

**NURSES & MIDWIVES HEALTH PTY LTD**  
**ACN 611 479 237**

**CONSTITUTION**  
**(ANNOTATED)**

## CORPORATIONS ACT

### NURSES & MIDWIVES HEALTH PTY LTD

#### CONSTITUTION

#### (ANNOTATED)

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## ANNOTATED CONSTITUTION

### INTRODUCTION

This constitution has been annotated with relevant provisions of the *Corporations Act 2001* (Commonwealth). The sections of the Corporations Act that are set out are for reference only and do not form part of the constitution.

The inclusion of relevant provisions of the Corporations Act is intended to make the interpretation of the constitution easier. The internal management of companies is now governed to a large extent by the Corporations Act. Some sections of the Corporations Act are *replaceable rules* which can be adopted, excluded or modified by the constitution of a company. However, most of the relevant sections of the Act are not replaceable rules, and are not affected by the constitution. This means that it is not possible to understand the rules that govern the internal management of a company from the constitution alone. It is necessary to look at sections of the Corporations Act that are relevant, including any replaceable rules that apply to the company.

A selection of relevant sections of the Corporations Act has been made in this annotated constitution. Other sections of the Act, or other Acts or Regulations, may be relevant and it should not be assumed that all relevant statutory provisions are set out in this constitution. It is also possible that sections of the Corporations Act that are set out in the annotations may not be complete or correct or may have been amended and reference should be made to the actual current text of the Corporations Act for certainty.

## CORPORATIONS ACT

### NURSES & MIDWIVES HEALTH PTY LTD CONSTITUTION

#### PRELIMINARY

#### 1. CONSTRUCTION AND INTERPRETATION

##### 1.1. Corporations Act

This Constitution is subject to the Corporations Act and is to be interpreted so as to comply with, and not to be contrary to, the Corporations Act.

##### 1.2. Construction and Interpretation

In this Constitution, unless otherwise stated or inconsistent with the context:

- 1.2.1. Headings are part of this Constitution but if there is any conflict or inconsistency between a heading and a clause or any other text of this Constitution then the heading does not alter the meaning of the clause or other text;
- 1.2.2. Sections or provisions of the Corporations Act which are set out in this Constitution are for convenience of reference only and are not part of this Constitution **[Note: sections of the Corporations Act that are set out in this Constitution may not be complete or correct or may have been amended and reference should be made to the actual current text of the Corporations Act for certainty];**
- 1.2.3. If this Constitution indicates that a Section of the Corporations Act (not being a replaceable rule) applies to the Company, or that the Company is bound by or may act in accordance with the Section, or that the Section has effect in relation to the Company, the Section is not part of this Constitution and the Section has application to the Company pursuant to the Corporations Act and not this Constitution;
- 1.2.4. If a replaceable rule applies to the Company then the rule applies pursuant to and subject to this Constitution as at the date of the Constitution or an amendment of the Constitution applying the replaceable rule, whichever is later, and any subsequent modification, replacement or repeal of the replaceable rule by the Corporations Act will not affect the replaceable rule as it applies to the Company pursuant to this Constitution, unless the modification, replacement or repeal of the replaceable rule applies to the Company by an amendment to this Constitution;
- 1.2.5. Singular words include the plural and plural words include the singular;
- 1.2.6. Words of one gender include each other gender;
- 1.2.7. Words indicating a person include a company, a corporation or an incorporated association or other body corporate and any other legal entity and a partnership or other form of association;
- 1.2.8. Grammatical variations and cognate words and expressions for words and expressions which are defined in this Constitution have corresponding meanings;
- 1.2.9. A reference to the Corporations Act, or any other Act or other legislation, includes all regulations or other subordinate legislation and all amendments and substituted legislation under that Act, from time to time;
- 1.2.10. A reference in this Constitution to a Section of the Corporations Act is a reference to the Section as it appears in the Corporations Act as at the date of the registration of the Company, or the date on which the Constitution is adopted as the Constitution of the Company, whichever

is later, and to the Section as re-numbered or re-enacted from time to time but not to any amendment or replacement of the Section, unless to the same effect;

1.2.11. Words or expressions which are defined or used in the Corporations Act and which are used in this Constitution have the same meaning as the words or expressions in the Corporations Act, unless otherwise defined in this Constitution.;

1.2.12. Words or expressions which are defined or used in the Private Health Insurance Acts and which are used in this Constitution have the same meaning as the words or expressions in the Private Health Insurance Acts, unless otherwise defined in this Constitution.

### 1.3. Law

The law of this Constitution is the law of this jurisdiction.

### 1.4. Place of Incorporation and Registration

The Company will be incorporated in this jurisdiction and will be taken to be registered in the State or Territory stated in the ASIC certificate of registration.<sup>1</sup>

### 1.5. Rectification and Severance

If any provision of this Constitution is void or voidable or unenforceable by reason of any conflict with the Corporations Act or for any other reason, then that provision must be rectified and amended so far as possible so that it is valid and enforceable. If the provision cannot be rectified and amended so that it is valid and enforceable, then, to that extent, it must be severed from this Constitution which will otherwise remain in full force and effect.

### 1.6. Definitions

In this Constitution, unless otherwise stated or inconsistent with the context:

- 1.6.1. **ASIC** means the Australian Securities and Investments Commission or any successor to that body and whether or not the body changes its name;
- 1.6.2. **Board** or **Board of Directors** means the board of Directors of the Company;
- 1.6.3. **Director** means a director or alternate director of the Company but does not, except to such extent as may be required by the Corporations Act, include a person defined in Section 9 of the Corporations Act, who is not a person appointed as and holding the office of, a Director in accordance with this Constitution<sup>2</sup>;
- 1.6.4. **Company** means the company of which this is the Constitution;
- 1.6.5. **Constitution** means the constitution of the Company contained in this document and as amended, modified or replaced from time to time;
- 1.6.6. **Corporations Act** means the Corporations Act 2001 (Commonwealth);
- 1.6.7. **Interest Rate** means the rate of interest charged on an overdraft amount of \$100,000.00 by an Australian bank nominated by the Directors plus 1% per annum or if no bank is nominated by the Directors then the most recent indicator lending rate published by the Reserve Bank of Australia for a small business overdraft plus 1% per annum.
- 1.6.8. **Private Health Insurance Acts** means the *Private Health Insurance Act 2007 (Cth)* and the *Private Health Insurance (Prudential Supervision) Act 2015 (Cth)*, whichever is applicable, and any Act or Acts amending or replacing those Acts from time to time;
- 1.6.9. **Section** means a section of the Corporations Act.
- 1.6.10. **this jurisdiction** has the meaning specified in the Corporations Act.<sup>3</sup>

NOTE definitions are contained in the <i>DICTIONARY</i> in Section 9 of the Corporations Act.
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## NAME AND REGISTRATION

### 2. NAME OF COMPANY

#### 2.1. Company Name

The name of the Company is **NURSES & MIDWIVES HEALTH PTY LTD**, or such other name as the Company may adopt as the name of the Company in accordance with this Constitution from time to time and as is recorded in its certificate of registration.<sup>4</sup>

#### 2.2. Abbreviations and Corresponding Words

In any document or place in which the name of the Company appears, abbreviations for words in the Company's name, or words corresponding to abbreviations in the Company's name, that are set out in Section 149(1) of the Corporations Act may be used instead. Abbreviations may be used with or without full stops.<sup>5</sup>

#### 2.3. Change of Name

The Company may change its name in accordance with Section 157 of the Corporations Act.<sup>6</sup>

### 3. TYPE OF COMPANY AND MEMBERS

#### 3.1. Proprietary Company

The Company is a proprietary company limited by shares.<sup>7</sup>

#### 3.2. Small Proprietary Company

The Company will be a small proprietary company if it complies with Section 45A(2) of the Corporations Act.<sup>8</sup>

#### 3.3. Large Proprietary Company

The Company will be a large proprietary company if it complies with Section 45A(3) of the Corporations Act.<sup>9</sup>

#### 3.4. Minimum of 1 Member

The Company must have at least 1 member.<sup>10</sup>

#### 3.5. Maximum Number of Shareholders

While the Company is registered as a proprietary company the number of shareholders of the Company may not exceed 50 non-employee shareholders in accordance with Section 113(1) and (2) of the Corporations Act. The Company may have employee shareholders.<sup>11</sup>

#### 3.6. Limitations on Activities Requiring Prospectus

While the Company is registered as a proprietary company, the Company must not engage in any activity that would require disclosure to investors under Chapter 6D of the Corporations Act, except for an offer of its shares to:

3.6.1. Existing shareholders of the Company; or

3.6.2. Employees of the Company or of a subsidiary of the Company.<sup>12</sup>

### 4. CONSTITUTION AND REPLACEABLE RULES

#### 4.1. Adoption of Constitution

This Constitution is adopted by the Company.<sup>13</sup>

#### 4.2. Modification or Repeal of Constitution

The Company may modify or repeal this Constitution or a provision of this Constitution by special resolution in accordance with Section 136(2) without any further requirement pursuant to Section 136(3) or otherwise. A special resolution adopting, modifying or repealing this Constitution takes effect in accordance with Section 137.<sup>14</sup>

#### **4.3. Consolidated Constitution for ASIC**

The Company will, if directed by ASIC, lodge a consolidated copy of this Constitution with ASIC.<sup>15</sup>

#### **4.4. Copies of Constitution for Members**

The Company will, if requested by a member in accordance with Section 139, send a copy of this Constitution to the member on receipt of payment of the fee required by the Company. The fee required by the Company will be the prescribed amount in accordance with Section 139(b) unless the Directors otherwise determine either generally or in any particular case that the fee will be less than the prescribed amount or that no fee will be charged.<sup>16</sup>

#### **4.5. Replaceable Rules**

The replaceable rules of the Corporations Act [Section 135] do not apply to the Company unless this Constitution expressly provides that a replaceable rule applies to the Company either in whole or in part. This Constitution may displace or modify any replaceable rule that applies to the Company. If any replaceable rule that applies to the Company is inconsistent with any provision of this Constitution then the replaceable rule is displaced or modified to the extent of the inconsistency.<sup>17</sup>

#### **4.6. Internal Management**

The internal management of the Company is governed by this Constitution and by such replaceable rules, if any, as may apply to the Company, subject to this Constitution.<sup>18</sup>

#### **4.7. Constitution a Contract**

This Constitution, and any replaceable rules that apply to the Company in accordance with this Constitution, have effect as a contract in accordance with Section 140.<sup>19</sup>

#### **4.8. Modifications Requiring Members Consent**

A member of the Company will not be bound by a modification to this Constitution described in Section 140(2) unless the member agrees in writing to be bound by the modification. The Company may enter into an agreement in such form as the Company or the Directors may deem fit with a member for the member to be bound by a modification to this Constitution made after the date on which the member became a member in relation to the matters set out in Section 140(2) or other matters. Except as to matters specified in Section 140(2), or as may otherwise be provided by the Corporations Act or this Constitution, a member of the Company will be bound by this Constitution, and all modifications to this Constitution, from time to time.<sup>20</sup>

#### **4.9. Amendment of Corporations Act**

The amendment or repeal of any provision of the Corporations Act, including any replaceable rule adopted in this Constitution, will not amend this Constitution except to such extent as may be necessary to comply with provisions of the Corporations Act which may not be varied by this Constitution.

### **5. POWERS, OBJECTS, DELEGATION AND AGENTS**

#### **5.1. Legal Capacity and Powers**

The Company has the legal capacity and powers of an individual and of a body corporate in accordance with Section 124 of the Corporations Act.<sup>21</sup>

#### **5.2. Objects of Company**

The principal objects of the Company are to:

- 5.2.1. apply for, obtain and maintain registration as a private health insurer, either as a restricted access insurer, or not as a restricted access insurer, and to change its status as a private health insurer, in accordance with the Private Health Insurance Acts;
- 5.2.2. carry on health insurance business;
- 5.2.3. carry on health-related business;

- 5.2.4. undertake or carry on any activity or business which a private health insurer may operate or carry on;
- 5.2.5. establish, maintain and operate at least one health benefits fund, or more than one health benefits fund, including any health benefits fund for a restricted access group, in respect of:
  - (a) the health insurance business of the Company or
  - (b) the health insurance business and some or all of the health-related business of the Company;
- 5.2.6. undertake or carry on any activity or business determined by the Board of Directors to be consistent with or conducive to the foregoing objects or purposes, and which is not prohibited by the Private Health Insurance Acts, or otherwise by law, or by this Constitution; and
- 5.2.7. to do all such acts and things, and to undertake all such activities, as may be incidental to, conducive to, or consistent with, the foregoing objects and purposes.<sup>22</sup>

### **5.3. Not-for-Profit Company**

The Company will not be carried on for the profit or gain of its individual members. The Company will not apply for or obtain registration under the Private Health Insurance Acts as, or carry on business as, a for profit insurer. The assets and income of the Company shall be applied solely in furtherance of the objects of the Company and no portion shall be distributed directly or indirectly to the members of the Company, except as bona fide consideration or compensation for services rendered, goods or materials supplied, or expenses incurred on behalf of the Company.

### **5.4. Delegation, Agents and Attorneys**

Except as may be expressly provided by the Corporations Act or otherwise at law, the Company may delegate all or any of its powers and may appoint any agent or attorney to exercise any of the Company's powers for or on behalf of the Company. An appointment of an agent or attorney may be made in such manner as the Company may deem fit, including by deed or other document executed in any manner in which the Company may execute a document.

## **6. SEALS, CONTRACTS AND AGENTS**

### **6.1. Common Seal and Duplicate Seal(s)**

The Directors, subject to any resolution of the Company, may determine whether the Company has a common seal or a duplicate common seal. The Directors may determine that the Company will dispense with and dispose of any common seal or duplicate common seal that it may have at any time.<sup>23</sup>

### **6.2. Use and Custody of Seals**

The Directors may provide for or may determine rules or procedures for, the use and custody of any common seal and any duplicate common seal of the Company. Unless otherwise determined by the Directors, a seal may be affixed to a document and witnessed as provided in Section 127 or witnessed by a director and another person appointed by the Directors to witness the fixing of the seal to that document or a class of documents including that document or by an attorney authorised to affix a seal of the company appointed under a power of attorney executed by the company under seal.

### **6.3. Execution of Deeds and Other Documents**

The Company may execute a document, including a deed, in any manner set out in Section 127 or in any other way that is a valid and effective execution of the document.<sup>24</sup>

### **6.4. Contracts by an Agent**

The Company may make, vary, ratify or discharge a contract by an individual acting with the Company's express or implied authority and on behalf of the Company. The power may be exercised with or without using a common seal.<sup>25</sup>



## **6.5. Contracts Before Registration**

The Company may ratify any contract entered into or purported to be entered into on behalf of, or for the benefit of, the Company before it became registered in accordance with Section 131(1).<sup>26</sup>

# **SHARES**

## **7. ISSUING SHARES**

### **7.1. Types of Shares and Consideration**

Without limiting the powers of the Company pursuant to the Corporations Act or otherwise, and subject to the Corporations Act and this Constitution, the Company may, by resolution of the Directors, issue shares of any type and for any consideration.<sup>27</sup>

### **7.2. Terms, Rights and Restrictions**

Without limiting the powers of the Company contained in the Corporations Act or otherwise, the Company may by resolution of the Directors and subject to the Corporations Act and the rights, terms or conditions of any existing shares or classes of shares, issue shares on or subject to any terms, conditions or restrictions and with any rights, privileges or priorities, whether deferred or not and whether in regard to, voting, return of capital or otherwise.<sup>28</sup>

### **7.3. No Par Value Shares**

The shares of the Company do not have a par value.<sup>29</sup>

### **7.4. No Limit on Capital or Numbers of Shares**

The capital of the Company is not limited to any amount and the number of shares which the Company may issue is not limited to any number.

### **7.5. Classes of Shares**

All shares issued by the Company will be ordinary shares unless the Company by resolution or the Directors otherwise determine, or the terms of issue of any other class of shares that have been issued otherwise require shares that are issued to be of a particular class. Ordinary shares have the same rights and terms of issue but may be issued for a different amount of payment or consideration.

## **8. RIGHTS OF PRE-EMPTION FOR SHARE ISSUES**

### **8.1. Rights of Existing Shareholders (Section 254D, Replaceable Rule)**

The replaceable rule in Section 254D applies to the Company subject to this Constitution.<sup>30</sup>

## **9. CONVERSION OF SHARES**

### **9.1. Conversion to and from**

The Company may convert an ordinary share into a preference share or a preference share into an ordinary share in accordance with Section 254G.<sup>31</sup>

### **9.2. Increase or Decrease in Numbers of Shares**

The Company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting in accordance with Section 254H.<sup>32</sup>

## **10. REDEEMABLE PREFERENCE SHARES**

The Company may issue redeemable preference shares on and subject to such terms and conditions as the Directors may determine, subject to the Corporations Act and this Constitution, provided that the amount payable for redemption of a redeemable preference share may not exceed the amount of capital paid-up on the share.<sup>33</sup>

## **11. PARTLY-PAID SHARES**

### **11.1. Terms of Partly-Paid Shares**

Unless otherwise specifically provided by the terms of issue of partly-paid shares of the Company, the terms of issue of partly-paid shares will include all provisions of this Constitution relating to partly-paid shares.

### **11.2. Liability for Calls: General Rule**

A shareholder holding partly-paid shares of the Company will be liable to pay calls on the shares in accordance with the terms on which the shares are on issue.<sup>34</sup>

### **11.3. Limitation of Calls to External Administration**

The Company may provide by special resolution in accordance with Section 254N that the whole or any part of its unpaid share capital may be called up only if the Company becomes an externally-administered body corporate.<sup>35</sup>

## **12. CALLS, LIENS, FORFEITURE AND SALE**

### **12.1. Notice of Calls**

Subject to any conditions in the terms of issue of any class of shares, the Directors may make calls on the holders of any partly-paid shares at any time if no time is specified by the terms of issue of the shares for payment. A call may be made by a notice to the holders of shares specifying a date for payment which must be not less than 14 days from the date on which the notice is sent to a shareholder.

### **12.2. Date of Calls**

A call on a share will be taken as having been made when the resolution of the Directors for the call was passed. The date of the call, however, does not affect the date on which the call is payable, which will be determined by notice in accordance with this Constitution or by the terms of issue of the share.

### **12.3. Postponing, Extending or Varying a Call**

The Directors may by resolution postpone a call, or decrease the amount of a call, or extend the time for payment of a call provided that unless otherwise provided by the terms of issue of a class of shares, the same variations are made for each share that is subject to the call.

### **12.4. Interest and Costs for Calls**

If any call or any amount of a call on a share is not paid to the Company on the due date for payment, then the holder of the share will pay to the Company:

12.4.1. Interest at the Interest Rate, or such lower rate as the Directors may determine, on the due date for payment; and

12.4.2. All costs and expenses, including legal fees or other professional fees for advice or assistance, incurred by the Company in relation to the non-payment of the call.

All interest and other amounts payable by the holder in accordance with this clause will form part of the call.

### **12.5. Payment of Calls in Advance**

Any amount not paid on a partly-paid share may be paid by the holder of the share to the Company whether or not a call has been made or in advance of the time for payment of any call. The Company is not bound to pay any interest to the holder of a share for any amount paid in advance of a call, but the Company may pay interest at such rate as the Directors may determine in any case.

### **12.6. Non-payment of Fixed Amounts**

If any amount payable for a share is due on allotment or at any fixed time and is not paid, whether or not a call or demand for payment has been made by the Company, the amount unpaid will be taken to

be a call on that share and the provisions of this Constitution in relation to calls will apply to that amount.

#### **12.7. Lien on Shares**

The Company has a first and paramount lien on all shares for all unpaid calls or other amounts that may be due to the Company by the holder of the share in respect of that share.

#### **12.8. Forfeiture and Sale of Shares**

If a call on a share is due and unpaid on the due date for payment, then the share may, by resolution of the Directors, be forfeited. The share will be forfeited on the making of the resolution. The Company may, but is not bound to, give a notice to the holder of the share of the forfeiture and no notice is required to effect the forfeiture. On forfeiture:

- 12.8.1. The forfeited share must be offered for sale by public auction within 3 months after the date of forfeiture.
- 12.8.2. The sale must be advertised in a daily newspaper circulating generally throughout this jurisdiction at least 14 days before the date of sale. The specific number of shares to be offered need not be specified in the advertisement and it is sufficient to give notice of the sale by advertising to the effect that all shares on which a call remains unpaid will be sold.
- 12.8.3. An intended sale of forfeited shares that has been advertised may be postponed for not more than 21 days from the advertised date of sale. The date on which the sale is postponed must be advertised in a daily newspaper circulating generally in Australia not less than 7 days prior to the sale. There may be more than one, but not more than 3 postponements of a sale.
- 12.8.4. A forfeited share which is to be sold may, if the Directors so determine, be sold as credited and paid up to the sum of:
  - (a) The amount paid on the share at the time of forfeiture;
  - (b) The amount of the call; and
  - (c) The amount of any other calls becoming payable on or before the day of sale.
- 12.8.5. The Directors may fix a reserve price for any forfeited share that is sold that does not exceed the sum of:
  - (a) The amount of the call due and unpaid on the share at the time of forfeiture; and
  - (b) The amount of any other calls that become payable on or before the date of the sale.
- 12.8.6. A forfeited share may be withdrawn from the sale if no bid at least equal to the reserve price is made at the sale.

#### **12.9. Sale of Unsold Shares**

If any forfeited share is offered for sale at auction and no bid for the share is received at the sale or no sufficient bid is received and the share is withdrawn from sale, the share will be held by the Directors in trust for the Company. The share may then be disposed of in such manner as the Directors may deem fit by private sale or public auction or otherwise and for such price as the Directors may deem fit but subject to the provisions of this Constitution in relation to the pre-emptive rights of shareholders, if any, if the share is sold other than by public auction.

#### **12.10. Application of Proceeds of Sale**

Any proceeds of sale of a forfeited share must be applied to pay:

- 12.10.1. Firstly, all expenses of the sale;
- 12.10.2. Secondly, all calls on the share that are due and unpaid, including all interest and expenses that are included in calls; and
- 12.10.3. Thirdly, the balance, if any, to the holder of the share prior to its sale.

Any balance payable to a holder of a forfeited share that has been sold need not be paid until that holder has delivered the certificate for the share to the Company or a declaration or such other evidence as the Directors may require in relation to the loss of the certificate.

#### **12.11. Validity of Sales and Rights of Third Parties**

If any forfeited share is sold by the Company, then the sale will be valid and effective notwithstanding any defect or error in procedure or in the manner of sale. Any person acquiring a forfeited share that is sold by the Company will obtain a good title to the share and will not be bound or required to enquire into the manner of sale of the share or the application of the proceeds of sale of the share or any other matter.

#### **12.12. Voting Rights of Defaulting Holders**

The holder of a share on which any call is due and unpaid or which is forfeited or held on trust for the Company may not, without the consent of the Directors by resolution, exercise any vote with respect to the share.

#### **12.13. Redemption and Payment of Unpaid Calls**

Any unpaid call or amount due in respect of a share, including a forfeited share or share held on trust for the Company, may be paid in full by the holder of the share at any time prior to the sale of the share and when all outstanding calls and other amounts are paid a forfeited share will be redeemed.

### **13. CAPITALISATION OF PROFITS AND EXCLUSION OF DIVIDENDS**

#### **13.1. Exclusion of Dividends**

The Company will not pay dividends on shares of the Company.

#### **13.2. Capitalisation of Profits**

The Company may capitalise profits in such manner as the Directors may determine, in accordance with Section 254S.<sup>36</sup>

### **14. CAPITAL REDUCTIONS**

#### **14.1. Reduction in Capital Not Otherwise Authorised**

The Company may reduce its share capital in any way that is authorised by law, and without limiting any other right of the Company to reduce its share capital, may do so in accordance with the provisions of Division 1 of Chapter 2J of the Corporations Act.<sup>37</sup>

#### **14.2. Cancellation of Forfeited Shares**

The Company may by resolution passed at a general meeting cancel shares that have been forfeited under the terms on which the shares are on issue including the terms contained in this Constitution.<sup>38</sup>

#### **14.3. Reductions for Lost Capital**

The Company may reduce its share capital by cancelling any paid-up share capital that is lost or is not represented by available assets in accordance with Section 258F.<sup>39</sup>

### **15. NATURE, TITLE AND CERTIFICATES FOR SHARES**

#### **15.1. Nature of Shares (Property, Transfer, and Transmission)**

Shares in the Company are personal property and are transferable or transmissible only as provided by the Corporations Act and this Constitution.<sup>40</sup>

#### **15.2. Numbering Shares**

Shares in the Company will be distinguished by an appropriate number if required by Section 1070B of the Corporations Act, but not otherwise. Certificates for shares in the Company may be distinguished by an appropriate number recorded in the register of members of the Company in accordance with Section 1070B(2)(b).<sup>41</sup>

### **15.3. Form of Share Certificates**

Certificates for shares in the Company will comply with Section 1070C of the Corporations Act and will otherwise be in such form and will be issued in such manner as the Directors may determine. A certificate may be given under the common seal or a duplicate common seal of the Company but is not required to be under seal and a certificate may be signed by a Director or secretary of the Company or a person authorised by resolution of the Directors.<sup>42</sup>

### **15.4. Loss or Destruction of Certificates**

If a certificate or other document title to shares or debentures of the Company is lost or destroyed, the Company will issue a duplicate certificate or document as required by Section 1070D. The Company will require payment of the prescribed amount, unless the Directors determine that a lesser amount may be paid or that no payment is required.<sup>43</sup>

### **15.5. Time for Issue of Certificates**

The Company will issue certificates, debentures or other documents as required by Section 1071H of the Corporations Act.<sup>44</sup>

## **16. REGISTRATION OF TRANSFERS**

### **16.1. Director's Consent for Transfer of Shares**

Except as may otherwise be specifically permitted or required by the Corporations Act or this Constitution, or the terms of issue of the share, no share in the Company may be transferred without the consent of the Board of Directors.

### **16.2. Discretion to Register Transfers (Section 1072G)**

A transfer or transmission of a share must be made in accordance with this Constitution and the Corporations Act and except as may be specifically provided by the Corporations Act, this Constitution or the terms of issue of any class of shares, the replaceable rule contained in Section 1072G does not apply to the Company. The Directors must refuse to register any transfer of a share in the Company that is not permitted by this Constitution for any reason.<sup>45</sup>

### **16.3. Conditions for Registration of Transfers (Section 1072F)**

The Directors or the secretary, subject to any direction of the Directors, may determine the manner and requirements for registration of transfers of shares.

Except as may be expressly provided by the Corporations Act and this Constitution, the replaceable rule in Section 1072F applies to the Company subject to this Constitution.<sup>46</sup>

### **16.4. Instrument of Transfer**

An instrument of transfer of shares of the Company must be in writing and must be in such form as the Directors may approve, subject to the Corporations Act, and must be a proper instrument of transfer in accordance with Section 1071B. An instrument of transfer must be:

- 16.4.1. Signed by the Transferor, if an individual;
- 16.4.2. Executed under seal or otherwise by the Transferor, if a company, in such manner as the company may execute a contract; or
- 16.4.3. Signed by a duly appointed attorney if a copy of the instrument of appointment or other evidence of the appointment of the attorney considered by the Directors to be sufficient is produced to the Company.<sup>47</sup>

### **16.5. Transfers by Personal Representatives**

The Company may accept a transfer of shares by or to a personal representative of a deceased shareholder on production to the Company of such evidence including the will or probate of the will of the deceased as the Directors may deem sufficient. The Company may receive production of a copy of a will or probate or other original document, whether certified to be a true copy or not, as evidence of the title or authority of the personal representatives of a deceased shareholder.

## **17. TRANSMISSION OF SHARES**

### **17.1. Transmission of Shares on Death (Replaceable Rule, Section 1072A)**

The replaceable rule in Section 1072A of the Corporations Act applies to the Company subject to this Constitution.<sup>48</sup>

### **17.2. Transmission on Bankruptcy (Replaceable Rule, Section 1072B)**

The replaceable rule in Section 1072B of the Corporations Act does not apply to the Company. However, notwithstanding any other provision of this Constitution, the Directors may, in any case, resolve to give effect to the provisions of Section 1072B. Except as provided in Section 1072C of the Corporations Act, the Company will not be required to recognise any right or claim of any creditor or trustee or receiver of the interests of a bankrupt shareholder.<sup>49</sup>

### **17.3. Transmission on Mental Incapacity (Replaceable Rule, Section 1072D)**

The replaceable rule in Section 1072D of the Corporations Act does not apply to the Company. However, the Directors may, in any case, resolve to give effect to the provisions of Section 1072D.<sup>50</sup>

## **18. TRUSTS AND BENEFICIAL OWNERSHIP OF SHARES**

### **18.1. Recognition of Trusts and Interests**

Except only to such extent as is specifically required by the Corporations Act or this Constitution, the Company will not be bound to recognise any person in relation to a share other than the registered holder of that share, or a person entitled in accordance with this Constitution to be registered as the holder of the share, notwithstanding any notice of any trust, beneficial interest, claim or right of any other person in a share. Where the consent of the Company is required pursuant to Section 1072E of the Corporations Act, or any other Section, for registration of a trustee or any person as the holder of a share, the Directors will determine in their absolute discretion whether consent will be given.<sup>51</sup>

### **18.2. Information as to Beneficial Ownership of Shares**

The Company may, notwithstanding that the Company is not bound to register or to take notice of any trust or beneficial interest except as provided in the Corporations Act or this Constitution, require and obtain from a holder of shares information and full particulars of any trusts, beneficial interests or any relevant interest within the meaning of Part 6.8 of the Corporations Act.

<b>MEMBERS RESOLUTIONS, MEETINGS AND CLASS RIGHTS</b>
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## **19. RESOLUTIONS OF MEMBERS**

### **19.1. Circulating Resolutions**

Any resolution of members of the Company, except as may specifically be required by the Corporations Act, may be passed by the signature of a document in accordance with Section 249A if the Company has more than 1 member and if the Company has only 1 member by a record signed by that member in accordance with Section 249B.<sup>52</sup>

### **19.2. Special Resolutions**

A special resolution (other than a resolution under Section 329 to remove an auditor) may be passed at a general meeting or by the signature of a document in accordance with Section 249A.<sup>53</sup>

## **20. CALLING MEETINGS WITH MEMBERS**

### **20.1. Directors Calling Meetings (Replaceable Rule, Section 249C)**

The replaceable rule in Section 249C does not apply to the Company.

The Directors, or any Director, may call a meeting of the Company's members.<sup>54</sup>

### **20.2. Members Request to Directors for Meeting**

The Directors will call a general meeting if requested by members in accordance with Section 249D.<sup>55</sup>

### **20.3. Calling of Meetings by Members**

Members with at least 5% of the votes that may be cast at a general meeting of the Company may call a general meeting in accordance with Section 249F.<sup>56</sup>

## **21. NOTICE OF MEETINGS OF MEMBERS**

### **21.1. Amount of Notice of Meetings**

The amount of notice for a meeting of members of the Company will be in accordance with Section 249H. For the purposes of Section 249H(1), no longer minimum period of notice is specified. The Company may call a meeting of members on shorter notice in accordance with Section 249H(2).<sup>57</sup>

### **21.2. Members and Directors to Receive Notices (Replaceable Rule, Section 249J(4))**

Notices of meetings of members will be given to the persons, and in the manner, specified in Section 249J. The replaceable rule in Section 249J(2) does not apply to the Company. Notice to joint members may be given to any one of the joint members or to each or any of the joint members and need not be given to the joint member named first in the register of members. The replaceable rule in Section 249J(4) applies to the Company subject to this Constitution.<sup>58</sup>

### **21.3. Notices to Auditor**

The Company will give to its auditor, if any, notices and communications in accordance with Section 249K.<sup>59</sup>

### **21.4. Contents of Notice of Meeting of Members**

A notice of a meeting of the Company's members will include the matters specified in Section 249L and such other information, statements or forms, such as forms of proxy or appointment of representatives, as the Company may deem fit.<sup>60</sup>

### **21.5. Notice of Adjourned Meetings (Replaceable Rule, Section 249M)**

The replaceable rule in Section 249M applies to the Company subject to this Constitution.<sup>61</sup>

## **22. MEMBERS' RESOLUTIONS AT GENERAL MEETINGS**

### **22.1. Notice by Members of Resolutions**

Members may give the Company notice of resolutions in accordance with the provisions of Section 249N of the Corporations Act, but not otherwise.<sup>62</sup>

### **22.2. Notice by Company of Members' Resolutions**

The Company will give notice of resolutions proposed by members under Section 249N in accordance with Section 249O.<sup>63</sup>

### **22.3. Distribution of Members' Statements**

Members may request the Company in accordance with Section 249P but not otherwise to give to all its members a statement pursuant to Section 249P.<sup>64</sup>

## **23. HOLDING MEETINGS OF MEMBERS**

### **23.1. Proper Purpose for Meetings**

A meeting of the Company's members must be held for a proper purpose in accordance with Section 249Q.<sup>65</sup>

### **23.2. Time and Place for Meetings of Members**

A meeting of the Company's members must be held at a reasonable time and place. The Company subject to any resolution of the Directors will determine a reasonable time, place and venue for each meeting of members.<sup>66</sup>

### **23.3. Technology and Venues**

The Company may hold meetings of its members at 2 or more venues and using any technology in accordance with Section 249S.<sup>67</sup>

#### **23.4. Quorum for Meetings of Members (Replaceable Rule, Section 249T(1))**

If the Company has more than one member, the replaceable rule in Section 249T(1) applies to the Company subject to this Constitution.<sup>68</sup>

#### **23.5. Chair of Meetings of Members (Replaceable Rule, Section 249U)**

The replaceable rule in section 249U does not apply to the Company. For all meetings of members:

23.5.1. The chair of the Board of Directors will chair each meeting of members, if that chair is present and does not decline to act as Chair of the meeting;

23.5.2. If the chair of the Board of Directors is not present at a meeting of members within 5 minutes after the time appointed for the holding of the meeting, or declines to act as chair of the meeting, a Director present will chair the meeting; and

23.5.3. If the chair of the Board of Directors is not present at a meeting of members within 5 minutes of the time appointed for holding the meeting, or if present, declines to act as chair of the meeting, and if no Director is present at the meeting within 5 minutes after the time appointed for the holding of the meeting, or if each Director present at the meeting declines to act as chair of the meeting, the members present at the meeting must elect a person to chair the meeting.

23.5.4. The Directors may elect an individual to chair meetings of the Company's members, and unless an individual is elected by the Directors, the chairperson of the Board of Directors will chair meetings of the Company's members, if that chairperson is present.

23.5.5. If an individual elected by the Directors to chair a meeting of members, or the chairman of the Board of Directors is not present at a meeting of the Company's members, then the directors at the meeting must elect an individual present to chair the meeting.

23.5.6. The members at a meeting of the Company's members must elect a member present to chair the meeting if:

(a) an individual elected by the Directors to chair the meeting is not present;

(b) the chairman of the Board of Directors is not present; or

(c) a previously elected chair is not available, or declines to act, for the meeting.

23.5.7. The chair must adjourn a meeting of the Company's members if the members present resolve that the meeting is to be adjourned.

23.5.8. A reference in this clause to "meeting" includes a part of a meeting.<sup>69</sup>

#### **23.6. Auditor's right to be heard at General Meetings**

The Company's auditor, if any, is entitled to attend and to be heard at any general meeting of the Company in accordance with section 249V.<sup>70</sup>

#### **23.7. Right of Attendance of Directors and Officers**

Any director, secretary or officer of the Company, notwithstanding that the director, secretary or officer may not be a member of the Company:

23.7.1. Is entitled to attend any general meeting of the company;

23.7.2. is entitled to be heard at the meeting on any part of the business of the meeting that concerns that director, secretary or officer or that concerns the Company generally.

#### **23.8. Resolutions and Business at Adjourned Meetings (Replaceable Rule, Section 249W)**

A resolution at a resumed meeting is passed in accordance with Section 249W(1). The replaceable rule in section 249W(2) applies to the Company subject to this Constitution.<sup>71</sup>

### **24. PROXIES AND BODY CORPORATE REPRESENTATIVES**

#### **24.1. Appointment of Proxies (Replaceable Rule, Section 249X)**

The replaceable rule in Section 249X applies to the Company subject to this Constitution.<sup>72</sup>



## **24.2. Rights of Proxies**

The rights of proxies at a meeting of members are in accordance with Section 249Y.<sup>73</sup>

## **24.3. Appointment Forms and List of Proxies**

If the Company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies then these will be sent in accordance with Section 249Z.<sup>74</sup>

## **24.4. Appointment of a Proxy**

An appointment of a proxy will be valid if it is in or substantially to the effect of and contains the information in any form of proxy forwarded by the Company in accordance with this Constitution and if it is in accordance with Section 250A.<sup>75</sup>

## **24.5. Receipt of Proxies**

Proxies and documents must be received for a meeting of members in the manner and period provided in Section 250B, unless the Chairman of the meeting, or the Directors, determine to reduce the period.<sup>76</sup>

## **24.6. Validity of Proxy Vote**

The vote of a proxy at a meeting in the circumstances specified in Section 250C will be valid. The replaceable rule in Section 250C(2) applies to the Company subject to this Constitution.<sup>77</sup>

## **24.7. Body Corporate Representatives**

A body corporate that is a member of the Company may appoint an individual as a representative in accordance with Section 250D. A body corporate representative may be a member or Director of the Company. If a body corporate representative is precluded from voting as a member on any resolution by reason of any conflict of interest or otherwise, the body corporate representative may nevertheless vote as the representative of the body corporate unless precluded from doing so by the terms of appointment of the representative by the body corporate.<sup>78</sup>

# **25. VOTING AT MEETINGS OF MEMBERS**

## **25.1. Votes of Members (Replaceable Rule, Section 250E)**

The replaceable rule in Section 250E applies to the Company subject to this Constitution. If the chair of a meeting is precluded by a conflict of interest or otherwise from voting on a resolution then:

- 25.1.1. If the chair holds a proxy from a member directing the chair as proxy how to vote on the resolution, the chair may vote as proxy for the member on that resolution, as directed;
- 25.1.2. If the chair holds a proxy for a member to vote on the resolution which does not direct the chair how to vote on that resolution, the chair may not vote on that resolution; and
- 25.1.3. If the chair is the representative of a body corporate then the chair may vote on the resolution as the representative of the corporation, unless the appointment of the chair as representative of the body corporate specifically precludes the chair from voting in these circumstances.<sup>79</sup>

## **25.2. Votes of Joint Shareholders (Replaceable Rule, Section 250F)**

The replaceable rule in Section 250F does not apply to the Company. If a share is jointly held, any 1 of the joint holders of the share may vote either on a show of hands or on a poll, provided that only 1 of the joint holders votes. If a share is jointly held and more than 1 member votes in respect of that share:

- 25.2.1. If all of the joint holders of the share have prior to the meeting at which the vote is taken advised the Company in writing that 1 of the joint holders is to exercise the vote of the joint holders on that share, then only the vote of that joint holder will count;
- 25.2.2. On a show of hands, if the joint holders have not advised the Company in accordance with the preceding subparagraph 1, then only the vote of the member whose name appears first in the register of members counts; and

25.2.3. On a poll, if more than one share is held by the joint holders, the votes on the shares will be apportioned equally between the joint holders seeking to vote, and if there is only 1 share, or if the number of votes is not equally divisible, the member whose name appears first on the register may exercise the vote, or any remainder vote after the votes are equally apportioned.<sup>80</sup>

### **25.3. Objections to Votes (Replaceable Rule, Section 250G)**

The replaceable rule in Section 250G applies to the Company subject to this Constitution.<sup>81</sup>

### **25.4. Votes in Different Ways**

On a poll a person entitled to 2 or more votes may cast votes in different ways in accordance with Section 250H.<sup>82</sup>

### **25.5. Voting by Show of Hands or Poll (Replaceable Rule, Section 250J)**

The replaceable rule in Section 250J other than Section 250J(1A) applies to the Company subject to this Constitution. Section 250J(1A) does not apply to the Company. Before a vote is taken, the chair must inform the meeting whether any proxy votes have been received but need not inform the meeting of the number of the proxy votes or how the proxy votes are to be cast. The chair may, in its discretion, inform the meeting of the number of proxy votes that have been received and how the proxy votes are to be cast.<sup>83</sup>

### **25.6. Demand for a Poll**

A poll may be demanded on a resolution in accordance with Sections 250K and 250L.<sup>84</sup>

### **25.7. Taking of Polls (Replaceable Rule, Section 250M)**

The replaceable rule in Section 250M applies to the Company subject to this Constitution.<sup>85</sup>

## **26. ANNUAL GENERAL MEETING**

### **26.1. No Requirement for AGM**

The Company need not hold an annual general meeting of members, but without limiting any right of members or Directors to call a meeting in accordance with this Constitution.

### **26.2. Holding of AGM**

Notwithstanding that an annual general meeting may not be required, the Directors may call a general meeting in accordance with the provisions of this Constitution to be styled the "Annual General Meeting" of the Company to transact such business as may usually be conducted at an annual general meeting including consideration of financial reports, directors reports, auditors reports, if any, election of directors and appointment of an auditor, if any, and such other business as the Directors may deem expedient.

## **27. CLASS RIGHTS AND VARIATION**

### **27.1. Varying and Cancelling Class Rights**

The procedure for varying or cancelling rights attached to shares in a class of shares of the Company is:

27.1.1. If the variation or cancellation of rights of the class of shares affects any rights of other shares of the Company, then the variation or cancellation may be made only by special resolution of the Company and with the written consent of members with at least 75% of the votes in the class of shares and each other class of shares which the variation or cancellation affects or a resolution of members with at least 75% of the votes in the class of shares and each other class of shares which the variation or cancellation affects at a meeting of the members of that class of shares; or

27.1.2. If the cancellation or variation of rights of the class of shares does not affect rights of other shares in the Company then, either with the written consent of members with at least 75% of the votes in the class of shares or a resolution carried by the votes of at least 75% of the members of that class of shares present at a meeting of the members of that class

and otherwise in accordance with Section 246B, 246C, 246D, 246E and 246F.<sup>86</sup>

## **27.2. Copies for Members**

The Company will provide copies of documents or resolutions referred to in Section 246G to members on payment by the member in accordance with that section. The amount of the payment required in accordance with Section 246G(3) will be the prescribed amount unless the Directors determine that a lesser amount, or no amount, will be charged.<sup>87</sup>

# **DIRECTORS, SECRETARIES AND OFFICERS**

## **28. DIRECTORS: APPOINTMENT, QUALIFICATIONS AND REMOVAL**

### **28.1. Number and Residence of Directors**

At all times that the Company is registered as a private health insurer in accordance with the Private Health Insurance Acts it must have at least five Directors. At all other times the Company must have at least two Directors. All Directors must ordinarily reside in this jurisdiction. The maximum number of Directors of the Company is ten unless the Company otherwise determines by special resolution.<sup>88</sup>

### **28.2. Consents of Directors and Secretaries**

A Director or secretary of the Company must consent in writing to act as a Director or secretary.<sup>89</sup>

### **28.3. Shares of Directors**

A Director need not hold shares in the Company.

### **28.4. Age of Directors**

A Director must have attained the age of 18 years. The office of a Director does not become vacant on the Director attaining any age.

### **28.5. Qualifications and Approval of Directors**

Directors must have such qualifications, and must be nominated, assessed and approved in such manner and by such processes as the Board of Directors may determine. Notwithstanding the foregoing, the Board may determine that a Director of the Company may be appointed if that Director is also a director of Teachers Federation Health Ltd ACN 097 030 414 and has been nominated, approved and appointed as a director of that company in accordance with its Constitution and requirements.

### **28.6. Appointment of Director by Members**

The members, or member if only one, of the Company may appoint a Director of the Company by a resolution passed in any manner in accordance with this Constitution and the Corporations Act. The replaceable rule in Section 201G does not apply to the Company.<sup>90</sup>

### **28.7. Appointment of Director by Board**

The Board of Directors may, subject to any resolution of the members of the Company, appoint or remove a Director of the Company. A person may be appointed as a Director of the Company in order to make up a quorum for a meeting of Directors even if the total number of Directors of the Company is not enough to make up that quorum.<sup>91</sup>

### **28.8. Appointment by Single Director**

If the only Director of the Company is also its only shareholder, then Section 201F applies.<sup>92</sup>

### **28.9. Death, Incapacity or Bankruptcy of Single Director/Shareholder**

If the only Director of the Company is also its only shareholder, then Section 201F applies.<sup>93</sup>

### **28.10. Alternate Directors (Replaceable Rule, Section 201K)**

The replaceable rule in Section 201K applies to the Company subject to this Constitution<sup>94</sup>.

#### **28.11. Removal and Replacement of Directors**

The appointment of a Director may be terminated by a resolution of the members of the Company, or by a resolution of the Board. A Director that is removed from office need not be replaced unless it is necessary for a replacement to be made to ensure that the Company has the minimum number of Directors required by this Constitution. Appointment of a replacement for a Director that has been removed from office may be made by either the Company or by the Board.<sup>95</sup>

#### **28.12. Resignation of Directors (Replaceable Rule, Section 203A)**

The replaceable rule in Section 203A does not apply to the Company. Subject to this Constitution, and to any agreement between the Director and the Company, a Director may resign as a Director by notice in writing to the Company.<sup>96</sup>

#### **28.13. Vacation of Office of Director**

A person will cease to be a Director of the Company in any circumstances specified by the Corporations Act.<sup>97</sup>

#### **28.14. Validity of Acts of Directors**

The acts of Directors are effective and binding in accordance with Sections 201M.<sup>98</sup>

### **29. POWERS OF DIRECTORS AND COMMITTEES AND DELEGATION**

#### **29.1. Powers of Directors (Replaceable Rule, Section 198A)**

The replaceable rule in Section 198A applies to the Company subject to this Constitution, and the business of the Company will be managed by or under the direction of the Directors who may exercise all the powers of the Company, except as may otherwise be provided in accordance with this Constitution.<sup>99</sup>

#### **29.2. Negotiable Instruments**

The Board may authorise and appoint any Director, officer or employee of the Company to operate any bank account of the Company and to sign, draw, accept, endorse or otherwise execute any cheque or other negotiable instrument on behalf of the Company. The replaceable rule in Section 198B does not apply to the Company.<sup>100</sup>

#### **29.3. Powers of Single Director/Shareholder**

If there is only one Director of the Company who is also the only shareholder of the Company then Section 198E applies.<sup>101</sup>

#### **29.4. Managing Director (Replaceable Rule, Sections 201J and 203F)**

The replaceable rules in Sections 201J and 203F apply to the Company subject to this Constitution and to any agreement between the Company and a managing director.<sup>102</sup>

#### **29.5. Delegation to Committees and Others (Replaceable Rule, Section 198D)**

Section 198D applies to the Company subject to this Constitution.<sup>103</sup>

#### **29.6. Assignment of Office**

No Director or secretary of the Company may assign the office of that person as a Director or secretary.

### **30. DISCLOSURE OF INTERESTS, DIRECTORS CONTRACTS AND NOMINEE DIRECTORS**

#### **30.1. Disclosure of Interests of Directors (Sections 191, 192, 193 and 194)**

Sections 191, 192 and 193 apply to the Company (unless the Company has only one director who is the sole shareholder). The replaceable rule in Section 194 applies to the Company subject to this Constitution, and notwithstanding that a disclosure required under Section 191 is made before or after the transaction is entered into.<sup>104</sup>

### **30.2. Disclosures by Directors and Secretaries**

Each Director and secretary of the Company must give notice to the Company and disclosure of matters required by Section 191, or otherwise by the Corporations Act.

### **30.3. Holding Company Interests**

If the Company is a wholly owned subsidiary of a body corporate ("holding company"), a director of the Company is authorised to act in the best interests of the holding company.<sup>105</sup>

## **31. DUTIES AND LIABILITIES OF OFFICERS**

### **31.1. Duties and Liabilities**

A Director, secretary or officer of the Company has the duties and obligations to the Company that are specified in the Corporations Act and which may not be excluded or modified by this Constitution.<sup>106</sup>

### **31.2. Liability for Debts of Trustee (Section 197)**

The Directors may be liable to discharge a liability of the Company incurred in accordance with Section 197, but not otherwise.<sup>107</sup>

### **31.3. Extent of Duties of Officers**

The standard of care, duties and liabilities of each Director, secretary or other officer of the Company to the Company and its shareholders are solely contained in and limited to the Corporations Act and no further or other duty or liability or any higher standard of care or duty or liability is contained or implied in or by reason of this Constitution and any other standard of care, duty or liability is expressly excluded.

## **32. INDEMNITY TO OFFICERS AND AUDITORS**

### **32.1. Permitted Indemnities**

The Company will indemnify every person who is or has been a Director, secretary, officer, employee or auditor of the Company to the fullest extent permitted by Section 199A(2) against any liability of that director, secretary, officer, employee or auditor to another person (other than the Company or a related body corporate) incurred by or arising out of the office or appointment of that Director, secretary or executive officer unless the liability arises out of conduct involving a lack of good faith. The Company will indemnify to the fullest extent permitted by Section 199A(3) any Director, secretary, officer, employee or auditor of the Company against a liability for costs and expenses incurred by that Director, secretary, officer, employee or auditor in accordance with Section 199A(3).<sup>108</sup>

### **32.2. Insurance Premiums for Certain Liabilities of Directors, Secretary, other Officers or Auditor**

The Company may, subject to Section 199B, pay insurance premiums for policies insuring any Directors, secretaries, officers, employees or auditors against a liability.<sup>109</sup>

## **33. SECRETARY**

### **33.1. Appointment of Secretary (Part 2D.4)**

The Board may appoint and may remove a secretary or secretaries of the Company. The replaceable rule in Section 204F applies to the Company subject to this Constitution.<sup>110</sup>

### **33.2. Additional and Temporary Secretaries**

The Directors may appoint a person to be a secretary of the Company:

33.2.1. For specific purposes;

33.2.2. For a limited period of time; or

33.2.3. As a temporary secretary or to act on behalf of a secretary in the absence of that secretary.

### **33.3. Validity of Acts of Secretaries**

The acts of a secretary of the Company is valid and effective in accordance with Section 204E.<sup>111</sup>

### **33.4. Consent of Secretary**

A person must consent to act as a secretary of the Company.

### **33.5. Assignment of Office of Secretary**

A secretary of the Company may not assign the office of that person as secretary of the Company.

## **34. MEETINGS AND PROCEEDINGS OF DIRECTORS**

### **34.1. Directors Proceedings**

Except as may be specifically otherwise provided by the Corporations Act or this Constitution, the Directors may determine all matters relating to the proceedings, meetings and arrangements of the Directors.

### **34.2. Notice of Directors Meetings (Replaceable Rule, Section 248C)**

The replaceable rule in Section 248C applies to the Company subject to this Constitution.<sup>112</sup>

### **34.3. Technology for Directors Meetings**

Directors meetings may be held in any manner permitted by the Corporations Act and determined by the Directors.<sup>113</sup>

### **34.4. Chair of Directors**

The replaceable rule in Section 248E(1) does not apply to the Company. The Directors must elect a Director as the chair of meetings of Directors, and a deputy chair to chair meetings of Directors if the chair is not present, or if the chair has a material personal interest in the matter. The replaceable rule in Section 248E(2) applies to the Company subject to this Constitution.<sup>114</sup>

### **34.5. Quorum for Directors Meetings (Replaceable Rule, Section 248F)**

The replaceable rule in Section 248F applies to the Company subject to this Constitution, unless the Company has only 1 Director.<sup>115</sup>

### **34.6. Majority and Casting Votes (Replaceable Rule, Section 248G)**

The replaceable rule in Section 248G applies to the Company subject to this Constitution.<sup>116</sup>

### **34.7. Circulating Resolutions (Replaceable Rule, Section 248A)**

The replaceable rule in Section 248A applies to the Company subject to this Constitution.<sup>117</sup>

### **34.8. Resolutions and Declarations of One Director**

If the Company has only one director, Section 248B applies to the Company.<sup>118</sup>

## **35. REMUNERATION OF DIRECTORS AND OTHER OFFICERS**

### **35.1. Remuneration of Directors**

The replaceable rule in Section 202A(1) does not apply to the Company. Without limiting any obligation of disclosure in accordance with the Corporations Act or this Constitution, the Company may pay such reasonable remuneration to a Director or enter into such agreement for payment of reasonable remuneration to a Director as the Directors may determine. The Company may by resolution determine the amount that may be paid as remuneration to the Directors as a whole. Subject to the resolution of the Company determining the amount of the total remuneration payable to Directors, the Directors may determine the reasonable amount of any remuneration payable to a Director, taking into account such matters as the Directors may think fit, including the duties or activities of a Directors, a service of the Director on any committee, the expertise, experience or qualifications of a Director, or any other matters.<sup>119</sup>

### **35.2. Remuneration of Secretaries and Other Officers**

The Company may pay such remuneration or enter into such agreement for payment of remuneration to a secretary or other officer of the Company as the Directors may determine, subject to any resolution of the Company.

### **35.3. Disclosure of Directors' Emoluments**

The Directors and the Company will, if required in accordance with Section 202B, disclose emoluments and other benefits received by directors of the Company or of a subsidiary of the Company but will not otherwise be bound to disclose the emoluments.<sup>120</sup>

## **OFFICES, REGISTERS, RECORDS AND RETURNS**

### **36. REGISTERED OFFICE AND PLACES OF BUSINESS**

#### **36.1. Registered Office**

The Directors may determine the location of the registered office of the Company and any change in the registered office from time to time.<sup>121</sup>

#### **36.2. Display of Company Name**

The Directors or a secretary, subject to the direction of the Directors, may determine the manner of display of the name of the Company at each place of business and at the registered office of the Company.<sup>122</sup>

#### **36.3. Opening Hours of Registered Office**

The Directors may determine the hours that the registered office of the Company will be open to the public subject to Section 145.<sup>123</sup>

#### **36.4. Places of Business and Principal Place of Business**

The Company may have such places of business as the Directors determine and if there is more than one place of business then the Directors will determine which is the principal place of business.

#### **36.5. Contact Address**

The Company may have a contact address for communications and notices from ASIC.<sup>124</sup>

### **37. REGISTERS**

#### **37.1. Form and Maintenance of Registers**

The Directors, or the secretary, subject to any direction of the Directors, may determine the form and manner of setting up and maintenance of registers of the Company required by the Corporations Act, or any other law, and any other registers which the Company may keep.

#### **37.2. Registers to be kept**

The Company will keep such registers as may be required by the Corporations Act and as the Directors may determine including:

37.2.1. A register of members [Sections 168(1)(a) and 169];

37.2.2. A register of option holders and of option documents [Section 168(1)(b) and 170];

37.2.3. A register of debenture holders [Sections 168(1)(c) and 171]; and

37.2.4. A register of charges [Section 271].<sup>125</sup>

#### **37.3. Location of Registers**

The Company will keep registers to which Section 172 relates at the places specified in Section 172. The Directors, or the secretary, subject to any direction of the Directors, may determine at which location a register is to be kept in accordance with Section 172.<sup>126</sup>

#### **37.4. Inspection and Copies of Registers**

The Company will permit inspection and give copies of registers of the Company in accordance with Section 173. The fee charged by the Company for inspection or copies of a register will be the prescribed amount unless the secretary or the Directors determine that the amount will be a lesser amount or that no fee will be charged.<sup>127</sup>

### **37.5. Agents for Registers**

The Company may appoint and remunerate agents on such terms as the Directors may determine to set up and maintain any register of the Company subject to Section 174.<sup>128</sup>

### **37.6. Evidence and Use of Information on Registers**

In the absence of evidence to the contrary a register of the Company is proof of the matters in the register. The information from registers of the Company may only be used for purposes specified in Section 177.<sup>129</sup>

### **37.7. Overseas Branch Registers**

The Company may keep a branch register of members outside Australia in accordance with Section 178.<sup>130</sup>

## **38. FINANCIAL RECORDS**

### **38.1. Records to be Kept**

The Company will keep records in accordance with Section 286 of the Corporations Act, and such records as may be required by the Private Health Insurance Acts, and such other records as the Directors or the secretary subject to any direction of the Directors, may determine.<sup>131</sup>

### **38.2. Language of Records**

The financial records of the Company will, unless the Directors otherwise determine, be kept in the English language.<sup>132</sup>

### **38.3. Format of Records**

The financial records of the Company will be kept in such form as the Directors or the secretary subject to the direction of the Directors may determine.<sup>133</sup>

### **38.4. Location of Records**

Financial records of the Company will be kept at the registered office or principal place of business of the Company or at the office of accountants or auditors of the Company or at such other place as the Directors or the secretary subject to any direction of the Directors may determine.<sup>134</sup>

### **38.5. Director Access to Records**

The Company will provide access to financial records of the Company to a Director in accordance with Section 290.<sup>135</sup>

### **38.6. Auditor's Access to Records**

An auditor of the Company, if appointed, will have a right of access to financial records of the Company in accordance with Section 310.<sup>136</sup>

## **39. FINANCIAL REPORTS AND ACCOUNTS**

### **39.1. Requirement for Annual, Financial and Directors' Reports**

If the Company is a large proprietary company, a financial report and a Directors' report will be prepared each financial year in accordance with the Corporations Act. If the Company is a small proprietary company the Company may prepare both or either a financial report and a Directors' report for a financial year if the Directors so determine and the Company will prepare a financial report and Directors' report in accordance with Section 292(2) if directed to do so under Section 293 or Section 294.<sup>137</sup>

### **39.2. Shareholder Direction for Small Proprietary Company Reports**

If the Company is a small proprietary company, it will prepare both or either a financial report and a Directors' report for a financial year if so required in accordance with Section 293, or if directed by ASIC under Section 294. The Directors may give a Directors' report and require the Company to prepare a financial report in such form as the Directors may determine if the Company is not required



to prepare a financial report or Directors' report in accordance with Section 293 or by ASIC pursuant to Section 294.<sup>138</sup>

### **39.3. Contents of Financial Report**

The financial report of the Company for a financial year, if required, will comply with and consist of the statements, declarations and notes required by Section 295.<sup>139</sup>

### **39.4. Standards for Financial Report**

The financial report for the Company, if required to be given in accordance with the Corporations Act, will comply with accounting standards in accordance with, and to the extent required by, Section 296 and will give a true and fair view of the matters referred to in Section 297.<sup>140</sup>

### **39.5. Directors' Report**

A Directors' report of the Company, if required to be given in accordance with the Corporations Act, will be in accordance with and will contain the information and matters required by Sections 298, 299 and 300 of the Corporations Act.<sup>141</sup>

### **39.6. Audit of Annual Financial Report**

The Company will have the financial report of the Company for a financial year audited in accordance with Section 301. If the Company is a small proprietary company, the Company will not be required to have an annual financial report audited unless the report is prepared in response to a direction under Section 293 and is required by that direction to be audited but the Directors may require that the annual financial report be audited to such extent as the Directors may determine.<sup>142</sup>

### **39.7. Small Proprietary Company Accounts**

If the Company is a small proprietary company and no direction is given by shareholders pursuant to Section 293, the Company will prepare for a financial year such accounts and reports as the Directors or the secretary, subject to any direction of the Directors, may determine.

## **40. ANNUAL REPORTS TO MEMBERS**

If the Company is required to prepare or obtain a financial report, Directors' report or auditor's report for a financial year then the Company may, if the Directors so determine, either send members copies of the reports or a concise report for the financial year in accordance with Section 314.<sup>143</sup>

### **40.1. Time for Reporting to Members**

If the Company is not a small proprietary company, the Company will report to members under Section 314 within the time prescribed by Section 315(4). If the company is a small proprietary company and is required to report under Section 293, the Company will report by the time provided in Section 315(2).<sup>144</sup>

### **40.2. Choice of Annual Financial Information**

Members of the Company may request materials for financial reports in accordance with Section 316.<sup>145</sup>

## **41. INSPECTION OF BOOKS BY MEMBERS**

### **41.1. Permission for Inspection of Books (Replaceable Rule, Section 247D)**

The replaceable rule in Section 247D applies to the Company subject to this Constitution. Any inspection may be made on such conditions as the Directors or the Company by general resolution may determine. Any information required on inspection of the books of the Company by or on behalf of a member must be kept confidential unless the information is freely available to the public and must be used only for such purposes as may be authorised by the Directors or the Company by general resolution or as may be authorised by the Corporations Act.<sup>146</sup>

## **42. MINUTES AND MEMBERS ACCESS**

### **42.1. Minutes of Members and Directors and Declarations**

The Company will keep Minute Books recording proceedings, resolutions and directions in accordance with Section 251A. Subject to any direction of the Directors, the Minute Books will be kept by the Secretary and will be kept at such place specified in Section 251A(5) as the Secretary may determine.<sup>147</sup>

### **42.2. Access to Minutes by Members**

The Company will make Minute Books of the Company available for inspection by members in accordance with Section 251B. Unless the Directors otherwise determine, the Company will require an amount to be paid for copies provided in accordance with Section 251B and the amount will be the prescribed amount or such lesser amount as the Directors may determine.<sup>148</sup>

## **43. AUDITS, AUDITORS AND REPORTS**

### **43.1. Qualifications of Auditors**

If an auditor is appointed for the Company then the auditor may be an individual or company firm in accordance with Section 324AA.<sup>149</sup>

### **43.2. Appointment of Auditor by Company**

The Company is not required to appoint an auditor unless required by the Corporations Act or this Constitution. The Company may in general meeting appoint an auditor of the Company. The Directors may appoint an auditor of the Company if the Company in general meeting has not appointed an auditor.<sup>150</sup>

### **43.3. Conditions for Appointment of Auditors**

The Company may appoint an auditor on and subject to such conditions and for such remuneration as may not be inconsistent with the Corporations Act or this Constitution.

### **43.4. Consent of Auditors**

An auditor appointed by the Company must consent in accordance with Section 328.<sup>151</sup>

### **43.5. Removal and Resignation of Auditors**

An auditor of the Company may be removed from office or may resign in accordance with Section 329.<sup>152</sup>

### **43.6. Audit Requirements**

If an auditor of the Company is appointed and conducts an audit of the financial report of the Company for a financial year, the report must be in accordance with Sections 307 and 307A.<sup>153</sup>

### **43.7. Auditor's Report**

If an auditor of the Company is appointed and audits the financial report of the Company for a financial year the auditor must report to members of the Company in accordance with Section 308.<sup>154</sup>

### **43.8. Auditor's Power to Obtain Information**

If an auditor of the Company is appointed then the auditor will have rights in accordance with Section 310 and may have access to all other such information, books, records and materials as the Directors may determine.<sup>155</sup>

### **43.9. Assistance to Auditor by Officers**

If an auditor of the Company is appointed, the Directors, secretary and other officers of the Company are to allow the auditor access and give the auditor information, explanation or assistance in accordance with Section 312.<sup>156</sup>

## WINDING UP

### **44. VOLUNTARY WINDING UP AND DECLARATION OF SOLVENCY**

#### **44.1. Resolutions and Circumstances for Winding Up**

The Company may by special resolution in accordance with Section 491 resolve to be wound up voluntarily except in the circumstances specified in Section 490.<sup>157</sup>

#### **44.2. Declaration of Solvency by Directors**

If it is proposed to wind up the Company voluntarily, the Directors, or a majority of the Directors, may make a declaration in accordance with Section 494. A resolution of the Company for winding up may be made conditional on a declaration of Directors in accordance with Section 494.<sup>158</sup>

#### **44.3. Cessation of Business and Commencement of Liquidation**

If the Company resolves to be wound up voluntarily, Section 493 will have effect.<sup>159</sup>

### **45. APPOINTMENT AND POWERS OF LIQUIDATOR**

#### **45.1. Appointment and Remuneration of Liquidator**

If the Company resolves voluntarily to be wound up, the Company in general meeting will appoint a liquidator in accordance with Section 495. Subject to the Corporations Act, the liquidator will be appointed on such terms and for such remuneration as the Company may resolve in general meeting or, if the Company does not so resolve, then as the Directors may determine.<sup>160</sup>

#### **45.2. Powers of Liquidator and Conduct of Liquidation**

A liquidator appointed for the voluntary winding up of the Company will have all such powers and duties as are conferred or required by the Corporations Act and will carry out the winding up of the Company in accordance with the Corporations Act and any conditions required on appointment of the liquidator.<sup>161</sup>

#### **45.3. Distribution of Property on Winding Up**

On the winding up of the Company the property of the Company, after satisfaction of its liabilities, may not be distributed among the members, and must be transferred to another body or organisation with similar aims, objects or purposes to the Company, which is not carried on for the profit or gain of individual members of the body or organisation. The other body or organisation must be nominated by a resolution of the Directors prior to the appointment of a liquidator or, if no resolution has been made before a liquidator of the Company is appointed, then by the liquidator.<sup>162</sup>

#### **45.4. Winding Up of Health Benefits Funds**

Any health benefits fund of the Company that is wound up must be wound up, and any assets distributed, in accordance with the Private Health Insurance Acts.

### **46. LIMITATION OF LIABILITY AND CONTRIBUTIONS**

#### **46.1. Liability to Contribute**

The liability of members to contribute on the winding up of the Company for any reason is limited to the amount (if any) unpaid on shares in respect of which the member is liable as a present or past member in accordance with Section 516.<sup>163</sup>

#### **46.2. Nature of Contributory's Liability**

The nature of the liability of a contributory on the winding up of the Company is in accordance with Section 527.<sup>164</sup>

#### **46.3. Death of a Contributory**

In the event of the death of a contributory on the winding up of the Company, the personal representatives of the contributory will be liable in accordance in Section 528 for the contribution due.<sup>165</sup>

#### **46.4. Bankruptcy of Contributory**

Section 529 will apply if a contributory becomes insolvent under administration or assigns his or her estate for the benefit of his or her creditors.<sup>166</sup>

### **NOTICES AND PAYMENTS**

#### **47. NOTICES AND SERVICE**

##### **47.1. Service on Companies**

Any document or notice for or arising from this Constitution or in relation to the Company, and whether or not for the purposes of any law, may be served on the Company in accordance with Section 109X(1).<sup>167</sup>

##### **47.2. Service on a Natural Person**

Any notice or document for or in relation to this Constitution or the Company, whether or not for the purposes of the Corporations Act or any law, may be served on a natural person by:

- 47.2.1. Delivering it to the person personally; or
- 47.2.2. Leaving it at, or posting it to, the residential or business address of the person last known to the person serving the document ; or
- 47.2.3. Transmitting it by facsimile to a facsimile number advised in writing by the person to the Company as an address for service of the person, if the facsimile transmission is recorded by the sending facsimile machine as an effective and complete transmission; or
- 47.2.4. Transmitting it by email to an email address of the person advised in writing by the person to the Company as an address for service of the person, if the email is recorded by the sending computer as delivered to the address.

##### **47.3. Service on Director or Company Secretary**

Any notice or document for or in relation to this Constitution or the Company may be served on a Director or a secretary, if appointed, of the Company by:

- 47.3.1. Any of the methods of service set out in clause 51.2; or
- 47.3.2. By leaving it at or posting it to an alternative address, being an address notified to ASIC for the service of notices or documents on a director or secretary of the Company.<sup>168</sup>

##### **47.4. Service on a Body Corporate**

Any notice or document for or in relation to this Constitution or the Company may be served on a body corporate, other than a company, recognised company or registered body by:

- 47.4.1. Leaving it at, or posting it to, the head office, a registered office or the principal place of business of the body corporate; or
- 47.4.2. Transmitting it by facsimile to a facsimile number advised in writing by the body corporate to the Company as an address for service of the body corporate, if the facsimile transmission is recorded by the sending facsimile machine as an effective and complete transmission; or
- 47.4.3. Transmitting it by email to an email address of the body corporate advised in writing by the body corporate to the Company as an address for service of the body corporate, if the email is recorded by the sending computer as delivered to the address.

##### **47.5. Service by Post**

If any notice or document for or in relation to this Constitution or the Company is required or permitted to be served or given by post, the service will be taken to be effected if:

- 47.5.1. The notice or document is properly addressed and posted under pre-paid post to the last known address of the person to be served; and

47.5.2. Unless the contrary is proved, the service is taken to have been effected at the time at which a letter would have been delivered in the ordinary course of post.

#### **47.6. Payments by Company**

Any payment due by the Company to any person or entity may be made by:

47.6.1. A cheque drawn by the Company;

47.6.2. Electronic funds transfer to an account nominated by the recipient of the payment and approved by the Company; or

47.6.3. Such other means including any form of negotiable instrument or by way of set-off as the Directors may approve.

#### **47.7. Posting of Payments**

Any cheque or other form of payment for any payment may be sent by the Company by post or by any other means that a notice may be given to the recipient of the payment. The Company will not be liable for any delay or failure in the delivery of the payment.

#### **47.8. Payments to Joint Holders or Parties**

If any payment is due to shareholders or other persons jointly then the payment may be made to one or more of the joint holders or persons and the receipt by each holder or person will be a full receipt and discharge to the Company for the payment.

#### **47.9. Unclaimed Payments**

Any payment of any nature that is not claimed or accepted by the recipient may be invested or used by the Company for the benefit of the Company and without any requirement for interest or other payment until the amount can be paid to the recipient only as to any relevant laws relating to unclaimed payments.

#### **47.10. Payments to Company**

Any payment of capital or other monies to the Company by a shareholder or other person that is made by cheque or other negotiable instrument or means other than cash will not be taken to have been received and any debt for the payment will not be discharged until the cheque or instrument is cleared or paid or the payment otherwise completed to the Company.

### **ADOPTION OF CONSTITUTION**

**THIS CONSTITUTION** is the constitution adopted by special resolution of the Company and signed by and on behalf of the sole shareholder of the Company on the date appearing below.

**SIGNED** for and on behalf of  
**TEACHERS FEDERATION HEALTH  
LIMITED**  
**ACN 097 030 414** in accordance with  
Section 127(1) of  
the *Corporations Act 2001 (Cth)*  
on the 26 day of APRIL 2016

Director

\*Director/\*Secretary

\*delete inapplicable position

## NOTES

The following sections of the Corporations Act are reproduced for reference:

1

### SECTION 118 ASIC GIVES COMPANY ACN, REGISTERS COMPANY AND ISSUES CERTIFICATE

**118(1) Registration.** If an application is lodged under section 117, ASIC may:

- (a) give the company an ACN; and
- (b) register the company; and
- (c) issue a certificate that states:
  - (i) the company's name; and
  - (ii) the company's ACN; and
  - (iii) the company's type; and
- (iv) that the company is registered as a company under this Act;
- (v) the State or Territory in this jurisdiction in which the company is taken to be registered; and
- (vi) the date of registration.

**118(2) ASIC must keep record of registration.** ASIC must keep a record of the registration. Subsections 1274(2) and (5) apply to the record as if it were a document lodged with ASIC.

### SECTION 119 COMPANY COMES INTO EXISTENCE ON REGISTRATION

**119** A company comes into existence as a body corporate at the beginning of the day on which it is registered. The company's name is the name specified in the certificate of registration.

**Note:** The company remains in existence until it is deregistered (see Chapter 5A).

### SECTION 119A JURISDICTION OF INCORPORATION AND JURISDICTION OF REGISTRATION

**119A(1)** Jurisdiction in which company incorporated. A company is incorporated in this jurisdiction.

**119A(2)** Jurisdiction of registration. A company is taken to be registered in:

- (a) the State or Territory specified:
  - (i) in the application for the company's registration under paragraph 117(2)(n) (registration of company under this Part); or
  - (ii) in the application for the company's registration under paragraph 601BC(2)(o) (registration of registrable body as company under Part 5B.1); or
- (b) the State or Territory in which the company is taken to be registered under paragraph 5H(4)(b) (registration of body as company on basis of State or Territory law).

This subsection has effect subject to subsection (3).

Note 1: ASIC must specify the State or Territory in which the company is taken to be registered in the company's certificate of registration (see paragraph 118(1)(c)(v) and 601BD(1)(c)(v)).

Note 2: The company's legal capacity and powers do not depend in any way on the particular State or Territory it is taken to be registered in (see section 124).

Note 3: A law of a State or Territory may impose obligations, or confer rights or powers, on a person by reference to the State or Territory in which a company is taken to be registered for the purposes of this Act. For example, a State or Territory law dealing with stamp duty on share transfers might impose duty on transfers of shares in companies that are taken to be registered in that State or Territory for the purposes of this Act.

**119A(3) Changing jurisdiction of registration.** The State or Territory in which a company is taken to be registered changes to the State or a Territory in this jurisdiction nominated by the company if:

(a) either:

(i) the relevant Minister of the State or Territory in which the company is taken to be registered before the change approves the change; or

(ii) the State in which the company is taken to be registered ceases to be a referring State; and

(b) the procedural requirements specified in the regulations are satisfied.

**119A(4) Effect of State ceasing to be referring State.** A company continues to be registered under this Act even if the State in which the company is taken to be registered ceases to be a referring State.

2

## SECTION 9 DICTIONARY

**“director”** of a company or other body means:

(a) a person who:

(i) is appointed to the position of a director; or

(ii) is appointed to the position of an alternate director and is acting in that capacity;

regardless of the name that is given to their position; and

(b) unless the contrary intention appears, a person who is not validly appointed as a director if:

(i) they act in the position of a director; or

(ii) the directors of the company or body are accustomed to act in accordance with the person's instructions or wishes.

Subparagraph (b)(ii) does not apply merely because the directors act on advice given by the person in the proper performance of functions attaching to the person's professional capacity, or the person's business relationship with the directors or the company or body.

Note: Paragraph (b) – Contrary intention – Examples of provisions for which a person referred to in paragraph (b) would not be included in the term “director” are:

- section 249C (power to call meetings of a company’s members)
- subsection 251A(3) (signing minutes of meetings)
- section 205B (notice to ASIC of change of address).

3

## SECTION OF DICTIONARY

“**this jurisdiction**” means the geographical area that consists of each referring State (including its coastal sea), the Capital Territory (including the coastal sea of Jervis Bay Territory) and the Northern Territory (including its coastal sea).

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## SECTION 119 COMPANY COMES INTO EXISTENCE ON REGISTRATION

**119** A company comes into existence as a body corporate at the beginning of the day on which it is registered. The company’s name is the name specified in the certificate of registration.

Note: The company remains in existence until it is deregistered (see Chapter 5A).

5

## SECTION 149 ACCEPTABLE ABBREVIATIONS

**149(1) [Table of abbreviations]** The abbreviations set out in the following table may be used:

- (a) instead of words that this Act requires to be part of a company’s name or to be included in a document or on a company’s common seal; and
- (b) instead of words that are part of a company’s name; and
- (c) with or without full stops.

Acceptable Abbreviations [operative table]

Word	Abbreviation
------	--------------

Company	Co or Coy
---------	-----------

Proprietary	Pty
-------------	-----

Limited	Ltd
---------	-----

No Liability	NL
--------------	----

Australian	Aust
------------	------



Number No

and &

Australian Company Number ACN

## SECTION 153 USING A NAME AND ACN ON DOCUMENTS

**153(1) [Name]** A company must set out its name on all its public documents and negotiable instruments.

**153(2) [ACN]** Subject to sections 154 and 155, if the company's ACN is not used in its name, the company must also set out with its name, or with 1 of the references to its name, the expression "Australian Company Number" followed by its ACN. If the company's name appears on 2 or more pages of the document or instrument, this must be done on the first of those pages.

Note 1: If a company has a common seal, its name and ACN must be set out on the seal (see section 123).

Note 2: A public company must display its name at its registered office. Every company must display its name at places at which the company carries on business and that are open to the public (see section 144).

Note 3: Section 149 provides that "ACN" is an acceptable abbreviation of "Australian Company Number".

## SECTION 154 EXCEPTION TO REQUIREMENT TO HAVE ACN ON RECEIPTS

**154** A company does not have to set out the expression "Australian Company Number" followed by its ACN on a receipt (for example, a cash register receipt) that sets out information recorded in the machine that produced the receipt.

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## SECTION 157 COMPANY CHANGING ITS NAME

**157(1) [Special resolution and application]** If a company wants to change its name, it must:

- (a) pass a special resolution adopting a new name; and
- (b) lodge an application in the prescribed form with ASIC.

Note: The company may reserve a name before the resolution is passed or the application is lodged (see section 152).

**157(2) [Lodgement requirements]** The company must lodge a copy of the special resolution with ASIC within 14 days after it is passed.

**157(3) [Change of name]** If the proposed name is available, ASIC must change the company's name by altering the details of the company's registration to reflect the change. The change of name takes effect when ASIC alters the details of the company's registration.

Note: For available names, see section 147

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#### SECTION 45A PROPRIETARY COMPANIES

**45A(1) [Proprietary company.]** A proprietary company is a company that is registered as, or converts to, a proprietary company under this Act.

Note 1: A proprietary company can be registered under section 118, 601BD or 1362B. A company can convert to a proprietary company under Part 2B.7.

Note 2: A proprietary company must:

- be limited by shares or be an unlimited company with a share capital
- have no more than 50 non-employee shareholders
- not do anything that would require disclosure to investors under chapter 6D (except in limited circumstances). (See Section 113).

8

**SECTION 45A(2) Small proprietary company.** A proprietary company is a small proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

- (a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is less than \$25 million, or any other amount prescribed by the regulations for the purposes of this paragraph;
- (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is less than \$12.5 million, or any other amount prescribed by the regulations for the purposes of this paragraph;
- (c) the company and the entities it controls (if any) have fewer than 50, or any other number prescribed by the regulations for the purposes of this paragraph, employees at the end of the financial year.

Note: A small proprietary company generally has reduced financial reporting requirements (see subsection 292(2)).

9

**45A(3) Large proprietary company.** A proprietary company is a large proprietary company for a financial year if it satisfies at least 2 of the following paragraphs:

- (a) the consolidated revenue for the financial year of the company and the entities it controls (if any) is \$25 million or more, or any other amount prescribed by the regulations for the purposes of this paragraph;
- (b) the value of the consolidated gross assets at the end of the financial year of the company and the entities it controls (if any) is \$12.5 million, or any other amount prescribed by the regulations for the purposes of this paragraph;

(c) the company and the entities it controls (if any) have 50, or any other number prescribed by the regulations for the purposes of this paragraph, or more employees at the end of the financial year.

**45A(4) When a company controls an entity.** For the purposes of this section, the question whether a proprietary company controls an entity is to be decided in accordance with the accounting standards made for the purposes of paragraph 295(2)(d) (even if the standards do not otherwise apply to the company).

**45A(5) Counting employees.** In counting employees for the purposes of subsections (2) and (3), take part-time employees into account as an appropriate fraction of a full-time equivalent.

**45A(6) Accounting standards.** Consolidated gross operating revenue and the value of consolidated gross assets are to be calculated for the purposes of this section in accordance with accounting standards in force at the relevant time (even if the standard does not otherwise apply to the financial year of some or all of the companies concerned).

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#### SECTION 114 MINIMUM OF 1 MEMBER

**114** A company needs to have at least 1 member.

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#### SECTION 113 PROPRIETARY COMPANIES

**113(1) [Limitation of non-employee shareholders]** A company must have no more than 50 non-employee shareholders if it is to:

- (a) be registered as a proprietary company; or
- (b) change to a proprietary company; or
- (c) remain registered as a proprietary company.

Note: Proprietary companies have different financial reporting obligations depending on whether they are small proprietary companies or large proprietary companies (see section 45A and Part 2M.3).

**113(2) [Application of subsection]** In applying subsection (1):

- (a) count joint holders of a particular parcel of shares as 1 person; and
- (b) an employee shareholder is:
  - (i) a shareholder who is an employee of the company or of a subsidiary of the company; or
  - (ii) a shareholder who was an employee of the company, or of a subsidiary of the company, when they became a shareholder.

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**113(3) [Share offers]** A proprietary company must not engage in any activity that would require the disclosure to investors under chapter 6D, except for an offer of its shares to:

- (a) existing shareholders of the company; or
- (b) employees of the company or of a subsidiary of the company.

**113(4) [Invalidity]** An act or transaction is not invalid merely because of a contravention of subsection (3).

**Note:** If a proprietary company contravenes this section, ASIC may require it to change to a public company (see section 165).

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#### **SECTION 136 CONSTITUTION OF A COMPANY**

**136(1) [Adoption]** A company adopts a constitution:

- (a) on registration - if each person specified in the application for the company's registration as a person who consents to become a member agrees in writing to the terms of a constitution before the application is lodged; or
- (b) after registration - if the company passes a special resolution adopting a constitution or a court order is made under Section 233 that requires the company to adopt the Constitution.

**Note:** The Life Insurance Act 1995 has rules about how benefit fund rules become part of a company's constitution and about amending those rules. They override this Act (see section 1348 of this Act). Consequential amendments to the rest of the company's constitution can be made under that Act or this Act (see Subdivision 2 of Division 4 of Part 2A of that Act).

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**136(3) [Further requirement]** The company's constitution may provide that the special resolution does not have any effect unless a further requirement specified in the constitution relating to that modification or repeal has been complied with.

**136(4) [Modification or repeal of further requirement]** Unless the constitution provides otherwise, the company may modify or repeal a further requirement described in subsection (3) only if the further requirement is itself complied with.

#### **SECTION 137 DATE OF EFFECT OF ADOPTION, MODIFICATION OR REPEAL OF CONSTITUTION**

**137** If a new constitution is adopted or an existing constitution is modified or repealed, that adoption, modification or repeal takes effect:

- (a) if it is the result of a special resolution:
  - (i) on the date on which the resolution is passed if it specified no later date; or

- (ii) on a date specified in, or determined in accordance with, the resolution if the relevant date is later than the date on which the resolution is passed; or
- (b) If it is the result of a court order made under Section 233:
  - (i) on the date on which the order is made if it specifies no later date; or
  - (ii) on a date specified by the order.

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**SECTION 138 ASIC MAY DIRECT COMPANY TO LODGE CONSOLIDATED CONSTITUTION**

**138** ASIC may direct a company to lodge a consolidated copy of its constitution with ASIC.

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**SECTION 139 COMPANY MUST SEND COPY OF CONSTITUTION TO MEMBER**

**139** A company must send a copy of its constitution to a member of the company within 7 days if the member:

- (a) asks the company, in writing, for the copy; and
- (b) pays any fee (up to the prescribed amount) required by the company.

17

**SECTION 135 REPLACEABLE RULES**

Companies to which replaceable rules apply.

**135(1)** A section or subsections (except subsection 129(1), this section and sections 140 and 141) whose heading contains the words:

(a) *replaceable rule*—applies as a replaceable rule to:

- (i) each company that is or was registered after 1 July 1998; and
- (ii) any company registered before 1 July 1998 that repeals or repealed its constitution after that day; and
- (b) replaceable rule for proprietary companies and mandatory rule for public companies—applies:
  - (i) as a *replaceable* rule to any proprietary company that is or was registered after 1 July 1998; and
  - (ii) as a replaceable rule to any company that is or was registered after 1 July 1998 and that changes or changed to a proprietary company (but only while it is a proprietary company); and
  - (iii) as a replaceable rule to any proprietary company that is or was registered before 1 July 1998 that repeals or repealed its constitution after that day; and
  - (iv) as an ordinary provision of this Act to any public company whenever registered.

The section or subsection does not apply to a proprietary company while the same person is both its sole director and sole shareholder.

Note 1: See sections 198E, 201F and 202C for the special provisions that apply to a proprietary company while the same person is both its sole director and sole shareholder.

Note 2: A company may include in its constitution (by reference or otherwise) a replaceable rule that does not otherwise apply to it.

Company's constitution can displace or modify replaceable rules

**135(2)** A provision of a section or subsection that applies to a company as a replaceable rule can be displaced or modified by the company's constitution.

Failure to comply with replaceable rules

**135(3)** A failure to comply with the replaceable rules as they apply to a company is not of itself a contravention of this Act (so the provisions about criminal liability, civil liability and injunctions do not apply).

Note: Replaceable rules that apply to a company have effect as a contract (see section 140).

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## SECTION 134 INTERNAL MANAGEMENT OF COMPANIES

**134** A company's internal management may be governed by provisions of this Act that apply to the company as replaceable rules, by a constitution or by a combination of both.

Note: There are additional rules about internal management in ordinary provisions of this Act and also in the common law.

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## SECTION 140 EFFECT OF CONSTITUTION AND REPLACEABLE RULES

**140(1)** A company's constitution (if any) and any replaceable rules that apply to the company have effect as a contract:

- (a) between the company and each member; and
- (b) between the company and each director and company secretary; and
- (c) between a member and each other member;

under which each person agrees to observe and perform the constitution and rules so far as they apply to that person.

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### **140(2) [Modification of constitution]**

(2) Unless a member of a company agrees in writing to be bound, they are not bound by a modification of the constitution made after the date on which they became a member so far as the modification:

- (a) requires the member to take up additional shares; or
- (b) increases the member's liability to contribute to the share capital of, or otherwise to pay money to, the company; or
- (c) imposes or increases restrictions on the right to transfer the shares already held by the member, unless the modification is made:
- (i) in connection with the company's change from a public company to a proprietary company under Part 2B.7; or
- (ii) to insert proportional takeover approval provisions into the company's constitution.

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## SECTION 124 LEGAL CAPACITY AND POWERS OF A COMPANY

**124(1) [Capacity and Powers]** A company has the legal capacity and powers of an individual both in and outside this jurisdiction. A company also has all the powers of a body corporate, including the power to:

- (a) issue and cancel shares in the company
- (b) issue debentures (despite any rule of law or equity to the contrary, this power includes a power to issue debentures that are irredeemable, redeemable only if a contingency, however remote, occurs, or redeemable at the end of a period, however long)
- (c) grant options over unissued shares in the company
- (d) distribute any of the company's property among the members, in kind or otherwise
- (e) give security by charging uncalled capital
- (f) grant a floating charge over the company's property
- (g) arrange for the company to be registered or recognised as a body corporate in any place outside this jurisdiction
- (h) do anything that it is authorised to do by any other law (including a law of a foreign country).

A company limited by guarantee does not have the power to issue shares.

Note: For a company's power to issue bonus, partly-paid, preference and redeemable preference shares, see section 254A.

**124(2) [Company's interests]** A company's legal capacity to do something is not affected by the fact that the company's interests are not, or would not be, served by doing it.

**124(3) [No authorisation of Act or right contrary to State or Territory laws]** For the avoidance of doubt, this section does not:

- (a) authorise a company to do an act that is prohibited by a law of a State or Territory; or

(b) give a company a right that a law of a State or Territory denies to the company.

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**SECTION 125 CONSTITUTION MAY LIMIT POWERS AND SET OUT OBJECTS**

**125(1) [Limitations in constitution]** If a company has a constitution, it may contain an express restriction on, or a prohibition of, the company's exercise of any of its powers. The exercise of a power by the company is not invalid merely because it is contrary to an express restriction or prohibition in the company's constitution.

**125(2) [Company's objects]** If a company has a constitution, it may set out the company's objects. An act of the company is not invalid merely because it is contrary to or beyond any objects in the company's constitution.

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**SECTION 123 COMPANY MAY HAVE COMMON SEAL**

**123(1) [Common seal]** A company may have a common seal. If a company does have a common seal, the company must set out on it:

(a) for a company that has its ACN in its name - the company's name; or

(b) otherwise - the company's name and either:

(i) the expression "Australian Company Number" and the company's ACN; or

(ii) if the last 9 digits of the company's ABN are the same, and in the same order, as the last 9 digits of its ACN - the expression "Australian Business Number" and the company's ABN.

**Note 1:** A company may make contracts and execute documents without using a seal (see sections 126 and 127).

**Note 2:** For abbreviations that can be used on a seal, see section 149.

**123(2) [Duplicate]** A company may have a duplicate common seal. The duplicate must be a copy of the common seal with the words "duplicate seal", "share seal" or "certificate seal" added.

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**SECTION 127 EXECUTION OF DOCUMENTS (INCLUDING DEEDS) BY THE COMPANY ITSELF**

**127(1) [Execution without seal]** A company may execute a document without using a common seal if the document is signed by:

(a) 2 directors of the company; or



(b) a director and a company secretary of the company; or

(c) for a proprietary company that has a sole director who is also the sole company secretary - that director.

Note: If a company executes a document in this way, people will be able to rely on the assumption in subsection 129(5) for dealings in relation to the company.

**127(2) [Execution with seal]** A company with a common seal may execute a document if the seal is fixed to the document and the fixing of the seal is witnessed by:

(a) 2 directors of the company; or

(b) a director and a company secretary of the company; or

(c) for a proprietary company that has a sole director who is also the sole company secretary - that director.

Note: If a company executes a document in this way, people will be able to rely on the assumptions in subsection 129(6) for dealings in relation to the company.

**127(3) [Execution as a deed]** A company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with subsection (1) or (2).

**127(4) [No limitation]** This section does not limit the ways in which a company may execute a document (including a deed).

## SECTION 128 ENTITLEMENT TO MAKE ASSUMPTIONS

**128(1) [Entitlement]** A person is entitled to make the assumptions in section 129 in relation to dealings with a company. The company is not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.

**128(2) [Title to property]** A person is entitled to make the assumptions in section 129 in relation to dealings with another person who has, or purports to have, directly or indirectly acquired title to property from a company. The company and the other person are not entitled to assert in proceedings in relation to the dealings that any of the assumptions are incorrect.

**128(3) [Fraud or forgery]** The assumptions may be made even if an officer or agent of the company acts fraudulently, or forges a document, in connection with the dealings.

**128(4) [Knowledge or suspicion]** A person is not entitled to make an assumption in section 129 if at the time of the dealings they knew or suspected that the assumption was incorrect.

## SECTION 129 ASSUMPTIONS THAT CAN BE MADE UNDER SECTION 128

**129(1) Constitution and replaceable rules complied with.** A person may assume that the company's constitution (if any), and any provisions of this Act that apply to the company as replaceable rules, have been complied with.

**129(2) Director or company secretary.** A person may assume that anyone who appears, from information provided by the company that is available to the public from ASIC, to be a director or a company secretary of the company:

(a) has been duly appointed; and

(b) has authority to exercise the powers and perform the duties customarily exercised or performed by a director or company secretary of a similar company.

**129(3) Officer or agent.** A person may assume that anyone who is held out by the company to be an officer or agent of the company:

(a) has been duly appointed; and

(b) has authority to exercise the powers and perform the duties customarily exercised or performed by that kind of officer or agent of a similar company.

**129(4) Proper performance of duties.** A person may assume that the officers and agents of the company properly perform their duties to the company.

**129(5) Document duly executed without seal.** A person may assume that a document has been duly executed by the company if the document appears to have been signed in accordance with subsection 127(1). For the purposes of making the assumption, a person may also assume that anyone who signs the document and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices.

**129(6) Document duly executed with seal.** A person may assume that a document has been duly executed by the company if:

(a) the company's common seal appears to have been fixed to the document in accordance with subsection 127(2); and

(b) the fixing of the common seal appears to have been witnessed in accordance with that subsection.

For the purposes of making the assumption, a person may also assume that anyone who witnesses the fixing of the common seal and states next to their signature that they are the sole director and sole company secretary of the company occupies both offices.

**129(7) Officer or agent with authority to warrant that document is genuine or true copy.** A person may assume that an officer or agent of the company who has authority to issue a document or a certified copy of a document on its behalf also has authority to warrant that the document is a genuine or is a true copy.

**129(8) [Application of assumptions]** Without limiting the generality of this section, the assumptions that may be made under this section apply for the purposes of this section.

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**SECTION 126 AGENT EXERCISING A COMPANY'S POWER TO MAKE CONTRACTS**

**126(1) [Acting on company's behalf]** A company's power to make, vary, ratify or discharge a contract may be exercised by an individual acting with the company's express or implied authority and on behalf of the company. The power may be exercised without using a common seal.

**126(2) [Non-application]** This section does not affect the operation of a law that requires a particular procedure to be complied with in relation to the contract.

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**SECTION 131 CONTRACTS BEFORE REGISTRATION**

**131(1) [Company bound]** If a person enters into, or purports to enter into, a contract on behalf of, or for the benefit of, a company before it is registered, the company becomes bound by the contract and entitled to its benefit if the company, or a company that is reasonably identifiable with it, is registered and ratifies the contract:

- (a) within the time agreed to by the parties to the contract; or
- (b) if there is no agreed time - within a reasonable time after the contract is entered into.

**131(2) [Liability for damages]** The person is liable to pay damages to each other party to the pre-registration contract if the company is not registered, or the company is registered but does not ratify the contract or enter into a substitute for it:

- (a) within the time agreed to by the parties to the contract; or
- (b) if there is no agreed time – within a reasonable time after the contract is entered into.

The amount that the person is liable to pay to a party is the amount the company would be liable to pay to the party if the company had ratified the contract and then did not perform it at all.

**131(3) [Powers of the court]** If proceedings are brought to recover damages under subsection (2) because the company is registered but does not ratify the pre-registration contract or enter into a substitute for it, the court may do anything that it considers appropriate in the circumstances, including ordering the company to do 1 or more of the following:

- (a) pay all or part of the damages that the person is liable to pay;
- (b) transfer property that the company received because of the contract to a party to the contract;
- (c) pay an amount to a party to the contract.

**131(4) [Failure to perform contracts]** If the company ratifies the pre-registration contract but fails to perform all or part of it, the court may order the person to pay all or part of the damages that the company is ordered to pay.

**SECTION 132 PERSON MAY BE RELEASED FROM LIABILITY BUT IS NOT ENTITLED TO INDEMNITY**

**132(1) [Release]** A party to the pre-registration contract may release the person from all or part of their liability under section 131 to the party by signing a release.

**132(2) [indemnity]** Despite any rule of law or equity, the person does not have any right of indemnity against the company in respect of the person's liability under this Part. This is so even if the person was acting, or purporting to act, as trustee for the company

**SECTION 133 THIS PART REPLACES OTHER RIGHTS AND LIABILITIES**

**133** This Part replaces any rights or liabilities anyone would otherwise have on the pre-registration contract.

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**SECTION 254A POWER TO ISSUE BONUS, PARTLY-PAID, PREFERENCE AND REDEEMABLE PREFERENCE SHARES**

**254A(1) [Power to issue shares]** A company's power under Section 124 to issue shares includes the power to issue:

(a) bonus shares (shares for whose issue no consideration is payable to the issuing company); and

(b) preference shares (including redeemable preference shares); and

(c) partly-paid shares (whether or not on the same terms for the amount of calls to be paid or the time for paying calls).

**Note 1:** Subsections 246C(5) and (6) provide that in certain circumstances the issue of preference shares is taken to be a variation of class rights.

**Note 2:** Partly-paid shares are dealt with in sections 254M-254N.

**Note 3:** On the issue of a bonus share there need not be any increase in the company's share capital.

**254A(2) [Preference shares]** A company can issue preference shares only if the rights attached to the preference shares with respect to the following matters are set out in the company's constitution (if any) or have been otherwise approved by special resolution of the company:

- (a) repayment of capital
- (b) participation in surplus assets and profits
- (c) cumulative and non-cumulative dividends
- (d) voting

- (e) priority of payment of capital and dividends in relation to other shares or classes of preference shares.

**254A(3) [Redeemable preference shares]** Redeemable preference shares are preference shares that are issued on the terms that they are liable to be redeemed. They may be redeemable:

- (a) at a fixed time or on the happening of a particular event; or  
(b) at the company's option; or  
(c) at the shareholder's option.

Note: Redeemable preference shares are dealt with in sections 254J-254L.

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#### SECTION 254B TERMS OF ISSUE

254B(1) [Terms, rights and restrictions] A company may determine:

- (a) the terms on which its shares are issued; and  
(b) the rights and restrictions attaching to the shares.

Note 1: Details of any division of shares into classes or conversion of classes of shares must be given to ASIC by a notice in the prescribed form (see subsection 246F(1)).

Note 2: For public companies, any document or resolution that attaches rights to shares or varies or cancels rights attaching to shares must be lodged with ASIC (see subsection 246F(3)).

Note 3: Sections 246B-246G provide safeguards in cases where class rights are cancelled or varied.

Note 4: The company cannot issue par value shares (see section 254C) or bearer shares (see section 254F).

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#### 254C NO PAR VALUE SHARES

**254C** Shares of a company have no par value.

Note: The Part 10.1 transitional provisions contain provisions that deal with the introduction of no par value shares. See also subsection 169(4).

**SECTION 254D PRE-EMPTION FOR EXISTING SHAREHOLDERS ON ISSUE OF SHARES IN PROPRIETARY COMPANY (replaceable rule - see section 135)**

**254D(1) [Pre-emption]** Before issuing shares of a particular class, the directors of a proprietary company must offer them to the existing holders of shares of that class. As far as practicable, the number of shares offered to each shareholder must be in proportion to the number of shares of that class that they already hold.

**254D(2) [Statement of offer]** To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:

- (a) the number of shares offered; and
- (b) the period for which it will remain open.

**254D(3) [Shares not taken up]** The directors may issue any shares not taken up under the offer under subsection(1) as they see fit.

**254D(4) [Authorisation]** The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with subsection (1).

**SECTION 254G CONVERSION OF SHARES**

**254G(1) [Company may convert]** A company may:

- (a) convert an ordinary share into a preference share; and
- (b) convert a preference share into an ordinary share.

**Note:** The variation of class rights provisions (sections 246B-246G) will apply to the conversion.

**254G(2) [Ordinary shares to preference shares]** A company can convert ordinary shares into preference shares only if the holders' rights with respect to the following matters are set out in the company's constitution (if any) or have been otherwise approved by special resolution of the company:

- (a) repayment of capital
- (b) participation in surplus assets and profits
- (c) cumulative and non-cumulative dividends
- (d) voting
- (e) priority of payment of capital and dividends in relation to other shares or classes or preference shares.

**254G(3) [Redeemable preference shares]** A share that is not a redeemable preference share when issued cannot afterwards be converted into a redeemable preference share.

**SECTION 254H RESOLUTION TO CONVERT SHARES INTO LARGER OR SMALLER NUMBER**

**254H(1) [Consolidation or division]** A company may convert all or any of its shares into a larger or smaller number of shares by resolution passed at a general meeting.

**Note:** The variation of class rights provisions (sections 246B-246G) may apply to the conversion.

**254H(2) [Conversion]** The conversion takes effect on:

- (a) the day the resolution is passed; or
- (b) a later date specified in the resolution.

**254H(3) [Unpaid amount]** Any amount unpaid on shares being converted is to be divided equally among the replacement shares.

**254H(4) [Lodgement with ASIC]** The company must lodge a copy of the resolution with ASIC within 1 month after it is passed.

**SECTION 254J REDEMPTION MUST BE IN ACCORDANCE WITH TERMS OF ISSUE**

**254J(1) [Redemption]** A company may redeem redeemable preference shares only on the terms on which they are on issue. On redemption, the shares are cancelled.

**Note:** For the power to issue redeemable preference shares see paragraph 254A(1)(b) and subsections 254A(2) and (3).

**254J(2) [Reduction of capital or share buy-back]** This section does not affect the terms on which redeemable preference shares may be cancelled under a reduction of capital or a share buy-back under Part 2J.1.

**SECTION 254K OTHER REQUIREMENTS ABOUT REDEMPTION**

**254K** A company may only redeem redeemable preference shares:

- (a) if the shares are fully paid-up; and
- (b) out of profits or the proceeds of a new issue of shares made for the purpose of the redemption.

**Note:** For a director's duty to prevent insolvent trading on redeeming redeemable preference shares, see section 588G.

**SECTION 254L CONSEQUENCES OF CONTRAVENING SECTION 254J OR 254K**

**254L(1) [Effect of contravention]** If a company redeems shares in contravention of section 254J or 254K:

- (a) the contravention does not affect the validity of the redemption or of any contract or transaction connected with it; and
- (b) the company is not guilty of an offence.

**254L(2) [Person involved in contravention]** Any person who is involved in a company's contravention of section 254J or 254K contravenes this subsection.

**Note 1:** Subsection (2) is a civil penalty provision (see section 1317E).

**Note 2:** Section 79 defines *involved*.

**254L(3) [Dishonest involvement]** A person commits an offence if they are involved in a company's contravention of Section 254J or 254K and the involvement is dishonest.

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**SECTION 254M LIABILITY ON PARTLY-PAID SHARES**

**254M(1) General rule about shareholder's liability for calls.** If shares in a company are partly-paid, the shareholder is liable to pay calls on the shares in accordance with the terms on which the shares are on issue. This subsection does not apply to a no liability company.

**Note:** The shareholder may also be liable as a contributory under sections 514-529 if the company is wound up.

**254M(2) No liability companies**

The acceptance by a person of a share in a no liability company, whether by issue or transfer, does not constitute a contract by the person to pay:

- (a) calls in respect of the share; or
- (b) any contribution to the debts and liabilities of the company.

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**SECTION 254N CALLS MAY BE LIMITED TO WHEN COMPANY IS EXTERNALLY-ADMINISTERED**

**254N(1) [Calls may be limited]** A limited company may provide by special resolution that the whole or a part of its unpaid share capital may be called up only if the company becomes an externally-administered body corporate.

**254N(2) [Lodgement with ASIC]** The company must lodge with ASIC a copy of the special resolution within 14 days after it is passed.

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**SECTION 254S CAPITALISATION OF PROFITS**

**254S A company may capitalise profits.** The capitalisation need not be accompanied by the issue of shares.

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Division 1 - Reductions in share capital not otherwise authorised by law

**SECTION 256B COMPANY MAY MAKE REDUCTION NOT OTHERWISE AUTHORISED**

**256B(1) [Reductions not otherwise authorised]** A company may reduce its share capital in a way that is not otherwise authorised by law if the reduction:

- (a) is fair and reasonable to the company's shareholders as a whole; and



- (b) does not materially prejudice the company's ability to pay its creditors; and
- (c) is approved by shareholders under section 256C.

A cancellation of a share for no consideration is a reduction of share capital, but paragraph (b) does not apply to this kind of reduction.

Note 1: One of the ways in which a company might reduce its share capital is cancelling uncalled capital.

Note 2: Sections 258A-258F deal with some of the other situations in which reductions of share capital are authorised. Subsection 254K(2) authorises capital reduction involved in the redemption of redeemable preference shares and subsection 257A(2) authorises reductions involved in share buy-backs

Note 3: For a director's duty to prevent insolvent trading on reduction of share capital, see section 588G.

**256B(2) [Equal or selective reduction]** The reduction is either an equal reduction or a selective reduction. The reduction is an **equal reduction** if:

- (a) it relates only to ordinary shares; and
- (b) it applies to each holder of ordinary shares in proportion to the number of ordinary shares they hold; and
- (c) the terms of the reduction are the same for each holder of ordinary shares.

Otherwise, the reduction is a **selective reduction**.

**256B(3) [Certain differences ignored]** In applying subsection (2), ignore differences in the terms of the reduction that are:

- (a) attributable to the fact that shares have different accrued dividend entitlements; or
- (b) attributable to the fact that shares have different amounts unpaid on them; or
- (c) introduced solely to ensure that each shareholder is left with a whole number of shares.

#### SECTION 256C SHAREHOLDER APPROVAL

**256C(1) Ordinary resolution required for equal reduction.** If the reduction is an equal reduction, it must be approved by a resolution passed at a general meeting of the company.

**256C(2) Special shareholder approval for selective reduction.** If the reduction is a selective reduction, it must be approved by either:

- (a) a special resolution passed at a general meeting of the company, with no votes being cast in favour of the resolution by any person who is to receive consideration as part of the reduction or whose liability to pay amounts unpaid on shares is to be reduced, or by their associates; or
- (b) a resolution agreed to, at a general meeting, by all ordinary shareholders.

If the reduction involves the cancellation of shares, the reduction must also be approved by a special resolution passed at a meeting of the shareholders whose shares to be cancelled.

**256C(3) [Lodge with ASIC]** The company must lodge with ASIC a copy of any resolution under subsection (2) within 14 days after it is passed. The company must not make the reduction until 14 days after lodgement.

Note: A proprietary company may also have to notify certain particulars under Part 2C.2.

**256C(4) Information to accompany the notice of meeting.** The company must include with the notice of the meeting a statement setting out all information known to the company that is material to the decision on how to vote on the resolution. However, the company does not have to disclose information if it would be unreasonable to require the company to do so because the company had previously disclosed the information to its shareholders.

**256C(5) Documents to be lodged with the ASIC.** Before the notice of the meeting is sent to shareholders, the company must lodge with ASIC a copy of:

- (a) the notice of the meeting; and
- (b) any document relating to the reduction that will accompany the notice of the meeting sent to shareholders.

#### SECTION 256D CONSEQUENCES OF FAILING TO COMPLY WITH SECTION 256B

**256D(1) [Compliance with sec 256B(1)]** The company must not make the reduction unless it complies with subsection 256B(1).

**256D(2) [Contravention]** If the company contravenes subsection (1):

- (a) the contravention does not affect the validity of the reduction or of any contract or transaction connected with it; and
- (b) the company is not guilty of an offence.

**256D(3) [Person involved in contravention]** Any person who is involved in a company's contravention of subsection (1) contravenes this subsection.

Note 1: Subsection (3) is a civil penalty provision (see section 1317E).

Note 2: Section 79 defines **involved**.

**256D(4) [Offence]** A person commits an offence if they are involved in a company's contravention of section 256B and the involvement is dishonest.

#### SECTION 258D CANCELLATION OF FORFEITED SHARES

**258D** A company may, by resolution passed at a general meeting, cancel shares that have been forfeited under the terms on which the shares are on issue.

**SECTION 258F REDUCTIONS BECAUSE OF LOST CAPITAL**

**258F** A company may reduce its share capital by cancelling any paid-up share capital that is lost or is not represented by available assets. This power does not apply if the company also cancels shares.

**Part 7.11—TITLE AND TRANSFER**

**Division 1—TITLE TO CERTAIN SECURITIES**

**SECTION 1070A NATURE OF SHARES AND CERTAIN OTHER INTERESTS IN A COMPANY OR REGISTERED SCHEME**

**1070A(1) [Nature of shares]** A share, other interest of a member in a company or interest of a person in a registered scheme:

- (a) is personal property; and
- (b) is transferable or transmissible as provided by:
  - (i) the company's, or scheme's, constitution; or
  - (ii) the operating rules of a prescribed CS facility if they are applicable; and
- (c) is capable of devolution by will or by operation of law.

**1070A(2) [Devolution by will]** Paragraph (1)(c) has effect subject to:

- (a) in the case of a company:
  - (i) the company's constitution (if any); and
  - (ii) any replaceable rules that apply to the company; and
  - (iii) the operating rules of a prescribed CS facility if they apply to the share or interest; and
- (b) in the case of a scheme:
  - (i) the scheme's constitution; and
  - (ii) the operating rules of a prescribed CS facility if they apply to the interest.

**1070A(3) [Application of laws and equitable interests]** Subject to subsection (1)

- (a) the laws applicable to ownership of, and dealing with, personal property apply to a share, other interest of a member in a company or interest of a person in a registered scheme as they apply to other property; and
- (b) equitable interests in respect of a share, interest of a member in a company or other interest of a person in a registered scheme may be created, dealt with and enforced as in the case of other personal property.

**1070A(4) [Jurisdiction]** For the purposes of any law, a share, other interest of a member in a company or interest of a person in a registered scheme is taken to be situated:

- (a) if the share, interest in a company, or interest in a registered scheme is entered on the register kept under section 169—in the State or Territory where that register is kept; or
- (b) if the share or interest in the company is entered on an overseas branch register kept under section 178—in the foreign country where that register is kept.

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**SECTION 1070B NUMBERING OF SHARES**

**1070B(1) [Appropriate numbering of shares required]** Except as provided in subsection (2), a company must ensure that each share in the company is distinguished by an appropriate number.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

**1070B(2) [Where distinguishing number not required]** Despite subsection (1):

(a) if at any time all the issued shares in a company, or all the issued shares in a company of a particular class:

- (i) are fully paid up; and
- (ii) rank equally for all purposes;

none of those shares is required to have a distinguishing number so long as each of those shares remains fully paid up, and ranks equally for all purposes with all shares of the same class for the time being issued and fully paid up; and

(b) if:

(i) all the issued shares in a company are evidenced by certificates in accordance with section 1070C; and

(ii) each certificate is distinguished by an appropriate number; and

(iii) that number is recorded in the register of members;

none of those shares is required to have a distinguishing number; and

(c) a share need not have a distinguishing number if the operating rules of a prescribed CS facility through which it is able to be transferred provide that the share need not have a distinguishing number

Note: A defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

**SECTION 1070C MATTERS TO BE SPECIFIED IN SHARE CERTIFICATE**

**1070C(1) [Content of share certificate]** A company must ensure that a certificate it issues specifying the shares held by a member of the company states:

- (a) the name of the company and the fact that it is registered under this Act; and
- (b) the class of the shares; and
- (c) the amount (if any) unpaid on the shares.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

**1070B(2) [Certificate is evidence of title]** A certificate issued in accordance with subsection (1) specifying shares held by a member of a company is prima facie evidence of the title of the member to the shares.

**1070B(3) [Failure to comply does not affect rights]** A failure to comply with subsection (1) does not affect the rights of a holder of shares.

**1070D LOSS OR DESTRUCTION OF TITLE DOCUMENTS FOR CERTAIN SECURITIES**

**1070D(1) [[Type of securities]** This section applies to the following securities:

- (a) shares in a company;
- (b) debentures of a company;
- (c) interests in a registered scheme.

**1070D(2) [References to company and directors]** This section applies to an interest in a registered scheme as if:

- (a) references to a company were instead references to the responsible entity of the registered scheme; and
- (b) references to the directors of a company were instead references to the directors of the responsible entity of the registered scheme.

**1070D(3) [Duplicate certificate]** A company must, in accordance with subsection (4), issue a duplicate certificate or other title document for securities if:

- (a) the certificate or document is lost or destroyed; and
- (b) the owner of the securities applies to the company for the duplicate in accordance with subsection (5); and
- (c) the owner complies with any requirements made in accordance with subsection (6).

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

1070D(4) [Duplicate to issue within 21 days] The company must issue the duplicate:

(a) if the company requires the payment of an amount not exceeding the amount prescribed by regulations made for the purposes of this paragraph—within 21 days after the payment is received by the company or within such longer period as ASIC approves; or

(b) in a case to which paragraph (a) does not apply—within 21 days after the application is made or within such longer period as ASIC approves.

1070D(5) [Information to be supplied] The application must be accompanied by:

(a) a statement in writing that the certificate or other document:

(i) has been lost or destroyed; and

(ii) has not been pledged, sold or otherwise disposed of; and

(b) if the certificate or other document has been lost—a statement in writing that proper searches have been made; and

(c) an undertaking in writing that if the certificate or other document is found or received by the owner it will be returned to the company.

**1070D(6) [Advertising loss]** The directors of the company may, before accepting an application for the issue of a duplicate certificate, require the applicant to do either or both of the following:

(a) place an advertisement in a daily newspaper circulating in a place specified by the directors stating that:

(i) the certificate or other document has been lost or destroyed; and

(ii) the owner intends, after the end of 14 days after the publication of the advertisement, to apply to the company for a duplicate certificate;

(b) give a bond for an amount equal to at least the current market value of the securities indemnifying the company against loss following the production of the original certificate or other document.

1070D(7) [Cancellation] If:

(a) a certificate or other title document for securities is cancelled in reliance on the operating rules of a prescribed CS facility; and

(b) having regard to those provisions, the certificate or other document should not have been cancelled;

this section applies to the certificate or other document as though it were destroyed on its cancellation.

**1071H DUTIES OF COMPANY WITH RESPECT TO ISSUE OF CERTIFICATES**

**1071H(1) [Issue of securities]** Subject to subsection (2), within 2 months after a company issues a security, the company must:

(a) complete and have ready for delivery to the holder of the security all the appropriate certificates or other title documents in connection with the issue of the security; and

(b) unless otherwise instructed by the holder, send or deliver the completed certificates or other title documents to:

(i) the holder; or

(ii) if the holder has instructed the company in writing to send them to a nominated person—that person.

Paragraph (a) has effect in relation to shares subject to the conditions on which the shares are issued.

**1071H(2) [Operating rules of prescribed CS facility]** If the operating rules of a prescribed CS facility include a provision to the effect that:

(a) no document is required by subsection (1) to be completed and delivered by a company in relation to the issue of a security in specified circumstances; or

(b) the only document required by subsection (1) to be completed and delivered by a company in relation to the issue of a security in specified circumstances is the document required by the provision;

the provision has effect accordingly.

**1071H(3) [Transfer of security]** Within one month after the date on which a transfer of a security is lodged with a company, the company must:

(a) complete and have ready for delivery to the transferee all the appropriate transfer and title documents in connection with the transfer; and

(b) unless otherwise instructed by the transferee, send or deliver the completed documents to:

(i) the transferee; or

(ii) if the transferee has instructed the company in writing to send them to a nominated person—that person.

This subsection does not apply to a transfer that the company is for any reason entitled to refuse to register and does not register.

**1071H(4) [Transfer covered by operating rules]** The only document required by subsection (3) to be completed and delivered by a company in relation to a transfer covered by the operating rules of a prescribed CS facility is the document (if any) that those rules require to be completed and delivered.

**1071H(5) [Exceptions]** A company need not comply:

(a) with subsection (1) in relation to the issue of a security; or

(b) with subsection (3) in relation to a transfer of a security;

if the person to whom the security is issued, or the transferee, has:

(c) applied to ASIC for the making of a declaration under this subsection; and

(d) been declared by ASIC, by writing published in the *Gazette*, to be a person in relation to whom this section does not apply.

1071H(6) [Court's powers where contravention] If:

(a) either:

(i) if subsection (1) applies—the holder referred to in that subsection serves a notice on the company requiring the company to remedy a contravention of that subsection; or

(ii) if subsection (3) applies—the transferee referred to in that subsection serves a notice on the company requiring the company to remedy a contravention of that subsection; and

(b) the company fails to remedy the contravention within 10 days after the service of the notice; and

(c) the person entitled to have the documents delivered to him or her applies to the Court for an order under this subsection;

the Court may make an order directing the company and any officer of the company to remedy the contravention within such period as is specified in the order.

**1071H(7) [Costs]** An order under subsection (6) may provide that all costs of, and incidental to, the application are to be borne by:

(a) the company; or

(b) any officer of the company who was involved in the contravention;

in such proportions as the Court thinks just and reasonable.

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**SECTION 1072G ADDITIONAL GENERAL DISCRETION FOR DIRECTORS OF PROPRIETARY COMPANIES TO REFUSE TO REGISTER TRANSFERS (REPLACEABLE RULE—SEE SECTION 135)**

**1072G** The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

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**SECTION 1072F REGISTRATION OF TRANSFERS (REPLACEABLE RULE—SEE SECTION 135)**

**1072F (1) [Person remains holder until transfer registered etc]** A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.



**1072F (2) [Directors not required to register transfer]** The directors are not required to register a transfer of shares in the company unless:

- (a) the transfer and any share certificate have been lodged at the company's registered office; and
- (b) any fee payable on registration of the transfer has been paid; and
- (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

**1072F (3) [Directors may refuse to register]** The directors may refuse to register a transfer of shares in the company if:

- (a) the shares are not fully-paid; or
- (b) the company has a lien on the shares.

**1072F (4) [Directors may suspend registration]** The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any one calendar year.

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#### SECTION 1071B INSTRUMENT OF TRANSFER

**1071B(1) [Transfer through prescribed CS facility]** This section does not apply to a transfer of a security through a prescribed CS facility.

**1071B(2) [Proper instrument of transfer]** Subject to subsection (5), a company must only register a transfer of securities if a proper instrument of transfer (see subsections (3) and (4)) has been delivered to the company. This is so despite:

**1071B(2) [Proper instrument of transfer]** Subject to subsection (5), a company must only register a transfer of securities if a proper instrument of transfer (see subsections (3) and (4)) has been delivered to the company. This is so despite:

- (a) anything in its constitution; or
- (b) anything in a deed relating to debentures.

**Note:** Failure to comply with this subsection is an offence (see subsection 1311(1)).

**1071B(3) [Details of company to be shown]** An instrument of transfer is not a proper instrument of transfer for the purposes of subsection (2) if it does not show the details, specified in the regulations, in relation to the company concerned.

**1071B(4) [Sufficient transfer]** If the transfer of the securities is covered by Division 3 of this Part, then (in addition to subsection (3)), the instrument is not a proper instrument of transfer for the purposes of subsection (2) unless it is a sufficient transfer of the securities under regulations made for the purposes of that Division.

**1071B(5) [Devolution by will or operation of law]** Subsection (2) does not prejudice the power of the company to register, as the holder of securities, a person to whom the right to the securities has devolved by will or by operation of law.

**1071B(6) [Transfer of security of dead holder]** Subsections (7) to (13) deal with a transfer of a security of a dead holder by the dead holder's personal representative. They deal with the transfer differently depending on whether the personal representative is a local representative or not.

**1071B(7) ["local representative"]** The personal representative is a *local representative* if the representative is duly constituted as a personal representative under the law of the State or Territory in which the security is situated.

Note: Subsection 1070A(4) provides that the security is situated where the relevant register is kept.

**1071B(8) [Transfer by local representative]** If the personal representative is a local representative, a transfer of the security by the representative is as valid as if the representative had been registered as the holder of the security at the time when the instrument of transfer was executed.

**1071B(9) [Transfer by representative who is not local representative]** If:

- (a) the personal representative is not a local representative; and
- (b) the representative:
  - (i) executes an instrument of transfer of the security to the representative or to another person; and
  - (ii) delivers the instrument to the company; and
  - (iii) delivers to the company with the instrument a statement in writing made by the representative to the effect that, to the best of the representative's knowledge, information and belief, no grant of representation of the estate of the deceased holder has been applied for or made in the State or Territory in which the security is located and no application for such a grant will be made; and
- (c) the statement is made within 3 months immediately before the date on which the statement is delivered to the company;

the company must (subject to subsection (10)) register the transfer and pay to the representative any dividends or other money accrued in respect of the security up to the time when the instrument was executed.

**1071B(10) [Operation of subsec 1091(9)]** Subsection (9) does not operate so as to require the company to do anything that it would not have been required to do if the personal representative were a local representative

**1071B(11) [Effect of transfer or payment under subsec 1091(9)]** A transfer or payment made under subsection (9) and a receipt or acknowledgment of such a payment is, for all purposes, as valid and effectual as if the personal representative were a local representative.

**1071B(12) [Application for registration as holder of share]** For the purposes of this section, an application by a personal representative of a dead person for registration as the holder of a security in place of the dead person is taken to be an instrument of transfer effecting a transfer of the security to the personal representative.

**1071B(13) [Evidence of probate of will, etc]** The production to a company of a document that is, under the law of a State or Territory, sufficient evidence of probate of the will, or letters of administration of the estate, of a dead person having been granted to a person, is sufficient evidence of the grant (for the company's purposes). This is so despite:

- (a) anything in its constitution; or
- (b) in a deed relating to debentures.

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**SECTION 1072A TRANSMISSION OF SHARES ON DEATH (REPLACEABLE RULE—SEE SECTION 135)**

**1072A(1) If share not held jointly** If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.

**1072A(2) [Transmission]** If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as the holder of the shares, to the same rights as the deceased shareholder.

**1072A(3) [Election]** On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.

**1072A(4) [Transfer rules]** A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

If shares held jointly

**1072A(5) If share held jointly.** If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

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**SECTION 1072B TRANSMISSION OF SHARES ON BANKRUPTCY (REPLACEABLE RULE—SEE SECTION 135)**

**1072B(1) [Transmission]** If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:

(a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(b) by giving a completed transfer form to the company, transfer the shares to another person.

**1072B(2) [Election]** On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.

**1072B(3) [Transfer rules]** A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

**1072B(4) [Bankruptcy Act 1966]** This section has effect subject to the *Bankruptcy Act 1966*.

**1072C Rights of trustee of estate of bankrupt shareholder**

**1072C(1) [Share vesting in trustee]** If:

(a) because of the *Bankruptcy Act 1966*, a share in a company, being part of the property of a bankrupt, vests in the trustee of the bankrupt's estate; and

(b) the bankrupt is the registered holder of that share;

this section applies whether or not the trustee has been registered as the holder of the share.

**1072C(2) [Trustee's entitlements]** On producing such information as the company's directors properly require, the trustee is entitled to:

(a) the same dividends and other benefits; and

(b) the same rights, for example, but without limitation, rights in relation to:

(i) meetings of the company; or

(ii) documents, including notices of such meetings; or

(iii) voting; or

(iv) inspection of the company's records;

as the bankrupt would be entitled to if he or she were not a bankrupt.

**1072C(3) [Trustee's rights]** The trustee has the same rights:

(a) to transfer the share; and

(b) to require a person to do an act or give a consent in connection with completing or registering a transfer of the share;

as the bankrupt would have if he or she were not a bankrupt.

**1072C(4) [Transfer of share]** If the trustee transfers the share, the transfer is as valid as if the trustee had been registered as the holder of the share when the trustee executed the instrument of transfer.

**1072C(5) [Consent or approval for transfer]** A person or body whose consent or approval is required for the transfer of shares in the company must not unreasonably withhold consent or approval for the transfer of the share by the trustee.

**1072C(6) [Effect of pre-emption provision]** If:

(a) the company's constitution requires:

- (i) the share to be offered for purchase to a member of the company; or
- (ii) an invitation to buy the share to be issued to such a member; and

(b) as at the end of a reasonable period after the trustee so offers the share, or so issues such an invitation, no such member has agreed to buy the share from the trustee at a reasonable price;

the trustee may sell and transfer the share to a person other than such a member.

**1072C(7) [Trustee unaffected by restrictions on bankrupt shareholder]** A provision of the company's constitution is void as against the trustee in so far as, apart from this section, it would affect rights attached to the share:

(a) because the bankrupt is a bankrupt; or

(b) because of some event that led to the bankrupt becoming, or that indicated that the bankrupt was about to become, or might be about to become, a bankrupt; or

(c) for reasons including a reason referred to in paragraph (a) or (b).

**1072C(8) [Generality of section]** Nothing in this section limits the generality of anything else in it.

**1072C(9) [Effect of constitution]** This section has effect despite anything in the company's constitution.

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**SECTION 1072D TRANSMISSION OF SHARES ON MENTAL INCAPACITY (REPLACEABLE RULE—SEE SECTION 135)**

**1072D(1) [Transmission]** If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:

(a) the person may:

(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or

(ii) by giving a completed transfer form to the company, transfer the shares to another person; and

(b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.

**1072D(2) [Election]** On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.

**1072D(3) [Transfer rules]** A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

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**1072E Trustee etc. may be registered as owner of shares**

**1072E(1) ["share"]** In this section:

**share**, in relation to a body corporate, means a share in the body that is registered in a register kept in this jurisdiction.

**1072E(2) [Trustee etc may be registered]** A trustee, executor or administrator of the estate of a dead person who was the registered holder of a share in a corporation may be registered as the holder of that share as trustee, executor or administrator of that estate.

**1072E(3) [Dead person who was entitled in equity]** A trustee, executor or administrator of the estate of a dead person who was entitled in equity to a share in a corporation may, with the consent of:

- (a) the corporation; and
- (b) the registered holder of that share;

be registered as the holder of that share as trustee, executor or administrator of that estate.

**1072E(4) [Infirm person registered holder]** If:

- (a) a person (the **administrator**) is appointed, under a law of a State or Territory relating to the administration of the estates of persons who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and
- (b) the incapable person is the registered holder of a share in a corporation;

the administrator may be registered as the holder of that share as administrator of that estate.

**1072E(5) [Bankrupt registered holder]** If:

- (a) a person (the **administrator**) is appointed, under a law of a State or Territory relating to the administration of the estates of a person who, through mental or physical infirmity, are incapable of managing their affairs, to administer the estate of a person who is so incapable; and
- (b) the incapable person is entitled in equity to a share in a corporation;

the administrator may, with the consent of the corporation and of the registered holder of that share, be registered as the holder of the share as administrator of that estate.

**1072E(6) [Bankrupt entitled in equity]** If:

- (a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and
- (b) the bankrupt is the registered holder of that share;

the Official Trustee may be registered as the holder of that share as the Official Trustee in Bankruptcy.

1072E(7) [Liabilities on registration] If:

(a) by virtue of the *Bankruptcy Act 1966*, a share in a body corporate, being the property of a bankrupt, vests in the Official Trustee in Bankruptcy; and

(b) the bankrupt is entitled in equity to that share;

the Official Trustee may, with the consent of the body and of the registered holder of that share, be registered as the holder of that share as the Official Trustee in Bankruptcy.

**1072E(8) [Identification of trustee-held shares]** A person registered under subsection (2), (3), (4), (5), (6) or (7), is, while registered as mentioned in that subsection:

(a) subject to the same liabilities in respect of the share as those to which he, she or it would have been subject if the share had remained, or had been, as the case requires, registered in the name of the dead person, the incapable person or the bankrupt, as the case may be; and

(b) subject to no other liabilities in respect of the share.

**1072E(9) [No other notice of trust etc]** Shares in a corporation registered in a register and held by a trustee in respect of a particular trust may, with the consent of the corporation, be marked in the register in such a way as to identify them as being held in respect of the trust.

**1072E(10) [Service of notice on company]** Except as provided in this section and section 169:

(a) no notice of a trust, whether express, implied or constructive, must be entered on a register kept in this jurisdiction or be receivable by ASIC; and

(b) no liabilities are affected by anything done under a preceding subsection of this section or under section 169; and

(c) nothing so done affects the body corporate concerned with notice of a trust.

1071E(11) A person must, within one month after beginning to hold shares in a proprietary company as trustee for, or otherwise on behalf of or on account of, a body corporate, serve on the company notice in writing that the person so holds the shares.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

**SECTION 249A CIRCULATING RESOLUTIONS OF PROPRIETARY COMPANIES WITH MORE THAN 1 MEMBER**

**249A(1) [Application of section]** This section applies to resolutions of the members of proprietary companies that this Act or, if a company has a constitution, the company's constitution requires or permits to be passed at a general meeting. It does not apply to a resolution under section 329 to remove an auditor.

**249A(2) [Resolution without general meeting]** A company may pass a resolution without a general meeting being held if all the members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. Each member of a joint membership must sign.

**249A(3) [More than one copy]** Separate copies of a document may be used for signing by members if the wording of the resolution and statement is identical in each copy.

**249A(4) [When resolution passed]** The resolution is passed when the last member signs.

**249A(5) [Notification and lodgement]** A company that passes a resolution under this section without holding a meeting satisfies any requirement in this Act;

- (a) to give members information or a document relating to the resolution-by giving members that information or document with the document to be signed; and
- (b) to lodge with ASIC a copy of a notice of meeting to consider the resolution -by lodging a copy of the document to be signed by members; and
- (c) to lodge a copy of a document that accompanies a notice of meeting to consider the resolution-by lodging a copy of the information or documents referred to in paragraph (a).

**249A(6) [Satisfaction of requirements]** The passage of the resolution satisfies any requirement in this Act, or a company's constitution (if any), that the resolution be passed at a general meeting.

**249A(7) [Scope of section]** This section does not affect any rule of law relating to the assent of members not given at a general meeting.

Note 1: A body corporate representative may sign a circulating resolution (see section 250D).

Note 2: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

#### SECTION 249B RESOLUTIONS OF 1 MEMBER COMPANIES

**249B(1) [Recording and signing]** A company that has only 1 member may pass a resolution by the member recording it and signing the record.

**249B(2) [Lodgement]** If this Act requires information or a document relating to the resolution to be lodged with ASIC, that requirement is satisfied by lodging the information or document with the resolution that is passed.

Note 1: A body corporate representative may sign such a resolution (see section 250D).

Note 2: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

#### SECTION 9 DICTIONARY

"Special Resolution" means:



(a) in relation to a company, a resolution:

- (i) of which notice as set out in paragraph 249L(c) has been given; and
- (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution; or

(b) in relation to a registered scheme, a resolution:

- (i) of which notice as set out in paragraph 252J(c) has been given; and
- (ii) that has been passed by at least 75% of the votes cast by members entitled to vote on the resolution.

**SECTION 249L CONTENTS OF NOTICE OF MEETING OF MEMBERS**

**249L(1) [Requirement of Notice]** A notice of a meeting of a company's members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the meeting's business; and
- (c) 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
- (d) if a member is entitled to appoint a proxy - contain a statement setting out the following information:
  - (i) that the member has a right to appoint a proxy
  - (ii) whether or not the proxy needs to be a member of the company
  - (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

**Note:** There may be other requirements for disclosure to members.

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**SECTION 249C CALLING OF MEETINGS OF MEMBERS BY A DIRECTOR (replaceable rule-see section 135)**

**249C** A director may call a meeting of the company's members.

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**SECTION 249D CALLING OF GENERAL MEETING BY DIRECTORS WHEN REQUESTED BY MEMBERS**

**249D(1) [Directors must call meetings]** The directors of a company must call and arrange to hold a general meeting on the request of:

- (a) members with at least 5% of the votes that may be cast at the general meeting; or

(b) at least 100 members who are entitled to vote at the general meeting.

**249D(1A) [Regulations may prescribe number of members]** The regulations may prescribe a different number of members for the purposes of the application of paragraph(1)(b) to:

- (a) a particular company; or
- (b) a particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

**249D(2) [Request]** The request must:

- (a) be in writing; and
- (b) state any resolution to be proposed at the meeting; and
- (c) be signed by the members making the request; and
- (d) be given to the company.

**249D(3) [More than one copy]** Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

**249D(4) [Percentage of votes]** The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.

**249D(5) [Time for meeting]** The directors must call the meeting within 21 days after the request is given to the company. The meeting is to be held not later than 2 months after the request is given to the company.

#### SECTION 249E FAILURE OF DIRECTORS TO CALL GENERAL MEETING

**249E(1) [Members may call meeting]** Members with more than 50% of the votes of all of the members who make a request under section 249D may call and arrange to hold a general meeting if the directors do not do so within 21 days after the request is given to the company.

**249E(2) [Procedure for calling meeting]** The meeting must be called in the same way-so far as is possible-in which general meetings of the company may be called. The meeting must be held not later than 3 months after the request is given to the company.

**249E(3) [Register of members]** To call the meeting the members requesting the meeting may ask the company under section 173 for a copy of the register of members. Despite paragraph 173(3)(b), the company must give the members the copy of the register without charge.

**249E(4) [Reasonable expenses]** The company must pay the reasonable expenses the members incurred because the directors failed to call and arrange to hold the meeting.

**249E(5) [Directors' liability for expenses]** The company may recover the amount of the expenses from the directors. However, a director is not liable for the amount if they prove that they took all reasonable steps to cause the directors to comply with section 249D. The directors who are liable are jointly and individually liable for the amount. If a director who is liable for the amount does not reimburse the company, the company must deduct the amount from any sum payable as fees to, or remuneration of, the director.

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**SECTION 249F CALLING OF GENERAL MEETINGS BY MEMBERS**

**249F(1) [Members may call general meeting]** Members with at least 5% of the votes that may be cast at a general meeting of the company may call, and arrange to hold, a general meeting. The members calling the meeting must pay the expenses of calling and holding the meeting.

**249F(2) [Procedure for calling meeting]** The meeting must be called in the same way-so far as is possible-in which general meetings of the company may be called.

**249F(3) [Percentage of votes]** The percentage of votes that members have is to be worked out as at the midnight before the meeting is called.

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**SECTION 249H AMOUNT OF NOTICE OF MEETINGS**

**249H(1) General rule.** Subject to subsection (2), at least 21 days notice must be given of a meeting of a company's members. However, if a company has a constitution, it may specify a longer minimum period of notice.

**249H(2) Calling meetings on shorter notice.** A company may call on shorter notice:

- (a) an AGM, if all the members entitled to attend and vote at the AGM agree beforehand; and
- (b) any other general meeting, if members with at least 95% of the votes that may be cast at the meeting agree beforehand.

A company cannot call an AGM or other general meeting on shorter notice if it is a meeting of the kind referred to in subsection (3) or (4).

**249H(3) Shorter notice not allowed-removing or appointing director.** At least 21 days notice must be given of a meeting of the members of a public company at which a resolution will be moved to:

- (a) remove a director under section 203D; or
- (b) appoint a director in place of a director removed under that section.

**249H(4) Shorter notice not allowed-removing auditor.** At least 21 days notice must be given of a meeting of a company at which a resolution will be moved to remove an auditor under section 329.

**SECTION 249J NOTICE OF MEETINGS OF MEMBERS TO MEMBERS AND DIRECTORS**

**249J(1) Notice to members and directors individually.** Written notice of a meeting of a company's members must be given individually to each member entitled to vote at the meeting and to each director. Notice need only be given to 1 member of a joint membership.

**249J(2) Notice to joint members (replaceable rule-see section 135).** Notice to joint members must be given to the joint member named first in the register of members.

**249J(3) How notice is given.** A company may give the notice of a meeting to a member:

- (a) personally; or
- (b) 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
- (c) by sending it to the fax number or electronic address (if any) nominated by the member; or
- (ca) by sending it to the member by other electronic means (if any) nominated by the member; or
- (cb) by notifying the member in accordance with subsection (3A); or
- (d) by any other means that the company's constitution (if any) permits.

**Note:** A defect in the notice given may not invalidate a meeting (see section 1322).

**249J(3A)** If the member nominates:

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

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

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

The subsection does not limit subsection (3).

**249J(4) When notice by post or fax is given (replaceable rule-see section 135).** A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

**249J(5)** A notice of meeting given to a member under paragraph (3)(cb) is taken to be given on the business day after the day on which the member is notified that the notice of meeting is available.

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**SECTION 249K AUDITOR ENTITLED TO NOTICE AND OTHER COMMUNICATIONS**

**249K** A company must give its auditor:

- (a) notice of a general meeting in the same way that a member of the company is entitled to receive notice; and
- (b) any other communications relating to the general meeting that a member of the company is entitled to receive.

Note 1: For when a company must have an auditor, see Part 2M.3.

Note 2: An auditor may appoint a representative to attend a meeting (see subsection 249V(4)).

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**SECTION 249L CONTENTS OF NOTICE OF MEETINGS OF MEMBERS**

**249L(1) [Requirements of Notice]** A notice of a meeting of a company's members must:

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate that); and
- (b) state the general nature of the meeting's business; and
- (c) 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
- (d) if a member is entitled to appoint a proxy-contain a statement setting out the following information:
  - (i) that the member has a right to appoint a proxy
  - (ii) whether or not the proxy needs to be a member of the company
  - (iii) that a member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise.

Note: There may be other requirements for disclosure to members.

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**SECTION 249M NOTICE OF ADJOURNED MEETINGS (replaceable rule-see section 135)**

**249M** When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

#### SECTION 249N MEMBERS' RESOLUTIONS

**249N(1) [Who may give notice]** The following members may give a company notice of a resolution that they propose to move at a general meeting:

- (a) members with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 members who are entitled to vote at a general meeting.

**249N(1A)** The regulations may prescribe a different number of members for the purposes of the application of paragraph (1)(b) to:

- (a) A particular company; or
- (b) A particular class of company.

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

**249N(2) [Requirements of notice]** The notice must:

- (a) be in writing; and
- (b) set out the wording of the proposed resolution; and
- (c) be signed by the members proposing to move the resolution.

**249N(3) [More than one copy]** Separate copies of a document setting out the notice may be used for signing by members if the wording of the notice is identical in each copy.

**249N(4) [Percentage of votes]** The percentage of votes that members have is to be worked out as at the midnight before the members give the notice.

#### SECTION 249O COMPANY GIVING NOTICE OF MEMBERS' RESOLUTIONS

**249O(1) [When resolution is to be considered]** If a company has been given notice of a resolution under section 249N, the resolution is to be considered at the next general meeting that occurs more than 2 months after the notice is given.

**249O(2) [Time for giving notice]** The company must give all its members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a meeting.

**249O(3) [Cost]** The company is responsible for the cost of giving members notice of the resolution if the company receives the notice in time to send it out to members with the notice of meeting.

**249O(4) [Liability for company's expenses]** The members requesting the meeting are jointly and individually liable for the expenses reasonably incurred by the company in giving members notice of the resolution if the company does not receive the members' notice in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expense itself.

**249O(5) [Company need not give notice]** The company need not give notice of the resolution:

- (a) if it is more than 1,000 words long or defamatory; or
- (b) if the members making the request are to bear the expenses of sending the notice out - unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in giving the notice.

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**SECTION 249P MEMBERS' STATEMENTS TO BE DISTRIBUTED**

**249P(1) [Members' statement]** Members may request a company to give to all its members a statement provided by the members making the request about:

- (a) a resolution that is proposed to be moved at a general meeting; or
- (b) any other matter that may be properly considered at a general meeting.

**249P(2) [Who must make request]** The request must be made by:

- (a) members with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 members who are entitled to vote at the meeting.

**249P(2A)** The regulations may prescribe a different number of members for the purposes of the application of paragraph (2)(b) to:

- (a) A particular company; or
- (b) A particular class of company

Without limiting this, the regulations may specify the number as a percentage of the total number of members of the company.

**249P(3) [Requirements for request]** The request must be:

- (a) in writing; and
- (b) signed by the members making the request; and
- (c) given to the company.

**249P(4) [More than one copy]** Separate copies of a document setting out the request may be used for signing by members if the wording of the request is identical in each copy.

**249P(5) [Percentage of votes]** The percentage of votes that members have is to be worked out as at the midnight before the request is given to the company.

**249P(6) [Distribution of Statement]** After receiving the request, the company must distribute to all its members a copy of the statement at the same time, or as soon as practicable afterwards, and in the same way, as it gives notice of a general meeting.

**249P(7) [Cost of distribution]** The company is responsible for the cost of making the distribution if the company receives the statement in time to send it out to members with the notice of meeting.

**249P(8) [Members' liability]** The members making the request are jointly and individually liable for the expenses reasonably incurred by the company in making the distribution if the company does not receive the statement in time to send it out with the notice of meeting. At a general meeting, the company may resolve to meet the expenses itself.

**249P(9) [Company need not comply in certain circumstances]** The company need not comply with the request:

- (a) if the statement is more than 1,000 words long or defamatory; or
- (b) if the members making the request are responsible for the expenses of the distribution - unless the members give the company a sum reasonably sufficient to meet the expenses that it will reasonably incur in making the distribution.

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#### **SECTION 249Q PURPOSE**

**249Q** A meeting of a company's members must be held for a proper purpose.

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#### **SECTION 249R TIME AND PLACE FOR MEETINGS OF MEMBERS**

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

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#### **SECTION 249S TECHNOLOGY**

**249S** A company may hold a meeting of its members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

Note: See section 1322 for the consequences of a member not being given a reasonable opportunity to participate.

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#### **SECTION 249T QUORUM (replaceable rule - see section 135)**

**249T(1) [Quorum]** The quorum for a meeting of a company's members is 2 members and the quorum must be present at all times during the meeting.

Note: For single member companies, see section 249B



**249T(2) [Determining whether quorum present]** In determining whether a quorum is present, count individuals attending as proxies or body corporate representatives. However, if a member has appointed more than 1 proxy or representative, count only 1 of them. If an individual is attending both as a member and as a proxy or body corporate representative, count them only once.

Note 1: For rights to appoint proxies, see section 249X.

Note 2: For body corporate representatives, see section 250D.

**249T(3) [No quorum present]** A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:

- (a) if the date is not specified - the same day in the next week; and
- (b) if the time is not specified - the same time; and
- (c) if the place is not specified - the same place.

**249T(4) [No quorum at resumed meetings]** If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

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**SECTION 249U CHAIRING MEETINGS OF MEMBERS (replaceable rule - see section 135)**

**249U(1) [Chairman]** The directors may elect an individual to chair meetings of the company's members.

**249U(2) [Directors may elect chairman]** The directors at a meeting of the company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).

**249U(3) [Members must elect chairman in certain circumstances]** The members at a meeting of the company's members must elect a member present to chair the meeting (or part of it) if:

- (a) a chair has not previously been elected by the directors to chair the meeting; or
- (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

**249U(4) [Adjournment of meeting]** The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

**SECTION 249V AUDITOR'S RIGHT TO BE HEARD AT GENERAL MEETINGS**

**249V(1) [Attendance at meeting]** A company's auditor is entitled to attend any general meeting of the company.

Note: Section 250RA imposes on the auditor of a listed public company an obligation to attend or be represented at the AGM.

**249V(2) [Entitlement to be heard]** The auditor is entitled to be heard at the meeting on any part of the business of the meeting that concerns the auditor in their capacity as auditor.

**249V(3) [Retirement or removal from office]** The auditor is entitled to be heard even if:

- (a) the auditor retires at the meeting; or
- (b) the meeting passes a resolution to remove the auditor from office.

**249V(4) [Auditor's representative]** The auditor may authorise a person in writing as their representative for the purpose of attending and speaking at any general meeting.

Note 1: At an AGM, members may ask the auditor questions (see section 250T).

Note 2: For when a company must have an auditor, see Part 2M.3.

**SECTION 249W ADJOURNED MEETINGS**

**249W(1) When resolution passed** A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

**249W(2) Business at adjourned meetings (replaceable rule - see section 135)** Only unfinished business is to be transacted at a meeting resumed after an adjournment.

**SECTION 249X WHO CAN APPOINT A PROXY (replaceable rule for proprietary companies and mandatory rule for public companies - see section 135)**

**249X(1) [Appointment of proxy]** A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.

**249X(1A) [Appointee may be individual or body corporate]** The person appointed as the member's proxy may be an individual or a body corporate.

**249X(2) [Proportion or number of votes]** The appointment may specify the proportion or number of votes that the proxy may exercise.

**249X(3) [Members' entitlement to appoint proxies]** Each member may appoint a proxy. If the member is entitled to cast 2 or more votes at the meeting, they may appoint 2 proxies. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes each proxy may exercise, each proxy may exercise half of the votes.

**249X(4) [Fractions of votes]** Disregard any fractions of votes resulting from the application of subsection (2) or (3).

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#### SECTION 249Y RIGHTS OF PROXIES

**249Y(1) Rights of proxies** A proxy appointed to attend and vote for a member has the same rights as the member:

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

**249Y(2) Proxy's right to vote** If a company has a constitution, the constitution may provide that a proxy is not entitled to vote on a show of hands.

Note: Even if the proxy is not entitled to vote on a show of hands, they may make or join in the demand for a poll.

**249Y(3) Effect of member's presence on proxy's authority** A company's constitution (if any) may provide for the effect that a member's presence at a meeting has on the authority of a proxy appointed to attend and vote for the member. However, if the constitution does not deal with this, a proxy's authority to speak and vote for a member at a meeting is suspended while the member is present at the meeting.

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#### SECTION 249Z COMPANY SENDING APPOINTMENT FORMS OR LISTS OF PROXIES MUST SEND TO ALL MEMBERS

**249Z(1)** If a company sends a member a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:

- (a) if the member requested the form or list - the company must send the form or list to all members who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
- (b) 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.

(2) An offence based on subsection (1) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

**SECTION 250A APPOINTING A PROXY**

**250A(1) [Valid appointment]** An appointment of a proxy is valid if it is signed by the member of the company making the appointment and contains the following information:

- (a) the member's name and address
- (b) the company's name
- (c) the proxy's name or the name of the office held by the proxy
- (d) the meetings at which the appointment may be used.

An appointment may be a standing one.

**250A(1A) [Regulations may prescribe different requirements for authentication]** The regulations made for the purposes of subsection (1) may prescribe different requirements for the authentication of an appointment given to the company by different means (electronic or otherwise).

**250A(2) [Company's constitution]** If a company has a constitution, the constitution may provide that an appointment is valid even if it contains only some of the information required by subsection (1).

**250A(3) [Undated appointment]** An undated appointment is taken to have been dated on the day it is given to the company.

**250A(4) [How proxy is to vote]** An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (a) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way; and
- (b) if the proxy has 2 or more appointments that specify different ways to vote on the resolution - the proxy must not vote on a show of hands; and
- (c) if the proxy is the chair - the proxy must vote on a poll, and must vote that way; and
- (d) if the proxy is not the chair - the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a member, this subsection does not affect the way that the person can cast any votes they hold as a member.

Note: A company's constitution may provide that a proxy is not entitled to vote on a show of hands (see subsection 249Y(2)).

**250A(5) [Offence]** A person who contravenes subsection (4) is guilty of an offence, but only if their appointment as a proxy resulted from the company sending to members:

- (a) a list of persons willing to act as proxies; or
- (b) a proxy appointment form holding the person out as being willing to act as a proxy.

**250A(6) [Witness]** An appointment does not have to be witnessed.

**250A(7) [Later appointment]** A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

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#### SECTION 250B PROXY DOCUMENTS

**250B(1) Documents to be received by company before meeting** For an appointment of a proxy for a meeting of a company's members to be effective, the following documents must be received by the company at least 48 hours before the meeting:

- (a) the proxy's appointment.
- (b) if the appointment is signed by the appointor's attorney - the authority under which the appointment was signed or a certified copy of the authority.

**250B(2) Documents received following adjournment of meeting** If a meeting of a company's members has been adjourned, an appointment and any authority received by the company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

**250B(3) Receipt of documents** A company receives an appointment authority when it is received at any of the following:

- (a) the company's registered office.
- (b) a fax number at the company's registered office.
- (c) a place, fax number or electronic address specified for the purpose in the notice of meeting.

**250B(4) Constitution or notice of meeting may provide for different notification period** The company's constitution (if any) or the notice of meeting may reduce the period of 48 hours referred to in subsection (1) or (2).

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#### SECTION 250C VALIDITY OF PROXY VOTE

**250C(1) Proxy vote valid even if proxy cannot vote as member** A proxy who is not entitled to vote on a resolution as a member may vote as a proxy for another member who can vote if their appointment specifies the way they are to vote on the resolution and they vote that way.

**250C(2) Proxy vote valid even if member dies, revokes appointment etc (replaceable rule - see section 135)** Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:

- (a) the appointing member dies; or
- (b) the member is mentally incapacitated; or
- (c) the member revokes the proxy's appointment; or

- (d) the member revokes the authority under which the proxy was appointed by a third party; or
- (e) the member transfers the share in respect of which the proxy was given.

Note: A proxy's authority to vote is suspended while the member is present at the meeting (see subsection 249Y(3)).

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#### SECTION 250D BODY CORPORATE REPRESENTATIVE

**250D(1) [Appointment of representative]** A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (a) at meetings of a company's members; or
- (b) at meetings of creditors or debenture holders; or
- (c) relating to resolutions to be passed without meetings.
- (d) in the capacity of a member's proxy appointed under subsection 249X(1).

The appointment may be a standing one.

**250D(2) [Restrictions in representatives powers]** The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

**250D(3) [More than 1 representative]** A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

**250D(4) [Representative's power]** Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

Note: For resolutions of members without meetings, see sections 249A and 249B.

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#### SECTION 250E HOW MANY VOTES A MEMBER HAS (replaceable rule - see section 135)

**250E(1) Company with share capital** Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:

- (a) on a show of hands, each member has 1 vote; and
- (b) on a poll, each member has 1 vote for each share they hold.

Note: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).

**250E(2) Company without share capital** Each member of a company that does not have a share capital has 1 vote, both on a show of hands and a poll.

**250E(3) Chair's casting vote** The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

Note 1: The chair may be precluded from voting, for example, by a conflict of interest.

Note 2: For rights to appoint proxies, see section 249X.

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#### SECTION 250F JOINTLY HELD SHARES (replaceable rule - see section 135)

**250F** If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

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#### SECTION 250G OBJECTIONS TO RIGHT TO VOTE (replaceable rule - see section 135)

**250G** A challenge to a right to vote at a meeting of a company's members:

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

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#### SECTION 250H VOTES NEED NOT ALL BE CAST IN THE SAME WAY

**250H** On a poll a person voting who is entitled to 2 or more votes:

- (a) need not cast all their votes; and
- (b) may cast their votes in different ways.

Note: For proxy appointments that specify the way the proxy is to vote on a particular resolution, see subsection 250A(4).

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#### SECTION 250J HOW VOTING IS CARRIED OUT (replaceable rule-see section 135)

**250J(1) [Show of hands]** A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.

**250J(1A) [Proxy votes]** Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

**250J(2) [Result]** On a show of hands, a declaration by the chair is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 250L(3)(c)).

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**SECTION 250K MATTERS ON WHICH A POLL MAY BE DEMANDED**

**250K(1) [Any resolution]** A poll may be demanded on any resolution.

**250K(2) [Constitution]** If a company has a constitution, the constitution may provide that a poll cannot be demanded on any resolution concerning:

- (a) the election of the chair of a meeting; or
- (b) the adjournment of a meeting.

**250K(3) [Withdrawal of demand]** A demand for a poll may be withdrawn.

**SECTION 250L WHEN A POLL IS EFFECTIVELY DEMANDED**

**250L(1) [Who may demand a poll]** At a meeting of a company's members, a poll may be demanded by:

- (a) at least 5 members entitled to vote on the resolution; or
- (b) members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chair.

Note: A proxy may join in the demand for a poll (see paragraph 249Y(1)(c)).

**250L(2) [Constitution]** If a company has a constitution, the constitution may provide that fewer members or members with a lesser percentage of votes may demand a poll.

**250L(3) [When poll may be demanded]** The poll may be demanded:

- (a) before a vote is taken; or
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

**250L(4) [Working out percentage of votes]** The percentage of votes that members have is to be worked out as at the midnight before the poll is demanded.



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**SECTION 250M WHEN AND HOW POLLS MUST BE TAKEN (replaceable rule-see section 135)**

**250M(1) [When poll must be taken]** A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

**250M(2) [Election of chair or adjournment]** A poll on the election of a chair or on the question of an adjournment must be taken immediately.

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**SECTION 246B VARYING AND CANCELLING CLASS RIGHTS**

**246B(1) If constitution sets out procedure.** If a company has a constitution that sets out the procedure for varying or cancelling:

- (a) for a company with a share capital-rights attached to shares in a class of shares; or
- (b) for a company without a share capital-rights of members in a class of members;

those rights may be varied or cancelled only in accordance with the procedure. The procedure may be changed only if the procedure itself is complied with.

**246B(2) If constitution does not set out procedure.** If a company does not have a constitution, or has a constitution that does not set out the procedure for varying or cancelling:

- (a) for a company with a share capital-rights attached to shares in a class of shares; or
- (b) for a company without a share capital-rights of members in a class of members;

those rights may be varied or cancelled only by special resolution of the company; and

- (c) by special resolution passed at a meeting:

- (i) for a company with a share capital of the class of members holding shares in the class; or
- (ii) for a company without a share capital of the class of members whose rights are being varied or cancelled; or

- (d) with the written consent of the members with at least 75% of the votes in the class.

**246B(3) [Notice]** The company must give written notice of the variation or cancellation to the members of the class within 7 days after the variation or cancellation is made.

**SECTION 246C CERTAIN ACTIONS TAKEN TO VARY RIGHTS ETC.**

**246C(1) Company with share capital.** If the shares in a class of shares in a company are divided into further classes, and after the division the rights attached to all of those shares are not the same:

- (a) the division is taken to vary the rights attached to every share that was in the class existing before the division; and

- (b) members who hold shares to which the same rights are attached after the division form a separate class.

**246C(2) [Variation of rights]** If the rights attached to some of the shares in a class of shares in a company are varied:

- (a) The variation is taken to vary the rights attached to every other share that was in the class existing before the variation; and
- (b) members who hold shares to which the same rights are attached after the variation form a separate class.

**246C(3) Company without share capital.** If the members in a class of members in a company without share capital are divided into further classes of members, and after the division the rights of all of those members are not the same:

- (a) the division is taken to vary the rights of every member who was in the class existing before the division ;and
- (b) members who have the same rights after the division form a separate class.

**246C(4) [Variation of rights]** If the rights of some of the members in a class of members in a company without a share capital are varied:

- (a) the variation is taken to vary the rights of every other member who was in the class existing before the variation; and
- (b) members who have the same rights after the variation form a separate class.

**246C(5) Company with 1 class of shares issuing new class of shares.** If a company with 1 class of shares issues new shares, the issue is taken to vary the rights attached to shares already issued if:

- (a) the rights attaching to the new shares are not the same as the rights attached to shares already issued; and:
- (b) those rights are not provided for in:
  - (i) the company's constitution (if any); or
  - (ii) a notice, document or resolution that is lodged with ASIC.

**246C(6) [Preference shares]** If a company issues new preference share that rank equally with existing preference shares, the issue is taken to vary the rights attached to the existing preference shares unless the issue is authorised by:

- (a) the terms of issue of the existing preference shares; or
- (b) the company's constitution (if any) as in force when the existing preference shares were issued.

**SECTION 246D VARIATION, CANCELLATION OR MODIFICATION WITHOUT UNANIMOUS SUPPORT OF CLASS**

**246D(1) [Disagreement of members]** If members in a class do not all agree (whether by resolution or written consent) to:

- (a) a variation or cancellation of their rights; or

(b) a modification of the company's constitution (if any) to allow their rights to be varied or cancelled; members with at least 10% of the votes in the class may apply to the Court to have the variation, cancellation or modification set aside.

**246D(2) [Time for application]** An application may only be made within 1 month after the variation, cancellation or modification is made.

**246D(3) [When variation etc takes effect]** The variation, cancellation or modification takes effect:

- (a) if no application is made to the Court to have it set aside-1 month after the variation, cancellation or modification is made; or
- (b) if an application is made to the Court to have it set aside-when the application is withdrawn or finally determined.

**246D(4) [Appointment of applicant]** The members of the class who want to have the variation, cancellation or modification set aside may appoint 1 or more of themselves to make the application on their behalf. The appointment must be in writing.

**246D(5) [Court may set aside]** The Court may set aside the variation, cancellation or modification if it is satisfied that it would unfairly prejudice the applicants. However, the Court must confirm the variation, cancellation or modification if the Court is not satisfied of unfair prejudice.

**246D(6) [Lodgement with ASIC]** Within 14 days after the Court makes an order, the company must lodge a copy of it with ASIC.

**SECTION 246E VARIATION, CANCELLATION OR MODIFICATION WITH UNANIMOUS SUPPORT OF CLASS**

**246E** If the members in a class all agree (whether by resolution or written consent) to the variation, cancellation or modification, it takes effect:

- (a) if no later date is specified in the resolution or consent-on the date of the resolution or consent; or
- (b) on a later date specified in the resolution or consent.

**SECTION 246F COMPANY MUST LODGE DOCUMENTS AND RESOLUTIONS WITH ASIC**

**246F(1) [Lodgement of notice]** A company must lodge with ASIC a notice in the prescribed form setting out particulars of any of the following:

- (a) a division of shares in the company into classes if the shares were not previously so divided
- (b) a conversion of shares in a class of shares in the company into shares in another class.

**246F(2) [Time for lodgement of notice]** The notice must be lodged within 14 days after the division or conversion.

**246F(3) [Lodgement of certain documents]** A public company must lodge with ASIC a copy of each document (including an agreement or consent) or resolution that:

- (a) does any of the following:
  - (i) attaches rights to issued or unissued shares

- (ii) varies or cancels rights attaching to issued or unissued shares
- (iii) varies or cancels rights of members in a class of members of a company that does not have a share capital
- (iv) binds a class of members; and

(b) is not already lodged with ASIC.

This also applies to a proprietary company that has applied under Part 2B.7 to change to a public company, while its application has not yet been determined.

**246F(4) [Time for lodgement of documents]** The document must be lodged within 14 days after it is made. The resolution must be lodged within 14 days after it is passed.

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#### SECTION 246G MEMBER'S COPIES OF DOCUMENTS AND RESOLUTIONS

**246G(1) [Copy]** A member of a company may ask the company in writing for a copy of a document or resolution referred to in section 246F. The company must send the copy to the member.

**246G(2) [Payment]** If the company requires the member to pay for the copy, the company must send it:

- (a) within 7 days after the company receives the payment; or
- (b) within any longer period required by ASIC.

**246G(3) [Prescribed payment]** The amount of any payment the company requires cannot exceed the prescribed amount.

**246G(4) [Payment not required]** If the company does not require payment for the copy, the company must send it:

- (a) within 7 days after the member asks for it; or
- (b) within any longer period approved by ASIC.

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#### SECTION 201A MINIMUM NUMBER OF DIRECTORS

**201A(1) Proprietary companies.** A proprietary company must have at least one director. That director must ordinarily reside in this jurisdiction.

**201A(2) Public companies.** A public company must have at least 3 directors (not counting alternate directors). At least 2 directors must ordinarily reside in this jurisdiction.

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**SECTION 201D CONSENT TO ACT AS DIRECTOR**

**201D(1) [Contravention]** A company contravenes this subsection if a person does not give the company a signed consent to act as director of the company before being appointed.

**201D(2) [Strict liability offence]** The company must keep the consent.

**201D(3)** An offence based on subsection (1) or (12) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

**SECTION 204C CONSENT TO ACT AS SECRETARY**

**204C(1) [Contravention]** A company contravenes this subsection if a person does not give the company a signed consent to act as secretary of the company before being appointed.

**222A(2) [Company must keep consent]** The company must keep the consent.

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**SECTION 201G COMPANY MAY APPOINT A DIRECTOR (replaceable rule-see section 135)**

**201G** A company may appoint a person as a director by resolution passed in general meeting.

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**SECTION 201H DIRECTORS MAY APPOINT OTHER DIRECTORS (replaceable rule-see section 135)**

**201H(1) Appointment by other directors.** The directors of a company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum.

**201H(2) Proprietary company - confirmation by meeting within 2 months.** If a person is appointed under this section as a director of a proprietary company, the company must confirm the appointment by resolution within 2 months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director of the company at the end of those 2 months.

**201H(3) Public company - confirmation by next AGM.** If a person is appointed under this section as a director of a public company, the company must confirm the appointment by resolution at the company's next AGM. If the appointment is not confirmed, the person ceases to be a director of the company at the end of the AGM.

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**SECTION 201F SPECIAL RULES FOR THE APPOINTMENT OF DIRECTORS FOR SINGLE DIRECTOR/SINGLE SHAREHOLDER PROPRIETARY COMPANIES**

**201F(1) [Appointment of another director]** The director of a proprietary company who is its only director and only shareholder may appoint another director by recording the appointment and signing the record.

**201F(2) Appointment of new director on death, mental incapacity or bankruptcy.** If a person who is the only director and the only shareholder of a proprietary company:

- (a) dies; or
- (b) cannot manage the company because of the person's mental incapacity;

and a personal representative or trustee is appointed to administer the person's estate or property, the personal representative or trustee may appoint a person as the director of the company.

**201F(3) [Trustee in bankruptcy may appoint new director]** If:

- (a) the office of the director of a proprietary company is vacated under subsection 206B(3) or (4) because of the bankruptcy of the director; and
- (b) the person is the only director and the only shareholder of the company; and
- (c) a trustee in bankruptcy is appointed to the person's property;

the trustee may appoint a person as the director of the company.

**201F(4) [Self-appointment]** A person who has a power of appointment under subsection (2) or (3) may appoint themselves as director.

**201F(5) [Appointment under subs(2), (3) or (4)]** A person appointed as a director of a company under subsection (2), (3) or (4) holds office as if they had been appointed in the usual way.

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- (b) the person is the only director and the only shareholder of the company; and
- (c) a trustee in bankruptcy is appointed to the person's property;

the trustee may appoint a person as the director of the company.

**201F(4)** A person who has a power of appointment under subsection (2) or (3) may appoint themselves as director.

**201F(5)** A person appointed as a director of a company under subsection (2), (3) or (4) holds office as if they had been appointed in the usual way.

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**SECTION 201K ALTERNATE DIRECTORS (replaceable rule--see section 135)**

**201K(1) [Appointment of alternate director]** With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.

**201K(2) [Notice of meetings]** If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.

**201K(3) [Exercise of powers]** When an alternate exercises the director's powers, the exercise of the powers is just as effective as if the powers were exercised by the director.

**201K(4) [Termination of appointment]** The appointing director may terminate the alternate's appointment at any time.

**201K(5) [Writing]** An appointment or its termination must be in writing. A copy must be given to the company.

Note: ASIC must be given notice of the appointment and termination of appointment of an alternate (see subsections 205B(2) and (5)).

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**SECTION 203C REMOVAL BY MEMBERS - PROPRIETARY COMPANIES (replaceable rule - see section 135)**

**203C** A proprietary company:

- (a) may by resolution remove a director from office; and
- (b) may by resolution appoint another person as a director instead.

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**SECTION 203A DIRECTOR MAY RESIGN BY GIVING WRITTEN NOTICE TO COMPANY (replaceable rule - see section 135)**

**203A** A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.

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#### SECTION 206A DISQUALIFIED PERSON NOT TO MANAGE CORPORATIONS

**206A(1) [Commission of offence]** A person who is disqualified from managing corporations under this Part commits an offence if:

- (a) they make, or participate in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
- (b) they exercise the capacity to affect significantly the corporation's financial standing; or
- (c) they communicate instructions or wishes (other than advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation) to the directors of the corporation:
  - (i) knowing that the directors are accustomed to act in accordance with the person's instructions or wishes; or
  - (ii) intending that the directors will act in accordance with those instructions or wishes.

It is a defence to the contravention if the person had permission to manage the corporation under either section 206F or 206G and their conduct was within the terms of that permission.

Note: Under section 1274AA, ASIC is required to keep a record of persons disqualified from managing corporations.

**206A(1A) [Strict liability attaches to disqualified persons managing corporations]** For an offence based on subsection (1), strict liability applies to the circumstance, that the person is disqualified from managing corporations under this Part.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**206A(1B) [Defence]** It is a defence to a contravention of subsection (1) if the person had permission to manage the corporation under either section 206F or 206G and their conduct was within the terms of that permission.

**206A(2) [Ceasing to be a director, alternate director or secretary]** A person ceases to be a director, alternate director or a secretary of a company if:

- (a) the person becomes disqualified from managing corporations under this Part; and
- (b) they are not given permission to manage the corporation under section 206F or 206G.

Note: If a person ceases to be a director, alternate director or a secretary under subsection (2) the company must notify ASIC (see subsection 205B (1)).

#### SECTION 206B - AUTOMATIC DISQUALIFICATION

**206B(1) Convictions** (1) A person becomes disqualified from managing corporations if the person:

- (a) is convicted on indictment of an offence that:
  - (i) concerns the making, or participation in making, of decisions that affect the whole or a substantial part of the business of the corporation; or
  - (ii) concerns an act that has the capacity to affect significantly the corporation's financial standing; or



(b) is convicted of an offence that:

(i) is a contravention of the Corporations Act and is punishable by imprisonment for a period greater than 12 months; or

(ii) involves dishonesty and is punishable by imprisonment for at least 3 months; or

(c) is convicted of an offence against the law of a foreign country that is punishable by imprisonment for a period greater than 12 months.

The offences covered by paragraph (a) and subparagraph (b)(ii) include offences against the law of a foreign country.

**206B(2) [Period of disqualification]** The period of disqualification under subsection (1) starts on the day the person is convicted and lasts for:

(a) if the person does not serve a term of imprisonment—5 years after the day on which they are convicted; or

(b) if the person serves a term of imprisonment—5 years after the day on which they are released from prison.

**206B(3) Bankruptcy, deed of arrangement or composition with creditors** A person is disqualified from managing corporations if the person is an undischarged bankrupt under the law of this jurisdiction, its external territories or another country.

**206B(4) [Effect of deed of arrangement or composition]** A person is disqualified from managing corporations if:

- (a) the person has executed a deed of arrangement under:
  - (i) Part X of the Bankruptcy Act 1966; or
  - (ii) a similar law of an external Territory or a foreign country; and
- (b) the terms of the agreement have not been fully complied with.

**206B(5)** A person is disqualified from managing corporations at a particular time if the person is, at that time, disqualified from managing Aboriginal and Torres Strait Islander corporations under Part 6-5 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006*.

#### SECTION 206BA EXTENSION OF PERIOD OF AUTOMATIC DISQUALIFICATION

**206BA(1) [Application of section]** This section applies if:

- (a) under subsection 206B(1); or
- (b) as a result of the operation of subsection 279-5(1) of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* and subsection 206B(5) of this Act:

a person is disqualified from managing corporations on being convicted of an offence.

**206BA(2) [Extension of up to additional 15 years]** On application by ASIC, the Court may extend by up to an additional 15 years the period of disqualification.

**206BA(3) [When ASIC must apply]** ASIC must apply:

- (a) before the period of disqualification begins; or
- (b) before the end of the first year of the disqualification.

**206BA(4) [ASIC may apply only once]** ASIC may apply only once in relation to the disqualification.

**206BA(5) [Matters Court may have regard to]** In determining whether an extension is justified (and if so, for how long), the Court may have regard to any matters that the Court considers appropriate.

#### SECTION 206C COURT POWER OF DISQUALIFICATION—CONTRAVENTION OF CIVIL PENALTY PROVISION

**206C(1) [Power of Court]** On application by ASIC, the Court may disqualify a person from managing corporations for a period that the Court considers appropriate if:

- (a) a declaration is made under section 1317E (civil penalty provision) that the person has contravened a civil penalty provision; and
- (b) the Court is satisfied that the disqualification is justified.

Note: The civil penalty provisions are subsection 180(1) and (2), 181(1) and (2), 182(1) and (2), 183(1) and (2), 209(2), 254L(2), 256D(3), 259F(2), 260D(2) or 344(1) or section 588G.

**206C(2) [Relevant circumstances]** In determining whether the disqualification is justified, the Court may have regard to:

- (a) the person's conduct in relation to the management, business or property of any corporation; and
- (b) any other matters that the Court considers appropriate.

#### SECTION 206D COURT POWER OF DISQUALIFICATION—INSOLVENCY AND NON-PAYMENT OF DEBT

**206D(1) [Power of Court]** On application by ASIC, the Court may disqualify a person from managing corporations for up to 10 years if:

- (a) within the last 7 years, the person has been an officer of 2 or more corporations when they have failed; and
- (b) the Court is satisfied that:
  - (i) the manner in which the corporation was managed was wholly or partly responsible for the corporation failing; and
  - (ii) the disqualification is justified.

**206D(2) [Failure of corporation]** For the purposes of subsection (1), a corporation fails if:

- (a) a Court orders the corporation to be wound up under section 459B because the Court is satisfied that the corporation is insolvent; or
- (b) the corporation enters into voluntary liquidation and creditors are not fully paid or are unlikely to be fully paid; or
- (c) the corporation executes a deed of company arrangement and creditors are not fully paid or are unlikely to be fully paid; or
- (d) the corporation ceases to carry on business and creditors are not fully paid or are unlikely to be fully paid; or
- (e) a levy of execution against the corporation is not satisfied; or
- (f) a receiver, receiver and manager, or provisional liquidator is appointed in relation to the corporation; or
- (g) the corporation enters into a compromise or arrangement with its creditors under Part 5.1; or
- (h) the corporation is wound up and a liquidator lodges a report under subsection 533(1) about the corporation's inability to pay its debts.

Note: To satisfy paragraph(h), a corporation must begin to be wound up while the person is an officer or within 12 months after the person ceases to be an officer. However, the report under subsection 533(1) may be lodged by the liquidator at a time that is more than 12 months after the person ceases to be an officer. Sections 513A to 513D contain rules about when a company begins to be wound up.

**206D(3) [Relevant circumstances]** In determining whether the disqualification is justified, the Court may have regard to:

- (a) the person's conduct in relation to the management, business or property of any corporation; and
- (b) any other matters that the Court considers appropriate.

#### **SECTION 206E COURT POWER OF DISQUALIFICATION—REPEATED CONTRAVENTIONS OF ACT**

**206E(1) [Power of Court]** (1) On application by ASIC, the Court may disqualify a person from managing corporations for the period that the Court considers appropriate if:

- (a) the person:
  - (i) has at least twice been an officer of a body corporate that has contravened this Law while they were an officer of the body corporate and each time the person has failed to take reasonable steps to prevent the contravention; or
  - (ii) has at least twice contravened this Law while they were an officer of a body corporate; or
  - (iii) has been an officer of a body corporate and has done something that would have contravened subsection 180(1) or section 181 if the body corporate had been a corporation; and
- (b) the Court is satisfied that the disqualification is justified.

**206E(2) [Relevant circumstances]** In determining whether the disqualification is justified, the Court may have regard to:

- (a) the person's conduct in relation to the management, business or property of any corporation; and
- (b) any other matters that the Court considers appropriate.

**SECTION 206F ASIC'S POWER OF DISQUALIFICATION**

**206F(1) Power to disqualify** (1)ASIC may disqualify a person from managing corporations for up to 5 years if:

- (a) within 7 years immediately before ASIC gives a notice under paragraph (b)(i):
  - (i) the person has been an officer of 2 or more corporations; and
  - (ii) while the person was an officer, or within 12 months after the person ceased to be an officer of those corporations, each of the corporations was wound up and a liquidator lodged a report under subsection 533(1) about the corporation's inability to pay its debts; and
- (b) ASIC has given the person:
  - (i) a notice in the prescribed form requiring them to demonstrate why they should not be disqualified; and
  - (ii) an opportunity to be heard on the question; and
- (c) ASIC is satisfied that the disqualification is justified.

**206F(2) Grounds for disqualification** In determining whether disqualification is justified, ASIC:

- (a) must have regard to whether any of the corporations mentioned in subsection (1) were related to one another; and
- (b) may have regard to:
  - (i) the person's conduct in relation to the management, business or property of any corporation; and
  - (ii) any other matters that ASIC considers appropriate.

**206F(3) Notice of disqualification** If ASIC disqualifies a person from managing corporations under this section, ASIC must serve a notice on the person advising them of the disqualification. The notice must be in the prescribed form.

**206F(4) Start of disqualification** The disqualification takes effect from the time when a notice referred to in subsection (3) is served on the person.

**206F(5) ASIC power to grant leave** ASIC may give a person who it has disqualified from managing corporations under this Part written permission to manage a particular corporation or corporations. The permission may be expressed to be subject to conditions and exceptions determined by ASIC.

**SECTION 206G COURT POWER TO GRANT LEAVE**

**206G(1) [Application for leave]** A person who is disqualified from managing corporations may apply to the Court for leave to manage:

- (a) corporations; or

(b) a particular class of corporations; or

(c) a particular corporation;

if the person was not disqualified by ASIC.

**206G(2) [Time limit]** The person must lodge a notice with ASIC at least 21 days before commencing the proceedings. The notice must be in the prescribed form.

**206G(3) [Order may be conditional]** The order granting leave may be expressed to be subject to exceptions and conditions determined by the Court.

Note: If the Court grants the person leave to manage the corporation, the person may be appointed as a director (see section 201B) or secretary (see section 204B) of a company.

**206G(4) [Lodgement with ASIC]** The person must lodge with ASIC a copy of any order granting leave within 14 days after the order is made.

**206G(5) [Revocation of leave]** On application by ASIC, the Court may revoke the leave. The order revoking leave does not take effect until it is served on the person.

#### SECTION 206H TERRITORIAL APPLICATION OF THIS PART

**206H** Part 2D.6 does not apply in respect of an act or omission by a person while they are managing a corporation that is a foreign company unless the act or omission occurred in connection with:

- (a) the foreign company carrying on business in Australia; or
- (b) an act that the foreign company does, or proposes to do, in Australia; or
- (c) a decision by the foreign company whether or not to do, or refrain from doing, an act in Australia.

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#### SECTION 201M EFFECTIVENESS OF ACTS BY DIRECTORS

**201M(1) [Acts have effect where appointment or its continuance invalid]** An act by a director is effective even if their appointment, or the continuance of their appointment, is invalid because the company or director did not comply with the company's constitution (if any) or any provision of this Act.

**201M(2) [Limitations]** Subsection (1) does not deal with the question whether an effective act by a director:

- (a) Binds the company in its dealings with other people; or
- (b) Makes the company liable to another person.

Note: The kinds of acts that this Section validates are those that are only legally effective if the person doing them is a director (for example, calling a meeting of the company's members or signing a document to be lodged with ASIC or minutes of a meeting). Sections 128-130 contain rules about the assumptions people are entitled to make when dealing with a company and its officers.

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**SECTION 198A POWERS OF DIRECTORS (replaceable rule-see section 135)**

**198A(1) [Business of company]** The business of a company is to be managed by or under the direction of the directors.

Note: See Section 198E for special rules about the powers of directors who are the single director/shareholder of proprietary companies.

**198A(2) [Powers directors may exercise]** The directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting.

Note: For example, the directors may issue shares, borrow money and issue debentures.

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**SECTION 198B NEGOTIABLE INSTRUMENTS (replaceable rule-see section 135)**

**198B(1) [Negotiable instruments]** Any 2 directors of a company that has 2 or more directors, or the director of a proprietary company that has only 1 director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

**198B(2) [Method of signing, etc]** The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

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**SECTION 198E SINGLE DIRECTOR/SHAREHOLDER PROPRIETARY COMPANIES**

**198E(1) Powers of director.** The director of a proprietary company who is its only director and only shareholder may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting. The business of the company is to be managed by or under the direction of the director.

Note: For example, the director may issue shares, borrow money and issue debentures.

**198E(2) Negotiable instruments.** The director of a proprietary company who is its only director and only shareholder may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The director may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

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**SECTION 201J APPOINTMENT OF MANAGING DIRECTORS (replaceable rule-see section 135)**

**201J** The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.

**SECTION 203F TERMINATION OF APPOINTMENT OF MANAGING DIRECTOR (replaceable rule – see section 135)**

**203F(1) [Ceases to be a director]** A person ceases to be managing director if they cease to be a director

**203F(2) [Powers to revoke or vary appointment]** The directors may revoke or vary any appointment of a managing director

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#### SECTION 198D DELEGATION

**198D(1) [Delegation of powers]** Unless the company's constitution provides otherwise, the directors of a company may delegate any of their powers to:

- (a) a committee of directors; or
- (b) a director; or
- (c) an employee of the company; or
- (d) any other person.

Note: The delegation must be recorded in the company's minute book (see section 251A).

**198D(2) [Powers of a delegate]** The delegate must exercise the powers delegated in accordance with any directions of the directors.

**198D(3) [Effect of exercise of powers]** The exercise of the power by the delegate is as effective as if the directors had exercised it.

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#### SECTION 191 MATERIAL PERSONAL INTEREST - DIRECTOR'S DUTY TO DISCLOSE

##### Director's Duty To Notify Other Directors Of Material Personal Interest When Conflict Arises

**191(1)** A director of a company who has a material personal interest in a matter that relates to the affairs of the company must give the other directors notice of the interest unless subsection (2) says otherwise.

**191(2)** The director does not need to give notice of an interest under subsection (1) if:

- (a) The interest:
  - (i) arises because the director is a member of the company and is held in common with the other members of the company; or
  - (ii) arises in relation to the director's remuneration as a director of the company; or
  - (iii) relates to a contract the company is proposing to enter into that is subject to approval by the members and will not impose any obligation on the company if it is not approved by the members; or

- (iv) arises merely because the director is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the company; or
  - (v) arises merely because the director has a right of subrogation in relation to a guarantee or indemnity referred to in subparagraph (iv); or
  - (vi) relates to a contract that insures, or would insure, the director against liabilities the director incurs as an officer of the company (but only if the contract does not make the company or a related body corporate the insurer); or
  - (vii) relates to any payment by the company or a related body corporate in respect of an indemnity permitted under Section 199A or any contract relating to such an indemnity; or
  - (viii) is in a contract, or proposed contract, with, or for the benefit of, or on behalf of, a related body corporate and arises merely because the director is a director of the related body corporate; or
- (b) the company is a proprietary company and the other directors are aware of the nature and extent of the interest and its relation to the affairs of the company; or
- (i) the director has already given notice of the nature and extent of the interest and its relation to the affairs of the company under subsection (1)
  - (ii) if a person who was not a director of the company at the time when the notice under subsection (1) was given is appointed as a director of the company – the notice is given to that person
  - (iii) the nature or extent of the interest has not materially increased above that disclosed in the notice; or
- (c) the director has given a standing notice of the nature and extent of the interest under Section 192 and the notice is still effective in relation to the interest.

Note: Subparagraph (c)(ii) – the notice may be given to the person referred to in this subparagraph by someone other than the director to whose interests it relates (for example, by the secretary).

**191(3)** The notice required by subsection (1) must:

- (a) Give details of:
- (i) the nature and extent of the interest; and
  - (ii) the relation of the interest to the affairs of the company; and
- (b) Be given at a directors' meeting as soon as practicable after the director becomes aware of their interest in the matter.

The details must be recorded in the minutes of the meeting.

**191(4) [Effect of contravention by director]** A contravention of this Section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

**191(5) [Section does not apply to single director proprietary company]** This Section does not apply to a proprietary company that has only one director.



**SECTION 192 DIRECTOR MAY GIVE OTHER DIRECTORS STANDING NOTICE ABOUT AN INTEREST**

**192(1) [Power to give notice]** A director of a company who has an interest in a matter may give the other directors standing notice of the nature and extent of the interest in the matter in accordance with subsection (2). The notice may be given at any time and whether or not the matter relates to the affairs of the company at the time the notice is given.

Note: The standing notice may be given to the other directors before the interest becomes a material personal interest.

**192(2)** The notice under subsection (1) must:

- (a) give details of the nature and extent of the interest; and
- (b) be given:
  - (i) at a directors' meeting (either orally or in writing); or
  - (ii) to the other directors individually in writing.

The standing notice is given under subparagraph (b)(ii) when it has been given to every director.

**192(3) [Standing notice must be tabled at meeting if given to directors individually]** If the standing notice is given to the other directors individually in writing, it must be tabled at the next directors' meeting after it is given.

**192(4) [Nature and extent of interest must be recorded in minutes]** The director must ensure that the nature and extent of the interest disclosed in the standing notice is recorded in the minutes of the meeting at which the standing notice is given or tabled.

**192(5) [Dates of effect and expiry of standing notice]** The standing notice:

- (a) takes effect as soon as it is given; and
- (b) ceases to have effect if a person who was not a director of the company at the time when the notice was given is appointed as a director of the company.

A standing notice that ceases to have effect under paragraph (b) commences to have effect again if it is given to the person referred to in that paragraph.

Note: The notice may be given to the person referred to in paragraph (b) by someone other than the director to whose interests it relates (for example, by the secretary).

**192(6) [Effect of material increase in nature or extent of interest]** The standing notice ceases to have effect in relation to a particular interest if the nature or extent of the interest materially increases above that disclosed in the notice.

**192(7) [Effect of contravention by director]** A contravention of this Section by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

**SECTION 193 INTERACTION OF SECTIONS 191 AND 192 WITH OTHER LAWS ETC**

Sections 191 and 192 have effect in addition to, and not in derogation of:

- (a) any general law rule about conflicts of interest; and

(b) any provision in a company's constitution (if any) that restricts a director from:

- (i) having a material personal interest in a matter; or
- (ii) holding an office or possessing property;

involving duties or interests that conflict with their duties or interests as a director.

**SECTION 194 VOTING AND COMPLETION OF TRANSACTIONS – DIRECTORS OF PROPRIETARY COMPANIES (replaceable rule – see Section 135)**

If a director of a proprietary company has a material personal interest in a matter that relates to the affairs of the company and:

- (a) under Section 191 the director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the directors; or
- (b) the interest is one that does not need to be disclosed under Section 191;

then

- (c) the director may vote on matters that relate to the interest; and
- (d) any transactions that relate to the interest may proceed; and
- (e) the director may retain benefits under the transaction even though the director has the interest; and
- (f) the company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under Section 191, paragraphs (e) and (f) apply only if the disclosure is made before the transaction is entered into.

Note: A director may need to give notice to the other directors if the director has a material personal interest in a matter relating to the affairs of the company (see Section 191).

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**SECTION 187 DIRECTORS OF WHOLLY-OWNED SUBSIDIARIES**

**187** A director of a corporation that is a wholly-owned subsidiary of a body corporate is taken to act in good faith in the best interests of the subsidiary if:

- (a) The constitution of the subsidiary expressly authorises the director to act in the best interests of the holding company; and
- (b) The director acts in good faith in the best interests of the holding company; and
- (c) The subsidiary is not insolvent at the time the director acts and does not become insolvent because of the director's act.

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## SECTION 179 BACKGROUND TO DUTIES OF DIRECTORS, OTHER OFFICERS AND EMPLOYEES

**179(1) [Scope]** This Part sets out some of the most significant duties of directors, secretaries, other officers and employees of corporations. Other duties are imposed by other provisions of this Act and other laws (including the general law).

**179(2)** ["director" and "officer"] Section 9 defines both *director* and *officer*.

**Officer** includes, as well as directors and secretaries, some other people who manage the corporation or its property (such as receivers and liquidators).

## SECTION 180 CARE AND DILIGENCE – CIVIL OBLIGATIONS ONLY

**180(1) care and diligence – directors and other officers.** A director or other officer of a corporation must exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person would exercise if they:

- (a) were a director or officer of a corporation in the corporation's circumstances; and
- (b) occupied the office held by, and had the same responsibilities within the corporation as, the director or officer.

Note: This subsection is a civil penalty provision (see section 1317E).

**180(2) Business judgment rule.** A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of subsection (1), and their equivalent duties at common law and in equity, in respect of the judgment if they:

- (a) make the judgment in good faith for a proper purpose; and
- (b) do not have a material personal interest in the subject matter of the judgment; and
- (c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
- (d) rationally believe that the judgment is in the best interests of the corporation.

The director's or officer's belief that the judgment is in the best interests of the corporation is a rational one unless the belief is one that no reasonable person in their position would hold.

Note: This subsection only operates in relation to duties under this section and their equivalent duties at common law or in equity (including the duty of care that arises under the common law principles governing liability for negligence) – it does not operate in relation to duties under any other provision of this Act or under any other laws.

**180(3)** ["business judgment"] In this section:

**business judgment** means any decision to take or not take action in respect of a matter relevant to the business operations of the corporation.

## SECTION 181 GOOD FAITH - CIVIL OBLIGATIONS

**181(1) Good faith – directors and other officers.** A director or other officer of a corporation must exercise their powers and discharge their duties:

- (a) in good faith in the best interests of the corporation; and
- (b) for a proper purpose.

Note 1: This subsection is a civil penalty provision (see section 1317E).

Note 2: Section 187 deals with the situation of directors of wholly-owned subsidiaries.

**181(2) [Person involved in contravention]** A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines **involved**.

Note 2: This subsection is a civil penalty provision (see section 1317E).

#### **SECTION 182 USE OF POSITION – CIVIL OBLIGATIONS**

**182(1) Use of position – directors, other officers and employees.** A director, secretary, other officer or employee of a corporation must not improperly use their position to:

- (a) gain an advantage for themselves or someone else; or
- (b) cause detriment to the corporation.

Note: This subsection is a civil penalty provision (see section 1317E).

**182(2) [Person involved in contravention]** A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines **involved**.

Note 2: This subsection is a civil penalty provision (see section 1317E).

#### **SECTION 183 USE OF INFORMATION – CIVIL OBLIGATIONS**

**183(1) Use of information – directors, other officers and employees.** A person who obtains information because they are, or have been, a director or other officer or employee of a corporation must not improperly use the information to:

- (a) gain an advantage for themselves or someone else; or
- (b) cause detriment to the corporation.

Note 1: This duty continues after the person stops being an officer or employee of the corporation.

Note 2: This subsection is a civil penalty provision (see section 1317E).

**183(2) [Person involved in contravention]** A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: Section 79 defines **involved**.

Note 2: This subsection is a civil penalty provision (see section 1317E).

**SECTION 184 GOOD FAITH, USE OF POSITION AND USE OF INFORMATION – CRIMINAL OFFENCES**

**184(1) Good faith – directors and other officers.** A director or other officer of a corporation commits an offence if they:

- (a) are reckless; or
- (b) are intentionally dishonest;

and fail to exercise their powers and discharge their duties:

- (c) in good faith in the best interests of the corporation; or
- (d) for a proper purpose.

Note: Section 187 deals with the situation of directors of wholly-owned subsidiaries.

**184(2) Use of position – directors, other officers and employees.** A director, other officer or employee of a corporation commits an offence if they use their position dishonestly:

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

**184(3) Use of information – directors, other officers and employees.** A person who obtains information because they are, or have been, a director or other officer or employee of a corporation commits an offence if they use the information dishonestly:

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or
- (b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

**SECTION 185 INTERACTION OF SECTIONS 180 TO 184 WITH OTHER LAWS ETC.**

**185** Sections 180 to 184:

- (a) have effect in addition to, and not in derogation of, any rule of law relating to the duty or liability of a person because of their office or employment in relation to a corporation; and
- (b) do not prevent the commencement of civil proceedings for a breach of a duty or in respect of a liability referred to in paragraph (a).

This section does not apply to subsections 180(2) and (3) to the extent to which they operate on the duties at common law and in equity that are equivalent to the requirements of subsection 180(1).

**SECTION 186 TERRITORIAL APPLICATION OF SECTIONS 180 TO 184**

**186** Section 180 to 184 do not apply to an act or omission by a director or other officer or employee of a foreign company unless the act or omission occurred in connection with:

- (a) the foreign company carrying on business in this jurisdiction; or

- (b) an act that the foreign company does, or proposes to do, in this jurisdiction; or
- (c) a decision by the foreign company whether or not to do, or refrain from doing, an act in this jurisdiction.

#### SECTION 187 DIRECTORS OF WHOLLY-OWNED SUBSIDIARIES

**187** A director of a corporation that is a wholly-owned subsidiary of a body corporate is taken to act in good faith in the best interests of the subsidiary if:

- (a) the constitution of the subsidiary expressly authorises the director to act in the best interests of the holding company; and
- (b) the director acts in good faith in the best interests of the holding company; and
- (c) the subsidiary is not insolvent at the time the director acts and does not become insolvent because of the director's act.

#### SECTION 188 RESPONSIBILITY OF SECRETARIES AND DIRECTORS FOR CERTAIN CONTRAVENTIONS

**188(1) Secretary's functions.** A secretary of a company contravenes this subsection if the company contravenes:

- (a) section 142 (requirement for companies to have registered office); or
- (b) section 145 (requirement for registered office of public company to be open to public); or
- (c) section 346C (requirement to respond to extract of particulars); or
- (ca) section 348D (requirement to respond to return of particulars); or
- (d) section 205B (lodgement of notices with ASIC); or
- (e) section 146 (notice of change of principal place of business); or
- (f) section 178A (notice of change to member register (proprietary companies only)); or
- (g) section 178C (notice of change to share structure (proprietary companies only)); or
- (h) section 254X (notice of issue of shares); or
- (i) subsection 319(1) (lodgement of financial reports); or
- (j) section 349A (notice of changes to ultimate holding company (proprietary companies only)).

**188(2) Consequence if director of proprietary company without secretary does not fulfil secretary's function.** Each director of a proprietary company contravenes this subsection if:

- (a) the proprietary company contravenes a provision referred to in subsection (1); and
- (b) the proprietary company does not have a secretary when it contravenes that section.

**1882(2A) [Strict liability offence]** An offence based on subsection (1) or (2) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the Criminal Code.

**188(3) Defence.** A person does not contravene subsection (1) or (2) if they show that they took all reasonable steps to ensure that the company complied with the section.

Note: A defendant bears a legal burden in relation to a matter mentioned in subsection (3), see section 13.4 of the Criminal Code.

#### SECTION 189 RELIANCE ON INFORMATION OR ADVICE PROVIDED BY OTHERS

**189** If:

- (a) a director relies on information, or professional or expert advice, given or prepared by:
  - (i) an employee of the corporation whom the director believes on reasonable grounds to be reliable and competent in relation to the matters concerned; or
  - (ii) a professional adviser or expert in relation to matters that the director believes on reasonable grounds to be within the person's professional or expert competence; or
  - (iii) another director or officer in relation to matters within the director's or officer's authority; or
  - (iv) a committee of directors on which the director did not serve in relation to matters within the committee's authority; and
- (b) the reliance was made:
  - (i) in good faith; and
  - (ii) after making an independent assessment of the information or advice, having regard to the director's knowledge of the corporation and the complexity of the structure and operations of the corporation; and
- (c) the reasonableness of the director's reliance on the information or advice arises in proceedings brought to determine whether a director has performed a duty under this Part or an equivalent general law duty;

the director's reliance on the information or advice is taken to be reasonable unless the contrary is proved.

#### SECTION 190 RESPONSIBILITY FOR ACTIONS OF DELEGATE

**190(1) [Delegation by director]** If the directors delegate a power under section 198D, a director is responsible for the exercise of the power by the delegate as if the power had been exercised by the directors themselves.

**190(2) [Director not responsible in certain circumstances]** A director is not responsible under subsection (1) if:

- (a) the director believed on reasonable grounds at all times that the delegate would exercise the power in conformity with the duties imposed on directors of the company by this Act and the company's constitution (if any); and
  - (b) the director believed:
    - (i) on reasonable grounds; and
    - (ii) in good faith; and
    - (iii) after making proper inquiry if the circumstances indicated the need for inquiry;
- that the delegate was reliable and competent in relation to the power delegated.

**SECTION 197 DIRECTORS LIABLE FOR DEBTS AND OTHER OBLIGATIONS INCURRED BY CORPORATION AS TRUSTEE**

**197(1) [Where director liable]** A person who is a director of a corporation when it incurs a liability while acting, or purporting to act, as trustee, is liable to discharge the whole or a part of the liability if the corporation:

- (a) Has not, and cannot, discharge the liability or that part of it; and
- (b) Is not entitled to be fully indemnified against the liability out of trust assets.

This is so even if the trust does not have enough assets to indemnify the trustee. The person is liable both individually and jointly with the corporation and anyone else who is liable under this subsection.

**197(2) [Where director entitled to be indemnified]** The person is not liable under subsection (1) if the person would be entitled to have been fully indemnified by 1 of the other directors against the liability had all the directors of the corporation been trustees when the liability was incurred.

**197(3) [Foreign company]** This Section does not apply to a liability incurred outside this jurisdiction by a foreign company.

**197(4) [Registrable Australian body]** This section does not apply to a liability incurred by a registrable Australian body outside its place of origin.

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**SECTION 199A INDEMNIFICATION AND EXEMPTION OF OFFICER OR AUDITOR**

**199A(1) [Exemptions not allowed]** A company or a related body corporate must not exempt a person (whether directly or through an interposed entity) from a liability to the company incurred as an officer or auditor of the company.

**199A(2) [When indemnity for liability (other than for legal costs) not allowed]** A company or a related body must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against any of the following liabilities incurred as an officer or auditor of the company:

- (a) a liability owed to the company or a related body corporate
- (b) a liability for a pecuniary penalty order under Section 1317G or a compensation order under Section 1317H
- (c) a liability that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.

This subsection does not apply to a liability for legal costs.

**199A(3) [When indemnity for legal costs not allowed]** A company or related body corporate must not indemnify a person (whether by agreement or by making a payment and whether directly or through an interposed entity) against legal costs incurred in defending an action for a liability incurred as an officer or auditor of the company if the costs are incurred:

- (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under subsection (2); or



- (b) in defending or resisting criminal proceedings in which the person is found guilty; or
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the person under this Act in which the Court denies the relief.

Paragraph (c) does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order.

**Note 1:** Paragraph (c) – This includes proceedings by ASIC for an order under Section 206C, 206D or 206E (disqualification), Section 232 (oppression), Section 1317E, 1317G or 1317H (civil penalties) or Section 1324 (injunction).

**Note 2:** The company may be able to give the person a loan or advance in respect of the legal costs (see Section 212).

**199A(4)** For the purposes of subsection (3), the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

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**SECTION 199B INSURANCE PREMIUMS FOR CERTAIN LIABILITIES OF DIRECTOR, SECRETARY, OTHER OFFICER OR AUDITOR**

**199B(1) [Insurance premiums for certain liabilities]** A company or a related body corporate must not pay, or agree to pay, a premium for a contract insuring a person who is or has been an officer or auditor of the company against a liability (other than one for legal costs) arising out of:

- (a) Conduct involving a wilful breach of duty in relation to the company; or
- (b) A contravention of Section 182 or 183.

This Section applies to a premium whether it is paid directly or through an interposed entity.

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**SECTION 204A MINIMUM NUMBER OF SECRETARIES**

**204A(1) [Proprietary Companies]** A proprietary company is not required to have a secretary but, if it does have 1 or more secretaries, at least 1 of them must ordinarily reside in this jurisdiction.

**SECTION 240B WHO CAN BE A SECRETARY**

**204B(1) [Minimum age]** Only an individual who is at least 18 may be appointed as a secretary of a company.

**204B(2)** A person who is disqualified from managing corporations under Part 2D.6 may only be appointed as a secretary of a company if the appointment is made with permission granted by ASIC under Section 206F or leave granted by the Court under Section 206G.

**SECTION 204C CONSENT TO ACT AS SECRETARY**

**204C(1) [Contravention]** A company contravenes this subsection if a person does not give the company a signed consent to act as secretary of the company before being appointed.

**204C(2) [Company must keep consent]** The company must keep the consent.

#### SECTION 240D HOW A SECRETARY IS APPOINTED

**204D** A secretary is to be appointed by the directors.

Note 1: The company must notify ASIC of the appointment within 14 days (see subsection 205B(1)).

Note 2: Section 188 deals with the responsibilities of secretaries for contraventions by the company.

#### SECTION 240E EFFECTIVENESS OF ACTS BY SECRETARIES

**204E(1) [Where appointment or its continuance invalid]** An act done by a secretary is effective even if their appointment, or the continuance of their appointment, is invalid because the company or secretary did not comply with the company's constitution (if any) or any provision of this Act.

**204E(2) [Limitation]** Subsection (1) does not deal with the question whether an effective act by a secretary:

- (a) Binds the company in its dealings with other people; or
- (b) Makes the company liable to another person

Note: The kinds of acts that this Section validates are those that are only legally effective if the person doing them is a secretary (for example, signing and sending out a notice of a meeting of directors if the company's constitution authorises the secretary to do so or signing a document to be lodged with ASIC). Sections 128-130 contain rules about the assumptions people are entitled to make when dealing with a company and its officers.

**SECTION 204F TERMS AND CONDITIONS OF OFFICE FOR SECRETARIES (replaceable rule - see section 135)** A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

**SECTION 204G SIGNPOST TO CONSEQUENCES OF DISQUALIFICATION FROM MANAGING CORPORATIONS** A person ceases to be a secretary of a company if the person becomes disqualified from managing corporations under Part 2D.6 (see subsection 206A(2)) unless ASIC or the Court allows them to manage the company (see Sections 206F and 206G).

#### 204E EFFECTIVENESS OF ACTS BY SECRETARIES

**204E(1) [Where appointment or its continuance invalid]** An act done by a secretary is effective even if their appointment, or the continuance of their appointment, is invalid because the company or secretary did not comply with the company's constitution (if any) or any provision of this Act.

**204E(2) [Limitation]** Subsection (1) does not deal with the question whether an effective act by a secretary:

- (a) Binds the company in its dealings with other people; or

- (b) Makes the company liable to another person.

Note: The kinds of acts that this Section validates are those that are only legally effective if the person doing them is a secretary (for example, signing and sending out a notice of a meeting of directors if the company's constitution authorises the secretary to do so or signing a document to be lodged with ASIC). Sections 128-130 contain rules about the assumptions people are entitled to make when dealing with a company and its officers.

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**SECTION 248C CALLING DIRECTORS' MEETINGS (replaceable rule - see section 135)**

**248C** A directors' meeting may be called by a director giving reasonable notice individually to every other director.

Note: A director who has appointed an alternate director may ask for the notice to be sent to the alternate director (see section 201K(2)).

113

**SECTION 248D USE OF TECHNOLOGY**

**248D** A directors' meeting may be called or held using any technology consented to by all the directors. The consent may be a standing one. A director may only withdraw their consent within a reasonable period before the meeting.

114

**SECTION 248E CHAIRING DIRECTORS' MEETINGS (replaceable rule - see section 135)**

**248E(1) [Election of chair]** The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.

**248E(2) [Requirement to elect]** The directors must elect a director present to chair a meeting, or part of it, if:

- (a) a director has not already been elected to chair the meeting; or
- (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

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**SECTION 248F QUORUM AT DIRECTORS' MEETINGS (replaceable rule - see section 135)**

**248F** Unless the directors determine otherwise, the quorum for a directors' meeting is 2 directors and the quorum must be present at all times during the meeting.

Note 1: For special quorum rules for public companies, see section 195.

Note 2: For resolutions of 1 director proprietary companies without meetings, see section 248B.

116

**SECTION 248G PASSING OF DIRECTORS' RESOLUTIONS (replaceable rule - see section 135)**

**248G(1) [Majority vote]** A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

**248G(2) [Casting vote]** The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

Note: The chair may be precluded from voting, for example, by a conflict of interest.

117

**SECTION 248A CIRCULATING RESOLUTIONS OF COMPANIES WITH MORE THAN 1 DIRECTOR (replaceable rule - see section 135)**

**248A(1) Resolutions.** The directors of a company may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

**248A(2) Copies.** Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

**248A(3) When the resolution is passed.** The resolution is passed when the last director signs.

Note: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

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**SECTION 248B RESOLUTIONS AND DECLARATIONS OF 1 DIRECTOR PROPRIETARY COMPANIES**

**248B(1) Resolutions.** The director of a proprietary company that has only 1 director may pass a resolution by recording it and signing the record.

**248B(2) Declarations.** The director of a proprietary company that has only 1 director may make a declaration by recording it and signing the record. Recording and signing the declaration satisfies any requirement in this Act that the declaration be made at a directors' meeting.

Note 1: For directors' declarations, see sections 295 and 494.

Note 2: Passage of a resolution or the making of a declaration under this section must be recorded in the company's minute books (see section 251A).

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**SECTION 202A REMUNERATION OF DIRECTORS (replaceable rule - see section 135)**

**202A(1) [Remuneration]** The directors of a company are to be paid the remuneration that the company determines by resolution.

Note: Chapter 2E makes special provision for the payment of remuneration to the directors of public companies.

**202A(2) [Travelling and other expenses]** The company may also pay the directors' travelling and other expenses that they properly incur:

- (a) in attending directors' meetings or any meetings of committees of directors; and
- (b) in attending any general meetings of the company; and
- (c) in connection with the company's business.

**202C SPECIAL RULE FOR SINGLE DIRECTOR/SINGLE SHAREHOLDER PROPRIETARY COMPANIES**

A person who is the only director and the only shareholder of a proprietary company is to be paid any remuneration for being a director that the company determines by resolution. The company may also pay the director's travelling and other expenses properly incurred by the director in connection with the company's business.

120

**SECTION 202B MEMBERS MAY OBTAIN INFORMATION ABOUT DIRECTORS' REMUNERATION**

**202B(1) [Director to disclose]** A company must disclose the remuneration paid to each director of the company or a subsidiary (if any) by the company or by an entity controlled by the company if the company is directed to disclose the information by:

- (a) members with at least 5% of the votes that may be cast at a general meeting of the company; or
- (b) at least 100 members who are entitled to vote at a general meeting of the company.

The company must disclose all remuneration paid to the director, regardless of whether it is paid to the director in relation to their capacity as director or another capacity.

**202B(2) [Manner of compliance with director]** The company must comply with the direction as soon as practicable by:

- (a) preparing a statement of the remuneration of each director of the company or subsidiary for the last financial year before the direction was given; and
- (b) having the statement audited; and
- (c) sending a copy of the audited statement to each person entitled to receive notice of general meetings of the company.

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#### SECTION 121 REGISTERED OFFICE

**121** The address specified in the application for registration for the company's proposed registered office becomes the address of the company's registered office on registration.

#### SECTION 142 REGISTERED OFFICE

**142(1) [Registered office]** A company must have a registered office in this jurisdiction. Communications and notices to the company may be addressed to its registered office.

Note: A document may be served on a company by leaving it at, or posting it to, the company's registered office (see subsection 109X(1)).

**142(2) [Change of address]** A company must lodge notice of a change of address of its registered office with ASIC not later than 14 days after the date on which the change occurs. The notice must be in the prescribed form.

Note: If the company is not to be the occupier of premises at the address of its new registered office, the notice must state that the occupier has consented to the address being specified in the notice and has not withdrawn that consent (see section 100).

**142(3) [Notice to take effect]** A notice of change of address takes effect from the later of:

- (a) the 7th day after the notice was lodged; or
- (b) a later day specified in the notice as the date from which the change is to take effect.

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#### SECTION 144 COMPANY'S NAME MUST BE DISPLAYED AT REGISTERED OFFICE ETC

**144(1) [Display name]** A company must display its name prominently at every place at which the company carries on business and that is open to the public.

**144(2) [Public company]** A public company must also display its name and the words "Registered Office" prominently at its registered office.

123

#### SECTION 145 OPENING HOURS OF REGISTERED OFFICE OF PUBLIC COMPANY

**145(1) [Opening hours]** The registered office of a public company must be open to the public:

- (a) each business day from at least 10 am to 12 noon and from at least 2 pm to 4 pm; or
- (b) at least 3 hours chosen by the company between 9 am and 5 pm each business day

**145(2) [Hours to be specified]** If the company chooses its own opening hours, the hours must be specified:

- (a) if the company is to have its own opening hours from its registration - in the application for registration of the company under section 117 (normal registration process) or the notice lodged under section 5H (registration of body as company on basis of State or Territory law); or

- (b) if the company changes its opening hours after its registration - in the most recent notice of change of opening hours lodged with ASIC under subsection (3).

**145(3) [Lodgement with ASIC]** The company must lodge notice of a change in the opening hours of its registered office with ASIC before the day on which a change occurs. The notice must be in the prescribed form.

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#### SECTION 146 CHANGE OF ADDRESS OF PRINCIPAL PLACE OF BUSINESS

**146 [Change of address]** A company must lodge with ASIC notice of a change of the address of its principal place of business not later than 14 days after the date on which the change occurs. The notice must be in the prescribed form.

#### SECTION 146A CONTACT ADDRESS

**146A(1) [Contact address]** A company may have a contact address (whether or not in this jurisdiction). Communications and notices from ASIC to the company may be addressed to its contact address.

**146A(2) [Lodgment with ASIC]** If a company is to have a contact address, the company must lodge a notice of the address in the prescribed form.

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#### SECTION 168 REGISTERS TO BE MAINTAINED

**168(1) [Registers]** A company or registered scheme must set up and maintain:

- (a) a register of members (see section 169); and
- (b) if the company or scheme grants options over unissued shares or interests - a register of option holders and copies of options documents (see section 170); and
- (c) if the company issues debentures - a register of debenture holders (see section 171).

Note 1: See also section 271 (register of charges).

Note 1A: See also section 672DA (register of relevant interests in listed company or registered scheme).

Note 2: The registers may be kept on computer (see section 1306).

**168(1A)** An offence based on subsection (1) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

**168(2)** For the purpose of this Part, choses in action (including an undertaking) that fall into one of the exceptions in paragraphs (a), (b), (e) and (f) of the definition of **debenture** in section 9 must also be entered into the register of debenture holders.

**SECTION 169 REGISTER OF MEMBERS**

**169(1) [General requirements]** The register of members must contain the following information about each member:

- (a) the member's name and address
- (b) the date on which the entry of the member's name in the register is made.

**169(2) [Index to register]** If the company or scheme has more than 50 members, the company or scheme must include in the register an up-to-date index of members' names. The index must be convenient to use and allow a member's entry in the register to be readily found. A separate index need not be included if the register itself is kept in a form that operates effectively as an index.

**169(3) [Companies with share capital]** If the company has a share capital, the register must also show:

- (a) the date on which every allotment of shares takes place; and
- (b) the number of shares in each allotment; and
- (c) the shares held by each member; and
- (d) the class of shares; and
- (e) the share numbers (if any), or share certificate numbers (if any), of the shares; and
- (ea) the amount paid on the shares; and
- (eb) whether or not the shares are fully paid; and
- (f) the amount unpaid on the share (if any)

Note 1: Transfers of shares are entered in the register under section 1071D. Section 1072E deals with the registration of trustees etc. on the death, incapacity or bankruptcy of the shareholder.

Note 2: For the treatment of joint holders see subsection (8).

**169(4) [Amount unpaid]** The register does not have to show the amount unpaid on the shares (see paragraph (1)(f)) if:

- (a) all of the company's shares were issued before 1 July 1998; and
- (b) the register continues to show the par values of the shares as they were immediately before 1 July 1998.

**169(5) [Amount unpaid]** The register does not have to show the amount unpaid on the shares (see paragraph (1)(f)) if:

- (a) all of the company's shares were issued before 1 July 1998; and
- (b) the company is not a listed company.

**169(5A) [Non-beneficial ownership - companies other than listed companies]** The register of a company that:



(a) has a share capital; and

(b) is neither a listed company (within the meaning of section 603) nor a company covered by an order under section 707;

must indicate any shares that a member does not hold beneficially.

**Note:** See also section 1072H (in particular, subsection 1072H(8) which contains relevant presumptions about beneficial ownership).

**169(6) [How beneficial ownership to be decided]** In deciding for the purposes of subsection (5) whether a member holds shares beneficially or non-beneficially, the company is to have regard only to information in notices given to the company under section 1072H, 672B or 672C.

**169(6A) [Registered schemes]** The register of a registered scheme must also show:

- (a) the date on which every issue of interests takes place; and
- (b) the number of interests in each issue; and
- (c) the interests held by each member; and
- (d) the class of interests; and
- (e) the amount paid, or agreed to be considered as paid, on the interests.

**169(7) [Former members]** A register of members must also show:

- (a) the name and details of each person who stopped being a member of the company or scheme within the last 7 years; and
- (b) the date on which the person stopped being a member.

The company or scheme may keep these entries separately from the rest of the register.

**169(8) [Joint holders]** For the purposes of this section:

- (a) 2 or more persons who jointly hold shares in the company or interests in the scheme are taken to be a single member of the company or scheme in relation to those shares or interests; and
- (b) 2 or more persons who have given a guarantee jointly are taken to be a single member of the company.

They may also be members of the company or scheme because of shares or interests that they hold, or a guarantee that they have given, in their own right or jointly with others.

#### **SECTION 170 REGISTER OF OPTION HOLDERS AND COPIES OF OPTIONS DOCUMENTS**

**170(1) [Information to be contained in register]** The register of option holders must contain the following information about each holder of options over unissued shares in the company or unissued interests in the scheme:

- (a) the option holder's name and address
- (b) the date on which the entry of the option holder's name in the register is made

- (c) the date of grant of the options
- (d) the number and description of the shares or interest over which the options were granted
- (e) either:
  - (i) the period during which the options may be exercised; or
  - (ii) the time at which the options may be exercised
- (f) any event that must happen before the options can be exercised
- (g) any consideration for the grant of the options
- (h) any consideration for the exercise of the options or the method by which that consideration is to be determined.

Because it is a register of the holders of options that are still exercisable, the register must be updated whenever options are exercised or expire.

**170(2) [Time limits]** Information about the grant of an option must be entered in the register within 14 days after the grant of the option.

**170(3) [Copies of options documents]** The company or scheme must keep with the register a copy of every document that grants an option over unissued shares or interests.

**170(3A)** An offence based on subsection (3) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

**170(3B)** Subsection (3) does not apply if the option is listed for quotation on a prescribed financial market.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3B), see subsection 13.3(3) of the *Criminal Code*.

**170(4)** The company or scheme must change the register to reflect the transfer of an option only if the person transferring the option gives the company or scheme written notice of the transfer.

**170(5) [Option unaffected by failure to comply]** A failure to comply with this section in relation to an option does not affect the option itself.

#### SECTION 171 REGISTER OF DEBENTURE HOLDERS

**171(1) [Information to be contained in register]** The register of debenture holders must contain the following information about each holder of a debenture:

- (a) the debenture holder's name and address
- (b) the amount of the debentures held.

**Note 171(2) [Debenture unaffected by failure to comply]** A company's failure to comply with this section in relation to a debenture does not affect the debenture itself.: See subsection 168(2) for the coverage of "debenture".

**SECTION 271 COMPANY TO KEEP DOCUMENTS RELATING TO CHARGES AND REGISTER OF CHARGES**

**271(1) [Company to keep copies]** A company must keep, at the place where the register referred to in subsection (2) is kept, a copy of:

(a) every document relating to a charge on property of the company that was or is lodged under this Part; and

(b) a copy of every document given to the company under this Part.

**271(2) [Company to keep register of charges]** A company must keep a register and must, upon the creation of a charge (whether registrable or not) on property of the company, or upon the acquisition of property subject to a charge (whether registrable or not), as soon as practicable enter in the register particulars of the charge, giving in each case:

(a) if the charge is a charge created by the company, the date of its creation or, if the charge was a charge existing on property acquired by the company, the date on which the property was so acquired;

(b) a short description of the liability (whether present or prospective) secured by the charge;

(c) a short description of the property charged;

(d) the name of the trustee for debenture holders or, if there is no such trustee, the name of the charge; and

(e) the name of the person whom the company believes to be the holder of the charge.

**271(3) [Inspection of register of charges]** A register kept by a company pursuant to subsection (2) must be opened for inspection:

(a) by any creditor or member of the company - without charge; and

(b) by any other person - on payment for each inspection of such amount, not exceeding the prescribed amount, as the company requires or, where the company does not require the payment of an amount, without charge.

**271(4) [Copies]** A person may request a company to furnish the person with a copy of the register or any part of the register and, where such a request is made, the company must send the copy to that person:

(a) if the company requires payment of an amount not exceeding the prescribed amount - within 21 days after payment of the amount is received by the company or within such longer period as ASIC approves etc; or

(b) in a case to which paragraph (a) does not apply - within 21 days after the request is made or within such longer period as ASIC approves.

**271(5) [Offence]** If default is made in complying with any provision of this section, the company and any officer of the company who is in default are each guilty of any offence.

**SECTION 172 LOCATION OF REGISTERS**

**172(1) [Where register to be kept]** A register kept under this Chapter that relates to a company must be kept at:

- (a) the company's registered office; or
- (b) the company's principal place of business in this jurisdiction; or
- (c) a place in this jurisdiction (whether of the company or of someone else) where the work involved in maintaining the register is done; or
- (d) another place in this jurisdiction approved by ASIC.

**172(1A)** A register kept under this Chapter that relates to a registered scheme must be kept at:

- (a) the responsible entity's registered office; or
- (b) an office at the responsible entity's principal place of business in this jurisdiction; or
- (c) an office in this jurisdiction (whether of the responsible entity or of someone else) where the work involved in maintaining the register is done; or
- (d) another office in this jurisdiction approved by ASIC.

**172(2) Notice to ASIC** The company or scheme must lodge with ASIC a notice of the address at which the register is kept within 7 days after the register is:

- (a) established at an office that:
  - (i) is not the registered office of the company or responsible entity; and
  - (ii) is not at the principal place of business of the company or responsible entity in this jurisdiction; or
- (b) moved from one place to another.

Notice is not required for moving the register between the registered office and the principal place of business in this jurisdiction.

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**SECTION 173 RIGHT TO INSPECT AND GET COPIES**

**173(1) Right to inspect.** A company or registered scheme must allow anyone to inspect a register kept under this Chapter. If the register is not kept on a computer, the person inspects the register itself. If the register is kept on a computer, the person inspects a hard copy of the information on the register unless the person and the company or the responsible entity agree that the person can access the information by computer.

**Note:** Other provisions that are relevant to the inspection of registers are:

- section 1300 (place and times for inspection)

- section 1301 (the location of documents that are kept on computers)
- section 1306 (form and evidentiary value).

**173(1A) [Limit to application of subs(1)]** The requirement in subsection (1) to allow the person to inspect a hard copy of the information on the register does not apply in relation to a register that is kept on a computer if the person and the company or the responsible entity agree that the person can access the information by computer.

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

**173(2) Inspection fees.** A member of a company or a registered scheme, a registered option holder or a registered debenture holder may inspect a register kept under this Chapter without charge. Other people may inspect the register only on a payment of any fee (up to the prescribed amount) required by the company or scheme.

**173(3) Right to get copies.** The company or scheme must give a person a copy of the register (or a part of the register) within 7 days if the person:

- (a) asks for the copy; and
- (b) pays any fee (up to the prescribed amount) required by the company or scheme.

ASIC may allow a longer period to comply with the request. If the register is kept on a computer and the person asks for the data on floppy disk, the company or scheme must give the data to the person on floppy disk. The data must be readable but the floppy disk need not be formatted for the person's preferred operating system.

**173(4) [Inspection of options documents]** A person has the same rights to inspect, and obtain copies of, the documents kept under subsection 170(3) as the person has in respect of the register of option holders itself.

**173(5) [Share certificate numbers]** The company is not required under subsection (1) or (3) to allow a person to see, or to give a person a copy that contains, share certificate numbers.

**173(6) ASIC power in relation to register of debenture holders.** ASIC may exempt a company from complying with subsections (1) and (3) in relation to information in a register of debenture holders about debentures that are not convertible into shares or options over unissued shares.

**173(7) [Form of exemption]** The exemption:

- (a) must be in writing; and
- (b) may be general or limited; and
- (c) may be subject to conditions specified in the exemption.

**173(8) [Gazette]** ASIC must publish a copy of the exemption in the *Gazette*.

**173(9) [Contravention of condition]** A person must not contravene a condition of the exemption.

**173(10) [Court may order compliance with condition]** On application by ASIC, the Court may order a person who contravenes a condition of the exemption to comply with the condition.

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**SECTION 174 AGENT'S OBLIGATIONS**

**174(1) [Maintenance of register]** A person who agrees to maintain a register on behalf of a company or registered scheme for the purposes of this Chapter must:

- (a) make the register available for inspection under this Chapter; and
- (b) provide the copies required by this Chapter.

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**SECTION 176 EVIDENTIARY VALUE OF REGISTERS**

**176** In the absence of evidence to the contrary, a register kept under this Chapter is proof of the matters shown in the register under this Chapter.

**SECTION 177 USE OF INFORMATION ON REGISTERS**

**177(1) [Prohibited uses]** A person must not:

- (a) use information about a person obtained from a register kept under this Chapter to contact or send material to the person; or
- (b) disclose information of that kind knowing that the information is likely to be used to contact or send material to the person;

unless that use or disclosure of the information is:

- (c) relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to them; or
- (d) approved by the company or scheme.

**Note:** An example of using information to send material to a person is putting a person's name and address on a mailing list for advertising material.

**177(1A) [Limit to application of subs(1)]** Subsection (1) does not apply if the use or disclosure of the information is:

- (a) relevant to the holding of the interests recorded in the register or the exercise of the rights attaching to them; or
- (b) approved by the company or scheme.

**Note:** A defendant bears an evidential burden in relation to the matter in subsection (1A), see subsection 13.3(3) of the *Criminal Code*.

**177(1B)** An offence based on subsection (1) is an offence of strict liability.

**Note:** For *strict liability*, see section 6.1 of the *Criminal Code*.

**177(2) [Compensation]** A person who contravenes subsection (1) is liable to compensate anyone else who suffers loss or damage because of the contravention.

**177(3) [Profit is debt to company]** A person who makes a profit from a contravention of subsection (1) owes a debt to the company or the scheme. The amount of the debt is the amount of the profit.

**177(4) [Debt to the scheme]** If a person owes a debt under subsection (3) to the scheme:

- (a) the debt may be recovered by the responsible entity as a debt due to it; and
- (b) any amount paid or recovered in respect of the debt forms part of the scheme property.

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#### SECTION 178 OVERSEAS BRANCH REGISTERS

**178(1) [Optional overseas register]** A company may keep a branch register of members at a place outside this jurisdiction.

**178(2) [Requirements where branch register kept]** If a company keeps an overseas branch register under subsection (1):

- (a) the company must keep the branch register in the same manner as this Act requires the company to keep the register kept under section 169 (the “**principal register**”); and
- (b) the company must enter in the principal register the details contained in the branch register; and
- (c) the company must distinguish shares that are registered in the branch register from the shares registered in the principal register.

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#### SECTION 286 OBLIGATION TO KEEP FINANCIAL RECORDS

**286(1) [Obligation to keep records]** A company, registered scheme or disclosing entity must keep written financial records that:

- (a) correctly record and explain its transactions and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited.

The obligations to keep financial records of transactions extends to transactions undertaken as trustee.

Note: Section 9 defines financial records.

**286(2) Period for which records must be retained.** The financial records must be retained for 7 years after the transactions covered by the records are completed.

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#### SECTION 287 LANGUAGE REQUIREMENTS

**287(1) [Language]** The financial records may be kept in any language.

**287(2) [English translation]** An English translation of financial records not kept in English must be made available within a reasonable time to a person who:

- (a) is entitled to inspect the records; and
- (b) asks for the English translation.

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**SECTION 288 PHYSICAL FORMAT**

**288** If financial records are kept in electronic form, they must be convertible into hard copy. Hard copy must be made available within a reasonable time to a person who is entitled to inspect the records.

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**SECTION 289 PLACE WHERE RECORDS ARE KEPT**

**289(1) [Place to keep records]** A company, registered scheme or disclosing entity may decide where to keep the financial records.

**289(2) Records kept outside this jurisdiction.** If financial records about particular matters are kept outside this jurisdiction, sufficient written information about those matters must be kept in this jurisdiction to enable true and fair financial statements to be prepared. The company, registered scheme or disclosing entity must give ASIC written notice in the prescribed form of the place where the information is kept.

**289(3) [Direction to produce]** ASIC may direct a company, registered scheme or disclosing entity to produce specified financial records that are kept outside this jurisdiction.

**289(4) [Direction requirements]** The direction must:

- (a) be in writing; and
- (b) specify a place in this jurisdiction where the records are to be produced (the place must be reasonable in the circumstances); and
- (c) specify a day (at least 14 days after the direction is given) by which the records are to be produced.

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**SECTION 290 DIRECTOR ACCESS**

**290(1) Personal Access.** A director of a company, registered scheme or disclosing entity has a right of access to the financial records at all reasonable times.

**290(2) Court order for inspection on director's behalf.** On application by a director, the Court may authorise a person to inspect the financial records on the director's behalf.



**290(3) [Copies]** A person authorised to inspect records may make copies of the records unless the Court orders otherwise.

**290(4) [Court's powers to make orders]** The Court may make any other orders it consider appropriate, including either or both of the following:

- (a) an order limiting the use that a person who inspects the records may make of information obtained during the inspection
- (b) an order limiting the right of a person who inspects the records to make copies in accordance with subsection (3).

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#### **SECTION 310 AUDITOR'S POWER TO OBTAIN INFORMATION**

**310** The auditor:

- (a) has a right of access at all reasonable times to the books of the company, registered scheme or disclosing entity; and
- (b) may require any officer to give the auditor information, explanations or other assistance for the purpose of the audit or review.

A request under paragraph (b) must be a reasonable one.

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#### **SECTION 292 WHO HAS TO PREPARE ANNUAL FINANCIAL REPORTS AND DIRECTORS' REPORTS**

**292(1) [Financial report and directors' report]** A financial report and a directors' report must be prepared for each financial year by:

- (a) all disclosing entities; and
- (b) all public companies; and
- (c) all large proprietary companies; and
- (d) all registered schemes.

Note: This Chapter only applies to disclosing entities incorporated or formed in Australia (see subsection 285(2)).

**292(2) [Small proprietary company]** A small proprietary company has to prepare the financial report and directors' report only if:

- (a) it is directed to do so under section 293 or 294; or
- (b) it was controlled by a foreign company for all or part of the year and it is not consolidated for that period in financial statements for that year lodged with ASIC by:

- (i) a registered foreign company; or
- (ii) a company, registered scheme or disclosing entity.

The rest of this Part does not apply to any other small proprietary company.

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**SECTION 293 SMALL PROPRIETARY COMPANY-SHAREHOLDER DIRECTION**

**293(1) [Shareholder direction]** Shareholders with at least 5% of the votes in a small proprietary company may give the company a direction to:

- (a) prepare a financial report and directors' report for a financial year; and
- (b) send them to all shareholders.

**293(2) [Requirements for direction]** The direction must be:

- (a) signed by the shareholders giving the direction; and
- (b) made no later than 12 months after the end of the financial year concerned.

**293(3) [Direction may specify certain matters]** The direction may specify all or any of the following:

- (a) that the financial report does not have to comply with some or all of the accounting standards
- (b) that a directors' report or a part of that report need not be prepared
- (c) that the financial report is to be audited.

**SECTION 294 SMALL PROPRIETARY COMPANY - ASIC DIRECTION**

**294(1) [ASIC direction]** ASIC may give a small proprietary company a direction to comply with requirements of this Division and Divisions 3, 4, 5 and 6 for a financial year.

**294(2) [General or specific requirements]** The direction may be general or may specify the particular requirements that the company is to comply with.

**294(3) [Date]** The direction must specify the date by which the documents have to be prepared, sent or lodged. The date must be a reasonable one in view of the nature of the direction.

**294(4) [Requirements for direction]** The direction must:

- (a) be made in writing; and
- (b) specify the financial year concerned; and
- (c) be made no later than 6 years after the end of that financial year.

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## SECTION 295 CONTENTS OF ANNUAL FINANCIAL REPORT

**295(1) Basic contents.** The financial report for a financial year consists of:

- (a) the financial statements for the year; and
- (b) the notes to the financial statements; and
- (c) the directors' declaration about the statements and notes.

**295(2) Financial statements.** The financial statements for the year are:

- (a) the financial statements in relation to the entity reported on that are required by the accounting standards; and
- (b) if required by the accounting standards-the financial statements in relation to the consolidated entity that are required by the accounting standards.

**295(3) Notes to financial statements.** The notes to the financial statements are:

- (a) disclosures required by the regulations; and
- (b) notes required by the accounting standards; and
- (c) any other information necessary to give a true and fair view (see section 297).

**295(4) Directors' declaration.** The directors' declaration is a declaration by the directors:

- (c) whether, in the directors' opinion, there are reasonable grounds to believe that the company, registered scheme or disclosing entity will be able to pay its debts as and when they become due and payable; and
- (d) whether, in the directors' opinion, the financial statement and notes are in accordance with this Act, including:
  - (i) section 296 (compliance with accounting standards); and
  - (ii) section 297 (true and fair view.)
- (e) if the company, disclosing entity or registered scheme is listed – that the directors have been given the declarations required by section 295A.

Note: See paragraph 285(3)(c) for the reference to the debts of a registered scheme.

**295(5) [Requirements]** The declaration must:

- (a) be made in accordance with a resolution of the directors; and
- (b) specify the date on which the declaration is made; and
- (c) be signed by a director.

**SECTION 296 COMPLIANCE WITH ACCOUNTING STANDARDS AND REGULATIONS**

**296(1) [Accounting standards]** The financial report for a financial year must comply with the accounting standards. However, a small proprietary company's report does not have to comply with particular accounting standards if:

- (a) the report is prepared in response to a shareholder direction under section 293; and
- (b) the direction specifies that at the report does not have to comply with those accounting standards.

**296(2) [Regulations]** The financial report must comply with any further requirements in the regulations.

**SECTION 297 TRUE AND FAIR VIEW**

**297** The financial statements and notes for a financial year must give a true and fair view of:

- (a) the financial position and performance of the company, registered scheme or disclosing entity; and
- (b) if consolidated financial statements are required-the financial position and performance of the consolidated entity.

This section does not affect the obligation under section 296 for a financial report to comply with accounting standards.

**Note:** If the financial statements and notes prepared in compliance with the accounting standards would not give a true and fair view, additional information must be included in the notes to the financial statements under paragraph 295(3)(c).

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**SECTION 298 ANNUAL DIRECTORS' REPORT**

**298(1) [Directors' report]** The company, registered scheme or disclosing entity must prepare a directors' report for each financial year. The report must include:

- (a) the general information required by section 299; and
- (b) the specific information required by section 300.
- (c) a copy of the auditor's declaration under section 307C in relation to the audit for the financial year.

**298(1A)** If the financial report for a financial year includes additional information under paragraph 295(3)(c) (information included to give true and fair view of financial position and performance), the directors' report for the financial year must also:

- (a) set out the directors' reasons for forming the opinion that the inclusion of that additional information was necessary to give the true and fair view required by section 297; and
- (b) specify where that additional information can be found in the financial report.

**298(2) [Requirements]** The report must:

- (a) be made in accordance with a resolution of the directors; and
- (b) specify the date on which the report is made; and
- (c) be signed by a director.

**298(3) [Small proprietary company]** A small proprietary company does not have to comply with subsection (1) for a financial year if:

- (a) it is preparing financial statements for that year in response to a shareholder direction under section 293; and
- (b) the direction specified that a directors' report need not be prepared.

#### SECTION 299 ANNUAL DIRECTORS' REPORT - GENERAL INFORMATION

**299(1)** General information about operations and activities. The directors' report for a financial year must:

- (a) contain a review of operations during the year of the entity reported on and the results of those operations; and
- (b) give details of any significant changes in the entity's state of affairs during the year; and
- (c) state the entity's principal activities during the year; and
- (d) give details of any matter or circumstance that has arisen since the end of the year that has significantly affected, or may significantly affect:
  - (i) the entity's operations in future financial years; or
  - (ii) the results of those operations in future financial years; and
  - (iii) the entity's state of affairs in future financial years; and
- (e) refer to likely developments in the entity's operations in future financial years and the expected results of those operations; and
- (f) if the entity's operations are subject to any particular and significant environmental regulation under a law of the Commonwealth of a State or Territory-details of the entity's performance in relation to environmental regulation.

**299(2)** [Entity reported on] The entity reported on is:

- (a) the company, registered scheme or disclosing entity (if consolidated financial statements are not required); or
- (b) the consolidated entity (if consolidated financial statements are required).

**299(3) Prejudicial information need not be disclosed.** The report may omit material that would otherwise be included under paragraph (1)(e) if it is likely to result in unreasonable prejudice to:

- (a) the company, registered scheme or disclosing entity; or

- (b) if consolidated financial statements are required-the consolidated entity or any entity (including the company, registered scheme or disclosing entity) that is part of the consolidated entity.

If material is omitted, the report must say so.

**SECTION 300 ANNUAL DIRECTORS' REPORT - SPECIFIC INFORMATION**

**300(1) [Content of report]** The directors' report for a financial year must include details of:

- (a) dividends or distributions paid to members during the year; and
- (b) dividends or distributions recommended or declared for payment to members, but not paid, during the year; and
- (c) the name of each person who has been a director of the company, registered scheme or disclosing entity at any time during or since the end of the year and the period for which they were a director; and
- (ca) the name of each person who:
  - (i) is an officer of the company, registered scheme or disclosing entity at any time during the year; and
  - (ii) was a partner in an audit firm, or a director of an audit company, that is an auditor of the company, disclosing entity or registered scheme for the year; and
  - (iii) was such a partner or director at a time when the audit firm or the audit company undertook an audit of the company, disclosing entity or registered scheme; and
- (d) options that are:
  - (i) granted over unissued shares or unissued interests during or since the end of the year; and
  - (ii) granted to any of the directors or any of the 5 most highly remunerated officers of the company; and
  - (iii) granted to them as part of their remuneration; (see subsections (3), (4) and (5)); and
- (e) unissued shares or interests under option as at the day the report is made (see subsections (3) and (6)); and
- (f) shares or interests issued during or since the end of the year as a result of the exercise of an option over unissued shares or interests (see subsections (3) and (7)); and
- (g) indemnities given and insurance premiums paid during or since the end of the year for a person who is or has been an officer or auditor (see subsections (8) (9)).

Public companies, listed companies and registered schemes must include additional information under subsections (10), (11), (12) and (13).

**300(2) [Details in financial report]** Details do not have to be included in the directors' report under this section if they are included in the company's financial report for the financial year.

**300(2A) [Details not included in report]** If subsection (2) is relied on not to include in the directors' report for a financial year details that would otherwise be required to be included in that report under paragraph (11B)(a) or (11C)(b), that report must specify, in the section headed "Non-audit services", where those details may be found in the company's financial report for that financial year.

**300(3) [Options over unissued shares]** Paragraphs (1)(d), (e) and (f) cover:

- (a) options over unissued shares and interests of the company, registered scheme or disclosing entity; and
- (b) if consolidated financial statements are required - options over unissued shares and interests of any controlled entity that is a company, registered scheme or disclosing entity.

**300(5) Options details** The details of an option granted are:

- (a) the company, registered scheme or disclosing entity granting the option; and
- (b) the name of the person to whom the option is granted; and
- (c) the number and class of shares or interests over which the option is granted.

**300(6) [Unissued shares or options]** The details of unissued shares or interests under option are:

- (a) the company, registered scheme or disclosing entity that will issue shares or interests when the options are exercised; and
- (b) the number and classes of those shares or interests; and
- (c) the issue price, or the method of determining the issue price, of those shares or interests; and
- (d) the expiry date of the options; and
- (e) any rights that option holders have under the options to participate in any share issue or interest issue of the company, registered scheme or disclosing entity or of any other body corporate or registered scheme.

**300(7) Shares or interests issued as a result of exercise of option** The details of shares or interests issued as a result of the exercise of an option are:

- (a) the company, registered scheme or disclosing entity issuing the shares or interests; and
- (b) the number of shares or interests issued; and
- (c) if the company, registered scheme or disclosing entity has different classes of shares or interests - the class to which each of those shares or interests belongs; and
- (d) the amount unpaid on each of those shares or interests; and
- (e) the amount paid, or agreed to be considered as paid, on each of those shares or interests.

**300(8) Indemnities and insurance premiums for officers or auditors.** The report for a company must include details of:

(a) any indemnity that is given to a current or former officer or auditor against a liability and that is covered by subsection 199A(2) or (3), or any relevant agreement under which an officer or auditor may be given an indemnity of that kind; and

(b) any premium that is paid, or agreed to be paid, for insurance against a current or former officer's or auditor's liability for legal costs.

Note: Sections 199A and 199B contain general prohibitions against giving certain indemnities and paying certain insurance premiums. This subsection requires transactions that are exceptions to these prohibitions to be reported.

300(9) [Indemnities and insurance premiums details] The details required under subsection (8) are:

(a) for an officer - their name or the class of officer to which they belong or belonged; and

(b) for an auditor - their name; and

(c) the nature of the liability; and

(d) for an indemnity given - the amount the company paid and any other action the company took to indemnify the officer or auditor; and

(e) for an agreement to indemnify - the amount that the relevant agreement requires the company to pay and any other action the relevant agreement requires the company to take to indemnify the officer or auditor; and

(f) for an insurance premium - the amount of the premium.

The report need not give details of the nature of the liability covered by, or the amount of the premium payable under, a contract of insurance to the extent that disclosure of those details is prohibited by the insurance contract.

300(10) Special rules for public companies [Not reproduced]

300(11) Special rules for listed companies [Not reproduced]

300(12) Special rules for listed registered schemes [Not reproduced]

300(13) Special rules for registered schemes [Not reproduced]

**300(14) Proceedings on behalf of a company** The report for a company must also include the following details of any application for leave under Section 237 made in respect of the company:

(a) the applicant's name; and

(b) a statement whether leave was granted.

**300(15) Details to be included in report** The report for a company must also include the following details of any proceedings that a person has brought or intervened in on behalf of the company with leave under Section 237:

(a) the person's name

(b) the names of the parties to the proceedings



- (c) sufficient information to enable members to understand the nature and status of the proceedings (including the cause of action and any orders made by the court).

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**SECTION 301 AUDIT OF ANNUAL FINANCIAL REPORT**

**301(1) [Audit]** A company, registered scheme or disclosing entity must have the financial report for a financial year audited in accordance with Division 3 and obtain an auditor's report.

**301(2) [Small proprietary company]** A small proprietary company's financial report for a financial year does not have to be audited if:

- (a) the report is prepared in response to a direction under section 293; and
- (b) the direction did not ask for the financial report to be audited.

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**SECTION 314 ANNUAL FINANCIAL REPORTING TO MEMBERS**

**314(1) Full or concise report to members.** A company, registered scheme or disclosing entity must report to members for a financial year by either:

- (a) sending members copies of:
  - (i) the financial report for the year; and
  - (ii) the directors' report for the year (see sections 298-300); and
  - (iii) the auditor's report on the financial report; or
- (b) sending members a concise report for the year that complies with subsection (2).

**314(1AA) Providing concise reports** A company, registered scheme or disclosing entity may provide the reports, or the concise report, for a financial year by doing all of the following:

- (a) sending, to each member who has made the election referred to in paragraph (1AB)(a);
  - (i) a hard copy of the reports, or the concise report; or
  - (ii) if the member has elected to receive the reports, or the concise report, as an electronic copy in accordance with paragraph (1AB)(c) – an electronic copy of the reports, or the concise reports;
- (b) making a copy of the reports, or the concise report, readily accessible on a web site;
- (c) directly notifying, in writing, all members who did not make the election referred to in paragraph (1AB)(a) that the copy is accessible on the web site, and specifying the direct address on the web site where the reports, or the concise report, may be accessed.

**Note:** A direct address may be specified, for example, by specifying the URL of the reports or the concise report.

**314(1AB) Notification in writing** For the purposes of paragraph (1AA)(a), a company, registered scheme or disclosing entity must, on at least one occasion, directly notify in writing each member that:

- (a) the member may elect to receive, free of charge, a copy of the reports for each financial year, or a copy of the concise report for each financial year; and
- (b) if the member does not so elect – the member may access the reports, or the concise report, on a specified web site; and
- (c) if the member does so elect and the company, scheme or entity offers to send the report either as a hard copy or an electronic copy – the member may elect to receive the copy as either a hard copy or an electronic copy.

**314(1AC) Standing election** An election made under subsection (1AB) is a standing election for each later financial year until the member changes his, her or its election.

Note: The member may request, under section 316, the company, registered scheme or disclosing entity not to send them material under this section.

**314(1AD) Electronic notification** A member may, for the purposes of this paragraph (1AA)(c) or subsection (1AB), be notified by electronic means only if the member has previously nominated that means as one by which the member may be notified.

**314(1AE) Reports** A company, registered scheme or disclosing entity may provide the reports, or the concise report, by sending each member:

- (a) a hard copy of the reports, or the concise report; or
- (b) an electronic copy of the reports, or the concise report, if the member has nominated that means as one by which the member may be sent the reports or the concise report.

**314(2) Concise report.** A concise report for a financial year consists of:

- (a) a concise financial report for the year drawn up in accordance with accounting standards made for the purposes of this paragraph; and
- (b) the directors' report for the year (see sections 298-300); and
- (c) a statement by the auditor:
  - (i) that the financial report has been audited; and
  - (ii) whether, in the auditor's opinion, the concise financial report complies with the accounting standards made for the purposes of paragraph (a); and
- (d) a copy of any qualification in, and of any statements included in the emphasis of matter section of, the auditor's report on the financial report; and
- (e) a statement that the report is a concise report and that the full financial report and auditor's report will be sent to the member free of charge if the member asks for them.

**314(3) [Discussion and analysis]** If the accounting standards made for the purposes of paragraph (2)(a) require a discussion and analysis to be included in a concise financial report:

- (a) the auditor must report on whether the discussion and analysis complies with the requirements that the accounting standards lay down for the discussion and analysis; and
- (b) the auditor does not otherwise need to audit the statements made in the discussion and analysis.

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#### SECTION 315 DEADLINE FOR REPORTING TO MEMBERS

**315(1) Public companies and disclosing entities that are not registered schemes.** A company, or a disclosing entity that is not a registered scheme, must report to members under section 314 by the earlier of:

- (a) 21 days before the next AGM after the end of the financial year; or
- (b) 4 months after the end of the financial year.

Note: For the deadline for holding an AGM, see section 250N.

**315(2) Small proprietary companies (shareholder direction under section 293).** If a shareholder direction is given to a small proprietary company under section 293 after the end of the financial year, the company must report to members under section 314 by the later of:

- (a) 2 months after the date on which the direction is given; and
- (b) 4 months after the end of the financial year.

**315(3) Registered schemes.** [Not reproduced.]

**315(4) Other proprietary companies.** A proprietary company that is not covered by subsection (1) or (2) must report to members under section 314 within 4 months after the end of the financial year.

**315(5)** For the purposes of this section, a company, registered scheme or disclosing entity that reports in accordance with subsection 314(1AA) is taken to report at the time that the company, scheme or entity has fully complied with the requirements of that subsection.

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#### SECTION 316 MEMBER'S CHOICES FOR ANNUAL FINANCIAL INFORMATION

**316(1) [Member request]** A member may request the company, registered scheme or disclosing entity:

- (a) not to send them the material required by section 314; or
- (b) to send them a full financial report and the director's report and auditor's report.

A request may be a standing request or for a particular financial year. The member is not entitled to a report for a financial year earlier than the one before the financial year in which the request is made.

**316(2) [Time for compliance with request]** The time for complying with a request under paragraph (1)(b) is:

- (a) 7 days after the request is received; or
  - (b) the deadline for reporting under section 315;
- whichever is later.

**316(3) [Cost]** A full financial report, directors' report and auditor's report are to be sent free of charge unless the member has already received a copy of them free of charge.

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**SECTION 247D COMPANY OR DIRECTORS MAY ALLOW MEMBER TO INSPECT BOOKS**  
(replaceable rule - see section 135)

**247D** The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.

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**SECTION 251A MINUTES**

**251A(1) [Company must keep minute books]** A company must keep minute books in which it records within 1 month:

- (a) proceedings and resolutions of meetings of the company's members; and
- (b) proceedings and resolutions of directors' meetings (including meetings of a committee of directors); and
- (c) resolutions passed by members without a meeting; and
- (d) resolutions passed by directors without a meeting; and
- (e) if the company is a proprietary company with only 1 director - the making of declarations by the director.

Note: For resolutions and declarations without meetings, see sections 248A, 248B, 249A and 249B.

**251A(2) [Minutes to be signed]** The company must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:

- (a) the chair of the meeting
- (b) the chair of the next meeting.

**251A(3) [Resolution without a meeting]** 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.

**251A(4) [1 director company]** The director of a proprietary company with only 1 director must sign the minutes of the making of a declaration by the director within a reasonable time after the declaration is made.

**251A(5)** [Where minute books to be kept] A company must keep its minute books at:

- (a) its registered office; or
- (b) its principal place of business in this jurisdiction; or
- (c) another place approved by ASIC.

**251A(6) [Evidence]** A minute that is so recorded and signed is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.

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**SECTION 251B MEMBERS' ACCESS TO MINUTES**

**251B(1) [Inspection by members]** A company must ensure that the minute books for the meeting of its members and for resolutions of members passed without meetings are open for inspection by members free of charge.

**251B(2) [Requests by members]** A member of a company may ask the company in writing for a copy of:

- (a) any minutes of a meeting of the company's members or an extract of the minutes; or
- (b) any minutes of a resolution passed by members without a meeting.

**251B(3) [No payment required]** If the company does not require the member to pay for the copy, the company must send it:

- (a) within 14 days after the member asks for it; or
- (b) within any longer period that ASIC approves.

**251B(4) [Payment required]** If the company requires payment for the copy, the company must send it:

- (a) within 14 days after the company receives the payment; or
- (b) within any longer period that ASIC approves.

The amount of any payment the company requires cannot exceed the prescribed amount.

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**SECTION 324AA INDIVIDUAL AUDITORS, AUDIT FIRMS AND AUTHORISED AUDIT COMPANIES**

**324AA** Subject to this Part, the following may be appointed as auditor for a company or a registered scheme for the purposes of this Act:

- (a) an individual;
- (b) a firm;

(c) a company.

The company or registered scheme may have more than one auditor.

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**SECTION 325 APPOINTMENT OF AUDITOR BY PROPRIETARY COMPANY**

**325** The directors of a proprietary company may appoint an auditor for the company if an auditor has not been appointed by the company in general meeting.

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**328A(1) [Auditors Consent to Appointment]** A company, the directors of a company or the responsible entity of a registered scheme must not appoint an individual, firm or company as auditor of the company unless that individual, firm or company:

- (a) has consented, before the appointment, to act as auditor; and
- (b) has not withdrawn that consent before the appointment is made.

For the purposes of this section, a consent, or the withdrawal of a consent, must be given by written notice to the company, the directors or the responsible entity of the scheme.

**328A(2) [Signature of consent notice]** A notice under subsection (1) given by a firm must be signed by a member of the firm who is a registered company auditor both:

- (a) in the firm name; and
- (b) in his or her own name.

**328A(3) [Who must sign notice]** A notice under subsection (1) given by a company must be signed by a director or senior manager of the company both:

- (a) in the company's name; and
- (b) in his or her own name.

**328A(4) [Where appointment contravenes s328A(1)]** If a company, the directors of a company or the responsible entity of a registered scheme appoints an individual, firm or company as auditor of a company in contravention of subsection (1):

- (a) the purported appointment does not have any effect; and
- (b) the company or responsible entity, and any officer of the company or responsible entity who is in default, are each guilty of an offence.

**328B(1) [Nomination of Auditor]** Subject to this section, a company may appoint an individual, firm or company as auditor of the company at its AGM only if a member of the company gives the company written notice of the nomination of the individual, firm or company for appointment as auditor:

- (a) before the meeting was convened; or

- (b) not less than 21 days before the meeting.

This subsection does not apply if an auditor is removed from office at the AGM.

**328B(2) [Where appointment contravenes s328B(1)]** If a company purports to appoint an individual, firm or company as auditor of the company in contravention of subsection (1):

- (a) the purported assignment is of no effect; and
- (b) the company and any officer of the company who is in default are each guilty of an offence.

**328B(3) [Who must be sent notice of notification]** If a member gives a company notice of the nomination of an individual, firm or company for appointment as auditor of the company, the company must send a copy of the notice to:

- (a) each individual, firm or company nominated; and
- (b) each auditor of the company; and
- (c) each person entitled to receive notice of general meetings of the company.

This is so whether the appointment is to be made at a meeting or an adjourned meeting referred to in section 327D or at an AGM.

**328B(4) [Timeframe for sending notice of notification]** The copy of the notice of nomination must be sent:

- (a) not less than 7 days before the meeting; or
- (b) at the time notice of the meeting is given.

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#### **SECTION 329 REMOVAL AND RESIGNATION OF AUDITORS**

**329(1) [Special notice of resolution for removal]** An auditor of a company may be removed from office by resolution of the company at a general meeting of which notice under subsection (1A) has been given, but not otherwise.

**329(1A) [2 months notice of intention required]** Notice of intention to move the resolution must be given to the company at least 2 months before the meeting is to be held. However, if the company calls a meeting after the notice of intention is given under this subsection, the meeting may pass the resolution even though the meeting is held less than 2 months after the notice of intention is given.

Note: Short notice of the meeting cannot be given for this resolution (see subsection 249H(4)).

**329(2) [Copy to auditor and ASIC]** Where notice under subsection (1A) of a resolution to remove an auditor is received by a company, it must as soon as possible send a copy of the notice to the auditor and lodge a copy of the notice.

**329(3) [Representation by auditor]** Within 7 days after receiving a copy of the notice, the auditor may make representations in writing, not exceeding a reasonable length, to the company and request that, before the meeting at which the resolution is to be considered, a copy of the representations be sent by the company at its expense to every member of the company to whom notice of the meeting is sent.

**329(4) [Copies to members]** Unless ASIC on the application of the company otherwise orders, the company must send a copy of the representations in accordance with the auditor's request, and the auditor may, without prejudice to his or her right to be heard orally or, where a firm is the auditor, to have a member of the firm heard orally on its behalf, require that the representations be read out at the meeting.

**329(5) [Resignation]** An auditor of a company may, by notice in writing given to the company, resign as auditor of the company if:

- (a) the auditor has, by notice in writing given to ASIC, applied for consent to the resignation and stated the reasons for the application and, at or about the same time as the notice was given to ASIC, notified the company in writing of the application to ASIC; and
- (b) the consent of ASIC has been given.

**329(6) [Notification by ASIC]** ASIC must, as soon as practicable after receiving a notice from an auditor under subsection (5), notify the auditor and the company whether it consents to the resignation of the auditor.

**329(7) [Privileged statement by auditor]** A statement made by an auditor in an application to ASIC under subsection (5) or in answer to an inquiry by ASIC relating to the reasons for the application:

- (a) is not admissible in evidence in any civil or criminal proceedings against the auditor; and
- (b) may not be made the ground of a prosecution, action or suit against the auditor;

and a certificate by ASIC that the statement was made in the application or in the answer to the inquiry by ASIC is conclusive evidence that the statement was so made.

**329(8) [Date of resignation]** Subject to subsection (9), the resignation of an auditor takes effect:

- (a) on the day (if any) specified for the purpose in the notice of resignation;
- (b) on the day on which ASIC gives its consent to the resignation; or
- (c) on the day (if any) fixed by ASIC for the purpose:

whichever last occurs.

**329(9) [Resignation of auditor of proprietary company]** The resignation of an auditor of a proprietary company does not require the consent of ASIC under subsection (5), and takes effect:

on the day (if any) specified for the purpose in the notice of resignation; or

on the day on which the notice is received by the company;

whichever is the later.



**329(10) [Retirement or withdrawal from firm]** Where on the retirement or withdrawal from a firm of a member the firm will no longer be capable, by reason of the provisions of paragraph 324(2)(d) of acting as auditor of a company, the member so retiring or withdrawing must (if not disqualified from acting as auditor of the company) be deemed to be the auditor of the company until he or she obtains the consent of ASIC to his or her retirement or withdrawal.

**329(11) [Notice of ASIC and trustee for debenture holders]** Within 14 days after:

(a) the removal from office of an auditor of a company; or

(b) the receipt of a notice of resignation from an auditor of a company,

the company must:

(c) lodge with ASIC a notice of the removal or resignation in the prescribed form; and

(d) where there is a trustee for the holders of debentures of the company - give to the trustee a copy of the notice lodged with ASIC.

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#### **SECTION 307 AUDIT**

**307** An auditor who conducts an audit of the financial report for a financial year or half-year must form an opinion about:

(a) whether the financial report is in accordance with this Act, including:

(i) section 296 or 304 (compliance with accounting standards); and

(ii) section 297 or 305 (true and fair view); and

(aa) if the financial report includes additional information under paragraph 295(3)(c) or 303(3)(c) (information included to give true and fair view of financial position and performance) – whether the inclusion of that additional information was necessary to give the true and fair view required by section 297 or 305; and

(b) whether the auditor has been given all information, explanation and assistance necessary for the conduct of the audit; and

(c) whether the company, registered scheme or disclosing entity has kept financial records sufficient to enable a financial report to be prepared and audited; and

(d) whether the company, registered scheme or disclosing entity has kept other records and registers as required by this Act.

#### **SECTION 307A AUDIT TO BE CONDUCTED IN ACCORDANCE WITH AUDITING STANDARDS**

**307A(1) [Individual auditor or audit company]** If an individual auditor, or an audit company, conducts:

(a) an audit of the financial report for a financial year; or

- (b) an audit or review of the financial report for a half-year;

the individual auditor or audit company must conduct the audit or review in accordance with the auditing standards.

**307A(2) [Lead auditor]** If an audit firm, or an audit company, conducts:

- (a) an audit of the financial report for a financial year; or  
(b) an audit or review of the financial report for a half-year;

the lead auditor for the audit or review must ensure that the audit or review is conducted in accordance with the auditing standards.

**307A(3) [Strict liability offence]** An offence based on subsection (1) or (2) is an offence of strict liability.

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

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**SECTION 308 AUDITOR'S REPORT ON ANNUAL FINANCIAL REPORT**

**308(1) [Report to members]** An auditor who audits the financial report for a financial year must report to members on whether the auditor is of the opinion that the financial report is in accordance with this Act, including:

- (a) section 296 (compliance with accounting standards); and  
(b) section 297 (true and fair view).

If not of that opinion, the auditor's report must say why.

**308(2) [Non-compliance with accounting standard]** If the auditor is of the opinion that the financial report does not comply with an accounting standard, the auditor's report must, to the extent it is practicable to do so, quantify the effect that non-compliance has on the financial report. If it is not practicable to quantify the effect fully, the report must say why.

**308(3) [Defects or irregularities]** The auditor's report must describe:

- (a) any defect or irregularity in the financial report; and  
(b) any deficiency, failure or shortcoming in respect of the matters referred to in paragraph 307(b), (c) or (d).

**308(3A)** The auditor's report must include any statements or disclosures required by the auditing standards.

**308(3B)** If the financial report includes additional information under paragraph 295(3)(c) (information included to give true and fair view of financial position and performance), the auditor's report must also include a statement of the auditor's opinion on whether the inclusion of that additional information was necessary to give the true and fair view required by section 297.

**308(3C)** If the directors' report for the financial year includes a remuneration report, the auditor must also report to members on whether the auditor is of the opinion that the remuneration report complies with section 300A. If not of that opinion, the auditor's report must say why.

**308(4) [Date]** The report must specify the date on which it is made.

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**SECTION 310 AUDITOR'S POWER TO OBTAIN INFORMATION**

**310** The auditor:

- (a) has a right of access at all reasonable times to the books of the company, registered scheme or disclosing entity; and
- (b) may require any officer to give the auditor information, explanations or other assistance for the purposes of the audit or review.

A request under paragraph (b) must be a reasonable one.

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**SECTION 312 ASSISTING AUDITOR**

**312** An officer of a company, registered scheme or disclosing entity must:

- (a) allow the auditor access to the books of the company, scheme or entity; and
- (b) give the auditor any information, explanation or assistance required under section 310.

Note: Books include registers and documents generally (not only the accounting "books"): see the definition of books in section 9.

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**SECTION 490 WHEN COMPANY CANNOT WIND UP VOLUNTARILY**

**490** Except with the leave of the Court, a company cannot resolve that it be wound up voluntarily if:

- (a) an application for the company to be wound up in insolvency has been filed; or
- (b) the Court has ordered that the company be wound up in insolvency, whether or not the order was made on such an application.

**SECTION 491 CIRCUMSTANCES IN WHICH COMPANY MAY BE WOUND UP VOLUNTARILY**

**491(1) [Special resolution]** Subject to section 490, a company may be wound up voluntarily if the company so resolves by special resolution.

**491(2) [Lodgement of copy; publication]** A company must:

- (a) within 7 days after the passing of a resolution for voluntary winding up, lodge a printed copy of the resolution; and
- (b) within 21 days after the passing of the resolution, cause notice of the resolution to be published in the *Gazette*.

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#### SECTION 494 DECLARATION OF SOLVENCY

**494(1) [Declaration by majority of directors]** Where it is proposed to wind up a company voluntarily, a majority of the directors may, before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out, make a written declaration to the effect that they have made an inquiry into the affairs of the company and that, at a meeting of directors, they have formed the opinion that the company will be able to pay its debts in full within a period not exceeding 12 months after the commencement of the winding up.

**494(2) [Statement of affairs]** There must be attached to the declaration a statement of affairs of the company showing, in the prescribed form:

- (a) the property of the company, and the total amount expected to be realised from that property;
- (b) the liabilities of the company; and
- (c) the estimated expenses of winding up;

made up to the latest practicable date before the making of the declaration.

**494(3) [Requirements as to declaration]** A declaration so made has no effect for the purposes of the Act unless:

- (a) the declaration is made at the meeting of directors referred to in subsection (1);
- (b) the declaration is lodged before the date on which the notices of the meeting at which the resolution for the winding up of the company is to be proposed are sent out or such later date as ASIC, whether before, on or after the first-mentioned date, allows; and
- (c) the resolution for voluntary winding up is passed within the period of 5 weeks after the making of the declaration or within such further period after the making of that declaration as ASIC, whether before or after the end of that period of 5 weeks, allows.

**494(4) [Offence]** A director who makes a declaration under this section (including a declaration that has no effect for the purposes of this Act by reason of subsection (3)) without having reasonable grounds for his or her opinion that the company will be able to pay its debts in full within the period stated in the declaration is guilty of an offence.

**494(5) [Presumption against director]** If the company is wound up pursuant to a resolution for voluntary winding up passed within the period of 5 weeks after the making of the declaration or, if pursuant to paragraph (3)(c) ASIC has allowed a further period after the end of that period of 5 weeks, within that further period, but its debts are not paid or provided for in full within the period stated in the declaration, it must be presumed, unless the contrary is shown, that a director who made the declaration did not have reasonable grounds for his or her opinion.

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**SECTION 493 EFFECT OF VOLUNTARY WINDING UP**

**493(1) [Effect]** The company shall, from the passing of the resolution, cease to carry on its business except so far as is in the opinion of the liquidator required for the beneficial disposal or winding up of that business, but the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its constitution, continue until it is deregistered.

**493(2) [Avoidance of transfer of shares]** Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the members, made after the passing of the resolution are void.

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**SECTION 495 LIQUIDATORS**

**495(1) Appointment]** The company in general meeting must appoint a liquidator or liquidators for the purpose of winding up the affairs and distributing the property of the company and may fix the remuneration to be paid to him, her or them.

**495(2) [Cessation of directors' powers]** On the appointment of a liquidator, all the powers of the directors cease except so far as the liquidator, or the company in general meeting with the consent of the liquidator, approves the continuance of any of those powers.

**495(3) [Vacancy]** If a vacancy occurs by death, resignation or otherwise in the office of a liquidator, the company in general meeting may fill the vacancy by the appointment of a liquidator and fix the remuneration to be paid to him or her, and for that purpose a general meeting may be convened by any contributory or, if there were 2 or more liquidators, by the continuing liquidators.

**495(4) [Manner of holding meeting]** The meeting must be held in the manner provided by this Act or by the company's constitution or in such manner as is, on application by any contributory or by the continuing liquidators, determined by the Court.

**495(5) [Liquidator's report]** Before remuneration is fixed under subsection (1), the liquidator or liquidators, or the proposed liquidator or proposed liquidators, must:

- (a) prepare a report setting out:
  - (i) such matters as will enable the members to make an informed assessment as to whether the proposed remuneration is reasonable; and
  - (ii) the costs associated with each of those major tasks; and
- (b) table the report at the relevant general meeting.

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[NOTE see generally Corporations Act Part 5.5 Division 4 and Part 5.6]

**SECTION 502 APPOINTMENT OF LIQUIDATOR**

**502** If from any cause there is no liquidator acting, the Court may appoint a liquidator.

#### SECTION 503 REMOVAL OF LIQUIDATOR

**503** The Court may, on cause shown, remove a liquidator and appoint another liquidator.

#### SECTION 504 REVIEW OF LIQUIDATOR'S REMUNERATION

**504(1) [Application to the court to review remuneration of liquidator]** Any member or creditor, or the liquidator, may at any time before the deregistration of the company apply to the Court to review the amount of the remuneration of the liquidator, and the decision of the Court is final and conclusive.

**504(2) [Reasonableness of remuneration]** IN exercising its powers under subsection (1), the Court must have regard to whether the remuneration is reasonable, taking into account any or all of the following matters:

- (a) the extent to which the work performed by the liquidator was reasonably necessary;
- (b) the extent to which the work likely to be performed by the liquidator is likely to be reasonably necessary;
- (c) the period during which the work was, or is likely to be, performed by the liquidator;
- (d) the quality of the work performed, or likely to be performed, by the liquidator;
- (e) the complexity (or otherwise) of the work performed, or likely to be performed, by the liquidator;
- (f) the extent (if any) to which the liquidator was, or is likely to be, required to deal with extraordinary issues;
- (g) the extent (if any) to which the liquidator was, or is likely to be, required to accept a higher level of risk or responsibility than is usually the case;
- (h) the value and nature of any property dealt with, or likely to be dealt with, by the liquidator;
- (i) whether the liquidator was, or is likely to be, required to deal with:
  - (i) one or more receivers; or
  - (ii) one or more receivers and managers;
- (j) the number, attributes and behaviour, or the likely number, attributes and behaviour, of the company's creditors;
- (k) if the remuneration is ascertained, in whole or in part, on a time basis:
  - (i) the time properly taken, or likely to be taken, by the liquidator in performing the work; and
  - (ii) whether the total remuneration payable to the liquidator is capped;
- (l) any other relevant matters.

#### SECTION 505 ACTS OF LIQUIDATOR VALID ETC

**505(1) [Acts valid]** The acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in his or her appointment or qualification.

**505(2) [Disposition of property by liquidator]** A conveyance, assignment, transfer, mortgage, charge or other disposition of a company's property made by a liquidator is, notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator, valid in favour of any person taking such property in good faith and for value and without actual knowledge of the defect or irregularity.

**505(3) [Disposition of property to liquidator]** A person making or permitting a disposition of property to a liquidator must be protected and indemnified in so doing notwithstanding any defect or irregularity affecting the validity of the winding up or the appointment of the liquidator that is not then known to that person.

**505(4) [Disposition includes payment]** For the purposes of this section, a disposition of property must be taken as including a payment of money.

#### SECTION 506 POWERS AND DUTIES OF LIQUIDATOR

**506(1) [Powers]** The liquidator may:

- (a) (Omitted)
- (b) exercise any of the powers that this Act confers on a liquidator in a winding up in insolvency or by the Court;
- (c) exercise the power under section 478 of a liquidator appointed by the Court to settle a list of contributors;
- (d) exercise the Court's powers under subsection 483(3) (except paragraph 483(3)(b)) in relation to calls on contributories;
- (e) exercise the power of the Court of fixing a time within which debts and claims must be proved; or
- (f) convene a general meeting of the company for the purpose of obtaining the sanction of the company by special resolution in respect of any matter or for any other purpose he or she thinks fit.

**506(1A) [Application of sec 477(2A), (2B)]** Subsections 477(2A) and (2B) apply in relation to the liquidator as if:

- (a) he or she were a liquidator in a winding up in insolvency or by the Court; and
- (b) in the case of a members' voluntary winding up - a reference in those subsections to an approval were a reference to the approval of a special resolution of the company.

**506(1B) [Lodgement of special resolution]** The company must lodge a copy of a special resolution referred to in paragraph (1A)(b) with ASIC within 14 days after the resolution is passed.

**506(2) [List *prima facie* evidence of liability]** A list of contributories settled in accordance with paragraph (1)(c) is *prima facie* evidence of the liability of the persons named in the list to be contributories.

**506(3) [Duties]** The liquidator must pay the debts of the company and adjust the rights of the contributories among themselves.

**SECTION 507 POWER OF LIQUIDATOR TO ACCEPT SHARES ETC AS CONSIDERATION FOR SALE OF PROPERTY OF COMPANY**

**507(1) [Application of section]** This section applies where it is proposed to transfer or sell to a body corporate the whole or a part of the business or property of a company.

**507(2) [Special resolution of company]** The liquidator of the company may, with the sanction of a special resolution of the company conferring on the liquidator either a general authority or an authority in respect of a particular arrangement, enter into an arrangement under which, in compensation or part compensation for the transfer or sale:

- (a) the liquidator is to receive shares, debentures, policies or other like interests in the body corporate for distribution among the members of the company; or
- (b) the members of the company may, instead of, or as well as, receiving cash, shares, debentures, policies or other like interests in the body corporate, participate in the profits of, or receive any other benefit from, the body corporate.

**507(3) [Sale etc binding]** A transfer, sale or arrangement under this section is binding on the members of the company.

**507(4) [Rights of dissenting member]** If a member of the company who did not vote in favour of a special resolution expresses dissent from the resolution in writing addressed to the liquidator and left at the office of the liquidator within 7 days after the passing of the resolution, the member may require the liquidator either to abstain from carrying the resolution into effect or to purchase the member's interest at a price to be determined by agreement or by arbitration under this section.

**507(5) [Purchase of member's interest]** If the liquidator elects to purchase the member's interest, the purchase money must be paid before the company is deregistered and be raised by the liquidator in such manner as is determined by special resolution.

**507(6) [Validity of special resolution]** A special resolution is not invalid for the purposes of this section because it is passed before, or concurrently with, a resolution for voluntary winding up or for appointing liquidators but, if an order for winding up the company by the Court is made within 1 year after the passing of the resolution, the resolution is not valid unless sanctioned by the Court.

**507(7) [Law applicable to arbitration]** For the purposes of an arbitration under this section, the law of this jurisdiction relating to commercial arbitration applies as if there were a submission for reference to 2 arbitrators, one to be appointed by each party.

**507(7A)** Parties to the arbitration may agree on the State or Territory in this jurisdiction whose law is to govern the arbitration. The **agreed arbitration law** is the law of that State or Territory relating to commercial arbitration.

**507(8) [Appointment of arbitrator]** The appointment of an arbitrator may be made in writing signed by:

- (a) if there is only one liquidator - the liquidator; or
- (b) if there is more than one liquidator - any 2 or more of the liquidators.

**507(9) [Court directions]** The Court may give any directions necessary for the initiation and conduct of the arbitration and any such direction is binding on the parties.



**507(10) [Creditors' voluntary winding up]** In the case of a creditors' voluntary winding up, the powers of the liquidator under this section must not be exercised except with the approval of the Court or the committee of inspection.

**507(11) [Lodgement of special resolution]** The company must lodge a copy of a special resolution referred to in subsection (2) or (5) with ASIC within 14 days after the resolution is passed.

#### SECTION 508 ANNUAL MEETING OF CREDITORS

**508(1) [Annual obligations of liquidator – meeting or report]** If the winding up continues for more than 1 year, the liquidator must:

(a) in the case of a members' voluntary winding up:

- (i) convene a meeting of the creditors; or
- (ii) prepare a report that complies with subsection (3), and lodge a copy of the report with ASIC;

within three months after the end of the first year beginning on the day on which the company resolved that it be wound up voluntarily and the end of each succeeding year.

**508(2) [Notice of creditor's meeting]** The liquidator must lay before a meeting convened under paragraph (1)(a) of subparagraph (1)(b)(i) an account of:

- (a) the liquidator's acts and dealings; and
- (b) the conduct of the winding up;

during that first year or that succeeding year, as the case may be.

**508(3) [Report]** A report referred to in subparagraph (1)(b)(ii) must set out:

- (a) an account of:
  - (i) the liquidator's acts and dealings; and
  - (ii) the conduct of the winding up;

during that first year or that succeeding year, as the case may be; and

- (b) a description of the acts and dealings that remain to be carried out by the liquidator in order to complete the winding up; and
- (c) an estimate of when the winding up is likely to be completed.

**508(4) [Written notice to creditors]** If a liquidator prepares a report under subparagraph (1)(B)(ii), the liquidator must, within 14 days of lodging a copy of the report with ASIC, give each creditor of the company a written notice stating that:

- (a) the liquidator has decided not to convene a meeting of the creditors under subparagraph (1)(b)(i); and
- (b) the liquidator has:

- (i) prepared a report under subparagraph (1)(b)(ii); and
- (ii) lodged a copy of the report with ASIC; and
- (c) if the creditor requests the liquidator to give the creditor a copy of the report free of charge, the liquidator will comply with the request.

Note: For electronic notification under this subsection, see section 600G.

**508(5) [Request by creditors]** If a request is made as mentioned in paragraph (4)(c), the liquidator must comply with the request as soon as practicable.

#### SECTION 509 FINAL MEETING AND DEREGISTRATION

**509(1) [Duty of liquidator to make up account and convene meeting]** As soon as the affairs of the company are fully wound up, the liquidator must make up an account showing how the winding up has been conducted and the property of the company has been disposed of and, when the account is so made up, he or she must convene a general meeting of the company, or, in the case of a creditors' voluntary winding up, a meeting of the creditors and members of the company, for the purpose of laying before it the account and giving any explanation of the account.

**509(2) [Advertisement]** The meeting must be convened by an advertisement published in the *Gazette* at least 1 month before the meeting specifying the date, time, place and purpose of the meeting.

**509(3) [Lodgement of return of holding meeting]** The liquidator must, within 7 days after the meeting, lodge a return of the holding of the meeting and of its date with a copy of the account attached to the return.

**509(4) [Quorum]** At a meeting of the company, 2 members constitute a quorum and, at a meeting of the creditors and members of the company, 2 creditors and 2 members constitute a quorum and, if a quorum is not present at the meeting, the liquidator must, in place of the return mentioned in subsection (3), lodge a return (with account attached) stating that the meeting was duly convened and that no quorum was present and, upon such a return being lodged, the provisions of that subsection as to the lodging of the return must be deemed to have been complied with.

**509(5) ASIC must deregister at the end of 3 month period.** ASIC must deregister the company at the end of the 3 month period after the return was lodged.

**509(6) ASIC must deregister on a day specified by the Court.** On application by the liquidator or any other interested party, the Court may make an order that ASIC deregister the company on a specified day. The Court must make the order before the end of the 3 month period after the return was lodged.

**509(7) [Lodgement of copy of order]** The person on whose application an order of the Court under this section is made must, within 14 days after the making of the order, lodge an office copy of the order.

#### SECTION 510 ARRANGEMENT: WHEN BINDING ON CREDITORS

**510(1) [Requirement of resolution]** An arrangement entered into between a company about to be, or in the course of being, wound up and its creditors is, subject to subsection (4):

- (a) binding on the company if sanctioned by a special resolution; and

(b) binding on the creditors if sanctioned by a resolution of the creditors.

**510(1A) [Lodgement of special resolution]** The company must lodge a copy of a special resolution referred to in paragraph (1)(a) with ASIC within 14 days after the resolution is passed.

**510(2) [Calculation of amount of debt]** A creditor must be accounted a creditor for value for such sum as upon an account fairly stated, after allowing the value of security or liens held by the creditor and the amount of any debt or set-off owing by the creditor to the company, appears to be the balance due to the creditor.

**510(3) [Dispute as to debt]** A dispute about the value of any such security or lien or the amount of any such debt or set-off may be settled by the Court on the application of the company, the liquidator or the creditor.

**510(4) [Appeal to Court]** A creditor or contributory may, within 3 weeks after the completion of the arrangement, appeal to the Court in respect of the arrangement, and the Court may confirm, set aside or modify the arrangement and make such further order as it thinks just.

#### SECTION 511 APPLICATION TO COURT TO HAVE QUESTIONS DETERMINED OR POWERS EXERCISED

**511(1) [Persons entitled to apply]** The liquidator, or any contributory or creditor, may apply to the Court:

- (a) to determine any question arising in the winding up of a company; or
- (b) to exercise all or any of the powers that the Court might exercise if the company were being wound up by the Court.

**511(1A)** APRA may apply to the Court under subsection (1) in relation to a company that is a friendly society within the meaning of the *Life Insurance Act 1995* and which may be wound up voluntarily under subsection 180(2) of that Act.

**511(2) [Court's powers]** The Court, if satisfied that the determination of the question or the exercise of power will be just and beneficial, may accede wholly or partially to any such application on such terms and conditions as it thinks fit or may make such other order on the application as it thinks just.

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#### SECTION 501 DISTRIBUTION OF PROPERTY OF COMPANY

**501** Subject to the provisions of this Act as to preferential payments, the property of a company must, on its winding up, be applied in satisfaction of its liabilities equally and, subject to that application, must, unless the company's constitution otherwise provides, be distributed among the members according to their rights and interests in the company.

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#### SECTION 516 COMPANY LIMITED BY SHARES

**516** Subject to sections 518 and 519, if the company is a company limited by shares, a member need not contribute more than the amount (if any) unpaid on the shares in respect of which the member is liable as a present or past member.

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**SECTION 527 NATURE OF CONTRIBUTORY'S LIABILITY**

**527** A contributory's liability is of the nature of a specialty debt according to the law of the Capital Territory accruing due from the contributory when the contributory's liability commenced but payable at the times when calls are made for enforcing the liability.

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**SECTION 528 DEATH OF CONTRIBUTORY**

**527** If a contributory dies, whether before or after being placed on the list of contributories:

- (a) his or her personal representatives are liable in due course of administration to contribute to the company's property in discharge of his or her liability to contribute and are contributories accordingly; and
- (b) if his or her personal representatives default in paying any money that they are ordered to pay – proceedings may be taken for administering his or her estate and for compelling payment, out of the assets of that estate, of the money due.

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**SECTION 529 BANKRUPTCY OF CONTRIBUTORY**

**529** If a contributory becomes an insolvent under administration, or assigns his or her estate for the benefit of his or her creditors, whether before or after being placed on the list of contributories:

- (a) his or her trustee must represent him or her for the purpose of the winding up and must be a contributory accordingly; and
- (b) calls already made, and the estimated value of his or her liability to future calls, may be proved against his or her estate.

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**SECTION 109X SERVICE OF DOCUMENTS**

**109X(1) [Service]** For the purposes of any law, a document may be served on a company by:

- (a) leaving it at, or posting it to, the company's registered office; or
- (b) delivering a copy of the document personally to a director of the company who resides in Australia or in an external Territory; or
- (c) if a liquidator of the company has been appointed – leaving it at, or posting it to, the address of the liquidator's office in the most recent notice of that address lodged with ASIC; or

- (d) if an administrator of the company has been appointed – leaving it at, or posting it to, the address of the administrator in the most recent notice of that address lodged with ASIC.

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**SECTION 109X SERVICE OF DOCUMENTS**

**109X(2) [Director or company secretary]** For the purposes of any law, a document may be served on a director or company secretary (in addition to the methods of service set out in subsection (4)) by leaving it at, or posting it to, the alternative address notified to ASIC under subsections 5H(2), 117(2), 205B(1) or (4) or 601BC(2). However, this only applies to service on the director or company secretary:

- (a) in their capacity as a director or company secretary; or
- (b) for the purpose of a proceeding in respect of conduct they engaged in as a director or company secretary.

[There are no subsections 109X(4), 109X(5) in the *Corporations Act 2001*.]

