

**CORPORATIONS ACT 2001**

**PROPRIETARY COMPANY LIMITED BY SHARES**

**CLUB PLUS SUPERANNUATION PTY LIMITED**

**(COMPANY)**

**COMPANY CONSTITUTION**

(adopted by special resolution effective  
on and from 26 June 2018)

# Constitution

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**CORPORATIONS ACT 2001**  
**A PROPRIETARY COMPANY LIMITED BY SHARES**

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**CLUB PLUS SUPERANNUATION PTY LIMITED**  
**COMPANY CONSTITUTION**

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1. Defined terms and interpretation

1.1 In this Constitution the following words and expressions have the meanings indicated unless the context requires otherwise.

**Alternate Director** means a person appointed as an alternate director under Article 47.

**Constitution** means the constitution of the Company as amended from time to time.

**Auditor** means the Company's auditor, if any.

**Business Day** has the same meaning as in the *Corporations Act 2001* (Cth).

**Company** means Club Plus Superannuation Pty Limited.

**Deed** means the deed pursuant to which the Fund was established, as amended from time to time.

**Director** includes any person occupying the position of director of the Company and, where appropriate, includes an Alternate Director.

**Directors** means all or some of the Directors acting as a board.

**Director Nomination, Appointment, Renewal and Removal Policy** means the policy adopted by the Company in its capacity as a registrable superannuation entity under the Superannuation Law in accordance with Prudential Standard SPS 510 issued by the Australian Prudential Regulatory Authority or any such replacement standard which may exist from time to time.

**Employer** means an Employer as defined in the Deed.

**Employer Association** means the Registered Clubs Association of New South Wales (**RCA**) otherwise known as ClubsNSW.

**Employer Representative Director** means a Director who was appointed by the Employer Association and noted by the Company.

**Fit and Proper Policy** means the policy adopted by the Company in its capacity as a registrable superannuation entity under the Superannuation Law in accordance with Prudential Standard SPS 520 issued by the Australian Prudential Regulatory Authority or any such replacement standard which may exist from time to time.

**Fund** means the Club Plus Superannuation Scheme of which the Company is trustee.

**Fund Member** means a member of the Fund.

**Independent Director** means an independent director appointed in accordance with Article 40.

**Member** means a person entered in the Register or any branch register as the holder of shares.

**Member Representative Director** means a Director who was appointed by the Union and noted by the Company.

**Office** means the Company's registered office.

**Register** means the register of Members of the Company.

**Registered Address** means the last known address of a Member as noted in the Register.

**Regulator** means the Australian Prudential Regulation Authority (APRA), the Australian Securities and Investments Commission (ASIC), the Australian Taxation Office (ATO), the Australian Transaction Reports and Analysis Centre (AUSTRAC), the Office of the Australian Information Commission (OAIC) and any other such bodies that may exist.

**Seal** means the Company's common seal.

**Secretary** means any person appointed by the Directors to perform any of the duties of a secretary of the Company and, where appropriate, includes an assistant or deputy secretary.

**Shares** means shares in the capital of the Company.

**Superannuation Law** means

- a. Any law, including:
  - i. The Superannuation Industry (Supervision) Act 1993
  - ii. The Superannuation Guarantee (Administration) Act 1992
  - iii. The Superannuation (Resolution of Complaints) Act 1993
  - iv. The Corporations Act 2001
  - v. The Impact Tax Assessment Act 1997
  - vi. The Privacy Act 1988
  - vii. The Anti-Money Laundering and Counter-Terrorism Financing Act 2006
  - viii. The Family Law Act 1975
- b. Any Regulations and/or Rules made under any of the Acts identified in (a) above.
- c. Any legislative transition period or modification of a law by a Regulator.
- d. Any standard, direction or rule issued, or condition imposed, by a Regulator.
- e. Any condition under a Trustee Licence.

**Trustee Licence** means the Responsible Superannuation Entity (RSE) Licence and/or the Australian Financial Services (AFS) Licence held by the Trustee.

**Union** means United Voice NSW Branch Liquor and Hospitality Division.

1.2 In this Constitution, unless the contrary intention appears:

- a. the singular includes the plural and vice versa and words importing a gender include other genders;
  - b. words importing natural persons include corporations;
  - c. words and expressions defined in the *Corporations Act 2001* (Cth) have the same meaning in this Constitution;
  - d. headings are for ease of reference only and do not affect the construction of this Constitution.
- 1.3 Division 10 of Part 1.2 of the *Corporations Act 2001* (Cth) applies in relation to this Constitution as if it was an instrument made under the *Corporations Act 2001* (Cth) as in force on the day when this Constitution becomes binding on the Company.

## 2. Proprietary company

- 2.1 The Company is a proprietary company and accordingly:
- a. the right to transfer shares is restricted under this Constitution;
  - b. the number of members of the Company (counting joint holders of shares as one person and not counting a person who is employed by the Company or any of its subsidiaries or a person who was, while so employed, and thereafter has continued to be, a member of the Company) is limited to 50;
  - c. any invitation to the public to subscribe for, and any offer to the public to accept subscriptions for, any shares in, or debentures of, the Company is prohibited; and
  - d. any invitation to the public to deposit money with, and any offer to the public to accept deposits of money with, the Company for fixed periods or payable at call, whether or not bearing interest, is prohibited.

## 3. Special purpose company - distributions prohibited

- 3.1 The Company is formed solely for the purpose of acting as the trustee of the Fund, and for purposes incidental to that purpose.
- 3.2 The Company must not be carried on for the purposes of profit or gain and must not at any time make any distribution of the Company's income or property to its Members.
- 3.3 Nothing in this clause prevents the Company from issuing new shares or redeeming preference shares.

## 4. Capital and shares - rights

- 4.1 Subject to this Constitution and to the terms of issue of shares, all shares in the capital of the Company attract the right to receive notice of, and to attend and vote at, all general meetings of the Company at one vote per share.

## 5. Capital and shares - Issue of shares

- 5.1 Subject to this Constitution, all unissued shares are under the control of the Company in general meeting which may issue and allot, or dispose of, the shares to persons:
- a. on terms determined by the Company in general meeting; and
  - b. at par or, subject to the *Corporations Act 2001* (Cth), at a premium or discount.

- 5.2 Subject to the *Corporations Act 2001* (Cth), the Company's power under Article 5.1 includes the power to issue options over unissued shares and the power to issue and allot preference shares that are, or at the option of the Company are, liable to be redeemed.
- 5.3 Subject to the *Corporations Act 2001* (Cth), the Company may issue and allot shares with:
- a. any preferential, deferred or special rights, privileges or conditions; or
  - b. any restrictions in regard to dividend, voting, return of capital or otherwise.
- 5.4 Subject to the *Corporations Act 2001* (Cth), the Company may issue and allot preference shares that are, or at the option of the Company are to be, liable to be redeemed.
- 5.5 All shares must be issued at their par value and must be fully paid.

## 6. Capital and shares - trusts not recognised

- 6.1 Except as required by law, the Company will not recognise any person as holding a share on trust and the Company will not recognise any equitable, contingent, future or partial interest or any other right in respect of a share except the registered holder's absolute right of ownership.
- 6.2 Subject to the other Articles of this Constitution, this Article 6 applies even if the Company has notice of the relevant trust, interest or right.

## 7. Capital and shares - joint holders

- 7.1 If two or more persons are registered as the holders of a share, they are deemed to hold the share as joint tenants with benefits of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Company.

## 8. Capital and shares - right to certificate

- 8.1 Subject to the conditions of allotment of any shares or any class of shares:
- a. every Member is entitled free of charge to one certificate for all shares registered in that Member's name; and
  - b. a Member may request several certificates in reasonable denominations for different portions of that Member's holding.
- 8.2 Subject to the conditions of allotment of any shares or any class of shares,
- a. joint holders are entitled to a single certificate in their joint names in respect of each portion of their holding; and
  - b. a certificate will be sent to the joint holder whose name appears first in the Register.
- 8.3 The Company must issue a replacement certificate for shares in accordance with the *Corporations Act 2001* (Cth) if:
- a. the holder of the shares is entitled to a certificate for those shares;



- b. satisfactory evidence has been received by the Company that the certificate for shares previously issued has been stolen, lost or destroyed and has not been pledged, charged, sold or otherwise disposed of; and
- c. the Member has undertaken in writing to the Company to return the certificate to the Company if it is found or received by the Member.

8.4 Every certificate for shares must be issued and despatched in accordance with the *Corporations Act 2001* (Cth).

## 9. Capital and shares - replacement of certificate

9.1 The Company may order worn out or defaced certificates to be cancelled and replaced by new certificates.

## 10. Capital and shares - variation of class rights

10.1 The rights attached to any class of shares may, unless their terms of issue state otherwise, be varied:

- a. with the written consent of the holders of 75% of the issued shares of the class; or
- b. with the sanction of a special resolution passed at a separate general meeting of the holders of shares of the class.

10.2 The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings as if they were general meetings except that:

- a. a quorum is two persons holding or representing by proxy at least one-third of the issued shares of the class or, if there is one holder of shares in a class, that person; and
- b. any holder of shares of the class, present in person or by proxy, may demand a poll.

10.3 The rights conferred on the holders of shares which are not ordinary shares and which have special rights are, unless otherwise expressly provided by their respective terms of issue, deemed not to be varied by the issue of more shares.

## 11. Transfer of shares - transfer

11.1 Subject to this Constitution, a Member may, with the approval of the Company in general meeting, transfer the shares held by that Member.

11.2 Shares may be transferred by:

- a. a written transfer instrument in any usual or common form; or
- b. any other form approved by the Company.

11.3 A written transfer instrument referred to in Article 11.2 must be executed by or on behalf of the transferor and the transferee.

11.4 A transferor of shares remains the holder of the shares transferred until the transfer is registered and the name of the transferee is entered in the Register in respect of the shares.

11.5 The Company may, at its absolute discretion and without assigning any reason, decline to approve of any transfer.

## 12. Transfer of shares - transfer procedure

12.1 For a transfer of shares:

- a. the written transfer instrument must be left at the Office or the office of the Company's share registrar, together with any fee (of \$1.00 or less) the Company requires;
- b. the instrument must be accompanied by a certificate for the shares dealt with in the transfer, unless the Company waives production of the certificate on receiving satisfactory evidence of the loss or destruction of the certificate; and
- c. the Company may require other evidence of the transferor's right to transfer the shares.

12.2 Subject to the powers vested in the Company by this Constitution, the Company must register all registrable transfer forms and issue certificates without charge, except where the issue of a certificate is to replace a lost or destroyed certificate.

## 13. Transfer of shares - registration

13.1 The Company must not register any transfer of shares which has not been approved by the Company as required by Article 11.1.

13.2 The Company may in its absolute discretion refuse to register any transfer of shares or other securities on which stamp duty is payable but unpaid.

## 14. Transfer of shares - closure of register

14.1 The transfer books and the Register may be closed for up to 30 days in each year.

## 15. Transmission of shares - title on death

15.1 The legal personal representative of a deceased Member who was the sole holder of shares is the only person whom the Company will recognise as having any title to the deceased Member's shares.

15.2 If a deceased Member was a joint holder of shares, the other joint holder is the only person whom the Company will recognise as having any title to the deceased Member's shares.

15.3 The Company may register a transfer to a transferee who dies before the transfer is registered.

## 16. Transmission of shares - transmission

16.1 A person who becomes entitled to a share in consequence of the death, lunacy or bankruptcy of a Member may, subject to producing to the Company evidence of that person's entitlement which is satisfactory to the Company, elect to:

- a. be registered as the holder of the share; or
- b. transfer the share to some other person nominated by that person.

- 16.2 If the person who has become entitled to a share:
- a. elects to be registered as the holder, then the person must deliver or send to the Company a written notice of election signed by that person; or
  - b. elects to transfer the share, then the person must execute a transfer of the share.

16.3 An election to be registered as a holder of shares under Article 16.1(a) or a transfer of a share from a Member or deceased Member under this Article 16 is subject to the same limitations, restrictions and provisions of this Constitution as would apply if the election was a transfer or the transfer was made by the Member or deceased Member itself.

## 17. Changes to share capital - new shares

17.1 Subject to their terms of issue and this Constitution, new shares are considered part of the original capital and are subject to this Constitution.

## 18. General meetings - convening general meetings

18.1 Any Director or Member may, at any time, convene a general meeting.

## 19. General meetings - notice of general meeting

19.1 Unless all Members consent to the giving of a shorter period of notice:

- a. at least 21 days' notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting at which a special resolution will be considered;
- b. at least 14 days' notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of all other general meetings.

19.2 A notice convening a general meeting must:

- a. specify the place, date and hour of the meeting; and
- b. state the general nature of the business to be transacted at the meeting.

19.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:

- a. the consideration of accounts and the reports of the directors and auditors;
- b. the appointment and fixing of the remuneration of the Auditor.

19.4 The failure or accidental omission to send a notice of a general meeting to any Member or the non-receipt of a notice by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## 20. Proceedings at general meetings - member

20.1 In Articles 21, 24 and 27, **Member** includes a Member present in person or by proxy, attorney or representative.

## 21. Proceedings at general meetings - quorum

- 21.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 21.2 A quorum of Members is two Members or, if there is only one Member, that Member.
- 21.3 If a quorum is not present within 30 minutes after the time appointed for a meeting:
- a. it will stand adjourned to the same time and place 7 days after the meeting, or to another day, time and place determined by the Directors; and
  - b. if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, it is automatically dissolved.

## 22. Proceedings at general meetings - chairman

- 22.1 The Members may elect one of the Members present as the chairman of a general meeting.
- 22.2 If there is a dispute at a general meeting about a question of procedure, the chairman may determine the question.

## 23. Proceedings at general meetings - adjournment

- 23.1 The chairman of a meeting at which a quorum is present:
- a. in his or her discretion may adjourn a meeting with the meeting's consent; and
  - b. must adjourn a meeting if the meeting directs him or her to do so.
- 23.2 An adjourned meeting may take place at a different venue to the initial meeting.
- 23.3 The only business that can be transacted at an adjourned meeting is the unfinished business of the initial meeting.
- 23.4 Notice of an adjourned meeting must be given in accordance with Article 19.1 only if a general meeting has been adjourned for more than 21 days.

## 24. Proceedings at general meetings - decision of questions

- 24.1 Subject to the *Corporations Act 2001* (Cth) in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 24.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded, before or on the declaration of the result of the show of hands, by:
- a. the chairman;
  - b. at least two Members who have the right to vote at the meeting;
  - c. any Member or Members who can vote not less than 10% of all votes held by Members who have the right to vote at the meeting.
- 24.3 The chairman has a casting vote on a show of hands and on a poll in addition to the chairman's votes as a Member, proxy, attorney or representative.

24.4 Unless a poll is demanded:

- a. a declaration by the chairman that a resolution has been carried, carried by a specified majority, or lost; and
- b. an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

24.5 The demand for a poll may be withdrawn.

## 25. Proceedings at general meetings - taking a poll

25.1 A poll will be taken when and in the manner that the chairman directs.

25.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

25.3 The chairman may determine any dispute about the admission or rejection of a vote.

25.4 The chairman's determination, if made in good faith, will be final and conclusive.

25.5 A poll demanded on the election of the chairman or the adjournment of a meeting must be taken immediately.

25.6 After a poll has been demanded at a meeting, the meeting may continue for the transaction of business other than the question on which the poll was demanded.

## 26. Proceedings at general meetings - written resolutions

26.1 Subject to the *Corporations Act 2001* (Cth), if all the Members have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is deemed to have been passed at a general meeting held on the day on which the document was last signed by a Member.

26.2 For the purposes of Article 26.1, two or more identical documents, each of which is signed by one or more Members, together constitute one document signed by those Members on the days on which they signed the separate documents.

26.3 Any document referred to in this Article may be in the form of a telex or facsimile transmission.

## 27. Votes of members - entitlement to vote

27.1 Subject to this Constitution and to any rights or restrictions attaching to any class of shares:

- a. every Member may vote;
- b. on a show of hands every Member has one vote; and
- c. on a poll every Member has one vote for each share.

## 28. Votes of members - joint holders

- 28.1 If two or more joint holders purport to vote, the vote of the joint holder whose name appears first in the Register will be accepted, to the exclusion of the other joint holder or holders.

## 29. Votes of members - objections

- 29.1 An objection to the qualification of a voter may only be raised at the meeting or adjourned meeting at which the voter tendered its vote.
- 29.2 An objection must be referred to the chairman of the meeting; whose decision is final.
- 29.3 A vote which the chairman does not disallow pursuant to an objection is valid for all purposes.

## 30. Votes of members - votes by operation of law

- 30.1 If the meeting is satisfied that a person wishing to attend the meeting has become entitled to a share by operation of law, that person may attend the meeting and may exercise all rights attached to the share in relation to the meeting, as if the person were the registered holder of the share.

## 31. Votes of members - votes by proxy

- 31.1 If a Member appoints one proxy, that proxy may vote on a show of hands.
- 31.2 If a Member appoints two proxies, neither proxy may vote on a show of hands.
- 31.3 A proxy may demand or join in demanding a poll.

## 32. Votes of members - instrument appointing proxy

- 32.1 A natural person may appoint one or two proxies by a written appointment signed by the appointor or the appointor's attorney.
- 32.2 A corporation may appoint one or two proxies by a written appointment under the appointor's common seal or signed by a director, secretary or attorney of the appointor.
- 32.3 A proxy need not be a Member.
- 32.4 If a Member appoints two proxies, that appointment is of no effect unless each proxy is appointed to represent a specified proportion of the appointor's voting rights.
- 32.5 An appointment of a proxy must be in a form approved by the Company. Schedule 1 sets out a form which will be deemed to be approved by the Company unless it resolves to use a different form.
- 32.6 A proxy may vote or abstain as he or she chooses except to the extent that an appointment of the proxy indicates the manner in which the proxy will vote on any resolution. The proxy must vote or abstain on a poll or show of hands in accordance with any instructions on the appointment.
- 32.7 A proxy's appointment is valid at an adjourned meeting.

### 33. Votes of members - lodgement of proxy

- 33.1 The written appointment of a proxy or attorney must be deposited at the Office, or another address nominated by the Company, not less than 48 hours before:
- a. the time for holding the meeting or adjourned meeting at which the appointee proposes to vote; or
  - b. the taking of a poll on which the appointee proposes to vote.
- 33.2 If the appointment purports to be executed under a power of attorney or other authority, then the original document, or an office copy or a notarially certified copy of it, must be deposited with the appointment.

### 34. Votes of members - validity

- 34.1 A vote cast in accordance with an appointment of proxy or power of attorney is valid even if before the vote was cast the appointor:
- a. died;
  - b. became of unsound mind;
  - c. revoked the proxy or power; or
  - d. transferred the shares in respect of which the vote was cast,

unless any written notification of the death, unsoundness of mind, revocation or transfer was received at the Office before the relevant meeting or adjourned meeting.

### 35. Votes of members - representatives of corporations

- 35.1 Any corporation which is a Member may authorise a natural person to act as its representative at any general meeting of the Company or any class of Members (**Representative**). A Representative is entitled to exercise at the relevant general meeting all the powers which the corporation which appointed him or her could exercise if it were a natural person. When a Representative is present at a meeting of the Company, the corporation which appointed him or her will be deemed to be personally present at the meeting.
- 35.2 A certificate under the common seal of the corporation is conclusive evidence of the appointment or of the revocation of the appointment (as appropriate) of the Representative.
- 35.3 The chairman of a general meeting may permit a person claiming to be a Representative to exercise his or her powers even if he or she has not produced a certificate evidencing his or her appointment, or may allow the Representative to vote on the condition that he or she subsequently establishes to the satisfaction of the chairman of the general meeting his or her status as a Representative within a period prescribed by the chairman of the general meeting.

### 36. Appointment and removal of directors - maximum and minimum number of directors

- 36.1 There will not be less than two or more than eight Directors unless the Company in a general meeting resolves to change the maximum or minimum number.

## 37. Appointment and removal of directors - number of directors

37.1 Subject to Article 37.3, the number of Directors will be eight.

37.2 Subject to Article 37.3, the Company in general meeting may resolve to increase or reduce the number of Directors.

37.3 If:

- a. an Independent Director is to be appointed in accordance with Article 40, the number of Directors must be an odd number;
- b. otherwise, the number of Directors must be an even number;

and, if the number of Directors determined in accordance with Article 37.1 or 37.2 would not otherwise comply with this Article 37.3, the number of Directors will be deemed to have been increased by one.

## 38. Appointment and removal of directors - qualification

38.1 Neither a Director nor an Alternate Director is required to hold any shares.

## 39. Appointment and removal of directors - equal representation rules

39.1 (a) Subject always to paragraph (b):

(i) the Employer Association may:

- (A) remove any Employer Representative Director; and
- (B) subject always to paragraph (e), appoint another person as a Director in place of a Director removed by the Employer Association pursuant to Article 39.1(a)(i)(A);

(ii) the Union may:

- (A) remove any Member Representative Director; and
- (B) subject always to paragraph (e), appoint another person as a Director in place of a Director removed by the Union pursuant to Article 39.1(a)(ii)(A).

(iii) if at any other time there are fewer than the relevant number of:

- (A) Employer Representative Directors, then the Employer Association may appoint additional Employer Representative Directors;
- (B) Member Representative Directors, then the Union may appoint additional Member Representative Directors,

where the **relevant number** is four.

b. Apart from any Independent Director appointed in accordance with Article 40, one-half of the total number of Directors will be Member Representative Directors, and one-half will be Employer Representative Directors.

c. Any vacancy must be filled within 90 days (or such other period prescribed by the Superannuation Law) of the vacancy occurring.



- d. The Company's **Director Nomination, Appointment, Renewal and Removal Policy** will specify, with respect to Employer Representative Directors and Member Representative Directors:
  - i. Eligibility for nomination to office;
  - ii. The nomination and appointment procedures;
  - iii. The term and tenure of office;
  - iv. The renewal of office;
  - v. When an office becomes vacant; and
  - vi. How a vacant office is filled.
- e. Any appointment of an Employer Representative Director or a Member Representative Director by an Employer Association or the Union pursuant to Clause 39.1(a)(i)(B) or 39.1(a)(ii)(B) respectively shall have regard to the requirements of the Superannuation Law concerning the obligations of directors of registerable superannuation entities including but not limited to the Fit and Proper Policy.

#### 40. Appointment and removal of directors - independent director

40.1 If allowed under the Superannuation Law and the Deed, the Directors may, at any time, at the request of either the Member Representative Directors or the Employer Representative Directors appoint a person who:

- a. is not a Fund Member;
- b. is not an associate of any Employer; or
- c. is not an employee of an Employer or an associate of an Employer or any other employer-sponsor of the Fund;
- d. is not, in any capacity, a representative of the Union or any other trade union or other organisation representing the interests of one or more of the Fund Members;
- e. is not, in any capacity, a representative of the Employer Association or any other organisation representing the interests of any Employer of the Fund or any other employer-sponsor of the Fund; and
- f. meets any other criteria specified in the Superannuation Law for the appointment of an independent director;

as an additional Director (**Independent Director**).

40.2 The procedures for appointing and removing an Independent Director and any term of office of an Independent Director will:

- a. to the extent to which the Deed provides for each of those matters, be as specified in the Deed; and
- b. otherwise, be as specified in procedures adopted by the Directors for the appointment and removal of an Independent Director.

and in either event, must not be inconsistent with the requirements of the Superannuation Law concerning the obligations of directors of registerable superannuation entities including but not limited to the Company's Fit and Proper Policy.

40.3 An Independent Director does not have a casting vote in any proceedings of the Directors.

## 41. Review of directors

41.1 Notwithstanding any article in this Constitution, each Director shall be subject to review in relation to the performance of their role as a Director in accordance with the Company's **Director Nomination, Appointment, Renewal and Removal Policy** .

41.2 Employer Representative Directors shall be reviewed by the Employer Association and Member Representative Directors shall be reviewed by the Union.

## 42. Remuneration of directors

42.1 Directors are not entitled to remuneration for their services except:

- a. as provided in Articles 42.2 and 42.3; or
- b. with the agreement of the Employer Association and the Union.

42.2 If a Director is required to perform services for the Company which in the opinion of the Directors are outside the scope of the ordinary duties of a Director, then the Company may pay the Director a fixed sum determined by the Directors.

42.3 The Directors may also be paid all travelling, accommodation and other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or general meetings of the Company or otherwise in connection with the Company's business.

## 43. Powers and duties of directors - directors to manage Company

43.1 The business of the Company is managed by the Directors who may exercise all powers of the Company that this Constitution and the *Corporations Act 2001* (Cth) do not require to be exercised by the Company in general meeting.

43.2 Without limiting the generality of Article 43.1, the Directors may exercise all the powers of the Company to:

- a. borrow money;
- b. charge any property or business of the Company; and
- c. issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

43.3 Every Director and other agent or officer of the Company must:

- a. keep secret all aspects of all transactions of the Company, except:
  - i. to the extent necessary to enable the person to perform his or her duties to the Company;
  - ii. as required by law;
  - iii. when requested to disclose information by the Directors to the auditors of the Company or a general meeting of the Company;

- b. if requested by the Directors, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the Company.

43.4 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two Directors or in such other manner as the Directors determine.

#### 44. Proceedings of directors - directors' meetings

44.1 A Director may at any time, and the Secretary must on the requisition of a Director, convene a Directors' meeting.

44.2 It is not necessary to give notice of a meeting of the Directors to a Director whom the Secretary, when giving notice to the other Directors, reasonably believes to be outside Australia.

44.3 A Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.

44.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.

44.5 A Director who participates in a meeting held in accordance with this Article 43.3 is deemed to be present and entitled to vote at the meeting.

44.6 The Directors may meet together, adjourn and regulate their meetings as they think fit.

44.7 At a meeting of Directors, a quorum is two-thirds of the total number of Directors in office for the time being.

44.8 A Director who has a direct or indirect interest in any business to be transacted or matter to be discussed at a Directors' meeting is to be counted for the purpose of determining whether a quorum is present notwithstanding his or her interest.

#### 45. Proceedings of directors - decision of questions

45.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by at least two-thirds (or such other percentage (if any) prescribed by the Superannuation Law) of the total number of Directors in office for the time being.

45.2 Each Director has one vote. The chairman of a meeting does not have a casting vote in addition to his or her deliberative vote.

45.3 An Alternate Director has one vote for each Director for whom he or she is an alternate.

45.4 If the Alternate Director is a Director, he or she also has a vote as a Director.

#### 46. Proceedings of directors - directors' interests

46.1 A Director and any firm, body or entity in which a Director has a direct or indirect interest may in any capacity:

- a. enter into any contract or arrangement with the Company;
- b. be appointed to and hold any office or place of profit under the Company, other than the office of auditor; and
- c. act in a professional capacity, other than as auditor, for the Company,

and may receive and retain for his or her own benefit any remuneration, profits or benefits as if he or she were not a Director.

46.2 Each Director must disclose his or her interests to the Company in accordance with the *Corporations Act 2001* (Cth) and the Secretary must record all declarations in the minutes of the relevant Directors' meeting.

46.3 A Director's failure to make disclosure under this Article does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

46.4 A Director may vote in respect of a contract or arrangement or any other matter in which the Director has a direct or indirect interest.

46.5 A Director may attest the affixing of the Seal to any document relating to a contract or arrangement or other matter in which the Director has an interest.

## 47. Proceedings of directors - alternate directors

47.1 A Director, with the approval of the other Directors, may appoint a person as his or her alternate for a period determined by that Director.

47.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum.

47.3 An Alternate Director is an officer of the Company and is not an agent of the appointor.

47.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors, except that Alternate Directors are not entitled to any remuneration from the Company.

47.5 The appointment of an Alternate Director may be revoked at any time by the appointor.

47.6 An Alternate Director's appointment ends automatically when his or her appointor ceases to be a Director.

47.7 Any appointment or revocation under this Article must be effected by written notice delivered to the Secretary.

## 48. Proceedings of directors - remaining directors

48.1 The Directors may act even if there are vacancies on the board.

48.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to convene a general meeting.

## 49. Proceedings of directors - chairman

49.1 The Directors may elect a Director as chairman of Directors' meetings \.

- 49.2 If no chairman is elected or if the chairman is not present at any Directors' meeting within 10 minutes after the time appointed for the meeting to begin, the Directors present must elect a Director to be chairman of the meeting.
- 49.3 The Directors may elect a Director as deputy chairman to act as chairman in the chairman's absence.
- 49.4 The Company's **Director Nomination, Appointment, Renewal and Removal Policy** will determine, with respect to the chairman and the deputy chairman:
- a. Nomination and appointment to office;
  - b. Term, tenure and renewal of office; and
  - c. Removal from office.

## 50. roceedings of directors - written resolutions

- 50.1 If all the Directors who are eligible to vote on a resolution have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, then a resolution in those terms is deemed to have been passed at a Directors' meeting held on the day on which the document was last signed by a Director.
- 50.2 For the purposes of Article 50.1, two or more identical documents, each of which is signed by one or more Directors, together constitute one document signed by those Directors on the days on which they signed the separate documents.
- 50.3 Any document referred to in this Article may be in electronic form and a signature includes an electronic signature

## 51. Proceedings of directors - validity of acts of directors

- 51.1 If it is discovered that:
- a. there was a defect in the appointment of a person as a Director or Alternate Director; or
  - b. a person appointed to one of those positions was disqualified;

all acts of the Directors before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## 52. Proceedings of directors - minutes and registers

- 52.1 The Directors must cause minutes to be made of:
- a. the names of the Directors present at all general meetings, Directors' meetings or committee meetings;
  - b. all resolutions and proceedings of general meetings, Directors' meetings and committee meetings;
  - c. all orders made by the Directors; and
  - d. all disclosures of interests made pursuant to Article 46.
- 52.2 Minutes must be signed by the chairman of the meeting or by the chairman of the next meeting of the relevant body.

52.3 The Company must keep all registers required by this Constitution, the Superannuation Law and the *Corporations Act 2001* (Cth).

## 53. Proceedings of directors - committees

53.1 The Directors may delegate any of their powers to committees consisting of such of the Directors as they think fit.

53.2 Any committee formed under Article 53.1 must, in exercising the powers delegated to it, conform to any rules which may be imposed on it by the Directors.

53.3 The meetings and proceedings of any committee formed under Article 53.1 will be governed by any rules prescribed under Article 53.2 and will otherwise be conducted in accordance with the provisions of this Constitution which regulate the proceedings and meetings of the Directors so far as they are applicable.

## 54. Appointment of attorneys and agents

54.1 The Directors may from time to time by resolution or power of attorney under the Seal appoint any person to be the attorney or agent of the Company:

- a. for the purposes;
- b. with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
- c. for the period; and
- d. subject to the conditions,

determined by the Directors.

54.2 An appointment by the Directors of an attorney or agent of the Company may be made in favour of:

- a. any company;
- b. the members, directors, nominees or managers of any company or firm; or
- c. any fluctuating body of persons whether nominated directly or indirectly by the Directors.

54.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

54.4 The Directors may appoint attorneys or agents by telex, facsimile transmission, telegraph or cable to act for and on behalf of the Company.

54.5 An attorney or agent appointed under this Article 54 may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in it.

## 55. Secretary

55.1 There must be at least one secretary of the Company appointed by the Directors for a term and at a remuneration and on conditions determined by them.

55.2 The Directors may appoint a deputy secretary for a term and at a remuneration and on conditions determined by them.

- 55.3 The Secretary and the deputy secretary are entitled to attend and be heard on any matter at all Directors and general meetings.
- 55.4 The Directors may, subject to the terms of the employment contract (if any) of the Secretary or the deputy secretary, suspend, remove or dismiss the secretary or the deputy secretary."

## 56. Seals - common seal

- 56.1 The Directors must provide for the safe custody of the Seal.
- 56.2 The Seal must not be used without the authority of the Directors or the Company in general meeting (as the case requires).
- 56.3 Every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

## 57. Minutes and records - keeping of records

- 57.1 The Directors will cause records to be made of the following:
- a. all changes of Directors;
  - b. any committees appointed by the Directors in accordance with Article 53.1;
  - c. all consents to being appointed as a Director given by the Directors.
- 57.2 The Directors will ensure that the records referred to in Article 57.1, together with the consents given by each Director to being appointed as a Director, are kept for at least 10 years or such other period as may be prescribed for the purposes of the Superannuation Law.

## 58. Notices - service of notices

- 58.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
- a. by serving it on the person;
  - b. by sending it by post, telex or facsimile transmission to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 58.2 A notice sent by post is deemed to be served:
- a. by properly addressing, pre-paying and posting a letter containing the notice; and
  - b. on the day after the day on which it was posted.
- 58.3 A notice sent by telex or facsimile transmission is deemed to be served:
- a. by properly addressing the telex or facsimile transmission and transmitting it; and
  - b. on the day after its dispatch.
- 58.4 A notice may be given by the Company to joint holders by giving the notice to the joint holder whose name appears first in the Register.

- 58.5 Every person who is entitled to a share by operation of law and who is not registered as the holder of the share is deemed to receive any notice served in accordance with this Article on the person from whom it derives its title.
- 58.6 A share certificate, cheque, warrant or other document may be delivered by the Company either personally or by sending it:
- a. in the case of a Member who does not have a registered address in Australia, by airmail post; and
  - b. in any other case, by ordinary post,
- and is at the risk of the addressee as soon as it is given or posted.
- 58.7 A Member whose registered address is not in Australia may specify in writing an address in Australia to be deemed to be the Member's registered address within the meaning of this Article.
- 58.8 A certificate in writing signed by a Director, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 58.9 Subject to the *Corporations Act 2001* (Cth) the signature to a written notice given by the Company may be written or printed.
- 58.10 All notices sent by post outside Australia must be sent by pre-paid airmail post.
- 58.11 If a Member has no registered address a notice will be deemed to be served on that Member 24 hours after it was posted on a notice board at the Office.

## 59. Notices - persons entitled to notice

- 59.1 Notice of every general meeting must be given to:
- a. every Member;
  - b. every Director and Alternate Director;
  - c. the Employer Association;
  - d. the Union; and
  - e. any Auditor.
- 59.2 No other person is entitled to receive notice of a general meeting.

## 60. Audit and accounts - company to keep accounts

- 60.1 The Directors must cause the Company to keep accounts of the business of the Company in accordance with the requirements of the *Corporations Act 2001* (Cth).

## 61. Indemnity

- 61.1 Every person officer or auditor (or former officer or auditor) of the Company may be indemnified out of the property of the Company against:
- a. a liability to another person (other than the Company or a related body corporate) incurred by the person in his or her capacity as officer or auditor, unless the liability arises out of conduct involving a lack of good faith; and



- b. a liability for costs and expenses incurred:
  - i. in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the officer or auditor or in which the officer or auditor is acquitted; or
  - ii. in connection with any application, in relation to proceedings referred to in Article 61.1(b)(i), in which the court grants relief to the officer or auditor under the *Corporations Act 2001* (Cth).

61.2 Subject to the *Corporations Act 2001* (Cth), the Company may pay a premium in respect of a contract insuring a person who is or has been an officer or auditor of the Company against a liability incurred by the person as such an officer or auditor except in respect of conduct involving a wilful breach of duty (including without limitation, improper use of information acquired by virtue of the person's position or improper use of the person's position).

## 62. Winding up

62.1 If upon the winding up or dissolution of the Company there remains, after satisfaction of all debts and liabilities of the Company, any money, investment or property of the Company, it must not be paid to or distributed among the Members of the Company but will instead, as the liquidator of the Company may decide, be paid to the person or company for the time being acting as trustee of the Fund to defray expenses incurred in so acting or be applied for such charitable purpose or purposes as the liquidator of the Company decides.

## 63. Overriding provision - superannuation law

63.1 To the extent that any provision of this Constitution is inconsistent with any requirement of the Superannuation Law with which the Fund must comply, that provision of this Constitution will be deemed to be modified to the extent necessary to ensure that the Fund is able to comply with the Superannuation Law.

# Schedule 1 - Form of Proxy

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I/We, .....

of .....

am/are a Member of **CLUB PLUS SUPERANNUATION** Pty Limited.

I/We appoint as my/our proxy .....

of .....

or failing him or her .....

of .....

or failing him or her the chairman of the general meeting of the Company to be held on ..... 19... at .....am/pm to vote for me/us at that meeting and at any adjournment of it.

This form is to be used in accordance with the directions below. Unless the proxy is directed, he or she may vote or abstain as he or she thinks fit.

<b>RESOLUTION</b>	<b>FOR</b>	<b>AGAINST</b>	<b>ABSTAIN</b>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Instructions

1. To direct the proxy to cast all votes covered by this instrument in a particular manner place a tick or a cross in the relevant box.
2. To direct the proxy to cast some only of the votes covered by this instrument in respect of an item of business in a particular manner, place in the relevant box either the number of votes to be cast in that manner on a poll or the percentage of the total votes covered by this instrument to be cast in that manner on a poll. This direction, if given, is also an instruction to the proxy to vote according to the proxy's discretion on a show of hands.

I/We understand that if I/we have not directed my/our proxy how to vote, my/our proxy may vote or abstain from voting as he or she thinks fit.

DATED:

.....

Signature of Member

.....

Signature of Member