any of its powers and/or functions (not being duties imposed exclusively on the Board by the Corporations Act, the Private Health Legislation or the Constitution) to one or more committees consisting of such number of Directors as the Board thinks fit.
- (b) The persons making up a Committee may appoint one of the Directors in the Committee, as a chair of their meetings.
- (c) Each person making up any Committee shall have one vote at meetings of that Committee.
- (d) Subject to any restrictions that the Board imposes, a Committee may meet and adjourn or otherwise regulate its meeting as it thinks fit.
- (e) Questions arising at any meeting shall be determined by a majority of votes of the persons present, and eligible to vote.
- (f) In the case of an equality of votes the chair of that meeting will have a second or casting vote.

## 16.6 Circulating resolutions

- (a) The Board of Directors may pass a resolution without a Board meeting being held if the Chair and all other Directors 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 a document may be used for signing by different Directors if the wording of the resolution and statement is identical in each copy. A facsimile or electronic message containing the text of such a document expressed to have been signed by a Director is, for the purposes of this Article, a document signed by the Director.
- (c) The resolution is passed when the last Director signs and the resolution is returned to and received by the Secretary.

## 17. DIRECTOR'S CONFLICT OF INTEREST

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### 17.1 Director not in breach if acts in matters relating to Director's interests

- (a) This Article applies if:
  - (i) a Director has an interest or duty in relation to a matter that is not a Material Personal Interest; or
  - (ii) if a Director with a Material Personal Interest in relation to the Company's affairs:
    - (A) complies with the requirements of the Corporations Act in relation to disclosure of the nature and extent of the interest and in relation to the Company's affairs before acting in a matter that relates to the interest; and
    - (B) may be present and vote on the matter under the Corporations Act.
- (c) The Director is not in breach of their duties to the Company merely because the Director acts in matters that relate to the Director's interest.
- (d) The Director may vote on matters that relate to the Director's interest.
- (e) In relation to any transactions that relate to the Director's interest:

- (i) the transactions may proceed;
- (ii) the Company cannot avoid the transactions merely because of the Director's interest; and
- (iii) the Director may retain benefits under the transactions despite the Director's interest.

## **17.2 Director not in breach if does not act in matters relating to Director's interests**

- (a) This Article applies if:
  - (i) a Director with a Material Personal Interest in relation to a matter complies with the requirements of the Corporations Act in relation to disclosure of the nature and extent of the interest and in relation to the Company's affairs; but
  - (ii) must not be present and vote on the matter under the Corporations Act.
- (b) The Director is not in breach of their duties to the Company merely because the Director does not act in relation to the matter.
- (c) The Board may vote on matters that relate to the Director's interest in the Director's absence.
- (d) In relation to any transactions that relate to the Director's interest:
  - (i) the transactions may proceed; and
  - (ii) the Company cannot avoid the transactions merely because of the Director's interest; and
  - (iii) the Director may retain benefits under the transactions despite the Director's interest.

## **17.3 Execution of instruments**

A Director may participate in the execution of an instrument for the Company, regardless of any interest or duty that the Director may have:

- (a) whether or not the Director has complied with the requirements of the Corporations Act in relation to disclosure of the nature and extent of the interest and its relation to the Company's affairs; and
- (b) whether or not the Director may be present and vote in relation to the execution of the instrument under the Corporations Act.

## **18. INDEMNITY**

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### **18.1 Indemnities for offices and former officers**

- (a) Subject to and so far as permitted by Corporations Act, the Competition and Consumer Act 2010 (Cth) and any other applicable law:
  - (i) the Company must, to the extent the person is not otherwise indemnified, indemnify every officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the liability arises out of conduct involving a lack of good faith; and

- (ii) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

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

- (b) Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay premium on, a contract of insurance in respect of any person.
- (c) The indemnity in favour of officers under Article 18.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Company or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.
- (d) Subject to the Corporations Act, the Competition and Consumer Act 2010 (Cth) and any other applicable law, the Company may, without limiting a person's rights under this Article 18, enter into an agreement with a person who is or has been an officer of the Company or any of the Company's subsidiaries, to give effect to the rights of the person under this Article 18 on any terms and conditions that the Board thinks fit.

## **19. ADMINISTRATION**

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### **19.1 Secretary**

- (a) The Board shall appoint a Secretary in accordance with the requirements of the Corporations Act.
- (b) Subject to Article 19.1 and Article 19.2 the Board may determine the Secretary's terms of appointment, powers, duties and remuneration. At any time the Board may vary or revoke a determination, or an appointment, whatever the terms of the appointment.

### **19.2 Resignation of Secretary**

- (a) The Secretary may resign by giving the Company notice of the Secretary's resignation.
- (b) The Secretary's office becomes vacant on the earlier of:
  - (i) if the notice of resignation specifies a date of resignation, then on that date; or
  - (ii) if the notice of resignation does not specify a date of resignation, then on the date the Company receives the notice of resignation and registers the resignation in the Company's files.

### **19.3 Seal**

- (a) The Board is to provide for the safe custody of the Seal.
- (b) The Seal is to be used only by the authority of the Board or such officers authorised by the Board.
- (c) To witness the affixing of the Seal on a document, every document to which the Seal is affixed shall be countersigned by the following:
  - (i) two (2) Directors; or

- (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Board for that purpose;
  - (iv) the Chief Executive Officer and a Secretary; or
  - (v) a Secretary and another person appointed by the Board for that purpose.
- (d) The Company may execute a document without a common Seal if the document is signed by:
- (i) two (2) Directors; or
  - (ii) a Director and a Secretary; or
  - (iii) a Director and another person appointed by the Board of Directors for that purpose; or
  - (iv) the Chief Executive Officer and a Secretary; or
  - (v) a Secretary and another person appointed by the Board for that purpose.
- (e) The Board of Directors may resolve, generally or in a particular case, that any signature on certificates for membership, or other common use documents specified by the Board of Directors, may be affixed by mechanical or other means.
- (f) Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Company in the manner, and by the persons, as the Board of Directors resolve.

## 20. DEFINITIONS AND INTERPRETATION

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### 20.1 Definitions

In this Constitution:

*AGM* means annual general meeting of the Company;

*Appointed Director* means a Director appointed by the Board in accordance with this Constitution;

*Article* means an Article of this Constitution;

*Board* means the Board of Directors of the Company;

*Business Day* means a day that is not a Saturday, Sunday, or a public holiday or bank holiday in Sydney, Australia;

*Chair* means the Director elected as chairperson in accordance with this Constitution;

*Committee* means the committee of Directors established under this Constitution;

*Company* means the Railway & Transport Health Fund Ltd (ABN 93 087 648 744);

*Confidential Information* means information of the Company which is not publicly available (whether by breach of this Constitution or any duty of confidentiality) and which has not been developed independently of the Company;

*Constitution* means the constitution of the Company, as amended from time to time;

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

*Deputy Chair* means the Director elected as deputy chairperson in accordance with this Constitution;

*Director* means a person holding office as a director of the Company;

*Elected Director* means a Member of the Company elected by the Members of the Company at a meeting called for that purpose;

*General Meeting* means a general meeting of the Members and includes the AGM;

*Health Benefits Fund* means any health benefits fund established under the Private Health Legislation and operated by the Company;

*Health Fund Rules* means the rules of the Health Benefits Fund, as amended from time to time;

*Material Personal Interest* has the same meaning as in Part 2D.1 of the Corporations Act;

*Member* means a person whose name has been entered in the register of members that the Company keeps as required under the Corporations Act;

*Private Health Legislation* means the Private Health Insurance Act 2007 (Cth) and its accompanying regulations and rules, as well as any other legislation governing private health insurance in Australia;

*Prudential Standards* has the meaning given to it by the Private Health Legislation;

*Restricted Access Group* has the meaning given to it by Article 4.1(b);

*Seal* means the Common Seal of the Company; and

*Secretary* means any person who is appointed in accordance with the Corporations Act to the statutory office of Company Secretary.

## **20.2 Interpretation**

In this Constitution:

- (a) the singular includes the plural and vice versa;
- (b) where an expression is defined in this Constitution, any other grammatical form of the expression has a corresponding meaning;
- (c) words and expressions defined in the Corporations Act have the same meaning in this Constitution;
- (d) headings are for purposes of convenience only and do not affect the interpretation of this Constitution;
- (e) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
- (f) a reference to this Constitution or another instrument includes all amendments or replacements of the Constitution or the other instrument;
- (g) a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:
  - (i) that replaces it; or
  - (ii) to which substantially all the powers and functions relevant to this Constitution are transferred; or



(h) the word "including" and similar expressions do not imply any limitations.

### **20.3 Time**

Unless expressly provided otherwise, when this Constitution or any notice given under this Constitution states a time or a period of time, the time stated is or the period of time is calculated by reference to Sydney time.

### **20.4 Replaceable rules do not apply**

The replaceable rules in the Corporations Act do not apply.