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LAWYERS

Constitution

Vegan Australia Limited

A company limited by guarantee and not having share capital

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Constitution

Vegan Australia Limited (Company)

1 INTERPRETATION

1.1 Definitions

In this Constitution unless the context otherwise requires:

ACN means Australian Company Number.

Act means the *Corporations Act 2001* as amended or re-enacted from time to time and includes any statutory instruments issued under the *Corporations Act 2001*.

ASIC means the Australian Securities and Investments Commission or any successor body.

Board means the board of directors.

Company means the company named above.

Constitution means this document and includes any variation or replacement of it.

Director means a person appointed as a director of the company or who is appointed to the position of an alternative director and is acting in that capacity.

Member means members of the company appointed under clause 6.1.

Office means the registered office of the company.

Personal Representative means, in respect of a member, a person who becomes entitled to membership in the company held by the member by reason of the death, mental ill health or bankruptcy of the member.

Replaceable Rules means the replaceable rules under, or as referred to in, the Act as amended or re-enacted from time to time.

Register means the register of members to be kept pursuant to the Act.

Seal means the common seal of the company (if any).

Secretary means any person appointed to perform the duties of secretary of the company.

Special resolution has the same meaning as in the Act.

Subsidiary has the same meaning as in the Act.

Writing or **Written** includes printing, lithography, photography and other modes of reproducing or representing words in a visible form.

1.2 General interpretive provisions

In this Constitution:

- (a) words importing the singular number include the plural number and vice versa; words importing any gender include every other gender; and words referring to a person include corporations;
- (b) where a word or an expression is defined, another part of speech or grammatical form of that word or expression has a corresponding meaning;
- (c) any reference to a clause is a reference to a clause of this Constitution;
- (d) headings to clauses, and italicised notes in brackets following some clauses, are added for convenience only and do not affect interpretation;
- (e) annotations or words which refer to sections of the Act or to Replaceable Rules do not form part of the Constitution;
- (f) a word or an expression which is defined in the Act has the same meaning when used in this Constitution unless the context otherwise requires; and
- (g) **includes** means "includes without limitation".

1.3 Replaceable Rules

The Replaceable Rules do not apply in respect of the Company except when they are expressly stated to apply.

1.4 Determining percentage of votes

Where a clause of this Constitution requires the percentage of votes a member has to be worked out, that percentage must be worked out as at the midnight before the relevant event.

(This reflects various sections of the Act including sections 249N(4), 249P(5) and 250L(4).)

1.5 Written notice

Written notice includes notice given by way of:

- (a) facsimile; and
- (b) electronic transmission.

1.6 Representatives

A representative appointed by a member that is a corporation may, unless otherwise specified in the appointment, exercise on that corporation's behalf, all of the powers that the corporation could exercise at a meeting or in voting on a resolution.

(This reflects section 250D(4) of the Act.)

2 PUBLIC COMPANY LIMITED BY GUARANTEE

The Company is a public company limited by guarantee and does not have share capital.

3 OBJECTS OF THE COMPANY

3.1 Charitable Objects:

- (a) The Company is a not for profit charitable institution established and located in Australia.
- (b) The principal object of the Company is to help end the exploitation, use, ownership and objectification of other animals by humans.
- (c) The principal activity of the Company is the promotion of vegan ethics and practice.
- (d) Without limiting the generality of clause 3.1(b) and 3.1(c), in pursuing the principal object and achieving the principal activity for which the Company is established, the Company will seek to:
 - (i) campaign for governments and other institutions to recognise and support veganism;
 - (ii) raise public awareness of vegan ethics and practice by engaging with media to provide an informed voice on issues relevant to veganism;
 - (iii) provide direct vegan education to the public through advertising and social media campaigns and the production of vegan promotional literature;
 - (iv) provide services and resources for new and existing vegans through the Company's website; and
 - (v) do all things as are incidental or conducive to the attainment of any or all of the objects stated in clause 3.1.

4 POWERS OF THE COMPANY

4.1 Legal capacity and powers of the company

The Company has the legal capacity and powers of an individual anywhere in the world. The Company also has all the powers of a body corporate, including the power to:

- (a) issue debentures whether irredeemable or redeemable;
- (b) grant a floating charge over the Company's property;

- (c) arrange for the Company to be registered or recognised as a body corporate in any place outside New South Wales; and
- (d) do anything that it is authorised to do under any law (including a law of a foreign country).

(This reflects section 124 of the Act.)

4.2 **Company may have a Seal**

- (a) The Company may, but need not, have a Seal. If the Company has a Seal, it must have set out on it:
 - (i) if the Company has its ACN in its name, the Company's name; or
 - (ii) otherwise, the Company's name and either:
 - (A) the expression "Australian Company Number" or "ACN" and the Company's ACN; or
 - (B) if the last 9 digits of the Company's ABN are the same, and in the same order as the last 9 digits of its ACN, the expression "Australian Business Number" or "ABN" and the Company's ABN.
- (b) The Company may have a duplicate Seal. The duplicate must be a copy of the Seal with the words "duplicate seal", "share seal", or "certificate seal" added.

(This reflects sections 123 and 149(1) of the Act.)

- (c) If the Company has a Seal, the Directors must provide for the safe custody of the Seal, which may only be used on the authority of the Directors or of a committee of the Directors authorised by the Directors.

4.3 **Agent exercising the company's power to make contracts**

Subject to the operation of a law that requires a particular procedure to be complied with in relation to the contract, the Company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the Company's express or implied authority and on behalf of the Company. The power may be exercised without using a common seal.

(This reflects section 126 of the Act.)

4.4 **Execution of documents by the company**

- (a) The Company may execute a document without using a common seal if the document is signed by:
 - (i) 2 Directors; or
 - (ii) a Director and Secretary.

- (b) If the Company has a Seal, the Company may execute a document if the Seal is fixed to the document and the fixing of the Seal is witnessed by:
- (i) 2 Directors; or
 - (ii) a Director and a Secretary.

(This reflects section 127 of the Act.)

5 INCOME AND PROPERTY OF THE COMPANY

5.1 Income and property to be applied towards objects

All income and property of the Company must be solely applied towards the promotion of the objects of the Company.

5.2 No payments to members

Subject to clause 5.3, no part of the income or property of the Company may be paid by way of dividend, bonus or otherwise to the Members of the Company.

5.3 Payments in good faith

Nothing in this Constitution prevents the Company from making payment in good faith:

- (a) of reasonable and proper remuneration to any employees of the Company;
- (b) to any Member of the Company in relation to any contract, right or claim in which that Member is interested or which arises other than by virtue of the Member's membership of the Company;
- (c) of reasonable interest on any money lent to the Company by any Member of the Company; or
- (d) of reasonable or proper rent for premises let by any Member to the Company.

5.4 Conduit Policy

Any allocation of funds or property to other persons or organisations will be made in accordance with the established purposes of the Company and will not be influenced by the preference of the donor.

6 MEMBERSHIP

6.1 Entry as a member

- (a) A general meeting of the Company's Members or a duly constituted meeting of the Company's Directors may resolve to invite a person to apply to be a Member of the Company.

- (b) Any person invited to apply to be a Member under clause 6.1(a) must comply with the conditions or requirements as may be stipulated from time to time by the Directors or approved by the Members in general meeting.
- (c) Every applicant for membership of the Company must sign an undertaking to be bound by the provisions of this Constitution.
- (d) Admission to membership will only become effective upon the passing of a resolution by the majority of Directors that the Member's name be entered into the Register. The Directors must not unreasonably delay consideration of such a resolution.
- (e) The rights and privileges of a Member are personal, non-transferable and cease on the death of a Member or on the cessation of a Member's membership.

6.2 Expulsion of members

- (a) If any Member wilfully refuses or neglects to comply with the provisions of this Constitution or has conducted itself in a way which has brought discredit upon the Company the Directors may by resolution expel that Member from the Company and remove that Member's name from the Register.
- (b) The Member in respect of which a resolution under clause 6.2(a) is proposed, must be given at least 14 days notice of the Director's meeting at which the resolution is to be considered and must be given an opportunity to:
 - (i) attend the meeting; and
 - (ii) give a Written explanation or defence in relation to the resolution proposed under clause 6.2(a).

6.3 Cessation of membership

A Member will cease to be a Member if the Member gives Written notice of its resignation to the Company and the resignation is accepted by the Directors.

7 CIRCULATING RESOLUTIONS OF MEMBERS

7.1 Circulating resolutions when more than 1 Member

- (a) Except in the case of a resolution under section 329 of the Act to remove an auditor, or any other resolution which the Act or this Constitution requires to be passed at a general meeting, the Company may pass a resolution without a general meeting being held if all the 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 a document may be used for signing by Members if the wording of the resolution and statement is identical in each copy.

- (c) The resolution is passed when the last Member signs the document.
- (d) This clause does not affect any rule of law relating to the assent of Members not given at a general meeting.

7.2 Resolutions of company when 1 Member

If the Company has only 1 Member, that Member may pass a resolution by the Member recording it and signing the record.

(This reflects section 249B of the Act.)

8 CALLING MEETINGS OF MEMBERS

8.1 Calling of meetings of Members by a Director

A Director may call a meeting of the Company's Members.

(This reflects section 249C of the Act which is a Replaceable Rule.)

8.2 Calling of general meeting by Directors when requested by members

- (a) The Directors of the Company must call and arrange to hold a general meeting on the request of:
 - (i) Members with at least 5% of the votes that may be cast at the general meeting; or
 - (ii) at least 100 Members (or such different number as may be prescribed by the regulations) who are entitled to vote at the general meeting.
- (b) The request must:
 - (i) be in Writing;
 - (ii) state any resolution to be proposed at the meeting;
 - (iii) be signed by the Members making the request; and
 - (iv) be given to the Company.
- (c) Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.
- (d) The Directors must call the meeting within 21 days after the request is given to the Company. The meeting is to be held not later than 2 months after the request is given to the Company.

(This reflects section 249D of the Act.)

8.3 Failure of Directors to call a general meeting

- (a) Members with more than 50% of the votes of all of the Members who make a request under clause 8.2 may call and arrange to hold a general meeting if the Directors do not do so within 21 days after the request is given to the Company.
- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called. The meeting must be held not later than 3 months after the request is given to the Company.
- (c) To call the meeting the Members requesting the meeting may ask the Company for a copy of the Register. The Company must give the Members the copy of the Register within 7 days after request without charge.
- (d) The Company must pay the reasonable expenses the Members incurred because the Directors failed to call and arrange the meeting.
- (e) The Company may recover the amount of the expenses from the Directors. However, a Director is not liable for the amount if they prove that they took all reasonable steps to cause the Directors to comply with clause 8.2. The Directors who are liable are jointly and individually liable for the amount. If a Director who is liable for the amount does not reimburse the Company, the Company must deduct the amount from any sum payable as fees to, or remuneration of, the Director.

(This reflects section 249E of the Act.)

8.4 Calling of general meeting by members

- (a) Members with at least 5% of the votes that may be cast at a general meeting of the Company may call, and arrange to hold, a general meeting. The Members calling the meeting must pay the expenses of calling and holding the meeting.
- (b) The meeting must be called in the same way, so far as is possible, in which general meetings of the Company may be called.

(This reflects section 249F of the Act.)

8.5 Amount of notice of meetings

- (a) Subject to clause 8.5(b) at least 21 days notice must be given of a meeting of the Company's Members.
- (b) The Company may call on shorter notice:
 - (i) an annual general meeting, if all the Members entitled to attend and vote at the annual general meeting agree beforehand; and
 - (ii) any other general meeting, if Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (c) A Company cannot call an annual general meeting or other general meeting on shorter notice if it is a meeting of the kind referred to in clause 8.5(d).

- (d) At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to:
 - (i) remove an auditor under section 329 of the Act; or
 - (ii) remove a Director under clause 14.2(b) or appoint a Director in place of a Director removed under that clause.

(This reflects section 249H of the Act.)

8.6 Notice of meetings of members to members and directors

- (a) Written notice of a meeting of the Company's Members must be given individually to each Member entitled to vote at the meeting and to each Director.

(This reflects section 249J(1) of the Act.)

- (b) The Company may give the notice of a meeting to a Member:
 - (i) personally;
 - (ii) by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member; or
 - (iii) by sending it to the facsimile number or electronic address (if any) nominated by the Member.

(This reflects section 249J(3) of the Act.)

- (c) A notice of meeting sent by post is taken to be given 2 days after it is posted. A notice of meeting sent by facsimile, or other electronic means, is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.

(This substitutes for section 249J(4) of the Act which is a Replaceable Rule.)

8.7 Auditor entitled to notice and other communications

The Directors must give the Company's auditor, if any:

- (a) notice of a general meeting in the same way that a Member of the Company is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a Member of the Company is entitled to receive.

(This reflects section 249K of the Act.)

8.8 Contents of notice of meetings of members

A notice of a meeting of the Company's Members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);

- (b) state the general nature of the meeting's business;
- (c) if a Special Resolution is to be proposed at the meeting, set out an intention to propose the Special Resolution and state the resolution; and
- (d) if a Member is entitled to appoint a proxy, contain a statement setting out the following information:
 - (i) that the Member has a right to appoint a proxy;
 - (ii) whether or not the proxy needs to be a Member of the Company; and
 - (iii) that a Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

(This reflects section 249L of the Act.)

8.9 Notice of adjourned meetings

When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

(This reflects section 249M of the Act which is a Replaceable Rule.)

- 8.10 The accidental omission to give notice of a meeting or the non-receipt of notice by any person does not invalidate the proceedings at that meeting unless the court, on the application of the person concerned, a person entitled to attend the meeting or the ASIC, declares proceedings at the meeting to be void.

(This reflects section 1322(3) of the Act.)

9 MEMBERS' RIGHTS TO PUT RESOLUTIONS AT GENERAL MEETINGS

9.1 Members' resolutions

- (a) The following Members may give the Company notice of a resolution that they propose to move at a general meeting:
 - (i) Members with at least 5% of the votes that may be cast on the resolution; or
 - (ii) at least 100 Members (or some different number as may be prescribed by the regulations) who are entitled to vote at a general meeting.
- (b) The notice must:
 - (i) be in Writing;
 - (ii) set out the wording of the proposed resolution; and
 - (iii) be signed by the Members proposing to move the resolution.

- (c) Separate copies of a document setting out the notice may be used for signing by Members if the wording of the notice is identical in each copy.

(This reflects section 249N of the Act.)

9.2 Company giving notice of members' resolutions

- (a) If a company has been given notice of a resolution under clause 9.1, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.
- (b) The Company must give all of its Members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.
- (c) The Company is responsible for the cost of giving Members notice of the resolution if the Company receives the notice in time to send it out to Members with the notice of meeting.
- (d) The Members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the Company in giving Members notice of the resolution if the Directors do not receive the Members notice in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.
- (e) The Company need not give notice of the resolution if:
 - (i) it is more than 1,000 words long or defamatory; or
 - (ii) the Members making the request are to bear the expenses of sending the notice out, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

(This reflects section 249O of the Act.)

10 MEMBERS' STATEMENTS TO BE DISTRIBUTED

10.1 Grounds for statement

Members may request the Company to give to all of its Members a statement provided by the Members making the request about:

- (a) a resolution that is proposed to be moved at a general meeting; or
- (b) any other matter that may be properly considered at a general meeting.

10.2 Who may request

The request must be made by:

- (a) Members with at least 5% of the vote that may be cast on the resolution; or

- (b) at least 100 Members (or such different number as may be prescribed by the regulations) who are entitled to vote at the meeting.

10.3 **How request to be made**

The request must be:

- (a) in Writing;
- (b) signed by the Members making the request; and
- (c) given to the Company.

10.4 **Copies for signing**

Separate copies of a document setting out the request may be used for signing by Members if the wording of the request is identical in each copy.

10.5 **Distribution of statement**

After receiving the request, the Company must distribute to all of the Company's Members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

10.6 **When company bears cost**

The Company is responsible for the cost of making the distribution if the Company receives the statement in time to send it out to Members with the notice of meeting.

10.7 **When members bear cost**

The Members making the request are jointly and individually liable for the expenses reasonably incurred by the Company in making the distribution if the Company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the Company may resolve to meet the expenses itself.

10.8 **When company need not comply with request**

The Company need not comply with the request if:

- (a) the statement is more than 1,000 words long or defamatory; or
- (b) the Members making the request are responsible for the expenses of the distribution, unless the Members give the Company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

(This reflects section 249P of the Act.)

11 HOLDING MEETINGS OF MEMBERS

11.1 Purpose

A meeting of Members must be held for a proper purpose.

(This reflects section 249Q of the Act.)

11.2 Time and place for meetings of members

A meeting of Members must be held at a reasonable time and place.

(This reflects section 249R of the Act.)

11.3 Technology

The Company may hold a meeting of its Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

(This reflects section 249S of the Act.)

11.4 Quorum

(a) No business may be transacted at any general meeting unless a quorum of Members entitled to vote is present at the time when the meeting proceeds to business. A quorum is constituted by:

- (i) if there is only 1 Member, that Member;
- (ii) if there are 2 or more Members, then subject to clause 11.4(b), 2 Members.

For the purposes of this clause and clause 11.4(b) "Member" includes a person attending as a proxy or a body corporate representative. If a person has appointed more than 1 proxy or representative, only 1 of those proxies or representations is to be counted in determining whether a quorum is constituted.

(b) If within 15 minutes from the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same day in the next week at the same time and place or to such other day and at such other time and place as the Directors may determine, and if at the adjourned meeting a quorum is not present within 15 minutes from the time appointed for the meeting, the Member or Members present constitute a quorum.

(This substitutes for section 249T of the Act which is a Replaceable Rule.)

11.5 Chairing meetings of members

(a) The chair, if any, of the Board is to be the chair at every general meeting of the Company. If the chair of the Board cannot or will not chair a general meeting or is not present within 15 minutes after the time appointed for the holding of the meeting the Directors present may elect one of their number

to be the chair of the meeting but if they do not do so the Members present must elect the chair of the meeting.

- (b) The chair must adjourn a meeting of the Company's Members if the Members present with a majority of votes at the meeting agree or direct that the chair must do so.

(This substitutes for section 249U of the Act which is a Replaceable Rule.)

11.6 Auditor's right to be heard at general meetings

- (a) The Company's auditor (if any) is entitled to attend any general meeting of the Company.
- (b) The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.
- (c) The auditor is entitled to be heard even if:
 - (i) the auditor retires at the meeting; or
 - (ii) the meeting passes a resolution to remove the auditor from Office.
- (d) The auditor may authorise a person in Writing as their representative for the purpose of attending and speaking at any general meeting.

(This reflects section 249V of the Act.)

11.7 Adjourned meetings

- (a) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

(This reflects section 249W(1) of the Act.)

- (b) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

(This substitutes for section 249W(2) of the Act which is a Replaceable Rule.)

11.8 Annual general meetings

- (a) **Holding of annual general meetings**

The Company must, if required by the Act, hold an annual general meeting.

(See the requirements of section 250N of the Act.)

- (b) **Business of annual general meeting**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting;

- (i) the consideration of the annual financial report, Directors' report and auditor's report;

- (ii) the election of Directors;
- (iii) the appointment of the auditor;
- (iv) the fixing of the auditor's remuneration.

(This reflects section 250R of the Act.)

(c) Questions at annual general meetings

- (i) The chair of an annual general meeting must allow a reasonable opportunity for Members as a whole at the meeting to ask questions about or make comments on the management of the Company.
- (ii) If the Company's auditor or their representative is at the meeting, the chair of the annual general meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or their representative questions relevant to the conduct the audit and the preparation and content of the auditor's report.

(This reflects sections 250S and 250T of the Act.)

12 VOTING AT A MEMBERS' MEETINGS

12.1 How many votes a member has

- (a) On a show of hands each Member has 1 vote.
- (b) On a poll, each Member has 1 vote.
- (c) The chair does not have a casting vote in addition to any vote they have as a Member.

(This substitutes for section 250E of the Act which is a Replaceable Rule.)

12.2 Objections to right to vote at a meeting of the company's Members

A challenge to a right to vote at a Members' meeting:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair, whose decision is final.

(This substitutes for section 250G of the Act which is a Replaceable Rule.)

12.3 Votes need not all be cast in the same way

On a poll, a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

(This reflects section 250H of the Act.)

12.4 How voting is carried out

- (a) A resolution put to the vote at a Members' meeting must be decided on a show of hands unless a poll is demanded.
- (b) On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against the resolution.
- (c) Subject to this Constitution and the Act, resolutions of Members are to be decided by simple majority of votes cast in respect of the relevant resolution.

(This substitutes for section 250J of the Act which is a Replaceable Rule.)

12.5 Matters on which a poll may be demanded

- (a) A poll may be demanded on any resolution proposed at a shareholders' meeting.
- (b) Without limiting clause 12.5(a), a poll can be demanded on any resolution concerning:
 - (i) the election of the chair of a meeting; or
 - (ii) the adjournment of a meeting.
- (c) A demand for a poll may be withdrawn.

(This reflects section 250K of the Act.)

12.6 When a poll is effectively demanded

- (a) At a Members' meeting a poll may be demanded by:
 - (i) at least 2 Members entitled to vote on the resolution;
 - (ii) Members with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (iii) the chair.
- (b) The poll may be demanded:
 - (i) before a vote is taken on the proposed resolution;
 - (ii) before the voting results on a show of hands on the proposed resolution are declared; or
 - (iii) immediately after the voting results on a show of hands on the proposed resolution are declared.

(This reflects section 250L of the Act.)

12.7 When and how polls must be taken

- (a) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- (b) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

(This substitutes for section 250M of the Act which is a Replaceable Rule.)

- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

12.8 Personal representative's right to vote

A Personal Representative of a Member may vote at any general meeting in the same manner as if the Personal Representative was the Member, if at least 48 hours before the time of holding the meeting (or adjourned meeting), at which the Personal Representative proposes to vote, the Personal Representative has satisfied the Directors of the Personal Representative's entitlement or the Directors have previously admitted the Personal Representative's right to vote at such meeting.

13 PROXIES

13.1 Who can appoint a proxy

Each Member of the Company who is entitled to attend and vote at a meeting of the Company's Members may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.

(This reflects section 249X of the Act.)

13.2 Rights of proxies

A proxy appointed to attend and vote for a Member has the same rights as the Member:

- (a) to speak at the meeting, except while the Member is present;
- (b) to vote on a poll and on a show of hands (but only to the extent allowed by the appointment); and
- (c) to join in a demand for a poll.

(This reflects section 249Y(1) of the Act.)

13.3 **Company sending appointment forms or lists of proxies must send to all members**

If the Company sends a Member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the Member requested the form or list, the Company must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) otherwise, the Company must send the form or list to all its Members entitled to appoint a proxy to attend and vote at the meeting.

(This reflects section 249Z of the Act.)

13.4 **Appointing a proxy**

- (a) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the following information:
 - (i) the Member's name and address;
 - (ii) the Company's name;
 - (iii) the proxy's name or the name of the Office held by the proxy; and
 - (iv) the meetings at which the appointment may be used if it is not a standing one.

An appointment may be a standing one.

- (b) The chair of the Board may determine in its absolute discretion that a proxy is valid even if it does not contain all of the information referred to in clause 13.4(a).
- (c) An undated appointment is taken to have been dated on the day it is given to the Company.
- (d) An appointment may specify the way the proxy is to vote on a particular resolution. If it does:
 - (i) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
 - (ii) if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands;
 - (iii) if the proxy is the chair, the proxy must vote on a poll, and must vote that way; and
 - (iv) if the proxy is not the chair, the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

- (e) If a proxy is also a Member, this clause does not affect the way that the person can cast any votes they hold as a Member.
- (f) An appointment does not have to be witnessed.
- (g) A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

(This reflects section 250A of the Act.)

13.5 Proxy documents

- (a) For an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Company at least 48 hours before the meeting:
 - (i) the proxy's appointment; and
 - (ii) if the appointment is signed or otherwise authenticated in a manner prescribed by the Regulations by the appointor's attorney, the authority under which the appointment was signed or authenticated or a certified copy of the authority.
- (b) If a meeting of Members has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.
- (c) The Company receives an appointment or an authority when it is received at any of the following:
 - (i) the Office;
 - (ii) a fax number at the Office; or
 - (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.
- (d) If the notice of meeting specifies other electronic means by which a Member may give the appointment or authority, then the appointment or authority will be received by the Company as prescribed by the Regulations.

(This reflects section 250B of the Act.)

13.6 Validity of proxy vote

- (a) A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

(This reflects section 250C(1) of the Act.)

- (b) Unless the Company has received Written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (i) the appointing Member dies;
- (ii) the Member is mentally incapacitated;
- (iii) the Member revokes the proxy's appointment; or
- (iv) the Member revokes the authority under which the proxy was appointed by a third party.

(This substitutes for section 250C(2) of the Act which is a Replaceable Rule.)

14 DIRECTORS

14.1 Number of directors

The Company must have at least 3 Directors (not counting alternate Directors) of which at least 2 must be ordinarily resident in Australia.

(This reflects section 201A of the Act).

14.2 Appointment and removal of directors

(a) Directors may appoint other directors

- (i) The Directors may appoint a person as a Director. Notwithstanding that there are insufficient persons appointed as Directors to form a quorum for a meeting of Directors, the remaining Directors may appoint a person as a Director in order to make up a quorum for a Directors' meeting.
- (ii) If a person is appointed as a Director under clause 14.2(a)(i), the Company must confirm the appointment by resolution at the Company's next annual general meeting. If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the Company's next annual general meeting.

(This substitutes for section 201H of the Act which is a Replaceable Rule.)

(b) Company may remove and appoint directors

The Company in general meeting may by resolution:

- (i) remove a Director from Office despite anything in this Constitution, any agreement between the Company and the Director or any agreement between any or all Members and the Director;

(This reflects section 203D(1) of the Act.)

- (ii) appoint a new Director.

(This substitutes for section 201G of the Act which is a Replaceable Rule.)

(As to further provisions regarding removal see sections 203D(2) to (7) and section 203E) of the Act.)

(c) **Resolution for appointment**

A resolution passed by the Company in general meeting appointing or confirming the appointment of 2 or more Directors is void unless:

- (i) a resolution is passed that the appointments or confirmations may be voted on together; and
- (ii) no votes are cast against the resolution.

(This reflects section 201E of the Act.)

14.3 Interested directors

(a) **Director may hold certain offices**

A Director may not hold any Office or position of profit (other than that of auditor) under the Company or under any company promoted by the Company or in which the Company is a shareholder or otherwise interested.

(b) **Director may enter into certain contracts**

Notwithstanding any rule of law or equity to the contrary, a Director may contract, transact, or enter into an arrangement with the Company and no such contract, transaction or arrangement entered into by or on behalf of the Company or any other contract, transaction or arrangement in which a Director is in any way interested is avoided or rendered voidable because of that person being a Director.

(c) **Disclosure of material interest**

A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest unless section 191(2) of the Act says otherwise.

(This reflects section 191(1) of the Act.)

(d) **Voting by interested directors**

- (i) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
 - (A) be present while the matter is being considered at the meeting; or
 - (B) vote on the matterunless;
 - (C) subclause 14.3(d)(iii) allows the Director to be present or;
 - (D) the interest does not need to be disclosed under section 191 of the Act.

- (ii) The Director may be present and vote if Directors who do not have a material personal interest in the matter have passed a resolution that:
 - (A) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
 - (B) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- (iii) The Director may be present and vote if so entitled under a declaration or order made by ASIC under section 196 of the Act.
- (iv) If there are not enough Directors for form a quorum for a Directors' meeting because of subclause 14.3(d)(i)(A) or 14.3(d)(i)(B), 1 or more of the Directors (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a resolution to deal with the matter.

(See the provisions of sections 195 and 196 of the Act.)

14.4 No Remuneration of directors

- (a) The Company must not pay fees to its directors.
- (b) Subject to clause 14.4(a) the Directors are entitled to be reimbursed for all reasonable expenses properly incurred in good faith attending or in connection with:
 - (i) their attendance at any meeting of the Company or of the Board or any committee of Directors; and
 - (ii) carrying out their duties in any manner properly authorised by the Board.
- (c) The Directors must approve all other payments the Company makes to the Directors

(This substitutes for section 202A of the Act which is a Replaceable Rule.)

14.5 Vacation of office

The Office of a Director automatically becomes vacant if the Director:

- (a) resigns by giving Written notice to the Company at its registered Office; or
- (b) is removed pursuant to the provisions of section 203D of the Act;
- (c) is removed from Office in accordance with this Constitution or the Act; or
- (d) is disqualified from managing corporations under Part 2D.6 of the Act.

(This reflects section 203B of the Act.)

14.6 **Financial benefits**

The Company must not provide financial benefits to a Director except as permitted by, and in accordance with, the provisions of the Act.

(See in particular, but not exclusively, Chapter 2E of the Act.)

14.7 **Defect in appointment**

Notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director, or a member of a committee, or to act as a Director, or that a person so appointed was disqualified, all acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director are valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

15 **POWERS AND DISCRETIONS OF DIRECTORS**

15.1 **Business of the company**

The business of the Company must be managed by or under the direction of the Directors who may exercise all the powers of the Company except any powers that the Act or this Constitution, require to be exercised by the Company in general meeting. No resolution made by the Company in general meeting invalidates any prior act of the Directors which would have been valid if the resolution had not been made.

(This substitutes for section 198A of the Act which is a Replaceable Rule.)

15.2 **Appointment of attorneys**

The Directors may by power of attorney appoint any company, firm, person or body of persons, whether nominated directly or indirectly by the Directors, to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Directors), for the period and subject to such conditions as the Directors think fit.

15.3 **Appointment of auditor**

The Directors must appoint an auditor of the Company if an auditor has not been appointed by the Company in general meeting within 1 month after the day on which the Company was incorporated.

(This reflects section 327(1) of the Act.)

(For other requirements see sections 327, 328 and 329 of the Act.)

15.4 **Directors may execute security over the assets of the company**

If the Directors or any of them or any other person becomes personally liable for the payment of any sum primarily due from the Company, the Directors may execute or cause to be executed any mortgage, charge or security over or affecting the whole or any part of the assets of the Company by way of indemnity to secure the Directors or persons so becoming liable from any loss in respect of such liability.

15.5 **Negotiable instruments**

All cheques, bills of exchange, promissory notes and other negotiable instruments will be signed, drawn, accepted, made or endorsed as the case may be for and on behalf of the Company in such manner as the Directors may from time to time determine.

(This substitutes for section 198B of the Act which is a Replaceable Rule.)

15.6 **Directors discretion**

Unless otherwise provided, if the Directors are given a power or discretion under this Constitution, subject to law they may exercise the power or discretion in any manner that they, in their absolute discretion, see fit.

15.7 **Delegation**

(a) **Power to delegate**

The Directors may delegate any of their powers to:

- (i) a committee of Directors; or
- (ii) a Director; or
- (iii) an employee of the Company; or
- (iv) any other person.

(b) **Delegate to act in accordance with directions**

The delegate must exercise the powers delegated in accordance with any directions of the Directors.

(c) **Effectiveness of exercise of delegates power**

The exercise of the power by the delegate is as effective as if the Directors had exercised it.

(d) **Meetings of committees**

The meetings and proceedings of a committee must be carried out in accordance with the provisions in this Constitution relating to the meetings and proceedings of Directors, subject to any necessary changes and any directions made by the Directors.

(This reflects section 198D of the Act.)

(e) **Directors liable for delegate**

If the Directors delegate a power under clause 15.7(a), a Director is responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves unless exonerated under section 190(2) of the Act.

(This reflects section 190(1) of the Act.)

16 DIRECTORS RESOLUTIONS AND MEETINGS

16.1 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if all the Directors present in Australia 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 Directors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Director signs.

(This substitutes for section 248A of the Act which is a Replaceable Rule.)

16.2 Calling directors' meetings

A Director may at any time and the Secretary on the request of a Director must convene a board meeting.

(This substitutes for section 248C of the Act which is a Replaceable Rule.)

16.3 Use of technology

A Directors' meeting may be called or held by telephone, facsimile, electronic mail or by using any other technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting.

(This reflects section 248D of the Act.)

16.4 Chairing directors' meetings

The Directors may elect a Director to chair their meetings and determine the period for which the chair is to hold Office, but if no such chair is elected, or if at any meeting the chair is not present within 15 minutes after the time appointed for holding the meeting, the Directors may elect one of their number present to chair the meeting.

(This substitutes for section 248E of the Act which is a Replaceable Rule.)

16.5 Quorum at directors' meetings

- (a) Subject to clause 14.3(d) a quorum for a meeting of the Board is constituted by 2 Directors or such other number determined by the Board.
- (b) The quorum must be present at all times during the meeting.

(This substitutes for section 248F of the Act which is a Replaceable Rule.)

16.6 Passing of directors' resolutions

Questions arising at any board meeting must be decided by a majority of votes. Each Director present at a board meeting has 1 vote. In the case of an equality of votes, the chair does not have a second or casting vote.

(This substitutes for section 248G of the Act which is a Replaceable Rule.)

17 ALTERNATE DIRECTORS

- 17.1 A Director may appoint an alternate to exercise some or all of the Director's powers for a specified period.
- 17.2 If the appointing Director requests the Company to give the alternate notice of Directors' meetings, the Company must do so.
- 17.3 The exercise of a Director's power by an alternate Director has the same effect as would the exercise of the power by the Director.
- 17.4 The appointing Director may terminate the alternate's appointment at any time.
- 17.5 An appointment or its termination must be in Writing. A copy must be given to the Company.
- 17.6 An alternate Director automatically vacates Office if the appointor vacates Office as a Director or terminates the alternate's appointment.
- 17.7 An alternate Director is entitled to be paid the expenses provided in this Constitution but is not entitled to receive Directors' fees.

(This substitutes for section 201K of the Act which is a Replaceable Rule.)

18 MANAGING DIRECTOR**18.1 Appointment**

The Directors may appoint 1 or more of themselves to the office of managing director of the Company for the period and on the terms (including as to remuneration) as the Directors see fit.

(This substitutes for section 201J of the Act which is a Replaceable Rule.)

18.2 **Effect of cessation of directorship**

A person ceases to be managing director if they cease to be a Director.

18.3 **Powers**

The Directors may confer on a managing Director any of the powers that the Directors can exercise.

18.4 **Revocation or variation of appointment or powers**

The Directors may revoke or vary:

- (a) an appointment; or
- (b) any of the powers conferred on the managing director.

(This substitutes for section 203F of the Act which is a Replaceable Rule.)

19 **SECRETARY**

19.1 **Requirement for secretary**

The Company must have at least 1 Secretary.

(This reflects section 204A(2) of the Act.)

19.2 **Appointment of secretary**

A Secretary must be appointed by the Directors.

(This reflects section 204D of the Act.)

19.3 **Natural person not a minor as secretary**

A Secretary must be a natural person who has attained the age of 18 years.

(This reflects section 204B(1) of the Act.)

19.4 **Australian resident as secretary**

The Secretary, or 1 of the secretaries, must be a person who ordinarily resides in Australia.

(This reflects section 204A(2) of the Act.)

19.5 **Acting secretary**

- (a) If there is no Secretary, or no Secretary is capable of acting, any act or thing required or authorised to be done by or in relation to the Secretary may be done by or in relation to any assistant or deputy Secretary.
- (b) If there is no assistant or deputy Secretary, or no assistant or deputy Secretary is capable of acting, by or in relation to any act or thing required

or authorised to be done by, or in relation to, the Secretary, an officer authorised by the Directors to act as Secretary, either generally or in relation to the doing of that act or thing.

19.6 **Terms and conditions of office of secretary**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) that the Directors determine.

(This substitutes for section 204(F) of the Act which is a Replaceable Rule.)

- (b) The Board may terminate or suspend any appointment of a person as a Secretary.

20 **MINUTES**

20.1 **Company must keep minute books**

The Company must keep minute books in which it records within 1 month:

- (a) proceedings and resolutions of meetings of the Members;
- (b) proceedings and resolutions of Directors' meetings (including meetings of a committee of Directors);
- (c) resolutions passed by Members without a meeting; and
- (d) resolutions passed by Directors without a meeting.

20.2 **Minutes to be signed**

The Company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by either:

- (a) the chair of the meeting; or
- (b) the chair of the next meeting.

20.3 **Resolution without meeting**

The Company must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

20.4 **Location of minute books**

The Company must keep the minute books of the Company at:

- (a) the Company's registered office;
- (b) the Company's principal place of business in Australia; or

- (c) another place approved by the ASIC.

(This reflects section 251A of the Act.)

20.5 Inspection by members

The Company must ensure that the minute books for the meetings of its Members and for resolutions of Members passed without meetings are open for inspection by Members free of charge.

(This reflects section 251B(1) of the Act.)

20.6 Requests by members

- (a) A Member may ask the Company in Writing for a copy of:
 - (i) any minutes of a meeting of the Company's Members or an extract of the minutes; or
 - (ii) any minutes of a resolution passed by Members without a meeting.
- (b) If the Company does not require the Member to pay for the copy, the Company must send it:
 - (i) within 14 days after the Member asks for it; or
 - (ii) any longer period that the ASIC approves.
- (c) If the Company requires payment for the copy, the Company must send it:
 - (i) within 14 days after the Company receives the payment; or
 - (ii) within any longer period that the ASIC approves.

(This reflects section 251B of the Act.)

21 INSPECTION OF BOOKS

The Directors may but are not required to authorise a Member to inspect books of the Company.

(This substitutes for section 247D of the Act which is a Replaceable Rule.)

22 INSPECTION OF ACCOUNTS

The Directors may determine whether and to what extent, and at what times and places, and under what conditions or regulations, the accounting and other records of the Company, or any of them, are to be opened to the inspection of Members not being Directors, and no Member (not being a Director) has any right of inspecting any account or book or paper of the Company, except as conferred by statute or authorised by the Directors.

23 NOTICES

23.1 When notice is given

Where a specified period (including a particular number of days) must elapse or expire from or after the giving of a notice before an action may be taken, neither the day on which the notice is given or the day on which the action is to be taken may be counted in calculating the period.

23.2 Notice by Members of address for service

Each Member must notify the Company in Writing of an address in Australia for service of notice. Subject to this Constitution and the Act, if the Member fails to do so, the Member is not entitled to any notice.

23.3 How notices are given

Subject to the Act and this Constitution, the Company may give notice and a person may give notice to the Company:

- (a) personally;
- (b) by post, to the last known address of the recipient;
- (c) by facsimile number or email address (if any) nominated by the recipient;
- (d) by any other means consented to by the sender and the recipient.

23.4 When notices are taken to be given

- (a) A notice sent by post is taken to be given two days after it is posted.
- (b) A notice sent by fax is taken to be given on the day on which the sender obtains machine acknowledgment of successful transmission.
- (c) A notice sent by email is taken to be given when the email is sent, unless the sender has been notified, by a system or person involved in the delivery of the email to the addressee, that the email has not been successfully delivered.

24 LIABILITY OF MEMBERS

The liability of the Members of the Company is limited.

25 WINDING UP

25.1 If the Company is wound up during the time of a Member's membership or within 1 year afterwards, each Member undertakes to contribute to the assets of the Company for payment of:

- (a) debts and liabilities of the Company contracted before the Member's membership ceases;

- (b) costs, charges and expenses of the winding up of the Company; and
 - (c) adjustment of the rights of the contributories amongst themselves,
- such amount as may be required but not exceeding \$10.00.
- 25.2 If upon the winding up or dissolution of the Company, there remains after the satisfaction of all its debts and liabilities any property whatsoever, that property must not be paid or distributed among the Members of the Company.
- 25.3 All remaining property of the Company under clause 25.2 must be paid and applied by the Company to any entity or organisation which:
- (a) has rules prohibiting the distribution of its assets and income to its Members; and
 - (b) has similar objectives to the Company.
- 25.4 The Directors must before or at the time of dissolution or winding up of the Company select the institution or institutions to which property will be transferred under clause 25.3.
- 25.5 If after the dissolution or winding up of the Company the Members of the Company have not made a selection under clause 25.4, the selection will be determined by the Chief Judge of the Equity Division of the Supreme Court of New South Wales or such other judge of that court as may handle or acquire jurisdiction in the matter.
- 25.6 If effect cannot be given to clauses 25.3 to 25.5 the property under clause 25.2 must be given to a charitable purpose.

26 INDEMNITY

26.1 Indemnity against proceedings

Subject to clause 26.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liabilities for costs and expenses incurred by that person:

- (a) in defending any proceedings relating to that person's position with the Company, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or which are withdrawn before judgment; or
- (b) in connection with any application in relation to any proceedings relating to that person's position with the Company, whether civil or criminal, in which relief is granted to that person under the Act by the court.

(See section 199A(3) of the Act.)

26.2 Indemnity against liabilities

Subject to clause 26.5, every person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate is indemnified, to the maximum extent permitted by law, out of the property of the Company against any liability incurred by the person as such a Director, Secretary or executive officer to another person (other than the Company or its related bodies corporate) unless the liability arises out of conduct involving a lack of good faith.

(See sections 199A(1) and (2) of the Act.)

26.3 Insuring officers of the company

The Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company or its related bodies corporate against:

- (a) any liability incurred by that person as such a Director, Secretary or executive officer which does not arise out of conduct involving a wilful breach of duty in relation to the Company or a contravention of section 182 or 183 of the Act; and
- (b) any liability for costs and expenses incurred by that person in defending proceedings relating to that person's position with the Company, whether civil or criminal and whatever the outcome provided the costs and expenses are not incurred for the reasons set out in section 199A(3) of the Act.

(See section 199B of the Act.)

26.4 Company may make separate contracts and bring separate actions

- (a) The Company may confirm the indemnities in clauses 26.1 and 26.2 by separate contract with, or on behalf of, 1 or more of the persons indemnified.
- (b) The indemnities given by the Company in clauses 26.1 and 26.2 do not affect the right of the Company to bring any demand or action against any Director, Secretary or executive officer of the Company or its related bodies corporate, including any demand or action arising out of the negligence of that person.

26.5 Directors may resolve to not indemnify

The Directors may resolve that the indemnities in clauses 26.1 and 26.2 are not to apply to a specified person or class of persons and the indemnities will not apply unless the Company has confirmed the indemnity under clause 26.4(a) by a contract which is in force.

26.6 Interpretation

Nothing in clauses 26.1 to 26.4 is to be taken to limit the power of the Company, as permitted by the Act, to indemnify or pay a premium for a contract insuring a person who is, or has been, an officer of the Company or its related bodies corporate.

26.7 Payments not remuneration

Any payment made by the Company under clauses 26.1 to 26.3 does not constitute remuneration for the purposes of this Constitution.

27 BRANCH REGISTERS**27.1 Company may keep branch registers**

The Company may establish and cause to be kept outside the state (including outside of Australia) where its principal register is kept a branch Register of Members in accordance with the provisions of the Act.

27.2 Directors to determine manner in which branch registers are kept

Subject to the provisions of the Act and of the provisions of this Constitution, any branch Register must be established and kept in the manner the Directors determine.

27.3 Delegation

The Directors may empower any officer of the Company or any other person to establish and keep any branch Register in a manner that the Directors determine.

28 AMENDING THIS CONSTITUTION

Subject to the Act:

28.1 By special resolution

The Company may modify or repeal this Constitution or a provision of this Constitution, by Special Resolution.

(This reflects section 136(2) of the Act.)

28.2 Date effective

A Special Resolution modifying or repealing this Constitution takes effect:

- (a) if no later date is specified in the resolution, the date on which the resolution is passed; or
- (b) on a later date specified in or determined in accordance with the resolution.

(This reflects section 137 of the Act.)

