

Defence
Health



Constitution

Defence Health Limited (ACN 008 629 481)
A Company Limited by Guarantee
Dated this 23rd day of March 2009

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Constitution

of Defence Health Limited (ACN 008 629 481)

Interpretation

1. In this Constitution unless a contrary intention is indicated:
 - 1.1. "Auditor" means the person who for the time being holds the position of auditor of the Company in accordance with the Law;
 - 1.2. "Board" means the board of directors of the Company;
 - 1.3. "business day" in any place means a day on which banks carry on their full range of trading activities in both the place at which the Company has its registered office and in the relevant place;
 - 1.4. "Chairman" means the chairman of the Board;
 - 1.5. "Chief Executive Officer" means the person who, at the relevant time, has been appointed by the Board to hold that office within the Company;
 - 1.6. "Company" means DEFENCE HEALTH LIMITED (ACN 008 629 481);
 - 1.7. "Commission" means Australian Securities & Investments Commission;
 - 1.8. "contributor" means a person who at the relevant time pays a periodical subscription in accordance with the Rules to purchase a health insurance product offered by the Fund;
 - 1.9. "Constitution" means the constitution of the Company as amended from time to time;
 - 1.10. "Fund" means the health benefits fund previously operated by Defence Health Benefits Society and now operated by the Company;
 - 1.11. "director" means a member of the Board;
 - 1.12. "Law" means the Corporations Act, 2001;
 - 1.13. "member" means a member of the Company;
 - 1.14. "month" means calendar month;
 - 1.15. "person" includes individual, body corporate and body politic;
 - 1.16. "Principal Insureds" means the persons referred to in sub-paragraphs 146.1, 146.2 and 146.3 of this Constitution.
 - 1.17. "Private Health Insurance Act" means the Private Health Insurance Act 2007 and where appropriate the National Health Act 1953;
 - 1.18. "Rules" means the rules of the Fund, as amended from time to time;
 - 1.19. "seal" means the common seal of the Company;
 - 1.20. "Secretary" means any person who is appointed in accordance with the Law to the statutory office of company secretary;
2. Unless the contrary intention appears:
 - 2.1. expressions referring to writing shall include references to printing, photography, facsimile and electronic mail;
 - 2.2. a reference to a statute, ordinance or other legislation includes any amendment, replacement or re-enactment of it for the time being in force and includes all regulations, by-laws and statutory instruments made thereunder;
3. The intended beneficiaries of the Fund are as set out in the Rules;
4. Section 46 of the Acts Interpretation Act 1901 applies in relation to this Constitution as if it was an instrument made under an Act in force on any relevant date.

Objects and Powers

Objects

5. The Company is established for charitable objects only existing for the patriotic purpose of offering peace of mind to and reducing the financial burden on members and former members of the Defence community by providing products and services to them and their immediate families to assist in treating, managing or preventing, or in meeting the costs associated with treating, managing or preventing diseases, injuries or conditions.

Powers

6. Solely for the purpose of carrying out the above objects and purpose and not otherwise and subject to any relevant prohibitions expressed or implied in the Private Health Insurance Act the Company may:
 - 6.1. undertake initiatives designed to inform, educate and induce the participation of the Defence community in the activities of the Company; and
 - 6.2. carry out activities which are incidental or conducive to the above Objects; and
 - 6.3. invest moneys which are part of the Fund; and
 - 6.4. carry out other activities which are not prohibited by the registration of the Company as a restricted access insurer under the Private Health Insurance Act; and no others.

The Chief of Army and the Chief of Air Force

7. For the purpose of clarification, a person who holds the office of Chief of Army or Chief of Air Force shall be entitled to exercise powers and enjoy privileges under this Constitution only for so long as that person is a member of the Company.

Binding Effect of the Rules

8. The Rules are binding on the Company, all its members and all contributors and persons claiming through them respectively to the same extent as if the Company, each member, each contributor and each person claiming through a contributor had subscribed his/her name and affixed his/her seal to the Rules and there was a covenant on the part of the Company and each such person to observe its provisions.

Alteration of Constitution

9. No alteration may be made to this Constitution which may deprive any contributor of any rights which they may have had as a contributor prior to any such amendment.
10. No alteration which may affect the tax exempt status of the income of the Company shall be made to or in the Constitution unless:
 - 10.1. not less than twenty-eight (28) days' prior written notice specifying the alterations proposed to be made shall have been given to the Commissioner of Taxation;
 - 10.2. the Company shall have received advice from the Commissioner that the Commissioner does not object to the alteration; or
 - 10.3. the Company shall have complied with the requirements of the Commissioner in relation to the alteration.

Limited Liability

11. The liability of the members is limited.
12. Each member agrees that, if the Company is wound up while he, she or it is a member, or within one year after he, she or it ceases to be a member, he she or it will contribute to the property of the Company, for payment of the debts and liabilities of the Company (contracted before he she or it ceases to be a member) and of the costs, charges, and expenses of winding up and for the adjustment of the rights of the members among themselves, such amount as may be required, not exceeding one hundred dollars (\$100).

Excess Assets on Winding Up

13. If on the winding-up (which includes dissolution) of the Company there remain any assets after satisfaction of all the Company's debts and liabilities, those assets shall not be paid to or distributed among the members or contributors, but shall be given or transferred to some other Australian institution or institutions having objects similar or in part similar to the objects of the Company and objects incidental or conducive to those so specified but no other, and whose constitution shall prohibit the distribution of its or their income and property among its or their members or contributors to an extent at least as great as is imposed on the Company under or by virtue of this Constitution.
14. Such institution or institutions shall be determined by the members at or before the start of the winding up.
15. If all relevant assets are not dealt with in accordance with paragraphs 13 and 14 then same shall be dealt with, having regard to the conditions of paragraph 13, by the Board at or before the time of the winding up and in default thereof by order of such Court as may have or acquire jurisdiction in the matter.

Accounts and Audit

16. The Board shall cause proper and accurate records to be kept of all money received and spent by the Company and the matter in respect of which each such receipt and expenditure takes place, and of the assets and liabilities of the Company and of all relevant activities involving the Company. The records shall be kept in such a manner as will enable true and fair financial statements to be prepared and audited.
17. The said records must be retained for at least seven (7) years after the transactions covered by the records are completed.
18. Each director of the Company has the right of access personally or by a nominee, being a practising lawyer or a registered company auditor, to the financial records and all other documents of the Company at all reasonable times, and the director and any such nominee may make copies of those records and other documents.
19. Subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the Board, the financial records of the Company shall be open to inspection by the members or their nominees.
20. A qualified auditor whose duties shall be regulated in accordance with the Law shall be appointed by the Company.
21. Once at least in every year, the accounts of the Company shall be examined by the auditor who shall report to the members in accordance with the Law.

Applicable Legislation

22. Notwithstanding any other provision in this Constitution, the Company and its officers and employees shall comply with all relevant Commonwealth, State and Territory legislation and all relevant regulations and ordinances.

Use of Assets

23. All of the income and property of the Company shall be used solely in accordance with the objects of the Company.
24. None of the Company's assets shall be paid or transferred, directly or indirectly, by way of dividend to the members of the Company.
25. No money the property of or under the control of the Company (including income derived from investments and proceeds of the realisation of investments) not then applied in accordance with the objects of the Company may be invested by the Company other than in a manner in which trustees are permitted by relevant legislation to invest trust money without special authorisation.

Membership

26. The Board shall admit as members of the Company:
 - 26.1. the persons who for the time being hold the offices of Chief of Army and Chief of Air Force;
 - 26.2. one nominee of each of Chief of Army and Chief of Air Force (if at any relevant time no such nominee is then a member of the Company, Chief of Army or Chief of Air Force as the case may be may make a further nomination); and
 - 26.3. any person who the Board desires to admit as a member and whose name has been submitted to each of Chief of Army and Chief of Air Force, providing that neither of Chief of Army nor Chief of Air Force has within 21 days after receipt of the submission informed the Chairman that in their opinion the proposed admission of that person would not be in the best interests of the Company.
27. Each potential member referred to in sub-paragraphs 26.1 to 26.3 shall become a member after their written consent to be a member and be bound by this Constitution is received by the Company and their name is entered on the register of members.
28. The Secretary shall as soon as practicable make each relevant entry in the Register of Members and notify each new member that they have become a member and provide to them such information concerning the Company as the Board determines.

Cessation of Membership

29. A member of the Company shall cease to be a member on the first to occur of:
 - 29.1. receipt by the Company of the member's written resignation;
 - 29.2. if the person became a member because they held the office of Chief of Army or Chief of Air Force, they cease to hold such office and their successor becomes a member;
 - 29.3. if the person was nominated by the Chief of Army or the Chief of Air Force for membership of the Company for a fixed period or until the occurrence of a particular event and the period has expired or the event has occurred;
 - 29.4. if the person was a director of the Company and ceases to be a director;
 - 29.5. if the person is expelled from the Company in accordance with this Constitution;or

29.6. their death:
whereupon the name of the member shall be removed from the register of members of the Company.

Expulsion

30. A member may be expelled from the Company in accordance with the following procedure:
- 30.1. If any member:
- (a) shall willfully refuse or neglect to comply with any provision of the Constitution or the Law; or
 - (b) shall be guilty of any conduct which in the opinion of the Board is unbecoming of a member or prejudicial to the interests of the Company;
- then the Board shall have power by resolution to expel the member from the Company.
- 30.2. The member must be given:
- (a) at least twenty-one (21) days notice of what is alleged against the member and of the proposed resolution; and
 - (b) the opportunity at the relevant Board meeting, of giving orally or in writing, whether personally or by the agent of the member, any explanation or defence the member may think fit.
- 30.3. If a resolution to expel the member is passed at the Board meeting the member shall be notified in writing of the resolution without delay.
- 30.4. If and only if the member availed himself or herself of the opportunity of providing an explanation or defence to the Board in accordance with the preceding sub-paragraphs, the member may by written notice received by the Company no later than seven days after the member received notification of a relevant expulsion resolution, elect to have the matter of expulsion dealt with by the Company in general meeting.
- 30.5. If the Company receives a notice in accordance with the preceding sub-paragraph, a general meeting of the Company shall be called without delay and if at that meeting a resolution to expel the member is passed, the member concerned shall be expelled.
- 30.6. Any resolution, whether of the Board or a general meeting relating to any matter referred to in this paragraph shall require a two-thirds majority of those voting on the matter.
- 30.7. No person who is expelled from the Company in accordance with this Constitution shall have any claim against the Company in their capacity as a former member in relation to their membership or the expulsion.

Effect of Cessation of Membership

31. A person who ceases to be a member shall continue to be liable for all moneys due by the member to the Company and in addition for any sum not exceeding one hundred dollars (\$100) for which he or she is liable as a member of the Company under this Constitution or the Law.

Meetings of Members

Calling of meetings

32. The Chairman may whenever he or she thinks fit and any two directors and any two members of the Company may whenever they think fit require the Secretary to convene a general meeting of the Company, and general meetings shall be convened on such requisition or in default may be convened by such requisition as is provided by the Law.

Time of Notice

33. Subject to the provisions of the Law relating to special resolutions and agreements for shorter notice, twenty-one (21) days notice at the least (exclusive of the day on which the notice is served or deemed to be served, and exclusive of the day for which notice is given) shall be given to such persons as are entitled to receive such notices from the Company.

Notice of meetings to members and directors

34. Written notice of a meeting of the members must be given individually to each member entitled to vote at the meeting and to each director and associate director (if any). The accidental omission to give any notice shall not invalidate any meeting.

How notice is given

35. The Company may give the notice of meeting to a member:
- 35.1. personally; or
 - 35.2. 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; or
 - 35.3. by sending it to the facsimile number or electronic address (if any) nominated by the member.

When notice by post or facsimile is given

36. A notice of meeting sent by post is taken to be given five (5) days after it is posted postage prepaid. A notice of meeting sent by facsimile, or other electronic means, is taken to be given on the business day after it is sent.

Auditor entitled to notice and other communications

37. The Company must give its auditor:
- 37.1. notice of a general meeting in the same way that a member is entitled to receive notice; and
 - 37.2. any other communications relating to the general meeting that a member is entitled to receive.

Contents of notice

38. A notice of a meeting of the members must:
- 38.1. set out the place, date and time for the meeting (and, if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate this); and
 - 38.2. state the general nature of the meeting's business; and
 - 38.3. if a special resolution is to be proposed at the meeting - set out an intention to propose the special resolution and state the resolution; and
 - 38.4. if a member is entitled to appoint a proxy - contain a statement setting out the following information:
 - (a) that the member has a right to appoint a proxy; and
 - (b) that the proxy does not need to be a member.

Notice of adjourned meetings

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

Members' rights to put resolutions and distribute statements

40. Members who are entitled to may give the Company notice of a resolution that they propose to move at a general meeting or request that the Company give to all its members a statement provided by the members making the request about a resolution that is proposed to be moved at a general meeting or any other matter that may be properly considered at a general meeting.
41. The notice or request must be in accordance with the requirements of the Law.

42. The Company shall deal with the notice in accordance with the Law.

Holding Meetings of Members

Time and place for meetings

43. A meeting of the members must be held at a reasonable time and place.

Technology

44. The Company may hold a meeting of its members at two (2) or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Quorum

45. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to the business. A quorum shall consist of two (2) members.
46. In determining whether a quorum is present individuals attending as a proxy or attorney for a member shall be counted. However, if a member has appointed more than one (1) proxy or representative, only one (1) of them shall be counted. If an individual is attending both as a member and as a proxy then that person will be counted as present in each such capacity.
47. If within fifteen minutes from the time appointed for the meeting a quorum is not present, the meeting shall be dissolved.

Chairperson

48. The Chairman shall preside as chairperson at any general meeting of the Company, or if there is no Chairman, or if the Chairman is not present within five minutes after the time appointed for the holding of the meeting or is unable or unwilling to act, then the members present shall elect one of their number to be chairperson of the meeting.

Auditor's right to be heard at General Meetings

49. The auditor of the Company is entitled to attend any general meeting of the members and to be heard at the meeting on any part of the business of the meeting that concerns the auditor in his or her capacity as auditor.
50. The auditor is entitled to be heard even if the auditor retires at the meeting or if the meeting passes a resolution to remove the auditor from office.
51. The auditor may authorise a person in writing as the representative of the auditor for the purpose of attending and speaking at any general meeting.

Adjournments

52. The chairperson may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
53. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
54. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

Appointing a proxy

55. Any member who is entitled to attend and cast a vote at a meeting of the members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

56. Any instrument appointing a proxy shall be in writing under the hand of the appointer or of the attorney of the appointer duly authorised in writing.
57. The instrument appointing a proxy shall be deemed to confer authority to speak at the meeting, demand or join in demanding a poll and (to the extent allowed by the instrument) to vote on a poll. The authority of a proxy to speak and vote for a member at a meeting is suspended while the member is present at the meeting.
58. A person attending a meeting as a proxy need not be a member.
59. The instrument appointing a proxy may subject to this Constitution be in such form as the chairperson of the meeting may determine is acceptable.
60. If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting;
 - 60.1. if the member requested the form or list, the Company must send the form or list to all members who requested it and who are entitled to appoint a proxy to attend and vote at the meeting; or
 - 60.2. otherwise - the Company must send the form or list to all its members entitled to appoint a proxy to attend and vote at the meeting.
61. An appointment of a proxy is valid if it is signed by the member making the appointment and contains the following information:
 - 61.1. the member's name and address;
 - 61.2. the name of the Company.
62. The instrument of appointment may specify the meetings at which the appointment may be used.
63. An undated appointment is taken to have been dated on the day it is given to the Company.
64. An appointment may specify the way the proxy is to vote on a particular resolution. Unless so instructed in writing, the proxy may vote as he or she thinks fit.
65. An instrument of appointment of a proxy does not have to be witnessed.

Notification of proxy to the Company

66. For an appointment of a proxy to be effective the instrument of appointment and the authority, if any, under which it is signed or a certified copy of that authority must be received by the Company at least twenty-four (24) hours before the start of the relevant meeting or adjourned meeting.
67. The Company shall have received an appointment instrument when it is received at any of the following:
 - 67.1. the Company's registered office;
 - 67.2. a facsimile number at the Company's registered office;
 - 67.3. a place, facsimile number or electronic address specified for the purpose in the notice of meeting.

Validity of proxy vote

68. A vote given on behalf of a member in accordance with the terms of an appoint of proxy or attorney shall be valid notwithstanding the previous death or mental incapacity of the member or revocation of the appointment or of the authority under which the appointment was executed if no written notice of such matter was received by the Company before the start or resumption of the meeting at which the proxy or attorney votes.

Voting and Polls

69. A member may vote in person or by proxy or by attorney. If any person is present as a member or representing one or more members that person shall on a show of hands have one vote. On a poll that person shall have one vote for each member he or she is representing and if he or she is a member a vote for himself or herself.

70. In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of the meeting at which the show of hands takes place or at which the poll is demanded shall not be entitled to a second or casting vote.
71. A challenge to a right to vote at a meeting of the members:
 - 71.1. may only be made at the meeting; and
 - 71.2. must be determined by the chairperson of the meeting, whose decision is final.
72. At any meeting of members a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is demanded:
 - 72.1. before the vote is taken; or
 - 72.2. before the voting results on a show of hands are declared; or
 - 72.3. immediately after the voting results on a show of hands are declared.
73. Each of the chairperson of the meeting and any member entitled to vote who is present at a meeting in person or by proxy is entitled to demand a poll.
74. Before a vote is taken the chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
75. On a show of hands, a declaration by the chairperson is conclusive evidence of the result, provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chairman nor the minutes need to state the number or proportion of the votes recorded in favour or against.
76. If a poll is duly demanded it shall be taken when and in such manner as the chairperson directs, and the result of the poll shall be the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairperson or on a question of adjournment shall be taken immediately and without discussion. A demand for a poll may be withdrawn. A member who is of unsound mind or whose person or estate is liable to be dealt with in any way under the law relating to mental health may vote, whether on a show of hands or on a poll, by the trustee or by such other person as properly has the management of the estate of the member, and any such trustee or other person may vote by proxy or attorney.

Annual General Meetings

77. The Company must hold an annual general meeting (AGM) at least once in each calendar year and within five (5) months after the end of its financial year.
78. An AGM is to be held in addition to any other meetings of members held by the Company in the year.

Reports at AGM

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

Business of AGM

80. The business of an AGM may include any of the following, even if not referred to in the notice of meeting:
 - 80.1. consideration of the annual financial report, directors' report and auditor's report;
 - 80.2. the election of directors;
 - 80.3. the appointment of the auditor; and
 - 80.4. the fixing of the auditor's remuneration.

Questions and comments by members on management

81. The chairperson of the AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask questions about, or make comments on, the management of the Company.

Reading auditor's report

82. If persons entitled to demand a poll so require, the directors must cause the auditor's report to be read aloud to the AGM.

Questions by members of auditors

83. If the Company's auditor or his or her representative is at the meeting, the chairperson of the AGM must allow a reasonable opportunity for the members as a whole at the meeting to ask the auditor or representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

Minutes and Members' Access to Minutes

Minutes

84. The Company must keep minute books in which it records within one (1) month:
- 84.1. proceedings and resolutions of meetings of the Company's members; and
 - 84.2. proceedings and resolutions of directors' meetings (including meetings of a committee of directors); and
 - 84.3. resolutions passed by members without a meeting; and
 - 84.4. resolutions passed by directors without a meeting; and
 - 84.5. all appointments of officers of the Company; and
 - 84.6. names of directors present at all meetings of the Company and Board.
85. Such minutes shall be signed by the chairperson of the meeting at which the proceedings were held or by the chairperson of the next succeeding meeting of the relevant body.
86. The Company 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.
87. Minutes shall be retained in a register (or registers) maintained by the Company for that purpose and kept at:
- 87.1. its registered office; or
 - 87.2. its principal place of business in Australia; or
 - 87.3. another place approved by the Commission.
88. A minute that is so recorded and signed is evidence of the proceedings or resolution to which it relates unless the contrary is proved.

Members' access to minutes

89. The Company must ensure that the minute books for the meetings of its members and for resolutions of members passed without meetings are open for inspection by members free of charge.
90. A member of the Company may ask the Company in writing for a copy of:
- 90.1. any minutes of a meeting of the Company's members or an extract of the minutes; or
 - 90.2. any minutes of a resolution passed by members without a meeting.

The Board

Appointment of Directors

91. The Company may, subject to this Constitution and the Law, by ordinary resolution appoint the directors, who shall be:
- 91.1. A nominee of the Chief of Army (being the person nominated by the Chief of Army as a member of the Company in accordance with paragraph 26.2);
 - 91.2. A nominee of the Chief of Air Force (being the person nominated by the Chief of Air Force as a member of the Company in accordance with paragraph 26.2);

- 91.3. Not less than four (4) and up to seven (7) directors selected, whether from inside or outside the Defence community, on the basis of their specific qualifications and abilities to contribute to the business of the Company and the deliberations of the Board. The members shall, in selecting the directors described in this sub-paragraph, have regard to recommendations of the Board or relevant committee of the Board.
92. The Board shall elect one of the directors as Chairman. The Chairman shall hold that office until a replacement Chairman is elected by the Board or until the Chairman ceases to be a director, whichever occurs first.
93. No person is eligible to be appointed a director unless that person is a member of the Company.

Remuneration of Directors and Associate Directors

94. Remuneration shall not be payable by the Company to any Director as a Director other than in accordance with this Constitution.
95. The members may determine an amount or a method of calculating an amount (herein called "the Directors' Fees") which shall be the maximum remuneration paid to all of the Directors, as a group, for a period determined by the members. The amount and the period may be varied by the members from time to time but the members may not retrospectively reduce the Directors' Fees for any period.
96. The Board shall determine the remuneration payable by the Company to individual Directors from time to time which remuneration shall not in aggregate for any period exceed the Directors' Fees determined in accordance with paragraph 95.
97. The determination of the members and the Board in accordance with paragraphs 95 and 96 shall:
- 97.1. not include any moneys payable to the Chief Executive Officer (whether or not that person is a Director) whose remuneration shall be determined by the Board from time to time.
- 97.2. not include remuneration in the nature of reimbursement for out of pocket expenses approved by the Board.
- 97.3. subject to sub-paragraphs 97.1 and 97.2, include all remuneration, however described, payable whether directly or indirectly to Directors or nominees of Directors for work performed by Directors as directors of the Company or in relation to committees of the Board but shall not include remuneration payable by the Company to Directors for work performed by them for the Company other than in their capacity as Directors.
98. The Board shall report to the members annually or more frequently if required by written notice from any two members, with details of the composition of the remuneration payable to each Director and nominee of each Director for all work physically performed by that Director in relation to the Company whether as Director, member of a committee of the Board or in some other capacity and whether the work was performed by arrangement with another entity. The report shall detail separately the remuneration for the categories of work of each individual Director and whether same relates to duties as a Director or in some other capacity and if the latter shall outline the nature of that work.
99. An Associate Director is not a director of the Company and for the purpose of clarity it is noted that the remuneration payable by the Company to or for the services of any Associate Director shall:
- 99.1. be determined by the Board from time to time; and
- 99.2. not be included in the calculation of the Directors' Fees referred to above.

Maximum number of Directors

100. The members may from time to time by ordinary resolution increase or reduce the number of directors, however until the members pass such a resolution there shall be no more than nine (9) directors at any one time.

Removal of Directors

101. The Company may remove any director, whether or not an office holder, before the expiration of his or her period of office. Any such removal must be in accordance with the Law.
102. The office of a director shall become vacant on the first to occur of the following events. If the director:
- 102.1. ceases to be a member of the Company or hold any other relevant appointment or qualification;
 - 102.2. becomes bankrupt or makes any arrangement or composition with his or her creditors generally;
 - 102.3. becomes prohibited from being a director of a company by reason of the Law or any order made under the Law;
 - 102.4. cannot manage the Company because of his or her mental incapacity and is a person whose estate or property has had a personal representative or trustee appointed to administer it;
 - 102.5. resigns his or her office by notice in writing received by the Company;
 - 102.6. is absent without permission of the Board from either three consecutive meetings of the Board or three meetings of the Board held in any financial year;
 - 102.7. holds any office of profit under the Company other than that of Chief Executive Officer;
 - 102.8. is directly or indirectly interested in any contract or proposed contract with the Company and:
 - (a) does not disclose that interest to each relevant meeting;
 - (b) votes at any relevant meeting in relation to that contract or proposed contract; or
 - 102.9. was appointed for a fixed period or until a certain date or event and the period has ended or the date or event has occurred.

Retirement of Directors in rotation

103. In addition to the provisions of paragraph 102:
- 103.1. any person whose most recent appointment as a director was by the Company in general meeting held on or after 1 January 2009 shall retire at the end of the fourth annual general meeting to be held after the said appointment.
 - 103.2. a director who retires under this paragraph is eligible for re-appointment.

Casual Vacancy

104. The Board has the power at any time and from time to time, to appoint any person as a director either to fill a casual vacancy or as an addition to the existing members of the Board but so that the total number of members of the Board shall not at any time exceed the maximum number fixed in accordance with this Constitution. Any member of the Board so appointed shall hold office only until the next following annual general meeting and shall not be taken into consideration in determining the number of directors to retire by rotation. The Board shall, without delay, notify the members of any appointment made in accordance with this paragraph. The Company may, at the next annual general meeting, in addition to appointing directors to fill vacancies caused by the retirement of directors in rotation in accordance with the preceding paragraph, appoint directors to fill any casual vacancies referred to in this paragraph.

105. Notwithstanding the immediately preceding paragraph, only the Chief of Army and the Chief of Air Force may fill a casual vacancy being their respective nominee on the Board as referred to in sub-paragraphs 91.1 and 91.2.

Associate Directors

106. The Board may from time to time appoint any person, other than a person who is at that time a director, to be an associate director and may from time to time terminate any such appointment.
107. The Board may from time to time determine the powers and duties of any person so appointed, however no such person shall have a vote at any meeting of the directors nor shall the attendance of an associate director at a Board meeting be taken into account for the purpose of determining whether or not a quorum of directors is present.
108. A person so appointed does not, except by the invitation and with the consent of the Board have any right to attend at any Board meeting however notices of Board meetings shall be sent to all associate directors at the same time as they are sent to the other directors.
109. A person who is an associate director shall immediately cease to hold such position if he/she becomes a member of the Board.

General Powers and Duties of the Board

110. The business of the Company shall be managed by the Board which may exercise all the powers of the Company except any powers that the Law or the Constitution requires to be exercised by the Company in general meeting. The Board shall not act contrary to the Law, the Private Health Insurance Act, the Constitution or the Rules. The Board's powers shall also be subject to such regulations, being not inconsistent with the Law, the Private Health Insurance Act, the Constitution or the Rules, as may be prescribed by the Company in general meeting.
111. Notwithstanding paragraph 110 and subject to the Private Health Insurance Act the Board may make, rescind and vary the Rules in relation to the following matters:
- 111.1. claims procedure in relation to the Fund;
 - 111.2. the amount of benefits payable to or for contributors in respect of claims; and
 - 111.3. any other matters not prohibited by Law or this Constitution.
112. Subject to the Private Health Insurance Act, the Board shall fix the contributions payable by the various categories of contributors.
113. The Board may employ personnel whether in a professional, consultative or any other capacity, suspend or discharge personnel and fix or agree upon the remuneration and superannuation or other benefits to be paid or provided for the services of any personnel.
114. The Board may delegate to any person any of the powers conferred on the Board by the Constitution or the Law, provided that:
- 114.1. any delegation of a power to expend money shall be limited to a sum to be determined by the Board; and
 - 114.2. no such delegation may be further delegated by the person or persons delegated except to the extent that express written power of delegation is conferred by the Board.
115. No resolution or regulation made by the Company in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or regulation had not been passed or made.
116. The Board shall:
- 116.1. administer the affairs of the Company in accordance with this Constitution, the Rules, the Private Health Insurance Act, the Health Insurance Act and any other relevant law.
 - 116.2. ensure that all moneys of the Company are deposited in banks or other financial institutions approved by the Board in accounts in the name of the Company;

- 116.3. directly or through any relevant committee authorise nominated persons or the holders of nominated offices within the Company to operate specified bank accounts of the Company and may change such authorisations from time to time. The authorisations may include authority to conduct both debit and credit transactions on any such specified accounts;
- 116.4. ensure that proper books of accounts and records of proceedings of Board meetings and General meetings of the Company are kept;
- 116.5. ensure audit of the accounts of the Company by a person who in the opinion of the Board has suitable qualifications and experience as at the 30 June every year;
- 116.6. ensure that the funds of the Company are not expended otherwise than:
 - (a) to pay benefits to or for contributors;
 - (b) to pay expenses of management of the Company; or
 - (c) for any other purposes authorised or required by the Law, the Private Health Insurance Act, this Constitution or the Rules.
- 116.7. ensure that any law requiring the preparation or lodgment of any return or report by the Company is complied with;
- 116.8. forward a copy of this Constitution to any member not previously supplied with a copy within fourteen (14) days of being requested to do so;
- 116.9. submit an Annual Report on the affairs of the Company to all members together with a copy of the audit report as soon as practicable after 30 June in each year;
- 116.10. ensure that the Company operates on a non profit basis; and
- 116.11. ensure that receipts are issued in the name of the Company with respect to all moneys received.

Meetings of the Board

- 117. The Board shall meet as and when necessary to carry out the efficient operation of the Company, and it may adjourn and otherwise regulate its meetings as it thinks fit providing that the Board shall meet at least six (6) times every calendar year.
- 118. A meeting of the Board may be called at any time by any director and the Secretary shall on the requisition of any such person send all relevant notices to call such a meeting.
- 119. Without limiting the general power conferred on the Board by paragraph 117, the directors may:
 - 119.1. conduct their meetings by telephone or other electronic device. A director shall be deemed to be present at such a meeting if the speech of the director via the telephone or device is audible to each other director who is present at the relevant meeting and if the first director can hear the speech of each other director;
 - 119.2. call or hold a meeting using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw his or her consent within a reasonable period before the holding of any relevant meeting.
- 120. A resolution of the directors must be passed by a majority of the votes cast by the directors present or deemed to be present and entitled to vote on the resolution. Each such director shall have one vote. In case of an equality of votes the chairperson of the meeting shall not have a second or casting vote.
- 121. The quorum necessary for a Board meeting shall be at least two directors and be a majority of the then directors.
- 122. The continuing directors may act notwithstanding any vacancy in the Board, but if and so long as their number is reduced below the minimum number required by the Law or below the necessary quorum of the Board, the continuing directors may act for the purpose of increasing the number of directors to that number or of summoning a general meeting of the Company, but for no other purpose.

123. The Chairman shall preside as chairperson at every meeting of the Board, or if there is no Chairman, or if at any meeting he or she has advised that he or she will not be present or if he or she has not so advised but is not present within ten minutes after the time appointed for holding the meeting, then the directors present shall choose one of their number to chair the meeting.
124. The Board may delegate any of its powers and/or functions (not being duties imposed exclusively on the Board by the Law or the Constitution) to one or more committees consisting of such directors as the Board thinks fit. The Chairman will, by virtue of his office, be a member of each such committee.
125. Any committee so formed shall conform to any regulation that may be imposed by the Board. Each member of any committee shall have one vote at meetings of that committee.
126. Committees may meet and adjourn as they respectively think appropriate. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in the case of an equality of votes the chairperson thereof shall not have a second or casting vote. If the Chairman is present at any committee meeting, he may if he wishes chair the meeting.
127. All acts done by any meeting of the Board or committee or by any person acting as a director shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such director or person acting as aforesaid, or that the directors or other persons were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director or member of the relevant body.
128. The directors may pass a resolution without a Board meeting being held if the Chairman and all other directors in Australia for the time being 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. Any such resolution may consist of several documents in like form, each signed by one or more directors. The resolution is passed when the last of such documents or a facsimile transmission thereof or some other document produced by mechanical or electronic means over the name of the Director with the Director's authority reaches any of the registered office of the Company or the Chief Executive Officer or the Chairman, whichever is more convenient.

Directors' Conflict of Interest

129. A director who has a material personal interest in a matter that relates to the affairs of the Company must give the other directors notice in accordance with the Law. The notice may be standing notice of the nature and extent of the interest.
130. No director shall vote at a meeting of the Board nor of any committee of the Board in respect of any matter in which that director has a material personal interest. If any director votes in contravention of this clause the vote shall not be counted.
131. No director, who is precluded by this clause from voting in respect of any matter, shall be present at any relevant meeting while that matter is being considered.
132. Notwithstanding the above a director does not have an interest in a matter relating to an existing or proposed contract of insurance merely because the contract insures, or would insure the director against a liability incurred by the director as an officer of the Company or a related body corporate.

Secretaries

133. The Company Secretary shall, in accordance with the Law, be appointed by the Board for such term, and upon such conditions as the Board determines, and any person so appointed may be removed by the Board at any time.

Seal

134. The Board shall provide for the safe custody of the seal which shall only be used by the authority of the Board or of a committee of the Board authorised by the directors in that behalf and every instrument to which the seal is affixed shall be signed by a director and shall be countersigned by the Secretary or by a second director or by some other person appointed by the Board for that purpose.

Use of Bank Accounts

135. The Company shall receive, process, spend or transfer money which is the property of the Company in accordance with the Law, any other relevant law and this Constitution.
136. The Company is to operate its own bank (or credit union, building society or other accredited financial institution) account.
137. All money received by the Company which is the property of the Company, shall be deposited as soon as practicable and without deduction to the credit of the Company in the relevant bank account of the Company.
138. All money received by the Company which is not the property of the Company shall be deposited as soon as practicable and without deduction to the credit of the relevant bank account.
139. The Company shall as soon as practicable after receiving any money, upon request, issue an appropriate receipt which shall be signed by a person who is, or a member of a class of persons which is, authorised by the Board to issue and sign such receipts.
140. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any two duly authorised persons.

Financial Year

141. The first financial year of the Company shall end on the first 30th June after the registration of the Company and thereafter each succeeding financial year shall end on the next 30th June.

Indemnity

142. To the extent permitted by the Law every director, auditor, secretary and other officer and employee for the time being of the Company (herein called "officer") shall be indemnified out of the assets of the Company against any liability incurred by that officer in his/her capacity as an officer of the Company:
 - 142.1. to any person (other than the Company or a related body corporate) unless the liability arises out of conduct involving wilful default or neglect or a lack of good faith; and
 - 142.2. for costs and expenses;
 - (a) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted; and
 - (b) in connection with an application in relation to those proceedings, in which the Court grants relief to the officer under the Law.
143. In particular, but without limiting the generality of the above indemnity, no such officer shall be liable for:
 - 143.1. any loss or damage occasioned by the exercise in good faith of any discretion or power conferred on any or all of them or by failure on reasonable grounds to exercise any such discretion or power; or

- 143.2. any breach of duty or trust whatsoever except to the extent (if any) that such breach results from wilful default or neglect or that such breach was committed in bad faith.

Internal By Laws

144. The Board may from time to time make rules, regulations or by-laws, not inconsistent with and subject to, the Law and the Constitution for the internal management of the Company.
145. The Board may from time to time vary or repeal such rules, regulations or by-laws.

Restricted Access Group

146. The only persons to whom complying health insurance products are or will be available (the Restricted Access Group) are:
- 146.1. persons who are already insured with the Company immediately before the commencement of the Private Health Insurance (Registration) Rules 2007 (No 2); and
- 146.2. persons who are or were:
- (a) a member of an arm of the Defence Force as referred to in the Defence Act 1903 (Cth); or
 - (b) an employee of the Department of Defence or an entity which has a reporting obligation to, or is within the portfolio responsibility of, the Minister for Defence or a Minister Assisting such Minister or a Parliamentary Secretary to either Minister (such Department and entities collectively called “the Bodies”); or
 - (c) an employee of:
 - (i) a contractor to any of the Bodies; or
 - (ii) a prescribed agency (as referred to in the Financial Management and Accountability Act 1997 (Cth)) or a Commonwealth authority or Commonwealth company (as referred to in the Commonwealth Authorities and Companies Act 1997 (Cth)) or other entity, which agency, authority, company or entity supplies goods or services to any of the Bodies; and
- 146.3. who is or was involved in supplying goods or services to any of the Bodies; and
- 146.4. persons who are or become officers or employees (including contractors) of the Company; and
- 146.5. the partners and dependent children of Principal Insureds; and
- 146.6. the former partners and adult children of Principal Insureds; and
- 146.7. the siblings, grandchildren and parents of Principal Insureds; and
- 146.8. the partners and dependent children of persons who are the adult children of Principal Insureds; and
- 146.9. the partners and dependent children of persons who are the siblings of Principal Insureds.
147. The Company is prohibited from issuing a complying health insurance product to a person who does not belong to the Restricted Access Group.
148. The Company is prohibited from ceasing to insure a person for the reason that the person has ceased to belong to the Restricted Access Group.
149. The Company is prohibited from adding new persons to the Restricted Access Group in addition to the persons included in the group by the operation of this Constitution, the Private Health Insurance Act and legislative instruments made under the Private Health Insurance Act.