
**Peoplecare Health
Limited**

Constitution

**Approved by Members at AGM on
11th November 2015**

Peoplecare Health Limited

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1. Interpretation

1.1. Definitions

In this *Constitution* unless a contrary intention is indicated:

'AGM' means annual general meeting of the *company*;

'ASIC' means Australian Securities & Investments Commission;

'appointed director' means a person appointed as a *director* pursuant to Rule 8.1(a)(iii);

'associate director' means a person appointed pursuant to Rule 8.9;

'board' means the board of *directors* of the *company*;

'company' means Peoplecare Health Limited (ABN 95 087 648 753);

'Constitution' means the *Constitution* of the *company* as amended from time to time;

'contributor' means a *person* who subscribes and is accepted as a *policy holder* of the *Health Benefits Fund*;

'Corporations Act' means the Corporations Act 2001 (Cth), as modified or amended from time to time;

'director' means any *elected director* or *appointed director* for the time being of the *company*;

'elected director' means a person elected as a *director* pursuant to Rule 8.4;

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

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

'material personal interest' has the same meaning as in Part 2D.1 of the *Corporations Act*;

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'member' means a **person** whose name has been entered for the time being in the Register of Members the **company** keeps under the **Corporations Act**;

'member affiliate' means a spouse or de facto partner of a **member**;

'members' meeting' means a general meeting of the **members**;

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

'person' includes individual, body corporate and body politic; and

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

1.2. Interpretation

- (a) In this **Constitution**, unless the context requires otherwise:
- (i) the singular includes the plural and vice versa;
 - (ii) where an expression is defined in this **Constitution**, any other grammatical form of the expression has a corresponding meaning;
 - (iii) words and expressions defined in the **Corporations Act** have the same meaning in this **Constitution**;
 - (iv) headings are for purposes of convenience only and do not affect the interpretation of this **Constitution**;
 - (v) a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
 - (vi) a reference to this **Constitution** or another instrument includes all amendments or replacements of the **Constitution** or the other instrument;
 - (vii) a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body:

- (A) that replaces it; or
 - (B) to which substantially all the powers and functions relevant to this **Constitution** are transferred; and
- (viii) the notes to this **Constitution** are for purposes of convenience only and do not affect the interpretation of this **Constitution**. The notes do not form part of this **Constitution** and may be removed or modified without the **company** complying with the **Corporations Act** requirements that apply to removal or modification of constitutional provisions.

1.3. Time

Unless expressly provided otherwise, when this **Constitution**, or any notice given under this **Constitution**, states a time or a period of time, the time stated is, or the period of time is calculated by reference to, Standard Time or Summer Time, as the case may be, at the **company's** registered office.

1.4. Replaceable Rules do not Apply

The replaceable rules in the **Corporations Act** do not apply.

1.5. Notices

- (a) This Rule applies to all notices and documents that the **Corporations Act** or this **Constitution** requires a party to this **Constitution** to send to another party to this **Constitution**.
- (b) In this Rule, **business day** means a day that is not:
 - (i) a Saturday or Sunday; or
 - (ii) a public holiday or bank holiday,in the place where the notice is received.
- (c) A **person** sending a notice must do so in writing and must address it to the recipient at the following respective addresses:
 - (i) if to the **company** — at its registered office or such other address as the **company** specifies to **members** from time-to-time; and

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- (ii) if to a **member** — at the **member's** address appearing on the Register of Members from time-to-time.
- (d) A **person** may send a notice or other document to another **person** in any of the ways set out in column 2 of the table. The other **person** receives the notice at the time set out in column 3:

Delivery Method		Time Person Receives Notice
1	Hand delivering the notice personally	The other person receives the notice: (i) if hand delivered before 4:00pm on a business day — on that business day ; (ii) if hand delivered after 4:00pm on a business day — on the next business day ; (iii) if hand delivered on a day other than a business day — on the next business day .
2	Sending the notice by pre-paid registered post	The other person receives the notice on the third business day after posting unless it is actually delivered earlier.
3	Sending the notice by facsimile transmission	The other person receives the notice: (i) if sent before 5:00pm on a business day — on that business day ; (ii) if sent after 5:00pm on a business day — on the next business day ; (iii) if sent on a day other than a business day — on the next business day . This rule does not apply where the person sending the facsimile has evidence that the transmission was unsuccessful.
4	Sending the notice by electronic means	The other person receives the notice: (i) if sent before 5:00pm on a business day — on that business day ; (ii) if sent after 5:00pm on a business day — on the next business day ; (iii) if sent on a day other than a business day — on the next business day . This rule does not apply where the person sending the notice by

	electronic means has evidence that the notice did not reach the other person's electronic address.
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2. Objects and Limit on Powers

Corporations Act Commentary

The **Corporations Act** provides that the **company** has the legal capacity and powers of an individual and of a body corporate: **see s 124**.

The **Corporations Act** allows the **Constitution** to set out the **company's** objects and to expressly limit the **company's** exercise of its powers: **see s 125**. The statement of objects is optional.

2.1. Objects

The **company** has the objects set out in Appendix 1.

2.2. Powers of Company

The **company** must exercise its powers conferred on it under the **Corporations Act** in a manner which is consistent with the objects of the **company**.

2.3. Binding Effects of the Rules

The Rules are binding on the **company**, all its **members** and all **contributors** and **persons** claiming through them respectively as if there was a covenant on the part of the **company** and each such **person** to observe the Rules.

2.4. Alteration of Constitution

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

2.5. Limited Liability

- (a) The liability of the **members** is limited.
- (b) Each **member** agrees that, if the **company** is wound up during the time they are a **member**, or within one year after ceasing to be a **member**, they will contribute to the assets of the **company**, for payment of the debts and liabilities of the

company (contracted before ceasing to be a **member**) and of the costs, charges, and expenses of winding up and for the adjustment among the **members** of the rights of the **members**, such amount as may be required, but not exceeding \$10.

2.6. Excess Assets on Winding up of the company

- (a) Subject to the **Private Health Insurance Legislation**, on winding up of the **company** the **members** are not entitled to any surplus that would otherwise be available for distribution to **members**.
- (b) The **company** must pay the surplus to another body corporate incorporated in an Australian state or territory that has:
 - (i) objects similar or in part similar to the objects of the **company** and objects incidental or conducive to those so specified but no other; and
 - (ii) whose Constitution prohibits the distribution of its income and property among its **members** or **contributors** to at least as great as that imposed on the **company** under this **Constitution**.
- (c) If the **company** is wound up, any assets remaining after the payment of outstanding claims, debts and liabilities ('the net assets') shall be applied as the **members** at a **members' meeting** direct providing that the direction is consistent with the conditions of Rule 2.6(b) and any order of a court having jurisdiction in this matter.

2.7. Limitation of powers

The **company**:

- (a) is prohibited from making distributions to **members**:
- (b) must exercise its powers conferred on it under section 124 (1) of the **Corporations Act** in a manner which is consistent with the objects of the **company** set out in Appendix 1.

2.8. Income and Property of the Company

The income, property and profits of the **company** must be applied solely towards the promotion of the objects of the **company** as set out in this **Constitution** and no portion thereof shall be paid directly or indirectly by way of dividend, bonus or otherwise by way

of profit to **members** except payments to a **member** in return for any services rendered or goods supplied in the ordinary or usual course of business **company**.

3. Membership

Corporations Act Commentary

A **person** becomes a **member** if the **person** agrees to become a **member** and the **company** enters the **person's** name in the Register of Members: **see s 231**.

- (a) Subject to any other Rule allowing admission of **members**, the **company** may admit a **person** as a **member** only if the **person** makes an application for membership in such form as approved by the **board** from time to time.
- (b) The **board** has an absolute discretion in exercising the **company's** power to admit **members** without any obligation to give a reason for not admitting a **person** as a **member**.
- (c) When the **company** admits a **person** as a **member**, the **company** must:
 - (i) enter the **person's** particulars in the Register of Members as required by the **Corporations Act**, and
 - (ii) give the **person** notice that it has admitted the **person** as a **member**.
- (d) When the **company** admits a **person** as a **member** the **member** agrees to be bound by this **Constitution**.

4. Termination of Membership

4.1. Termination of membership

- (a) A **member** ceases to be a **member**.
 - (i) on receipt by the **company** of the **member's** written resignation; or
 - (ii) if the **person** ceases to be **member** in accordance with the provisions of any **Health Fund Rule**; or
 - (iii) if the **member** is terminated under this Rule 4.

- (b) The **company** may remove a **member's** name from the Register of Members if:
 - (i) the **member** dies; or
 - (ii) the **member** becomes bankrupt; or
 - (iii) the **member** becomes mentally incapable.

4.2. Termination by the Board

- (a) The **company** may terminate a person's membership by **board** resolution if:
 - (i) the **member** fails to discharge the **member's** obligations to the **company**; or
 - (ii) the **member** is guilty of conduct that the **board** reasonably considers to be detrimental to the **company**; or
 - (iii) the **member** obtains membership by misrepresentation or mistake.
- (b) The **company** must give notice of the proposed resolution under Rule 4.2(a) to the **member** at least 14 days before considering the proposed resolution.
- (c) At the time the **board** considers the proposed resolution, the **member** is entitled:
 - (i) to be present with or without the **member's** legal representative; and
 - (ii) to be heard, either in person or through the **member's** legal representative.

4.3. Effect of cessation of membership

- (a) Subject to Rule 2.6 a **person** who ceases to be a **member** shall continue to be liable for all moneys due by the **member** to the **company**.
- (b) If a **person** ceases to be a **member** under this Rule 4 then the **member affiliate** of the **member** ceases to be a **member affiliate**.

5. Meeting of Members

Corporations Act Commentary

Holding a members' meeting

A **members' meeting** must be held at a reasonable time and place: **see s 249R**.

A **members' meeting** can be held using any technology (such as video conferencing), provided that it gives the **members** as a whole a reasonable opportunity to participate in the meeting: **see s 249S**.

Notice of members' meeting

At least 21 days notice must be given of a **members' meeting**. A meeting can be called on shorter notice with the consent of the requisite number of **members**, but not to remove a **director** or auditor: **see 249H**.

Written notice must be given individually to each **member** and **director**.

Notice may be given personally, by post, by fax or electronic means if nominated by the **member**: **see section 249J**. See Rule 1.5 as to service by post or by fax.

The auditor must also receive the notice convening a **members' meeting** and other communication **members** are entitled to receive: **see s 249K**.

Content of notice

A notice convening a **members' meeting** must:

- set out the place, date and time of the meeting and the technology to be used to conduct the meeting if it is to be held in 2 or more places;
- state the general nature of the meeting's business;
- state the terms of any special resolution and the fact that it is proposed as a special resolution;
- in relation to proxies:
 - that the **member** has a right to appoint a proxy;
 - whether or not the proxy needs to be a **member**, and
 - that a **member** entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise: **see s 249L**.

Auditor's right to attend

The Auditor has a right to attend any **members' meeting** and to speak: **see s 249V**.

Members' right to give notice of a resolution

Members with at least 5% of the votes that may be cast at a **members' meeting** or at least 100 **members** may give the **company** notice of a resolution that they propose to move at a **members' meeting**: **see s 249N**.

This resolution is to be considered at the next **members' meeting** that occurs not more than 2 months after the notice is given: **see s 249O**.

Members' request for statement to be distributed

A **company** must distribute a statement about a resolution, or other matter to be considered at a **members' meeting**, as requested by a certain number of **members**: **see s 249P**.

5.1. Calling Meetings of Members

Corporations Act Commentary

Members' right to call a *members' meeting*

A **members' meeting** must be held if 100, or **members** with at least 5% of the votes ask for it. The **board** has to call a **members' meeting** within 21 days after the request and the meeting itself must be held within 2 months: **see ss 249D and 249F**. In any case, **members** who hold at least 5% of the votes can call and arrange to hold a meeting themselves: **see s 249F**.

The **board** or any individual **director** may at any time call a **members' meeting**.

5.2. Adjourning Meetings of Members

- (a) The chair of a **members' meeting** at which a quorum is present:
 - (i) may adjourn the meeting with the consent of the meeting by ordinary resolution; and
 - (ii) must adjourn the meeting if directed by ordinary resolution.
- (b) The **company** must give notice of an adjourned **members' meeting** if the adjournment is for 1 month or more.
- (c) When a meeting is adjourned for 30 days or less, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (d) It is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting adjourned under Rule 5.2(c).
- (e) The only business that an adjourned **members' meeting** may deal with is business unfinished at the **members' meeting** that was adjourned.

Technology

The **company** may hold a meeting of its **members** at two (2) or more venues using any technology that gives the **members** as a whole a reasonable opportunity to participate: **see s 249S**.

5.3. Quorum

- (a) No business shall be transacted at any **members' meeting** unless a quorum of **members** is present at the time when the meeting proceeds to the business. A quorum shall consist of:
- (i) 10 **members** present in **person**; or
 - (ii) if less than 20 **members** are eligible to attend and vote at a **member's** meeting – 50% of the **members** eligible to attend and vote at the **member's meeting**.

5.4. Proceedings at Members' Meetings

- (a) In determining whether a quorum is present individuals attending as a proxy or attorney for a **member** shall be counted. However, if a **member** has appointed more than one (1) proxy or representative, only one (1) of them shall be counted. If an individual is attending both as a **member** and as a proxy then that **person** will be counted as present in each capacity.
- (b) If within 15 minutes from the time appointed for the meeting a quorum is not present, the **members' meeting** is adjourned to the date, time and place the **board** specifies. If the **board** does not specify 1 or more of those things, the meeting is adjourned to:
- (i) if the date is not specified – the same day in the next week;
 - (ii) if the time is not specified – the same time; and
 - (iii) if the place is not specified – the same place.
- (c) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

5.5. Chair of Members' Meeting

- (a) The Chair of **members' meetings** shall be the person who has been elected as Chair of meetings of the **board**.
- (b) If the Chair is not present within five (5) minutes after the time appointed for the holding of the **members' meeting** or is unable or is unwilling to act as Chair for the whole or any part of the **members' meeting** then the **directors** present may elect a **director** present as Chair of the **members' meeting**.
- (c) If there are no **directors** present or those **directors** present are unable or unwilling to act as Chair of the meeting then the meeting shall be adjourned.

6. Voting at Members' Meetings

6.1. Voting

- (a) A resolution put to the vote at a **members' meeting** must be decided on a show of hands unless a poll is demanded.
- (b) Before a **members' meeting** votes on a resolution, the Chair must inform the meeting:
 - (i) how many proxy documents the **company** has received that validly appoint a person present at the meeting as a proxy;
 - (ii) how many of these proxy documents direct the proxies how to vote on the resolution; and
 - (iii) how the proxies are directed to vote on the resolution.
- (c) The **members' meeting** passes an ordinary resolution only if more than half the total number of votes cast on the resolution are in favour of it.
- (d) The Chair will have a casting vote in addition to his or her deliberative vote.
- (e) Each of the Chair of the meeting and any **member** entitled to vote who is present at a meeting in person or by proxy is entitled to demand a poll.
- (f) No **member** shall be entitled to vote at any **members' meeting** if relevant annual subscriptions of the **member** are in arrears at the date of the meeting, nor shall any **person** be entitled to vote on behalf of any such **member**.

6.2. Voting on a Poll

Corporations Act Commentary

Section 250L allows the following to demand a poll:

- *at least 5 **members** entitled to vote on the resolution;*
- ***members** with at least 5% of the votes to be cast on the resolution; or*
- *the chair.*

*A proxy may join a demand for a poll: **see s 249Y(1).***

Section 250K states that a poll may be demanded on any resolution and that the demand may be withdrawn.

- (a) A poll cannot be demanded on any resolution concerning the election of a person to chair the **members' meeting**.
- (b) A poll on the question of an adjournment must be taken immediately. The chair may direct when and the manner in which any other poll must be taken.
- (c) The **members' meeting** may conduct other business even though a poll is demanded on a resolution.
- (d) If a poll is demanded it shall be taken when and in such manner as the Chair directs. The result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on a question of adjournment shall be taken immediately and without discussion.

6.3. Who can appoint a proxy

- (a) Any **member** who is entitled to attend and cast a vote at a **members' meeting** may appoint a person as the **member's** proxy to attend and vote for the **member** at the meeting.
- (b) Any instrument appointing a proxy shall be in writing under the hand of the appointer or of the attorney of the appointer duly authorised in writing.

Corporations Act Commentary

Sections 249X to 250C set out **members'** powers to appoint proxies and the rights and obligations of proxies.

- (c) The **board** may determine the form of proxy document from time-to-time.

- (d) The instrument appointing a proxy shall be deemed to confer authority to speak at the meeting, demand or join in demanding a poll and (to the extent allowed by the instrument) to vote on a poll. The authority of a proxy to speak and vote for a **member** at a meeting is suspended while the **member** is present at the meeting.
- (e) If the **company** sends a **member** a proxy appointment form for a meeting or a list of **persons** willing to act as proxies at a meeting:
 - (i) if the **member** requested the form or list, the **company** must send the form or list to all **members** who requested it and who are entitled to appoint a proxy to attend and vote at the meeting; or
 - (ii) otherwise – the **company** must send the form or list to all its **members** entitled to appoint a proxy to attend and vote at the meeting.
- (f) A proxy does not have a right to vote on a show of hands.
- (g) If a **member** appoints the chair as the **member's** proxy and directs the chair to vote either in favour of or against the resolution, the chair must demand a poll on the resolution.

6.4. Appointing a proxy

- (a) An appointment of a proxy is valid if it is signed by the **member** making the appointment and contains the following information:
 - (i) the **member's** name and address;
 - (ii) the name of the **company**;
 - (iii) the proxy's name or the name of the office that the proxy holds;
 - (iv) the instrument of appointment may specify the meetings at which the appointment may be used;
 - (v) an undated appointment is taken to have been dated on the day it is given to the **company**; and
 - (vi) an appointment may specify the way the proxy is to vote on a particular resolution. Unless so instructed in writing, the proxy may vote as he or she thinks fit.

- (b) An appointment of a proxy is not invalid merely because it does not contain all the information required for a valid proxy appointment, so long as it contains:
 - (i) the **member's** name; and
 - (ii) the proxy's name or the name of the office that the proxy holds.
- (c) An instrument of appointment of a proxy does not have to be witnessed.

6.5. Notification to the Company

- (a) For an appointment of a proxy to be effective the instrument of appointment and authority, if any, under which it is signed or a certified copy of that authority must be received by the **company** at least forty eight (48) hours before the start of the relevant meeting or adjourned meeting.
- (b) The **company** shall have received an appointment instrument when it is received at any of the following:
 - (i) the **company's** registered office; or
 - (ii) a facsimile number at the **company's** registered office; or
 - (iii) a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

6.6. Validity of Proxy Vote

- (a) Unless the **company** receives written notice of the matter before the meeting at which a proxy vote starts or resumes, the proxy's vote at that meeting will be valid if, before the proxy votes:
 - (i) the appointing **member** dies; or
 - (ii) the **member** is mentally incapacitated; or
 - (iii) the **member** revokes the proxy's appointment; or
 - (iv) the **member** revokes the authority under which the proxy was appointed by a third party.

6.7. Objections

An objection to the qualification of a voter:

- (a) may only be made at the meeting or adjourned **members' meeting** at which the vote objected to is cast; and
- (b) must be determined by the Chair of the meeting, whose decision is final.

6.8. Voting on a Show of Hands

On a show of hands, a declaration by the chair is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against. The minutes only need to record that the resolution was passed or not passed.

7. Annual General Meetings

Corporations Act Commentary

The **company** must hold an annual general meeting (AGM) at least once in each calendar year and within five (5) months after the end of its financial year: **see s 250N(2)**.

An AGM is to be held in addition to any other meetings of **members** held by the **company** in the year: **see s 250N(3)**.

The **directors** must lay before the AGM the annual financial report, the **directors'** report and the auditor's report for the last financial year that ended before the AGM.

Business of AGM

The business of an AGM may include any of the following, even if not referred to in the notice of meeting:

- (a) consideration of the annual financial report, **directors'** report and auditor's report;
- (b) the election of **directors**;
- (c) the appointment of the auditor; and
- (d) the fixing of the auditor's remuneration: **see s 250R**.

Questions and comments by members on management

The chairperson of the AGM must allow a reasonable opportunity for the **members** as a whole at the meeting to ask questions about, or make comments on, the management of the **company**: **see s 250S**.

Questions by members of auditors

If the **company's** auditor or his or her representative is at the meeting, the chairperson of the AGM must allow a reasonable opportunity for the **members** as a whole at the meeting to ask the auditor or representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report: **see s 250T**.

Members' access to minutes

The **company** must ensure that the minute books for the meetings of its **members** and for resolutions of **members** passed without meetings are open for inspection by **members** free of charge: **see s 251B(1)**.

A **member** may ask the **company** in writing for a copy of:

- (i) any minutes of a meeting of **members** or an extract of the minutes; or
- (ii) any minutes of a resolution passed by **members** without a meeting: **see s 251B(2)**.

This Division contains no Rule but is explanatory only and refers to relevant provisions of the Corporations Act.

8. Directors – Appointment and Vacation of Office

Corporations Act Commentary

Section 201A(2) requires that companies must have at least 3 **directors** (not counting alternate **directors**) and that at least 2 must ordinarily reside in Australia.

8.1. The Board of Directors

- (a) The **board** must have not more than 6 **directors**:
 - (i) all of whom must be **members** or **member affiliates**;
 - (ii) at least 2 of whom must be elected by the **members** at a meeting called for that purpose; and

- (iii) not more than 4 of whom may be appointed from time to time as **directors** by resolution of the majority of the **board** having regard to the specific skills and experience required by the **board**.
- (b) Subject to Rule 8.9, the **board** may in its absolute discretion appoint not more than 2 persons to act as **associate directors** in addition to the maximum number of **directors** allowable under Rule 8.1(a).

8.2. Maximum number of Directors

Subject to the **Corporations Act**, the **members** may from time to time by ordinary resolution increase or reduce the number of **directors**, however until the **members** pass such a resolution there shall be not more than six (6) **directors**, not including **associate directors**, at any one time.

8.3. Eligibility to be a Director

- (a) Notwithstanding any other provision in this **Constitution**, a person is not eligible to be a **director**:
 - (i) unless the person is at least 18 years of age; or
 - (ii) if that person ceases to be a **member** or **member affiliate** as the case may be; or
 - (iii) unless the person has not had a personal representative or trustee appointed to administer the person's estate or property because of their mental incapacity; or
 - (iv) if the person is a **member affiliate**, and the **member** who is the spouse or de facto partner of the **member affiliate** is a **director**, or
 - (v) if the person is a **member**, and the **member affiliate** of the **member** is a **director**.

8.4. Election by Members

The **members** may elect a person to be an **elected director** as determined by ballot at the **AGM** in accordance with an election process as determined by the **board**.

8.5. Automatic Vacation of Office

- (a) The office of a **director** shall automatically become vacant if the **director**:
- (i) dies; or
 - (ii) ceases to hold any relevant appointment or qualification; or
 - (iii) ceases to be eligible to be a **director** under Rule 8.3; or
 - (iv) becomes bankrupt or makes any arrangement or composition with his or her creditors generally; or
 - (v) becomes prohibited from being a director of a company by reason of the **Corporations Act** or any order made under the **Corporations Act** or **Private Health Insurance Legislation** (or any order made under the **Private Health Insurance Legislation**); or
 - (vi) cannot manage the **company** because of his or her mental incapacity and is a **person** whose estate or property has had a personal representative or trustee appointed to administer it; or
 - (vii) is absent without permission of the **board** from either 3 consecutive meetings of the **board** or 3 meetings of the **board** held in any financial year.

Neither the **board** or the **members' meeting** may waive the operation of this Rule.

8.6. Term of Office

- (a) Subject to the **Corporations Act** and the rotation provisions in this Rule 8.6 an **elected director's** term of office:
- (i) starts at the end of the **AGM** at which the **elected director's** election is announced; and
 - (ii) ends at the end of the third **AGM** after the **AGM** at which the **elected director's** election is announced.

- (b) If an **elect**ed director is due to retire at the next **AGM** and if the **elect**ed director wishes to stand for election then the **elect**ed director must nominate for re-election as a **director**.
- (c) Any **appointed director**.
 - (i) may be appointed for a term not exceeding 3 years as determined by the **board** in its absolute discretion;
 - (ii) subject to rule 8.6(e)(ii), may be re-appointed by the **board** at the expiration of their term for a further term or terms as determined by the **board** in its absolute discretion.
- (d) Subject to rule 8.6(e), no **director** shall serve as a **director** for more than 9 years.
- (e) Any **director** who has served for 9 years as a **director** (either as an **appointed director** or **elect**ed director or both) and:
 - (i) wishes to stand for election as **director**, must stand for election by the **members** for a one year term at each **AGM**; and
 - (ii) wishes to be appointed for a further term as a **director**, must be appointed by the **board** each year for a one year term.

8.7. Resignation

A **director** may resign by giving the **company** notice of the **director's** resignation. The **director's** office becomes vacant:

- (i) if the notice of resignation specifies a date of resignation on the date of resignation; or
- (ii) otherwise on the date the **company** receives the notice of resignation.

8.8. Casual Vacancy

- (a) The **board** may appoint a person to be a **director**.
 - (i) if a **director's** office becomes vacant other than because the **director's** term of office has ended; or

- (ii) if for any reason, the number of **directors** is less than the maximum under Rules 8.1 and 8.2.

The **board** may only appoint a person who is eligible to be a **director** under this Rule 8.

- (b) The term of office for a **director** appointed to fill a vacancy in Rule 8.8(a)(i) ends:
 - (i) if the **members' meeting** approves the appointment before the end of the next **AGM** after the **director's** appointment — at the end of the term of office of the **director** whose office has become vacant; and
 - (ii) otherwise — at the end of the next **AGM** after the **director's** appointment.
- (c) The term of office for a **director** appointed to fill a vacancy in Rule 8.8(a)(ii) ends at the end of the next **AGM** after the **director's** appointment.

8.9. Associate Directors

- (a) The **board** may from time to time appoint any **person**, other than a **person** who is at that time a **director**, to be an **associate director** for a term not exceeding one year as determined by the **board** in its absolute discretion and may from time to time terminate any such appointment.
- (b) The **board** may from time to time determine the powers and duties of any **associate director**, however no **associate director** has a vote at any **director's** meeting and the **associate director's** attendance at a **board** meeting will not count for the purpose of determining whether or not a quorum of **directors** is present.
- (c) A **person** so appointed as **associate director**, except by the invitation and with the consent of the **board** does not have any right to attend at any **board** meeting however notices of **board** meetings may be sent to all **associate directors** at the same time as they are sent to the **directors**.
- (d) A **person** who is an **associate director** shall immediately cease to hold such position if he or she becomes a **director**.
- (e) The **board** may re-appoint an **associate director** at the expiration of their term for a further term of one year as determined by the **board** in its absolute discretion provided that no person may be appointed as an **associate director** for more than three terms.

8.10. Chair

- (a) The **board** may elect a Chair at the first **board** meeting following an **AGM** and who, subject to resignation or removal under this **Constitution**, will serve in the position until the next **AGM** or until such time as the **board** determines as they see fit.
- (b) The **board** by resolution may remove the Chair from the position of chair at any time.

8.11. Removal of Director

Subject to the **Corporations Act**, the **board** may by resolution passed at a **members' meeting** remove any **director** before the end of the **director's** term of office.

8.12. Remuneration of Directors

- (a) The aggregate sum of remuneration of **directors** is determined or varied by resolution of **members** at the **AGM**.
- (b) The individual **directors** are to be paid the remuneration that the **board** determines by resolution.
- (c) The **board** may determine that the **company** shall pay the **director's** travelling and other expenses that they properly incur:
 - (i) in attending **director's** meetings or any meetings of committees of **directors**;
 - (ii) in attending any **members' meetings**; and
 - (iii) in connection with the **company's** business.
- (d) The **company** must disclose the remuneration paid to each **director** or a subsidiary (if any) by the **company** or by an entity controlled by the **company** if the **company** is directed to disclose the information by:
 - (i) **members** with at least 5% of the votes that may be cast at a **members' meeting**; or
 - (ii) at least 100 **members** who are entitled to vote at a **members' meeting**.

- (e) The **company** must disclose all remuneration paid to the **directors**, regardless of whether it is paid to the **directors** in relation to their capacity as **directors** or another capacity.
- (f) The **company** must comply with the direction as soon as practicable by:
 - (i) preparing a statement of the remuneration of each **director** or subsidiary for the last financial year before the direction was given;
 - (ii) having the statement audited; and
 - (iii) sending a copy of the audited statement to each person entitled to receive notice of **members' meetings**.

9. General Powers of Directors

9.1. The **board**:

- (a) manages the business of the **company**;
- (b) may exercise all the powers of the **company** except any powers that the **Corporations Act** or this **Constitution** expressly allocates to the **members' meeting**; and
- (c) subject to the **Private Health Insurance Legislation** may exercise all the powers of the **company** to manage **Health Benefits Fund** business, including but not limited to **contributors**, and make, rescind and vary **Health Fund Rules**.

9.2. Delegation

- (a) The **board** may delegate any of its powers to any committee or to any other **person** any of the powers conferred on the **board** by the **Constitution** or the **Corporations Act**, provided that:
 - (i) any delegation of a power to expend money shall be limited to a sum to be determined by the **board**;
 - (ii) the **board** may permit the delegate to sub-delegate any powers delegated to them subject to any limitations imposed by the **board**; and
 - (iii) the **board** cannot delegate its powers under Rule 3(b).

Corporations Act Commentary

The delegate must exercise the powers delegated in accordance with any directions of the **board**. A power so exercised is taken to have been exercised by the **board**: see s 198D.

- (b) The **board** must establish policies for the guidance of delegates in the exercise of any powers so delegated.

9.3. Negotiable Instruments

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

10. Director's Meetings

Corporations Act Commentary

Section 248D says that a **directors'** meeting may be called and held using any technology consented to by all **directors**. The consent may be a standing one. A **director** can withdraw consent within a reasonable period before the meeting.

10.1. Calling and Conduct of Board Meetings

- (a) The **board** shall meet as and when necessary to carry out the efficient operation of the **company** provided that the **board** shall meet at least six (6) times every calendar year.
- (b) A **director** or the **secretary** (upon the authority of a **director**) may call a **board** meeting by giving reasonable notice to every other **director**.
- (c) The **board** may meet, adjourn and otherwise regulate its meetings as it thinks fit.

10.2. Passing of Directors Resolutions

- (a) A resolution of the **board** must be passed by a majority of the votes cast by the **directors** present or deemed to be present and entitled to vote on the resolution.

- (b) Each **director** shall have one vote. In case of an equality of votes the chairperson of the meeting shall have a second or casting vote.

10.3. Quorum of the Board

- (a) The quorum necessary for a **board** meeting shall be a majority of the **directors**. The quorum must be present at all times during the meeting.
- (b) If, at any time, the number of **directors** is less than the quorum:
 - (i) the **board** may meet only for the purpose of filling any casual vacancies or for calling a **members' meeting**; and
 - (ii) the **board** may conduct business by circulating a resolution under Rule 10.6.

10.4. Chair of Board

- (a) The chair elected under Rule 8.10 will preside as chair at every **board** meeting.
- (b) The **board** must elect a **director** present to Chair a meeting (or part of it) if:
 - (i) a **director** has not already been appointed to chair the meeting; or
 - (ii) a previously appointed chair is not present within 10 minutes after the time nominated for holding the meeting, or declines to act, for the meeting (or part of it).

10.5. Committees of Directors

- (a) The **board** may delegate any of its powers and/or functions (not being duties imposed exclusively on the **board** by the **Corporations Act** or the **Constitution**) to one or more committees consisting of such number of **directors** and upon such terms as the **board** in its absolute discretion thinks fit.
- (b) Each **person** making up any committee shall have one vote at meetings of that committee.
- (c) Subject to any restrictions that the **board** imposes, a committee may meet and adjourn or otherwise regulate its meetings as it thinks fit.

- (d) Questions arising at any meeting shall be determined by a majority of votes of the **persons** present, and voting.
- (e) In the case of an equality of votes the chair of that meeting will have a second or casting vote.

10.6. Circulating Resolutions

- (a) The **directors** may pass a resolution without a **board** meeting being held if a majority of **directors** entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) The document referred to in Rule 10.6(a) may be delivered to the **directors** in such form as approved by the **board** from time to time, including but not limited to email, facsimile, or paper.
- (c) Separate copies of a document may be used for signing by different **directors** if the wording of the resolution and statement is identical in each copy.
- (d) The resolution is passed when the last **director** signs.

10.7. Use of technology

Subject to the **Corporations Act**, a **board** meeting may be held by the **directors** communicating with each other by any technological means by which they are able simultaneously to hear each other and participate in discussion.

11. Director's Conflict of Interest

Corporations Act Commentary

Part 2D.1 and Chapter 2E deal with conflicts of interest and financial benefits to related parties.

11.1. Director Not in Breach if Acts in Matters Relating to Director's Interests

- (a) This Rule applies if:
 - (i) a **director** has an interest or duty in relation to a matter that is not a **material personal interest**, or

- (ii) if a **director** with a **material personal interest** in relation to the **company's** affairs:
 - (A) complies with the requirements of the **Corporations Act** in relation to disclosure of the nature and extent of the interest and its relation to the **company's** affairs before acting in a matter that relates to the interest; and
 - (B) may be present and vote on the matter under the **Corporations Act**.
- (b) The **director** is not in breach of his or her duties to the **company** merely because he or she acts in matters that relate to the **director's** interest.
- (c) The **director** may vote on matters that relate to the **director's** interest.
- (d) In relation to any transactions that relate to the **director's** interest:
 - (i) the transactions may proceed;
 - (ii) the **company** cannot avoid the transactions merely because of the **director's** interest; and
 - (iii) the **director** may retain benefits under the transactions despite the **director's** interest.

11.2. Director Not in Breach if Does Not Act in Matters Relating to Director's Interests

- (a) This Rule applies if a **director** with a **material personal interest** in relation to a matter:
 - (i) complies with the requirements of the **Corporations Act** in relation to disclosure of the nature and extent of the interest and its relationship to the **company's** affairs; but
 - (ii) must not be present and vote on the matter under the **Corporations Act**.

Corporations Act Commentary

Section 195 provides that a **director** of a company who has a **material personal interest** in the matter that a **board** meeting is considering must not:

- be present while the matter is being considered at the **board** meeting; or
- vote on the matter,

unless:

- the other **directors** approve the **director** being present: **see s 195(2)**;
- **ASIC** approves the **director** being present: **see s 195(3)**; or
- the interest does not have to be disclosed: **see s 191**.

- (b) The **director** is not in breach of his or her duties to the **company** merely because he or she does not act in relation to the matter.
- (c) The **board** may vote on matters that relate to the **director's** interest in the **director's** absence.
- (d) In relation to any transactions that relate to the **director's** interest:
 - (i) the transactions may proceed;
 - (ii) the **company** cannot avoid the transactions merely because of the **director's** interest; and
 - (iii) the **director** may retain benefits under the transactions despite the **director's** interest.

11.3. Execution of Instruments

- (a) A **director** may participate in the execution of an instrument for the **company**, regardless of any interest or duty that the **director** may have:
 - (i) whether or not the **director** has complied with the requirements of the **Corporations Act** in relation to disclosure of the nature and extent of the interest and its relationship to the **company's** affairs; and
 - (ii) whether or not the **director** may be present and vote in relation to the execution of the instrument under the **Corporations Act**.

12. Indemnity and Insurance

12.1. Indemnities for Officers and Former Officers

Corporations Act Commentary

Section 199A restricts the **company** from giving an indemnity to **persons** who are, or have been, officers or auditors against certain liabilities they incur while acting in that position. Those liabilities include:

- liability owed to the **company** or a related body corporate;
- liability for pecuniary penalty orders under s 1317G or compensation orders under s 1317H;
- liabilities arising out of conduct involving a lack of good faith;
- liability for costs or expenses that the officer incurs:
 - in defending proceedings where the **person** is found liable (on the grounds described above);
 - in defending criminal proceedings where the **person** is found guilty;
 - in defending proceedings brought by **ASIC** or a liquidator for a court order if the grounds for the court order are established;
 - in connection with proceedings for relief under the **Corporations Act** where the court denies relief.

Section 199B restricts the **company** from providing insurance to an officer or former officer for liability arising out of conduct involving a wilful breach of duty or a contravention of their duty not to misuse their position or information.

- (a) In this Rule **indemnified person** means an officer or agent, of the **company**.
- (b) To the extent that the **Corporations Act** permits:
- (i) the **company** must indemnify an **indemnified person** against any liability that the **indemnified person** incurs in conducting the **company's** business or exercising the **company's** powers as an officer or agent of the **company**; and
 - (ii) the **company** may indemnify, agree to indemnify or enter into (and pay premiums on) a contract of insurance in relation to an **indemnified person** or any other **person**.
- (c) The indemnity in Rule 12.1(b)(i):

- (i) applies in relation to an **indemnified person** for all incidents occurring during the period that **person** is an officer or agent of the **company**, even though a claim is made against the **indemnified person** after they have ceased to be an officer or agent of the **company**; and
 - (ii) covers costs and expenses in defending proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted.
- (d) The indemnity in Rule 12.1(b)(i) does not cover any liability arising out of conduct which is a wilful breach of duty or neglect or a lack of good faith.

13. Administration

13.1. Secretary

Corporations Act Commentary

Under s 204A(2), the **company** must have at least 1 **secretary** and at least 1 **secretary** must reside in Australia.

Section 204B(1) provides that only individuals (not bodies corporate) who are at least 18 years of age may be secretaries.

Section 204B(2) provides that a person who has been disqualified from managing corporations under Part 2D.6 may only be appointed a **secretary** if the appointment is made with **ASIC**'s permission under s 206F or the Court's leave under s 206G.

Subject to Rule 13.2, the **board** may determine the **secretary's** terms of appointment, powers, duties and remuneration. At any time the **board** may vary or revoke a determination, or an appointment, whatever the terms of the appointment.

13.2. Resignation of Secretary

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

13.3. Seal

- (a) The **board** is to provide for the safe custody of the seal.
- (b) The seal is to be used only by the authority of the **board**.
- (c) The **board** may authorise;
 - (i) 2 **directors**; or
 - (ii) a **director** and **secretary**,

to witness the affixing of the seal on a document of a class specified in the resolution.

Appendix 1

Objects

- (a) The objects for which the **company** is established are:
- (i) To operate as a private health insurer and to conduct a **Health Benefits Fund** or funds within Australia for the purposes of carrying on health insurance business and/or health related business.
 - (ii) To provide health and welfare facilities and services and benefits for customers or **members** or their dependants, including but not limited to:
 - (A) hospital, medical, and general treatment *benefits* as defined in the Private Health Insurance Act 2007;
 - (B) health risk assessments, chronic disease management programs, hospital substitution, or hospital prevention services, programs and benefits;
 - (C) facilities, insurances and benefits for the financial assistance, relief and maintenance of **members** or their dependants in the case of death, sickness, disability, accident, retirement, old age and unemployment.
 - (iii) To provide annuities, superannuation or other financial services that the **board** may deem beneficial for customers or **members** or their dependants.
 - (iv) To operate diversified business activities that are not health insurance business or health related business that the **board** may deem beneficial for the **members**, including but not limited to provision of administration and management services on behalf of other **health benefits funds**.
 - (v) To promote the principles of mutual aid and co-operation.
 - (vi) To act as a Trustee.
 - (vii) To promote health and medical research and health service development research.

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- (viii) Subject to the ***Private Health Insurance Legislation***, to invest moneys which are owned or controlled by the ***company*** including any ***Health Benefits Fund***.

- (ix) To act in any manner conducive to furthering these objects.