

CONSTITUTION

of

ESSENTIAL ENERGY (ABN 37 428 185 226)

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Constitution of the Corporation:

“Chief Executive Officer” means the chief executive officer for the time being of the Corporation appointed under Rule 16.1;

“Corporation” means the corporation named above whatever its name may be from time to time;

“Deputy” means a person for the time being appointed as a deputy of a Director under Rule 21.1;

“Director” means a director for the time being of the Corporation;

“Eligible Minister” means a Minister referred to in paragraph (b) of the definition of “eligible Ministers” in section 3(1) of the SOC Act who is not a Minister referred to in section 11(2) of the ESC Act;

“ESC Act” means the *Energy Services Corporations Act 1995* (NSW) or any other statutory modification, amendment or re-enactment of that Act for the time being in force and applicable to the Corporation and any reference to any provision of that Act is to that provision so modified, amended or re-enacted;

“general meeting” means a meeting of the Voting Shareholders convened under Rule 10.1;

“joint board” means the joint board of directors of the Corporation and the Other Distributors constituted under Rule 14.1;

“member” means a Voting Shareholder for the time being of the Corporation;

“Non-Executive Directors” means all Directors other than the Chief Executive Officer;

“Office” means the principal place of business for the time being of the Corporation;

“Officer” has the meaning given to that expression in clause 6(4) of Schedule 10 to the SOC Act;

“Other Distributors” means Ausgrid (ABN 67 505 337 385) and Endeavour Energy (ABN 59 253 130 878);

“paid up” includes credited as paid up;

“Portfolio Minister” means the portfolio Minister as defined in section 3(1) of the SOC Act;

“Premier” means the Premier for the time being of the State;

“Register” means the register of members maintained by the Corporation under Rule 5.1;

“Seal” means the common seal of the Corporation and as the context allows includes an

official seal;

“Seal Register” means the seal register maintained by the Corporation under Rule 25.5;

“Secretary” means the secretary for the time being of the Corporation, and if there are joint secretaries, any one or more of such joint secretaries;

“SOC Act” means the *State Owned Corporations Act 1989* (NSW) or any other statutory modification, amendment or re-enactment of that Act for the time being in force and applicable to the Corporation and any reference to any provision of that Act is to that provision so modified, amended or re-enacted;

“State” means the State of New South Wales and includes, as the context allows, the Crown in right of New South Wales;

“Statement of Corporate Intent” means the statement of corporate intent for the time being applicable to the Corporation in accordance with Part 4 of the SOC Act;

“subsidiary” has the meaning given in section 3(1) of the SOC Act;

“Treasurer” means the Treasurer for the time being of the State; and

“Voting Shareholders” means the shareholders in the Corporation referred to in paragraph (b) of the definition of voting shareholders in section 3(1) of the SOC Act, except when that term is used in connection with the joint board, in which case it means the shareholders in the Corporation and in each of the Other Distributors in accordance with section 9A(3) of the ESC Act.

1.2 Interpretation

- (a) In this Constitution, unless the contrary intention appears:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words importing any gender include all other genders;
 - (iii) a reference to a person includes a corporation, a partnership, a body corporate, an unincorporated association and a statutory authority;
 - (iv) where any word or phrase is given a defined meaning any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;
 - (v) a reference to a Rule is to a rule of this Constitution; and
 - (vi) any power, right, discretion or authority conferred upon any person or groups of persons under this Constitution may be exercised at any time and from time to time.
- (b) Headings are for convenience only and do not affect meaning.

1.3 Legislation to prevail

- (a) To the extent that the provisions of the ESC Act apply to the Corporation, such provisions prevail over any inconsistent provisions of this Constitution.
- (b) In accordance with Schedule 6 clause 2(1) of the SOC Act, to the extent that the provisions of the SOC Act apply to the Corporation, such provisions prevail over any inconsistent provisions of this Constitution.

2. SHARES

2.1 Issue of Shares

The unissued shares and all options over unissued shares are under the control of the Directors who may:

- (a) with the prior written approval of the Voting Shareholders; and
- (b) subject to Rule 3 and any special rights conferred on the holders of any shares or class of shares,

allot, issue or otherwise dispose of unissued shares, including new shares created on an increase of capital, on such terms and conditions, at such times, with such preferred, deferred, qualified or other rights or restrictions, and at such premium or discount (if any) as the Directors think fit.

2.2 Restrictions on Issue of Shares

In accordance with section 11 of the ESC Act, the Directors may not allot, issue or otherwise dispose of unissued shares, including new shares created on an increase of capital, to any person other than an Eligible Minister.

2.3 Voting Shareholders not obliged to acquire shares

In accordance with Schedule 6, clause 3(7) of the SOC Act, no Voting Shareholder is obliged to acquire or otherwise take up unissued shares.

3. VOTING SHAREHOLDERS

3.1 Two Voting Shareholders only

In accordance with section 20H(2) of the SOC Act, the Corporation must have two Voting Shareholders, and no more at any time.

3.2 Identity of Voting Shareholders

Subject to Rule 3.3, in accordance with section 20H(5) of the SOC Act, the shareholders in the Corporation are to be the Treasurer and another Minister for the time being nominated by the Premier as a Voting Shareholder. The Premier can be nominated as a Voting Shareholder.

3.3 Only Eligible Ministers may hold shares

- (a) In accordance with Schedule 6, clause 3(1) of the SOC Act, only Eligible Ministers may hold shares in the Corporation.
- (b) In accordance with Schedule 6, clause 3(3) of the SOC Act, if a Voting Shareholder ceases to be an Eligible Minister, the Voting Shareholder:
 - (i) ceases to be eligible to hold shares in the Corporation; and

- (ii) may not exercise any rights as a Voting Shareholder.

3.4 Voting Shareholders hold shares on behalf of the State

In accordance with Schedule 6, clause 3(2) of the SOC Act, the Voting Shareholders hold their shares in the Corporation for and on behalf of the State.

3.5 Voting Shareholders to have equal rights

The Voting Shareholders must at all times:

- (a) have an equal number of shares in the Corporation, in accordance with section 20H(3) of the SOC Act and Schedule 6, clause 3(9) of the SOC Act;
- (b) be in a position to cast an equal number of votes, in accordance with Schedule 6, clause 3(9) of the SOC Act; and
- (c) be entitled to rights equal to those of the other Voting Shareholder, in accordance with clause 20H(4) of the SOC Act.

3.6 Acting Ministers may exercise rights of Voting Shareholders

Nothing in this Constitution will be taken to prevent a Minister who is authorised to act for and on behalf of another Minister who is a Voting Shareholder, exercising all of the other Minister's rights and powers as a Voting Shareholder under this Constitution or any applicable law.

4. SHARE CERTIFICATES

4.1 Share certificates to be issued under Seal

Certificates issued in respect of shares will be issued under the Seal in such manner as the Directors may determine.

4.2 Voting Shareholder's entitlement to share certificates

Unless the conditions of allotment of the shares provide otherwise, every Voting Shareholder will be entitled to one certificate, without payment, in respect of the shares registered in the Voting Shareholder's name, or to several certificates in reasonable denominations.

4.3 Duplicate certificate if original damaged, defaced or lost

If any share certificate, letter of allotment, transfer, receipt or any other document of title to shares is damaged, defaced, lost or destroyed, then:

- (a) where it has been damaged or defaced, on production of it to the Directors; or
- (b) where it has been lost or destroyed, upon making a request for a replacement,

the Directors may order it to be cancelled and may issue a duplicate in its place.

5. REGISTER

5.1 Register of Members

The Corporation will maintain a register of members of the Corporation.

5.2 Only Eligible Ministers to be entered in Register

Only Eligible Ministers may be entered in the Register as members of the Corporation.

6. TRANSFER OF SHARES

6.1 Transfer of shares by Voting Shareholders

- (a) Subject to Rule 3 and paragraph (b), a Voting Shareholder may transfer any shares held by him or her by a written instrument of transfer in any usual form or in any other form approved by the Directors.
- (b) In accordance with Schedule 6, clause 3(4) of the SOC Act, a Voting Shareholder may not sell or otherwise dispose of shares in the Corporation otherwise than to an Eligible Minister.

6.2 Transfer of shares by Premier

- (a) Subject to Rule 3, the Premier may, in accordance with Schedule 6, clause 3(5) of the SOC Act, transfer any shares in the Corporation by executing (on behalf of the transferor and transferee) a written instrument of transfer.
- (b) The Premier may execute an instrument of transfer under this Rule:
 - (i) whether or not the Premier is the transferor or transferee;
 - (ii) whether or not the transferor or transferee consents; or
 - (iii) whether or not the transferor still holds office as an Eligible Minister.

6.3 Validity of transfer of shares

- (a) Subject to paragraph (b), upon execution of an instrument of transfer in accordance with Rule 6.1 or 6.2, the person named as transferee in the instrument will immediately be deemed to be the holder of the shares which are the subject of the instrument and be entitled to exercise all rights and powers as a Voting Shareholder in respect of those shares.
- (b) A person named in an instrument of transfer will not be deemed to be the holder of the shares the subject of the instrument and will not be entitled to exercise any powers as a Voting Shareholder of the Corporation if:
 - (i) the instrument of transfer purports to transfer the shares to a person other than an Eligible Minister; or
 - (ii) the transfer of shares would result in a contravention or failure to observe any provisions of the SOC Act, the ESC Act or any other applicable law.

6.4 Registration of instruments of transfer

- (a) An instrument of transfer referred to in Rule 6.1 or 6.2 must be delivered to the Office of the Corporation as soon as practicable following execution, accompanied by the certificate (if any) in respect of the shares to be transferred.
- (b) The Directors will, as soon as practicable upon receiving such executed instrument of transfer authorise and direct the Secretary to register the transfer and cancel the old share certificate (if any).

- (c) All instruments of transfer which are registered will be retained by the Corporation, but any instrument of transfer which the Directors decline or refuse to register (except in the case of fraud) will on demand be returned to the transferee.

7. ALTERATION OF CONSTITUTION

7.1 Alterations by Voting Shareholders

In accordance with section 20Q(5) of the SOC Act and subject to Rule 7.2, the Voting Shareholders may, by resolution in general meeting, alter or add to the Constitution of the Corporation in such manner as they think fit.

7.2 Alterations must be consistent with SOC Act and ESC Act

- (a) In accordance with section 20Q(7) of the SOC Act, the Constitution of the Corporation may not be altered or added to in a way that is inconsistent with the provisions of the SOC Act and the ESC Act.
- (b) In accordance with section 20Q(8) of the SOC Act, paragraph (a) does not apply to the extent provided in resolutions of both Houses of Parliament.

8. ALTERATION OF CAPITAL

Without limiting the generality of Rule 7.1, the provisions of the Constitution of the Corporation may be altered or added to (in the manner set out in Rule 7.1) in any one or more of the following ways:

- (a) **Create new shares:** by increasing its share capital by the creation of new shares of such amount as the Voting Shareholders think fit;
- (b) **Consolidate shares:** by consolidating and dividing all or any of the share capital of the Corporation into shares of larger amounts than its existing shares;
- (c) **Subdivide shares:** by subdividing the shares of the Corporation or any of them into shares of smaller amount than is fixed by the Constitution but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each share of a smaller amount remains the same as it was in the case of the share from which the share of a smaller amount is derived; or
- (d) **Cancel shares:** by cancelling shares that, at the date of the passing of the resolution to that effect, have not been taken or agreed to be taken by any person or that have been forfeited, and by reducing the amount of the Corporation's share capital by the amount of the shares so cancelled.

9. REDUCTION OF CAPITAL

- (a) Subject to the requirements of any applicable law, the Voting Shareholders may by resolution in general meeting reduce the share capital of the Corporation.
- (b) Without limiting the generality of paragraph (a), the Voting Shareholders may resolve that such reduction be effected wholly or in part by the distribution of specific assets (whether held in the name of the Corporation or in the name of any wholly owned subsidiary of the Corporation) and in particular paid up shares, debentures, debenture stock or other securities of any other corporation or in any one or more of such ways.

10. GENERAL MEETINGS

10.1 Convening of general meetings

- (a) The Directors may convene a general meeting whenever they think fit.
- (b) The Directors must convene a general meeting on a requisition of one or both of the Voting Shareholders at a place, day and hour (if any) specified by the Voting Shareholder or Voting Shareholders.

10.2 Notice period

- (a) Not less than 14 days' notice of a general meeting must be given to the Voting Shareholders.
- (b) A general meeting will, notwithstanding that it is convened by notice shorter than is required by paragraph (a), be deemed to be duly convened if it is so agreed by all of the Voting Shareholders.

10.3 Form of notice

A notice of a general meeting must under Rule 10.2 be given in a manner authorised by Rule 27.1 and specify the place, day and hour of the meeting and the general nature of any business to be considered at the meeting.

10.4 Notice of adjourned meeting in certain circumstances only

- (a) Whenever a general meeting is adjourned for less than 21 days, no further notice of the time and place of the adjourned meeting need be given.
- (b) Whenever a general meeting is adjourned for 21 days or more, at least 3 days' notice of the time and place of the adjourned meeting must be given to Voting Shareholders.

10.5 Auditor's rights to attend general meetings

- (a) The auditor is entitled to receive, in a manner authorised by Rule 27.1, all notices of and other communications relating to any general meeting that a Voting Shareholder is entitled to receive.
- (b) The auditor, or an agent authorised in writing by the auditor, is entitled to attend any general meeting and speak on any part of the business of the meeting which concerns the auditor in that capacity, notwithstanding that the auditor retires or is removed from office at that meeting.
- (c) A failure to comply with this Rule 10.5 does not invalidate any resolutions passed at a relevant meeting.

10.6 Directors' rights to attend general meetings

- (a) Each Director, or in the absence of a Director, that Director's Deputy, is entitled to receive, in a manner authorised by Rule 27.1, all notices of and other communications relating to any general meeting that a Voting Shareholder is entitled to receive.
- (b) Each Director, or in the absence of a Director, that Director's Deputy, is entitled to attend any general meeting and speak on any part of the business of the meeting but has no voting rights.
- (c) A failure to comply with this Rule 10.6 does not invalidate any resolutions passed at a relevant meeting.

10.7 Postponement or cancellation of meeting

The Directors may whenever they think fit postpone or cancel any general meeting other than a meeting convened as a result of a requisition under Rule 10.1(b).

11. PROCEEDINGS AT GENERAL MEETINGS

11.1 Quorum

- (a) A quorum for a general meeting is 2 persons, each being a Voting Shareholder or a proxy of a Voting Shareholder entitled to vote at that meeting.
- (b) No business can be transacted at any general meeting unless the requisite quorum is present at the commencement of the meeting.
- (c) If a quorum is present at the beginning of a general meeting it is deemed present throughout the meeting unless the chairperson otherwise declares on the chairperson's own motion or at the instance of a Voting Shareholder or the proxy of a Voting Shareholder.

11.2 Chairperson

- (a) The Treasurer or in the Treasurer's absence the other Voting Shareholder will preside as chairperson at every general meeting of the Corporation.
- (b) If both the Treasurer and the other Voting Shareholder are not present in person at any general meeting, the proxy of the Treasurer will preside as chairperson at the meeting.

11.3 If quorum absent

If half an hour after the time appointed for a general meeting a quorum is not present:

- (a) a meeting convened by the Directors on a requisition of Voting Shareholders will be dissolved; or
- (b) in any other case, the meeting will be adjourned to such other day, time and place as the Directors may by notice to the Voting Shareholders appoint, but failing such appointment, then to the same day in the next week at the same time and place as the meeting adjourned.

11.4 Quorum for adjourned general meeting

If at any adjourned general meeting a quorum is not present after half an hour from the time appointed for that adjourned general meeting, then the meeting will be dissolved.

11.5 Adjournment of general meetings

If so directed by the general meeting, the chairperson will adjourn the meeting from time to time and from place to place, but no business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

11.6 General conduct of meetings

- (a) The chairperson will be responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
- (b) The chairperson may make rulings, including adjourning the meeting without putting the question (or any question) to the vote, if such action is required to

ensure the orderly conduct of the meeting.

- (c) The chairperson may require the adoption of any procedures which are in the chairperson's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Corporation.
- (d) Nothing contained in this Rule 11.6 will be taken to limit the powers conferred on the chairperson under any applicable law.

12. VOTES AT GENERAL MEETINGS

12.1 Only Voting Shareholders may vote

In accordance with Schedule 6, clause 3(8) of the SOC Act, only the Voting Shareholders may vote, in person or by proxy, at general meetings of the Corporation.

12.2 Voting: show of hands

At any general meeting a resolution put to the vote of the meeting will be decided on a show of hands.

12.3 Number of votes

Subject to Rule 12.9 and any special rights or restrictions attaching to any class of shares in the Corporation, every person present at a general meeting who is a Voting Shareholder or proxy is entitled to one vote.

12.4 Questions decided by majority

A resolution will be taken to be carried if the proportion that the number of votes in favour of the resolution bears to the total number of votes on the resolution exceeds one-half.

12.5 No casting vote

In the case of an equality of votes at any general meeting, the chairperson will not have a casting vote and the proposed resolution is to be taken as having been lost.

12.6 Declaration by chairperson that resolution carried

A declaration by the chairperson that a resolution has been carried or lost and an entry to that effect in the book of proceedings of the Corporation will be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

12.7 Chairperson to determine disputes regarding votes

Subject to Rules 12.1 and 13.3, the chairperson may determine conclusively any dispute concerning the qualification of any person to vote or the admission, validity or rejection of a vote.

12.8 Objections to qualification to vote

No objection to the qualification of any person to vote, other than in relation to Rule 12.1 or 13.3, may be raised except at the meeting at which the vote objected to is tendered and, subject to Rules 12.1 and 13.3, every vote not disallowed at that meeting is valid for all purposes.

12.9 Proxy not to vote if Voting Shareholder present

If a Voting Shareholder is present at a meeting of the Corporation and a proxy for such Voting Shareholder is also present, the proxy is not entitled to vote in respect of the shares to which the proxy relates.

13. PROXIES

13.1 Right to appoint proxy

- (a) A Voting Shareholder is entitled to appoint not more than one other person (whether a Voting Shareholder or not) as the Voting Shareholder's proxy to attend a general meeting and, subject to this Rule 13, exercise the rights of the Voting Shareholder to vote.
- (b) A proxy may be appointed for all meetings or for any number of meetings or for a particular purpose.

13.2 Form of proxy

- (a) Every instrument appointing a proxy, whether for a specified meeting or otherwise, must:
 - (i) be in writing signed by the Voting Shareholder appointing the proxy; and
 - (ii) be in such form as the Directors may prescribe, or if no form is prescribed, in any usual form or such form as the Directors may accept.
- (b) An instrument appointing a proxy may contain directions as to the manner in which the proxy is to vote in respect of any particular resolution or resolutions.
- (c) A copy of a written appointment of a proxy is valid.

13.3 Proxy ceasing to be valid

A proxy ceases to be valid, and any vote subsequently purported to be cast in accordance with the terms of the instrument appointing a proxy will not be valid, immediately upon:

- (a) the Voting Shareholder who appointed the proxy ceasing to be an Eligible Minister;
- (b) transfer of the share in respect of which the proxy was given; or
- (c) revocation of the appointment of the proxy.

13.4 Chairperson decides validity

Subject to Rule 13.3, the chairperson's decision as to the validity of a proxy will be final and binding.

13.5 Authority conferred on proxy

Unless otherwise provided in the instrument and subject always to Rule 13.3, an instrument appointing a proxy will be taken to confer authority:

- (a) to agree to a meeting being convened by shorter notice than is required by this Constitution;

- (b) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion; and
 - (ii) to vote on any procedural motion, including any motion to adjourn the meeting; and
- (c) to speak on any proposed resolution on which the proxy may vote.

13.6 Proxy form to be deposited before meeting

An instrument appointing a proxy or a facsimile of such instrument, must be delivered to the Secretary at the Office (or at such other place as is specified in the notice of meeting) before the time scheduled for commencement of the meeting (or any adjournment of that meeting) at which the person named in the instrument intends to vote.

13.7 Failure to name appointee

Any instrument of proxy in which the name of the appointee is not filled in will be deemed to be given in favour of the chairperson.

14. JOINT BOARD OF DIRECTORS

14.1 Joint Board of Directors

In accordance with clause 9A and Schedule 2, clause 1(1) of the ESC Act, the Corporation and the Other Distributors are to have a joint board of directors, which shall constitute the board of directors of each of the Corporation and the Other Distributors.

14.2 Constitution of joint board

In accordance with Schedule 2, clause 1(2) and clause 1(2A) of the ESC Act, the joint board is to consist of:

- (a) the Chief Executive Officer of the Corporation;
- (b) the chief executive officer of each of the Other Distributors appointed in accordance with the constitution of that corporation; and
- (c) at least 3 and not more than 6 other Directors.

14.3 Responsibilities of joint board

In accordance with section 20L(1) of the SOC Act, all decisions relating to the operation of the Corporation are to be made by or under the authority of the joint board.

15. APPOINTMENT AND REMOVAL OF DIRECTORS

15.1 Appointment of Directors

- (a) The Chief Executive Officer of the Corporation is to be appointed in accordance with Rule 16.1.
- (b) In accordance with Schedule 2, clause 1(2)(c) of the ESC Act, the Directors, other than the Chief Executive Officer and the chief executive officers of the Other Distributors are to be appointed by the Voting Shareholders at their discretion.

15.2 Instruments of appointment

Directors appointed under Rule 15.1(b) are to be appointed pursuant to a written instrument of appointment which must:

- (a) be signed by the Voting Shareholders;
- (b) be delivered to the Secretary at the Office of the Corporation;
- (c) specify the term of office of the Director in accordance with Rule 15.3; and
- (d) specify the terms of the appointment.

15.3 Term of office of Directors

In accordance with Schedule 8, clause 5 of the SOC Act, a Director of the Corporation may be appointed to hold office for a period not exceeding 5 years.

15.4 Removal of Directors by Voting Shareholders

In accordance with Schedule 2, clause 1(6) of the ESC Act, the Voting Shareholders in general meeting may remove a Director from office at any time for any or no reason and without notice.

15.5 Suspension of Director guilty of prejudicial behaviour

- (a) If the conduct or position of any Director is such that continuance in office appears to a majority of the Directors to be prejudicial to the interests of the Corporation, a majority of the Directors at a meeting of the Directors specially convened for that purpose may suspend that Director.
- (b) Within 14 days of the suspension, the Directors will call a general meeting, at which the Voting Shareholders may either confirm the suspension and remove that Director from office, or annul the suspension and reinstate that Director.

15.6 Vacation of office of Director

In accordance with Schedule 8, clause 7(1) of the SOC Act, the office of a Director is vacated if that Director:

- (a) dies;
- (b) ceases to be a Director in accordance with the terms of the Director's instrument of appointment and is not re-appointed;
- (c) resigns the office by letter to the Voting Shareholders;
- (d) is absent from 4 consecutive meetings of the joint board of which reasonable notice has been given to the Director personally or in the ordinary course of post, except on leave granted by the joint board or unless, before the end of 4 weeks after the last of those meetings, the Director is excused by the joint board for having been absent from those meetings;
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- (f) becomes a mentally incapacitated person;
- (g) is convicted in New South Wales of an offence that is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable;

- (h) is removed under the provisions of Rule 15.4 or 15.5(b); or
- (i) in the case of the Director who holds the office of Chief Executive Officer, that person ceases to hold that office, other than by virtue of Rule 16.4(a).

15.8 Filling of vacancy

- (a) Subject to Rule 15.1, in accordance with Schedule 8, clause 8 of the SOC Act, if the office of a Non-Executive Director becomes vacant, a person may be appointed by the Voting Shareholders to fill the vacancy.
- (b) Any appointment under paragraph (a) is to be made in accordance with the requirements of Rule 15.1.

15.9 Limited ability of Directors to act during vacancies

The Directors may act notwithstanding any vacancy in their number, but for as long as the number of Directors is below 4, the Directors will not act except in emergencies or for the purpose of appointing a Chief Executive Officer or acting Chief Executive Officer or convening a general meeting of the Corporation.

16. CHIEF EXECUTIVE OFFICER

16.1 Appointment of Chief Executive Officer

In accordance with Schedule 2, clause 2(1) of the ESC Act, the Non-Executive Directors are to appoint a Chief Executive Officer of the Corporation after consultation with the Voting Shareholders.

16.2 Terms of appointment of Chief Executive Officer

- (a) In accordance with Schedule 9, clause 1 of the SOC Act, the Chief Executive Officer may be appointed to hold office for such period (not exceeding 5 years) as may be specified in the Chief Executive Officer's instrument of appointment.
- (b) In accordance with Schedule 2, clause 2(3A) of the ESC Act, the Non-Executive Directors may, after consultation with the Voting Shareholders, fix the conditions of employment of the Chief Executive Officer in so far as they are not fixed by or under any other applicable law.
- (c) The remuneration of the Chief Executive Officer is to be determined in accordance with Rule 18.2.

16.3 Removal of Chief Executive Officer by Directors

In accordance with Schedule 2, clause 2(2) of the ESC Act, the Directors may, after consultation with the Voting Shareholders, remove a person from office as Chief Executive Officer at any time, for any or no reason and without notice.

16.4 Vacation of office of Chief Executive Officer

The office of Chief Executive Officer is vacated if the person who holds that office:

- (a) vacates the office of Director under Rule 15.6, other than by virtue of Rule 15.6(i);
- (b) ceases to be Chief Executive Officer in accordance with the terms of any contract between the Chief Executive Officer and the Corporation or the Chief Executive Officer's instrument of appointment and is not re-appointed; or
- (c) is removed under the provisions of Rule 16.3.

16.5 Suspension of Chief Executive Officer

- (a) Subject to the provisions of the Chief Executive Officer's instrument of appointment or any contract between the Chief Executive Officer and the Corporation, the Directors may, after consultation with the Voting Shareholders, suspend a person from office as Chief Executive Officer at any time, for any or no reason.
- (b) The Chief Executive Officer is not entitled to attend or vote at any meeting of Directors while under suspension from office.

16.6 Performance agreements with Chief Executive Officer

In accordance with Schedule 9, clause 4 of the SOC Act, the Directors may require the Chief Executive Officer to enter into performance agreements.

16.7 Powers and Duties of Chief Executive Officer

- (a) In accordance with section 20L(2) of the SOC Act, the Chief Executive Officer of the Corporation is, subject to Rule 14.3, responsible for the day to day management of the operation of the Corporation in accordance with the general policies and specific directions of the Directors.
- (b) The Directors may entrust to and confer on the Chief Executive Officer such of the powers exercisable under this Constitution by the Directors as they think fit.
- (c) The Directors may confer any powers under paragraph (b) for any period that they think fit and for any objects and purposes and on any terms and conditions and with such restrictions as they think fit.
- (d) The Directors may confer powers under paragraph (b) either together with or to the exclusion of and in substitution for all or any of the powers of the Directors in that regard, and may revoke, withdraw, alter or vary all or any of the powers.
- (e) Notwithstanding any provision of this Constitution, the Chief Executive Officer will at all times and in all respects be subject to the control of the Directors.
- (f) The Chief Executive Officer in his or her capacity as Director of the Corporation must comply with the duties of a Director under this Constitution or any applicable law.
- (g) The Chief Executive Officer may delegate any functions of the chief executive officer to an employee of the Corporation, but this power is subject to any directions of the joint board.

16.8 Appointment of acting Chief Executive Officer

- (a) In accordance with Schedule 2, clause 3(1) of the ESC Act, the Directors may appoint a person to act in the office of Chief Executive Officer during the illness or absence of the Chief Executive Officer or if there is a vacancy in the office of Chief Executive Officer.
- (b) In accordance with Schedule 2, clause 3(3)(a) of the ESC Act, a person while acting in the office of Chief Executive Officer, will have all the functions of the Chief Executive Officer and be taken to be the Chief Executive Officer.
- (c) In accordance with Schedule 2, clause 3(3)(b) of the ESC Act, a person while acting in the office of Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Directors may from time to time determine in respect of the person.

- (d) In accordance with Schedule 2, clause 3(2) of the ESC Act, the Directors may remove a person from the office to which the person was appointed under paragraph (a) at any time for any or no reason and without notice.

17. POWERS AND DUTIES OF DIRECTORS

17.1 Directors accountable to Voting Shareholders

- (a) In accordance with Schedule 2, clause 1(5) of the ESC Act and Schedule 6, clause 3(6) of the SOC Act, the Directors are accountable to the Voting Shareholders in the manner set out in Part 4 of the SOC Act, in this Constitution of the Corporation.
- (b) Without limiting the generality of paragraph (a), in accordance with section 29(1) of the SOC Act, the Directors must supply to the Voting Shareholders such information relating to the affairs of the Corporation or any of its subsidiaries as they from time to time request (whether or not the information is of a kind referred to in the Statement of Corporate Intent).
- (c) The Directors must use their best endeavours to comply with any request under paragraph (b) within the time frame specified in the request.

17.2 General duties of Directors

- (a) In accordance with Schedule 10, clause 3(2) of the SOC Act, each Director must act honestly in the exercise of powers and discharge of functions as a Director of the Corporation.
- (b) In accordance with Schedule 10, clause 3(3) of the SOC Act, each Director, in the exercise of powers and discharge of functions, must exercise the degree of care and diligence that a reasonable person in a like position would exercise.
- (c) In accordance with Schedule 10, clauses 3(4) and 3(5) of the SOC Act, a Director must not make improper use of his or her position as a Director of the Corporation or information acquired as a result of his or her position as a Director of the Corporation:
 - (i) to gain, directly or indirectly, an advantage for himself or herself or another person; or
 - (ii) to cause detriment to the Corporation.
- (d) In accordance with Schedule 10, clause 11(2) of the SOC Act, a Director must not:
 - (i) make a statement concerning the affairs of the Corporation to another Director, the Chief Executive Officer, an employee of the Corporation or a Voting Shareholder which the Director knows is false or misleading in a material particular; or
 - (ii) omit from a statement concerning the affairs of the Corporation made to another Director, the Chief Executive Officer, an employee of the Corporation or a Voting Shareholder anything without which the statement is, to the Director's knowledge, misleading in a material particular.
- (e) In accordance with Schedule 10, clause 11(4) of the SOC Act, a Director must not give to another Director, the Chief Executive Officer, an employee of the Corporation or a Voting Shareholder a document that the Director knows is false, misleading or incomplete in a material particular without:
 - (i) indicating to the recipient that the document is false, misleading or

incomplete and the respect in which the document is false, misleading or incomplete; and

- (ii) giving the correct information to the recipient if the Director has, or can reasonably obtain, the correct information.

17.3 Director's duty to prevent insolvent trading

- (a) In accordance with Schedule 10, clause 7 of the SOC Act, a Director must take all reasonable steps to prevent the Corporation from incurring a debt if the Director has reasonable grounds to believe that:
 - (i) the Corporation is not able to pay all its debts as and when they fall due, or
 - (ii) as a result of incurring the debt, the Corporation will not be able to pay all its debts as and when they fall due.
- (b) In accordance with Schedule 10, clause 12 of the SOC Act, the Directors must immediately notify the Voting Shareholders in writing if the Directors suspect that the Corporation or a subsidiary of the Corporation is, may be, will or may become insolvent, other than as a result of compliance with a direction or notification given by the Voting Shareholders.

17.4 Statement of Corporate Intent

- (a) The Directors must prepare and agree with the Voting Shareholders a Statement of Corporate Intent for the Corporation on an annual basis in accordance with the timetable and procedures set out in section 21 of the SOC Act.
- (b) The Statement of Corporate Intent must contain the matters set out in section 22 of the SOC Act.

17.5 Half-yearly reports

Within one month after the first 6 months of the financial year of the Corporation (or such other period after the end of that half-year as may be agreed by the Directors and the Voting Shareholders) the Directors must deliver a report to the Voting Shareholders which complies with the requirements of section 23 of the SOC Act.

17.6 General powers of Directors

- (a) Without limiting Rule 14.3, the Directors may exercise all powers and do all such acts and things which the Corporation is authorised or permitted to exercise and do and which are not by this Constitution or by statute directed or required to be exercised or done by the Voting Shareholders.
- (b) The operation and effect of this Rule 17.6 is not limited in any way by the following provisions of this Rule 17.

17.7 Directors may exercise Corporation's powers to borrow and give security

Subject to any relevant restrictions in the Statement of Corporate Intent and any directions from the Voting Shareholders, the Directors may exercise all powers of the Corporation to borrow or raise money, give any security, guarantee or become liable for the payment of any money or performance of any obligations.

17.8 Directors may appoint attorney or agent

The Directors may, by resolution, power of attorney under Seal, or other written instrument, appoint any person or persons to be attorney or agent of the Corporation for such purposes, with such powers (including powers of delegation), authorities and discretions, being powers, authorities and discretions vested in or exercisable by the Directors, for such period and subject to such conditions as they think fit.

17.9 Execution of Corporation cheques, etc.

Any cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments signed, drawn, accepted, endorsed or otherwise executed by the Corporation, and all receipts for money paid to the Corporation, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner and by such persons as the Directors determine.

18. REMUNERATION OF DIRECTORS

18.1 Remuneration of Non-Executive Directors

In accordance with Schedule 8, clause 6 of the SOC Act, each Non-Executive Director will be paid out of the funds of the Corporation such remuneration (including travel and subsistence allowances) as the Voting Shareholders may from time to time determine.

18.2 Remuneration of Chief Executive Officer

- (a) In accordance with Schedule 2, clause 2(3) of the ESC Act, the Chief Executive Officer is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Non-Executive Directors may determine.
- (b) The Non-Executive Directors may determine that the Chief Executive Officer be remunerated in accordance with paragraph (a) by way of fixed salary, commission on or percentage of profits of the Corporation or of any other corporation in which the Corporation is interested, any combination of fixed salary and commission or any other means that the Non-Executive Directors determine.

18.3 Payment for extra services and expenses

- (a) In accordance with Schedule 8, clause 6 of the SOC Act and Schedule 2, clause 2(3) of the ESC Act, the Directors are entitled to be paid their reasonable travelling, accommodation and other expenses incurred in consequence of their attendance at meetings of Directors, and otherwise in the execution of their duties as Directors.
- (b) If any Non-Executive Director is called upon to perform extra services or to make any special exertion in going or residing abroad or otherwise for any of the purposes of the Corporation, the Corporation may pay such additional remuneration or provide benefits to that Director as the Voting Shareholders determine.
- (c) If the Chief Executive Officer is called upon to perform extra services or to make any special exertion in going or residing abroad or otherwise for any of the purposes of the Corporation, the Corporation may pay such additional remuneration or provide benefits to the Chief Executive Officer as the Non-Executive Directors determine.

19. DIRECTORS' CONTRACTS WITH CORPORATION

19.1 Disclosure of interests by Directors

In accordance with Schedule 10, clause 1(1) of the SOC Act, if a Director has a direct or indirect interest in a matter being considered, or about to be considered, by the joint board the Director must disclose the nature of the interest to a meeting of the joint board as soon as practicable after the relevant facts come to the Director's knowledge.

19.2 Director may hold other office of profit

- (a) A Director may hold any other office or place of profit in the Corporation or any other corporation in which the Corporation is a shareholder or otherwise interested (except that of auditor) in conjunction with the office of Director, on such terms as the Voting Shareholders may approve.
- (b) A Director will not:
 - (i) be disqualified by virtue of holding the office of Director from holding any other office or place of profit referred to in paragraph (a); or
 - (ii) be liable to account to the Corporation for any profit arising from the Director holding any other office or place of profit referred to in paragraph (a), by reason only of the Director holding that office or of the fiduciary relations established as a result of the Director holding that office,

provided that the details of the other office or place of profit are disclosed by the Director to a meeting of the joint board as soon as practicable after the relevant facts come to the Director's knowledge.

19.3 Director's interests in contracts

A Director will not:

- (a) be disqualified by virtue of holding the office of Director from contracting with the Corporation or any corporation in which the Corporation is a shareholder or is otherwise interested, either as vendor, purchaser or otherwise, and nor will any contract or arrangement entered into by or on behalf of the Corporation in which any Director is in any way interested be avoided; or
- (b) be liable to account to the Corporation for any profit realised by the contract or arrangement by reason only of the Director holding that office or of the fiduciary relations established as a result of the Director holding that office,

provided that the Director discloses the nature of his or her interest to a meeting of the joint board as soon as practicable after the relevant facts come to the Director's knowledge.

19.4 Voting by interested Director

- (a) In accordance with Schedule 10, clause 2(1) of the SOC Act, a Director who has a material personal interest in a matter that is being considered by the joint board must not:
 - (i) vote on the matter;
 - (ii) vote on a proposed resolution under paragraph (b) (a "**related resolution**") in relation to the matter (whether in relation to the Director or another Director);
 - (iii) be present while the matter, or a related resolution, is being considered by the joint board; or

- (iv) otherwise take part in any decision of the joint board in relation to the matter or a related resolution.
- (b) In accordance with Schedule 10, clause 2(2) of the SOC Act, paragraph (a) does not apply to the matter if the joint board has at any time passed a resolution that:
 - (i) specifies the Director, the interest and the matter; and
 - (ii) states that the Directors voting for the resolution are satisfied that the interest should not disqualify the Director from considering or voting on the matter.
- (c) In accordance with Schedule 10, clause 2(3) of the SOC Act, in determining whether a quorum is present at a meeting of the joint board during a consideration of such a matter by the joint board, only those Directors who are entitled to vote on any motion that may be moved in relation to the matter will be counted in determining a quorum.
- (d) In accordance with Schedule 10, clause 2(4) of the SOC Act, the Voting Shareholders may, by each signing a consent to a proposed resolution, deal with the matter if the joint board cannot deal with it because of requirements of this Rule 19.4.
- (e) No act of the Corporation is invalid or voidable by reason only of a failure of a Director to comply with this Rule 19.4.

19.5 Director may not affix Seal if interested

- (a) If a Director is interested in a contract or arrangement, that Director may not be appointed as the Director:
 - (i) to sign on behalf of the Corporation any instrument to which the interest relates; or
 - (ii) in whose presence the Seal of the Corporation is to be affixed to any instrument to which the interest relates.
- (b) No act of the Corporation is invalid or voidable by reason only of a failure of a Director to comply with paragraph (a).

19.6 Record of disclosures by Directors

In accordance with Schedule 10, clause 1(2) of the SOC Act, any disclosure given by a Director under this Rule 19 must be recorded in the Minutes by the Secretary.

20. PROCEEDINGS OF DIRECTORS

20.1 Meetings of Directors

In accordance with Schedule 8, clause 10 of the SOC Act, the procedure for the calling of meetings of the joint board and for the conduct of business at those meetings is, subject to the SOC Act, the ESC Act and this Constitution, to be determined by the Directors.

20.2 Quorum for meetings of Directors

- (a) A quorum for the purpose of considering a matter at a meeting of Directors will be not less than 3 persons, each of whom:
 - (i) is a Director or a Deputy to a Director who is absent; and

- (ii) in accordance with Schedule 10, clause 2(3) of the SOC Act, is not excluded from voting by virtue of Rule 19.4.
- (b) A meeting of the Directors during which a quorum is present is competent to exercise all or any of the authorities, powers and discretions under this Constitution for the time being vested in or exercisable by the Directors.
- (c) Where a quorum cannot be established for a meeting of Directors (or consideration of a matter), a Director may convene a general meeting of the Voting Shareholders to deal with the matter or matters in question.
- (d) Schedule 8, clause 11 of the SOC Act does not apply to the Corporation.

20.3 **Convening meetings of Directors**

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

20.4 **Notice of meetings of Directors**

- (a) Notice of every Directors' meeting will be given to each Director and each Deputy who is within Australia, but it is not necessary to give notice to any Director or Deputy who is outside Australia.
- (b) Notice of a meeting of Directors may be given in writing or by telephone, closed circuit television or other electronic means of audio or audio-visual communication.

20.5 **Votes at meetings of Directors**

- (a) In accordance with Schedule 8, clause 13 of the SOC Act, questions arising at any meeting of the Directors at which a quorum is present will be decided by a majority of votes and, subject to Rule 19.4, each Director has one vote.
- (b) A person who is a Deputy is entitled to one vote (in addition to the Deputy's own vote as a Director, if any) on behalf of each Director whose deputy the Deputy is and who is not personally present.
- (c) In accordance with Schedule 8, clause 12(2) of the SOC Act, in case of an equality of votes the chairperson of a meeting of Directors will have a second or casting vote.

20.6 **Meetings by electronic means**

- (a) Without limiting the discretion of the Directors to regulate their meetings under Rule 20.1, in accordance with Schedule 8, clause 14(2) of the SOC Act, the Directors may, if they think fit, confer by telephone, closed circuit television or other electronic means of audio or audio-visual communication ("**tele-conference**").
- (b) Notwithstanding that the Directors are not present together in one place at the time of the tele-conference, a resolution passed by a tele-conference will be deemed to have been passed at a meeting of the Directors held:
 - (i) on the day on which the tele-conference was held;
 - (ii) at the time at which the tele-conference was held; and
 - (iii) at such place as is determined by the chairperson of the relevant tele-conference, provided that at least one of the Directors who took part in the tele-conference was at such place for the duration of the tele-conference.

- (c) The provisions of this Constitution relating to proceedings of Directors apply to tele-conferences to the extent that they are capable of applying, and with the necessary changes.
- (d) A Director present at the commencement of a tele-conference will be conclusively presumed to have been present and, subject to this Constitution, to have formed part of the quorum throughout the tele-conference.
- (e) Any minutes of a tele-conference purporting to be signed by the chairperson of that tele-conference or by the chairperson of the next succeeding meeting of Directors will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the tele-conference.

20.7 **Written resolutions of Directors**

- (a) Without limiting the discretion of the Directors to regulate their meetings under Rule 20.1, in accordance with Schedule 8, clause 14(1) of the SOC Act, the joint board may transact any of its business by resolution in writing.
- (b) Notice of a proposed resolution under this Rule 20.7 must be given in accordance with the requirements of Rule 20.4.
- (c) A resolution under this Rule 20.7 will be deemed to have been passed if, subject to Rule 19.4, a majority of the Directors for the time being have signed a document containing a statement that they are in favour of the resolution in terms set out in the document.
- (d) A resolution under this Rule 20.7 will be deemed to have been passed at a meeting of the Directors held on the day on which, and at the time at which the document was last signed by a Director.
- (e) For the purposes of this Rule 20.7:
 - (i) 2 or more separate documents containing statements in identical terms each of which is signed by one or more Directors will together be deemed to constitute one document containing a statement in those terms signed by the Directors;
 - (ii) a document signed by a Deputy need not also be signed by the Director in respect of whom the Deputy was appointed and, if signed by a Director who has appointed a Deputy, need not be signed by the Deputy in that capacity; and
 - (iii) any document so signed by a Director may be received by the Corporation at the Office (or other place agreed by the Directors) by post, by facsimile or other electronic means or by being delivered personally by that Director.

20.8 **Chairperson and deputy chairperson of Directors**

- (a) In accordance with Schedule 2, clause 1(4) of the ESC Act, one of the Directors appointed under Rule 14.2(c) is (in and by the Director's instrument of appointment or in and by another instrument executed by the Voting Shareholders) to be appointed as chairperson of Directors.
- (b) In accordance with Schedule 8, clause 12(1) of the SOC Act, the chairperson of the joint board will preside at meetings of the joint board.
- (c) The Directors may elect a deputy chairperson who in the absence of the chairperson at a meeting of the Directors may exercise all the powers and authorities of the chairperson.

- (d) If at any meeting the chairperson or deputy chairperson is not present within half an hour of the time appointed for holding the meeting, the Directors present will choose one of their number to be chairperson of that meeting.
- (e) In accordance with Schedule 8, clause 2(3) of the SOC Act, the office of chairperson is vacated if the chairperson:
 - (i) is removed from that office by the Voting Shareholders in general meeting at any time, for any or no reason and with or without notice, in accordance with Schedule 2, clause 1(6) of the ESC Act;
 - (ii) completes his or her term of office and is not re-appointed;
 - (iii) resigns that office by letter addressed to the Voting Shareholders; or
 - (iv) vacates the office of Director of the Corporation in accordance with Rule 15.6.
- (f) The office of deputy chairperson is vacated if the deputy chairperson:
 - (i) is removed from that office by the Directors;
 - (ii) completes his or her term of office as deputy-chairperson (if any) and is not re-appointed;
 - (iii) resigns that office by letter addressed to the Directors; or
 - (iv) vacates the office of Director of the Corporation in accordance with Rule 15.6.

20.9 **Committees of Directors**

- (a) The Directors may delegate any of their powers to committees consisting of one or more Directors as they think fit, and the Directors may from time to time revoke that delegation.
- (b) A committee will conform to any regulations that may be imposed upon it by the Directors in the exercise of their powers.
- (c) Without limiting the discretion of the Directors to regulate their meetings under Rule 20.1, the provisions of the Constitution which regulate the meetings and proceedings of the Directors govern the meetings and proceedings of committees of 2 or more Directors, to the extent that they are capable of application and with the necessary changes.
- (d) Where a committee consists of 2 or more members, a quorum will be any 2 members or such larger number as the committee itself determines.

20.10 **Defects in appointment or qualifications of Director**

- (a) All acts done at any meeting of the Directors or committee of Directors will be as valid as if every Director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that any Director was disqualified or not entitled to vote, unless it is discovered that a Director was disqualified or not entitled to vote by virtue of Rule 19.4(a).
- (b) All acts done at any meeting of the Directors or committee of Directors will be as valid as if every Director or committee had been duly appointed, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Director or of the committee.

21. DEPUTIES TO DIRECTORS

21.1 Appointment and removal of Deputies

In accordance with Schedule 8, clause 3(1) of the SOC Act, the Voting Shareholders may, from time to time, appoint a person to be the Deputy of a Director of the Corporation and the Voting Shareholders may revoke any such appointment.

21.2 Functions and duties of Deputies

In accordance with Schedule 8, clause 3(2) of the SOC Act, in the absence of a Director, the Director's Deputy:

- (a) is, if available, to act in the place of the Director; and
- (b) while so acting, has all the functions of the Director and is taken to be a Director of the Corporation for all purposes under this Constitution.

21.3 Deputy to Director who is Chairperson

In accordance with Schedule 8, clause 3(3) of the SOC Act, the Deputy of a Director of the Corporation who is chairperson of the joint board, does not have the Director's functions as chairperson, unless such functions are conferred by the joint board under Rule 20.8(c).

21.4 Remuneration of Deputies

In accordance with Schedule 8, clause 3(4) of the SOC Act, a person while acting in place of a Director of the Corporation is entitled to be paid out of the funds of the Corporation such remuneration (including travelling and subsistence allowances) as the Voting Shareholders may from time to time determine in respect of that person.

22. MINUTES

22.1 Minutes of all proceedings to be kept

The Directors will cause minutes of all proceedings of general meetings and meetings of Directors and committees, including disclosures under Rule 19, to be duly entered in books kept for that purpose.

22.2 Inspection of minutes of general meetings

Books containing the minutes of proceedings of general meetings will be open for inspection by the Voting Shareholders.

23. SECRETARY

23.1 Appointment and removal of Secretary

The Directors will appoint a Secretary or Secretaries for such term, at such remuneration and on such conditions as they think fit. The Directors may remove any Secretary so appointed.

23.2 Acting Secretary

The Directors may appoint a person as an acting Secretary or as a temporary substitute for a Secretary. A person so appointed will, for the purpose of this Constitution, be deemed to be a Secretary.

24. LOCAL MANAGEMENT

24.1 Management in specified localities

The Directors may provide for the management and transaction of the affairs of the Corporation in any specified locality, whether in the State or elsewhere in Australia, in such manner as they think fit.

24.2 Local boards and management committees

Without limiting the general powers conferred by Rule 24.1, the Directors may:

- (a) establish any local boards, management committees or agencies for managing any of the affairs of the Corporation in the specified locality;
- (b) appoint any persons to be members of local boards or any managers or agents ("**appointees**") on any terms and subject to any conditions as the Directors think fit, including fixing their remuneration;
- (c) delegate to the appointees any of the powers, authorities and discretions for the time being vested in the Directors (including this power of delegation) and any such delegation may be made on any terms and subject to any conditions as the Directors think fit; and
- (d) remove any appointee and revoke or vary any delegation.

25. THE SEAL

25.1 Custody and use of Seal

- (a) The Directors will provide a Seal for the Corporation and will provide for the safe custody of that Seal.
- (b) The Seal will only be used by the authority of the Directors or of a committee of the Directors authorised by the Directors. The authority to use the Seal may be given before or after the seal is used.
- (c) Every instrument to which the Seal is affixed, subject to any provisions contained in this Constitution, will be signed by a Director and countersigned by the Secretary, another Director, or by some other person appointed by the Directors for that purpose.

25.2 Official Seal

The Corporation may have for use in any place outside the State an official seal which is a facsimile of the Seal with the addition on its face of the name of the place where it is to be used, and the following provisions have effect:

- (a) the Corporation may by writing under the Seal authorise any person appointed for the purpose in the relevant place outside the State to affix its official seal for that place to any deed or other document to which the Corporation in that place is a party;
- (b) as between the Corporation and any person dealing with the agent, the authority of the agent will continue during the period (if any) mentioned in the instrument conferring the authority, or if no period is mentioned, then until notice of the revocation or termination of the agent's appointment has been given to the person dealing with the agent;
- (c) the person affixing the official seal will certify the date and place of affixing the

same by writing under hand on the deed or document to which the seal is affixed;
and

- (d) a deed or other document to which the official seal is duly affixed will bind the Corporation as if it had been sealed with the Seal of the Corporation.

25.3 Facsimile signature under Seals

The Directors may determine, either generally or in a particular case and subject to such conditions as they think fit, that wherever a signature is required by this Constitution on a document to or in which the Seal or an official seal is affixed, that requirement will be satisfied by a facsimile of the signature affixed by mechanical or other means.

25.4 Effect of sealing

Any instrument bearing the Seal or an official seal, if issued for valuable consideration, will be binding on the Corporation notwithstanding any irregularity regarding the authority of the Directors to issue the instrument, or the circumstances of its issue.

25.5 Seal register

- (a) The Corporation must keep a seal register and, upon the affixing of the Seal to any document must enter in the register particulars of the document, giving in each case the date of the document, the names of the parties to the document, a short description of the document and the names of the persons signing and countersigning the document under Rule 25.1(c).
- (b) The Seal Register must be produced at meetings of Directors for confirmation of the use of the Seal since confirmation was last given under this Rule 25.5.
- (c) Failure to comply with Rules 25.5(a) or (b) does not invalidate any document to which any Seal is properly affixed.

26. DIVIDENDS

26.1 Share dividend scheme

In accordance with Schedule 2, clause 4(1) of the ESC Act, the Voting Shareholders, in consultation with the Directors, are to determine the Corporation's share dividend scheme to apply from time to time.

26.2 Payments of dividends

- (a) In accordance with Schedule 2, clause 4(2) of the ESC Act, the dividends to be paid by the Corporation are to be declared by the Directors in accordance with the share dividend scheme so determined.
- (b) Subject to Rule 26.3, in accordance with section 20S(4) of the SOC Act, dividends declared by the Corporation and payable to Voting Shareholders are to be paid to the Treasurer on behalf of the State for payment into the Consolidated Fund.

26.3 Application of dividends for the purchase of shares

In accordance with section 20S(2) of the SOC Act, the Directors and the Voting Shareholders may agree that dividend payments required to be made by the Corporation will be applied in the purchase of shares by the Voting Shareholders.

27. NOTICES

27.1 Method of service of notices

A notice may be served by the Corporation on a Voting Shareholder, or any other person entitled to receive notice under this Constitution, (the “**recipient**”) by any of the following methods:

- (a) by serving it personally on the recipient;
- (b) by leaving it at or by sending it by post in a prepaid letter, envelope or wrapper addressed to:
 - (i) in the case of a Voting Shareholder, the Ministerial Office of the Voting Shareholder or such other address notified by the Voting Shareholder to the Corporation for the purpose of service of notices; or
 - (ii) in the case of a recipient who is not a Voting Shareholder, at an address nominated by the recipient for the purpose of serving notices on the recipient; or
- (c) by sending it by facsimile transmission to a facsimile number nominated by the recipient for the purpose of serving notices on the recipient.

27.2 Time of service by post

- (a) Any notice sent by post, airmail or air courier will be deemed to have been served on the day following that on which the letter, envelope or wrapper containing the notice is posted or delivered to the air courier.
- (b) In proving service it will be sufficient to prove that the letter, envelope or wrapper containing the notice was properly addressed and put into the post office or other public postal receptacle or delivered to the air courier.
- (c) A certificate in writing signed by any manager, Secretary or other Officer of the Corporation will be conclusive evidence of the matters referred to in paragraph (b).

27.3 Time of service by facsimile transmission

Any notice sent by facsimile transmission will be deemed to have been served on receipt by the Corporation of a transmission report confirming successful transmission.

27.4 Signatures on notices

The signature to any notice to be given by the Corporation may be written or printed or a facsimile thereof may be affixed by mechanical or other means.

27.5 Calculation of notice period

Where a period of notice is required to be given, the day on which the notice is dispatched and the day of doing the act or other thing will not be included in the number of days or other period.

28. OFFICERS' INDEMNITIES AND INSURANCE

28.1 Indemnities

- (a) Subject to paragraph (c), in accordance with Schedule 10, clause 5(1) of the SOC Act, the Corporation must not:
 - (i) indemnify any person is or who has been an Officer of the Corporation against a liability incurred as an Officer; or
 - (ii) exempt a person who is or has been an Officer of the Corporation from a liability incurred as an Officer.
- (b) In accordance with Schedule 10, clause 5(2) of the SOC Act, an instrument is void so far as it provides for the Corporation to do something prohibited by paragraph (a);
- (c) In accordance with Schedule 10, clauses 5(3), 5(4) and 5(5) of the SOC Act, the Corporation may, with the prior approval of the Voting Shareholders, indemnify an Officer:
 - (i) against civil liability (other than liability to the Corporation or a subsidiary of the Corporation) unless the liability arises out of conduct involving a lack of good faith;
 - (ii) for costs and expenses incurred by the Officer in defending a proceeding, whether civil or criminal, in which judgement is given in favour of the Officer or the Officer is acquitted; or
 - (iii) for costs and expenses incurred by the Officer in connection with an application in relation to a proceeding in which relief is granted to the Officer by the court.

28.2 Insurance

- (a) Subject to paragraph (b), in accordance with Schedule 10, clause 6(1) of the SOC Act, the Corporation must not pay or agree to pay a premium in relation to a contract insuring a person who is or has been and Officer of the Corporation against a liability:
 - (i) incurred by the person as an Officer of the Corporation; and
 - (ii) arising out of conduct involving a wilful breach of duty in relation to the Corporation or a breach of Rule 17.2(c).
- (b) In accordance with Schedule 10, clause 6(2) of the SOC Act, the Corporation may pay or agree to pay a premium in relation to a contract insuring a person who is or has been and Officer of the Corporation against a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.

29. RESTRICTIONS ON ACTIVITIES OF CORPORATION

29.1 Formation and acquisition of subsidiaries

In accordance with Schedule 6, clause 4(1) of the SOC Act, the Corporation may not form, participate in the formation of or acquire subsidiaries without the prior written approval of the Voting Shareholders.

29.2 Constitutions of subsidiaries

In accordance with Schedule 6, clause 4(2) of the SOC Act, the Corporation must ensure that the constitution of each of its subsidiaries at all times contain provisions to the effect of those required by Schedule 7 to the SOC Act.

29.3 Corporation to ensure subsidiary complies with memorandum and articles

In accordance with Schedule 6, clause 4(3) of the SOC Act, the Corporation must, to the maximum extent practicable, ensure that each of its subsidiaries complies with its constitution (if any) and with the requirements of the SOC Act.

29.4 Acquisitions and sales of assets and main undertaking

The Corporation is expressly prohibited from exercising any power of the Corporation in contravention of any requirement of or under section 20X or 20Y of the SOC Act.

29.5 Directors to comply with directions and notices given by the Portfolio Minister under the SOC Act

- (a) The Directors must ensure that any directions or notices given to the joint board by the Portfolio Minister under any of the following sections of the SOC Act:
 - (i) section 20N - "Non-commercial activities";
 - (ii) section 20O - "Public sector policies"; or
 - (iii) section 20P - "Direction in public interest",are carried out in relation to the Corporation and, as far as practicable, its subsidiaries in accordance with the terms of the notice or direction.
- (b) Paragraph (a) does not affect any rights the Corporation might have under the SOC Act to reimbursement or compensation in connection with such directions or notices.

29.6 Loans to Directors

- (a) In accordance with Schedule 10, clause 4(1) of the SOC Act, subject to paragraph (b), the Corporation must not, whether directly or indirectly:
 - (i) make a loan to a Director, a spouse of a Director or a relative of a Director or spouse of a Director; or
 - (ii) give a guarantee or provide security in connection with a loan made to a Director, a spouse of a Director or a relative of a Director or spouse of a Director
- (b) In accordance with Schedule 10, clause 4(2) of the SOC Act, paragraph (a) does not apply to the entering into by the Corporation of an instrument with a person mentioned in paragraph (a) if the instrument is entered into on the same terms as similar instruments (if any) entered into by the Corporation with members of the public.

30. MISCELLANEOUS

30.1 Accounts

The Corporation will keep such accounting and other records of the business of the Corporation as:

- (a) it is required to keep under law; and
- (b) as are prescribed in the Statement of Corporate Intent.

30.2 Secrecy

- (a) Every Director, Chief Executive Officer, manager, Secretary, employee, auditor, trustee, member of a committee, agent, or accountant is bound to observe secrecy with respect to all transactions and operations of the Corporation and any related matters.
- (b) If required by the Directors, every person referred to in paragraph (a) will, before commencing that person's duties or employment or at any time afterwards, sign and make a declaration in a book to be kept for that purpose that they will not reveal or make known any of the matters, affairs or concerns with respect to the transactions and operations of the Corporation and any related matters except in the course and in the performance of their duties, or under compulsion or obligation of law, or when officially required so to do by the Directors or by the auditors for the time being, or by any general meeting of Voting Shareholders.