

# **Constitution of The Children's Book Council of Australia Limited**

ACN 009 580 956

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A handwritten signature in black ink, appearing to read "Ian Jones". The signature is written in a cursive, flowing style.

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## Constitution

of

### **The Children's Book Council of Australia Limited**

ACN 009 580 956

## Introduction

### **1. Replaceable rules**

- 1.1. The replaceable rules contained in the Act do not apply to the Company.
- 1.2. A replaceable rule that is also a mandatory rule for public companies applies to the Company despite any other provision in this constitution.

### **2. Definitions and interpretation**

#### 2.1. In this constitution:

- 2.1.1. **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- 2.1.2. **Affiliate** means a person who is a financial member (meaning that they have at the relevant time paid up all annual subscriptions and any other sum due in respect of their membership) of a Member;
- 2.1.3. **AGM** means the annual general meeting of the Company;
- 2.1.4. **Board** means the board of Directors;
- 2.1.5. **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- 2.1.6. **Chairperson** means the chairperson of the Board from time to time;
- 2.1.7. **Claim** means:
  - (a) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
  - (b) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
  - (c) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application may be initiated;
- 2.1.8. **Company** means The Children's Book Council of Australia Limited ACN 009 580 956;
- 2.1.9. **Connected Party** means an employee, contractor, servant or officer (including any member of the management committee) of any Member;
- 2.1.10. **Director** means a director for the time being of the Company;
- 2.1.11. **DGR** means deductible gift recipient;
- 2.1.12. **Foundation** means the perpetual public charitable trust known as the Children's Book Council of Australia Awards Foundation established by a deed of trust dated 27 March 1996 as amended from time to time;
- 2.1.13. **General Meeting** means a general meeting of the Members;
- 2.1.14. **Gift Fund** means the Company's DGR fund known as the Children's Book Council of Australia Gift Fund;
- 2.1.15. **Member** means a member for the time being of the Company;
- 2.1.16. **Register** means a register of Members;
- 2.1.17. **Secretary** means the person appointed to perform the duties of a secretary of the Company;

- 2.2. In this constitution, unless the contrary intention appears:
- 2.2.1. one gender includes the others;
  - 2.2.2. the singular includes the plural and vice versa;
  - 2.2.3. a person includes a body corporate;
  - 2.2.4. an expression defined in the Act has the same meaning in this constitution;
  - 2.2.5. if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act;
  - 2.2.6. **including** and similar expressions are not words of limitation; and
  - 2.2.7. headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

### 3. **Objects**

- 3.1. The objects for which the Company is established are to:
- 3.1.1. celebrate outstanding contributions to Australian children's literature;
  - 3.1.2. support and encourage Members to:
    - (a) promote quality literature to young Australians; and
    - (b) support Australian writers and illustrators of children's books; and
  - 3.1.3. do any lawful thing incidental or conducive to the attainment of any of the foregoing.

### 4. **DGR funds**

- 4.1. The Company must operate and maintain its DGR funds in accordance with all relevant requirements of the *Income Tax Assessment Act 1997* and other law.
- 4.2. With respect to the Foundation, the Company must also operate and maintain the fund in accordance with the rules set out in the Foundation's deed of trust.
- 4.3. With respect to the Gift Fund, the Company must also operate and maintain the fund subject to the following rules:
- 4.3.1. the object of the Gift Fund is to further the objects of the Company;
  - 4.3.2. the Company must:
    - (a) have a separate financial institution account for the Gift Fund;
    - (c) ensure that gifts and deductible contributions to the Gift Fund, and interest and other earnings accruing thereon, are credited to the Gift Fund;
    - (d) keep the Gift Fund separate from other funds of the Company and ensure that the Gift Fund does not receive any other money or property;
    - (e) keep records evidencing the receipt and use of money and property belonging to the Gift Fund;
    - (f) only use the Gift Fund to further the objects of the Company; and
    - (g) not distribute Gift Fund money or property to its Members, officers or other persons administering the Gift Fund except as reimbursement of out-of-pocket expenses incurred on behalf of the Gift Fund or proper remuneration for administrative services;
  - 4.3.3. the Gift Fund must be:
    - (a) a public fund to which the public is invited to contribute and to which the public, or a significant part of it, does in fact contribute;
    - (b) administered by persons the majority of whom have a degree of responsibility to the general community, as distinct from obligations solely in regard to the cultural objects of the Company;
  - 4.3.4. receipts for gifts to the Gift Fund must state:
    - (a) the name of the Gift Fund and that it is listed on the Register of Cultural Organisations maintained under Subdivision 30-B of the *Income Tax Assessment Act 1997*;
    - (b) the name and ABN of the Company;
    - (c) the name of the donor;
    - (d) that the receipt is for a gift;
    - (e) the amount of money donated and/or a description of any gifts of property that are not money;

- (f) the date of the gift; and
  - (g) any other matter required to be included on the receipt pursuant to law; and
- 4.3.5. upon the winding up or dissolution of the Gift Fund, all its remaining assets after all its liabilities have been satisfied must be distributed to some other fund, authority or institution having objects similar to the objects of the Gift Fund, and whose rules shall prohibit the distribution of its or their income among its or their members, such fund, authority or institution to be eligible for tax deductibility of donations under Subdivision 30-B, section 30-100, of the *Income Tax Assessment Act 1997*.

## **5. Powers**

*[compare section 124]*

- 5.1. The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 5.2. Despite rule 5.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in rule 3.

## **6. Application of income and property**

*[compare sections 125 and 150]*

- 6.1. The income and property of the Company, from wherever it may be derived, must be applied solely towards the promotion of the objects of the Company set out in rule 3.

## **7. No distribution to Members**

*[compare section 150]*

- 7.1. No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Members or officers of the Company.
- 7.2. Rule 7.1 does not prevent:
  - 7.2.1. the payment, in good faith, of remuneration to any officer, servant or Member of the Company in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
  - 7.2.2. indemnification of, or payment of any premiums on contracts of insurance for, any officer to the extent permitted by law;
  - 7.2.3. the payment of interest on money borrowed from any Member at a rate not exceeding the lesser of:
    - (a) 12% per annum; and
    - (b) 1% more than the standard overdraft rate of the Commonwealth Bank of Australia ACN 123 123 124;
  - 7.2.4. the payment of reasonable and proper rent by the Company to a Member for premises leased by the Member to the Company; or
  - 7.2.5. the reimbursement of expenses incurred by any Member on behalf of the Company.

## **8. Liability of Members**

- 8.1. The liability of the Members is limited.

*[compare section 117]*

- 8.2. Every Member undertakes to contribute an amount not exceeding \$100 to the property of the Company in the event of its being wound up while the Member is a Member or within 1 year after the Member ceased to be a Member, if required for payment:
  - 8.2.1. of the debts and liabilities of the Company (contracted before the Member ceased to be a Member);
  - 8.2.2. of the costs, charges and expenses of winding up; and
  - 8.2.3. for the adjustment of the rights of the contributories among themselves.

## **Membership**

### **9. Membership qualifications**

- 9.1. The Members shall consist of:
  - 9.1.1. the Members at the date of the adoption of these rules, who for the avoidance of doubt are listed in schedule 1; and

- 9.1.2. subject to rule 9.2, such incorporated entities as the Board may admit to membership.
- 9.2. No more than 1 incorporated entity from each State or Territory of Australia may be a Member at any one time.
- 9.3. A natural person is not eligible to be a Member.

## **10. Application for membership**

- 10.1. An application for membership of the Company:
  - 10.1.1. must be made in writing in the form determined, from time to time, by the Board; and
  - 10.1.2. must be lodged with the Secretary.
- 10.2. As soon as is practicable after receiving an application for membership, the Secretary must refer the application to the Board which must decide, by ordinary resolution, whether to approve or to reject the application at their next meeting. The Board is not obliged to give reasons for the rejection of an application.
- 10.3. If the Board decides to approve an application for membership, the Secretary must as soon as practicable after that decision notify the applicant of that approval.
- 10.4. The applicant becomes a Member at the time when the applicant's name is entered in the Register.

## **11. Register**

*[compare sections 168 and 169]*

- 11.1. The Company must keep a Register in accordance with the Act.
- 11.2. The following details must be entered in the Register in respect of each Member:
  - 11.2.1. its full name;
  - 11.2.2. its postal and electronic mail addresses, if any;
  - 11.2.3. its date of admission to and cessation of membership; and
  - 11.2.4. such other information as the Board requires.
- 11.3. Each Member must notify the Secretary in writing of any change in its name, address, facsimile number or electronic mail address within 1 month after the change.

## **12. Membership entitlements not transferable**

- 12.1. A right, privilege or obligation that a Member has because of being a Member:
  - 12.1.1. cannot be transferred or transmitted to another person; and
  - 12.1.2. terminates on cessation of the membership.

## **13. Cessation of membership**

- 13.1. A Member ceases to be a Member if it:
  - 13.1.1. ceases to exist;
  - 13.1.2. is wound up;
  - 13.1.3. resigns from membership of the Company;
  - 13.1.4. is expelled from the Company in accordance with rule 15; or
  - 13.1.5. fails to renew its membership (if renewal is required).
- 13.2. If a Member ceases to be a Member, the Secretary must make an appropriate entry in the Register recording the date the Member ceased to be a Member.

## **14. Resignation of membership**

- 14.1. A Member may resign from membership of the Company by giving notice in writing to the Secretary.
- 14.2. The resignation of a Member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

## **15. Disciplining of Members**

- 15.1. If the Board is of the opinion that a Member (or its Affiliates) has:
  - 15.1.1. persistently refused or neglected to comply with a provision of these rules; or
  - 15.1.2. persistently and wilfully acted in a manner that is unbecoming of a Member or prejudicial to the interests of the Company,the Board may, by resolution:
  - 15.1.3. censure or fine the Member;

- 15.1.4. expel the Member from the Company; or
- 15.1.5. suspend the Member from the rights and privileges of membership of the Company for a period determined by the Board.
- 15.2. A resolution of the Board under rule 15.1 is of no effect unless:
  - 15.2.1. the Board, at a meeting held not earlier than 30 days and not later than 60 days after service on the Member of a notice under rule 15.3, confirms the resolution in accordance with this rule 15; and
  - 15.2.2. the resolution is passed by the Board by a 75% majority of those present and voting, such vote to be taken by ballot.
- 15.3. If the Board passes a resolution under rule 15.1, the Secretary must, as soon as practicable, serve a written notice on the Member:
  - 15.3.1. setting out the resolution of the Board and the grounds on which it is based;
  - 15.3.2. stating that the Member may address the Board at a meeting to be held not earlier than 30 days and not later than 60 days after service of the notice;
  - 15.3.3. stating the date, place and time of that meeting; and
  - 15.3.4. informing the Member that it may do either or both of the following:
    - (a) attend and speak at that meeting; and
    - (b) submit to the Board at or before the date of that meeting written representations relating to the resolution.
- 15.4. At a meeting of the Board mentioned in rule 15.2, the Board must:
  - 15.4.1. give to the Member mentioned in rule 15.1 an opportunity to make oral representations;
  - 15.4.2. give due consideration to any written representations submitted to the Board by that Member at or before the meeting; and
  - 15.4.3. by resolution, complying with rule 15.2.2, decide whether to confirm or to revoke the resolution made by the Board.
- 15.5. The Secretary must inform the Member of the decision made by the Board pursuant to rule 15.4.3 by written notice within 7 days after that decision.

## **16. Effect of cessation of membership**

- 16.1. If any Member ceases to be a Member under this constitution, the ex-member remains liable to pay to the Company any money which, at the time the Member ceases to be a Member, it owes to the Company on any account and for any sum not exceeding \$100 for which the Member is liable under rule 8.2.

## **Board**

### **17. Number of Directors**

*[compare section 201A]*

- 17.1. The number of Directors must be not less than 4 and no more than 15.

### **18. Board constitution and membership**

- 18.1. The Board shall consist of:
  - 18.1.1. a natural person appointed by each Member; and
  - 18.1.2. up to 7 independent natural persons, appointed in any manner determined by the Board, provided that the Board resolution appointing any such person must be approved by a 75% majority.
- 18.2. To be eligible for appointment to the Board by a Member, a person must:
  - 18.2.1. be an Affiliate; but
  - 18.2.2. not be an employee or contractor, of the Member by which they are appointed.
- 18.3. To be eligible for appointment to the Board as an independent, a person must not be:
  - 18.3.1. a Connected Party; or
  - 18.3.2. a relative, or a relative of a spouse of a Connected Party.
- 18.4. The remainder of rule 18 is subject to this rule 18.4. Directors as at 8 April 2017, the persons appointing them, and the initial maximum periods for which they will hold office, are as set out in schedule 2.
- 18.5. Any Director:

- 18.5.1. subject to any shorter periods set out in schedule 2, is to hold office for a maximum period of 3 consecutive years (commencing from the date of the adoption of these rules);
- 18.5.2. may be appointed for one further maximum period of 3 consecutive years;
- 18.5.3. is ineligible for appointment to the Board for at least:
  - (a) 2 years after ceasing to be a Director following 3 or more consecutive years acting as such;
  - (b) 1 year after ceasing to be a Director following less than 3 consecutive years acting as such.
- 18.6. The appointment of a Director by a Member is to be in writing signed by an officer of the Member and delivered to the Secretary together with:
  - 18.6.1. a copy of the minutes of the board or management committee of that Member evidencing the resolution to so appoint that person;
  - 18.6.2. confirmation (and evidence, where reasonably possible) that the person satisfies the eligibility criteria in rule 18.2; and
  - 18.6.3. that person's consent to act as a Director.
- 18.7. A person appointed to the Board by a Member may be removed from that position in the sole discretion of that Member by written notice delivered to the person and the Secretary. If that occurs, the Member must appoint a replacement Director in accordance with these rules as soon as reasonably practicable.
- 18.8. The Secretary is to notify the Members and the Directors of any changes in the Directors as soon as reasonably practicable after they occur.

## **19. Chairperson and deputy chairperson**

- 19.1. The Chairperson and deputy chairperson are:
  - 19.1.1. to be elected by the Board from among the Directors at the first Board meeting after the AGM; and
  - 19.1.2. hold office until the earlier of:
    - (a) the end of the next AGM; or
    - (b) when they cease to be a Director.
- 19.2. The Board will undertake succession planning for the position of Chairperson, deputy chairperson and other Directors and will report to the AGM about their plan.

## **20. Secretary**

- 20.1. The Secretary shall be appointed by the Board.
- 20.2. The Secretary must, as soon as practicable after being appointed as Secretary, notify the Company of his or her address and of any change to that address.

## **21. Casual vacancies**

*[compare replaceable rules 201G and 201H]*

- 21.1. If a casual vacancy occurs in the position of a Director appointed by a Member, then that Member shall appoint a replacement Director in accordance with these rules as soon as reasonably practicable.

## **22. Insufficient members**

*[compare replaceable rule 201H]*

- 22.1. In the event of a vacancy in the position of a Director, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a Board meeting, they may act only for the purpose of:
  - 22.1.1. increasing the number of Directors to a number sufficient to constitute a quorum; or
  - 22.1.2. convening a General Meeting.

## **23. Resignation of Director**

*[replaceable rule 203A]*

- 23.1. A Director may resign as such by giving a written notice of resignation to the Secretary.

## **24. Vacation of position of Director**

*[compare section 206B]*

- 24.1. In addition to any other circumstances in which the position of a Director becomes vacant

under the Act, the position of a Director becomes vacant if the Director:

- 24.1.1. dies;
- 24.1.2. if appointed by a Member:
  - (a) ceases to be an Affiliate;
  - (b) becomes an employee or contractor of that Member;
- 24.1.3. becomes insolvent under administration within the meaning of the Act;
- 24.1.4. becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- 24.1.5. is absent without the consent of the Board from all Board meetings held during a period of 6 consecutive months;
- 24.1.6. becomes disqualified from being a Director under the Act or any order made under the Act;
- 24.1.7. holds office for a period of 6 consecutive years after the date of the adoption of these rules;
- 24.1.8. if appointed by the Board as an independent person:
  - (a) becomes a Connected Party; or
  - (b) becomes a relative, or a relative of a spouse, of a Connected Party; or
- 24.1.9. resigns from office in accordance with rule 23.

## **Delegation and Advisory Committees**

### **25. Delegation by Board to subcommittee**

- 25.1. The Board may, in writing, delegate to 1 or more subcommittees (consisting of such Directors, Affiliates, or other persons that the Board considers appropriate) the exercise of the functions of the Board that are specified in the instrument, other than:
  - 25.1.1. this power of delegation; and
  - 25.1.2. a function exclusively imposed on the Board by the Act, or by resolution of the Company in General Meeting.
- 25.2. A function, the exercise of which has been delegated to a subcommittee under this rule 25, may, while the delegation remains unrevoked, be exercised from time to time by the subcommittee in accordance with the terms of the delegation, and:
  - 25.2.1. a delegation under this rule 25.2 may be made subject to any conditions or limitations about the exercise of any function, or about time or circumstances, that may be specified in the instrument of delegation;
  - 25.2.2. despite any delegation under this rule 25.2, the Board may continue to exercise any function delegated;
  - 25.2.3. any act or thing done or suffered by a subcommittee acting in the exercise of a delegation under this rule 25.2 has the same force and effect as it would have if it had been done or suffered by the Board;
  - 25.2.4. the Board may, in writing, revoke wholly or in part any delegation under this rule 25.2;
  - 25.2.5. subject to any conditions or limitations in the delegation, a subcommittee has the power to co-opt any Director or Affiliate; and
  - 25.2.6. a subcommittee may meet and adjourn as it considers appropriate.
- 25.3. The provisions in this constitution regulating the meetings and proceedings of the Board govern the meetings and proceedings of any subcommittee consisting of 2 or more persons, with any necessary changes.

### **26. Advisory committee**

- 26.1. The Board may appoint 1 or more advisory committees consisting of such Directors, Affiliates or other persons as the Board considers appropriate.
- 26.2. An advisory committee acts in an advisory capacity only.
- 26.3. An advisory committee must conform to any regulations that may be imposed by the Board. However, subject to those regulations, an advisory committee may co-opt any Director or Affiliate.
- 26.4. The meetings and proceedings of any advisory committee consisting of 2 or more persons are governed by the provisions in this constitution regulating the meetings and proceedings

of the Board, with any necessary changes.

## **Powers of Board**

### **27. General management powers**

*[compare replaceable rule 198A]*

- 27.1. The affairs of the Company are to be managed by or under the direction of the Board.
- 27.2. The Board may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in General Meeting.
- 27.3. Without limiting rules 27.1 and 27.2, the Board has power to perform all acts and do all things that appear to it to be necessary or desirable for the proper management of the affairs of the Company.
- 27.4. A rule made or resolution passed by the Company in General Meeting does not invalidate any prior act of the Board which would have been valid if that rule or resolution had not been made or passed.

### **28. Borrowing powers**

- 28.1. Without limiting the generality of rule 27, but subject to rule 7, the Board may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

### **29. Appointment of attorney**

- 29.1. The Board may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the directors), for the period and subject to the conditions they see fit.
- 29.2. A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the Board sees fit.

### **30. Negotiable instruments**

*[compare replaceable rule 198B]*

- 30.1. Any 2 Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 30.2. The Board may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

### **31. Validation of acts of Directors**

*[compare sections 201M and 204E]*

- 31.1. All acts done by any Board meeting or by any person acting as a Director are (notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be, or act as, a Director, or that a person so appointed was disqualified) as valid as if the person had been duly appointed and was qualified to be a Director.

## **Meetings of the Board**

*[compare replaceable rule 248E]*

### **32. Circulating resolutions**

*[compare replaceable rule 248A]*

- 32.1. The Board may pass a resolution without a meeting being physically held, if more than 75% of the Directors entitled to vote on the resolution (except a Director absent from Australia who has not left a facsimile number or email address at which he or she may be given notice) sign a document containing a statement that he or she is in favour of the resolution set out in the document.
- 32.2. Notwithstanding clause 32.1, the Chairperson may in his or her absolute discretion determine that for a particular resolution the email sent by an absent Director will only be

valid if the Secretary has verified orally that the absent Director actually sent or authorized the sending of the email.

- 32.3. Separate copies of a document may be used for signing by the Directors if the wording of the resolution and statement is identical in each copy.
- 32.4. The resolution is passed when the last relevant Director signs.
- 32.5. A facsimile or email addressed to or received by the Company and purporting to be signed or sent by a Director for the purpose of this rule 32 must be treated as a document in writing signed by that Director.

### **33. Board meetings**

- 33.1. Subject to this constitution, the Board may meet for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- 33.2. The Board must meet at least 4 times in each calendar year at the places and times the Board determines.
- 33.3. Any Director may call additional meetings of the Board. The Secretary must, on the requisition by a Director, summon a meeting of the Board.

### **34. Notice of Board meetings**

*[compare replaceable rule 248C]*

- 34.1. Notice of a Board meeting must be given by the Secretary to each Director at least 48 hours (or any other period that may be unanimously agreed on by the Board) before the time appointed for the holding of the meeting.
- 34.2. Despite rule 34.1 it is not necessary to give notice of a Board meeting to any Director who:
  - 34.2.1. has been given special leave of absence; or
  - 34.2.2. is absent from Australia and has not left a facsimile number or email address at which he or she may be given notice.
- 34.3. Any notice of a Board meeting may be given in writing or orally, by facsimile, telephone, electronic mail or any other means of communication.
- 34.4. Notice of a meeting given under rule 34.1 must specify the general nature of the business to be transacted at the meeting and no business other than that business may be transacted at the meeting, except business that the Directors present at the meeting unanimously agree to treat as urgent business.

### **35. Technology meeting of Board**

*[compare section 248D]*

- 35.1. A Board meeting may be held using telephone or, if consented to by all Directors, other technology. The consent may be a standing one. A Director may only withdraw the consent within a reasonable period before the meeting.
- 35.2. If a Board meeting is held using any technology and all Directors take part in the meeting, they are deemed to have consented to the use of the technology for that meeting.
- 35.3. The following provisions apply to a technology meeting:
  - 35.3.1. each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
  - 35.3.2. at the commencement of the meeting each Director must announce his or her presence to all the others taking part in the meeting.
- 35.4. If the minute secretary is not present at a technology meeting, one of the Directors present must take minutes of the meeting.
- 35.5. A Director may not leave a technology meeting by intentionally disconnecting his or her link to the meeting unless that Director has previously notified the chair of the meeting.
- 35.6. A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the chair to leave the meeting.

### **36. Quorum**

*[compare replaceable rule 248F]*

- 36.1. A majority of the Board, or such greater number as the Board determines, constitutes a quorum for the transaction of the business of a Board meeting.
- 36.2. No business may be transacted by the Board unless a quorum is present, and if within 30

minutes after the time appointed for the meeting a quorum is not present, the meeting stands adjourned to the same place and at the same hour of the same day in the following week.

- 36.3. If at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting is abandoned.

### **37. Chairing meetings of the Board**

*[compare replaceable rule 248E]*

- 37.1. The Chairperson is the chair of all Board meetings.
- 37.2. If the Chairperson is not present within 10 minutes after the time appointed for the holding of a meeting or is unwilling to act, the deputy chairperson is the chair of the meeting.
- 37.3. If the deputy chairperson is not present within 10 minutes after the time appointed for the holding of that meeting or is unwilling to act, the Directors present must appoint one of them to chair the meeting.

### **38. Voting and decisions**

*[compare replaceable rule 248E]*

- 38.1. Questions arising at a Board meeting are decided by a majority of the votes of Directors present at the meeting.
- 38.2. Each Director present at a Board meeting (including the person chairing the meeting) is entitled to one vote but, if the votes on any question are equal, the chair may exercise a second or casting vote.
- 38.3. Subject to rule 22, the Board may act despite any vacancy.

### **39. Prohibition on being present or voting**

*[compare section 195]*

- 39.1. Except where permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting:
- 39.1.1. must not be counted in a quorum;
  - 39.1.2. must not vote on the matter; and
  - 39.1.3. must not be present while the matter is being considered at the meeting.
- 39.2. If a Director who has a material personal interest in a matter that is being considered at a Board meeting is not prohibited by the Act from being present at the meeting and voting, the Director may be present, be counted in the quorum and be heard, but may not vote on the matter.

### **40. Director to disclose interests**

*[compare section 191]*

- 40.1. A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the Director's knowledge, declare the nature of the interest at a Board meeting or by written notice to the Secretary.
- 40.2. A Director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his other duties or interests as Director must declare at a Board meeting or by written notice to the Secretary the fact, nature, character and extent of the conflict.
- 40.3. For the purposes of this rule 40, a Director's interest or any conflict must be disregarded if it arises from or relates solely to:
- 40.3.1. a guarantee to be given by the Director (or by persons including the Director or by a body corporate of which the Director is a member or officer) in respect of a loan to the Company; or
  - 40.3.2. the position of the Director as an officer of a related body corporate.

### **41. Effect of interest in contract**

*[compare replaceable rule 194]*

- 41.1. If a Director has an interest in a contract or proposed contract with the Company (other than as an Affiliate), or a conflicting interest or duty in relation to any other matter being considered by the Board, and the Director discloses the nature and extent of the interest or duty at a Board meeting or by written notice to the Secretary:

- 41.1.1. the contract may be entered into; and
- 41.1.2. if the disclosure is made before the contract is entered into:
  - (a) the Director may retain benefits under the contract even though the Director has an interest in the contract;
  - (b) the Company cannot terminate the contract or have it declared void merely because of the existence of the interest; and
  - (c) the Director is not disqualified from the position of a Director.
- 41.2. For the purposes of this rule 41, **contract** includes an arrangement, dealing or other transaction.

#### **42. Extension of meaning of “Company”**

- 42.1. For the purposes of rules 40 and 41, **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a member or is otherwise interested.

#### **43. Other directorships and shareholdings**

- 43.1. A Director may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, member or otherwise, and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.
- 43.2. Subject to the Act:
  - 43.2.1. the Board may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
  - 43.2.2. any Director may vote at a Board meeting in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
  - 43.2.3. any Director may be appointed as a representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
  - 43.2.4. a Director who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors as directors or other officers of the other company.

#### **44. Remuneration of Directors**

*[compare section 150]*

- 44.1. No Director may receive any remuneration for his or her services in his or her capacity as a Director.

#### **45. Directors’ expenses**

- 45.1. Despite rule 44, the Company may pay Directors’ travelling and other expenses that they properly incur:
  - 45.1.1. in attending Board meetings or any meetings of subcommittees or advisory committees;
  - 45.1.2. in attending any General Meetings; and
  - 45.1.3. in connection with the Company’s business.
- 45.2. The Board must approve all payments the Company makes to Directors.

#### **46. Financial benefit**

*[compare Chapter 2E - sections 207 and following]*

- 46.1. To the extent, if any, required by the Act, a Director must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the Company to the Director or to any other related party of the Director.

## **47. Indemnity**

*[compare section 199A]*

- 47.1. To the extent permitted by the Act, the Company indemnifies every person who is or has been an officer of the Company.
- 47.2. An officer must:
  - 47.2.1. give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under rule 47.1;
  - 47.2.2. take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
  - 47.2.3. not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
  - 47.2.4. allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
  - 47.2.5. on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and
  - 47.2.6. notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

## **48. Insurance**

*[compare section 241A]*

- 48.1. The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:
  - 48.1.1. conduct involving a wilful breach of duty in relation to the Company; or
  - 48.1.2. a contravention of section 182 or 183 of the Act.
- 48.2. In the case of a Director, any premium paid under this rule is not remuneration for the purpose of rule 44.

## **49. Director voting on contract of insurance**

*[compare section 191(2)(vi)]*

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

## **50. Liability**

- 50.1. An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

## **51. Meaning of "officer"**

- 51.1. For the purposes of rules 47 to 50, **officer** includes a Director and a member of a subcommittee appointed under rule 25.

## Inspection of records

### 52. Rights of inspection

*[compare replaceable rule 247D and sections 173, 198F, 247A and 251B]*

- 52.1. The Board, or the Company by a resolution passed at a General Meeting, may authorise a Member to inspect the books of the Company.
- 52.2. A Member does not have the right to inspect any document of the Company, other than the minute books for General Meetings and for resolutions of Members passed without meetings, except as provided by law or authorised by the Board.
- 52.3. Directors have the rights of inspection and access provided by section 198F of the Act.

## General Meetings

### 53. Business of General Meeting

- 53.1. No business other than that specified in the notice calling a General Meeting may be transacted at the meeting except, for an AGM, business that may be transacted pursuant to rule 85.
- 53.2. The Secretary must call for any motions or other matters to be brought before an AGM from the Members at least 60 days before the AGM.
- 53.3. The Secretary must forward a draft agenda of any motions submitted by Members at least 21 days before the AGM.

### 54. Resolutions proposed by Members

*[compare sections 249N and 249O]*

- 54.1. A Member may not at any General Meeting move any resolution relating to special business unless:
  - 54.1.1. Members with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution, or the requirements of section 249N of the Act have otherwise been satisfied, and at least 2 months have elapsed since the notice was given; or
  - 54.1.2. the resolution has previously been approved by the Board.

### 55. Calling of General Meeting

*[compare sections 250N, replaceable rule 249C and section 249D]*

- 55.1. Except as permitted by law, an AGM must be held at least once in every calendar year.
- 55.2. A majority of the Board may call a General Meeting whenever they see fit.
- 55.3. The Secretary must call a General Meeting if required in writing by 2 or more Members. Any such meeting is taken to be a Member requisitioned meeting under the Act.
- 55.4. Except as provided by this rule 55 or in the Act, no Member or Members may call a General Meeting.

### 56. Amount of notice of General Meeting

*[compare section 249H]*

- 56.1. Subject to rule 56.2 and the provisions of the Act as to short notice, at least 30 days' notice of a General Meeting must be given in writing to those persons who are entitled to receive notices of General Meetings from the Company.
- 56.2. At least 60 days' notice of an AGM must be given to those persons who are entitled to receive notices of General Meetings from the Company.

### 57. Persons entitled to notice of General Meeting

*[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]*

- 57.1. Written notice of a General Meeting must be given to:
  - 57.1.1. each Member;
  - 57.1.2. each Director;
  - 57.1.3. the Company's auditor; and
  - 57.1.4. any others deemed eligible to attend.

## **58. How notice is given**

*[compare sections 249J(3) and 240J(3A)]*

- 58.1. The Company may give notice of a General Meeting to a Member:
- 58.1.1. personally;
  - 58.1.2. by sending it by post to the address for the Member in the Register or the alternative address (if any) nominated by the Member;
  - 58.1.3. by sending it to the facsimile number or electronic address (if any) nominated by the Member;
  - 58.1.4. by sending it by other electronic means (if any) nominated by the Member; or
  - 58.1.5. by notifying the Member in accordance with rule 58.2.
- 58.2. If the Member nominates:
- 58.2.1. an electronic means (**nominated notification means**) by which the Member may be notified that notices of General Meeting are available; and
  - 58.2.2. an electronic means (**nominated access means**) the Member may use to access such notices,
- the Company may give the Member notice of a General Meeting by notifying the Member (using the nominated notification means):
- 58.2.3. that the notice of General Meeting is available; and
  - 58.2.4. how the Member may use the nominated access means to access that notice.

## **59. When notice is given**

*[compare replaceable rules 249J(4) and 249J(5)]*

- 59.1. A notice of General Meeting sent by post is taken to be given 5 days after it is posted.
- 59.2. Except as provided by rule 59.3, a notice of General Meeting given to a Member under rule 58.1.3 is taken to be given on the business day after it is sent.
- 59.3. A notice of General Meeting given to a Member under rule 58.1.3 is not effective if:
- 59.3.1. in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful;
  - 59.3.2. in the case of service by electronic mail, the Company's computer reports that delivery has failed; or
  - 59.3.3. in either case the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- 59.4. A notice of General Meeting given to a Member under rule 58.1.5 is taken to be given on the business day after the day on which the Member is notified that the notice is available.
- 59.5. A certificate signed by the Secretary or any Director that the notice was posted or given in accordance with this rule 59 is conclusive evidence of the matter.

## **60. Period of notice**

- 60.1. Subject to the Act and this constitution, where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

## **61. Contents of notice**

*[compare replaceable rule 249L]*

- 61.1. A notice of a General Meeting must:
- 61.1.1. set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
  - 61.1.2. state the general nature of the meeting's business;
  - 61.1.3. if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
  - 61.1.4. be worded and presented in a clear, concise and effective manner; and
  - 61.1.5. contain a statement setting out the following information:
    - (a) that the Member has a right to appoint a proxy; and
    - (b) that the proxy need not be a Member, but must be an Affiliate.

## **62. Notice of adjourned meeting**

*[replaceable rule 249M]*

- 62.1. When a General Meeting is adjourned, new notice of the resumed meeting must be

given if the meeting is adjourned for 1 month or more.

### **63. Accidental omission to give notice**

*[compare section 1322(3)]*

63.1. The accidental omission to give notice of any General Meeting to, or the non-receipt of the notice by, any person entitled to receive such notice under this constitution does not invalidate the proceedings at or any resolution passed at the meeting.

### **64. Postponement of General Meeting**

- 64.1. The Board may postpone the holding of any General Meeting whenever they see fit (other than a meeting requisitioned by Members as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 64.2. Whenever any such meeting is postponed (as distinct from being adjourned under rule 66.4 or rule 67.3), the same period of notice of the meeting must be given to persons entitled to receive notice of a General Meeting as if a new meeting were being called for the date to which the original meeting is postponed.

### **65. Technology**

*[section 249S]*

65.1. The Company may hold a General Meeting at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

### **66. Quorum**

*[compare replaceable rule 249T]*

- 66.1. The quorum for a General Meeting is a majority of the Members present by a representative, or by proxy.
- 66.2. The quorum must be present at all times during the meeting.
- 66.3. In determining whether a quorum is present, individuals attending as proxies, attorneys or representatives are counted. If an individual is attending both as a Member and as a proxy, attorney or representative, the individual is counted only once.
- 66.4. If a quorum is not present within 30 minutes after the time for the General Meeting set out in the notice of meeting:
- 66.4.1. where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or
- 66.4.2. in any other case, the meeting is adjourned to the date, time and place the Board specifies. If the Board does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.
- 66.5. If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is abandoned.

### **67. Chair at General Meetings**

*[compare replaceable rule 249U]*

- 67.1. The Chairperson, if present, presides as chair at every General Meeting.
- 67.2. Where a General Meeting is held and the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting, or is unwilling to act:
- 67.2.1. the person (who must be a Director) nominated by the Chairperson to chair the meeting; or
- 67.2.2. if no such person has been nominated, a person appointed from among the persons present, is to be chair of the meeting.
- 67.3. The chair must adjourn a General Meeting if the Members present with a majority of votes agree or direct that the chair must do so.

### **68. Business at adjourned meetings**

*[replaceable rule 249W(2)]*

68.1. Only unfinished business is to be transacted at a General Meeting resumed after an

adjournment.

## Proxies and representatives

### 69. Who can appoint a proxy

[compare mandatory rule 249X]

69.1. A Member who is entitled to attend and cast a vote at a General Meeting may appoint an individual as the Member's proxy to attend and vote for the Member at the meeting. The proxy need not be a Member, but must be an Affiliate.

### 70. Rights of proxies

[compare section 249Y]

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

- 70.1.1. to speak at the meeting;
- 70.1.2. to vote (but only to the extent allowed by the appointment); and
- 70.1.3. to join in a demand for a poll.

70.2. If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

70.3. A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

70.4. A proxy may be revoked at any time by notice in writing to the Company.

### 71. When proxy form must be sent to all Members

[section 249Z]

71.1. 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:

- 71.1.1. if the Member requested the form or list – the Company must send the form or list to all Members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- 71.1.2. 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.

### 72. Appointing a proxy

[compare section 250A and Corporations Regulations 2001 reg 2G.2.01]

72.1. An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001*, and in rules 72.2 and 72.3) by the Member making the appointment and contains the following information:

- 72.1.1. the Member's name and address;
- 72.1.2. the Company's name;
- 72.1.3. the proxy's name or the name of the office held by the proxy; and
- 72.1.4. the meetings at which the appointment may be used.

An appointment may be a standing one.

72.2. An electronically authenticated appointment of a proxy must also include:

- 72.2.1. a method of identifying the Member; and
- 72.2.2. an indication of the Member's approval of the information communicated.

72.3. If a Member appoints a proxy by email or internet-based voting:

- 72.3.1. the Member must be identified by personal details such as the Member's name, personal address and date of birth; and
- 72.3.2. the Member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a shareholder registration number or holder identification number).

72.4. An undated appointment is taken to have been dated on the day it is given to the Company.

72.5. An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- 72.5.1. the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote the specified way;
- 72.5.2. if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
- 72.5.3. if the proxy is the chair – the proxy must vote on a poll, and must vote the specified

way; and

72.5.4. if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote the specified way.

If a proxy is also a Member, this rule 72.5 does not affect the way that the person can cast any votes the person holds as a Member.

72.6. An appointment of a proxy does not have to be witnessed.

72.7. A later appointment of a proxy revokes an earlier one if both appointments could not be validly exercised at the meeting.

### **73. Form of proxy sent out by Company**

73.1. A form of proxy sent out by the Company may be in a form determined by the Board but must:

73.1.1. enable the Member to specify the manner in which the proxy must vote in respect of a particular resolution; and

73.1.2. leave a blank for the Member to fill in the name of the person primarily appointed as proxy.

73.2. The form may provide that if the Member leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.

### **74. Receipt of proxy documents**

*[compare section 250B]*

74.1. For an appointment of a proxy for a General Meeting to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

74.1.1. the proxy's appointment; and

74.1.2. if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.

74.2. If a General Meeting has been adjourned, an appointment of a proxy and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

74.3. The Company receives an appointment of a proxy or authority:

74.3.1. when it is received at any of the following:

(a) the Company's registered office;

(b) a facsimile number at the Company's registered office; or

(c) a place, facsimile number or electronic mail address specified for the purpose in the notice of General Meeting; or

74.3.2. if the notice of General Meeting specifies other electronic means by which a Member may give the document – when the document given by those means is received by the Company and complies with rules 72.2 and 72.3.

74.4. An appointment of a proxy is ineffective if:

74.4.1. the Company receives either or both the appointment or authority at a fax number or electronic address; and

74.4.2. a requirement (if any) in the notice of General Meeting that:

(a) the transmission be verified in a way specified in the notice; or

(b) the proxy produce the appointment and authority (if any) at the meeting,

is not complied with.

### **75. Validity of proxy vote**

*[section 250C(1) and compare replaceable rule 250C(2)]*

75.1. A proxy who is not entitled to vote on a resolution as a Member may vote as a proxy for another Member who can vote, if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

75.2. A vote cast by a proxy is valid although, before the proxy votes:

75.2.1. the appointing Member dies;

75.2.2. the Member is mentally incapacitated;

75.2.3. the Member revokes the proxy's appointment; or

75.2.4. the Member revokes the authority under which the proxy was appointed by a 3<sup>rd</sup>

party,  
unless the Company receives written notice of that event before the start or resumption of the meeting at which the proxy votes.

## **76. Representatives**

*[Compare section 250D]*

- 76.1. A Member may appoint an individual as a representative to exercise all or any of the powers the Member may exercise:
- 76.1.1. at General Meetings;
  - 76.1.2. at meetings of creditors or debenture holders;
  - 76.1.3. relating to resolutions to be passed without meetings; or
  - 76.1.4. in the capacity of a Member's proxy appointed under rule 69.
- The appointment may be a standing one.
- 76.2. The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- 76.3. A Member may appoint more than one representative but only one representative may exercise the Member's powers at any one time.
- 76.4. Unless otherwise specified in the appointment, the representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution.

## **77. Attorney of Member**

- 77.1. An attorney for a Member may do whatever the Member could do personally as a Member, but if the attorney is to vote at a meeting of Members or a class of Members the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

## **Voting at meetings of Members**

### **78. How vote may be exercised**

- 78.1. Subject to rules 72.5 and 80, at any General Meeting each Member has one vote on a show of hands and on a poll.

### **79. Voting**

- 79.1. No Director has a vote at a General Meeting except:
- 79.1.1. where that Director exercises a vote in his or her capacity as the proxy or representative of a Member; or
  - 79.1.2. as provided by rule 84.
- 79.2. Any person who is in attendance at the meeting who does not have a vote in respect of any particular item or items may nevertheless speak and be heard at the meeting.

### **80. Objections to right to vote**

*[compare replaceable rule 250G]*

- 80.1. A challenge to a right to vote at a General Meeting:
- 80.1.1. may only be made at the meeting; and
  - 80.1.2. must be determined by the chair, whose decision is final.
- 80.2. A vote not disallowed following the challenge is valid for all purposes.

### **81. How voting is carried out**

*[compare replaceable rule 250J and section 251A]*

- 81.1. On a show of hands, a declaration by the chair is conclusive evidence of the result and the voting shall be recorded in the minutes.
- 81.2. Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions, which are resolutions passed by a majority of the votes cast by Members entitled to vote on the resolutions.

## **82. Matters on which a poll may be demanded**

*[compare section 250K and 250L]*

- 82.1. A poll may be demanded on any resolution:
  - 82.1.1. before a vote is taken;
  - 82.1.2. before the voting results on a show of hands are declared; or
  - 82.1.3. immediately after the voting results on a show of hands are declared.
- 82.2. At a General Meeting, a poll may be demanded by:
  - 82.2.1. at least 3 Members entitled to vote on the resolution; or
  - 82.2.2. the chair.
- 82.3. A demand for a poll may be withdrawn.

## **83. When and how polls must be taken**

*[compare replaceable rule 250M]*

- 83.1. A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- 83.2. A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 83.3. The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 83.4. The result of the poll is the resolution of the meeting at which the poll was demanded.

## **84. Chair's casting vote**

*[compare replaceable rule 250E(3)]*

- 84.1. In the case of an equality of votes, whether on a show of hands or on a poll, the chair of a General Meeting has a casting vote.
- 84.2. The chair has a discretion both about whether to use the casting vote and as to the way in which it is used.

## **Annual general meeting**

*[compare section 250N]*

## **85. Business of an AGM**

*[compare sections 250R, 250S and 250T]*

- 85.1. The business of an AGM may include any of the following, even if not referred to in the notice of meeting:
  - 85.1.1. to confirm the minutes of the last AGM and of any General Meeting held since that meeting;
  - 85.1.2. the consideration of the annual financial report, Directors' report and auditor's report;
  - 85.1.3. the consideration of reports on the activities of Members during the last financial year;
  - 85.1.4. the appointment of the auditor;
  - 85.1.5. the fixing of the auditor's remuneration; and
  - 85.1.6. to attend to any matter that is required by this constitution or the Act to be done at an AGM.All other business transacted at an AGM and all business transacted at any other General Meeting is special business.
- 85.2. The chair of the AGM must allow a reasonable opportunity for the Members as a whole at the meeting:
  - 85.2.1. to ask questions about or make comments on the management of the Company; and
  - 85.2.2. if the Company's auditor or the auditor's representative is at the meeting, to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

## Minutes

### 86. Minutes to be kept

*[compare section 251A]*

- 86.1. The Board must keep or cause to be kept minute books in which they record within one month:
  - 86.1.1. proceedings and resolutions of General Meetings;
  - 86.1.2. proceedings and resolutions of Board meetings (including meetings of subcommittees of the Board); and
  - 86.1.3. resolutions passed by the Board without a meeting.
- 86.2. The Board must ensure that minutes of a meeting are signed within a reasonable time after the meeting by one of the following:
  - 86.2.1. the chair of the meeting; or
  - 86.2.2. the chair of the next meeting.
- 86.3. The Board must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.
- 86.4. Without limiting rule 86.1 the Board must record in the minute books:
  - 86.4.1. all appointments of officers;
  - 86.4.2. the names of the Directors present at meetings;
  - 86.4.3. in the case of a technology meeting, the nature of the technology; and
  - 86.4.4. all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a Director of a material personal interest.

## Accounts, audit and records

### 87. Accounts

*[compare sections 285-297, 314-317]*

- 87.1. The Board must cause proper accounting and other records to be kept in accordance with the Act.
- 87.2. The Board must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by law to be attached to them) as required by the Act.

### 88. Audit

*[compare sections 301, 327-331]*

- 88.1. A registered company auditor must be appointed.
- 88.2. The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

## Execution of documents

### 89. Common seal

- 89.1. The Company may, but need not, have a common seal.

### 90. Use of common seal

*[compare sections 127(2) and 129(6)]*

- 90.1. If the Company has a common seal the Board must provide for its safe custody.
- 90.2. The common seal may not be fixed to any document except by the authority of a resolution of the Board.
- 90.3. The Company executes a document with its common seal if the fixing of the seal is witnessed by two Directors.

### 91. Execution of documents without common seal

*[compare sections 127(1) and 129(5)]*

- 91.1. The Company may execute a document without using a common seal if the document is signed by two Directors.

## **92. Execution of document as a deed**

*[compare section 127(3)]*

92.1. The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 90 or rule 91.

## **93. Execution – general**

*[compare sections 129(5), 129(6) and 127(4)]*

93.1. A Director may sign any document as a Director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.

93.2. Rules 90 and 91 do not limit the ways in which the Board may authorise documents (including deeds) to be executed on behalf of the Company.

## **Inadvertent omissions**

### **94. Formalities omitted**

*[compare section 1322]*

94.1. If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid, unless it is proved to the satisfaction of the Board that the omission has directly prejudiced any Member financially. The decision of the Board is final and binding on all Members.

## **Winding up**

### **95. Winding up**

95.1. If upon the winding up or dissolution of the Company any property remains, after satisfaction of all its debts and liabilities, that property must not be paid to or distributed among the Members but must be given or transferred to some other institution or institutions determined by the Members at or before the time of dissolution which has similar objects to the Company and which is approved by the Commissioner of Taxation for the purposes of any Commonwealth Taxation Act.

95.2. If the Members do not make the necessary determination under rule 95.1, the Company may apply to the Supreme Court to determine the institution or institutions.

## **Schedule 1 – Members (rule 9.1.1)**

Children’s Book Council of Australia (Australian Capital Territory Branch) Inc

Children’s Book Council of Australia (Northern Territory Branch) Inc

Children’s Book Council of Australia NSW Branch Inc

Children’s Book Council of Australia (Queensland Branch) Inc

Children’s Book Council of Australia (South Australian Branch) Inc

Children’s Book Council of Australia - Tasmania Branch Inc

The Children’s Book Council of Australia, Victorian Branch Inc

The Children’s Book Council of Australia (Western Australian Branch) Inc

## Schedule 2 – Directors (rule 18.4)

<b>Director</b>	<b>Appointor</b>	<b>Date on which initial appointment expires</b>
Margaret Hamilton	Board	End of AGM 2018
John Chisholm	Northern Territory	“
Angela Briant	Board	“
Tina Cavanough	Queensland	“
Justine Power	ACT	“
Belle Alderman	Board	End of AGM 2019
Margot Hillel	Board	“
Debbie Hatswell	Victoria	“
Megan Lavender	New South Wales	“
Julia Davenport	Board	7 April 2020
Jane O’Connell	Board	“
Dyan Blacklock	Board	“
Cam Jones	Tasmania	“
Linda Guthrie	South Australia	“