

**CONSTITUTION OF
AWARE SUPER PTY LTD
ACN 118 202 672**

**(CONFORMED TO INCLUDE CHANGES
MADE UP 29 JUNE 2022)**

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**CONSTITUTION
OF
AWARE SUPER PTY LTD**

1. PRELIMINARY

Fund means the Initial Fund and any Other Fund.

Fund Employer Entity means the entity or entities appointed from time to time by the directors under clause 14.9 as a Fund Employer Entity provided that, in any event, at all times, the requirements of SIS in respect of who may appoint Employer Representative

membership qualifications means a person meeting the following criteria:

- (a) is a director of the Company; and
- (b) consents in writing to holding a share,

but a director may choose not to be a member.

Member Representative Director means a director appointed by the Fund Member Entity.

ordinary resolution means a resolution of a meeting of members where more than two thirds of the total votes cast on the resolution are in favour of the resolution.

Other Fund means any Regulated Superannuation Fund (other than the Initial Fund) for which the Company acts as trustee.

special resolution means a resolution of a meeting of members:

- (a) of which notice as set out in section 249L(c) of the Corporations Act has been given; and
- (b) where at least seventy five percent (75%) of the total votes cast on the resolution are in favour of the resolution.

transfer means dispose of in any way and includes, without limitation, assign, assure, declare a trust, transfer or sell and also includes agreeing to do any of those things.

1.2 Interpretation

In the construction of this Constitution:

- (a) headings are disregarded; and
- (b)

- (g) solely for the above purposes, to do anything allowed by the operation of SIS and the Corporations Act (whether or not in respect of any object or power contained in this clause 2.1).

- (c) for any goods supplied or service rendered to the Company by a member, director or officer (including in a professional or technical capacity), where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the directors; or
- (d) as an employee of the Company, where the terms of employment are on reasonable commercial terms and have been previously approved by a resolution of the directors.

5. USE OF PROPERTY ON MERGER OR WINDING UP

5.1 Surplus

If, on the merger, winding up or dissolution of the Company, after the satisfaction of all its debts and liabilities, any property of the Company remains (surplus) , the surplus must not be paid or distributed among the members of the Company.

5.2

10. MEETINGS OF MEMBERS

10.1 No annual general meetings

The Company need not hold annual general meetings unless required by the Corporations Act.

10.2 Calling of meetings

(a)

- (d) other persons may attend only with leave of the meeting or its chairman and then only while the leave is on foot and in accordance with the terms of the leave.

The right to attend is subject to the powers of the chairman of the meeting both at law and under this Constitution.

11.2 Proxy eligibility

A proxy can only be a director.

11.3 Proxy recognition

A proxy is recognised as having been duly appointed by a member and entitled to act as a proxy for that member only if the proxy form complies with the requirements of this Constitution in relation to form, execution and lodgement.

11.4 Proxy form

The proxy form:

- (a) must contain the member's name and address; and
- (b) must contain the proxy's name or the office held by the proxy; and
- (c) may make provision for the chairman of the meeting of members to act as the proxy either in the absence of any other appointment or if the proxy primarily appointed fails to attend the meeting of members; and
- (d) must contain the Company's name and either identify the meetings of members at which the proxy form may be used or be identified as a standing one; and
- (e) may enable the member to instruct the proxy to vote for or against each notified resolution; and
- (f) may be in the form set out in Schedule

12.5 Passing the chair

If the chairman of a meeting of members is unwilling or unable to be the chairman for any part of the business of the meeting:

- (a) that chairman may withdraw as chairman for that part of the business and may nominate any person (whether or not they would be entitled under clause 12.4) to chair the meeting for that part of the business; and
- (b) after that part of the business is completed, the person so nominate

12.8 Adjournment of meeting

The chairman of a meeting of members at which a quorum is present may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place as the chairman determines.

12.9 Business at adjourned meeting

No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. No notice need be given of an adjournment, or of the business to be transacted at an adjourned meeting, unless it is adjourned for one (1) month or more, in which event notice of the adjourned meeting must be given.

13. VOTING AT MEETINGS OF MEMBERS

Any proxy may be revoked at any time. A later appointment revokes an earlier one if both appointments would not be validly exercised at the meeting. The decision of the chairman as to whether a proxy has been revoked is final and conclusive.

13.6 Proxy must vote on a poll as directed

A proxy form 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 (or on the voices), but if the proxy does so, the proxy must vote that way; and

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minutes of proceedings of the Company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

13.12 Conduct of poll

The demand for a poll may be withdrawn. If a poll is duly demanded (and the demand not withdrawn) it must be taken in such manner and at such time (either at once or after an interval or adjournment or otherwise) as the chairman of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded. A poll demanded on any question of adjournment must be taken at the meeting and without an adjournment. The demand for a poll does not prevent the continuance of the meeting for the transaction of any business other than the question on which a poll has been demanded.

13.13 No casting vote of chairman

If, on a show of hands or on a poll, the votes are equal, the chairman of the meeting does not have a casting vote.

13.14 Objections

No objection may be made to the validity of any vote except at the meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll is treated as valid. In recording votes the latest copy of the register held in the registered office must be adopted and acted on as the voting roll in respect of members and their shares on such register.

13.15 Ruling on votes

The chairman of the meeting is the sole judge of the validity of every vote tendered at the meeting and the determination of the chairman is final and conclusive.

14. APPOINTMENT AND REMOVAL OF DIRECTORS

14.1 Number of directors

- (a) The number of directors must be not less than two (2) nor more than the number determined from time to time by directors, but not exceeding thirteen (13) ("**Approved Number**").
- (b) Subject to clause 14.2, the directors may increase the Approved Number of directors up to a maximum of seventeen (17) to meet business needs. Any increase to the Approved Number of directors made under this sub clause, must be reduced back to the Approved Number set out in sub clause (a), within five (5) years of any increase taking effect.

14.2 Appointment of directors – overriding rule

All appointments of directors must satisfy at all times the equal representation rules in respect of the Initial Fund and any other applicable requirements under SIS. For the avoidance of doubt, a person who does not satisfy a policy or a procedure established by the directors from time to time in respect of a requirement of the Regulator (including in respect of who may be appointed as a director), or who is a Disqualified Person, must not be appointed as a director. A policy or procedure may allow some matters to be satisfied by a director within a period after the director has taken office on such terms as the policy or procedure may specify.

14.3 Appointment of directors

The directors are to be as follows:

- (a) fifty percent (50%) of the directors (other than any Independent Directors) are to be appointed by the Fund Employer Entities as Employer Representative Directors; and
- (b) fifty percent (50%) of the directors (other than any Independent Directors) are to be appointed by the Fund Member Entities as Member Representative Directors; and
- (c)

the directors must appoint such entity or entities determined under clause 14.8 to be appropriate to be the Fund Member Entity or Fund Member Entities. If there is more than one (1) Fund Member Entity appointed, the directors must specify the basis on which each such entity is to appoint Member Representative Directors (including, without limitation, the number of Member Representative Directors to be appointed by that Fund Member Entity and any class of members of the Fund to which they relate).

14.12 Termination of Fund Member Entities

Each Fund Member Entity continues to hold its position until:

- (a) the Fund Member Entity retires from that position by giving the Company ninety (90) days prior written notice of retirement (or such shorter period of notice allowed by the directors); or
- (b) the Fund Member Entity fails to replace a Member Representative Director appointed by the Fund Member Entity (or a predecessor)

- (c) is or becomes an insolvent under administration; or
- (d) cannot manage the company because of their mental incapacity and/or is a person whose estate or property has had a personal representative or trustee appointed to administer it; or
- (e) is absent from meetings of directors for a continuous period of six (6) months without leave of absence from the directors; or
- (f) being a Employer Representative Director, is removed from office on forty five (45) days notice (or such lesser period as specified by the Fund Employer Entity) by the Fund Employer Entity who appointed him or her (or a successor Fund Employer Entity); or
- (g) being a Member Representative Director, is removed from office on forty five (45) days notice (or such lesser period as specified by the Fund Member Entity) by the Fund Member Entity who appointed him or her (or a successor Fund Member Entity).

14.16 Replacement of directors

If:

- (a) an Employer Representative Director vacates office, the Fund Employer Entity who appointed him or her (or a successor Fund Employer Entity) may appoint a replacement director; or
- (b) a Member Representative Director vacates office, the Fund Member Entity who appointed him or her (or a successor Fund Member Entity) may appoint a replacement director,

and the replacement director is appointed for a term of three (3) years.

If the Independent Director vacates office, the other directors may replace the Independent Director.

14.17 Less than minimum number of directors

The continuing directors may act despite any vacancy in their body but if the number falls below the minimum number fixed in accordance with this Constitution, the directors may act only:

- (a) if there is no Fund Employer Entity, to appoint an interim Fund Employer Entity; or
- (b) if there is no Fund Member Entity, to appoint an interim Fund Member Entity; or
- (c) if a Fund Employer Entity fails to replace a Employer Representative Director appointed by the Fund Employer Entity (or a predecessor Fund Employer Entity) within forty five (45) days (or such longer period allowed by the directors) of the Employer Representative Director vacating office, to replace the Fund Employer Entity; or
- (d) if a Fund Member Entity fails to replace a Member Representative Director appointed by the Fund Member Entity (or a predecessor Fund Member Entity) within forty five (45) days (or such longer period allowed by the directors) of the Member Representative Director vacating office, to replace the Fund Member Entity; or

14.20 Record of Directors

The Secretary must specify and maintain in the Company's records held at the Company's Registered Office, details of the following:

- (a) for each Employer Representative Director:
 - i) which Fund Employer Entity (if more than one (1)) appointed the relevant Employer Representative Director (that entity being the entity able to remove that representative); and
 - ii) the term of appointment of that representative; and
 - iii) if the representative is appointed to replace another representative, his or her status as a replacement representative; and
- (b) for each Member Representative Director:
 - i) which Fund Member Entity (if more than one (1)) appointed the relevant Member Representative Director (that entity also being the entity able to remove that representative); and
 - ii) the term of appointment of that representative; and
 - iii) if the representative is appointed to replace another representative, his or her status as a replacement representative.

14.21 SIS requirements

Without limiting clause 3 or clause 14.15(b) or both of them, the provisions of this clause 14 must be read subject to any requirement of any policy, guideline or procedure adopted or established by the Board from time to time in respect of any requirement of SIS or the Regulator. To the extent that there is any inconsistency between any provision of clause 14 and any requirement of a policy, guideline or procedure (as described), the policy, guideline or procedure prevails.

15. REMUNERATION OF DIRECTORS**15.1 Application**

- (a) Clause 16 applies to the extent that amounts payable to the directors are reimbursed from the Initial Fund.
- (b) This clause 15 applies to the extent that amounts payable to the directors are reimbursed from any Other Fund or paid by the Company without reimbursement.

15.2 Remuneration

- (a) The directors shall be paid such remuneration for their services as directors, and on such basis, as the Board shall determine having regard to advice from an independent external expert.
- (b) The remuneration of directors shall accrue from day to day.

15.3 Expenses

Whenever the Board determines to increase the aggregate annual remuneration under this clause , it must:

- (a) give not less than 1 month's notice in writing to each of the Fund Employer Entities and the Fund Member Entities representing the Initial Fund of the increased aggregate annual remuneration and the basis of that determination, prior to the date of implementation; and
- (b)

16.8 Payment by the Company and recovery from the Initial Fund

Although all amounts payable to directors under this clause 16 are obligations of the Company, the directors must use reasonable endeavours to ensure that, to the maximum extent that SIS and the Corporations Act allows it, the Initial Fund reimburses the Company for those amounts (or pays those amounts directly to the directors).

17. MEETINGS OF DIRECTORS

17.1 Mode of meeting

- (a) The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they see fit.
- (b) For the purposes of the Corporations Act, each director, by consenting to be a director (or by reason of the adoption of this Constitution), consents to the use of each of the following technologies for holding a Board meeting:
 - (i) video;
 - (ii) telephone;
 - (iii) any other technology that permits each director to communicate with every other director; or
 - (iv) any combination of these technologies.

A director may withdraw the consent given under this clause in accordance with the Corporations Act.

- (c) A director need not be in the physical presence of another director or other directors. Where the directors are not all in attendance at one place and are holding a meeting using technology and each director can communicate with the other directors:
 - (i) the participating directors are, for the purpose of every provision of this Constitution concerning meetings of the Board, taken to be assembled together at a meeting and to be present at that meeting; and
 - (ii) all proceedings of the Board conducted in that manner are as valid and effective as if conducted at a meeting at which all of the participating directors were physically present in the one location.

17.2 Quorum

A quorum for a meeting of the directors is at least two thirds of all directors then in office (who must include at least two (2) Employer Representative Directors and at least two (2) Member Representative Directors) unless there are fewer than six

17.4 Secretary calling a meeting

The Secretary, upon the request of any director, must call a meeting of the directors to be

18.9 Effect of material increase in nature or extent of interest

A 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 standing notice.

18.10 Board may make exceptions regarding directors' interests in issues

Despite any other provision of this Constitution, provided SIS and the Corporations Act do not prohibit it, the Board may make rules regarding directors with an interest in an issue participating in the decision making of the Board, including, without limitation:

- (a) permitting a director who is otherwise prohibited from doing all or any of the following to do all or any of them; or
- (b) prohibiting a director who is otherwise permitted to do any or all of the following from doing all or any of them,

namely:

- (c) attending a meeting at which the issue is to be discussed; or
- (d) receiving material in respect of the issue; or
- (e) participating in discussions regarding the issue; or
- (f) voting on the issue; or
- (g) doing anything else in respect of the issue.

18.11 Effect of contravention

A contravention of any of the clauses in this clause 18 by a director does not affect the validity of any act, transaction, agreement, instrument, resolution or other thing.

19. POWERS AND DUTIES OF DIRECTORS**19.1 Powers generally**

Subject to SIS and the Corporations Act and to any other provisions of this Constitution, the management and control of the Company and of the business and affairs of the Company is vested in the directors. The directors may exercise all such powers of the Company and do all such acts or things unless, by this Constitution or by the Corporations Act, they are expressly required to be exercised or done by a meeting of members. No ordinary resolution, special resolution, or change in this Constitution, invalidates any prior act of the directors which would have been valid if that resolution or change in this Constitution had not been adopted or passed.

19.2 Borrowing

Subject to SIS, the directors have the power to raise or borrow any sum or sums of money and to secure the payment or repayment of such moneys and any other obligation or liability of the Company in such manner and on such terms in all respects as they think fit. This includes upon the security of any mortgage or by the issue of debentures or debenture stock of the Company charged upon all or any of the property of the Company (both present and future) including its goodwill, undertaking and uncalled capital for the time being or upon bills of exchange, promissory notes or other obligations or otherwise.

19.3 Arrangements for satisfying licensing requirement

Subject to SIS, the directors have the power to enter into any arrangement with the Fund or any service provider to the Fund in such manner and on such terms in all respects as they think fit for the purpose of ensuring that the Company satisfies any approval or licensing requirement to act as trustee of the Fund. Without limitation, the Company may accept on deposit from the Fund or a service provider to the Fund any amount on any terms as to repayment, interest or otherwise as the directors think fit.

19.4 Security

Without limiting the generality of clause 19.2, the directors have the power to make such loans to, and to provide such guarantees and security for obligations undertaken by, directors of the Company as may be permitted by SIS or the Corporations Act and resolution of the Company in accordance with SIS and the Corporations Act.

19.5 Execution of negotiable instruments

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

19.6 ~~Asipdn: (ur)15.21.~~

20. COMMITTEES

20.1 Delegation to committee

The directors may:

- (a) delegate any of their powers to committees consisting of such one (1) or more persons, whether directors or not, as they think fit; and
- (b) establish advisory committees (or other committees not having delegated power of directors) consisting of such person or persons as they think fit.

20.2 Committee powers

- (a) Any committee so formed or person or persons so appointed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions that may at any time be given or imposed by the directors.
- (b) All committees of the Board are required to function under a Board approved charter which sets out details of the authority that the Board has delegated to the committee.

20.3 Committee meetings

The meetings and proceedings of any committee consisting of two (2) or more persons are governed by the provisions in this Constitution for regulating the meetings and proceedings of the directors so far as they are capable of application and not affected by any resolution made, or direction given, by the directors under clause 20.2.

20.4 Committee members as officers

Each person appointed to a committee under clause 20.1(a), if not otherwise an officer of the Company, is when exercising the powers so delegated or functions entrusted, an officer of the Company.

21. SECRETARY

21.1 Appointment of Secretary

The Secretary must be appointed by the directors and holds office until the Secretary's services are terminated by the directors.

21.2 Duties of Secretary

The Secretary must perform such duties as are required of that person by SIS and the Corporations Act and this Constitution and, in addition, must perform such duties and exercise such powers as may at any time be directed by the directors.

21.3 Assistant Secretary

The directors may also appoint an assistant Secretary or assistant Secretaries and temporary substitutes for the Secretary. Any such assistant Secretary or temporary substitute is, for the purposes of this Constitution, treated as and may fulfil the duty of the Secretary subject to any limitation prescribed by the directors.

22. MINUTES

Any minutes of a meeting of members or of the directors, if purporting to be signed by any person purporting to be either the chairman of such meeting, or the chairman of the next succeeding meeting, must be received in evidence without any further proof as sufficient evidence that the matters and things recorded by or appearing in such minutes actually took place or happened as recorded or appearing and of the regularity of those things in all respects and that the same took place at a meeting duly called and held.

23. COMMON SEAL

23.1 Optional

The Company may at any time have a common seal (but is not obliged to have one).

23.2 Use of common seal

The common seal must not be affixed to any document unless it is done by the authority of the directors or of a committee of them with delegated authority in that respect.

23.3 Mode of execution by common seal

Every document to which the common seal is fixed must be signed, to witness the fixing of the seal, by two (2) persons. One (1) must be a director. The other must be the Secretary, a second director, or such other person as the directors may appoint for that purpose. No person may sign in more than one (1) capacity.

23.4 Presence during execution

It is not necessary for a person signing under either of clauses 23.2 or 23.3 to be present either when the common seal is fixed or when another person signs the document under either clauses 23.2 or 23.3.

23.5 Delegation of authority to use common seal

The directors may delegate to any director power and authority to fix the common seal to such documents as the directors may at any time by resolution determine. When so fixed and signed by the director, it is binding on the Company in all respects as if it were duly signed by two (2) directors.

24.

26. AUDITOR

The Company's financial statements must be audited each year by an auditor appointed in accordance with the Corporations Act.

27. NOTICES

27.1 Service of notices

Without limiting the Corporations Act, where this Constitution, SIS, the Corporations Act or other legislation requires or permits a document to be served on, given, sent or dispatched to, any person, whether any such expression or any other expression is used (in this clause 27.1 referred to as "served"),

of (1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11) (12) (13) (14) (15) (16) (17) (18) (19) (20) (21) (22) (23) (24) (25) (26) (27) (28) (29) (30) (31) (32) (33) (34) (35) (36) (37) (38) (39) (40) (41) (42) (43) (44) (45) (46) (47) (48) (49) (50) (51) (52) (53) (54) (55) (56) (57) (58) (59) (60) (61) (62) (63) (64) (65) (66) (67) (68) (69) (70) (71) (72) (73) (74) (75) (76) (77) (78) (79) (80) (81) (82) (83) (84) (85) (86) (87) (88) (89) (90) (91) (92) (93) (94) (95) (96) (97) (98) (99) (100)

27.6 Service on Company or its officers

Every document required to be served upon the Company or upon any officer of the Company may be served by leaving it at the registered office.

27.7 Signature

The signature to any document to be given by the Company may be written, printed or stamped.

28. INDEMNITY AND INSURANCE**28.1 Indemnity for officers**

To the maximum extent that SIS and the Corporations Act allows, each officer of the Company and each officer of any wholly-owned entity must be indemnified by the Company against any liability incurred by that person in that capacity and the cost of defending such claims against that person.

28.2 Insurance premiums

The directors may, at any time, cause the Company to pay premiums in respect of a contract insuring a person (whether with others or not) who is an officer of the Company or who is an officer of a wholly-owned entity against a liability incurred by the person as such an officer and the cost of defending such claims against that person. The liability insured against must not include that which SIS or the Corporations Act prohibits. Any such premium in relation to a director is in addition to, and not regarded as part of, the remuneration of directors.

28.3 Contract

The Company may contract with any officer of the Company or with any officer of any wholly-owned entity in relation to the matters referred to in clauses 28.1 and 28.2 not only during that person's directorship but also after that person has ceased to be a director.

28.4 Indemnity and insurance by the Fund

The directors must use reasonable endeavours to ensure that, to the maximum extent that SIS and the Corporations Act allows, at all times, each Fund:

- (a) indemnifies each officer of the Company and each officer of any wholly-owned entity against any liability incurred by the officer in respect of the Fund and the cost of defending such claims against the officer; and
- (b) pays the premiums in respect of a contract insuring each officer of the Company and each officer of any wholly-owned entity (whether with others or not) against a liability incurred by the officer in respect of the Fund and the cost of defending such claims against the officer.

SCHEDULE 1

Terms of Issue –

5. REDEMPTION

5.1 Redemption

On and by virtue of a redeemable preference member vacating office as a director, all redeemable preference shares held by the redeemable preference member are redeemed. If redemption of a redeemable preference share would result in the Company having no shares on issue at a particular time, the redemption is postponed until immediately after another redeemable preference share has been issued.

5.2 Redemption value and payment

The redemption value of a redeemable preference share to be redeemed is the amount actually paid on that redeemable preference share and is payable within thirty(30) days after redemption of the redeemable preference share.

5.3 Cancellation on redemption

Redeemable preference shares are cancelled on and by virtue of redemption.

6. 1

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