

# CONSTITUTION

Water Research Australia Limited

Effective 22<sup>nd</sup> June 2021



Collaborate Innovate Impact

**WATER RESEARCH AUSTRALIA LIMITED**

**CONSTITUTION**

**Varied 22 June 2021**

Corporations Act

**CONSTITUTION**

**OF**

**WATER RESEARCH AUSTRALIA LIMITED**

**PRELIMINARY**

1. The provisions of the Corporations Act that apply as replaceable rules shall not apply to the Company unless otherwise specified and the following shall be the prescribing regulations for the Company.

2. **Definitions and Interpretation**

2.1 In these Rules unless it is inconsistent with the subject or context in which it is used:

**"Activities"** means activities that are undertaken in pursuit of the Objects and as may be further defined by the Members in the Members' Agreement;

**"Alternate Director"** means a person who, but for Rule 47, could have been appointed an alternate of a Director to exercise some or all of that Director's powers for a specified period.

**"Auditor"** means the auditor for the time being of the Company;

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

**"Chairperson"** means the person appointed pursuant to Rule 50 as the chairperson of the Board and the chairperson of a meeting, as the context may require;

**"Chief Executive Officer"** and **"CEO"** means the person from time to time appointed as the CEO of the Company;

**"Company"** means Water Research Australia Limited;

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

**"Director"** means a person appointed or elected from time to time to the Board as a director in accordance with these Rules;

**"Effective Date"** means the date of the 2021 General Meeting.

**"Financial Year"** means a period of twelve (12) months commencing on 1 July in any year and ending 30 June in the next succeeding year provided that the first and final financial years of the Company may span different periods of time;

**"General Member"** means a person who is admitted as a Member of the Company, is directly or indirectly involved in activities aligned with objects set out in paragraphs (a) to (g) of Rule 4.1, but is not eligible to be an Industry Member, to be a Research Member or, if another Membership Category is created, to be a member of that Membership Category and who contributes the minimum amount of cash as set out in the Members' Agreement as an annual membership fee to the Company;

**"Independent Director"** has the meaning set out in Rule 43.3.

**"Industry Member"** means a person who is admitted as a Member of the Company and who satisfies the following requirements:

- i) Is a standalone water supply utility or authority; or
- ii) Is a consultant to a water supply utility or authority; or
- iii) Is a Commonwealth or State based department or government authority with responsibility for activities aligned with objects set out in paragraphs (a) to (g) of Rule 4.1; or
- iv) Is an association that represents any party covered by paragraphs (i) to (iv); and
- v) Who contributes a minimum amount of cash as set out in the Members' Agreement as an annual membership fee to the Company.

**"Member"** means a person who pursuant to Rule 11 is registered in the Register of the Company as a member of the Company;

**"Membership Category"** means a category of Members established by these Rules, being, the Industry Members, Research Members, General Members and any other categories created under Rule 11.

**"Members' Agreement"** means the agreement, so called, between the Company on the one part and the Members of the Company.

**"Objects"** means the objects of the Company set out in Rule 4;

**"Office"** means the registered office from time to time of the Company;

**"Register"** means the register of Members;

**"Registered Address"** means the address of which the Member notifies the Company as a place at which the Member will accept service of notices including the facsimile number of the Member;

**"Representative"** means a representative appointed by a Member in accordance with the Members' Agreement.

**"Research Member"** means a person who is admitted as a Member of the Company and who satisfies the following requirements:

- i) Is a recognised research organisation or institution involved in research activities aligned with objects set out in paragraphs (a) to (g) of Rule 4.1; or
- ii) Is a recognised university or higher educational institution involved in research activities aligned with objects set out in paragraphs (a) to (g) of Rule 4.1;
- iii) Who contributes a minimum amount in-kind as set out in the Members' Agreement as an annual membership fee to the Company.

**"Rules"** means the rules of this constitution as altered or added to from time to time;

**"Seal"** means the common seal from time to time of the Company;

**"Secretary"** means a person appointed as secretary of the Company and includes any persons appointed to perform the duties of Secretary;

**"University"** means a Research Member who satisfies the description in paragraph ii) of the definition of "Research Member".

**"Utility"** means an Industry Member who satisfies the description in paragraph i) of the definition "Industry Member".

**"writing"** and **"written"** includes printing, typing, lithography and other modes of reproducing words in a visible form.

- 2.2 Words and phrases which are given a special meaning by the Corporations Act have the same meaning in these Rules.
- 2.3 Words in the singular include the plural and vice versa.
- 2.4 Words importing a gender include every gender.
- 2.5 These Rules will be construed with reference to the Corporations Act and terms used in these Rules will be taken as having the same meanings as they have when used in the Corporations Act unless the contrary intention appears.
- 2.6 A reference to the Corporations Act or any other statute or regulations is to be read as though the words "as modified or substituted from time to time" were added to the reference.
- 2.7 The headings and side notes are for ease of reference and do not affect the construction of these Rules.

- 2.8 Words importing persons include partnerships, associations and corporations, unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals.
- 2.9 This Constitution shall be read and construed in such a manner that:
- a) Every Chairperson, Director, Alternate Director or Secretary in office as such immediately before the Effective Date shall continue in office subject to this Constitution;
  - b) Any register maintained by the Company immediately before the Effective Date shall be deemed to be a register maintained pursuant to this Constitution;
  - c) Any common seal adopted by the Company before the Effective Date shall be deemed to be a common seal which the Company has under a relevant authority conferred by this Constitution; and
  - d) Unless a contrary intention appears in this Constitution, all persons, things and circumstances appointed or created by or under the constitution of the Company in force before the Effective Date shall continue to have the same status, operation and effect after the Effective Date.

## **THE COMPANY**

### **3. Name of Company**

The name of the Company is Water Research Australia Limited.

### **4. Objects of Company**

- 4.1 The objects for which the Company is established are to be a not-for-profit scientific research institution whose purposes are:
- (a) To initiate, promote, fund, advocate for and undertake research on the priority issues for the Australian water industry, including urban, peri-urban and regional water supplies, water recycling and relevant areas of wastewater management;
  - (b) To initiate, promote, fund and advocate for the adoption of a risk-based approach to research to underpin the implementation and further development of relevant Australian guidelines for drinking water and recycled water;
  - (c) To promote and undertake research into the availability and quality of alternative sources of water supply, including consideration of the financial, environmental and public health issues to the community of securing such supplies;

- (d) To facilitate knowledge transfer and the up-take of the outcomes of the research in the industry and the adoption by regulators of best practice guidelines focussed on the supply of drinking water, recycled water and relevant areas of wastewater management;
- (e) To undertake education and training programs focussed on the collection and/or supply of drinking water, recycled water and relevant areas of wastewater management;
- (f) To promote interaction between water industry, academic institutions and other bodies in Australia and internationally with specialist expertise in areas relevant to potable water, recycled water and wastewater;
- (g) To facilitate the training and skilling of individuals with the required competencies needed within the Australian water industry to remain at the forefront of scientific knowledge and expertise in water research issues; and
- (h) To do all such other lawful things as may be incidental or conducive to the attainment of the above objects.

## **5. Liability of Members**

The liability of Members of the Company is limited in accordance with Rule 8.

## **6. Application of Income and Property**

The income and property of the Company from wherever derived must be applied solely towards promoting the Activities as provided in these Rules and no portion thereof shall be applied directly or indirectly by way of dividend or bonus to the Members or Directors of the Company.

## **7. Distribution of Income and Property**

The Company must not distribute, pay or transfer to the Members or Directors directly or indirectly by way of dividend, bonus or otherwise any of the property or income of the Company PROVIDED that nothing shall prevent the payment in good faith of remuneration to any officers or servants of the Company or to any Member of the Company in return for any services actually rendered to the Company or for goods supplied or agreed expenses incurred in the ordinary and usual way of business nor prevent the payment of interest at reasonable and proper commercial rates on money borrowed from any Members of the Company or reasonable and proper rent for premises demised or let by any Member of the Company. A Director (other than an Independent Director) may be paid the remuneration determined by the Company in general meeting for his or her services as a Director of the Company together with all travelling and other expenses properly incurred concerning the Company's business provided that such remuneration must be determined on an arms' length basis. An Independent Director may be paid such remuneration as is determined by the Board from time to time for his or her services as a Director of the Company together with all

travelling and other expenses properly incurred concerning the Company's business provided that such remuneration must be determined on an arm's length basis.

## **8. Winding Up Contribution**

Each Member of the Company undertakes to contribute to the Company's property an amount as may be required not exceeding one hundred dollars (AUD\$100) if the Company is wound up while it is a Member or within one (1) year after ceasing to be a Member, for payment of the Company's debts and liabilities contracted before it ceased to be a Member and of the costs, charges and expenses of winding up and for an adjustment of the rights of contributories amongst themselves.

## **9. Transfer of Property on Winding Up**

If upon the winding up, dissolution or deregistration of the Company there remains (after satisfaction of all its debts and liabilities) any surplus assets (apart from any assets dealt with under clause 79), such surplus assets must not be distributed amongst the Members, but will be distributed to one or more charitable funds, authorities or institutions which:

- (a) are not carried on for the profit or gain of their members;
- (b) have a similar purpose to the Company; and
- (c) prohibit the distribution of income and property to their members,

as selected by the Members at or prior to winding up, dissolution or deregistration (or in default, by the Supreme Court of South Australia).

## **10. Accounts**

True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place of the property credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with these Rules for the time being in force shall be open to the inspection of the Members. At the conclusion of a Financial Year the accounts of the Company shall be examined by one or more registered Auditors who shall report to the Members in accordance with the provisions of the Corporations Act and/or as may be required by this Constitution.

# **MEMBERS**

## **11. Membership**

The number of Members is unlimited.



There are to be three initial Membership Categories, being a General Member, an Industry Member and a Research Member.

'The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law. Members must make an active contribution towards the Company achieving its Objects.'

The Board may, from time to time, determine:

- i) The various Membership Categories of the Company;
- ii) The various classes of Members within a Membership Category; and
- iii) accept applications to a Membership Category and/or class of membership based upon an applicant meeting the conditions applicable to that Membership Category and/or class of membership.

## **12 Application to become a Member**

Every application to become a Member shall be made in accordance with the form set out in the Members' Agreement and shall be signed by the applicant and submitted to the Board for approval. The Board shall not approve such application unless and until it has the endorsement in writing from:

- i) In the case of an application to be an Industry Member, at least three of the existing Industry Members; or
  - ii) In the case of an application to be a Research Member, at least three of the existing Research Members; or
  - iii) In the case of an application to be a General Member, at least three of the existing Industry and Research Members; or
  - iv) In the case of an application to a new Membership Category, at least three of the existing Industry, Research and General Members,
- for the acceptance of the applicant as a Member.

## **13. Applicant to agree to be bound**

Each applicant for membership of the Company must before becoming a Member duly execute and deliver to the Company a deed in the form specified in Members' Agreement under which it, inter alia, agrees to be bound by the terms of the Members' Agreement once their application to become a Member is approved by the Board.

## **14. Register of Members**

A Register of Members must be kept by the Secretary. The name and address of each Member must be recorded in the Register, as well as the dates when the Member became and, where relevant, ceased to be a Member. The Register must be kept at the

Office and be available for inspection by Members at all reasonable times. Each Member must notify the Secretary of any change of name or address and each such change must be recorded in the Register.

#### **15. Corporation as a Member**

If a Member is a corporation or a statutory corporation then in such event the corporation or statutory corporation will enjoy the benefits as a Member as if it were a natural person but must in all matters pertaining to the Company be represented by its duly appointed attorney or an officer authorised of the Member, nominated representative appointed under section 250D of the Corporations Act or proxy. Upon approval of its membership the Member must notify the Secretary in writing the details of the person who will be its Representative pursuant to this Rule. A Member may subsequently notify the Secretary of any change of Representative, such notification to be in writing and take effect 24 hours after the same is deemed to be served in accordance with this Rule 15.

#### **16. Cessation of Membership**

A Member ceases to be a Member if:

- (a) They die or otherwise cease to operate;
- (b) The Member is placed in liquidation;
- (c) The Member becomes the subject of any form of insolvency administration;
- (d) By twelve (12) months written notice to the Secretary, or such shorter period as may be agreed to by the Board, the Member resigns its membership;
- (e) The Member fails to make the required annual contribution as specified in the Members' Agreement or to pay their annual membership fee and the Board has not otherwise agreed to vary that requirement in respect of that Member;
- (f) The Board determines that the Member has ceased to have any direct or indirect involvement in activities aligned with objects set out in paragraphs (a) to (g) of Rule 4.1 and the Board has not otherwise agreed to continue that person as a Member. It is a requirement that the Board provide 90 days' notice to the Member of their intended action prior to terminating the Member's membership under this paragraph; or
- (g) The Member is in breach of any of its obligations under the Members' Agreement and has failed to remedy their breach after being notified in accordance with the Members' Agreement.

#### **17. Liability**

A person who ceases to be a Member or their estate (in the case of a deceased Member, a Member in liquidation or an insolvent Member) remains liable for all moneys,

including any outstanding or unpaid membership fees (if any) owing to the Company by that Member at the time of cessation of membership.

## **MEETINGS OF MEMBERS**

### **18. Annual General meeting**

An annual general meeting of the Company must be held at such time and place as may be determined by the Board at least once in each calendar year, in accordance with the Corporations Act, and as soon as practicable after the first day of July of each year.

### **19. General Meeting**

19.1 All meetings will be called general meetings except the meeting referred to in Rules 18 and 23 which will be called an "Annual General Meeting".

19.2 Unless otherwise required by the Corporations Act the procedures for general meetings set out in these Rules also apply to the annual general meeting.

### **20. Cancellation or postponement of general meeting**

By resolution of the Board any general meeting (other than a general meeting which has been requisitioned or convened by Members in accordance with the Corporations Act) may be cancelled or postponed prior to the date on which it is to be held.

### **21. Requisition of general meeting**

One or more Members or one or more Directors may whenever they think fit requisition a general meeting, and general meetings shall be convened as provided by the Corporations Act.

### **22. Notice of general meeting**

Subject to the provisions of the Corporations Act relating to special resolutions and agreements for shorter notice, twenty one (21) days' notice at the least (exclusive of the day on which the notice is served or deemed to be served but inclusive of the day for which notice is given), specifying the place, the date and the hour of meeting and in case of special business, the general nature of that business, must be given to Members. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.

## **PROCEEDINGS OF MEETINGS**

### **23. Business of meetings**

- 23.1 The business of an annual general meeting is to receive and consider the accounts and reports required by the Corporations Act to be laid before each annual general meeting and to transact any business which, under these Rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Subject to the Corporations Act and except with the approval of the Board with the permission of the Chairperson or under the Corporations Act, no person may move any resolution or amendment to any resolution at any meeting:
- (a) In regard to any special business of which notice has not been given under Rule 22; or
  - (b) Which does not constitute part of special business of which notice has been given under Rule 22.
- 23.2 The Auditor is entitled to attend and be heard on any part of the business of a general meeting which concerns the Auditor and to receive notices for such meeting.

## **24. Quorum**

A quorum for a meeting exists when:

- (a) More than 50% of the Members are present in person or by proxy, attorney or Representative; and
- (b) There is at least one Member present in person or by proxy, attorney or Representative from each Membership Category.

No business may be transacted at any meeting except the election of a Chairperson and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.

## **25. Adjournment in absence of quorum**

If within thirty (30) minutes from the time appointed for the holding of a general meeting a quorum is not present the meeting if convened on the requisition of Members will be dissolved. In any other case (unless a longer time is agreed to by those present) it will stand adjourned to the same day in the next week, at the same time and place or at such other place as the Chairperson appoints and if at such adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for holding the meeting the Members present will constitute a quorum.

## **26. Chairperson**

- 26.1 The Chairperson of the Board is entitled to take the chair at every general meeting.
- 26.2 If at any general meeting:

- (a) The Chairperson is not present at the specified time for holding the meeting; or
  - (b) The Chairperson is present but is unwilling to act as Chairperson of the meeting,
- the Members present must elect one of their number to chair the meeting.

## **27. Acting Chairperson**

If during any general meeting the Chairperson acting pursuant to Rule 26 is unwilling to act as Chairperson for any part of the proceedings, the Chairperson of the Board may withdraw as Chairperson during the relevant part of the proceedings and may nominate any Representative to be acting Chairperson of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings the acting Chairperson is to withdraw and the Chairperson is to resume as Chairperson of the meeting.

## **28. General conduct of meeting**

- 28.1 Subject to the Corporations Act and these Rules the general conduct of each general meeting and the procedures to be adopted at the meeting are as determined by the Chairperson. The Chairperson may at any time the Chairperson considers it necessary or desirable for the proper and orderly conduct of the meeting, demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present. 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, whether on a show of hands or on a poll.
- 28.2 The first general meeting of the Company must occur within sixty (60) days of the registration of the Company.

## **29. Adjournment**

The Chairperson may at any time during the course of the general meeting with the consent of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

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

## **30. Declaration of vote on a show of hands; when poll demanded**

At any general meeting, unless a poll is demanded, a declaration by the Chairperson that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company, signed by the Chairperson of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded either immediately before or immediately after any question is put to a show of hands either by a Member in accordance with the Corporations Act and not otherwise or by the Chairperson. No poll may be demanded on the election of a Chairperson of a meeting.

### **31. Taking a poll**

If a poll is demanded as provided in Rule 30, it is to be taken in the manner and at the time and place as the Chairperson directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairperson's determination in respect of the dispute made in good faith is final.

### **32. Continuation of business**

A demand for a poll does not prevent the continuance of a general meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question or adjournment is to be taken at the meeting and without adjournment.

## **VOTES OF MEMBERS**

### **33. Value of votes**

Each Member is entitled to one vote. In the case of any equality of votes, whether on a show of hands or on a poll, the Chairperson of the meeting has a casting vote.

### **34. Eligible Voters**

34.1 Subject to Rule 34.2 only Members are entitled to be represented at or to vote at or on any question at any general meeting.

34.2 A Member will not be entitled to be represented at or to vote at or on any question at any general meeting unless that Member has complied with all of its obligations under the Members' Agreement. Failure to do so will, without limitation, result in the loss of that Member's voting rights which shall be revived upon remediation by the Member in accordance with the notice provided to them and/or as specified in the Members' Agreement.

34.3 Matters concerning the eligibility of a Member to vote at any general meeting and that are in dispute by a Member or between Members shall be referred to the Chairperson

for resolution and the decision of the Chairperson concerning the eligibility of a Member to vote shall be absolute and binding upon all Members.

### **35. Voting rights**

A Member eligible to vote may vote by proxy or Representative and on a show of hands every person who is a Representative of a Member has the number of votes referred to in Rule 33 and on a poll every Member present in proxy or through its Representative has the number of votes referred to in Rule 33. That vote may be done or given by hand, via a poll, electronically online, or in any other manner permitted by the Chairperson as set out in the notice of meeting in relation to the meeting at which that Member is to vote.

### **36. Appointment of proxies**

36.1 The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, or any other place the Board may determine from time to time, before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote. No instrument appointing a proxy is valid after the expiration of twelve months after the date of its execution, except in the case where a Member is or intends to be absent or resident abroad. Where a Member is or intends to be absent or resident abroad the Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all meetings during such absence or residence abroad and until revocation.

36.2 A proxy may be any natural person.

### **37. Validity of vote**

A vote given in accordance with the terms of an instrument of proxy is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind or revocation has been received at the Office before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

### **38. Form and execution of instrument of proxy**

An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its common seal or signed by a duly authorised officer and in the form prescribed or accepted by the Board. The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the

person giving the proxy. An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and the Board may authorise completion of the proxy by the insertion of the name of any member of the Board as the person in whose favour the proxy is given.

### 39. Board to issue forms of proxy

The Board may issue with any notice of general meeting forms of proxy for use by the Members. Each form may include the names of any of the Directors or of any other persons as suggested proxies. The forms may be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

In the event that the Board does not issue a specific form of proxy then any instrument appointing a proxy will be in the following form:

|  |
|--|
| <p style="text-align: center;"><b>WATER RESEARCH AUSTRALIA LIMITED</b></p> <p>I, ..... of .....<br/>a member of the incorporated body known as Water Research Australia Limited hereby appoint .....<br/>of ..... and failing him/her<br/>..... of .....<br/>to vote for me on my behalf at the (annual general meeting or general meeting, as the case may be) of the Company to be held on the ..... day of ..... 20 ..... and at every adjournment thereof.</p> <p>My proxy is hereby authorised to vote in favour of * against the * following resolutions:</p> <p>SIGNED this ..... day of ..... 20 .....</p> <p>Note: Unless otherwise instructed, the proxy may vote as the proxy thinks fit.</p> <p>(* Delete as applicable)</p> |
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### 40. Attorneys of Members

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney



as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

## **THE BOARD OF DIRECTORS**

### **41. Eligibility to Vote for Appointment of Director**

41.1 Subject to Rule 42.2 (e), each Member shall, so long as it is a Member, be entitled to vote to appoint a Director to the Board and vote to remove any Director so appointed.

41.2 A person will only be entitled to hold the position of a Director if that person satisfies one or more of the following criteria:

- (a) Corporate governance experience;
- (b) Accounting experience;
- (c) Legal experience;
- (d) Experience gained in industry or research in a field aligned with the objects set out in paragraphs (a) to (g) of Rule 4.1; or
- (e) any other criteria determined from time to time by resolution of the Board.

41.3 While, but only until, the composition of the Board is changing to satisfy clause 42, the Board may determine the nominees under clauses 42.2(b), (c) and (d) to achieve the balance of representation contemplated under that clause.

### **42. Membership of the Board and Confidentiality**

42.1 The number of Directors will be no less than 3 and no more than 9 as voted by Members or appointed to that position pursuant to these Rules.

42.2 Without derogating from the appointment of any person to the Board before 22 June 2021 (who subject to earlier resignation will continue to hold office under the Rules and for the period for which he or she was elected as in force at the time of that person's election), and subject to Rule 42.1, as at the relevant annual general meeting at which it becomes possible to implement the following, the Board will consist of:

- (a) A chairperson appointed under Rule 50;
- (b) up to three Directors, who must be employed by a Utility, being nominated by the Industry Members and voted to that position by the Members;
- (c) up to two Directors, who must be employed or engaged by a University being nominated by the Research Members and voted to that position by the Members;
- (d) one Director, who must be employed by an Industry Member (who may also be a Utility) or employed or engaged by a Research Member (who may also be a

University), being nominated, in the case of a nominee of the Industry Members, by the Industry Members and, in the case of a nominee of the Research Members, by the Research Members and in all cases voted to that position by the Members; and

- (e) up to two Directors appointed by the Board under Rule 43.3.

A person is not eligible to be elected to office at a general meeting under clause 42.2(d) if they have or will be subject to a vote as a nominee under clause 42.2(b) or 42.2(c) at that general meeting.

- 42.3 The Members may, by complying with the requirements of Clause 78, decrease or increase the number of Directors able to be appointed to the Board, provided that the requirements of Rule 41.2 are always complied with.
- 42.4 General Members are not permitted to nominate any person for or to any office or position within the Company.
- 42.5 Each Director shall be required to sign a confidentiality agreement in favour of the Company, Members and any other relevant persons in terms acceptable to them for the protection of information which is confidential to the Company or the Members.

### **43 Rules concerning the appointment of directors**

- 43.1 Where the original director was appointed pursuant to:

- (a) Rule 42.2(b), the appointment will be by the passing of a separate vote by the Members, with those with the highest voting tallies being elected to those positions. If two or more candidates for appointment as a Director receive the same number of votes, then the candidate (or candidates if there are more than two) to be appointed is to be determined by lot, conducted upon the declaration of the voting tallies and otherwise as determined by the Chairperson. If there are more than two such candidates with the same number of votes then all of them will participate in the lot, with the remaining candidates taking part in each successive lot until the number of positions for the office of Director have been filled; and
- (b) Rule 42.2(c), the appointment will be by the passing of a separate vote by the Members, with those with the highest voting tallies being elected to those positions. If two or more candidates for appointment as a Director receive the same number of votes, then the candidate (or candidates if there are more than two) to be appointed is to be determined by lot, conducted upon the declaration of the voting tallies and otherwise as determined by the Chairperson. If there are more than two such candidates with the same number of votes then all of them will participate in the lot, with the remaining candidates taking part in each successive lot until the number of positions for the office of Director have been filled.

- (c) Rule 42.2(d), the appointment will be by the passing of a separate vote by the Members, with the candidate with the highest voting tally being elected to that position. If two or more candidates for appointment as a Director receive the same number of votes, then the candidate (or candidates if there are more than two) to be appointed is to be determined by lot, conducted upon the declaration of the voting tallies and otherwise as determined by the Chairperson. If there are more than two such candidates with the same number of votes then all of them will participate in the lot
- 43.2 Where the number of Directors nominated under either Rule 42.2(b), 42.2(c) or 42.2(d) equals the number of Directors able to be nominated under these Rules, the nominees will be deemed to have been elected to the positions of Directors by the Members, with the order of their position determined in accordance with the alphabetical order of their surname, those earlier being deemed to have the highest tally and those last having the lowest tally.
- 43.3 The Board may from time to time appoint a person who:
- (a) satisfies the requirements of Rule 41.2; and
  - (b) is not a permanent full-time employee of a Member,
- as a Director, without reference to a vote by the Members (**Independent Director**). Any such Independent Director will be appointed for such period (not exceeding 3 years) as the Board determines, and will hold the position until the earliest of:
- (c) the expiration of that period (unless re-appointed);
  - (d) the Independent Director becoming a permanent full-time employee of a Member; or
  - (e) the Board resolving that the Independent Director be removed from that office.
- 43.4 Subject to Rule 43.6, a Director appointed under Rules 42.2(b), (c) or (d) will hold office for a period of three years and must retire at the conclusion of the third annual general meeting after their election to that position. The nomination of successive persons for election to the position of a Director must be from the same representative group or groups of Members as originally nominated a retiring director for that position.
- 43.5 A retiring Director remains in office until the end of the relevant general meeting to fill the vacancy left by his or her retirement.
- 43.6 A Director that has vacated their office for any reason specified in Rule 48, other than the reason set out in Rule 48(d), is not eligible to be reappointed to the position of a Director.
- 43.7 A retiring Director, other than one excluded by Rule 43.8, is eligible to renominate for and to be elected to the position of Director, but may not, without the prior or contemporaneous approval of Members by special resolution, hold that office for more than nine years in aggregate.
- 43.8 Subject to Rule 43.9, a Director appointed under Rules 42.2(b), (c) or (d) that has ceased to be employed by a Member or changes employment from one Member to another Member must immediately resign from the Board and the position will be regarded as

vacant and the position may be filled in accordance with the general requirements set out in Rule 43A.2.

- 43.9 If a Director referred to in Rule 43.8 becomes employed by another Member, and no other Director has been nominated by that Member and that person is authorised by that Member to continue as a Director, then that Director may continue as a Director until the conclusion of that Director's term under these Rules.

#### **43A Appointment of persons to fill casual vacancies on the Board**

43A.1 Except in the case of an Independent Director, Members of the same Membership Category as the vacating Director must appoint a person to fill any casual vacancy arising on the Board within 90 days of that vacancy arising or such other time period as is reasonable given the time period to the next annual general meeting, the particular circumstances and whether the position can be filled.

43A.2 Directors appointed to fill a casual vacancy will, for the purposes of the operation of this Rule, be deemed to have commenced their appointment as and from that date. A Director filling a casual vacancy will be required to resign their position at the conclusion of the next annual general meeting and that position filled by the passing of a vote of the Members and:

- (a) If the Director filled a casual vacancy for a person nominated pursuant to Rule 42.2(b), then a person who has been nominated by the Industry Members;
- (b) If the Director filled a casual vacancy for a person nominated pursuant to Rule 42.2(c), then a person who has been nominated by the Research Members; or
- (c) If the Director filled a casual vacancy for a person nominated pursuant to Rule 42.2(d), then a person who has been nominated by either an Industry or Research Member

#### **44. Directors may contract with the Company**

44.1 Subject to any contrary requirement contained in the Corporations Act or of a State or Territory law in which a Member is resident, except where that Director is an Independent Director, a Director is not disqualified, by the office of Director, from contracting or entering into any arrangement with the Company either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company by that Director nor any contract or arrangement entered into by or on behalf of the Company in which that Director is in any way interested may be avoided for that reason. Except for a disqualified Director, a Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason of holding the office of Director or of the fiduciary relationship established by the office.

44.2 Subject to Rule 44.3 no Director may, as a Director, vote in respect of any contract or arrangement or proposed contract or arrangement in which that Director is in any way, whether directly or indirectly, interested, and, if he or she does so vote, that vote will not be counted, but this prohibition as to voting does not apply to any contract by or on behalf of the Company to give any Director any security for advances or by way of

indemnity or to any contract or arrangement where the Director is interested merely as a shareholder or director of another company. Such prohibition may at any time or times be suspended or relaxed to any extent by the Company in general meeting. Any Director having direct or indirect personal material interest in any contract or arrangement which the Company proposes to enter must declare his or her interest forthwith by written notice to the Chairperson.

44.3 The provisions of Rule 44.2 shall not apply to any contract or arrangement or any proposed contract or arrangement where the Director is, whether directly or indirectly, interested only as a consequence of the fact that he is a Director, employee, consultant, contractor, Representative, or is otherwise similarly related to a Member which is a party to any such contract or arrangement or proposed contract or arrangement.

44.4 A Director who is interested in any contract or arrangement may, despite the interest, attest the affixing of the Seal to any document evidencing or otherwise connected with the contract or arrangement.

**45. Directors may hold other office**

A Director may be or become a director of or hold any other office or position under any corporation promoted by the Company, or in which it may be interested, whether as a vendor or shareholder or otherwise, and the Director will not be accountable for any benefits received as a director or shareholder of or holder of any other office or position under that corporation.

**46. Directors may not lend to the Company**

A Director may not lend money to the Company.

**ALTERNATE DIRECTORS**

**47. A Director may not appoint an Alternate Director**

**VACATION OF OFFICE OF DIRECTOR**

**48. Conditions of vacation of office**

The office of a Director is vacated:

- (a) upon the death of a Director;
- (b) upon the Director becoming an insolvent under administration, suspending payment generally to creditors or compounding with or assigning the Director's estate for the benefit of creditors;

- (c) upon the Director becoming a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws relating to mental health;
- (d) upon the Director being absent from meetings of the Board during a period of six (6) consecutive calendar months without leave of absence from the Board where the Board has not, within fourteen (14) days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
- (e) upon the Director resigning office by notice in writing to the Company;
- (f) upon the Director being prohibited from being a Director by reason of the operation of the Corporations Act;
- (g) in the case of the Chairperson, becoming employed by a Member; and
- (h) in the case of an Independent Director, upon the happening of one of the events in Rule 43.3.

## **PROCEEDINGS OF THE BOARD**

### **49. Procedures relating to Board Meetings**

- 49.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A quorum for such a meeting will be that number of Directors present equivalent to half of all Directors in office at the time of that meeting plus 1, and of whom the number of Directors present and elected to office by the Members must exceed the number of Independent Directors.
- 49.2 Notice is deemed to have been given to a Director if sent by mail, personal delivery, facsimile transmission or other electronic means to the usual place of business of the Director or at any other address given to the Secretary by the Director from time to time.

### **50. Chairperson**

- 50.1 The Chairperson's term of office as Chairperson will expire on the conclusion of the third annual general meeting after he or she was last elected as Chairperson.
- 50.2 A retiring Chairperson is eligible for reappointment as Chairperson provided that they satisfy the criteria in Rule 41.2. In the event that the retiring Chairperson does not stand for reappointment or they are ineligible to stand, it is the responsibility of the Board to search for and provide recommendations to the Members for a person that is eligible to become the Chairperson.
- 50.3 The Chairperson will:

- (a) be appointed by the agreement of not less than 75% of the Members, and must satisfy the criteria in Rule 41.2 and must not be a permanent full-time employee of a Member;
- (b) take the chair at all meetings of the Board and if at any meeting the Chairperson is not present within 30 minutes after the time appointed for holding the same the Directors present will choose one of their number to be Chairperson of that meeting;
- (c) be required to sign a confidentiality agreement in favour of the Company, Members and any other relevant persons in terms acceptable to them for the protection of information which is confidential to the Company or the Members and his/her appointment to the Board may be terminated at any time by a unanimous (other than him/herself) decision of the Board; and
- (d) subject to the Chairperson being removed by the unanimous agreement of the full Board, (other than the Chairperson) the term of office for the Chairperson is three (3) years with successive terms being permissible.

50.4 Despite Rule 50.3(a), the Members may, by the agreement of not less than 75% of their number appoint as Chairperson a person who is a permanent full-time employee of a Member for a period of no more than 12 months.

## **51. Meetings by telephone or other means of communication**

The Directors may meet either in person or by telephone or by other means of communication by which all persons participating in the meeting are able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting was at that place for the duration of the meeting.

## **52. Votes at meetings**

- 52.1 Questions arising at any meeting of the Board are decided by majority of votes.
- 52.2 Each Director other than the Chairperson has one (1) vote provided that the Chairperson shall have a casting vote to be used in cases of a deadlock.

## **53. Convening of meetings**

- 53.1 The Board must meet at least twice in each financial year and otherwise as determined by the Chairperson. The Secretary must give Directors not less than fourteen (14) working days written notice of meetings provided that if all of the Directors agree a lesser period of notice may be given for any particular meeting.

53.2 One or more Directors can request that the Chairperson, through the Secretary, convene a meeting of the Directors, provided that the Secretary must give Directors not less than fourteen (14) working days written notice of the meeting.

**54. Power of meetings**

A meeting of the Board at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

**55. Constitution of and delegation of powers to committee**

The Board may create and appoint members to such committees and may delegate any of its powers to a committee consisting of Directors and any other person or persons as the Board thinks fit as it deems necessary for the achievement of the Activities. Any committee formed or person or persons appointed to the committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to sub-delegate any of the powers for the time being vested in him or her.

**56. Proceedings of committees**

The meetings and proceedings of a committee formed under Rule 55 are to be governed by the provisions of these Rules in so far as they are applicable and are not superseded by any regulations made by the Board under Rule 55.

**57. Validity of acts**

57.1 All acts done at any meeting of the Board, by any committee, or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors, or a committee, or the person acting as a Director or that any of them were disqualified, is valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of a committee (as the case may be).

57.2 If the number of Directors is reduced below the minimum number fixed under these Rules, the continuing Directors may act for the purpose of calling a general meeting of the Company but for no other purpose.

**58. Resolution in writing**

A resolution in writing of which notice has been given to all Directors and which is signed by a majority of the Directors entitled to vote on the resolution is a valid "resolution of Directors" but Directors do not include any Alternate Director. A document produced by mechanical or electronic means under the name of a Director with the Director's authority is deemed to be a document in writing signed by the Director.



## POWERS OF THE BOARD

### 59. General powers of the Board

59.1 Subject to Rules 59.2 and 59.3 the management and control of the business and affairs of the Company is vested in the Board, which (in addition to the powers and authorities conferred upon them by these Rules) may exercise all powers and do all things as are within the power of the Company and are not by these Rules or by law directed or required to be exercised or done by the Company in general meeting.

59.2 The functions of the Board do not include (and accordingly the Board does not have power to bind the Members with respect to):

- (a) the borrowing of funds by any of the Members;
- (b) the entering into any lease or hiring of capital equipment by any Member;
- (c) any amendments to the terms of the Constitution or the release or waiver of any breach by any Member;
- (d) the promotion, salary or other matters related to the terms and conditions of employment of any seconded personnel;
- (e) acting in a manner inconsistent with the Rules or the Constitution; or
- (f) acting in a manner which requires a Member to act in a manner or do anything which is ultra vires, or conflicts with the internal policy of that Member.

59.3 The general power of the Board to manage and control the business and affairs of the Company is subject to and conditional upon the provisions of the Members' Agreement and this Constitution.

### 59.4 Committees

The Directors may establish either or both of the following:

- (a) committees with powers delegated by the Directors (**Board Committees**); and
- (b) advisory committees, with no delegated powers, to advise the Directors on specified matters (**Advisory Committees**).

59.5 Board Committee members and Advisory Committee members will be appointed by the Directors.

59.6 At least one member of each Board Committee must be a Director

59.7 Meetings of any Board Committee or Advisory Committee will be governed by the provisions of this Constitution which deal with Directors meetings so far as they are applicable and are not inconsistent with any directions of the Directors.

**60. Powers to select bankers**

Cheques on the Company bankers must be signed by such person or persons as may be nominated by the Board. The Company banking account will be kept with such banker or bankers as the Board determines.

**61. Power to appoint others to assist the Company**

The Board may from time to time by power of attorney appoint any corporation, firm, person or body of persons, whether nominated directly or indirectly by the Board, to be the attorney or attorneys of the Company for such purposes and with such powers, authorities and discretions (not exceeding those vested in or exercisable by the Board) and for such period and subject to such conditions as the Board thinks fit, and any such power of attorney may contain such provision for the protection and convenience of persons dealing with any such attorney as the Board thinks fit and may also authorise any such attorney to delegate all or any of the powers, authorities and discretions vested in him.

## **ACCOUNTS**

**62. Proper Accounts**

The Board must cause proper accounting and other records to be kept with respect to:

- (a) the income, expenditure, assets and liabilities of the Company;
- (b) the sums of money received and expended by the Company and the manner and method in which such receipts and expenditures take place; and
- (c) all sales and purchases of real and personal property including goods of all nature by the Company.

**63. Holding and inspection of records**

The books of account and records must be kept at the Office or at such other place or places as the Board thinks fit and must at all times be open to inspection by the Directors.

**64. Distribution of Accounts**

The Board must distribute to the Members copies of the Company's annual accounts accompanied by a copy of the Auditor's report prepared by a registered company auditor no later than may be required by the Corporations Act or, if a shorter timeframe

is required under another law of a State or Territory, within that shorter timeframe. The Board must also cause to be made and laid before each annual general meeting a set of accounts or a balance sheet and profit and loss account made up to a date not more than six months before each such meeting.

## **65. Inspection by Members**

A Member (the "Requesting Party") may by giving reasonable written notice to the Board request permission to inspect the accounting books and records of the Company. The Company will, not more than once a year, allow the Requesting Party or its accountants at the Requesting Party's expense at any reasonable time to inspect and take copies of or extracts from such relevant accounting books, records, or vouchers as may be reasonably necessary for the sole purpose of verifying the accounts of the Company.

## **AUDIT**

### **66. Auditor**

- 66.1 A properly qualified auditor must be appointed in accordance with the provisions of the Corporations Act and his or her (as the case may be) duties, removal and remuneration will be handled in accordance with the Corporations Act. The Auditor of the Company must be appointed within thirty (30) days of the Company being incorporated.
- 66.2 The Auditor must notify his or her (as the case may be) address for service of a notice.

## **APPOINTMENT OF CEO AND COMPANY SECRETARY**

### **67. Chief Executive Officer**

- 67.1 The Directors may appoint any person to the position of CEO for the period and on the terms (including as to remuneration) that the Directors see fit.

### **68. Secretary**

- 68.1 There must be at least one secretary of the Company, appointed by the Directors for a term and at remuneration and on conditions determined by them.
- 68.2 The Secretary is entitled to attend and be heard on any matter at all Directors and general meetings.
- 68.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.
- 68.4 If the CEO is appointed as Secretary, the CEO will not be entitled to any remuneration in addition to his or her remuneration as CEO.

## THE COMMON SEAL OF THE COMPANY

### 69. Affixing the common Seal of the Company

The Board is to provide for the safe custody of the Seal which may only be used by the authority of the Board. Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary or by a second Director or by another person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination. The Company may also from time to time exercise the powers conferred by the Corporations Act in relation to the Seal and those powers are vested in the Board

### 70. Execution without use of a Common Seal

The Board may at any time determine that the Company shall not have a common seal or that a particular document may be executed by the Company without the Seal. Upon such determination, then a document shall be validly executed and shall be binding on the Company if it is signed by a Director and countersigned by the Secretary or by a second Director.

## MINUTES

### 71. Minutes

- 71.1 The Board must cause minutes to be duly entered in books provided for the purpose of all resolutions and proceedings of the Company and of meetings of the Board, and of Committees and such minutes will be signed by the chairperson of the meeting at the next ensuing meeting and upon same being signed will be receivable as prima facie evidence of the matters stated in such minutes.
- 71.2 The Minute Book shall include any resolution in writing passed by the Directors pursuant to Rule 58.
- 71.3 A Member (the "Requesting Party") may by giving reasonable written notice to the Board request permission to inspect the minutes of the Company. The Company will allow the Requesting Party or its accountants at the Requesting Party's expense at any reasonable time to inspect and take copies of or extracts from such minutes as may be reasonably necessary for the sole purpose of verifying matters resolved by the Members.

## NOTICES

### 72. Service of notices

A notice may be given by the Company to any Member personally, by leaving it at the Member's Registered Address or by sending it by prepaid post, electronic means or facsimile transmission addressed to the Member's Registered Address.

### **73. When notice deemed to be served**

Any notice sent by post is deemed to have been served at the expiration of three business days after the notice is posted and, in proving service, it is sufficient to prove that the notice was properly addressed and posted. Any notice served on a Member or Auditor personally, or left at the Member's or Auditor's Registered Address is deemed to have been served when delivered. Any notice sent by facsimile transmission will be deemed to have been received upon the earlier notification of receipt of transmission or twelve (12) hours after transmission.

### **74. Member not known at Registered Address**

If the Company has bona fide reason to believe that a Member is not known at their last Registered Address, all future notices are deemed to be given to the Member if the notice is exhibited in the Office for a period of forty-eight (48) hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs the Company of their new Registered Address.

### **75. Calculating the period of notice**

Where a given number of days' notice or notice extending over any other period is required to be given the day of service is not to be included in the number of days or other period.

## **INDEMNITY**

### **76 Indemnity**

- 76.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred in good faith by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 76.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person in good faith as an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).
- 76.3 The amount of any indemnity payable under Rule 76.1 or 76.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity that includes a GST Amount is subject to the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

## **WINDING UP OF THE COMPANY**

- 77.** The Company may be dissolved by a resolution of Members requiring a majority of 75% of votes at a meeting of the Company's Members.

## **AMENDMENTS TO CONSTITUTION**

- 78.** The Constitution may only be amended by a resolution of Members requiring a majority of at least 75% of votes at a meeting of the Company's Members.

## **SCHOLARSHIP FUND**

### **79 Water Research Australia Scholarship Fund**

#### **79.1 Scholarship fund**

- (a) The Company may establish and maintain a fund solely for the purpose of providing money for scholarships, bursaries or prizes to which section 30-37 of the Tax Act applies (**Scholarship Fund**).
- (b) The Scholarship Fund must have its own bank account, and all funds must be kept separate from any other funds held by the Company.
- (c) The Company must keep proper records in respect of all receipts and payments on account of the Scholarship Fund, and of all dealings connected with it.
- (d) Receipts must be issued in the name of the Scholarship Fund, but state the Australian Business Number of the Company.
- (e) The public must be invited to contribute to the Scholarship Fund (as required by Taxation Ruling TR 95/27, or such later ruling or other publication as substantially replaces same).
- (f) The Scholarship Fund must be operated on a non-profit basis. Moneys must not be distributed to any of those who manage and control the Scholarship Fund except as:
  - (i) reimbursement for out-of-pocket expenses incurred on behalf of the Scholarship Fund; or
  - (ii) proper remuneration for administrative services provided to the Scholarship Fund.
- (g) The Scholarship Fund will be managed and controlled (at the election of the Board) by either:
  - (i) the Board itself (but only if a majority of the members of the Board are Responsible Persons); or

- (ii) a committee appointed by the Board (provided that at all times a majority of the members of any such committee must be Responsible Persons).
- (h) Upon the winding up of the Scholarship Fund, the Company must transfer any surplus assets of the Scholarship Fund (apart from any assets dealt with under clause 79.2(c)) to a charitable fund, authority or institution gifts to which can be deducted under Division 30 of the Tax Act.

## 79.2 Gifts, contributions etc

- (a) The Company must maintain for the principal purpose of the Scholarship Fund a gift fund in accordance with section 30-130 of the Tax Act.
- (b) The Company may only use that gift fund for the principal purpose of the Scholarship Fund.
- (c) At the first occurrence of one of the following events:
  - (i) the winding up of the Scholarship Fund; and
  - (ii) the revocation of the Company's endorsement under subdivision 30-BA of the Tax Act relating to the Scholarship Fund,

the Company must transfer any surplus amounts of the gift fund to a charitable fund, authority or institution gifts to which can be deducted under Division 30 of the Tax Act.

## 79.3 Interpretation

In this clause 79:

- (a) '**Responsible Persons**' means persons who have a degree of responsibility to the community as a whole (within the meaning of Taxation Ruling TR 95/27, or such later ruling or other publication as substantially replaces same);
- (b) '**Tax Act**' means the Income Tax Assessment Act 1997 (Cth).

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