

Dated 17 September

2015

Constitution of The Legacy Club of Brisbane Limited

ACN 608 282 631

Version2: 18 April 2017

Incorporating changes adopted at the Legacy Brisbane AGM 7 April 2017

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VERSION HISTORY

Date	Description of Change	Version
17 September 2015	Initial release following company registration with ASIC	1
18 April 2017	Incorporating changes adopted at The Legacy Club of Brisbane Limited AGM 7 April 2017 Amendment and additions: Rule 9.1 Rule 3.1(1) Rule 26.1(4)	2

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Constitution of The Legacy Club of Brisbane Limited

Introduction

1. Replaceable rules excluded

1.1 The replaceable rules contained in the Act do not apply to the Club.

2. Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **ACNC** means the Australian Charities and Not-for-Profits Commission;
- (2) **ACNC Act** means the *Australian Charities & Not-for-Profits Commission Act 2012*;
- (3) **Act** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (4) **Australian legal practitioner** means a person who is admitted to the legal profession under the *Legal Profession Act 2007* (Qld) or a corresponding law and who holds a current practising certificate;
- (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 Club has its registered office;
- (6) **Club** means The Legacy Club of Brisbane Limited, a company limited by guarantee, which was formerly a letters patent body corporate prior to registration under the Act known as The Legacy Fund of Brisbane;
- (7) **directors** means the directors for the time being of the Club or the directors assembled as a board;
- (8) **Foundation Legatees** means the persons who were members of The Legacy Fund of Brisbane immediately prior to the transfer of registration of the Club under the Act;
- (9) **ITAA** means the *Income Tax Assessment Act 1997* (Cth);

- (10) **Legacy Australia** means the association duly incorporated in Victoria known as Legacy Australia Incorporated;
- (11) **Legatee** or **member** means a member of the Club;
- (12) **Personal Service** means such level of personal service to those in need in pursuit of the Club's objects that the directors of the Club specify as being adequate from time to time for ordinary members; and
- (13) **secretary** means the secretary referred to in rule 39 and any other person appointed to perform the duties of a secretary of the Club.

2.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
 - (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) 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.
- (3) "Including" and similar expressions are not words of limitation.
- (4) 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 of the Club are:

- (1) to provide care for the dependants of those who served their country, namely Veterans, who gave their lives or health on operational service or following service, and Australian Defence Force members who died in service or as a result of their service;
- (2) to provide information and appropriate support, as well as assistance by way of referral to relevant community, local, State and Federal-based government services, as applicable, concerning applications for financial grants and other appropriate financial assistance.

3.2 For the purposes of this rule 3.1, care is not limited to the financial support of the dependants of Veterans but includes Personal Service by Legatees.

- 3.3 For the purposes of rule 3.1, **Veteran** means a person who meets the definition of that term specified by Legacy Australia in Annexure A to The Code of Legacy referred to in the constitution of Legacy Australia from time to time.

4. Powers

[compare section 124]

- 4.1 The Club has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 4.2 Despite rule 4.1 the powers of the Club are ancillary to and exercisable only to pursue the objects of the Club set out in rule 3.

5. Application of income and property

[compare sections 125 and 150]

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

6. No distribution to members

[compare section 150]

- 6.1 No portion of the income or property of the Club may be paid directly or indirectly, by way of dividend, bonus or otherwise to the members of the Club.
- 6.2 Rule 6.1 does not prevent:
- (1) the payment in good faith of remuneration to any officer, servant or member of the Club in return for any services actually rendered to the Club or for goods supplied in the ordinary and usual way of business;
 - (2) the payment of interest at a rate not exceeding 12% per annum on money borrowed from any member of the Club;
 - (3) the payment of reasonable and proper rent by the Club to a member of the Club for premises leased by the member to the Club; or
 - (4) the reimbursement of expenses incurred by any member on behalf of the Club.

7. Limited liability

- 7.1 The liability of the members is limited.

8. Guarantee

[compare section 117]

- 8.1 Every member of the Club undertakes to contribute an amount not exceeding \$10 to the property of the Club in the event of its being wound up while the member is a member or within 1 year after the member ceases to be a member, if required for payment:

- (1) of the debts and liabilities of the Club (contracted before the member ceases to be a member);
- (2) of the costs, charges and expenses of winding up; and
- (3) for the adjustment of the rights of the contributories among themselves.

9. Gift fund

9.1 The Club, if endorsed as a deductible gift recipient in its own right, will ensure that it is carried on for the purposes in respect of which the Club is so endorsed or approved and may maintain for that purpose a fund (**Gift Fund**):

- (1) to which all gifts of money or property for those purposes are made;
- (2) to which contributions are made in relation to an eligible fundraising event held for the principal purposes of the Club; and
- (3) which does not receive any other money or property.

9.2 The Club must use a Gift Fund only for its objects set out in rule 3.

Membership

10. Categories of membership

10.1 The categories of membership are:

- (1) ordinary members; and
- (2) retired members.

10.2 Additional categories of members, if recommended by the directors, may be created from time to time by the members in general meeting.

11. Entitlements of different categories of membership

11.1 Ordinary members have:

- (1) the right to receive notices of and to attend and be heard at any general meeting of members of the Club;
- (2) a right to vote at any general meeting;
- (3) an obligation to pay the annual subscription specified in accordance with rule 21; and
- (4) an obligation to render Personal Service.

11.2 Retired members have the right to receive notices of and to attend and be heard at any general meeting of members of the Club. However, retired members do not have:

- (1) a right to vote at any general meeting;
- (2) an obligation to pay an annual subscription; nor
- (3) an obligation to render Personal Service.

11.3 Despite clause 11.2(3), a retired member may render Personal Service at their discretion.

12. Number of members

12.1 The number of ordinary members is limited to the number that the directors determine from time to time is necessary to ensure that all ordinary members render adequate Personal Service.

12.2 The number of retired members is unlimited.

13. Membership

13.1 The members of the Club are:

- (1) the Foundation Legatees; and
- (2) any other persons the directors admit to membership in accordance with this constitution.

14. Application for ordinary membership

14.1 Any individual who is not less than 18 years of age at the date of application may apply for ordinary membership of the Club.

15. Form of application

15.1 An application for membership must be:

- (1) in writing in a form approved by the directors;
- (2) signed by the applicant;
- (3) signed by the proposer and seconder, each of whom must be members of at least 12 month standing; and
- (4) accompanied by any other documents or evidence as to qualification for membership as the directors require.

15.2 An application form must be accompanied by the annual subscription, determined in accordance with rule 21.

16. Admission to membership

- 16.1 The directors must consider an application for membership as soon as practicable after its receipt and determine, in their discretion, the admission or rejection of the applicant.
- 16.2 The directors need give no reason for the rejection of an application.
- 16.3 If an application for membership is rejected, the annual subscription must be refunded to the applicant.
- 16.4 If an applicant is accepted for membership:
- (1) the secretary must notify the applicant of admission in the form of a receipt for the annual subscription or in any other form the directors determine; and
 - (2) the name and details of the member must be entered in the register of members.

17. Notification by members

- 17.1 Each member must promptly notify the secretary in writing of any change in their qualification to be a member of the Club.

18. Foundation Legatees

- 18.1 On the adoption of this constitution by the Club, the Foundation Legatees will become members of the Club in the equivalent category of membership which they belonged to in The Legacy Fund of Brisbane.
- 18.2 Foundation Legatees are not required to pay an annual subscription until 1 January next occurring after registration of the Club under the Act.
- 18.3 Foundation Legatees must otherwise comply with this constitution.

19. Retired membership

- 19.1 If, in the opinion of the directors, a member has made over a period of years a significant contribution to the Club, including any period prior to the transfer of its registration to the Act, the directors may declare the member as a retired member of the Club if that member is otherwise unable to render Personal Service.
- 19.2 A retired member has all the rights and privileges as determined by this constitution.

20. Register of members

[compare sections 168 and 169]

- 20.1 A register of members of the Club must be kept in accordance with the Act.
- 20.2 The following must be entered in the register of members in respect of each member:

- (1) the full name of the member;
- (2) the residential address, telephone number and electronic mail address, if any, of the member;
- (3) the category of membership;
- (4) the date of admission to and cessation of membership;
- (5) the date of last payment of the member's annual subscription; and
- (6) such other information as the directors require.

20.3 Each member must notify the secretary in writing of any change in their name, residential address, telephone number or electronic mail address within 1 month after the change.

Annual subscription

21. Annual subscription

- 21.1 The annual subscription payable by a member of the Club is the sum the directors determine and the Club approves in general meeting.
- 21.2 All annual subscriptions are due and payable in advance on 1 January in each year.
- 21.3 If a person is admitted to membership of the Club during the months of July to December inclusive the directors may reduce the annual subscription payable by the applicant in any manner they see fit.
- 21.4 If a member's circumstances warrant, the directors may reduce or waive the annual subscription payable by the member.
- 21.5 No annual subscription is payable by any retired member.

22. Unpaid annual subscriptions

- 22.1 If:
 - (1) the annual subscription of a member remains unpaid for 2 months after it becomes payable; and
 - (2) a notice of default is given to the member following a resolution of the directors to do this;

the member ceases to be entitled to any of the rights or privileges of membership but these may be reinstated on payment of all arrears if the directors see fit.

Cessation of membership

23. Failure to render personal service

23.1 The directors may cancel the membership of an ordinary member if that member is unable to render Personal Service to the satisfaction of the directors.

24. Resignation

24.1 A member may resign from membership of the Club by giving written notice to the secretary.

24.2 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.

25. Failure to pay

25.1 If a member has not paid all arrears of annual subscriptions under rule 21.1 or, if paid, the member's rights and privileges are not reinstated:

- (1) the member remains liable for all the obligations and liabilities of membership until the expiration of 6 months after the date of notification under rule 22.1(2); and
- (2) the member ceases to be a member and member's name must be removed from the register of members at the expiration of the 6 month period.

26. Cessation of membership

26.1 A member ceases to be a member:

- (1) on the death or resignation of the member;
- (2) if the member is expelled under rule 29.3 and:
 - (a) does not appeal to the directors under rule 30; or
 - (b) the directors dismiss the appeal; or
- (3) if the member fails to meet any requisite legal requirement applying to any person providing service to others as envisaged by the objects in rule 3 of this constitution in which case the member must give written notice to the secretary as soon as possible thereafter.
- (4) pursuant to rule 25.1 (2).

Disciplining members

27. Disciplinary Committee

27.1 The directors will establish a Disciplinary Committee for the purpose of determining disciplinary action of members.

27.2 The Disciplinary Committee will comprise:

- (1) the chair, being an Australian Legal Practitioner, who need not be a member; and
- (2) 4 members of the Company.

27.3 A director may not be appointed to the Disciplinary Committee.

28. Grounds for disciplinary action

28.1 If any member:

- (1) wilfully refuses or neglects to comply with the provisions of this constitution; or
- (2) is guilty of any conduct which, in the opinion of the directors, is unbecoming of a member or prejudicial to the interest of the Club;

the directors may resolve to refer the matter to the Disciplinary Committee for determination at a hearing.

28.2 At least 1 week before the hearing of the Disciplinary Committee at which a matter of the nature referred to in rule 28.1 is to be determined, the Disciplinary Committee must give to the member written notice of the following:

- (1) that a complaint regarding the member has been referred to the Disciplinary Committee by the directors;
- (2) what is alleged against the member;
- (3) the date, time and place of the hearing;
- (4) that the member may:
 - (a) attend the hearing and address the Disciplinary Committee; and
 - (b) provide a written statement to the Disciplinary Committee at any time prior to the hearing.

28.3 The Disciplinary Committee may provide to the member other information and material considered to be appropriate and in accordance with natural justice.

28.4 The member may seek the consent of the Disciplinary Committee, which will not be unreasonably withheld, for the member to be represented or accompanied by their legal adviser at the hearing.

29. Conduct of the Disciplinary Committee

29.1 At a hearing of the Disciplinary Committee referred to in rule 28.1, the Disciplinary Committee must:

- (1) give the member an opportunity to be heard orally or in writing, to call witnesses and produce material;
- (2) consider any written statements submitted by the member;
- (3) conduct the hearing in accordance with the principles of natural justice.

29.2 The Disciplinary Committee will make each decision in writing and provide written reasons for the decision. The Disciplinary Committee will provide copies of its decision and reasons to the directors and the member concerned.

29.3 The Disciplinary Committee may order:

- (1) that no further action be taken;
- (2) that the member be reprimanded, censured or suspended; or
- (3) that the member be expelled and, in the case of expulsion, to remove the member's name from the register of members.

30. Appeal against decision of the Disciplinary Committee

30.1 A member may lodge an appeal to the directors regarding a decision of the Disciplinary Committee by lodging a notice of appeal.

30.2 A notice of appeal must:

- (1) be in writing;
- (2) set out the member's grounds of appeal; and
- (3) be provided to the secretary within 10 days of the member receiving notice of the decision of the Disciplinary Committee.

30.3 When the secretary receives a notice of appeal under rule 30.2 he or she must call a meeting of the directors to hear and determine the appeal. Notice of the meeting must be sent to the directors not less than 7 days and not more than 28 days after receiving the notice of appeal.

30.4 The secretary must notify the member of the time and place of the directors meeting.

30.5 The directors meeting must be conducted in the same manner as that set out in rule 29.1.

30.6 In determining the appeal, the directors may:

- (1) allow or dismiss the appeal; or
- (2) vary the penalty (if any) imposed by the Disciplinary Committee.

- 30.7 The decision of the directors is determined in accordance with rule 89.
- 30.8 The directors will make each decision in writing and provide written reasons for the decision. The directors will provide copies of their decision and reasons to the Disciplinary Committee and the member concerned.
- 30.9 If any member ceases to be a member under rule 28.3 the directors may reinstate the member and restore the name of that member to the register of members upon and subject to any terms and conditions they see fit.

31. Effect of cessation of membership

- 31.1 If any member ceases to be a member under this constitution, the member remains liable to pay to the Club for any money which, at the time of the member ceasing to be a member, the member owes to the Club on any account and for any sum not exceeding \$10 for which the member is liable under rule 8.1 of this constitution.

Appointment of directors

32. Number of directors

[compare section 201A]

- 32.1 The number of the directors must be not less than 5 nor more than 10.
- 32.2 The Club in general meeting may by resolution increase the number of directors referred to in rule 32.1.

33. Directors' qualifications

- 33.1 At least 5 directors must be ordinary members.

34. First directors

- 34.1 The first directors are those named in the application for registration of the Club.

35. Election of directors

[compare section 201E and replaceable rule 201G]

- 35.1 At each annual general meeting of the Club (including the first annual general meeting held after the adoption of this constitution), 1/3 of the directors for the time being or, if their number is not 3 or a multiple of 3, then the number nearest to but not exceeding 1/3, retire from office but no director may retain office for more than 3 years without submitting himself or herself for re-election even though the submission results in more than 1/3 of the directors retiring from office.
- 35.2 The director or directors to retire at an annual general meeting are those who have been longest in office since their election.

- 35.3 As between or among 2 or more directors who became directors on the same day, the director or directors to retire are determined by lot unless they otherwise agree between or among themselves.
- 35.4 A retiring director is eligible for re-election without the necessity of giving any previous notice of his or her intention to submit himself or herself for re-election.
- 35.5 Unless the directors decide to reduce the number of directors in office the Club at any annual general meeting at which any director retires may fill the vacated office by re-electing the retiring director or electing some other qualified person.
- 35.6 If at the annual general meeting the vacated office is not filled, the retiring director, if willing and not disqualified, must be treated as re-elected unless the directors decide to reduce the number of directors in office or a resolution for the re-election of that director is put and lost.

36. Nomination for election

- 36.1 The secretary must call for nominations for election of directors at least 60 days prior to the annual general meeting.
- 36.2 Each candidate for election as a director must:
- (1) be proposed by an ordinary member; and
 - (2) be seconded by another ordinary member;
- both of which members must be current members of the Club at the time of nomination.
- 36.3 No ordinary member may propose more than 1 person as a candidate but may second more than 1 nomination.
- 36.4 A nomination of a candidate for election must:
- (1) be in writing;
 - (2) be signed by the candidate; and
 - (3) be signed by the proposer and seconder.
- 36.5 A nomination of a candidate for election must be received at the registered office of the Club not later than 5pm on the day which is 30 days prior to the annual general meeting at which the candidate seeks election.
- 36.6 A list of the candidates' names in alphabetical order together with the proposers' and seconders' names must be sent to members with the notice of the annual general meeting.

37. Election procedure – directors

- 37.1 If the number of candidates for election as directors is equal to or less than the number of vacancies on the board, the chair of the annual general meeting must declare those candidates to be duly elected as directors.

- 37.2 If the number of candidates for election as directors is greater than the number of vacancies on the board, a ballot must be held for the election of the candidates.
- 37.3 If a ballot is required, balloting lists must be prepared listing the names of the candidates only in alphabetical order.
- 37.4 At the annual general meeting each person entitled to vote and voting on the ballot may vote for a number of candidates equal to the number of vacancies.
- 37.5 The candidates receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as directors.
- 37.6 If an equality of votes would otherwise prevent the successful candidate for a vacancy from being determined, the chair, prior to the declaration of the result of the ballot, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:
- (1) does not exercise a casting vote; or
 - (2) is one of the candidates who received the same number of votes;
- then the names of the candidates who received the same number of votes must be put to a further ballot immediately.
- 37.7 There is not a vacancy for the purpose of this rule 37 (or rules 43 or 44) because the number of directors is less than the maximum allowed under rule 32.1. There is a vacancy only if the number of directors is less than the number elected at the previous annual general meeting (adjusted for any increase under clause 43.1).

38. Time appointment or retirement takes effect

- 38.1 Directors who are appointed at a meeting of members take office immediately after the end of the meeting.
- 38.2 Directors who retire at a meeting of members continue to hold office until the end of the meeting.

39. Office bearers

- 39.1 The office bearers of the Club are:
- (1) the president;
 - (2) the vice-president; and
 - (3) the treasurer.

40. First office bearers and subsequent election at board meeting

- 40.1 The first office bearers of the Club are elected by the first directors appointed under rule 34. They hold office until the end of the first meeting of the directors held after the first annual general meeting of the Club.

- 40.2 Subsequent office bearers are elected by the directors at the first meeting of the directors held after the immediately preceding annual general meeting and hold office until the end of the first meeting of the directors held after the next annual general meeting.
- 40.3 The directors present must appoint one of their number to act as chair of the meeting for the purpose of the election.

41. Eligibility and nomination

- 41.1 Except for the secretary, only directors may be office bearers. Any director who is also an ordinary member of the Club is eligible for election to any office bearer position.
- 41.2 Each director standing for election as an office bearer must be proposed by another director.
- 41.3 If a director stands for election for more than 1 position as an office bearer separate nominations must be received in respect of each position.
- 41.4 A nomination may be:
- (1) in writing, received by the secretary not less than 24 hours prior to the board meeting at which the election is to take place and signed by the candidate and the proposer; or
 - (2) made orally at the meeting, provided that the candidate is present and consents to the nomination.

42. Election procedure – office bearers

- 42.1 The election of the office bearers is held in the order in which the positions are listed in rule 39.1.
- 42.2 If there is only 1 candidate for election to any office bearer position that person is declared elected to that position.
- 42.3 If there is more than 1 candidate for election to any office bearer position a ballot must be held from among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- 42.4 In the case of an equality of votes in respect of any position a further ballot must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.
- 42.5 If a director is elected to a position as office bearer, then his or her nomination, if any, for any other position must be treated as withdrawn before the election is held in respect of the other position or positions.
- 42.6 Subject to this rule 42 a ballot is conducted in the manner the directors determine.

Appointment of directors between AGMs

43. Casual vacancies and additional directors

[compare replaceable rules 201G and 201H]

- 43.1 The Club in general meeting may by resolution and the directors may at any time appoint a person qualified to be a director, either to fill a casual vacancy or as an addition to the existing directors, but so that the total number of directors does not at any time exceed the number fixed in accordance with this constitution.
- 43.2 Any director appointed under rule 43.1 holds office until the termination of the next annual general meeting of the Club and is then eligible for re-election.

44. Insufficient directors

[compare replaceable rule 201H]

- 44.1 In the event of a vacancy in the office of a director, the remaining directors may act, but if the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of increasing the number of directors to a number sufficient to constitute a quorum or convening a general meeting of the Club.

Alternate directors

[compare replaceable rule 201K]

45. Appointment

- 45.1 A director may appoint any person approved by a majority of the other directors to act as an alternate director in place of the appointing director for a meeting or for a specified period.
- 45.2 An alternate director is not taken into account for the purpose of rule 32.

46. Rights and powers of alternate director

- 46.1 An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.
- 46.2 When an alternate director exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.

47. Suspension or revocation of appointment

- 47.1 A director may revoke or suspend the appointment of an alternate director appointed by him or her.
- 47.2 The directors may suspend or remove an alternate director by resolution after giving the appointor reasonable notice of their intention to do so.

48. Form of appointment, suspension or revocation

48.1 Every notice of appointment, revocation or suspension under rules 45 or 47 must be in writing and a copy must be given to the Club. The notice may be given by facsimile or electronic mail.

49. Termination of appointment

49.1 The appointment of an alternate director automatically terminates:

- (1) if the appointor ceases to hold office as director;
- (2) on any event which causes a director to vacate the office of director; or
- (3) if the alternate director resigns from the appointment by written notice left at the registered office of the Club.

50. Power to act as alternate for more than 1 director

50.1 A director or any other person may act as alternate director to represent more than 1 director.

Powers of directors

51. Validation of acts of directors and secretaries

[compare sections 201M and 204E]

51.1 The acts of a director or secretary of the Club are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.

51.2 Where a person whose office as director of the Club is vacated under a provision of the Act purports to do an act as a director of the Club, that act is as valid, in relation to a person dealing with the Club in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

52. General business management

[compare replaceable rule 198A]

52.1 The business of the Club is to be managed by or under the direction of the directors.

52.2 The directors may exercise all the powers of the Club except any powers that the Act or this constitution requires the Club to exercise in general meeting.

52.3 A rule made or resolution passed by the Club in general meeting does not invalidate any prior act of the directors which would have been valid if that rule or resolution had not been made or passed.

52.4 The directors may pay all expenses incurred in promoting and forming the Club.

53. Borrowing powers

- 53.1 Without limiting the generality of rule 52, but subject to rule 6, the directors may exercise all the powers of the Club to borrow money, to charge any property or business of the Club and to issue debentures or give any other security for a debt, liability or obligation of the Club or of any other person.

54. Appointment of attorney

- 54.1 The directors may appoint any person or persons to be the attorney or attorneys of the Club 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.
- 54.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

55. Negotiable instruments

[compare replaceable rule 198B]

- 55.1 Any 2 directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 55.2 The directors 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.

Chief executive officer

[compare replaceable rule 201J]

56. Power to appoint

- 56.1 The directors may appoint any person, not being a director, to the position of chief executive officer for the period and on the terms (including as to remuneration) the directors see fit.

57. Not a member of the board

- 57.1 The chief executive officer is not a member of the board of the Club but may attend meetings of the directors except where the directors otherwise request.

58. Powers

- 58.1 The directors may, upon terms and conditions and with any restrictions they see fit, confer on an executive officer any of the powers that the directors can exercise.
- 58.2 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the directors.

59. Withdrawal of appointment or powers

59.1 The directors may revoke or vary:

- (1) an appointment; or
- (2) any of the powers conferred on an chief executive officer.

60. Temporary appointments

60.1 If a chief executive officer becomes incapable of acting in that capacity the directors may appoint any other person, not being a director, to act temporarily as executive officer.

Committees of directors

61. Committees of directors

[compare replaceable rule 198D]

- 61.1 The directors may delegate any of their powers to a committee of directors.
- 61.2 Directors may co-opt others who are not directors to any committee of directors from time to time having regard to requisite skills and knowledge required for the committee concerned.
- 61.3 A committee must exercise the powers delegated to it in accordance with any directions of the directors. The effect of the committee exercising a power in this way is the same as if the directors exercised it.
- 61.4 The meetings and proceedings of any committee consisting of 2 or more committee members are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.

Removal and resignation of directors

62. Removal of directors

[compare section 203D]

62.1 Subject to the Act the Club may by resolution remove a director from office.

63. Resignation of director

[replaceable rule 203A]

63.1 A director may resign as a director of the Club by giving a written notice of resignation to the Club at its registered office.

64. Vacation of office of director

[compare section 206B]

- 64.1 In addition to any other circumstances in which the office of a director becomes vacant under the Act, the office of a director becomes vacant if the director:
- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
 - (2) 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;
 - (3) is not present (either personally or by an alternate director) at 3 consecutive meetings of directors without special leave of absence from the directors and the directors declare his or her seat to be vacant;
 - (4) ceases to be qualified as a director under rule 33;
 - (5) becomes disqualified from being a director under the Act or a responsible entity under the ACNC Act or any order made under the Act or the ACNC Act;
 - (6) is removed from office in accordance with rule 62; or
 - (7) resigns from office in accordance with rule 63.

Directors' interests

65. Prohibition on being present or voting

[compare section 195]

- 65.1 Except where permitted by the Act a director who has a material personal interest in a matter that is being considered at a meeting of directors:
- (1) must not be counted in a quorum;
 - (2) must not vote on the matter; and
 - (3) must not be present while the matter is being considered at the meeting.
- 65.2 If a director who has a material personal interest in a matter that is being considered at a meeting of the directors 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 may be heard but may not vote on the matter.

66. Director to disclose interests

[compare section 191]

- 66.1 A director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Club must, as soon as practicable after the relevant facts have come to the director's knowledge, declare the nature of the interest at a meeting of the directors or by written notice to the secretary of the Club.

- 66.2 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 or her duties or interests as director must declare at a meeting of the directors of the Club or by written notice to the secretary of the Club the fact and the nature, character and extent of the conflict.
- 66.3 For the purposes of rules 66.1 and 66.2, a director's interest or any conflict must be disregarded if it arises from or relates solely to:
- (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 Club; or
 - (2) the position of the director as a director of a related body corporate.

67. Effect of interest in contract

[compare replaceable rule 194]

- 67.1 If a director has an interest in a contract or proposed contract with the Club (other than as a member), or a conflicting interest or duty in relation to any other matter being considered by the directors, and the director discloses the nature and extent of the interest or duty at a meeting of the directors or by written notice to the secretary of the Club:
- (1) the contract may be entered into; and
 - (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 Club cannot avoid the contract merely because of the existence of the interest; and
 - (c) the director is not disqualified from the office of director.
- 67.2 For the purposes of rule 67.1, **contract** includes an arrangement, dealing or other transaction.

68. Other interests

- 68.1 Without limiting rule 66 or rule 67 a director may to the extent permitted by the Act:
- (1) hold any other office or place of profit under the Club (other than the office of auditor) in conjunction with the office of director;
 - (2) be interested in any operation, undertaking or business undertaken or assisted by the Club or in which the Club is or may be interested.

69. Extension of meaning of "Club"

69.1 For the purposes of rules 66, 67 and 68, **Club** includes any subsidiary of the Club and any other company in which the Club or any subsidiary of the Club is or becomes a shareholder or member or is otherwise interested.

70. Other directorships and shareholdings

70.1 A director of the Club may be or become a director, officer, employee or member of any company promoted by the Club or in which the Club may be interested as a vendor, shareholder or otherwise and is not accountable for any reasonable benefits received as a director, officer, employee or member of the other company.

70.2 Subject to the Act:

- (1) the directors of the Club may exercise the voting power conferred by the shares or other interest held by the Club in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (2) any director of the Club may vote at a meeting of directors of the Club in favour of a resolution that the Club exercises its voting power conferred by the shares or other interest held by the Club in the other company to appoint that director as a director or other officer of the other company;
- (3) any director of the Club may be appointed as representative of the Club 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
- (4) a director of the Club 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 of the Club as directors or other officers of the other company.

Remuneration of directors

71. No directors' remuneration

[compare section 150]

71.1 No director may receive any remuneration for his or her services in his or her capacity as a director of the Club.

72. Directors' expenses

72.1 Despite rule 71 the Club may pay the directors' travelling and other expenses that they properly incur:

- (1) in attending directors' meetings or any meetings of committees of directors;
- (2) in attending any general meetings of the Club; and

- (3) in connection with the Club's business.

73. Financial benefit

[compare Chapter 2E - sections 207 and following]

- 73.1 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 Club to the director or to any other related party of the director.

Secretary

74. Terms of office of secretary

[compare replaceable rule 204F]

- 74.1 A secretary of the Club holds office on the terms and conditions (including as to remuneration) that the directors determine.

Indemnity and insurance

75. Indemnity

[compare section 199A]

- 75.1 To the extent permitted by the Act, the Club indemnifies:

- (1) every person who is or has been an officer of the Club; and
- (2) where the board of directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Club;

against any liability incurred by that person in his or her capacity as an officer of the Club or of the related body corporate (as the case may be).

- 75.2 In accordance with section 199A of the Act, the Club must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Club:
 - (a) a liability owed to the Club or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (c) a liability that is owed to someone other than the Club or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Club if the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 75.2(1);
- (b) in defending or resisting criminal proceedings in which the person is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
- (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 75.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of rule 75.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

75.3 An officer must:

- (1) give notice to the Club promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified under rule 75.1;
- (2) take such action as the Club reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Club;
- (4) allow the Club or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Club, render all reasonable assistance and co-operation to the Club or its insurers in the conduct of any Claim, including giving the Club or its insurers any document, authority or direction that the Club or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Club or its insurers, do everything necessary or desirable which the Club reasonably requests to enable the Club 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 Club or its insurers for that purpose; and
- (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.

75.4 In rule 75.3 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Club;

- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Club; or
- (3) 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 referred to in rule 75.4(1) or 75.4(2) may be initiated.

76. Insurance

[compare section 241A]

76.1 The Club 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 Club or a related body corporate of the Club against any liability incurred by the person as an officer of the Club or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Club; or
- (2) a contravention of section 182 or 183 of the Act.

76.2 In the case of a director, any premium paid under this rule is not remuneration for the purpose of rule 71.

77. Director voting on contract of insurance

[compare section 191(2)(vi)]

77.1 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 Club or of a related body corporate.

78. Liability

78.1 An officer of the Club 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.

79. Meaning of "officer"

79.1 For the purposes of rules 75, 76, 77 and 78, **officer** means a director or secretary.

Inspection of records

80. Rights of inspection

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

80.1 The directors of the Club, or the Club by a resolution passed at a general meeting, may authorise a member to inspect books of the Club.

80.2 A member other than a director does not have the right to inspect any document of the Club, other than the minute books for the meetings of its members and for resolution of members passed without meetings, except as provided by law or authorised by the directors or by the Club in general meeting.

80.3 Directors have the rights of inspection and access provided by section 198F of the Act.

81. Confidential information

81.1 Except as provided by the Act, no member (not being a director) is entitled to require or receive any information concerning the business, trading or customers of the Club or any trade secret, secret process or other confidential information of or used by the Club.

Directors' meetings

[compare sections 248A to 248G]

82. Circulating resolutions

[compare replaceable rule 248A]

82.1 The directors may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution (except a director absent from Australia who has not left an 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.

82.2 Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

82.3 The resolution is passed when the last director signs.

82.4 An email to or received by the Club and purporting to be a scanned copy of an email which has been signed originally by a director (and not by way of electronic signature) for the purpose of this rule 82 must be treated as a document in writing signed by that director.

83. Meetings of directors

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

83.2 However, directors must meet together for the despatch of business at least once in every 3 month period.

84. Calling directors' meetings

[compare replaceable rule 248C]

84.1 A director may at any time, and a secretary must on the requisition of a director, call a meeting of the directors.

85. Notice of meeting

[compare replaceable rule 248C]

- 85.1 Reasonable notice of every directors' meeting must be given to each director and alternate director except that it is not necessary to give notice of a meeting of directors to any director who:
- (1) has been given special leave of absence; or
 - (2) is absent from Australia and has not left a facsimile number or electronic mail address at which he or she may be given notice.
- 85.2 Any notice of a meeting of directors may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication.

86. Technology meeting of directors

[compare section 248D]

- 86.1 A directors' 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.
- 86.2 If a directors' meeting is held using any technology and all the directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.
- 86.3 The following provisions apply to a technology meeting:
- (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
 - (2) at the commencement of the meeting each director must announce his or her presence to all the other directors taking part in the meeting.
- 86.4 If the secretary is not present at a technology meeting, the directors present must ensure minutes of the meeting are taken.
- 86.5 A director may not leave a technology meeting by disconnecting his or her link to the meeting unless that director has previously notified the chair of the meeting.
- 86.6 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.

87. Chairing directors' meetings

[compare replaceable rule 248E]

- 87.1 The president is the chair of all meetings of the directors.
- 87.2 At a meeting of directors if:
- (1) no president has been elected as provided by rule 42; or

- (2) the president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the vice-president is the chair of the meeting, but if:

- (3) no vice-president has been elected as provided by rule 42; or
- (4) the vice-president is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the directors present must elect a director present to chair the meeting.

88. Quorum

[compare replaceable rule 248F]

- 88.1 The quorum for a directors' meeting is 5 directors entitled to vote or a greater number determined by the directors. The quorum must be present at all times during the meeting.
- 88.2 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (so long as the alternate is, under the Act relating to directors' interests, entitled to vote).

89. Passing of directors' resolutions

[compare replaceable rule 248G]

- 89.1 A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.
- 89.2 The chair has a casting vote if necessary in addition to any vote he or she has as a director. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- 89.3 A person who is an alternate director is entitled (in addition to his or her own vote if he or she is a director) to 1 vote on behalf of each director whom he or she represents as an alternate director at the meeting and who is not present at the meeting.

Meetings of members

90. Circulating resolutions

[compare section 249A]

- 90.1 This rule 90 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 90.2 The Club may pass a resolution without a general meeting being held if all the members 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.

- 90.3 Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.
- 90.4 The resolution is passed when the last member signs.
- 90.5 If the Club receives by facsimile transmission or electronic mail a copy of a document referred to in this rule 90 it is entitled to assume that the copy is a true copy.

91. Calling of general meeting

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

- 91.1 A majority of directors may call a general meeting whenever they see fit.
- 91.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.
- 91.3 Except as provided in the Act, no member or members may call a general meeting.

92. Amount of notice of meeting

[compare section 249H]

- 92.1 Subject to the provisions of the Act as to short notice, at least 21 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Club.

93. Persons entitled to notice of general meeting

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

- 93.1 Written notice of a meeting of the Club's members must be given individually to:
- (1) each member entitled to vote at the meeting;
 - (2) each director; and
 - (3) the Club's auditor.
- 93.2 No other person is entitled to receive notice of general meetings.

94. How notice is given

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

- 94.1 The Club may give the notice of meeting to a member:
- (1) personally;
 - (2) by sending it by post to the address for the member in the register of members or the alternative address (if any) nominated by the member;
 - (3) by sending it to the facsimile number or electronic mail address (if any) nominated by the member;
 - (4) by sending it by other electronic means (if any) nominated by the member; or

- (5) by notifying the member in accordance with rule 94.2.

94.2 If the member nominates:

- (1) an electronic means (**nominated notification means**) by which the member may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the member may use to access notices of meeting;

the Club may give the member notice of the meeting by notifying the member (using the nominated notification means):

- (3) that the notice of meeting is available; and
- (4) how the member may use the nominated access means to access the notice of meeting.

95. When notice is given

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

95.1 A notice of meeting sent by post is taken to be given 3 days after it is posted.

95.2 Except as provided by rule 95.3, a notice of meeting given to a member under rule 94.1(3) is taken to be given on the Business Day after it is sent.

95.3 A notice of meeting given to a member under rule 94.1(3) is not effective if:

- (1) in the case of service by facsimile, the Club's facsimile machine issues a transmission report that the transmission was unsuccessful;
- (2) in the case of service by electronic mail, the Club's computer reports that delivery has failed; or
- (3) in either case the addressee notifies the Club immediately that the notice was not fully received in a legible form.

95.4 A notice of meeting given to a member under rule 94.1(5) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

95.5 A certificate signed by a manager, secretary or other officer of the Club that the notice was posted or given in accordance with this rule 95 is conclusive evidence of the matter.

96. Period of notice

96.1 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.

97. Contents of notice

[compare replaceable rule 249L]

97.1 A notice of a general meeting must:

- (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);
- (2) state the general nature of the meeting's business;
- (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;
- (4) be worded and presented in a clear, concise and effective manner; and
- (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 must be a member of the Club.

98. Notice of adjourned meeting

[replaceable rule 249M]

98.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

99. Accidental omission to give notice

[compare section 1322(3)]

99.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not invalidate the proceedings at or any resolution passed at the meeting.

100. Postponement of general meeting

100.1 The directors 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.

100.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 102.3 or rule 103.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

101. Technology

[section 249S]

101.1 The Club may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

102. Quorum

[compare replaceable rule 249T]

- 102.1 The quorum for a meeting of the Club's members is 21 persons entitled to vote and the quorum must be present at all times during the meeting.
- 102.2 In determining whether a quorum is present, individuals attending as proxies, are counted. If an individual is attending both as a member and as a proxy, the individual is counted only once.
- 102.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the members or upon the requisition of members, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 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.
- 102.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

103. Chair at general meetings

[compare replaceable rule 249U]

- 103.1 The president of the Club, if present, presides as chair at every general meeting.
- 103.2 Where a general meeting is held and:
- (1) there is no president of the Club; or
 - (2) the president is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the vice-president of the Club if present presides as chair of the meeting or, if the vice-president is not present or is unwilling to act, the directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the members present may appoint any 1 of their number to be chair of the meeting.

- 103.3 The chair must adjourn a meeting of the Club's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

104. Business at adjourned meetings

[replaceable rule 249W(2)]

- 104.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Proxies

105. Who can appoint a proxy

[compare mandatory rule 249X]

105.1 A member who is entitled to attend and cast a vote at a meeting of the Club's members may appoint an individual as the member's proxy to attend and vote for the member at the meeting.

106. Rights of proxies

[compare section 249Y]

106.1 A proxy appointed to attend and vote for a member has the same rights as the member:

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

106.2 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.

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

106.4 A proxy may be revoked at any time by notice in writing to the Club.

107. When proxy form must be sent to all members

[section 249Z]

107.1 If the Club sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (1) if the member requested the form or list – the Club 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
- (2) otherwise – the Club must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.

108. Appointing a proxy

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

108.1 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 rule 108.2) by the member making the appointment and contains the following information:

- (1) the member's name and address;

- (2) the Club's name;
- (3) the proxy's name or the name of the office held by the proxy; and
- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

108.2 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:

- (1) the member must be identified by personal details such as the member's name, personal address and date of birth; and
- (2) the member's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number).

108.3 An undated appointment is taken to have been dated on the day it is given to the Club.

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

- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (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;
- (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
- (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 that way.

This rule 108.4 does not affect the way that a member can cast any votes as a member.

108.5 An appointment does not have to be witnessed.

108.6 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

109. Form of proxy sent out by Club

109.1 A form of proxy sent out by the Club may be in a form determined by the directors but must:

- (1) enable the member to specify the manner in which the proxy must vote in respect of a particular resolution; and
- (2) leave a blank for the member to fill in the name of the person primarily appointed as proxy.

109.2 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.

109.3 Despite rule 109.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

The Legacy Club of Brisbane Limited

ACN 608 282 631

I/We, _____ of _____, being a member/members of the abovenamed company, appoint _____ of _____ or, in his or her absence, _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the *annual general/*general meeting of the company to be held on _____ and at any adjournment of that meeting.

† This form is to be used *in favour of/*against the resolution.

Signed on _____ .

* Strike out whichever is not desired.

† To be inserted if desired.

110. Receipt of proxy documents

[compare section 250B]

110.1 For an appointment of a proxy for a meeting of the Club's members to be effective, the following documents must be received by the Club at least 48 hours before the meeting:

- (1) the proxy's appointment; and
- (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.

110.2 If a meeting of the Club's members has been adjourned, an appointment and any authority received by the Club at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

110.3 The Club receives an appointment or authority:

- (1) when it is received at any of the following:
 - (a) the Club's registered office;
 - (b) a facsimile number at the Club's registered office; or
 - (c) a place, facsimile number or electronic mail address specified for the purpose in the notice of meeting; or

- (2) if the notice of meeting specifies other electronic means by which a member may give the document – when the document given by those means is received by the Club and complies with rule 108.2.

110.4 An appointment of a proxy is ineffective if:

- (1) the Club receives either or both the appointment or authority at a fax number or electronic address; and
- (2) a requirement (if any) in the notice of 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.

111. Validity of proxy vote

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

111.1 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.

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

- (1) the appointing member dies;
- (2) the member is mentally incapacitated;
- (3) the member revokes the proxy's appointment; or
- (4) the member revokes the authority under which the proxy was appointed by a 3rd party;

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

Voting at meetings of members

112. How vote may be exercised

112.1 Subject to rules 113 and 114 at any general meeting of members, each ordinary member present has 1 vote on a show of hands and on a poll.

112.2 The vote may be exercised in person or by proxy.

113. Voting disqualification

113.1 A member is not entitled to vote at a general meeting if the annual subscription of the member is more than 1 month in arrears at the date of the meeting or the postponed or adjourned meeting.

114. Objections to right to vote

[compare replaceable rule 250G]

114.1 A challenge to a right to vote at a meeting of members:

- (1) may only be made at the meeting; and
- (2) must be determined by the chair, whose decision is final.

114.2 A vote not disallowed following the challenge is valid for all purposes.

115. How voting is carried out

[compare replaceable rule 250J and section 251A]

115.1 A resolution put to the vote at a meeting of the Club's members must be decided on a show of hands unless a poll is demanded.

115.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

115.3 Unless otherwise required by this constitution or the Act, all resolutions of the Club are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by members entitled to vote on the resolutions.

116. Matters on which a poll may be demanded

[compare section 250K]

116.1 A poll may be demanded on any resolution.

116.2 A demand for a poll may be withdrawn.

117. When a poll is effectively demanded

[compare section 250L]

117.1 At a meeting of the Club's members, a poll may be demanded by:

- (1) at least 3 members entitled to vote on the resolution; or
- (2) the chair.

117.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or

- (3) immediately after the voting results on a show of hands are declared.

118. When and how polls must be taken

[compare replaceable rule 250M]

- 118.1 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.
- 118.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 118.3 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.
- 118.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

119. Chair's casting vote

[compare replaceable rule 250E(3)]

- 119.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a member or proxy.
- 119.2 The chair has a discretion both as to use of the casting vote and as to the way in which it is used.

Annual general meeting

[compare section 250N]

120. Business of an annual general meeting

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

- 120.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- (1) the consideration of the annual financial report, directors' report and auditor's report;
 - (2) the election of directors;
 - (3) the appointment of the auditor; and
 - (4) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

- 120.2 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.

120.3 The chair of the annual general meeting 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 Club.

120.4 If the Club's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must allow a reasonable opportunity for the members as a whole 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.

121. Resolutions proposed by members

[compare sections 249N and 249O]

121.1 A member may not at any meeting move any resolution relating to special business unless:

- (1) members with at least 5% of the votes that may be cast on the resolution have given the Club notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months' notice has elapsed since the notice was given; or
- (2) the resolution has previously been approved by the directors.

Minutes

122. Minutes to be kept

[compare section 251A]

122.1 The directors must keep minute books in which they record within 1 month:

- (1) proceedings and resolutions of meetings of the Club's members;
- (2) proceedings and resolutions of directors' meetings (including meetings of a committee of directors);
- (3) resolutions passed by members without a meeting; and
- (4) resolutions passed by directors without a meeting.

122.2 The directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:

- (1) the chair of the meeting; or
- (2) the chair of the next meeting.

122.3 The directors 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.

122.4 Without limiting rule 122.1 the directors must record in the minute books:

- (1) all appointments of officers;

- (2) the names of the directors and alternate directors present at all meetings of directors and the Club;
- (3) in the case of a technology meeting, the nature of the technology; and
- (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

123. Accounts

[compare sections 285-297, 314-317]

- 123.1 The directors must cause proper accounting and other records to be kept in accordance with the Act or the ACNC Act as the case may be.
- 123.2 The directors 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 or the ACNC Act as the case may be.

124. Audit

[compare sections 301, 327A-331]

- 124.1 A registered company auditor must be appointed if required by the Act or the ACNC Act as the case may be.
- 124.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act or the ACNC Act as the case may be.

Execution of documents

125. Common seal

- 125.1 The Club may, but need not, have a common seal.

126. Use of common seal

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

- 126.1 If the Club has a common seal the directors must provide for its safe custody.
- 126.2 The common seal may not be fixed to any document except by the authority of a resolution of the directors or of a committee of the directors duly authorised by the directors.
- 126.3 The Club executes a document with its common seal if the fixing of the seal is witnessed by:

- (1) 2 directors of the Club; or
- (2) a director and a company secretary of the Club.

127. Execution of documents without common seal

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

127.1 The Club may execute a document without using a common seal if the document is signed by:

- (1) 2 directors of the Club; or
- (2) a director and a company secretary of the Club.

128. Execution of document as a deed

[compare section 127(3)]

128.1 The Club 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 126 or rule 127.

129. Execution – general

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

- 129.1 The same person may not sign in the dual capacities of director and secretary.
- 129.2 A director may sign any document as 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.
- 129.3 Rules 126 and 127 do not limit the ways in which the directors may authorise documents (including deeds) to be executed on behalf of the Club.

Inadvertent omissions

130. Formalities omitted

[compare section 1322]

130.1 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 directors that the omission has directly prejudiced any member financially. The decision of the directors is final and binding on all members.

Alterations

131. Alterations

131.1 If the Club is approved as a public benevolent institution by the ACNC, the ACNC must be notified in writing of any alterations to this constitution.

Winding up

132. Winding up

132.1 If:

- (1) the Club ceases to be endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA; or
- (2) the Club is wound up and, at that time, the Club is endorsed as a deductible gift recipient under subdivision 30-BA of the ITAA;

any surplus assets of any Gift Fund maintained by the Club must be transferred to a fund, authority or institution:

- (3) which is charitable at law;
- (4) gifts to which can be deducted under Division 30 of the ITAA; and
- (5) which has been approved by the directors.

132.2 Subject to rule 132.1, if at the time of winding up or dissolution of the Club, any property remains, other than in the Gift Fund, after satisfaction of all its debts and liabilities, that property must not be paid or distributed to any of the members of the Club but must be given or transferred to some other institution or institutions determined by the members of the Club at or before the time of dissolution which:

- (1) has similar objects to the Club;
- (2) is endorsed by the Commissioner of Taxation as a public benevolent institution for the purposes of the ITAA; and
- (3) which has been approved in writing by the members of the Club.

End of document

