

# Constitution

**H.E.S.T. Australia Limited**  
**ABN 66 006 818 695**

A company limited by guarantee under the  
*Corporations Act 2001*

**(As at 1 March 2022)**

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## **1 Introduction**

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### **1.1 The Company**

The name of the Company is H.E.S.T. Australia Limited.

### **1.2 Limited by guarantee**

The Company:

- (a) is a company limited by guarantee;
- (b) will operate predominantly for the promotion, development and attainment of its objects;
- (c) will apply its profits (if any) or other income in promoting its objects; and
- (d) will not carry on its activities for the purpose of profit or gain to its Guarantors.

### **1.3 Legal capacity**

The Company has the legal capacity and all the powers of a natural person but it must comply with:

- (a) the terms and conditions of this constitution; and
- (b) any law (including the Trustee Law) that the Company:
  - (i) is obliged to observe having regard to its objects from time to time; and
  - (ii) cannot exclude by contract.

### **1.4 Objects**

Unless the Guarantors determine otherwise by Special Resolution, the principal object of the Company is to act solely as the trustee for a Registrable Superannuation Entity.

## **2 How to read this constitution**

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### **2.1 Replaceable rules excluded**

The replaceable rules contained in the Corporations Act do not apply to the Company.

### **2.2 Terminology**

A provision that is expressly set out in this constitution is called a Rule.

### **2.3 Definitions**

The following definitions apply in this constitution unless the context requires otherwise:

**“A” Class Directors** mean those directors appointed on the nomination of the Employee Guarantors in accordance with this constitution.

**ACTU** means Australian Council of Trade Unions of Level 6, 365 Queen Street, Melbourne, Victoria.

**Alternate Director** means a director appointed in accordance with Rule 6.

**ANMF** means Australian Nursing and Midwifery Federation of Level 1, 365 Queen Street, Melbourne, Victoria.

**ASU** means Australian Services Union of Ground Floor, 116 Queensberry Street, Carlton South, Victoria.

**Auditor** means the auditor (if any) for the time being of the Company.

**“B” Class Directors** mean those directors appointed on the nomination of the Employer Guarantors in accordance with this constitution.

**Board** means the Directors acting as a board.

**Business Day** means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in the place where the Company has its registered office.

**Chair** means the Director who has been appointed by the Board in accordance with this constitution to act as the chairperson for the Company.

**Committee** means a committee set up in accordance with Rule 14.

**Company** means the company regulated by this constitution.

**Company Policy** means a policy that is adopted by the Board in accordance with Rule 2.6(e).

**Company Secretary** means the company secretary of the Company for the time being and if there is more than one company secretary at any time, means each of those persons to the extent of their respective secretarial functions within the Company.

**Complying Superannuation Fund** has the meaning given to that expression in the SIS Act.

**Corporations Act** means the *Corporations Act 2001*.

**Director** means a director for the time being of the Company and includes any Independent Director and Alternate Director.

**Employee** has the meaning given to that expression under the SIS Act.

**Employee Guarantor** means:

- (a) each of the ACTU, ANMF, ASU, HSU and United Workers Union; and
- (b) any other Employee Organisation that is admitted from time to time as a Guarantor in accordance with this constitution whether in addition to, in substitution for or as successors to any one or more of the ACTU, ANMF, ASU, HSU and United Workers Union.

**Employee Organisation** means a national association of Employees that represents the interests of Employees in the health, aged care and community services industries and is:

- (a) registered as an organisation under the *Fair Work (Registered Organisations) Act 2009*; or
- (b) otherwise a recognized trade union or other peak union organisation,

that the Board has accepted as an employee organisation for the purposes of the Fund and includes the Employee Guarantors.

**Employer** has the meaning given to that expression under the SIS Act.

**Employer Guarantor** means each Employer Organisation that is a Guarantor.

**Employer Organisation** means a national association of Employers that represents the interests of Employers in the health, aged care and community services industries and such other employer associations (whether national or not) and in such other industries that the Board determines from time to time and is:

- (a) registered as an organisation under the *Fair Work (Registered Organisations) Act 2009*; or
- (b) otherwise a recognized organisation that represents the interests of such Employers,

that the Board has accepted as an employer organisation for the purposes of the Fund.

**Equal Representation** means an equal number of “A” Class Directors and “B” Class Directors as directors of the Company or as members of a Committee (as the case may be).

**Fund** means the trust known as, “HESTA” whose Australian business number is ABN 64 971 749 321.

**Fund Member** means a person who has been admitted to membership of the Fund and has not ceased to be a member of the Fund in accordance with the Trust Deed.

**Guarantor** means a member of the Company within the meaning of the *Corporations Act 2001* and includes the Employee Guarantors and the Employer Guarantors.

**HSU** means Health Services Union of Suite 408, 454 Collins Street, Melbourne, Victoria.

**Independent Director** means a director appointed under Rule 5.7.

**Officer** means a Director or any other person as defined under the *Corporations Act 2001*.

**Registrable Superannuation Entity** has the meaning given to that expression in the SIS Act.

**Regulator** means, as the context requires, any one or more of:

- (a) the Australian Prudential Regulation Authority;

- (b) the Australian Securities & Investments Commission;
- (c) the Australian Taxation Office;
- (d) the Australian Transaction Reports and Analysis Centre; and
- (e) any other regulatory body from time to time that is responsible for administering any Trustee Law.

**RSE Licence** has the same meaning as given in section 10 of the SIS Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993*.

**Special Resolution** has the meaning given to that expression in the Corporations Act.

**Technology Meeting** has the meaning given to that expression in Rule 15.5.

**Top Six Guarantors** means the 6 Employer Guarantors that are national organisations which the Board determines from time to time according to available Fund data represent the Employers whose Employees respectively make up the 6 largest numbers of Fund Members when Fund Members are counted according to the Employer Guarantors in which their Employers are represented.

**Trust Deed** means the trust deed dated 30 July 1987 pursuant to which the Fund was established as amended from time to time.

**Trustee Law** means any requirement that applies to the Company under:

- (a) subject to paragraph (b), any law including:
  - (i) the SIS Act;
  - (ii) the *Superannuation Industry (Supervision) Regulations 1994*;
  - (iii) the *Superannuation Guarantee (Administration) Act 1992*;
  - (iv) the *Superannuation (Resolution of Complaints) Act 1993*;
  - (v) the *Corporations Act 2001*;
  - (vi) the *Income Tax Assessment Act 1997*;
  - (vii) the *Privacy Act 1988*;
  - (viii) the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006*; and
  - (ix) the *Family Law Act 1975*.
- (b) any legislative transition period or modification of a law by a Regulator;
- (c) any standard, direction or rule issued or condition imposed by a Regulator; and
- (d) any condition under a Trustee Licence.

**Trustee Licence** means any licence granted from time to time by a Regulator to the Company including:

- (a) its RSE licence within the meaning of the SIS Act; and
- (b) its Australian financial services licence (if any) within the meaning of the Corporations Act.

**United Workers Union** means United Workers Union of 833 Bourke Street, Docklands, Melbourne Victoria.

## **2.4 Interpretation**

The following rules of interpretation apply unless the context requires otherwise:

**(a) Headings**

Headings are inserted for convenience only and do not affect interpretation.

**(b) Legislation**

A reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it, and all regulations and statutory instruments issued under it.

**(c) Grammatical forms**

Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.

**(d) Singular and plural**

The singular includes the plural and conversely.

**(e) Defined expressions in the Trustee Law**

Unless a contrary intention appears in this constitution, an expression used in a provision of this Constitution which relates to a particular provision of the Trustee Law has the same meaning as in that provision of the Trustee Law.

**(f) Gender**

A gender includes all genders.

**(g) Illustration**

The use of illustrations in a provision of this constitution as when any part of a provision is prefaced with words like “include”, “including” or “for example” are to be construed without limitation.

**(h) Currency**

A reference to a sum of money means that sum in Australian currency.

**2.5 Incorporation by reference**

If a Rule states that other provisions that are not contained in this constitution are included in it, those other provisions will be taken to form part of this constitution but only to the extent and for the purposes (if any) expressly stated in that Rule.

**2.6 Trustee Law**

**(a) Deemed Rules**

If at any time the Trustee Law states that this constitution must have particular provisions in it for:

- (i) the Fund to be a Complying Superannuation Fund; or
- (ii) the Company to:
  - (A) hold an RSE Licence or any other licence (including an Australian financial services licence) that is necessary to conduct its business;
  - (B) operate the Fund as a public offer fund;
  - (C) offer a MySuper product; or
  - (D) otherwise be compliant with the Trustee Law,

and those provisions are not contained in the Rules, those provisions are taken to be included in and form part of this constitution from the time required under the Trustee Law.

In this constitution, such provisions are called **Deemed Rules**.

**(b) Limits on Application of Deemed Rules**

Despite anything else to the contrary in this constitution:

- (i) a Deemed Rule is included in this constitution only to the extent that:
  - (A) it is not expressly contained in this constitution;
  - (B) it is necessary for the Company and the Fund to comply with the Trustee Law; and
  - (C) its inclusion will not cause the Company or this constitution to contravene the Corporations Act; and
- (ii) if there is any inconsistency between a Rule and a Deemed Rule (other than the Rule that provides for the incorporation of the Deemed Rule into this constitution), the Deemed Rule will prevail but only to the extent of the inconsistency.

**(c) Actions authorized under the Trustee Law**

Where the Trustee Law authorizes or permits a company to do any matter or thing if so authorized by its constitution, the Company is and will be taken by this Rule to be authorized or permitted to do that matter or thing, despite any other provisions of this constitution.

**(d) Resolution**

Where a Rule provides for the doing of something by the passage of a resolution:

- (i) of Guarantors, the resolution is passed if it is passed by the prescribed majority under Rule 16.11 unless that Rule or the Trustee Law say otherwise; or
- (ii) of the Board, the resolution is passed if it is passed by the prescribed majority under Rule 15.1 unless that Rule or the Trustee Law say otherwise.

**(e) Company Policies**

- (i) Unless the Trustee Law provides otherwise, the Board may from time to time formulate and adopt by resolution of the Board such policies that it considers necessary or appropriate to:
  - (A) regulate the affairs of the Company including by establishing procedures for specific actions or activities that may be undertaken by the Company, its officers, employees and agents or providing guidance that must be taken into account; or
  - (B) otherwise comply with any requirement under the Trustee Law for the Company to have policies governing any aspect of its affairs.
- (ii) Any Company Policy adopted under this Rule 2.6(e) is subject to the rights of Guarantors under this constitution.
- (iii) Despite anything to the contrary in this constitution, the Board may not do anything in relation to the appointment, removal or resignation of “A” Class Directors and “B” Class Directors or Independent Directors that is inconsistent with the terms of this constitution except to the extent necessary to comply with the Trustee Law or as otherwise approved by Special Resolution of the Guarantors.

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## **3 Liability**

### **3.1 Limited liability**

The liability of the Guarantors is limited.

### **3.2 Extent of liability**

Every Guarantor of the Company undertakes to contribute an amount not exceeding one dollar (AUD1.00) to the property of the Company if the Company is wound up while that person is a Guarantor or within 1 year of ceasing to be a Guarantor for payment of:

- (a) the Company's debts and liabilities contracted before he, she or it ceased to be a Guarantor;
- (b) the costs, charges and expenses of the winding up; and
- (c) the adjustment of the rights of contributories amongst themselves.

## **4 Membership**

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### **4.1 Classes of membership**

The Company shall have the following classes of membership:

- (a) Employee Guarantors; and
- (b) Employer Guarantors.

### **4.2 Eligibility for membership**

- (a) No person other than an Employee Organisation or an Employer Organisation is eligible to become a Guarantor.
- (b) There is no limit on the number of Guarantors that the Company may accept.

### **4.3 Application for membership**

An application for membership in the Company must be in the form and satisfy the requirements determined from time to time by the Board.

### **4.4 Determination of application by the board**

- (a) An eligible applicant for membership in the Company will only be admitted as a Guarantor if:
  - (i) the Board resolves to admit that applicant as a Guarantor; and
  - (ii) the applicant agrees, in a form approved by the Board from time to time, to subscribe to and be bound by the terms of this constitution.
- (b) Despite anything to the contrary in this constitution, the Board:
  - (i) may only approve an application for membership in the Company if it is in the interests of the Company or the Fund to do so having regard to the Trustee Law; and
  - (ii) is not required to give reasons for refusing a membership application but may do so in its absolute discretion.

#### **4.5 Rights of guarantors**

- (a) Unless expressly stated otherwise in this constitution, each Guarantor:
  - (i) may vote on any resolution (including Special Resolutions) in general meetings;
  - (ii) has such other rights as are set out in this constitution; and
  - (iii) if it authorizes another person to act on its behalf (whether as a proxy, delegate or otherwise) in respect of anything that it may do under this constitution, must give the Company Secretary written notice of such authorization in a form approved by the Company.
- (b) A Guarantor must exercise its rights and discharge its obligations under this constitution in a timely manner.
- (c) In exercising its rights under this constitution, a Guarantor must do so in a manner that has genuine regard for and is consistent with the interests, duties and obligations of the Company under the Trustee Law, this constitution and the Trust Deed.

#### **4.6 Cessation of membership**

- (a) Subject to clause 4.7, the Board has the right to cancel the membership of a Guarantor if:
  - (i) the Guarantor at any time ceases to satisfy the requirements for membership (whether as at the time the Guarantor was originally admitted or at the time the Board cancels that membership); or
  - (ii) the Board reasonably determines on the basis of any requirement under the Trustee Law that it would be detrimental to the Company or the Fund if that Guarantor remained a member of the Company.
- (b) The Board must remove from the membership record the name and particulars of any Guarantor who ceases to be a member of the Company, and must maintain a record of ceased Guarantors.
- (c) A person who has ceased to be a Guarantor may be readmitted to membership in accordance with the normal requirements for membership.

#### **4.7 Employee Guarantors**

Despite anything to the contrary in this constitution, the membership of the ACTU, ANMF, ASU, HSU and United Workers Union may not be cancelled or altered unless:

- (a) the Trustee Law requires it;
- (b) any one of those entities ceases to represent the interests of Employees who are eligible to be or are Fund Members; or
- (c) this constitution is amended in accordance with its terms to give effect to any such cancellation or alteration.

## **5 Directors**

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### **5.1 Number of directors**

The minimum number of directors that the Company must have is the greater of:

- (a) 13; or
- (b) such other minimum number prescribed under the Trustee Law that would be necessary for the Company to:
  - (i) be the trustee of a Complying Superannuation Fund; and
  - (ii) otherwise comply with its obligations under the Trustee Law or its Trustee Licence.

### **5.2 Eligibility for appointment**

Despite anything else to the contrary in this constitution, no person may hold office as a director of the Company unless he or she satisfies:

- (a) the requirements and standards (if any) for that office that are prescribed under any Company Policy from time to time; and
- (b) for as long as the Company is the trustee of a Complying Superannuation Fund:
  - (i) the fitness and propriety standards under the SIS Act as they apply to the directors of a Complying Superannuation Fund; and
  - (ii) any other qualifications prescribed under the Trustee Law that must be met for office as a director.

### **5.3 Equal Representation**

- (a) The Company must have an equal number of "A" Class Directors and "B" Class Directors.
- (b) The total number of "A" Class Directors and "B" Class Directors will be the number that the Guarantors determine from time to time provided that the resulting number is consistent with Equal Representation and the Trustee Law.
- (c) Equal Representation must be maintained at all times. If a vacancy in the office of a director occurs and:
  - (i) immediately before the vacancy occurred there was Equal Representation;
  - (ii) the vacancy is filled within 90 days after it occurred; and
  - (iii) immediately after the vacancy is filled, there is Equal Representation,

then the Company is taken to have maintained Equal Representation at all times during the period of the vacancy.

**5.4 “A” Class Directors and “B” Class Directors**

Despite anything to the contrary in this constitution:

- (a) no person may be appointed as an “A” Class Director or “B” Class Director (including to fill any casual vacancy) except as provided for in this Rule 5; and
- (b) if a Guarantor who nominated a Director ceases to be a Guarantor, the term of that Director will automatically terminate with effect from the date that the Board tables notice of the Guarantor’s cessation.

**5.5 Nomination of “A” Class Directors and “B” Class Directors**

- (a) Subject to anything to the contrary in Rule 5, the Board may only appoint:
  - (i) persons nominated by the Employee Guarantors in accordance with this Rule 5.5 as “A” Class Directors; and
  - (ii) persons nominated by the Employer Guarantors in accordance with this Rule 5.5 as “B” Class Directors.
- (b) Unless the minimum number of directors required to be appointed under Rule 5.1 is greater or less than 13:
  - (i) the Employee Guarantors are entitled to nominate candidates for appointment as “A” Class Directors in the following numbers:

Employee Guarantor	Number of Candidates
ACTU	1
ANMF	2
ASU	1
HSU	1
United Workers Union	1

- (ii) the Employer Guarantors are entitled to nominate an equal number of candidates for appointment as “B” Class Directors as the total number of candidates that the Employee Guarantors are entitled to nominate except that:
  - (A) if there are only 6 Employer Guarantors at the relevant time, each Employer Guarantor may nominate one candidate;
  - (B) if there are less than 6 Employer Guarantors at the relevant time, each Employer Guarantor will be allowed an additional

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- nomination starting in descending order with the Employer Guarantor that the Board has determined in its absolute discretion represents Employers whose Employees make up the highest number of Fund Members until the maximum number of permitted candidates is reached; and
- (C) if there are more than 6 Employer Guarantors at the relevant time, the Top Six Guarantors at that time may nominate one candidate each.
- (c) Despite anything to the contrary in this constitution:
- (i) whenever the term of a “B” Class Director ends (whether through expiry, retirement, termination or removal), the Board must review and determine who the Top Six Guarantors are at that time and which of them is eligible to nominate a candidate to fill that vacancy provided that if the Employer Guarantor who nominated the outgoing Director is still a Top Six Guarantor at that time, it will be entitled to and must nominate the candidate for appointment; and
  - (ii) if any Guarantor who is entitled to nominate a candidate for appointment as a Director chooses not to do so or fails to do so unconditionally within a reasonable period, the Board may ask the then existing Directors representing that class to do so and, if requested, those Directors must nominate an appropriate candidate within a reasonable period.
- (d) Whenever the term of an “A” Class Director ends (whether through expiry, retirement, termination or removal), the Employee Guarantor who nominated that Director, must nominate a candidate to fill that vacancy unless it is no longer an Employee Guarantor.
- (e) The nomination of a candidate for appointment as an “A” Class Director or “B” Class Director (as the case may be) must:
- (i) be made in writing to the Company Secretary no later than 30 days after the Company has notified the relevant Guarantor of a vacancy in the office of any Director that the Guarantor is entitled to nominate; and
  - (ii) include all the information and documentation (if any) that the Trustee Law and any Company Policy requires the Company to collect in respect of the appointment of a director.
- (f) If the minimum number of directors that must be appointed is less than or greater than 13, the number of candidates that a Guarantor is entitled to nominated will be:
- (i) adjusted as far as possible according to the proportions set out in Rule 5.5(b) or
  - (ii) determined by Special Resolution of the Guarantors if adjustment in accordance with Rule 5.5(f)(i) is not possible.

**5.6 Appointment by the Board**

- (a) The appointment of any director must be considered and determined by the Board at the earliest meeting of the Board at which it is able to table, consider and determine those matters and will take effect from a date determined by the Board.
- (b) The Board must not appoint a person as a director of the Company unless:
  - (i) all formalities under the Corporations Act, the Trustee Law and any applicable Company Policy have either been satisfied or the Board has a reasonable expectation that they will be satisfied in due course in respect of the appointee;
  - (ii) the Company has undertaken and completed all necessary enquiries, searches and due diligence investigations regarding the appointee's suitability to act as a director of the Company or the Board has a reasonable expectation that those enquiries, searches and investigations when completed in due course will not indicate any unsuitability; and
  - (iii) the Board is satisfied or the Board has a reasonable expectation that it will be satisfied in due course that the appointee is not or will not be disqualified from acting as a director pursuant to the requirements of the Corporations Act, the Trustee Law and any applicable Company Policy (as the case may be).
- (c) If the Board determines that it is not permitted by this constitution to appoint a particular person to office as an "A" Class Director or a "B" Class Director (as the case may be), the Company Secretary must:
  - (i) give the Guarantor who nominated that director written notice of the Board's decision including the reasons for that decision; and
  - (ii) invite that Guarantor to nominate another person to fill that vacancy.
- (d) If a Guarantor is invited to nominate another appointee, the Guarantor may, without being obliged to do so, provide additional information about its original appointee to the Company Secretary in which case, the Board must reconsider its decision based on the new information as soon as practicable. The Guarantor retains its right to nominate another person to fill the vacancy if the Board reaffirms its original decision. In deciding whether to either ask the Board to reconsider its decision or nominate an alternative candidate to fill the vacancy, the Guarantor must act promptly so that the Company can ensure that Equal Representation is maintained at all times in accordance with this constitution.

**5.7 Independent Directors**

- (a) The Board may by resolution appoint a person as an Independent Director on such terms and conditions that are not inconsistent with this constitution or the Trustee Law.
- (b) For the purposes of this Rule 5.7, a person will be eligible for:

- (i) appointment; and
- (ii) to remain in office,  
  
as an Independent Director if and for so long as that person meets the requirements of an independent director under the Trustee Law and is not a Non-Compliant Director under Rule 5.10.
- (c) The total number of Independent Directors must not be less than the total number of Independent Directors that the Company is required to have under the Trustee Law.
- (d) A person is not ineligible to be an Independent Director merely as a consequence of that person being or having previously been an “A” Class Director or “B” Class Director.
- (e) The Board may by resolution remove an Independent Director, including in accordance with Rule 5.10.
- (f) Subject to Trustee Law, only “A” Class Directors and “B” Class Directors may vote on a Board resolution to appoint or remove an Independent Director.
- (g) This Rule 5.7 applies notwithstanding anything to the contrary in the remainder of Rule 5.

**5.8 Term of office**

- (a) A Director may only be appointed for a term not exceeding 5 years.
- (b) At the end of a Director’s term of appointment, that Director can be reappointed for a further term that does not exceed 5 years if it is permitted under the Trustee Law, Company Policy and Rule 5.7(b).
- (c) Despite anything to the contrary in this constitution, the reappointment of a Director is subject to the terms of this Rule 5 that govern appointments of directors generally.
- (d) The Company Secretary must give the Guarantor who is entitled to nominate a Director for reappointment or nominate another person for appointment written notice of the date on which the Director’s term will expire at least 3 months before the expiry date.
- (e) The relevant Guarantor must consider whether the renomination of that Director is appropriate having regard to the requirements for office under this constitution, the Trustee Law and any applicable Company Policy and notify the Director and the Company Secretary in writing at least two months before the Director’s term expires whether the Guarantor will nominate that Director for reappointment or otherwise nominate another person for appointment in accordance with Rule 5.5(e).

**5.9 Removal and replacement of Guarantor nominated Directors**

- (a) Except as stated otherwise in either this constitution or the Trustee Law, only the Guarantor who nominated a particular “A” Class Director or a “B” Class Director can remove that director and nominate a replacement for that director.
- (b) If such a Guarantor wishes to remove an “A” Class Director or a “B” Class Director (as the case may be):
  - (i) it must give a written direction to that effect to the Company Secretary but is not required to give any reasons for that direction; and
  - (ii) the removal of an “A” Class Director or a “B” Class Director will, unless the Trustee Law provides otherwise:
    - (A) take effect on the date on which the Board ratifies the removal of that director; and
    - (B) create a vacancy in that office from the date the removal takes effect.

**5.10 Non-Compliant Directors**

- (a) In this Rule 5.10:

**Non-Compliant** in relation to a director means that he or she does not satisfy the requirements under this constitution, the Trustee Law or an applicable Company Policy for appointment as a director; and

**Non-Compliant Director** means a director who is the subject of a Board resolution that the director is Non-Compliant.
- (b) Unless the Trustee Law provides otherwise, if all the “A” Class Directors and “B” Class Directors (other than a director who is the subject of a resolution that he or she is Non-Compliant) resolve at any time that a director is Non-Compliant, the Board must:
  - (i) where the Non-Compliant Director is an Independent Director, subject to Rule 5.7:
    - (A) take such action as is prescribed under a Company Policy; or
    - (B) if no action is prescribed under a Company Policy:
      - (1) remove that director from office as soon as practicable; and
      - (2) give written notice of the Board’s decision to both the Employee Guarantors and the Employer Guarantors; and
  - (ii) where the Non-Compliant Director is an “A” Class Director or a “B” Class Director:

- (A) take such action as is prescribed under a Company Policy; or
- (B) if no action is prescribed under a Company Policy:
  - (1) remove that director from office as soon as practicable;
  - (2) give written notice of the Board's decision to the Employee Guarantors and the Employer Guarantors; and
  - (3) invite the Guarantor who nominated the Non-Compliant Director to either provide information as to why the Non-Compliant Director should be reappointed or nominate another person in accordance with Rule 5.5 to fill the vacancy created by the removal of the Non-Compliant Director.

#### **5.11 Resignation of director**

Unless the Trustee Law or a Company Policy provides otherwise:

- (a) a Director may resign as a director of the Company by giving a written notice of resignation to the Company at its registered office; and
- (b) the resignation of a Director shall take effect from the date (if any) stated in the notice of resignation and if no effective date is stated, from a date determined by the Board.

#### **5.12 Vacation of office of director**

In addition to any other circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

- (a) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) is not present (either personally or by an Alternate Director) at 3 consecutive meetings of directors without special leave of absence from the Board and the Board declares his or her seat to be vacant;
- (d) being an executive director ceases to be employed full-time by the Company or a subsidiary or related body corporate;
- (e) becomes disqualified from being a director under the Trustee Law or any order made under the Trustee Law;
- (f) is removed from office in accordance with Rules 5.9 or 5.10; or
- (g) resigns from office in accordance with Rule 5.11.

**5.13 Insufficient directors**

Unless the Trustee Law or a Company Policy provides otherwise, any vacancy in the office of a Director that needs to be filled to maintain Equal Representation as required by Rule 5 shall be filled upon the valid nomination of a Guarantor who is entitled, under Rule 5, to nominate a candidate to fill that vacancy as soon as practicable, but in any case no more than 90 days after that vacancy occurred. If a Guarantor fails to act as required by this Rule 5.13, the remaining Directors may act despite the absence of a quorum.

**5.14 Chair**

The Company must have a chairperson who:

- (a) is an Independent Director appointed in accordance with Rule 5.7;
- (b) will be appointed by the Board for such period as the Board determines; and
- (c) may be replaced by the Board.

**6 Alternate directors**

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**6.1 Appointment**

- (a) The Employee Guarantors and the Employer Guarantors may each from time to time nominate one or more persons to act as an alternate director in any meeting of the Board or a Committee in place of a Director appointed on the nomination of that Guarantor.
- (b) The Board may from time to time nominate one or more persons to act as an alternate Independent Director in any meeting of the Board or a Committee in place of an Independent Director.
- (c) If a person:
  - (i) is nominated for appointment as an alternate director, the procedures for appointment of a director under Rule 5.6 will apply to the appointment of the Alternate Director;
  - (ii) is appointed as an Alternate Director:
    - (A) the procedures for removal of a director under Rules 5.9 and 5.10 will apply to the Alternate Director as if he or she is the same class of director as the Director for whom he or she is an alternate director; and
    - (B) that person may resign as an Alternate Director in accordance with Rule 5.11; and
  - (iii) resigns or is removed as an Alternate Director, there is no obligation on the party that nominated or appointed that person, to nominate or appoint another alternate director.

## **6.2 Cessation**

Despite anything to the contrary in this constitution, an Alternate Director ceases to hold office if the Director for whom the Alternate Director was appointed ceases to hold office.

## **6.3 Rights and powers**

- (a) An Alternate Director:
  - (i) may exercise all the powers and, subject to the Act, perform all the duties (including attend and vote at Board meetings) of the Director in whose place the Alternate Director has been appointed to act insofar as the absentee director has not exercised or performed them;
  - (ii) is entitled to all notices of meetings and any other relevant material that the Director in relation to whom the Alternate Director has been appointed is entitled to receive;
  - (iii) may sign a written resolution in place of the relevant Director; and
  - (iv) whilst acting as a director is responsible to the Company for his or her own acts, omissions and defaults and the Director in whose place the Alternate Director has been appointed to act is not responsible for the acts, omissions or defaults of the Alternate Director.
- (b) When an Alternate Director who is entitled to act for an absentee Director, exercises that Director's powers, the exercise of the power is just as effective as if the powers were exercised by that Director.

## **7 Powers of directors**

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### **7.1 Management**

- (a) The business of the Company is to be managed by or under the direction of the Board.
- (b) The Board may exercise all the powers of the Company except any powers that the Corporations Act or this constitution requires the Guarantors to exercise in general meeting.
- (c) A Rule made or resolution passed by the Guarantors in general meeting does not invalidate any prior act of the Board which would have been valid if that Rule or resolution had not been made or passed.
- (d) Any sale or transfer of the Company's main undertaking may only be made subject to:
  - (i) the Trustee Law; and
  - (ii) approval or ratification by Special Resolution of the Guarantors in a general meeting; and
  - (iii) the Fund being able to continue to operate as a public offer fund and to qualify as a Complying Superannuation Fund.

## **7.2 Borrowing**

Subject to the Trustee Law, the Board may exercise all the powers of the Company to borrow money, to charge any property or business of the Company or all or any of its uncalled capital and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person, but only if to do so shall not breach the Trustee Law or any applicable Company Policy.

## **7.3 Negotiable instruments**

- (a) Any 2 directors, if the Company has 2 or more directors, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Board may determine that a negotiable instrument, including a class of negotiable instruments, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

## **7.4 Power of attorney**

- (a) The Board may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Board), for such period and subject to the conditions they see fit.
- (b) Unless the Trustee Law or a Company Policy provide otherwise, a power of attorney may contain provisions for the protection and convenience of persons dealing with the attorney that the Board sees fit and may also authorize the attorney to delegate all or any of the powers and discretions vested in the attorney.

# **8 Delegation**

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## **8.1 Power to Delegate**

The Board may delegate any of its powers to:

- (a) a Committee;
- (b) a Director;
- (c) an employee of the Company; or
- (d) any other person,

to the extent that it is permitted to do so under the Trustee Law and any applicable Company Policy.

## **8.2 Terms of Delegation**

- (a) A delegation of the Board's powers may be made:
  - (i) on such terms and subject to any restrictions that the Board decides;
  - (ii) for a specified period or an indefinite period; and

- (iii) for a particular purpose.
- (b) A delegation of any of the Board's powers does not include the power to delegate further unless expressly provided under the terms of the delegation.

### **8.3 Subject to Direction**

- (a) A delegate must exercise the powers delegated to it in accordance with any directions of the Board.
- (b) The exercise of the power by the delegate is as effective as if the Board had exercised it.

### **8.4 Revocation of Delegation**

- (a) Unless the Trustee Law or an applicable Company Policy provide otherwise, the Board may revoke any delegation that it has made whether or not the delegation was made for a specified period.
- (b) If the Trustee Law requires the Company to have a Committee of a particular kind, a delegation of the Board's powers that is necessary to give effect to that requirement may not be revoked unless the Trustee Law permits that revocation.

## **9 Directors' interests**

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### **9.1 Conflict of Interest Policy**

The provisions of this Rule 9 are subject to:

- (a) the Company's conflicts of interest policy as it applies from time to time; and
- (b) the requirements of the Trustee Law as they apply to conflicts of interest.

### **9.2 Director to disclose interests**

Subject to the limitations and qualifications under section 191 of the Corporations Act, 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.

### **9.3 Effect of interest in contract**

- (a) If a Director has a material personal interest in a matter that relates to the affairs of the Company:
  - (i) the Director may not vote on matters that relate to the interest; and
  - (ii) subject to Rule 9.3(b):
    - (A) any transactions that relate to the interest may proceed;
    - (B) the Director may retain benefits under the transaction even though the director has the interest; and

- (C) the Company cannot avoid the transaction merely because of the existence of the interest.
- (b) If a Director is required to disclose a material personal interest, Rule 9.3(a)(ii)(B) only applies if all requisite disclosures were duly made before the Company entered into or was otherwise affected by the transaction.
- (c) Despite the fact that a Director has a material personal interest in a matter that relates to the affairs of the Company, the director may vote on matters that relate to the interest if:
  - (i) the Directors who do not have a material personal interest in the matter, resolve that the Director may vote on those matters; or
  - (ii) the material personal interest does not need to be disclosed under section 191 of the Corporations Act.

#### **9.4 Standing notice of interest**

- (a) A Director who has an interest in a matter may give the other Directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.
- (b) A notice under Rule 9.4(a) may be given:
  - (i) at a Board meeting (either orally or in writing); or
  - (ii) to the other Directors individually in writing.
- (c) If a standing notice is given to the other Directors individually in writing:
  - (i) the notice is only effective when it has been given to every Director; and
  - (ii) the notice must be tabled at the next Directors' meeting after it is given.
- (d) The Director who gives a standing notice must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

#### **9.5 Other interests**

Without limiting Rules 9.2 or 9.3, a Director may to the extent permitted by the Trustee Law:

- (a) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of director; and
- (b) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

**9.6 Extension of meaning of “Company”**

For the purposes of this Rule 9, a reference to the Company includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

**10 Remuneration of directors**

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**10.1 Remuneration**

- (a) Despite anything else in this constitution, the Board must establish one or more Committees to assess and determine the level and structure of remuneration that will be paid by the Company to officers of the Company.
- (b) The Committee or Committees shall be:
  - (i) established in accordance with Rule 14; and
  - (ii) called by such name that denotes its function as the Board determines from time to time.
- (c) For convenience, in this constitution the relevant Committee(s) shall be referred to as the **Remuneration Committee**.

**10.2 Payment of remuneration**

- (a) Unless the Trustee Law provides otherwise, the Directors are to be paid the remuneration that is recommended from time to time by the Remuneration Committee and approved by the Company in general meeting.
- (b) In addition to Rule 10.2(a), annual remuneration increases for Directors may be recommended by the Remuneration Committee and approved by the Board, to the extent any such increases do not exceed the Average Weekly Ordinary Time Earnings rate of change as published by the Australian Bureau of Statistics at the relevant time.
- (c) Where a Director being willing is called upon to perform extra services or to make any special exertions in going or residing abroad or otherwise for the Company, the Board may resolve in accordance with any applicable Company Policy to remunerate him or her by payment of a fixed sum determined by the Board and that remuneration may be either in addition to or in substitution for his or her remuneration as provided for in Rule 10.2(a).
- (d) Despite anything to the contrary in this constitution, the Board may:
  - (i) approve the remuneration to be paid to an executive Director; and
  - (ii) determine from time to time the remuneration (if any) that is payable to an Alternate Director including remuneration for:
    - (A) any special services which in the opinion of the Board are outside the scope of the ordinary duties of a Director; and

- (B) attending a meeting of the Board or a Committee if the Director in whose place the Alternate Director has been appointed to act is not present at that meeting of the Board or the Committee and that Alternate Director is entitled to vote in his or her stead,

in accordance with any applicable Company Policy.

### **10.3 Payment of expenses**

The Company will also pay the Directors' travelling and other expenses that they properly incur:

- (a) in attending Board meetings or any Committee meeting;
- (b) in attending any general meeting of the Company; and
- (c) in connection with the Company's business.

### **10.4 Information about directors' remuneration**

- (a) The Board must make such disclosures about the remuneration payable to Directors (whether paid to the Directors in their respective capacities as directors or any other capacity) as are required to be made under the Trustee Law and must do so in the manner and form (if any) prescribed by the Trustee Law.
- (b) Without limiting Rule 10.4(a), the Board must, when requested by either an Employee Guarantor or Employer Guarantor provide both classes of Guarantors with such information as would allow those Guarantors to understand the amount of remuneration paid or payable to the Directors in a given financial year and how that level of remuneration was determined.

### **10.5 Cancellation, suspension, reduction or postponement**

The Board may by resolution cancel, suspend, reduce or postpone payment of any remuneration of any Director but any such resolution may only apply prospectively.

## **11 Company Secretary**

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### **11.1 Board to appoint company secretary**

- (a) The Board:
  - (i) must appoint at least one company secretary (and, for the avoidance of doubt, may appoint more than one such secretary) and may remove him or her; and
  - (ii) may appoint any other person to perform all or any of the duties of a company secretary (whether as acting company secretary or otherwise) and may remove him or her.
- (b) If at any time the Company has more than one Company Secretary:

- (i) unless a Company Policy provides otherwise or the Board determines otherwise, the respective roles and functions of each of those Company Secretaries may be determined by those Company Secretaries; and
- (ii) where this constitution makes reference to the doing of anything by or the giving of notice to the Company Secretary, that act will be validly done or the notice validly given if the act is done by or the notice is given to any one or other of the Company Secretaries regardless of their respective roles and functions.

### **11.2 Terms of office of secretary**

A Company Secretary holds office on the terms and conditions (including as to remuneration) that the Board determines.

### **11.3 Secretary to attend meetings**

The Company Secretary is entitled to receive notice of and attend all Directors' meetings and general meetings.

## **12 Indemnity and insurance**

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### **12.1 Meaning of "Claim"**

For the purposes of this Rule 12:

**Claim** means:

- (a) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (b) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (c) any written or oral demand or threat or fact, matter or thing that might result in commencement of any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in paragraphs (a) and (b) of this definition.

### **12.2 Protection under the Trustee Law**

Nothing contained in this constitution shall be construed to lessen or abrogate any indemnity or protection given or permitted to be given to officers of the Company by the Trustee Law.

### **12.3 Indemnity**

- (a) The Company will indemnify to the full extent permitted by the Trustee Law:
  - (i) every person who is or has been an officer of the Company; and
  - (ii) where the Board considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company,

against any liability incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be) except for liability arising out of conduct involving lack of good faith or breach of the Trustee Law.

- (b) Without limiting Rule 12.3(a), the Company must not indemnify any person in respect of any event, liability, cost or expense that the Trustee Law prohibits the Company from indemnifying a person against.
- (c) An officer who is indemnified by the Company must comply with any Company Policy that from time to time regulates:
  - (i) the provision by the Company of any indemnity for the benefit of an officer; or
  - (ii) the terms on which the Company may obtain insurance cover or pay insurance premiums for insurance cover in respect of an officer of the Company.
- (d) Unless a Company Policy provides otherwise, an officer must:
  - (i) give prompt written notice to the Company on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under Rule 12.3(a);
  - (ii) take such action as the Company or an insurer who has provided insurance cover either for the officer's benefit or the Company's benefit (**Insurer**) reasonably requests including action to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
  - (iii) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company or the Insurer (as the case may be);
  - (iv) allow the Company or the Insurer to assume the conduct, negotiation or defence of any Claim and, on request by the Company or the Insurer, render all reasonable assistance and co-operation to the Company or the Insurer in the conduct of any Claim, including giving the Company or the Insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
  - (v) on request by the Company or the Insurer, do everything necessary or desirable which the Company or the Insurer reasonably requests to enable the Company or the Insurer (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or the Insurer for that purpose; and
  - (vi) notify any Claim to the Insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all

reasonable steps to enforce all the officer's rights against the insurer or other person.

- (e) The Company may for the purposes of Rule 12.3(a) enter into a contract of indemnity or insurance with individual officers of the Company.

#### **12.4 Insurance**

Subject to the Trustee Law, the Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of sections 182 or 183 of the Corporations Act.

#### **12.5 Director voting on contract of indemnity or insurance**

Despite anything to the contrary in this constitution, a Director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance merely because the contract indemnifies or insures or would indemnify or insure the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate.

### **13 Records and inspection of records**

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#### **13.1 Company must maintain books**

The Company must maintain such books, records and documents as it is required to keep and maintain under the Trustee Law.

#### **13.2 Minutes to be kept**

- (a) Without limiting Rule 13.1, the Board must keep or cause to be kept minute books in which they record within 1 month of:
  - (i) proceedings and resolutions of meetings of the Guarantors;
  - (ii) proceedings and resolutions of Board meetings;
  - (iii) proceedings and resolutions of meetings of all Committees;
  - (iv) resolutions passed by the Guarantors without a meeting; and
  - (v) resolutions passed by Directors without a meeting.
- (b) The Board must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
  - (i) the Chair of the meeting; or
  - (ii) the Chair of the next meeting.

- (c) The Board 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.
- (d) Without limiting Rule 13.2(a), the Board must record in the minute books:
  - (i) all appointments of officers;
  - (ii) the names of the Directors and Alternate Directors and Directors' proxies present at all meetings of Directors and general meetings of the Company;
  - (iii) in the case of a Technology Meeting, the nature of the technology; and
  - (iv) all other matters required by the Corporations Act to be recorded in the minute books, including each notice and standing notice given by a director of a material personal interest.

### **13.3 Requirements under Relevant Regulations**

The Board must ensure that the Company retains copies of all minutes affecting the Fund and other records required to be kept and notices given by the Company under or pursuant to the Trustee Law for such periods as may be required under the Trustee Law.

### **13.4 Rights of inspection**

- (a) Each Director and former director of the Company has the rights of inspection and access provided by section 198F of the Corporations Act, as applicable.
- (b) A Guarantor (other than in his or her capacity as a Director) does not have the right to inspect any document of the Company, other than the minute books for meetings of Guarantors and for resolutions of Guarantors passed without meetings, except as:
  - (i) provided by law (including the Trustee Law); or
  - (ii) authorized by:
    - (A) the Board; or
    - (B) by the Guarantors in general meeting.

### **13.5 Confidential information**

No Guarantor (not being a Director acting in his or her capacity as a director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company unless and only to the extent permitted by the Corporations Act.

## **14 Committees**

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### **14.1 Establishment**

The Board must establish in accordance with this Rule 14 such committee or committees as:

- (a) it considers appropriate;
- (b) are prescribed under the Trustee Law or a Company Policy; or
- (c) the Guarantors determine by Special Resolution that the Company should have.

### **14.2 Composition**

Unless the Trustee Law or a Company Policy provides otherwise:

- (a) each Committee may only consist of any combination of the following persons:
  - (i) an equal number of “A” Class Directors and “B” Class Directors (including Alternate Directors);
  - (ii) any independent directors;
  - (iii) any employee; or
  - (iv) any other person,as would be consistent with Equal Representation on the Committee; and
- (b) for the purposes of determining Equal Representation on a Committee, an Alternate Director shall be counted as if he or she is a director of the same kind (that is, an “A” Class Director”, a “B” Class Director or an independent director) as the Director for whom he or she is appointed to act.

### **14.3 Appointment**

Despite anything to the contrary in this constitution, the members of each Committee will be appointed by the Board which must have regard to the requisite skills and experience required for the Committee.

### **14.4 Rules governing committees**

Despite anything to the contrary in this constitution but subject to the Trustee Law, the Board may from time to time make, vary or amend procedural rules governing how a Committee may conduct its affairs. For the avoidance of doubt, the Board may:

- (a) make different procedural rules for each Committee; or
- (b) delegate the making, variation or amendment of procedural rules to the applicable Committee itself.

## **15 Directors' meetings**

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### **15.1 Meetings of directors**

The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

### **15.2 Calling directors' meetings**

The Chair or a Company Secretary may at any time, and a Company Secretary must on the requisition of 3 Directors, call a meeting of the Board.

### **15.3 Notice of meeting**

(a) Reasonable notice of every Board meeting must be given to each Director and Alternate Director except that it is not necessary to give notice of a meeting of the Board to any Director who:

- (i) has been given special leave of absence; or
- (ii) is absent from Australia and has not left a facsimile number or email address at which he or she may be given notice.

(b) A notice of a meeting of the Board may be given in writing or orally, by facsimile, telephone, electronic mail or any other means of communication.

### **15.4 Waiver of notice**

If a quorum is present at any meeting of Directors but notice of the meeting was not given to all the Directors:

- (a) any resolution of the Board passed at that meeting; or
- (b) any act carried out in accordance with any of those resolutions,

is as valid as if notice of meeting had been given to all the Directors if:

- (c) the Trustee Law permits; and
- (d) each Director to whom notice was not given subsequently agrees to waive the giving of that notice.

### **15.5 Technology meeting of directors**

(a) A Board meeting may be held using:

- (i) video conferencing;
- (ii) telephone; and
- (iii) any other form of technology that provides real time communication approved by the Board,

and the Directors will be taken to be present at a meeting that is attended through any combination of the forms of technology permitted under this constitution.

- (b) Any approval given by the Board to the use of a particular type of technology to facilitate Board meetings:
  - (i) may be given as a standing approval; and
  - (ii) must be revoked upon the reasonable objection of a Director.
- (c) If a Board meeting is held using any technology (**Technology Meeting**) and all the directors take part in the meeting without objection, they must be treated as having consented to the use of the technology for that meeting.
- (d) The following provisions apply to a Technology Meeting:
  - (i) each of the people taking part in the meeting must be able to hear and be heard by each of the other people taking part in the meeting; and
  - (ii) at the commencement of the meeting each person must announce his or her presence to all the other people taking part in the meeting.
- (e) If at least one Company Secretary is not present at a Technology Meeting or the Company does not have a company secretary, one of the Directors present must take minutes of the meeting.
- (f) A person may not leave a Technology Meeting by disconnecting his or her link to the meeting unless that person has obtained the consent of the Chair to leave the meeting.
- (g) A person is conclusively presumed to have been present at all times during a Technology Meeting unless that person has previously obtained the express consent of the Chair to leave the meeting.

## **15.6 Chairing meetings**

- (a) The Chair will chair all Board meetings and general meetings of the Company.
- (b) If the Chair is not present at a meeting of the Board within 30 minutes after the time appointed for the holding of a meeting, the Directors present shall choose one of themselves to be the chairperson of the meeting.

## **15.7 Quorum**

- (a) Unless otherwise determined by Special Resolution of the Guarantors, the quorum for a Board meeting is at least two-thirds of the total number of Directors.
- (b) The quorum must be present at all times during the meeting.
- (c) An Alternate Director while acting as an alternate director, is only counted in a quorum at a meeting at which the Director for whom the Alternate Director is entitled to act is not present;

- (d) An independent director is not to be counted in a quorum.

### **15.8 Passing of directors' resolutions**

- (a) Unless otherwise specified in this constitution or the Trustee Law, a resolution of the Directors is not passed at a meeting of the Directors, unless at least two-thirds of the Directors present and entitled to vote on the resolution at that meeting, vote in favour of the resolution.
- (b) The Chair does not have a casting vote in addition to any vote that he or she has as a Director.
- (c) A person who is an Alternate Director is entitled (in addition to any other vote he or she has in any capacity) to one vote on behalf of the Director whom he or she represents as an alternate director who is not present at the meeting.

### **15.9 Circulating resolutions**

- (a) The Directors may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution (except a director absent from Australia who has not left a facsimile number or an email address at which he or she may be given notice) 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.
- (d) A facsimile or email addressed to or received by the Company Secretary and purporting to be signed or sent by a Director for the purpose of this Rule 15.9 must be treated as a document in writing signed by that Director.

## **16 Meetings of guarantors**

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### **16.1 Calling of general meeting**

- (a) The Board must convene at least one general meeting every calendar year within the time prescribed under the Corporations Act and may otherwise convene general meetings of the Company whenever it thinks fit.
- (b) Without limiting Rule 16.1(a), Guarantors representing not less than 5% of the votes that may be cast at a general meeting may convene a general meeting of the Company at the cost of the Company.
- (c) A general meeting, including an annual general meeting, may be held using technology of electronic or virtual means provided that all Guarantors as a whole have a reasonable opportunity to participate.
- (d) A reference to “**present**” under Rule 16 means those persons physically in attendance or in attendance virtually for any general meeting or annual general meeting held using technology of electronic or virtual means.

**16.2 Annual general meeting**

The business of an annual general meeting is to receive and consider the financial reports of the Company and the reports of the Directors and the Auditor.

**16.3 Amount of notice of meeting**

- (a) Subject to the provisions of the Corporations Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those Guarantors who are entitled to receive notices of a general meeting from the Company.
- (b) Non-receipt of notice, or accidental omission to give notice, does not invalidate a resolution passed at a general meeting.

**16.4 Persons entitled to notice of general meeting**

- (a) Written notice of a general meeting must be given individually to:
  - (i) each Guarantor entitled to vote at the meeting;
  - (ii) each Director; and
  - (iii) the Auditor.
- (b) No other person is entitled to receive notice of general meetings.

**16.5 Auditor's right to attend general meetings**

The Auditor or any authorised agent of the Auditor is entitled to:

- (a) attend any general meeting;
- (b) receive all notices of and other communications relating to any general meeting which a Guarantor is entitled to receive; and
- (c) be heard at any general meeting on any part of the business of the meeting which concerns the Auditor in that capacity (even if the Auditor retires at that meeting or a resolution to remove the Auditor from office is passed at that meeting).

**16.6 How notice is given**

The Company may give the notice of meeting to a Guarantor:

- (a) personally;
- (b) by sending it by post to the address for the Guarantor in the register of members or the alternative address (if any) nominated in writing by the Guarantor;
- (c) by sending it to the facsimile number or electronic address (if any) nominated in writing by the Guarantor; or
- (d) by sending it by other electronic means (if any) nominated in writing by the Guarantor.

**16.7 Contents of notice**

A notice of a general meeting must:

- (a) set out the place, date and time for the meeting (and, if applicable, details of the technology that will be used to facilitate the meeting);
- (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;
- (d) be worded and presented in a clear, concise and effective manner; and
- (e) contain a statement setting out the following information:
  - (i) that the Guarantor has a right to appoint a proxy;
  - (ii) that the proxy need not be a Guarantor of the Company; and
  - (iii) that a Guarantor who is entitled to cast 2 or more votes may appoint 2 or more proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

**16.8 Quorum**

- (a) The quorum for a general meeting is 4 Guarantors provided that at least one Employee Guarantor and at least one Employer Guarantor are present.
- (b) A quorum must be present at the beginning of a general meeting and remain present throughout the meeting (unless the Chair otherwise declares).
- (c) If a quorum is not present within 15 minutes after the time appointed for a meeting, it shall be adjourned to the same day in the next week at the same time and place. If a quorum is not present within 15 minutes, after the time appointed for the adjourned meeting, the meeting is dissolved.

**16.9 Chair at general meetings**

- (a) Unless provided otherwise in this constitution, the chairperson for a general meeting shall be the Chair for the time being of the Board or if he or she is not present, any other Director that the Guarantors present at the meeting and comprising a quorum decide.
- (b) Where a general meeting is held and the Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the Guarantors present may appoint any one of their number to be chair of the meeting.

**16.10 Cancellation or postponement**

The Chair or the Company Secretary may postpone or cancel any general meeting but must give written notice of, and reasons for, the postponement or cancellation to

everyone entitled to receive notices from the Company, at least 3 days before the date of the convened meeting.

**16.11 Voting**

- (a) A resolution that is put to a general meeting and is not a Special Resolution will only be taken to be passed if there is a quorum at the meeting and at least two-thirds of the Guarantors present and entitled to vote on that resolution have voted in favour of it.
- (b) A Special Resolution will only be taken to be passed if it is proposed as Special Resolution and the requisite proportion of the Guarantors as prescribed under the Corporations Act who are present and entitled to vote on that resolution have voted in favour of it.

**16.12 Weighting of votes if unequal numbers**

- (a) Despite anything to the contrary in this constitution and subject only to the Trustee Law:
  - (i) at all general meetings of the Company:
    - (A) an equality of voting rights between Employee Guarantors and Employer Guarantors must be maintained, and
    - (B) the votes available to the Employee Guarantors shall be exercised in the proportions set out in the table below and if all the Employee Guarantors are not present at a particular annual general meeting, the total number of votes available to the Employee Guarantors as a class of Guarantors will be apportioned between those Employee Guarantors who are present in the proportions that apply to the Employee Guarantors who are present:

Employee Guarantor	Voting Proportion
ACTU	1
ANMF	2
ASU	1
HSU	1
United Workers Union	1

- (ii) for the purposes of Rule 16.12(a)(i), the voting rights at each general meeting shall be weighted to the extent necessary to achieve an equality of voting rights between the Employee Guarantors and Employer Guarantors and for the avoidance of doubt, this means that despite any disparity in:

## Constitution of H.E.S.T. Australia Limited

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- (A) the total number of Employee Guarantors and Employer Guarantors who are entitled to vote at a general meeting at the relevant time; or
- (B) the number of Employee Guarantors and Employer Guarantors in attendance at the relevant general meeting after accounting for proxies,

the overall total number of votes available to the Employee Guarantors and the Employer Guarantors respectively at the general meeting shall be the same and shall be a number that gives effect to the voting proportions applicable to the Employee Guarantors as between themselves under Rule 16.12(a)(ii).

(b) By way of example and only for the purposes of illustrating the operation of Rule 16.12(a), if:

- (i) there are 2 Employee Guarantors and 8 Employer Guarantors who are entitled to vote at a general meeting; or
- (ii) after accounting for proxies, a meeting is attended by 2 Employee Guarantors and 8 Employer Guarantors,

the Employee Guarantors as a collective and Employer Guarantors as a collective will be entitled to 24 votes each, and of those votes:

- (iii) the 8 Employer Guarantors will have 3 votes each; and
- (iv) the 2 Employee Guarantors will have a total of 12 votes that will be exercised in one of two ways as follows:

- (A) in accordance with the 2:1 voting proportion if ANMF is one of the 2 Employee Guarantors at the meeting with the following result:

Employee Guarantors	Number of Votes
ANMF	8
Other Employee Guarantor	4

- (B) in accordance with the 1:1 voting proportion if ANMF is not one of the 2 Employee Guarantors at the meeting with the following result:

Employee Guarantors	Number of Votes
Employee Guarantor No. 1	6
Employee Guarantor No. 2	6

**17 Execution of documents**

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Unless the Board determines otherwise, every document to be executed by the Company must be signed by a Director and countersigned by the Company Secretary or a second Director or some other person appointed generally or in a particular case by the Board for that purpose.

**18 Alteration to constitution**

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The Guarantors may, by Special Resolution, alter this constitution but not so as to breach the Trustee Law.

**19 Winding up**

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- (a) If on the winding up of the Company there remain any assets (after the satisfaction of all debts and liabilities), those assets must not be paid or distributed among the Guarantors. Instead, the assets must be paid or applied for the promotion of pension or superannuation schemes as the Guarantors determine at or before the time of winding up.
- (b) If the Guarantors do not make any such determination, the assets must be paid or applied for the purposes set out in Rule 19(a) in such a manner as determined by a judge of the Supreme Court or an appropriate judicial or administrative authority.