

National Rail Corporation (Agreement) Act 1991 No 82

[1991-82]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Authorisation

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National Rail Corporation (Agreement) Act 1991 No 82



New South Wales

An Act to approve and give effect to an Agreement between the State of New South Wales, the Commonwealth and certain other States relating to the National Rail Corporation Limited; to refer certain powers arising out of the Agreement to the Parliament of the Commonwealth; to amend the *Transport Administration Act 1988* as a consequence of the Agreement; and for other purposes.

1 Name of Act

This Act may be cited as the *National Rail Corporation (Agreement) Act 1991*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act:

the Agreement means the Agreement, a copy of which is set out in Schedule 1, as varied by any further Agreement made in accordance with clause 8 of that Agreement.

the Company means the National Rail Corporation Limited.

(2) If the Agreement is varied by a further Agreement, the Governor may, by proclamation published on the NSW legislation website, amend this Act by inserting at the end of this Act a Schedule containing a copy of the further Agreement.

4 Approval of Agreement

(1) The Agreement is approved.

(2) The execution of the Agreement by the Honourable Nicholas Frank Greiner for and on behalf of the State of New South Wales is ratified.

5 Agreement to be given effect to by parties to the Agreement

The parties to the Agreement, and each authority of those parties:

- (a) are authorised to do anything which they are authorised to do under the Agreement, and
- (b) are required to observe the provisions of the Agreement that are applicable to them.

6 Referral of power to the Parliament of the Commonwealth

- (1) The matter of the Commonwealth of Australia holding shares in the Company in accordance with the Agreement, to the extent to which it is not otherwise included in the legislative powers of the Parliament of the Commonwealth, is referred to the Parliament of the Commonwealth for a period commencing on the day on which this section commences and ending on the day fixed under subsection (2) as the day on which the reference under this section terminates, but not longer.
- (2) The Governor may, at any time, fix by proclamation published on the NSW legislation website a day as the day on which the reference under this section terminates.
- (3) In this section, a reference to holding shares includes a reference to acquiring, disposing of or dealing with those shares.

7 (Repealed)

8 Shares in Company issued to State to be held by eligible Ministers

- (1) The shares in the Company issued to or acquired by the State of New South Wales in accordance with the Agreement or with the articles of association of the Company are to be held by an eligible Minister.
- (2) Those shareholders hold their shares in the Company for and on behalf of the State of New South Wales.
- (3) A person ceases to be eligible to hold those shares in the Company on ceasing to be an eligible Minister, and may thereafter exercise no rights as a shareholder (except to transfer his or her shares as directed by the Premier).
- (4) The Premier is empowered to execute a transfer of any of those shares, whether or not the person to whom they were issued or previously transferred consents, and whether or not the person still holds office as an eligible Minister.
- (5) In this section, **eligible Minister** means the Minister administering this Act and any other Minister for the time being nominated by the Premier as being eligible to hold shares in the Company.

9 Transfer of rail freight assets of State to Company

- (1) The Minister may, with the approval of the Company, from time to time direct by order in writing that any specified rail freight assets of the State be transferred to the Company.
- (2) The consideration for the transfer is (subject to the order) the issue to the State of shares in the Company in accordance with the Agreement.
- (3) On the commencement of the order, the following provisions have effect (subject to the order):
 - (a) the transferred rail freight assets vest in the Company by force of this section and without the need for any conveyance, transfer, assignment or assurance,
 - (b) the rights and liabilities of the State relating to the transferred rail freight assets become, by force of this section, the rights and liabilities of the Company,
 - (c) all proceedings by or against the State relating to the transferred rail freight assets pending immediately before the transfer are taken to be proceedings pending by or against the Company,
 - (d) anything done or not done in relation to the transferred rail freight assets before the transfer by, to or in respect of the State is (to the extent that it has any effect) taken to have been done or not done by, to or in respect of the Company.
- (4) The operation of this section is not to be regarded:
 - (a) as a breach of contract or confidence or otherwise as a civil wrong, or
 - (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities, or
 - (c) as giving rise to any remedy by a party to an instrument, or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability.
- (5) This section does not limit any other method of transfer of rail freight assets of the State to the Company.
- (5A) For the purposes of this section:
 - (a) the Minister may, with the approval of the Company, give a direction to a Rail Corporation within the meaning of the [Transport Administration Act 1988](#), and
 - (b) a reference to rail freight assets includes a reference to assets vested in or owned by a Rail Corporation, and
 - (c) a Rail Corporation stands in the same position as the State Rail Authority stands

under section 13 (9) of the *Transport Administration Act 1988* in relation to financial loss as a result of complying with any direction given by the Minister under this section.

(6) In this section:

assets means any legal or equitable estate or interest (whether present or future and whether vested or contingent) in real or personal property of any description, and includes securities, choses in action and documents.

liabilities means liabilities, debts and obligations (whether present or future and whether vested or contingent).

rail freight assets of the State means any assets of the State that are required or authorised to be transferred to, or acquired by, the Company under the Agreement.

rights means all rights, powers, privileges and immunities (whether present or future and whether vested or contingent).

the State includes the State Rail Authority and any other authority of the State of New South Wales.

10 Stamp duty on statutory transfer of assets etc

- (1) The Minister must not make an order under section 9 unless satisfied that arrangements have been made for the payment to the Crown of the amount of stamp duty forgone.
- (2) The amount of stamp duty forgone is the amount of stamp duty that would have been payable if the assets transferred by the order had been transferred by instrument in writing executed by the parties to the transfer instead of by the operation of section 9.
- (3) Any order under section 9 or any instrument executed only for:
 - (a) a purpose ancillary to or consequential on the operation of that section, or
 - (b) the purpose of giving effect to that section,is not chargeable with stamp duty.

11 Company not the Crown etc

- (1) The Company and its subsidiaries are not, and do not represent, the Crown.
- (2) Without limiting the generality of subsection (1), the Company and its subsidiaries:
 - (a) are not instrumentalities or agencies of the Crown, and
 - (b) are not entitled to any immunity or privilege of the Crown, and

(c) are not public authorities for any purpose.

(3) The obligations of the Company or any of its subsidiaries are not guaranteed by the State of New South Wales.

12 Appropriation of money

(1) All money required to be provided by the State of New South Wales under the Agreement is to be provided out of money to be appropriated by Parliament for the purpose.

(2) The approval of the Agreement by this Act does not operate to appropriate that money from the Consolidated Fund.

13 Act to bind the Crown

This Act binds the Crown not only in right of New South Wales but also, so far as the legislative power of Parliament permits, in all its other capacities.

14 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act or the Agreement.

15 (Repealed)

16 Repeal of [Grafton-Kyogle to South Brisbane Railway Management Act 1943 No 30](#) and related Acts

(1) The following Acts are repealed:

[Grafton-Kyogle to South Brisbane Railway Management Act 1943 No 30](#)

[Grafton-Kyogle to South Brisbane Railway Agreement Ratification \(Amendment\) Act 1927 No 17](#)

[Grafton-Kyogle to South Brisbane Railway Agreement Ratification Act 1924 No 20](#)

(2) Despite the repeal of the [Grafton-Kyogle to South Brisbane Railway Management Act 1943](#), the Agreement and Supplementary Agreement set out in that Act (and any further Agreement made under that Act) continue in force until such time as they are terminated in accordance with those Agreements or by further agreement of the parties concerned.

(3) The repeal of the above Acts does not prevent the State Rail Authority from entering into a further agreement with a railway authority of Queensland for the operation by the State Rail Authority of the railway services to which those Acts applied.

Schedule 1 Agreement

AGREEMENT

BETWEEN

THE COMMONWEALTH OF AUSTRALIA
THE STATE OF NEW SOUTH WALES
THE STATE OF VICTORIA
THE STATE OF QUEENSLAND
THE STATE OF WESTERN AUSTRALIA

Relating to the Establishment of the
NATIONAL RAIL CORPORATION

AUSTRALIAN GOVERNMENT SOLICITOR
ROBERT GARRAN OFFICES
BARTON A.C.T.

THIS AGREEMENT is made on 30th day of July 1991.

BETWEEN:

THE COMMONWEALTH OF AUSTRALIA of the first part
THE STATE OF NEW SOUTH WALES of the second part
THE STATE OF VICTORIA of the third part
THE STATE OF QUEENSLAND of the fourth part and
THE STATE OF WESTERN AUSTRALIA of the fifth part

WHEREAS:

- A. To achieve micro-economic reform in the Australian rail industry, the Commonwealth, State and Territory Governments have agreed that a company should be established for the purpose of conducting, among other things, rail freight operations in Australia on a commercial basis in accordance with principles compatible with those set out in the Heads of Government Agreement on the National Rail Freight Corporation dated 31 October 1990.
- B. These principles are:
- (a) that the Company will:
 - (i) operate on a strictly commercial basis, with a financially viable corporate plan, and be subject to the *Trade Practices Act 1974* (Commonwealth);
 - (ii) have access (by ownership or other appropriate arrangements) to the assets, including track infrastructure, necessary to achieve commercial viability;
 - (iii) operate under labour arrangements incorporated in an enterprise award, which reflects

best practice in productivity standards through efficient work and manning practices, determined by the technical capacity of its equipment and commercial considerations, with cost efficiencies being, as a minimum, in line with those identified by the National Rail Freight Initiative Task Force in Attachment I to its Report of 21 March 1991;

- (iv) have the capacity to contract out activities where that is the most efficient approach;
 - (v) provide access on a commercial basis to the NRC network and to terminal facilities for private and public sector operators;
 - (vi) have the capacity to provide services to Governments, with the charging for such services being on a strictly commercial basis; and
 - (vii) not be responsible, financially or in any other way, for redundancies that may arise in rail authorities resulting from its formation and transfer of functions and assets to it; and
- (b) that during the Establishment Period the current financial position of the Commonwealth and State rail authorities' interstate rail freight operations will not deteriorate as a result of the Commonwealth and the States participating in the formation and operation of the Company.

C. The Company will be established and operated in accordance with the terms and conditions set out in this Agreement and its Memorandum and Articles of Association to give effect to the principles referred to in Recital B(a).

IT IS AGREED as follows:

PART I INTERPRETATION

—
1.

In this Agreement, except where a contrary intention appears or the context otherwise requires:

“asset” means any real or personal property of any description.

“Best Practice Industrial Agreements” means labour arrangements negotiated by the Company which reflect the most efficient work and manning practices, determined by the technical capacity of equipment and commercial considerations.

“Commonwealth” means the Commonwealth of Australia as a party to this Agreement.

“Company” means the National Rail Corporation Limited, a company to be incorporated in the Australian Capital Territory under the Corporations Law.

“Corporate Plan” means the corporate plan prepared in accordance with the Articles of Association of the Company.

“date of commencement of operations” means 31 January 1992, or such later date as is mutually agreed between the Relevant Ministers, other than the Ministers of the other States, being the common date from which all rail authorities of the Commonwealth and the States carry interstate rail freight on behalf of the Company.

“Establishment Period” means a five year period commencing on the date of commencement of

operations.

“finally valued” means, in relation to the value of an asset or assets transferred (by way of ownership or long term lease) by the Commonwealth, the States, or their rail authorities to the Company, that the value of the asset or assets has been agreed or fixed by arbitration.

“interstate rail freight” means interstate rail freight carried on the NRC network.

“long term lease” means a lease which has a term of or in excess of 20 years.

“NRC network” means the rail network connecting the mainland State capital cities and Alice Springs as specified in the Corporate Plan.

“NRC Standard Costs” means those costs that the Company projects, with the objective of achieving as a minimum, the potential cost efficiencies identified by the National Rail Freight Initiative Task Force in Attachment I of its Report of 21 March 1991, that the Company would achieve by the end of the Transition Period, if the Company were from the date of commencement of operations to:

- (a) assume the management and operations of all the interstate rail freight functions set out in Schedule 2 from all rail authorities;
- (b) have in place Best Practice Industrial Agreements; and
- (c) undertake a capital works program in accordance with the Corporate Plan.

“other State and other States” means the State of Queensland.

“predominant use”:

- (a) where used in relation to an asset which is a terminal, means the greatest use of the terminal under consideration taken for the period of 12 months prior to the date on which the matter is to be determined, having regard to the volume of freight handled at the terminal (measured in appropriate units of originating and terminating throughput).
- (b) where used in relation to track, means the greatest use of the section of track under consideration (as identified in the Corporate Plan) taken for the period of 12 months prior to the date on which the matter is to be determined, having regard to the volume of freight carried and the frequency of freight and passenger services.

“rail authorities” means the railway authorities of the Commonwealth, the States and, where used in connection with the other States, the railway authorities of those other States.

“Railways of Australia Agreement” means the interstate rail freight revenue sharing arrangements determined by the rules contained in Railways of Australia Commissioners Conference Minute 7248, as they stand at the date of commencement of operations.

“Relevant Ministers” means Ministers of the Commonwealth, the States and the other States having responsibility for administration of this Agreement.

“State” means the State of New South Wales, the State of Victoria, the State of Western Australia and the State of Queensland if it becomes a shareholder of the Company.

“States” means the State of New South Wales, the State of Victoria, the State of Western Australia and the State of Queensland if it becomes a shareholder of the Company.

“Transition Period” means the first three year period of the Establishment Period.

PART II COMMENCEMENT OF OPERATION OF AGREEMENT

2(1)

Clause 3 and subclauses 4(1), (2), (3), (4) and (5) will come into operation when this Agreement has been executed by the Commonwealth, the States and the other States.

2(2)

The remainder of this Agreement will come into operation on the date on which the last of the legislation referred to in clause 3 (except the legislation referred to in subparagraph 3(1)(a)(i)) comes into force.

PART III LEGISLATION

3(1)

The Commonwealth, the States and the other States will, in relation to the legislation referred to in paragraphs (a)(ii) and (iii), as soon as possible after the execution of this Agreement by all of them, and in relation to the legislation referred to in paragraph (a)(i), if the relevant State or other State proposes to give its approval in writing to the Company engaging in intra-State rail transport services in that State or other State, prior to giving that approval, take all practicable steps to seek the enactment of the following legislation:

- (a) legislation by the respective Parliaments of the Commonwealth, the States and the other States to approve this Agreement and to make such provision as shall be necessary or appropriate on the part of those Parliaments respectively for the implementation of this Agreement, including:
 - (i) legislation by the States and the other States referring to the Commonwealth, under s.51(xxxvii) of the Constitution, the matter of the Commonwealth holding shares in the Company when the Company engages in intra-State rail transport services in the States and in the other States;
 - (ii) legislation by the Commonwealth, the States and the other States to provide for an additional means for the transfer or vesting in the Company of assets owned or leased by the Commonwealth, the States or the other States and their rail authorities, and for substituting the Company for the Commonwealth, the States, the other States and their rail authorities in contracts, in cases where the legislative transfer or vesting of assets, or contract substitution, has been agreed in accordance with this Agreement between the Commonwealth, the States, the other States and their rail authorities, respectively and the Company; and
 - (iii) legislation by the Commonwealth, the States and the other States authorising the making of regulations or by-laws that are necessary or convenient for carrying out or giving effect to this Agreement and to the legislation for the implementation of this Agreement;

PART IV INCORPORATION OF THE COMPANY AND SHAREHOLDERS ARRANGEMENTS

4(1)

- (a) The Commonwealth, the States and the other States agree that the Company shall be incorporated as a public company limited by shares which shall be operated on a strictly commercial basis with a financially viable corporate plan, and have as a principal objective the carriage of interstate rail freight on a national network.
- (b) The Commonwealth will, as soon as practicable after this Agreement has been executed, arrange for the Company to be incorporated under the Corporations Law, with the name of “National Rail Corporation Limited” and with a Memorandum and Articles of Association substantially in the form set out in Schedule 1. Nothing in this Agreement shall be construed as limiting or restricting the amendment of the Memorandum and Articles of Association of the Company in accordance with their provisions and the *Corporations Law*.

4(2)

The Commonwealth will, itself and through trustees, subscribe to 500 ordinary and 500 B convertible shares in the Company and will, within 30 days of the date referred to in subclause 2(2), transfer to the States, at par value, out of these shares, the following number of shares:

New South Wales—140 ordinary shares and 125 B convertible shares

Victoria—65 ordinary shares and 125 B convertible shares

Western Australia—25 ordinary shares and 125 B convertible shares

4(3)

The funds required for the establishment and functioning of the Company, until the date of commencement of operations, shall be provided out of the equity payment to be made by the Commonwealth pursuant to clause 6.

4(4)

The Commonwealth and the States agree that subject to subclause 4(6), until the end of the Establishment Period, there will be nine (9) Directors of the Company and the Commonwealth, as subscriber and member of the Company, and the States, as members of the Company, will exercise their appointment and voting rights in respect of the appointment of the first and subsequent Directors in such a way as to have during the Establishment Period:

- (a) three Directors nominated by the Commonwealth, one being the Chairperson of the Board of Directors and one, as a matter of Commonwealth policy, being a nominee of the Australian Council of Trade Unions, not being a member of a union directly associated with operations of the Company;
- (b) two Directors nominated by the State of New South Wales;
- (c) two Directors nominated by the State of Victoria; and
- (d) one Director nominated by the State of Western Australia,

holding office during the Establishment Period. The remaining Director, who will be the Managing Director, will be appointed by the Board of Directors in accordance with the Articles.

4(5)

The Commonwealth and the States agree that, until the end of the Establishment Period, they will as members of the Company, exercise their voting rights in respect of the removal of Directors so that a Director nominated by any of them will, at the request of the Commonwealth, in the case of a Director nominated by it, or of a State, in respect of a Director nominated by it, be removed.

4(6)

If any other State becomes a shareholder of the Company pursuant to subclauses 6(8) and 6(9), that State shall have a right from the date it becomes a shareholder to nominate and have appointed one Director of the Company, in addition to the Directors referred to in subclause 4(4), to hold office during the Establishment Period in accordance with the provisions of subclauses 4(4) and 4(5).

4(7)

The Commonwealth and the States agree that, after the Establishment Period, during such time as the Commonwealth and any of the States are the only shareholders of the Company, the Commonwealth and those States (as members of the Company) shall exercise their voting rights relating to the appointment and removal of Directors in such a way as to ensure that the Commonwealth and those States each will have the right to nominate at least one (1) Director, to have that Director appointed and to have that Director removed. The remainder of the Directors will be appointed in accordance with the Articles of Association of the Company.

PART V ESTABLISHMENT AND OPERATION OF THE COMPANY

5(1)

The Commonwealth and the States will, to the extent each in its capacity as a shareholder in the Company is able, procure the Company to:

- (a) negotiate Best Practice Industrial Agreements with the relevant unions leading to an enterprise award as envisaged by Recital B(a)(iii);
- (b) before the commitment of any capital upgrading have in place Best Practice Industrial Agreements which the Company advises provide a basis for commercial operations;
- (c) commence and conduct national interstate rail freight operations;
- (d) conduct all marketing and determine pricing for interstate rail freight carried on by the Company;
- (e) collect and retain all revenue generated by the carriage of interstate rail freight from the date of commencement of operations;
- (f) take over progressively from the rail authorities of the Commonwealth and the States, in whole or in part, functions of the type listed in Schedule 2 and the management of the associated assets pursuant to the provisions of this Agreement and the agreements entered into pursuant

to subclauses 5(3), 5(4) and 5(5); and

- (g) give effect to this Agreement and to those obligations which by this Agreement are expressed to be obligations of the Company.

5(2)

The Commonwealth, the States and the other States will, and will cause their respective rail authorities to assist the Company, when requested by the Company, to undertake the matters set out in subclause 5(1), except, in the case of the other States, in relation to the matters set out in paragraph 5(1)(f).

5(3) Contracts for Services

Prior to and during the Transition Period, at the request of the Company, the Commonwealth and the States shall, and shall cause their respective rail authorities to, enter into contracts with the Company for the provision of rail services to the Company, relating to interstate rail freight. Those contracts will make provision for the following during the Transition Period:

- (a) The price for services performed under the contracts shall be agreed on the basis that:
- (i) the initial contract price, to apply for no longer than for the period of 12 months after the date of commencement of operations, will be set having regard to:
 - (A) the Company being able to meet its costs incurred in performing the functions assumed by it in whole or in part, during the period for which the initial contract price applies (being reasonable costs); and
 - (B) the revenue that the rail authority would have received under the Railways of Australia Agreement, had that agreement still applied.
- and,
- (ii) thereafter the contract price will, on the basis that the Company has achieved Best Practice Industrial Agreements and is implementing its approved capital investment program, reduce progressively to NRC Standard Costs.
- (b) liquidated damages, in an amount or by a formula to be agreed between the parties to the contract, to be paid to the Company by the respective rail authorities, or by the Company to the respective rail authorities, in respect of a failure by a party to meet such performance standards as are specified in the contract;
- (c) the Company and the relevant rail authority are to maintain and make available to each other externally audited accounts of the costs of carrying out their respective obligations under any contract. The accounts shall be in the form specified from time to time by the auditors of the Company in accordance with generally accepted accounting practices. Such accounts shall be retained by the parties to a contract for at least a period of 12 months after the expiration of the contract. These accounts will only be used for the purpose of determining payments pursuant to clause 5.

5(4) Transfer of Functions

- (a) Subject to this Agreement, the Commonwealth and the States shall and shall cause their

respective rail authorities to permit the Company to assume performance of the functions relating to interstate rail freight of the type listed in Schedule 2, in whole or in part, in accordance with a detailed list of specific functions and the timetable set out in the Corporate Plan and being no later than the end of the Transition Period.

- (b) When a function is assumed pursuant to subclause 5(4)(a) by the Company, an assessment will be made at that time by the Company of the initial full cost to the Company of performing that function determined having regard to any accounts kept pursuant to subclause 5(3)(c) or in the absence of such accounts, such other accounts as may be relevant. Where that assessed cost exceeds NRC Standard Costs for that function:
- (i) the transferring rail authority and the Company will agree as to the rate and the time, which is not to exceed three years from the date of transfer, or the end of the Establishment Period, whichever shall first occur, at which, and within which the Company will be able to reduce costs in relation to that function to NRC Standard Costs, while meeting the Company's performance standards;
 - (ii) the Company and the Commonwealth, or the State concerned, will agree a schedule of payments, to be made by the Commonwealth or the State to the Company, during the period agreed to in subclause (i) above while the Company is in the process of achieving NRC Standard Costs in respect of the function in the time agreed. The schedule will be based on the difference between NRC Standard Costs to carry out the function and the actual costs measured on a comparable basis determined having regard to any accounts kept pursuant to subclause 5(3)(c) (or in the absence of such accounts, such other accounts as may be relevant), to the Commonwealth, the States or their rail authorities, as the case may be, of carrying out the function in the twelve month period prior to the transfer.
- (c) In the case of the State of Western Australia, if it is established by an independent expert to be appointed by the Company and approved by the State of Western Australia, as soon as practicable after the date of commencement of operations, that transfer of its interstate rail freight business to the Company would have a detrimental effect on the financial position of the rail authority of Western Australia, because of a reduction in revenues not matched by a commensurate reduction in costs, including fixed costs and overheads, then assessments shall be made by that expert of the extent in dollar terms, of that effect for each year of the Establishment Period, and of the maximum practicable rate at which the Western Australian rail authority could reduce fixed costs and overheads as a consequence of the transfer of the functions and assets to the Company. The Company, the Commonwealth and the States must agree a schedule of annual payments to be made to the State of Western Australia by the Company within the Establishment Period, which provides compensation to the State of Western Australia based on these assessments.
- (d) Payments to be made by the rail authority of the State of Western Australia pursuant to subclause 5(4)(b), as well as payments received by the rail authority of the State of Western Australia pursuant to subclause 5(3), shall be taken into account in assessing the payments to be made to the State of Western Australia pursuant to subclause 5(4)(c), as well as any reductions in costs occasioned by the transfer of functions by the rail authority of the State of Western Australia, giving rise to payments by the State of Western Australia pursuant to subclause 5(4)(b).

- (e) Prior to any application of Part VII in relation to payments to be made to the State of Western Australia pursuant to subclause 5(4)(c), agreement as to payments to the State of Western Australia pursuant to that subclause shall, if necessary, be negotiated at Heads of Government level.

5(5) Access to and Transfer of Assets

The Commonwealth and the States shall, or shall cause their rail authorities to transfer ownership of, or for as long as the Company continues to conduct national interstate rail freight operations, give leases of, or grant access to the Company, in relation to any asset, owned or controlled by the Commonwealth or the State or their rail authorities, and used by their rail authorities in connection with interstate rail freight. The Company, in its Corporate Plan, shall identify that a particular asset or class of assets is required by it. The Commonwealth and the States shall have a discretion whether to transfer ownership, give a lease or grant access to the Company in relation to any asset required by it. Transfer of ownership, lease or grant of access shall be given within a reasonable time following the request by the Company to make the asset available. The objective is that all transfers of ownership, leases or grants of access shall be completed before the end of the Transition Period. The following provisions shall apply:

- (a) In the case where the Company requires access to an asset the predominant use of which has not been for interstate rail freight, or of which the Company is not, and will not in the future, be the predominant user (eg metropolitan track) as projected in the Corporate Plan, the Company will be granted access to that asset pursuant to a contract, the terms and conditions of which will be agreed between the Company and the Commonwealth or a State or its respective rail authority, as the case may be. Such contract will provide for the Company to pay to the rail authority in respect of such access, an amount that reflects the cost to the rail authority of providing access in the most efficient manner and that allows the Company to meet its service standards specified in the contract;
- (b) In the case where the Commonwealth or a State, or its rail authority, does not agree to transfer ownership, or enter into a long term lease of an asset, the predominant use of which has been for interstate rail freight, or of which the Company is or is to be, the predominant user as projected in the Corporate Plan, the Company will be granted access to that asset pursuant to a contract, the terms and conditions of which will be agreed between the Company and the Commonwealth or a State, or its respective rail authority, as the case may be. Such contract will provide that the rail authority maintain the asset to NRC specified standards and for the Company to pay to the rail authority, in respect of such access, an amount no greater than the costs (based on NRC Standard Costs) that would be avoided by the rail authority if the Company were not to utilise the asset on the basis that the rail authority would for its own purposes maintain the asset to the standards specified in the contract.
- (c) In the case where the Company acquires ownership of, or a long term lease of, an asset to which a rail authority still requires access (eg for intrastate rail freight or passenger services), the rail authority will be granted access to that asset pursuant to a contract, the terms and conditions of which will be agreed between the Company and the Commonwealth or a State, or its rail authority, as the case may be. Such contract will provide for the rail authority to pay to the Company, in respect of such access, an amount that reflects the cost to the Company of providing access in the most efficient manner and that allows the rail authority to meet its service standards specified in the contract.

- (d) In the case where the Company does not nominate as an asset which it requires to be transferred to it, an asset the predominant use of which has been for interstate rail freight, but to which it requires access, access will be granted to the Company pursuant to a contract, the terms and conditions of which will be agreed between the Company and the Commonwealth or a State, or its rail authority, as the case may be. Such contract will provide for the Company to pay to the rail authority, in respect of such access, an amount that reflects the cost to the rail authority of providing access in the most efficient manner and that allows the Company to meet its service standards specified in the contract.

5(6) Other States—Access to and Transfer of Assets and Contracts of Service

- (a) The other States shall, or shall cause their rail authorities to transfer ownership of, or for as long as the Company continues to conduct national interstate rail freight operations, give leases of, or grant access to the Company, in relation to any asset, owned or controlled by the other States or their rail authorities, and used by their rail authorities in connection with interstate rail freight. The Company, in its Corporate Plan, shall identify that a particular asset or class of assets is required by it. The other State in question shall have a discretion whether to transfer ownership, give a lease or grant access to the Company in relation to any asset required by it. Transfer of ownership, lease or grant of access shall be given within a reasonable time following the request by the Company to make the asset available. The objective is that all transfers of ownership, leases or grants of access shall be completed before the end of the Transition Period. The transfers of ownership, leases and the grants of access shall be on such commercial terms and conditions as are agreed between the Company and the other State in question.
- (b) Until all the transfers of ownership, leases or grants of access pursuant to subclause 5(6)(a) are completed, the other States shall, and shall cause their respective rail authorities to, enter into contracts with the Company for the provision of rail services to the Company, relating to interstate rail freight. Those contracts will make provision for the following: The price for services performed under the contracts shall be agreed on the basis that:
- (i) the initial contract price, to apply for no longer than for the period of 12 months after the date of commencement of operations, will be set having regard to:
- (A) the Company being able to meet its costs incurred in performing the functions, identified in Schedule 2, assumed by it in whole or in part during the period for which the initial contract price applies (being reasonable costs); and
- (B) the revenue that the rail authority would have received under the Railways of Australia Agreement, had that agreement still applied.
- and,
- (ii) thereafter the contract price will be at commercial rates agreed between the Company and the other State in question or its rail authority.

PART VI FUNDING

—
6(1)

- (a) The Commonwealth and the States will contribute the following equity funds to the

establishment, capital and operation of the Company:

- (i) the Commonwealth—\$295.8 million.
 - (ii) the State of New South Wales—\$75.6 million.
 - (iii) the State of Victoria —\$35.1 million.
 - (iv) the State of Western Australia —\$8.0 million.
- (b) The Commonwealth and the States shall, prior to the date of commencement of operations, make an application to the Company for the issue of A convertible shares equal to the amounts set out in subclause 6(1)(a).
- (c) the Company shall issue to the Commonwealth and the states respectively, the A convertible shares referred to in subclause 6(1)(b).
- (d) Payments by the Commonwealth and the States respectively of funds to be contributed pursuant to subclause 6(1)(a), and any calls on the A convertible shares, shall be made from time to time in accordance with Schedule 4.

6(2)

- (a) During the Establishment Period, the Commonwealth and the States will contribute any additional equity funding requirements of the Company provided for, both as to amounts and times of payment, in the Corporate Plan according to the following percentages:

| | |
|-------------------|-------|
| Commonwealth | 54.3% |
| New South Wales | 27.7% |
| Victoria | 13.1% |
| Western Australia | 4.9% |

- (b) The Commonwealth and the States shall, during the Establishment Period, make application to the Company for the issue of A convertible shares calculated in accordance with subclause 6(2)(a).
- (c) The Company shall issue to the Commonwealth and the States respectively, the A convertible shares referred to in subclause 6(2)(b).

6(3)

For the purposes only of determining the numbers of A convertible shares to be issued pursuant to subclause 6(7), the value of an interest in the assets transferred (by way of ownership or long term lease) will be agreed bilaterally by the Company and the Commonwealth or by the Company and the relevant State, on the following basis:

- (a) for an interest in track or terminal, and major associated assets, the valuation will be agreed prior to the end of the Establishment Period and will take into account the condition of the asset at the time of transfer and the net amount expected to be recovered from its continued use, assessed as at the end of the Establishment Period. The cost, adjusted in accordance with subclause 6(5), of any improvements to such assets funded by the Company prior to the

valuation of such assets, whether by capital upgrade or maintenance, will be deducted from the value of the asset.

(b) for an interest in any other asset:

- (i) valuation at market value, assessed at the time of transfer, if an established market exists for that type of asset; or
- (ii) if no such established market exists, then on an asset valuation methodology appropriate to the type of asset involved, assessed at the time of transfer.

6(4)

In valuing interests in assets transferred (by way of ownership or long term lease), the valuation methodology adopted will be applied uniformly to value the interests in assets of the same type transferred by the Commonwealth, the States and their rail authorities to the Company.

6(5)

For the purpose of determining the number of A convertible shares for issue to the Commonwealth and the States, or the number of ordinary shares to issue as bonus shares, the monetary value of assets transferred assessed in accordance with subclauses 6(3) and 6(4), and moneys contributed in accordance with subclause 6(1), will be adjusted immediately prior to the end of the Establishment Period (or, in the case of assets finally valued after the Establishment Period, as soon as practicable after the assets are finally valued) to constant prices by indexing those monetary values by the All Groups Consumer Price Index Number published by the Australian Statistician. The period of indexation will commence from the latest published index number before the date of the transfer of assets or payment of moneys to the latest published index number before the end of the Establishment Period.

6(6)

The Commonwealth and the States shall, prior to the end of the Establishment Period, make an application to the Company for the issue of:

- (a) A convertible shares equal to the value, as assessed in accordance with subclauses 6(3), 6(4) and 6(5), of the assets transferred (by way of ownership or long term lease) respectively by the Commonwealth and the States and their rail authorities; and
- (b) A convertible or ordinary shares, in accordance with subclause 6(7), equal to the value of the difference between the moneys contributed by the Commonwealth and the States in accordance with subclause 6(1) and the adjusted value thereof assessed in accordance with subclause 6(5).

6(7)

The Company shall issue to the Commonwealth and the States respectively the A convertible or ordinary shares referred to in subclause 6(6), provided that the shares referred to in subclause 6(6)(b) shall only be issued as bonus shares when there are sufficient profits or reserves out of which the shares can be so issued and shall be issued as ordinary shares if, at the time of issue, all the A convertible shares have been converted into ordinary shares or A convertible cumulative preference shares. The Commonwealth and the States shall, before the end of the Establishment Period, pass the necessary special resolution for the A convertible or ordinary shares, referred to in

subclause 6(6)(b), to be issued as bonus shares in priority to the rights of any other shareholder.

6(8)

If, during, the first three years of the Establishment Period, any of the other States notifies the Commonwealth, the States and the Company that it wishes to contribute a minimum of \$5 million in cash for shares in the Company, the Commonwealth and the States shall, as members, pass a unanimous resolution for the issue of the shares to the other State and for the issue of additional shares to the Commonwealth and the States in accordance with the relevant provisions of the Table in Schedule 3 under the following conditions:

- (a) the Commonwealth, the States and the other State, upon making an application for shares, shall be each issued with the number of ordinary and B convertible shares at par value set out in Schedule 3. In addition to the B convertible shares, the other State shall, upon payment in full of the moneys contributed by it, be issued with A convertible shares at par value for the remainder of the moneys contributed by it; and
- (b) the other State shall be obliged to contribute such proportion of the additional equity funding requirements of the Company pursuant to subclause 6(2)(a), as is determined by the Company and agreed between the Commonwealth, the States and the other State prior to the date of the passing of the unanimous resolution to issue shares pursuant to this subclause. The percentages as then agreed shall, from the date the other State becomes a shareholder, be the percentages at which the Commonwealth, the States and the other State have to contribute to additional equity funding requirements and will replace the percentages set out in subclause 6(2)(a).

6(9)

If, during the last two years of the Establishment Period, any of the other States notifies the Commonwealth, the States and the Company that it wishes to purchase shares in the Company, the Commonwealth and the States, as members, may pass a unanimous resolution for the issue of such shares (if any) to the other State, subject to such terms and conditions, as they determine, and are agreed to by the other State.

6(10)

After the Establishment Period, if any of the other States notifies the Company and all the shareholders of the Company that it wishes to purchase shares in the Company, the other State shall have the right to purchase shares in the Company on the same terms and conditions as shares are offered for sale to third parties.

6(11)

The Commonwealth and the States shall, at the end of the Establishment Period, pass a special resolution to convert all the A convertible shares to ordinary or A convertible cumulative preference shares, or if at the time all the assets transferred (by way of ownership or long term lease) by the Commonwealth and the States and their rail authorities to the Company have not been finally valued, as soon as practicable after the final valuation is completed.

PART VII RESOLUTION OF DISPUTES

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7.

Except for a dispute or difference as to any obligation imposed under Part III, any dispute or difference whatsoever arising in connection with this Agreement shall first be the subject of conciliation by a conciliator agreed between the parties to the dispute or difference, unless one of the parties to the dispute or difference objects to conciliation. In the event that the dispute or difference has not been resolved within twenty-eight (28) days (or such other period as is agreed to in writing between the parties to the dispute or difference) after the appointment of a conciliator by the parties to the dispute or difference, or the parties to the dispute or difference cannot agree to referring the dispute or difference for conciliation, the dispute or difference shall be submitted to arbitration in accordance with and subject to the Arbitration Rules of the United Nations Commission on International Trade Law in force at the date of first notification of the dispute or difference. A dispute or difference will include, without limiting the generality thereof, a dispute or difference as to:

- (a) the identification of any asset within any class of assets identified in the Corporate Plan;
- (b) the value of the interest in any asset to be transferred or leased or otherwise made available to the Company;
- (c) the terms and conditions of a service contract to be entered into pursuant to subclauses 5(3) and 5(6);
- (d) the schedule of payments to be made by the Commonwealth or a State pursuant to subclause 5(4)(b);
- (e) the schedule of payments which may be made by the Company pursuant to subclause 5(4)(c);
or
- (f) the charges and terms and conditions for access to assets pursuant to subclauses 5(5)(a), (b), (c) and (d) and subclause 5(6)(a).

PART VIII VARIATION OF AGREEMENT

8(1)

The provisions of this Agreement, which do not relate to or affect any of the other States may be varied, as between the Commonwealth and the States, by an agreement in writing between the Relevant Ministers of the Commonwealth and States.

8(2)

Any provisions of this Agreement, which affect any of the other States, may be varied as between the Commonwealth, the States and the other State or other States affected, by an agreement between the Relevant Ministers of the Commonwealth, the States and the other State or States affected.

8(3)

A copy of an agreement, or copies of documents which constitute an agreement under subclause 8(1), shall be tabled in the Commonwealth and State Parliaments within 15 sitting days from the date on which the agreement is made and shall, if not disallowed by any Parliament within 15 sitting days of being so tabled, take effect at the expiration of 15 sitting days of the Parliament in which

the agreement or documents are last tabled.

8(4)

A copy of an agreement, or copies of documents which constitute an agreement under subclause 8(2), shall be tabled in the Commonwealth and the State Parliaments and the Parliament of the other State or States within 15 days from the date on which the agreement is made and shall, if not disallowed by any Parliament within 15 sitting days of being so tabled, take effect at the expiration of 15 sitting days of the Parliament in which the agreement or documents are last tabled.

PART IX MISCELLANEOUS

—
9(1)

The Relevant Ministers may, from time to time, do all things, or enter into agreements or arrangements for giving effect to the provisions of this Agreement.

9(2)

During the Establishment Period, the Commonwealth and the States, as members of the Company, shall not mortgage or otherwise encumber their shares.

9(3)

The obligations of a party hereunder, or in any agreement contemplated by this Agreement shall not be subject to that party holding or continuing to hold shares in the Company.

PART X WINDING UP OF A COMPANY

—
10.

If the Company is wound up within eight years of the date of commencement of operations, the Commonwealth, the States and the other States will, to the extent permitted by law, have the first option to acquire by distribution or purchase, assets of the Company which they or their rail authorities have respectively transferred to the Company.

IN WITNESS WHEREOF this Agreement has been executed on behalf of the parties respectively as at the day and year above written.

SIGNED BY THE HONOURABLE ROBERT JAMES LEE
HAWKE, Prime Minister of the Commonwealth of
Australia, in the presence of:

Roger Beale
.....

Bob Hawke
.....

SIGNED BY THE HONOURABLE NICHOLAS FRANK
GREINER, Premier of the State of New South Wales
in the presence of:

Roger Beale
.....

Nick Greiner
.....

SIGNED BY THE HONOURABLE JOAN ELIZABETH
KIRNER, Premier of the State of Victoria, in the
presence of:

Roger Beale
.....

Joan Kirner
.....

SIGNED BY THE HONOURABLE WAYNE GOSS,
Premier of the State of Queensland, in the presence
of:

Roger Beale
.....

Wayne Goss
.....

SIGNED BY THE HONOURABLE CARMEN LAWRENCE,
Premier of the State of Western Australia, in the
presence of:

Roger Beale
.....

Carmen Lawrence
.....

SCHEDULE 1

Australia
Corporations Law
A Company Limited by Shares
MEMORANDUM
AND
ARTICLES OF ASSOCIATION
OF
NATIONAL RAIL CORPORATION LIMITED
Australia
Corporations Law
A Company Limited by Shares
MEMORANDUM OF ASSOCIATION
OF
NATIONAL RAIL CORPORATION LIMITED

1.

The name of the Company is National Rail Corporation Limited.

2.

Subject to the Corporations Law, the Company may exercise the legal capacity of a natural person

and, without limiting the generality of the foregoing, has power:

- (1) to issue and allot fully or partly paid shares in the Company.
- (2) to issue debentures of the Company.
- (3) to distribute any of the property of the Company among the members, in kind or otherwise;
- (4) to give security by charging uncalled capital;
- (5) to grant a floating charge on property of the Company;
- (6) to procure the Company to be registered or recognised as a body corporate in any place outside Australia; and
- (7) to do any other act that it is authorised to do by any other law (including a law of a foreign country).

3.

Notwithstanding the provisions of clause 2, the Company shall not carry on any intra-State rail services in any State unless:

- (a) there is in relation to that State, a referral of power, referring to the Commonwealth, under s.51(xxxvii) of the Constitution, the matter of the Commonwealth holding shares in the Company when the Company engages in intra-State rail services in the State; and
- (b) that State has given its prior approval in writing to the Company to carry on the intra-State rail services in that State.

4.

This clause and clause 3 may not be amended or deleted without the unanimous resolution of all of the members of the Company and if, at the relevant time any of the States of New South Wales, Victoria, Queensland, Western Australia or South Australia, is not a member of the Company, the prior approval in writing of such a State will be required to any amendment.

5.

The liability of the members is limited.

6.

The capital of the Company is five billion dollars (\$5,000,000,000) divided into five billion (5,000,000,000) shares of One dollar (\$1.00).

7.

WE, the several persons whose names and addresses are subscribed hereto, are desirous of being formed into a Company in pursuance of this Memorandum of Association and respectively agree to take the number of shares in the capital of the Company set out opposite our respective names:

| Name and Address | Signature of Subscribers | Number of Shares taken by each Subscriber | Signature and Address of Witness |
|------------------|-----------------------------|--|-------------------------------------|
|------------------|-----------------------------|--|-------------------------------------|

DATED this 1991

Australia

Corporations Law

A Company Limited by Shares

ARTICLES OF ASSOCIATION

OF

NATIONAL RAIL CORPORATION LIMITED

PRELIMINARY

1. Table "A" Excluded

The Regulations contained in Table "A" in Schedule 1 to the Law do not apply to the Company.

2. Definitions and Interpretation

2(1)

In these Articles, unless the contrary intention appears:

"Articles" means the Articles of Association of the Company in force from time to time, and a reference to a particular article has a corresponding meaning.

"Auditor" means any person appointed to perform the duties of an auditor of the Company.

"Board" means the whole or any number of the Directors for the time being assembled at a meeting of Directors and not being less than a quorum.

"Branch Register" means any Register of members authorised and established in accordance with these Articles outside the State or Territory in which the principal register is kept whether within or outside Australia.

"Business Days" means the days, other than a Saturday, Sunday or days gazetted as public holidays or bank holidays in the Australian Capital Territory.

"Capital" means the capital for the time being of the Company.

"Chairperson" means Chairperson of the Board of Directors.

"Company" means the National Rail Corporation Limited.

"Corporate Plan" means the plan prepared in accordance with Article 118(3) from time to time.

"Directors" means the Directors for the time being of the Company or the Directors assembled as a Board and includes all Alternate Directors.

"Dividend" includes a bonus issue of shares.

"Establishment Period" means a five year period commencing on 31 January 1992, or such later date as is agreed by the members in writing, being the common date from which all rail authorities

of the Commonwealth and the States carry interstate rail freight on behalf of the Company.

“Executive Director” means a Director in the full time employment of the Company who is concerned, or takes part in the management of the Company.

“Law” means the *Corporations Law* of the Australian Capital Territory within the meaning of the *Corporations Act 1989* (Commonwealth) and includes any amendment or re-enactment of the same or any legislation passed in substitution.

“Managing Director” means any person appointed to perform the duties of managing director of the Company and includes an acting Managing Director.

“member”, “shareholder”, or “holder” means any person entered in the Register as a member for the time being of the Company.

“member present” means a member present at any general meeting of the Company in person or by proxy or attorney or, in the case of a corporation, by a duly appointed representative.

“meeting” means a meeting of members duly called and constituted in accordance with the Articles and any adjourned holding thereof.

“Office” means the registered office for the time being of the Company.

“Register” means the Register of members to be kept pursuant to the Law and shall also include any Branch Register.

“Resolution” means a resolution other than a special resolution.

“Seal” means the Common Seal of the Company and includes any official seal of the Company.

“Secretary” means any person appointed to perform the duties of Secretary or Acting Secretary of the Company or as a temporary substitute for the Secretary.

“Shares” means the shares into which the Capital is from time to time divided and, when shares are fully paid up, includes stock, except where a distinction between stock and shares is expressed or implied.

“special resolution” means a special resolution within the meaning of Section 253 of the Law.

“State” means the State of New South Wales, Victoria, Queensland or Western Australia.

“Statement of Corporate Intent” means the statement of corporate intent referred to in Article 118(4).

2(2)

The term “Chairman” or “Chairwoman” shall be able to be substituted for the term “Chairperson” where the holder of the office of Chairperson or deputy Chairperson elects to do so at meetings of the Company, Directors’ meetings or in Company documents.

2(3)

Headings are for convenience only and shall not be used in the interpretation of these Articles or of

any part thereof to which they relate.

2(4)

Words importing any gender include the other genders, words importing persons shall include partnerships, associations, corporations, bodies politic or other legal entities, companies unincorporated and incorporated whether by Act of Parliament or otherwise, as well as individuals and words importing the singular include the plural and vice versa.

2(5)

In every case where in these Article general expressions are used in conjunction with powers, discretions or things such general expressions shall not be limited to or controlled by the particular powers, discretions or things with which the same are concerned.

2(6)

Any words and expressions denoting authority or permission shall be construed as words or expressions of authority merely and shall not be construed as words or expressions denoting directions or compulsory trusts.

2(7)

Section 46 of the [Acts Interpretation Act 1901](#) (Commonwealth) applies in relation to these Articles as if they were an instrument made under the Law as in force on the date of incorporation of the Company.

2(8)

Subject to the aforesaid, an expression used in a particular Part or Division of the Law that is given by that Part or Division a special meaning for the purposes of that Part or Division has, in any of these Articles that deals with a matter dealt with by that Part or Division, unless the contrary intention appears, the same meaning as in that Part or Division.

2(9)

A reference to any statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issues under that statute.

3. Compliance with the Law

In so far as and for so long as the Law applies to the Company, the Company shall comply with the provisions thereof and these Articles, to the extent that they may be inconsistent therewith, shall be subject to the provisions of the Law.

CAPITAL AND VARIATION OF RIGHTS

4. Share Capital

4(1)

The capital of the Company shall be divided into nine hundred (900) ordinary shares of \$1 each, nine hundred (900) B convertible shares and 4,999,998,200 A convertible shares of \$1 each (which may be converted in accordance with these Articles into A convertible cumulative preference

shares).

4(2)

The A convertible shares shall confer on the holders the following rights, privileges and conditions:

- (a) a right to receive notices of and to attend General Meetings, but no right to vote;
- (b) a right on winding up and on a reduction of capital to have the capital paid up on A convertible shares repaid *pari passu* with the ordinary shares and the B convertible shares; and
- (c) no further right to participate in the assets or profits of the Company.

4(3)

The A convertible cumulative preference shares shall confer on the holders the following rights, privileges and conditions:

- (a) a right to receive notice of and to attend General Meetings, but no right to vote;
- (b) a right to receive a fixed cumulative preferential dividend of 10% per annum, or such other dividend as is determined by the Directors from time to time, in preference to all other issued shares in the capital of the Company;
- (c) a right on winding up and on a reduction of capital to have the capital paid up on the A convertible cumulative preference shares repaid in priority to all other issued shares in the Company; and
- (d) no further right to participate in the surplus assets or profits of the Company.

4(4)

The B convertible shares shall confer on the holders the following rights privileges and conditions:

- (a) a right to receive notices of, attend and vote at General Meetings.
- (b) no right to receive any dividends or profits of the Company.
- (c) a right on winding-up and on a reduction of capital to have the capital paid up on the B convertible shares repaid *pari passu* with the A convertible shares and the ordinary shares; and
- (d) no further right to participate in the surplus assets or profits of the Company;

4(5)

After the Establishment Period, any issue of shares shall be in accordance with the following conditions:

- (a) the shares will first be offered to the existing members in proportion to the shares held by them who may take up the shares to which they are entitled in whole or in part. If, within twenty-one (21) days of such offer being made, the shares, or some of them, are not taken up, those not taken up will be again offered to all the existing members, but without regard to their respective shareholdings.
- (b) the shares not taken up by any member within twenty-one (21) days of such offer, may be

offered to third parties. If an offer to purchase the shares is made by a third party which is acceptable to the Company, the shares will be offered again to the existing members, but at the value and on the terms at which the third party made the offer. If any member does not take up the offer within twenty-one (21) days of such offer being made, the shares not taken up can be issued to the third party on the basis of that offer.

- (c) if any issue of shares to a member pursuant to this Article would result in that member holding, including shares marked in the Register as being held in trust for the member, more than 49% of the issued ordinary shares in the Capital of the Company, the shares in excess of the 49% holding shall automatically convert into A convertible cumulative preference shares and shall be dealt with as provided in Article 28(6).
- (d) Any offer of shares pursuant to this Article to a body politic will permit the body politic such period to settle the purchase as is necessary to allow it a reasonable time to obtain any necessary Parliamentary approval, including appropriation of funds.

4(6)

In the event a member is entitled to apply during the Establishment Period for A convertible shares and such entitlement is not exercised prior to the end of the Establishment Period, that member is entitled to apply for and be issued with, after the end of the Establishment Period, the number of ordinary shares equal to the number of A convertible shares to which the member would have been so entitled.

5. Control of Issue of Shares and Modification of Rights

5(1)

Subject to the provisions of the Articles and the Law and without prejudice to any special rights previously conferred on the holders of any existing shares, the unissued shares in the Company (including new shares created upon an increase of capital), shall be under the control of the Directors who may allot, grant options over or otherwise dispose of the same to such persons on such terms and conditions and either at a premium or at par or subject to the provisions of the Law at a discount and at such times as the Directors think fit.

5(2)

Without prejudice to any special rights previously conferred on the holders of any existing shares, any share may be issued with such preferred, deferred or other special rights or such restrictions whether in regard to dividend, voting, return of share capital or otherwise as the Company may from time to time by resolution determine and any preference share may with the sanction of a special resolution be issued on the terms that it is or at the option of the Company is liable to be redeemed.

5(3)

During the Establishment Period, no shares in the capital of the Company, other than five hundred (500) ordinary shares, five hundred (500) B convertible shares and such of the A convertible shares as may be allotted to the Commonwealth or any State in return for cash or in satisfaction of the transfer of interests in assets, may be allotted without the unanimous resolution of the Company in general meeting.

5(4)

If at any time the Capital is divided into different classes of shares, the rights and privileges attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may only, whether or not the Company is being wound up, be varied with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of that class.

5(5)

The provisions of the Articles relating to general meetings shall, mutatis mutandis, apply to every such meeting, except that in voting on modification of rights:

- (a) the necessary quorum shall be members present holding or representing seventy five percentum (75%) of the nominal amount of the issued shares of the class; and
- (b) any member present holding shares of the class may demand a poll.

6. Modification of Rights by Consent in Writing

If a quorum is not present at any separate general meeting of holders of shares of a class, or if such resolution is not passed by the necessary majority, all or any of such rights and privileges may be varied with the consent in writing of the holders of at least seventy five percentum (75%) in nominal value of the issued shares of the class within two (2) calendar months from the date of such meeting.

7. Payment of Commission

7(1)

The Company may exercise the power to make payments by way of brokerage or commission conferred by the Law in the manner provided by the Law.

7(2)

Payments by way of brokerage or commission may be satisfied by the payment of cash and, after the Establishment Period, by the allotment of fully or partly paid shares, or partly by the payment of cash and partly by the allotment of fully or partly paid shares.

8. Recognition of Ownership

8(1)

Except as required by law or as herein provided, no person shall be recognised by the Company as holding any share upon any trust.

8(2)

The Company shall not be bound by or be compelled in any way to recognise (even when having notice thereof) any equitable contingent, future or partial interest in any share or unit of a share or (except only as otherwise provided by these Articles or by law) any other right in respect of any share except an absolute right to the entirety thereof in the registered holder.

8(3)

Shares held by a trustee may, with the consent of the Directors, be marked in the Register in such a way as to identify them as being held subject to the relevant trust, but nothing in this paragraph derogates from paragraph (1) of this Article.

SHARE CERTIFICATES

9. Issue of Certificates Under Seal

The certificate of title to shares shall be issued under the Seal of the Company in accordance with the provisions of these Articles.

10. Entitlement to Certificates

10(1)

Every person whose name is entered as a member in the Register of members shall be entitled free of charge to one certificate specifying the share or the shares registered in his or her name and the amount paid up thereon, or if he or she so desires, to several certificates in reasonable denominations.

10(2)

In respect of a share or shares held jointly by several persons, the Company shall not be bound to issue more than one certificate and delivery of a certificate for a share to one of several joint holders shall be sufficient delivery to all such holders.

10(3)

Share certificates shall be dispatched by the Company within ten (10) business days of the date of allotment or the date of lodgement of a registerable transfer of the shares, as the case may be.

11. Replacement of Certificates

11(1)

If any certificate, letter of allotment, transfer, receipt or other document of title to shares is worn out or defaced then, upon production thereof to the Directors, they may order the same to be cancelled and shall issue a new certificate in lieu thereof upon the conditions prescribed by the Law.

11(2)

If any certificate, letter of allotment, transfer, receipt or other documents of title to shares is lost, then the Directors may issue a duplicate thereof upon the conditions prescribed by the Law.

11(3)

A fee of such amount, not exceeding the amount prescribed under the Law as the Directors determine, may be charged for a new certificate or duplicate certificate issued under this Article.

LIEN ON SHARES

12. Rights to Lien

12(1)

The Company shall have a first and paramount lien for calls and instalments which are due and unpaid and interest thereon and expenses incurred in relation thereto upon the specific shares registered in the name of each member (whether solely or jointly with others) and such lien shall extend to all dividends from time to time declared in respect of such shares.

12(2)

The Directors may at any time declare any share to be wholly or in part exempt from the provisions of Article 12(1).

12(3)

Unless otherwise agreed or the Company first gives notice of the claim to the transferee, the registration of a transfer of shares shall operate as a waiver of the Company's lien (if any) on such shares.

13. Imposition of a Liability

13(1)

Whenever any law for the time being of the Commonwealth or any State or Territory of Australia imposes any liability, or possible liability, upon the Company to make any payment or empowers the Commonwealth or any State or Territory government or taxing authority or government official to require the Company to make any payment in respect of any shares registered in the Register or any Branch Register, as held either jointly or solely by any member, or in respect of any dividends or other moneys due or payable or accruing due or which may become due or payable to such member by the Company on or in respect of any shares registered as aforesaid or for or on account or in respect of any member and whether in consequence of:

- (a) the death of such member;
- (b) the liability for income tax or other tax by such member;
- (c) the liability for any estate, probate, succession, death, stamp or other duty by the executor or administrator of such member or by or out of the member's estate; or
- (d) any other act or thing;

the Company in every such case:

- (i) shall be fully indemnified by such member or his or her executor or administrator from all liability;
- (ii) shall have a first and paramount lien upon all shares registered in the Register or any Branch Register as held either jointly or solely by such member and upon all dividends and other moneys payable in respect thereof for any liability arising under or in consequence of any such law and for any amount paid in complete or partial satisfaction of such liability and for interest on any amount so paid at the rate per centum per annum set by the Directors from the date of payment to the date of repayment and the Company may deduct from or set off against any such dividend or other money payable as aforesaid any moneys paid or payable by the Company as aforesaid together with interest as aforesaid;
- (iii) may recover as a debt due from such member or the member's executor or administrator wherever constituted any moneys paid by the Company under or in consequence of any such law and interest thereon at the rate and for the period aforesaid in excess of any dividend or other money as aforesaid then due or payable by the Company to such member;
- (iv) may, if any such money is paid or payable by the Company under any such law as aforesaid, refuse to register a transfer of any such shares by any such member or the member's executor or administrator until such money with interest as aforesaid is set off or deducted as aforesaid, or in case the same exceeds the amount of any such dividend or other money as aforesaid then due or payable by the Company to such member, until such excess is paid to the Company.

13(2)

Nothing herein contained shall prejudice or affect any right or remedy which any such law may confer or purport to confer on the Company and, as between the Company and every such member as aforesaid, the member's executors, administrators and estate wheresoever constituted or situate, any right or remedy which such law shall confer or purport to confer on the Company shall be enforceable by the Company.

14. Enforcement of Lien

14(1)

After the Establishment Period, subject to Article 14(2), the Company may sell in such manner as the Directors think fit, any shares on which the Company has a lien.

14(2)

A share on which the Company has a lien shall not be sold unless:

- (a) a sum in respect of which the lien exists is presently payable; and
- (b) the Company has not less than fourteen (14) days before the date of the sale given to the registered holder for the time being of the share, or the person entitled thereto by reason of the holder's death or bankruptcy, a notice in writing stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable.

15. Sale of Share Subject to Lien

Any share on which the Company has a lien may be disposed of in the same manner as a forfeited share.

16. Appropriation of Proceeds

The proceeds of the sale shall be received by the Company and applied in payment of such part of the amount in respect of which the lien exists as is presently payable and in payment of any other moneys due and payable to the Company and the residue if any shall (subject to a like lien for sums not presently payable as existed upon the shares before the sale) be paid to the person registered or entitled to be registered as the holder of the shares immediately prior to the sale.

17. Liability for Calls, etc.

17(1)

For the purpose of these Articles, any member whose shares shall have been forfeited shall, notwithstanding such forfeiture, be liable to pay and shall forthwith pay to the Company all calls, instalments, interest and expenses owing upon or in respect of such shares at the time of the forfeiture, together with interest thereon from the time of forfeiture until payment at the 90 day bank bill rate as charged by the Company's principal bankers at the time of forfeiture plus 5 percentage points and the Directors may enforce the payment of such moneys or any part thereof if they think fit, but they shall not be under any obligation so to do.

17(2)

The liability, if any, of a person whose shares have been forfeited shall cease if the Company receives payment in full of all the money (including calls, instalments, interest and expenses) so payable in respect of the shares.

CALLS ON SHARES

18. Power to Make Calls

18(1)

Subject to Article 21, the Directors may from time to time make such calls as they think fit upon the members in respect of all or any moneys unpaid on the shares (whether on account of the nominal value of the shares or by way of premium) held by them respectively and which are not by the conditions of allotment thereof made payable at fixed times.

18(2)

A call may be made payable by instalments.

18(3)

A call may be revoked, postponed or extended as the Directors may determine.

19. Time of Calls

A call shall be deemed to have been made at the time when the resolution of the Directors authorising such call was passed.

20. Notice of Calls

20(1)

Each member shall pay the amount of every call so made on the member according to the terms of the notice thereof.

20(2)

Twenty-one (21) days' notice of any call shall be given to the members specifying the following:

- (a) the name of the member;
- (b) the number of shares held by the member;
- (c) the amount of the call;
- (d) the due date for payment;
- (e) the place of payment; and
- (f) the consequences of non-payment.

20(3)

The non-receipt of a notice of a call by or the accidental omission to give notice of a call to any of the members shall not invalidate the call.

21. Fixed Calls

21(1)

If by the terms of issue of any share or otherwise any amount is made payable at any fixed time or by instalments at fixed times (whether on account of the nominal value of the share or by way of

premium), every such amount or instalment shall be payable as if it were a call duly made by the Directors and of which due notice had been given.

21(2)

In case of non-payment the provisions of these Articles as to payment of interest and expenses forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified.

22. Interest on Outstanding Calls

If a sum called is not paid on or before the date for payment thereof, the person from whom the sum is due shall pay interest on the sum (or on so much as remains unpaid from time to time) at the 90 day bank bill rate as charged by the Company's principal bankers on the date the sum becomes due plus 5 percentage points, calculated from the day appointed for the payment thereof until the time of actual payment. The Directors may waive such interest in whole or in part.

23. Liability of Joint Shareholders

The joint holders of shares shall be severally as well as jointly liable for the payment of all amounts of instalments and calls in respect of such shares.

24. Differentiation between Shareholders

Subject to Article 21(1), during the Establishment Period the Directors shall not, but thereafter, the Directors may on the issue of shares differentiate between the holders as to the amount of calls to be paid and the times of payment.

25. Proceedings on Default

In the event of non-payment of any call, the Company may proceed to recover the same with interest and expenses (if any) as hereinafter provided by action, suit or otherwise, but such right of action, suit or otherwise shall be without prejudice to the right, after the end of the Establishment Period, to forfeit the share of any member so in arrears and either or both of such rights may be exercised by the Directors in their discretion.

26. Proof of Outstanding Calls

On the trial or hearing of any action for the recovery of any call or of any interest or expenses upon or in respect of any call it shall be sufficient to prove that:

- (a) the name of the member sued is entered in the Register as the holder or one of the holders of the shares in respect of which such debt accrued; and
- (b) the resolution making the call is duly recorded in the minute book; and
- (c) notice of such call was duly given to the registered holder of the shares in pursuance of these Articles; or
- (d) in the case of calls or instalments payable at fixed times by the terms of issue of any share or otherwise, to prove such terms and that such sum or call has not been paid,

and it shall not be necessary to prove the appointment of the Directors who made the allotment or call, nor the passing of the resolution nor any other matters whatsoever, but proof of the matters aforesaid, shall be conclusive evidence of the debt.

27. Payment of Calls in Advance

27(1)

The Directors may, if they think fit, receive from any member all or any part of the amount unpaid on a share although no part of that amount has been called up and may authorise the Company to pay interest upon the whole or any part of the moneys so paid in advance until the amount becomes payable, at the 90 day bank bill rate as charged by the Company's principal bankers at the date the advance is made, or such lesser rate as may be agreed between the Directors and the member.

27(2)

Any amount being paid in advance of calls shall not be included or taken into account in ascertaining the amount of dividend payable upon the shares in respect of which such advance has been made.

27(3)

The Directors may at any time repay the amount so advanced upon giving to such member one (1) month's notice in writing.

CONVERSION AND TRANSFER OF SHARES

28. Right to Transfer

28(1)

Except where required by law or elsewhere in these Articles, there shall be no restriction on the transfer of shares in the Company.

28(2)

The Directors may not register a transfer of shares in the Company unless the transfer is either:

- (a) to existing members; or
- (b) accompanied by a statutory declaration by the transferor or stating that the provisions of this Article have been complied with.

Nothing in this Article shall prohibit or restrict the transmission of shares pursuant to Articles 35, 36 and 37.

28(3)

During the Establishment Period, there will be no right for holders of shares to transfer any shares held by them.

28(4)

After the Establishment Period, any transfer of shares, or disposition by the Company of forfeited or surrendered shares, or transfer of shares pursuant to the Company's lien, shall be in accordance with the following conditions:

- (a) the shares will first be offered to the existing members at the value established by an independent valuer appointed by the Company at the time the offer of transfer is made, in proportion to the shares held by them and shares so offered may be taken up by each member

in whole or in part. If within twenty-one (21) days of such offer being made, the shares, or some of them, are not taken up, those not taken up will be again offered to all the existing members, but without regard to their respective shareholdings, at the value established by the independent valuer.

- (b) the shares not taken up by any member within twenty-one (21) days of such offer, may be offered to third parties. If an offer to purchase the shares is made by a third party which is acceptable to the transferor, the shares will be offered again to the existing members, but at the value and on the terms at which the third party made the offer. If any does not take up the offer within twenty one (21) days of the offer being made, the shares not taken up can be transferred to the third party on the basis of that offer.
- (c) if any transfer to a purchaser pursuant to this Article would result in that purchaser holding, including shares marked in the Register as being held in trust for the member, more than 49% of the issued ordinary shares in the Capital of the Company, the shares in excess of the 49% holding shall automatically convert into A convertible cumulative preference shares and shall be dealt with as provided in Article 28(6).

28(5)

- (a) Immediately on the conclusion of the Establishment Period, the B convertible shares shall automatically convert to A convertible shares.
- (b) On a day appointed by the members by a special resolution, such of the unissued A convertible shares and those A convertible shares held by a member as may be converted to ordinary shares without the member holding, including shares marked in the Register as being held in trust for the member, more than 49% of the issued ordinary shares in the Capital of the Company, shall automatically convert to ordinary shares. The remainder of the shares held by that member shall automatically convert into A convertible cumulative preference shares and shall be dealt with as provided in Article 28(6).

28(6)

After the conversion of ordinary shares and A convertible shares into A convertible cumulative preference shares, the latter will be dealt with in the following way:

- (a) within thirty (30) days of the conversion, they will be first offered to the existing members at a value established by an independent valuer appointed by the Company at the time offer is made in proportion to the shares held by them, who may take up the shares to which they are entitled in whole or in part. If within twenty-one (21) days of such offer being made, the shares, or some of them are not taken up, those not taken up will be offered again to all the existing members, but without regard to their respective shareholdings at the value established by the independent valuer.
- (b) the shares not taken up by any member within twelve (12) months of the offer, will be offered for sale to third parties. If an offer to purchase the shares is made by a third party which is acceptable to the seller, the shares will be offered again to the existing members, but at the value and on the terms at which the third party made the offer. If any member does not take up the offer within 21 days of the offer being made, the shares not taken up can be transferred to the third party on the basis of that offer.

- (c) if within a further six (6) months of the date referred to in the previous paragraph, any of the shares are not sold to existing share holders or third parties, the member can, within thirty (30) days of the expiration of the six (6) month period, elect to convert the shares into ordinary shares. In that case the member must, at the time of the election, offer to purchase all other members' holdings at a value established by an independent valuer appointed by the Company at the time the offer is made. If the offer is not wholly taken up, the shares shall automatically convert to ordinary shares.
- (d) if a member continues to hold the shares without converting them into ordinary shares, that member may at any time, on giving to the other members three (3) months notice, elect to convert the shares to ordinary shares, but must, at the time of the election, offer to purchase all other members' holdings at a value established by an independent valuer appointed by the Company at the time the offer is made. If the offer is not wholly taken up, the shares shall automatically convert to ordinary shares.
- (e) if a member disposes of ordinary shares and, on disposal of such shares, holds, including shares marked in Register as being held in trust for the member, ordinary shares less than 49% of the issued ordinary shares in the Capital of the Company, any A convertible cumulative preference shares held by that member shall automatically convert to ordinary shares, but to the extent only that such would not result in that member holding in excess of 49% of the issued ordinary shares in the capital of the Company following such conversion.
- (f) on the transfer of A convertible cumulative preference shares, they shall automatically convert into ordinary shares if the transfer of the shares does not result in the purchaser holding, including shares marked in the Register as being held in trust for the member, in excess of 49% of the issued ordinary shares in the Capital of the Company following such conversion.

28(7)

Any offer of shares pursuant this Article to a body politic will permit the body politic such period to settle the purchase as is necessary to allow it a reasonable time to obtain any necessary Parliamentary approval, including appropriation of funds.

29. Instrument of Transfer

29(1)

The instrument of transfer of any share shall be in writing in any usual or common form or in any other form which the Directors may approve and may comprise more than one document.

29(2)

No fee shall be charged on a transfer of shares.

29(3)

The instrument of transfer of a share shall be executed by or on behalf of both the transferor and the transferee or, where permitted by the provisions of the Law, by the transferor only.

29(4)

The transferor shall be deemed to remain the holder of the share until the transfer is registered and the name of the transferee is entered in the Register in respect thereof.

30. Effect of Powers of Attorney

All powers of attorney granted by members for the purpose (inter alia) of transferring shares which may be lodged produced or exhibited to the Company shall, as between the Company and the grantor of such powers, be deemed to remain in full force and effect and the same may be acted upon until such time as express notice in writing of the revocation of the same or of death of the grantor has been lodged at the Office.

31. Power to Refuse Transfer

31(1)

The Directors may refuse to register any instrument of transfer of, or which includes, shares on which the Company has a lien and may refuse to register a transfer of partly paid up shares to a transferee who, after being requested by the Directors so to do, has not demonstrated on reasonable grounds that the transferee is financially able to meet any unpaid liability in respect of the shares the subject of the transfer.

31(2)

The Directors may also refuse to register any instrument of transfer of shares,

(a) if:

- (a) it is not accompanied by the certificate for the shares to which it relates and such other evidence as the Directors may reasonably require to show the right of the transferor to make the transfer; or
- (b) in the case of a transfer to joint holders they exceed three (3) in number, except in the case of executors and trustees of a deceased shareholder; or
- (c) the registration of the instrument of transfer would result in a contravention or failure to observe the provisions of a law of the Commonwealth of Australia or of a State or Territory of Australia.

32. Notice of Refusal

Upon any refusal to register an instrument of transfer of shares, the Directors shall give written notice of the refusal to the transferor and the transferee and the reasons therefor within ten (10) business days after the date on which the instrument was lodged with the Company.

33. Retention of Instruments of Transfer

All instruments of transfer which are registered shall be retained by the Company, but any instrument of transfer which the Directors may decline to register shall, except on the grounds of fraud, upon a demand in writing be returned to the party presenting it.

34. Period of Suspension of Registration

The transfer books and the Register may be closed during such times as the Directors think fit not exceeding in the whole thirty (30) days in each year.

TRANSMISSION OF SHARES

35. Title to Shares Following Death of Members

In the case of the death of a member, the survivor or survivors, where the deceased was a joint holder, and the legal personal representative of the deceased where the deceased was a sole holder, shall,

upon producing satisfactory proof of death, be the only persons recognised by the Company as having any title to the deceased's interest in the share, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share which has been jointly held by him or her with any other person.

36. Procedure of Transmission

36(1)

This Article is hereinafter referred to as "the transmission article".

36(2)

Any person becoming entitled to a share in consequence of the death or bankruptcy of a member, or to a share of a member of unsound mind, may, upon such information being produced as is properly required by the Directors, and subject as hereinafter provided, elect either to be registered himself or herself as the holder of the share or to have some person nominated by him or her registered as the transferee thereof.

36(3)

If the person so becoming entitled elects to be registered himself or herself, he or she shall deliver or send to the Company a notice in writing signed by him or her stating that he or she so elects. If he or she elects to have another person registered, he or she shall execute a transfer of the share to that person.

36(4)

All the provisions of these Articles relating to the right to transfer and the registration of transfers of shares shall apply to any such notice or transfer as if the death, bankruptcy or insanity of the member had not occurred and the notice or transfer were a transfer executed by that member.

37. Rights on Entitlement

37(1)

A person entitled to be registered as a member in respect of a share by transmission shall upon the production of such evidence as may from time to time be properly required by the Directors in that behalf, be entitled to the same dividends and other advantages, and to the same rights (whether in relation to meetings of the Company, or to voting, or otherwise), as the registered holder would have been.

37(2)

Where two (2) or more persons are jointly entitled to any share in consequence of the death of the registered holder, they shall, for the purposes of these Articles, be deemed to be joint holders of the share.

FORFEITURE AND SURRENDER OF SHARES

38. Notice Requiring Payment

If any member fails to pay the whole or any part of any call or instalment on or before the day appointed for payment thereof, the Directors may, at any time thereafter while the same remains unpaid, serve a notice on the member requiring the member to pay the same, together with any interest that may have accrued thereon and interest up to the date of payment and any expenses that may have been incurred by the Company by reason of such non-payment.

39. Contents of Notice

The notice referred to in Article 38 shall name a further day (not earlier than the expiration of fourteen (14) days from the date of service of the notice) on or before which the payment required by the notice is to be made, the place where payment is to be made and shall state that, in the event of non-payment on or before the day and at the place appointed the shares in respect of which such payment is due will be liable to be forfeited.

40. Effect of Non-Compliance with Notice

40(1)

If the requirements of any notice referred to in Article 38 are not complied with, any share in respect of which such notice has been given may, after the Establishment Period, at any time thereafter before payment required by the notice has been made, be forfeited by a resolution of the Directors to that effect.

40(2)

Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture, but this right to forfeit the shares shall not affect the right of the Company to sue for any allotment moneys, calls, instalments, interest and expenses due in respect of such shares.

41. Annulment of Forfeiture

The Directors may, at any time before the forfeited shares have been sold or otherwise disposed of, annul the forfeiture thereof upon such conditions as they think fit.

42. Disposition of Forfeited Shares

Every share which is forfeited may be sold or otherwise disposed of upon such terms and in such manner as the Directors think fit.

43. Liability of Forfeited Shares

A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but shall be liable to pay and shall forthwith pay to the Company, all money payable by the person in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture until payment, at the 90 day bank bill rate as charged by the Company's principal bankers at the time of forfeiture plus 5 percentage points, and the Directors may enforce the payment of such money or any part thereof as they shall think fit, but shall not be under any obligation to do so.

44. Evidence of Forfeiture

A statement in writing by a Director or the Secretary of the Company that a share in the Company has been duly forfeited on a date stated therein shall be conclusive evidence of the facts therein stated as against all persons claiming to be entitled to the share.

45. Rights Upon Transfer of Forfeited Shares

45(1)

The Company may receive the consideration (if any) given for a forfeited share on any sale or disposition thereof and may execute or appoint some person to execute a transfer of the share in favour of the person to whom the share is sold or disposed of.

45(2)

Upon the execution of the transfer, the transferee shall thereupon be registered as the holder of the share and shall not be bound to see to the application of the purchase money (if any).

45(3)

The title of the transferee to the share shall not be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale or disposal of the share.

46. Surrender of Shares

After the Establishment Period the Directors may accept the surrender of a share which is liable for forfeiture or any part thereof upon such terms as may be agreed between such member and the Directors and ratified by the Company by special resolution. Any share so surrendered may be disposed of in the same manner as a forfeited share.

47. Application of Forfeiture Provisions

The provisions of these Articles as to forfeiture shall apply in the case of non-payment of any sum which by the terms of issue of a share becomes payable at a fixed time, whether on account of the amount of the share or by way of premium, as if the same had been payable by virtue of a call duly made and notified.

ALTERATION OF CAPITAL

48. Power to Increase, Consolidate, Divide, Sub-Divide and Cancel Shares

The Company may by resolution:

- (a) increase the Capital by the creation of new shares of such amount as is specified in the resolution;
- (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;
- (c) convert all or any of its paid up shares into stock and re-convert any stock into fully paid shares of any denomination;
- (d) subdivide its shares or any of them into shares of smaller amount than is fixed by the Memorandum of Association, but so that in the subdivision the proportion between the amount paid and the amount (if any) unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived. The resolution whereby any share is subdivided may determine that, between the holders of the shares resulting from such subdivision, one or more of such shares shall have some preference or special advantage as regards dividend, capital, voting or otherwise as compared with others; and
- (e) cancel shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person or which have been forfeited and reduce the amount of its Capital by the amount of the shares so cancelled.

49. Power to Reduce Capital

Subject to the Law and the provisions of any law of the Commonwealth of Australia or of a State or Territory of Australia, the Company may by special resolution reduce its share capital, any capital redemption reserve fund or any share premium account.

50. Transfer of Interests in Stock

50(1)

The holders of stock may transfer the same or any part thereof in the same manner and subject to the same provisions of the Articles as and subject to which fully paid shares may be transferred, or as near thereto as circumstances admit.

50(2)

The Directors may, from time to time, fix the minimum amount of stock transferable and restrict or forbid the transfer of fractions of that minimum, but the minimum shall not exceed the aggregate nominal amount of the shares from which the stock arose and shall be stated on the certificates for such stock.

51. Rights of Stockholders

51(1)

The holders of stock shall, according to the amount of the stock held by them, have the same rights, privileges and advantages as regards participation in profits, participation in assets on a winding up, voting at meetings, and all other matters, as if they held the shares from which the stock arose.

51(2)

No such rights, privileges or advantages (except participation in dividends and profits and in the assets on a winding up) shall be conferred by an amount of stock which would not, if existing in shares, have conferred such rights, privileges or advantages.

52. Applicability of Share Provisions to Stock

All the provisions of these Articles applicable to fully paid shares shall apply to stock.

GENERAL MEETINGS

53. Convening of General Meetings

53(1)

The Directors may, whenever they think fit, and shall where required by the Law convene a general meeting. If at any time there are not within Australia sufficient Directors capable of forming a quorum, any Director may convene a general meeting in the same manner as nearly as possible as that in which meetings may be convened by Directors.

53(2)

Any member or members, holding at least five (5) percent of the total voting rights in the Company, may requisition the Directors to convene a general meeting in which case the Directors shall convene a general meeting for the purpose of considering the business proposed by the member or members requisitioning the meeting.

54. Notice of General Meeting

Every notice of a general meeting shall be accompanied by a form of proxy and shall specify the place, day and hour of meeting and, in the case of special business, the general nature of such business and, in the case of an election of Directors, the names of the candidates for election and shall be given to the members by notice sent by post or otherwise served as hereinafter provided.

55. Accidental Omission to Give Notice

The accidental omission to give notice of any general meeting to, or the non-receipt of any such notice by, any of the members or the Auditors or the Secretary, or any person required to receive notice

pursuant to the Law, or the accidental omission to advertise (if necessary) such meeting, shall not invalidate the proceedings at or any resolution passed at any such meeting.

56. Postponement of General Meetings

56(1)

The Directors shall have power to postpone the holding of any general meeting, provided that the postponed meeting shall be held within twenty-one (21) days of the date for which it was originally called.

56(2)

Whenever any meeting is postponed for ten (10) days or more, then no less than two (2) days' notice shall be sent to the members of every such postponed meeting, as in the case of the original meeting, but it shall not be necessary to specify in such notice the nature of the business to be transacted at such postponed meeting.

PROCEEDINGS AT GENERAL MEETINGS

57. Quorum

57(1)

No business shall be transacted at any general meeting unless the members present constitute a quorum at the time when the meeting proceeds to business.

57(2)

Save as provided in Articles 5 or 58 and 118(3)(h), four (4) members present shall be a quorum.

58. Absence of Quorum

If within fifteen (15) minutes after the time appointed for the holding of a meeting a quorum is not present, the meeting:

- (a) if convened upon the requisition of members or for the purpose of winding up the Company voluntarily, shall be dissolved; or
- (b)
 - (i) in any other case it shall stand adjourned to the first Business Day thereafter at the same time and place or to such other day time and place as the Directors may by notice to the shareholders appoint;
 - (ii) if at such adjourned meeting a quorum is not present within fifteen (15) minutes after the time appointed for the meeting:
 - (A) the members present (being not less than three (3)) shall be a quorum; or
 - (B) where three (3) members are not present, the meeting shall be dissolved.

59. Ordinary and Special Business

59(1)

The business of an annual general meeting shall be:

- (a) to receive and consider the profit and loss account, the balance sheet, the reports of the Directors and of the Auditors and the Directors' Statement required by the Law to be attached to the accounts of the Company;
- (b) to elect Directors, in place of those retiring or otherwise;
- (c) when necessary, to appoint Auditors;
- (d) to declare dividends; and
- (e) any other matter required to be considered by law; and
- (f) to transact any other business which under these Articles ought to be transacted at an annual general meeting.

59(2)

All other business transacted at an annual general meeting and all business transacted at a general meeting shall be deemed special.

60. Resolutions Proposed by members

No member shall, as regards any special business, be at liberty to move at any meeting any resolution not previously approved by the Directors unless he or she has given not less than fourteen (14) days previous notice in writing of his or her intention to move such resolution at such meeting by leaving such notice and a signed copy of the resolution at the Office whereupon the Secretary shall forthwith notify the members thereof if the notice convening the meeting has then been despatched, but otherwise notice thereof shall be included with the notice convening the meeting.

61. Chairperson

61(1)

The Chairperson, or in his or her absence the deputy Chairperson (if any), shall be entitled to preside at every general meeting.

61(2)

If there be no Chairperson or deputy Chairperson, or if at any meeting he or she shall not be present within fifteen (15) minutes after the time appointed for holding such meeting or is unwilling to act, the Directors present may choose one of their number as a chairperson and, in default of their doing so, the members present shall choose one of the Directors to be chairperson and, if no Director present is willing to preside, the members present shall choose one of their number to be chairperson.

62. Adjournment of Meetings

The chairperson of a meeting at which the requisite quorum is present may, with the consent of the meeting, adjourn the same from time to time and from place to place as the meeting shall determine, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

VOTING AT GENERAL MEETINGS

63. Voting Rights

63(1)

Subject to any rights or restrictions for the time being attached to any class, votes may be given either personally or by proxy or by attorney under power, or in the case of a corporation, by its duly authorised representative.

63(2)

No person shall be entitled to vote unless he or she is a member and present in person or by proxy or attorney, or is the representative of a corporation which is a member duly authorised in accordance with the Law.

63(3)

Subject to the rights or restrictions attached to any class of shares, on a show of hands every member present shall have one vote.

63(4)

On a poll every member present shall have one vote for each share held by the member in the Company, provided that in respect of partly paid shares the voting rights of a member shall be pro-rata to the proportion of the total issue price paid up on such shares.

64. Voting Disqualification

A member is not entitled to vote at a general meeting unless all calls and other sums presently payable by the member in respect of the member's shares have been paid.

65. Power to Demand Polls

Every question submitted to a general meeting shall be decided by a show of hands unless a poll (before or on the declaration of the result of the show of hands) is demanded by:

- (a) the chairperson of the meeting; or
- (b) any member present having the right to vote at the meeting;

66. Evidence of Resolutions

At any general meeting (unless a poll is demanded as aforesaid), a declaration by the chairperson that a resolution has been carried, or carried by a particular majority, or lost, or not carried by a particular majority, and an entry in the book of minutes of proceedings of the Company signed by the chairperson of that or the next succeeding meeting, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

67. Conduct of Polls

67(1)

If a poll is demanded, it shall be taken in such manner and either by ballot or otherwise and at such time not exceeding fourteen (14) days after the meeting and at such place, as the chairperson of the meeting directs and either at once or after an interval or adjournment or otherwise and the result of the poll shall be the resolution of the meeting at which the poll was demanded.

67(2)

No poll shall be demanded on the election of a chairperson of a meeting and a poll demanded on

any question of adjournment shall be taken at the meeting and without an adjournment.

67(3)

The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business, other than the question on which a poll has been demanded.

67(4)

The demand for a poll may be withdrawn.

68. Casting Vote

In the case of an equality of votes, and where all members are present at the meeting personally or by proxy or representative, but not otherwise, the chairperson of the meeting shall on a show of hands and on a poll have a casting vote in addition to his or her deliberative vote (if any).

69. Voting Rights of Joint Shareholders

69(1)

In the case of joint holders, any one may vote, but the vote of the person first named in the Register who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders.

69(2)

Several executors or administrators of a deceased member shall for the purposes of this Article be deemed joint holders.

70. Voting Rights of Persons Entitled under Transmission Articles

Any person entitled under the transmission articles to the transfer of any shares may vote at any meeting in respect thereof in the same manner as if he or she were the registered holder of such shares, provided that twenty four (24) hours at least before the time of holding the meeting or adjourned meeting, as the case may be, at which he or she proposes to vote, he or she shall satisfy the Directors of his or her right to the transfer of such shares, unless the Directors shall have previously admitted his or her right to vote at such meeting in respect thereof.

71. Objections to Exercise of Voting Rights

71(1)

No objection shall be made to the validity of any vote, except at a meeting or adjourned meeting or poll at which such vote is tendered and every vote not disallowed at any such meeting or poll shall be valid for all purposes.

71(2)

In recording votes the last copy of the Register shall be adopted and acted on as the voting roll in respect of shares on the Register.

72. Determination of Validity of Votes

The chairperson of any meeting shall be the sole judge of the validity of every vote tendered at the meeting and his or her determination shall be final and conclusive.

73. Right to Appoint Proxies and Attorneys

73(1)

A member may appoint no more than two (2) proxies, neither of whom need be a member.

73(2)

Where a member appoints two (2) proxies, the appointment shall be of no effect unless each proxy is appointed to represent a specified proportion of the member's voting rights.

74. Deposit of Proxy and Attorney Instrument

An instrument appointing a proxy (and the power of attorney (if any) under which it is signed or proof thereof to the satisfaction of the Directors) shall be deposited at the Office or with the chairperson before the time for the holding of the meeting or adjourned meeting, as the case may be, at which the person named in such instrument proposes to vote.

75. Proxy Instrument to be in Writing

An instrument appointing a proxy shall be in writing under the hand of the appointor or his or her attorney duly authorised in writing, if such appointor is a corporation, under its common seal or the hand of its attorney or duly authorised representative or if such an appointor is a body politic, under the hand of a Minister of State.

76. Form of Proxy

Every instrument of proxy shall be in the form determined by the Directors from time to time, provided however, that it is in such form as will enable the member to vote for or against each resolution and is blank so far as the person primarily to be appointed as proxy is concerned, but may make provision for the Chairman of the meeting to act as proxy in the absence of any other appointment or if the person or persons nominated fails or all fail to attend.

77. Effect of Proxy Instrument

77(1)

The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.

77(2)

A proxy may only be for a single meeting and each proxy shall specify the day upon which the meeting at which it is intended to be used is to be held and shall be available only at the meeting so specified and any postponement or adjournment thereof.

77(3)

Any proxy may be revoked at any time by notice in writing to the Company.

78. Voting Rights of Proxies and Attorneys

78(1)

An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

78(2)

A vote given or act done in accordance with the terms of an instrument of proxy, or power of

attorney, shall be valid notwithstanding the previous death of the principal or revocation of the proxy or power of attorney or transfer of the share in respect of which the vote is given or act done, provided no duly authenticated intimation in writing of the death, revocation or transfer shall have been received at the Office before the vote is given or act done.

APPOINTMENT AND REMOVAL OF CHAIRPERSON AND DIRECTORS

79. Number qualifications and Residency of Directors

79(1)

The number of Directors shall be not less than five (5), nor more than twelve (12).

79(2)

Not less than two (2) Directors shall be ordinary resident within the Commonwealth of Australia.

79(3)

The Company in General Meeting may by special resolution increase or reduce the number of Directors, provided that at no time does the number of Directors fall below five (5).

79(4)

The Chairperson, appointed in accordance with Article 80, shall be a Director of the Company.

79(5)

The Managing Director, appointed in accordance with Article 92, shall be a Director of the Company.

79(6)

There shall be no share qualification for Directors.

80. Appointment of Chairperson

80(1)

The Commonwealth shall have the right, by notice in writing to the Company, to appoint the Chairperson from the date of incorporation of the Company to the end of the Establishment Period, such appointment or appointments expiring at the end of the Establishment Period.

80(2)

Thereafter the Directors may elect one of their number to be Chairperson and may determine the period, not exceeding three (3) years, for which he or she is to hold office.

81. Appointment and Removal of Directors and Chairperson

81(1)

The first Directors of the Company (other than the Chairperson and the Managing Director) shall be appointed in writing by the subscribers to the Memorandum and Articles of Association and such persons shall, upon incorporation of the Company, be deemed to be the Directors.

81(2)

The Company may, at any annual general meeting at which any Director is to retire in accordance with Article 83(2), appoint any a replacement Director provided that the person appointed:

- (a) holds office as a Director at the annual general meeting and is due for retirement; or
- (b) has been nominated by a member or members holding not less than 5% of the issued shares in the Company for appointment as a Director not less than 21 days prior to the annual general meeting.

and the person consents to re-appointment or appointment as the case may be.

81(3)

The Directors with the consent of the members may or the Company may, at any general meeting appoint a Director.

81(4)

The Directors shall hold office until they shall be removed by resolution of the Company passed in general meeting or until they retire, or their office shall, ipso facto, become vacant pursuant to these Articles or pursuant to the Law.

82. Insufficient Directors

The continuing Directors may act notwithstanding any vacancy in their body, but if the number falls below the minimum fixed in accordance with Article 79, the Directors may act only for the purpose of summoning a general meeting or in emergencies, but for no other purpose.

83. Retirement from Office

83(1)

Any Director may retire from office upon giving notice in writing to the Company of his or her intention to do so and such resignation shall take effect upon the expiration of the notice or its earlier acceptance.

83(2)

Directors (other than the Chairperson and other than the Managing Director to the extent that the terms of appointment of the Managing Director may be inconsistent with this Article) shall retire from office at the conclusion of the annual general meeting next following the expiration of three (3) years from the date of their appointment, but are eligible for reappointment.

84. Removal from Office

Subject to the provisions of these Articles and the Law, the Company may by resolution passed at any general meeting remove any Director and appoint another person in his or her stead.

85. Disqualification

In addition to the circumstances in which the office of Director becomes vacant by virtue of the Law, the office of Director shall be, ipso facto, vacated if the Director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) is removed by a resolution pursuant to Article 84;
- (c) absents himself or herself from meetings of Directors for a continuous period of six (6) months without special leave of absence from the Directors and the Directors thereupon declare his or her

seat to be vacant;

- (d) if he or she ceases to hold his or her qualification shares (if any be required by these Articles) or fails to pay any call due on any shares held by him or her for the space of one (1) month or such further time as the Directors shall allow after the time when the call shall have been made;
- (e) being the Managing Director ceases to hold that office; or
- (g) being an Executive Director ceases to be employed full time by the Company.

ALTERNATE DIRECTORS

86. Power to Appoint

86(1)

Each Director shall have power from time to time to appoint any person approved for that purpose by a majority of his or her co-Directors to act as an Alternate Director in his or her place whenever he or she is unable to act personally by reason of illness absence or any other cause whatsoever and may do so generally or for a meeting or for any other purpose or for a specified period.

86(2)

Nothing in this Article is to be construed as empowering a Managing Director to appoint an alternate to act as Managing Director.

87. Rights and Powers of Alternate Directors

An Alternate Director, while he or she holds office, shall for all purposes be deemed to be a Director of the Company and shall have the same rights and powers and be subject in all respects to the same terms and conditions, except remuneration and share qualification (if any be required by these Articles), as exist with reference to other Directors and except that he or she shall not be taken into account in determining the number of Directors pursuant to Article 79(1).

88. Suspension or Revocation of Appointment

88(1)

A Director may at any time revoke or suspend the appointment of an Alternate Director appointed by him or her.

88(2)

The Directors may at any time suspend or remove an Alternate Director by resolution after giving the appointor reasonable notice of their intention so to do.

89. Form of Appointment, Suspension or Revocation

89(1)

Every appointment, suspension or removal under Articles 86 or 88 shall be effected by notice in writing signed by the Director or Directors making the same.

89(2)

Any such notice under Articles 86 or 88 or a resignation under Article 90(c) may be given by facsimile, telex, telegram or cable.

90. Termination of Appointment

The appointment of an Alternate Director shall automatically determine in any of the following events:

- (a) the Director for whom he or she acts as alternate ceasing to hold office as Director;
- (b) on the happening of any event which, if he or she were a Director, would cause him or her to vacate the office of Director; or
- (c) if by writing under his or her hand, left at the Office, he or she shall resign such appointment.

91. Power to Act as Alternate for More than One Director

A Director or any other person may act as Alternate Director to represent more than one Director.

MANAGING DIRECTORS AND EXECUTIVE DIRECTORS

92. Power to Appoint

The Directors may from time to time appoint any person to be the Managing Director of the Company, either for a fixed term not exceeding 5 years, or without fixing any term and otherwise subject to such conditions limitations and restrictions as the Directors may determine.

93. Qualification

A Managing Director shall, subject to the provisions of any contract between him or her and the Company and to these Articles, be subject to the same provisions as to resignation, disqualification and removal as the other Directors and, if he or she ceases to hold the office of Director from any cause, he or she shall, ipso facto, immediately cease to be a Managing Director.

94. Temporary Appointments

In the event of the Managing Director becoming at any time in any way incapable of acting as such, the Directors may appoint any other Director to act as Managing Director temporarily.

95. Removal or Dismissal

Subject to any contract between the Managing Director or an Executive Director and the Company, the Directors at any time may remove or dismiss him or her from office and appoint another in his or her place.

96. Powers

96(1)

The Directors may, upon such terms and conditions and with such restrictions as they think fit, confer upon a Managing Director or an Executive Director any of the powers exercisable by them.

96(2)

Any powers so conferred may be concurrent with, or be to the exclusion of, the powers of the Directors.

96(3)

The Directors may, at any time, withdraw or vary any of the powers so conferred on a Managing Director or an Executive Director.

97. Remuneration

Subject to the provisions of any Contract between the Company and the Managing Director or an

Executive Director, the remuneration of the Managing Director or an Executive Director shall from time to time be fixed by the Directors and may be by way of fixed salary or participation in profits of the Company or of any other company in which the Company is interested or by any or all of those modes, but shall not be by way of commission on or percentage of operating revenue of the Company and, unless otherwise determined by the Company in general meeting, may be in addition to any remuneration which he or she may receive as a Director of the Company.

REMUNERATION OF DIRECTORS

98. Payment of Fees

98(1)

The Directors (other than the Managing Director or other Executive Director) shall be paid out of the funds of the Company as fees for their ordinary services as Directors such sum as may from time to time be determined by the Company in general meeting.

98(2)

Such fees shall be by a fixed sum and not by a commission on or percentage of the operating revenue of the Company or of any other company in which the Company is interested or (except in the case of a Managing Director or other Executive Director) its profits.

98(3)

The sum so fixed shall be divided amongst the Directors (other than the Managing Director or other Executive Director) in such proportion and manner as the members may resolve in general meeting and, failing such resolution, as the Directors shall from time to time agree, or in default of agreement, equally.

98(4)

The fees of each Director for his or her ordinary services shall be deemed to accrue from day to day and shall be apportionable accordingly.

99. Payment of Expenses

The Directors shall also be entitled to be paid their reasonable travelling and other expenses incurred in connection with their attendance at board meetings and otherwise in the execution of their duties as Directors.

100. Payment for Extra Services

Any Director (other than the Managing Director or other Executive Director) who, being willing, is called upon to perform extra services or to make any special exertions or to undertake any executive or other work for the Company beyond his or her ordinary duties, or to go or reside abroad or otherwise for any of the purposes of the Company, shall be remunerated either by a fixed sum or a salary as may be determined by the Directors and such remuneration may be either in addition to or in substitution for his or her share in the remuneration above provided.

101. Increases in Remuneration

In the event of a proposal to increase the fees of the Directors for their ordinary services, the notice calling the general meeting at which such increase is to be proposed shall state the amount of the proposed increase and the maximum sum that may be paid.

102. Cancellation, Suspension, Reduction or Postponement

A resolution of Directors, cancelling suspending reducing or postponing payment of such remuneration

or any part thereof, shall bind all the Directors for the time being.

103. Effect of Cessation of Office

103(1)

Upon a Director ceasing or at any time after his or her ceasing to hold office, the Directors may pay to the former Director, or in the case of his or her death, to his or her legal personal representatives, or to his or her dependants, or any of them, a lump sum payment in respect of past services of such Director of any amount not exceeding the amount permitted by the Law. The Company may contract with any Director, other than an Executive Director, to secure payment of any such sum to him or her, to his or her legal personal representatives or to his or her dependants or any of them.

103(2)

A determination made by the Directors in good faith, that a person is or was, at the time of the death of such Director, a dependant of such Director, shall be conclusive for all purposes of Article 103(1).

PROCEEDINGS OF DIRECTORS

104. Meetings of Directors

104(1)

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

104(2)

Subject to Article 110, the Directors may conduct the meetings by way of video, telephone, radio or any other form of instantaneous audio or audio and visual communication without a Director being in the physical presence of another Director or Directors.

104(3)

The minutes of any meeting of the Directors, howsoever convened and held, shall state the method of meeting.

104(4)

The minutes of any meeting of the Directors, howsoever convened and held, shall be given to each Director within the one (1) month after the date of the meeting.

105. Quorum

A quorum of Directors shall be four (4) Directors present in person or by telephone, radio or other form of instantaneous audio or audio and visual communication at the meeting.

106. Convening of Meeting

A Director may at any time and the Secretary, upon the request of a Director, shall convene a meeting of the Directors.

107. Notice of Meeting

107(1)

Notice of every Directors' meeting shall be given to each Director and Alternate Director who is

within the Commonwealth of Australia, but it shall not be necessary to give a notice of a meeting of Directors to any Director who is absent from the Commonwealth of Australia or who has been given special leave of absence.

107(2)

Any notice of a meeting of Directors may be given in writing or by facsimile, telex, telegram or cable or by telephone or any other means of communication.

108. Voting

108(1)

Questions arising at any meeting of the Directors shall be decided by a majority of votes and each Director shall have one vote.

108(2)

A person who is an Alternate Director shall be entitled (in addition to his or her own vote if he or she is a Director) to one vote on behalf of each Director whom he or she represents as an Alternate Director at the meeting.

108(3)

In the case of an equality of votes and where all Directors (or their Alternates) are present at the meeting, the Chairperson of the meeting, in addition to his or her deliberative vote (if any), shall have a casting vote.

109. Chairperson and Deputy Chairperson

109(1)

The Directors may from time to time appoint a Deputy Chairperson, who in the absence of the Chairperson at a meeting of the Directors, may exercise all the powers and authorities of the Chairperson.

109(2)

If no Chairperson or Deputy Chairperson is appointed or elected, or if at any meeting the Chairperson, or failing him or her, the Deputy Chairperson is not present at the meeting within half an hour of the time appointed for holding the same, the Directors so present shall choose some one of their number so present to be Chairperson of such meeting.

110. Teleconference Meeting of Directors

110(1)

For the purpose of these Articles the contemporaneous linking together by an instantaneous communication device of a number of Directors constituting not less than the quorum required for the purpose of these Articles, whether or not one or more of the Directors is outside the Commonwealth of Australia, shall be deemed to constitute a meeting of the Directors and all the provisions of these Articles as to meetings of the Directors shall apply to such meetings, so long as the conditions set out in paragraph (3) are met.

110(2)

For the purpose of these Articles a reference to the Chairperson, Deputy or a Director being present at a meeting of the Directors shall refer to the Chairperson, Deputy Chairperson, or Director being present in person or through an instantaneous communication device.

110(3)

The conditions referred to in paragraph (1) are that:

- (a) all the Directors for the time being entitled to receive notice of the meeting of the Directors (including any Alternate Director for a Director) shall be entitled to notice of the meeting;
- (b) notice of any such meeting shall be given in accordance with Article 107;
- (c) each of the Directors taking part in the meeting shall be linked by an instantaneous communication device and must throughout the meeting be able to hear each of the other Directors so taking part;
- (d) at the commencement of the meeting each Director must acknowledge his or her presence for the purpose of the meeting to all the other Directors taking part; and
- (e) if the Secretary is not present at the meeting, one of the Directors so present shall take minutes of the meeting.

110(4)

A Director may not leave a meeting conducted pursuant to this Article 110 by disconnecting his or her instantaneous communication device unless he or she has previously obtained the express consent of the chairperson of the meeting.

110(5)

A Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by instantaneous communication device unless he or she has previously obtained the express consent of the chairperson of the meeting to leave the meeting.

110(6)

A minute of the proceeding at a meeting held by instantaneous communication device shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified on a correct minute by the chairperson of the meeting or by the Secretary, if present, at the meeting.

110(7)

For the purposes of this Article, “instantaneous communication device” shall include telephone, television or any other audio and visual device which permits instantaneous communication.

111. Circulated Resolutions

111(1)

If all the Directors have signed a document containing a statement that they are in favour of a resolution of the Directors in terms set out in the document, a resolution in those terms shall be deemed to have been passed at a meeting of the Directors held on the day on which the document

was signed at the time at which the document was last signed by a Director, or if the Directors have signed the document on different days, on the day on which and, at the time at which, the document was last signed by a Director.

111(2)

For the purposes of paragraph (1), two (2) or more separate documents containing statements in identical terms, each of which is signed by one or more Directors, shall together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

111(3)

A reference in paragraph (1) to all the Directors does not include a reference to a Director who, at a meeting of Directors, would not be entitled to vote on the resolution.

111(4)

Every resolution so made and signed shall be, as soon as practicable, entered in the minutes of the Directors' meetings.

111(5)

A facsimile, telex, cable, telegram or such similar means of communication addressed to or received by the Company and purporting to be signed by a Director shall, for the purpose of this Article, be deemed to be writing signed by such Director.

112. Restriction on Voting

No Director shall be entitled to be present in person or by an Alternate Director or to vote at a meeting of Directors or to be reckoned in a quorum if and as often as, he or she shall have failed to pay any call to the Company on shares held by him or her after the date upon which the call should have been made.

113. Committees of Directors

113(1)

The Directors may delegate any of their powers to committees consisting of such Directors with such quorum as they think fit and may from time to time revoke such delegation.

113(2)

Any committee formed pursuant to paragraph (1) shall, in the exercise of the powers so delegated, conform to any regulations that may from time to time be imposed upon it by the Directors.

113(3)

Save as aforesaid, the meetings and proceedings of any such committee consisting of two (2) or more Directors shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors.

114. Validation of Acts of Directors

All acts done at any meeting of Directors, or of a committee of Directors, or by any person acting as a Director, or by any person purporting to act as an attorney under power of the Company, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment

or continuance in office of such Director, or person, or attorney acting as aforesaid, or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed, or had duly continued in office and was qualified to be a Director, or attorney and was entitled to vote.

DIRECTORS' CONTRACTS WITH COMPANY AND DISCLOSURE OF INTEREST

115. Contracts with Directors

115(1)

Subject to this Article, no Director shall be disqualified by his or her office from holding any other office, or place of profit, under the Company, or any of its subsidiary companies or under any company in which the Company is or becomes a shareholder or is otherwise interested, or from contracting or arranging with the Company or any other such company as aforesaid, either as vendor, purchaser or otherwise howsoever, nor shall any such contract or any contract or arrangement entered into or to be entered into by or from or on behalf of the Company in which the Director shall or may be in any way interested, be avoided, nor shall the Director so contracting, or being so interested, be liable to account to the Company for any profit arising from any such office or place of profit or realised by any such contract or arrangement by reason only of the Director holding that office or of the fiduciary relationship thereby established.

115(2)

The nature of the Director's interest as referred to in paragraph (1) must be disclosed by him or her before or at the meeting of Directors at which the question of entering into the contract or arrangement is first taken into consideration if his or her interest then exists, or in any other case at the first meeting of the Directors after he or she becomes so interested.

115(3)

No Director shall vote in respect of any contract, or proposed contract or arrangement, in which he or she whether directly or indirectly has a material interest and, if he or she does so vote, when prohibited by this Article his or her vote shall not be counted although he or she may be counted, in the quorum present at any Directors' meeting at which such contract or arrangement is considered.

115(4)

Subject to any law, the restrictions contained in paragraph (3) may, at any time or times, be suspended or relaxed to any extent and either prospectively or retrospectively by resolution of the Company in general meeting.

115(5)

A Director may, notwithstanding his or her interest, and whether or not he or she is entitled to vote or does vote, participate in the execution of any document evidencing any contract or arrangement referred to in paragraph (1) by or on behalf of the Company and whether by signing or sealing the same or otherwise.

116. Disclosure of Interests

A general notice given to the Directors by any Director to the effect that he or she is an officer or a member of, or interested in, any specified firm or corporation and is to be regarded as interested in all transactions with such firm or corporation, shall be sufficient disclosure as required by the Law as regards such Director and the said transactions and, after such general notice, it shall not be

necessary for such Director to give any special notice relating to any particular transaction with such firm or corporation, unless requested to do so by the Board, in which case the Director shall provide such special notice.

117. Other Directorships and Shareholdings

A Director of the Company may be or become a director or other officer of, or otherwise interested in, any corporation promoted by the Company, or in which the Company may be interested as shareholder or otherwise, or which holds any shares in the Company, and no such Director shall be accountable to the Company for any remuneration or other benefits received by him or her as a director or officer of, or from his or her interest in, such corporation. The Directors may exercise the voting power conferred by the shares or other interest in any such other corporation held or owned by the Company, or exercisable by them as directors of such other corporation in such manner in all respects as they think fit (including the exercise thereof in favour of any resolution appointing themselves or any of them directors or other officers of such corporation), and any Director may vote in favour of the exercise of such voting rights in the manner aforesaid, notwithstanding that he or she may be, or be about to be, appointed a director or other officer of such corporation and as such is, or may become, interested in the exercise of such voting rights in manner aforesaid.

POWERS AND DUTIES OF DIRECTORS

118. General Business Management

118(1)

Subject to the Law, paragraph (2) and to any other provisions of these Articles, the management and control of the business of the Company shall be vested in the Directors, who may exercise all such powers of the Company as are not hereby or by the Law required to be exercised by the Company in general meeting, but no Article made or resolution passed by the Company in general meeting, shall invalidate any prior act of the Directors which would have been valid if that Article or resolution had not been made or passed.

118(2)

The Company reserves to itself the power or function of:

- (a) approval subject to Article 118(3)(h), of the Corporate Plan, by a special resolution;
- (b) approval of the formation or acquisition by whatever means of any subsidiary of the Company; and
- (c) any power or function resolved by a special resolution to be reserved for exercise by the Company by a special resolution.

118(3)

- (a) The Directors shall prepare a corporate plan for the Company as soon as possible after the incorporation of the Company. The Directors shall prepare a corporate plan in each year thereafter.
- (b) The corporate plan or plans prepared for any period within the Establishment Period shall set out a strategic framework for the management of the Company for the period to which it refers (being a period of not less than three years) and shall:
 - (i) set out the Company's proposed national rail network;

- (ii) identify functions proposed to be assumed by the Company, and nominate and identify associated classes of assets to be transferred or to which access is to be given to the Company;
 - (iii) provide a schedule for the transfer of control or the giving of access to the Company of identified functions and associated assets;
 - (iv) provide a schedule for the making of calls on the issued A convertible shares;
 - (v) provide details of any additional equity funding requirements and timetable;
 - (vi) provide a business plan for the Company;
 - (vii) provide financial projections for the Company, including any borrowing requirements;
 - (viii) provide an investment strategy for the Company, including a capital works program and timetable;
 - (ix) identify NRC Standard Costs;
 - (x) such other information as the Company in annual general meeting may require; and
 - (x) provide a Statement Of Corporate Intent.
- (c) The corporate plan or plans prepared for any period following the Establishment Period shall set out a strategic framework for the management of the Company for the period to which it refers (being a period of not less than three years) and shall:
- (i) provide a business plan for the Company;
 - (ii) provide financial projections for the Company, including any borrowing requirements;
 - (iii) provide an investment strategy for the Company, including a capital works program and timetable;
 - (iv) such other information on the Company in annual general meeting may require;
 - (v) provide a Statement Of Corporate Intent;
- (d) The Directors may from time to time amend or replace the Corporate Plan in accordance with paragraph (g).
- (e) The Directors shall provide copies of the Corporate Plan and all amendments to and replacements of the Corporate Plan, to all members of the Company.
- (f) Members shall keep the Corporate Plan confidential.
- (g) The Directors shall, within seven (7) days of preparing a corporate plan, submit the corporate plan to the members for approval. On receipt of the corporate plan the members shall consult each other in relation to the corporate plan and may, within thirty (30) days of such receipt, approve by a special resolution, the corporate plan, either as submitted or subject to such amendments as may be specified in the special resolution.

- (h) During the Establishment Period if the members have not approved the corporate plan as provided in paragraph (g) within thirty (30) days of the date of receiving the plan, the plan, either as submitted or subject to such amendments as may be specified in the resolution, may be approved within thirty (30) days of the expiry of that thirty (30) day period by resolution as follows—
 - (i) by a vote of any two (2) members (irrespective of the number of shares held by the members) if there are three members in the Company;
 - (ii) by a vote of any three (3) members (irrespective of the number of shares held by the members) if there are four members in the Company;
 - (iii) by a vote of any four (4) members (irrespective of the number of shares held by the members) if there are five members in the Company;
 - (iv) by a vote of any five (5) members (irrespective of the number of shares held by the members) if there are six members of the Company.
- (i) After the Establishment Period, on receipt of the corporate plan, the members shall consult each other in relation to the corporate plan and may approve the plan by a special resolution either as submitted by the Directors or subject to such amendments as may be specified in the special resolution.
- (j) Upon approval by the members in accordance with paragraph (g), (h) or (i), the corporate plan, or the corporate plan as amended or replaced, shall be the Corporate Plan for the Company until replaced or amended.

118(4)

The Statement of Corporate Intent shall set out:

- (a) the objectives of the Company;
- (b) its main undertakings;
- (c) the nature and scope of the activities to be undertaken by the Company;
- (d) the accounting policies to be applied by the Company in its accounts;
- (e) appropriate information on the company's performance; and
- (f) such other matters as may be agreed upon by the Directors and the members from time to time.

118(5)

Any member may publish the Statement of Corporate Intent in such manner as it thinks fit.

118(6)

The Directors will act in a manner not inconsistent with the Statement of Corporate Intent, unless required to do so by law.

119. Borrowing Powers

The Directors shall have 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 and conditions in all respects as they think fit (not inconsistent with the Corporate Plan), whether 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.

120. Loans to Directors

Without limiting the generality of the foregoing, it is expressly declared that the Directors shall have power to make such loans to Directors and to provide such guarantees and security for obligations undertaken by, Directors, as may be permitted by the Law, and by resolution of the Company, but not otherwise.

121. 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 from time to time determine, provided however, until determined otherwise, at least two (2) persons, duly authorised by the Directors for this purpose, shall be required to execute any negotiable instruments.

122. Use of Seals

The Directors may exercise all the powers of the Company in relation to any official seal for use outside the State or Territory in which the registered office of the Company is located and in relation to Branch Registers.

123. Appointment of Attorney

The Directors may from time to time, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the Directors under these Articles) and for such period and subject to such conditions as they may think fit, and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the Directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in him or her.

124. Conferment of Powers

The Directors may, from time to time, confer upon any Director for the time being, or such other person as they may select, such of the powers exercisable under the Articles by the Directors as they may think fit for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they think expedient; and they may confer such powers either collaterally with, or to the exclusion of and in substitution for, all or any of the powers of the Directors in that behalf and may, from time to time, revoke withdraw alter or vary all or any of such powers.

125. Inadvertent Omissions

Notwithstanding anything contained in these Articles, if it be found that some formality required by these Articles to be done has been inadvertently omitted or has not been carried out, such omission shall not invalidate any resolution, act, matter or thing which, but for such omission would have been valid, unless it is proved to the satisfaction of the Directors, or a majority of them, that such omission has directly prejudiced any member financially. The decision of the Directors shall be conclusive and final and shall be binding on all members.

SECRETARY

126. Appointment of Secretary

126(1)

Any Secretary shall hold office for such term, at such remuneration and upon such conditions, as the Directors may think fit.

126(2)

The Directors may at any time appoint a person as an Acting Secretary or as a temporary substitute for a Secretary.

MINUTES

127. Minutes to be Kept

127(1)

The Directors shall cause minutes to be duly entered in books provided for the purpose of recording:

- (a) all appointments of officers made by the Directors;
- (b) the names of the Directors present at each meeting of the Directors and of any committee of the Directors;
- (c) all orders, resolutions and proceedings of general meetings and of meetings of the Directors and committees; and
- (d) such matters as are required by the Law to be contained therein.

127(2)

Any such minutes as aforesaid, if purporting to be signed by any person purporting to be the chairperson of such meeting, or to be the chairperson of the next succeeding meeting, shall 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 thereof in all respects and that the same took place at a meeting duly convened and held.

127(3)

The minutes of any meeting shall be entered in the relevant book with one (1) month after the relevant meeting is held.

THE SEAL

128. Company Seal

128(1)

The Directors shall provide for the safe custody of the Seal.

128(2)

In accordance with section 219 of the Law the Seal, and each other seal of the Company, shall

contain the Company's Australian Company Number.

128(3)

The Seal shall be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal in such form and manner as required by Law.

128(4)

Every document to which the Seal is affixed shall be signed by a Director and countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

129. Share Seal

The Company may adopt a duplicate common seal to be known as the Share Seal, which shall be a facsimile of the Seal with the substitution on its face of the words "Share Seal" or "Certificate Seal" for the words "Common Seal". Any certificate may be issued under such a duplicate Seal and, if so issued, shall be deemed to be sealed with the Seal of the Company.

130. Affixing of Seal

The signature of any Directors, Secretary or other person as aforesaid and the Share Seal may be affixed by some mechanical means to certificates which have first been approved for sealing by the Company, or other person appointed for that purpose by the Company.

131. Meaning of Certificate

For the purpose of the foregoing Articles 129 and 130, "certificate" means a certificate in respect of shares or stock or stock units, debentures, certificates of debenture or any certificate or other document evidencing any options or rights to take up shares or other interests in the Company.

BRANCH REGISTER

132. Use of Branch Registers

The Directors may make such provisions as they think fit respecting the keeping of any Branch Register and the Directors may appoint any such person as they think fit to approve of and register or reject transfers and make entries thereof in any Branch Register and to issue certificates in respect of shares on the Branch Register and may make such other provisions relating thereto as they may think fit.

133. Transfer Between Registers

Subject to the provisions of the Law, the Directors may transfer shares from one register to another and may at any time discontinue any Branch Register. No fee shall be charged on any transfer between two registers both being within the Commonwealth of Australia.

ACCOUNTS AND AUDIT

134. Record Keeping

The Directors shall ensure that accounting records of the Company are kept in accordance with the Law.

135. Auditors

Auditors shall be appointed for the Company in accordance with the Law and the accounts of the Company shall be duly audited each year.

INSPECTION OF RECORDS

136. Rights of Inspection

136(1)

The Directors shall cause proper books of account to be kept with respect to all sums of money received and expended by the Company and the matters in respect of which the receipt and expenditure takes place and with respect to the assets and liabilities of the Company.

136(2)

The books of account and all other documents and records of the Company shall be kept at the Office, or subject to the Law at such other place or places as the Directors think fit, and shall always be open to inspection by any Director and subject to Article 137 by any member.

136(3)

Subject to this Article, no person shall have any right of inspecting any account or book or papers of the Company except as required by Law.

137. Confidential Information

No member (not being a Director) shall be entitled to require or receive any information concerning the business trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company beyond such information as to the accounts and business of the Company as is by these Articles or by the Law directed to be laid before the Company in general meeting. No member shall be entitled to inspect any books, papers, correspondence or documents of the Company except so far as such inspection is expressly authorised by the Law or these Articles.

DIVIDENDS AND RESERVES

138. Declaration of Dividends

138(1)

The Directors may, from time to time, recommend to the Company a dividend to be paid to members.

138(2)

Unless the Company, by special resolution, rejects or amends the Directors' recommended dividend, the dividend shall be declared by the Directors to be paid to members.

138(3)

If the Company, by special resolution, amends the Directors' recommended dividend, the amended dividend shall be paid to members.

138(4)

The time for payment of dividends shall be determined by the Directors and notice of the declaration or payment of dividends may be given to members by advertisement or otherwise as the Directors determine.

139. Interim Dividends

The Directors may, from time to time, declare such interim dividends to be paid to the members entitled thereto as appear to the Directors to be justified by the profits of the Company.

140. Source of Dividends

No dividend shall be paid otherwise than out of profits, nor bear interest, against the Company.

141. Power to Employ Reserves

The Directors may, before declaring any dividend, set aside out of the profits of the Company such sums as they think proper as reserves, which shall, at the discretion of the Directors, be applicable for any purpose to which the profits of the Company may be properly applied and, pending any such application, may at the like discretion either be employed in the business of the Company or be invested in such investments (other than shares in the Company) as the Directors may, from time to time, think fit. The Directors may, with the approval of the Members by resolution, also without placing the same to reserve, carry forward any profits which they may think prudent not to set aside.

142. Crediting of Dividends

142(1)

Subject to the rights of persons, if any, entitled to shares with special rights as to dividend, all dividends shall be declared and paid according to the amounts paid or credited as paid on the shares in respect whereof the dividend is paid, but no amount paid or credited as paid on a share in advance of calls shall be treated for the purpose of this Article as paid on the share.

142(2)

All dividends shall be apportioned and paid proportionately to the amounts paid or credited as paid on the shares during any portion or portions of the period in respect of which the dividend is paid, but, if any share is issued on terms providing that it shall rank for dividend as from a particular date, that share shall rank for dividend accordingly.

143. Deductions from Dividends

The Directors may deduct from any dividend payable to any member all sums of money (if any) presently payable by him or her on account of calls or otherwise in relation to the shares of the Company.

144. Methods of Paying Dividends

Any general meeting declaring a dividend may, by resolution direct payment of a dividend wholly or partly by the distribution of specific assets and, in particular, of paid up shares, debentures or debenture stock of any other company, or in any one or more of such ways, and where any difficulty arises in regard to such distribution, the Directors may settle the same as they think expedient and fix the value for distribution of such specific assets or any part thereof and may determine that cash payments shall be made to any members upon the footing of the value so fixed in order to adjust the rights of all parties and may vest any such specific assets in trustees as may seem expedient to the Directors.

145. Administration of Dividend Payments

145(1)

Any dividend interest or other money payable in cash in respect of shares may be paid by electronic transfer to an account nominated by the holder or alternatively by cheque sent through the post directed to the registered address of the holder or, in the case of joint holders, to the registered address of that one of the joint holders who is first named on the Register, or to such person and to

such address as the holder or joint holders may in writing direct.

145(2)

Every such cheque shall be made payable to the person to whom it is sent and may be made payable to bearer.

145(3)

Any one of two (2) or more joint holders may give effectual receipts for any dividends or other money payable in respect of the shares held by them as joint holders.

146. Power to Make Concurrent Call

The Directors, when declaring a dividend, may, with the prior consent of a member, make a call on the member of such amount as they may fix, but so that the call on each member shall not exceed the dividend payable to him or her and so that the call be made payable at the same time as the dividend and the dividend may, if so arranged between the Company and the member, be set off against the call.

147. Unclaimed Dividends

Subject to the provisions of the law relating to unclaimed monies, all dividends unclaimed for one (1) year after having been declared may be invested or otherwise made use of by the Directors for the benefit of the Company until claimed.

148. Entitlement to Dividends

Subject to these Articles, all dividends and interest shall belong (subject to any lien of the Company) to those members whose names are on the Register at the date at which such dividend or bonus is declared, or at the date on which such interest is payable respectively, or at such other date as the Directors may determine and shall be paid in the manner set forth in these Articles, notwithstanding any subsequent transfer or transmission of shares.

149. Payment of Dividends on Transmission

The Directors may retain the dividends or bonuses payable on shares in respect of which any person is under the transmission articles entitled to become a member, or which any person is under articles entitled to transfer, until such person shall become a member in respect of such shares or shall duly transfer the same.

150. Reinvestment of Dividends

The Directors may, from time to time, grant to members or any class of members, or to the holders of any convertible notes, debentures or unsecured notes of the Company, the right, upon such terms and conditions as the Directors may determine, to elect to reinvest all or part of the dividends, interest or any other moneys (as the case may be) paid by the Company in respect of any such holdings in subscribing for shares of the same or, at the Directors' discretion, a different class in the capital of the Company or in subscribing for convertible notes, debentures, unsecured notes or any other securities issued or to be issued by the Company and, for any such purposes, may implement and maintain, on such terms and conditions as they may determine from time to time, any scheme or plan for such reinvestment and may, at their absolute discretion, modify or terminate any such scheme or plan by not less than one (1) month's notice in writing to all members and holders of any convertible notes, debentures or unsecured notes issued by the Company, as the case may be eligible to participate in such scheme or plan.

CAPITALISATION OF PROFITS

151. Power to Capitalise Profits and Reserves

The Directors may resolve that it is desirable to capitalise any sum, being the whole or a part of the amount for the time being standing to the credit of any reserve account, or the profit and loss account or otherwise available for distribution to members, and that that sum be applied, in any of the ways mentioned in Article 152, for the benefit of members in the proportions to which those members would have been entitled in a distribution of that sum by way of dividend and such distribution or payment shall be accepted by such members in full satisfaction of their interests in the said capitalised sum.

152. Methods of Capitalisation

152(1)

The ways in which a sum may be applied for the benefit of members under Article 150 are:

- (a) in paying up any amounts unpaid on shares held by members;
- (b) in paying up in full, either at par or at such premium as the Directors may resolve, unissued shares or debentures to be issued to members as fully paid; or
- (c) partly as mentioned in paragraph (a) and partly as mentioned in paragraph (b).

152(2)

Where the holders of any redeemable preference shares or issued shares of the company are by virtue only of the special terms of issue thereof, entitled to participate in any distribution pursuant to Article 151 whether at the time such distribution is made or at some future time such holders shall participate in any such distribution to the extent and in the manner authorised by the said terms of issue and all the provisions of Article 151 shall be subject to the said terms of issue and shall be deemed to be modified in order to give effect thereto.

153. Directors' Powers upon Capitalisation

The Directors shall do all things necessary to give effect to the resolution made pursuant to Article 151 and, in particular, to the extent necessary to adjust the rights of the members among themselves, may:

- (a) issue fractional certificates or make cash payments in cases where shares or debentures become issuable in fractions;
- (b) fix the value for distribution of any specific assets or any part thereof;
- (c) determine that cash payments shall be made to any members upon the footing of the value so fixed or that fractions of less value than fifty cents (\$0.50) may be disregarded in order to adjust rights of all parties;
- (d) vest any such cash or specific assets in trustees, upon trusts for the persons entitled to the dividend or capitalised fund; and
- (e) authorise any person to make, on behalf of the members entitled to any further shares or debentures upon the capitalisation, an agreement with the Company providing for the issue to them, credited as fully paid up, of any such further shares or debentures or for the payment up by the Company on their behalf of the amounts remaining unpaid on their existing shares by the application of their respective proportions of the sum resolved to be capitalised,

and any agreement made under an authority referred to in paragraph (e) is effective and binding on all the members concerned.

154. Powers upon Redemption of Shares

If the Company has redeemed any redeemable preference shares, or has issued any shares at a premium, the Directors may resolve that all or any part of any capital redemption fund arising from the redemption of such shares or shares premium account arising from such issue, may be applied in paying up in full any unissued shares to be issued to such members as would be entitled to receive the same if distributed by way of dividend equal to the nominal amount of the shares so issued or otherwise in such manner as may be authorised by the Law. Where requisite, a proper contract shall be filed in accordance with the Law and the Directors may appoint any person to sign such contract on behalf of the persons entitled to be dividend or capitalised fund and such appointment shall be effective.

NOTICES

155. Service of Notices

Subject to these Articles, a notice may be served by the Company upon any member either personally or by sending it by post addressed to such member at his or her address entered in the Registry or the address supplied by him or her for the giving of notices to him or her or where the facsimile number of the member is known to the Company, by facsimile transmission.

156. Notice upon Transmission

It shall not be necessary to give notice of meetings to any person entitled to a share by transmission, unless such person shall have been duly registered as a member of the Company.

157. Notice to Joint Shareholders

A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder first named in the register of members in respect of the share.

158. Method of Service

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected on the business day after the date of its posting. Notices and other documents for overseas shareholders shall be forwarded by air mail. Where notice is sent by facsimile transmission, notice shall be deemed to be effected forthwith upon such transmission, unless the member subsequently establishes that the notice was not in fact received by its facsimile machine.

159. Constructive Notice

Every person, who by operation of law, transfer or other means whatsoever, becomes entitled to any share, shall be bound by every notice in respect of such share which, previously to his or her name and address being entered on the Register, has been duly given to the person from whom he or she derives his or her title and to every previous holder thereof.

160. Period of Notice

Subject to the Law, where a specified number of days notice or notice extending over any period is required to be given, the day of service shall not be, but the day upon which such notice will expire shall be included in such number of days or other period. The accidental omission to give any notice of a meeting to any member or the non-receipt by any member of any notice shall not invalidate the proceedings at any meeting.

161. Service by Company

Subject to law, all summonses, notices, processes, orders and judgments in relation to any legal proceedings by the Company or its liquidators against any member may be served by registered post and the foregoing provisions as to notices shall apply, mutatis mutandis, and such service shall be considered for all purposes to be personal service.

162. Service upon Company

Every summons notice order or other document required to be served upon the Company, or upon any officer of the Company, may be served by leaving the same at the Office.

163. Form of Signature

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

INDEMNITY

164. Right to Indemnity

164(1)

Every person, who is or has held office as a Director, Auditor, Secretary or other officer of the Company and their respective executors or administrators, shall be indemnified out of the assets of the Company against any liability incurred by him or her in defending any proceedings, whether civil or criminal in which judgment is given in his or her favour, or in which he or she is acquitted or in connection with any application under the Law in which relief is granted to him or her by the Court in respect of any negligence, default, breach of duty or breach of trust.

164(2)

Every person, who is or has held office as a Director, Secretary and other officer or employee of the Company and their respective executors or administrators, shall be indemnified by the Company from and against all costs losses and expenses which any such Director, Secretary or other officer or employee may properly incur or become liable to pay by reason of any contract entered into, or other act or thing done by any of them as such officer or employee, or in any way in the discharge of his or her duties and it shall be the duty of the Directors to pay the same out of the funds of the Company.

WINDING UP

165. Shareholders' Rights on the Distribution of Assets

If the Company is wound up, the liquidator may, with the sanction of a special resolution of the Company, divide amongst the members in kind the whole or any part of the assets of the Company (whether they consist of property of the same kind or not) and may for that purpose set such value as he or she deems fair upon any property to be divided as aforesaid and may determine how the division shall be carried out as between the members or different classes of members. The liquidator may, with the like sanction, vest the whole or any part of any such assets in trustees upon such trusts for the benefit of the contributories as the liquidator with the like sanction thinks fit, but so that no member shall be compelled to accept any shares or other securities whereon there is any liability.

166. Remuneration of Liquidator

The Company in general meeting shall not fix the remuneration to be paid to a liquidator pursuant to the Law, unless at least fourteen (14) days' notice of the meeting has been given to the members and such notice has specified the amount of the proposed remuneration of the liquidator.

WE the several subscribers to the Memorandum of Association agree to the foregoing Articles of

Association.

Signature of Subscribers

Signature and Address
of Witness

DATED this day of 1991.

SCHEDULE 2

NATIONAL RAIL CORPORATION LIMITED

MAJOR INTERSTATE RAIL FREIGHT FUNCTIONS

| FUNCTION | DESCRIPTION |
|-----------------------------------|---|
| Interstate Rail Freight Business: | <p>The marketing of interstate rail freight business, including, but not limited to:</p> <ul style="list-style-type: none">- business planning and analysis- rail freight promotion- service specification- services pricing- service agreements and contracts- operational cost modelling- freight train operations and terminal forecasting <p>Freight accounting, including, but not limited to:</p> <ul style="list-style-type: none">- consignment management and tracking, freight reservations, acceptance and invoicing- freight customer interface management- revenue accounting and collection |
| Terminals: | <p>Operation of interstate rail freight terminals and freight terminal management, including, but not limited to:</p> <ul style="list-style-type: none">- loading/unloading, delivery, operation and management- location/inventory management |

| | |
|-------------------|---|
| | - salvage |
| Support Services: | Responsibility for arranging support services for interstate rail freight, including, but not limited to: |
| | - computing services |
| | - security services |
| | - insurance and claims management |
| | - property management |
| | - human resource services |
| | - contracts administration |
| | - industrial relations |
| | - finance and accounting management |

SCHEDULE 3**ISSUE OF ADDITIONAL SHARES**

The total number of shares held by the Commonwealth, the States and the other States and the number of shares to be issued to them pursuant to subclause 6(8)(a) are set out in the Table below:

TABLE

| | Initial Shareholding | | 5th State Joins | | 6th State Joins | |
|---------------------------------|-----------------------------|---------------------------|------------------------|---------------------------|------------------------|---------------------------|
| | B | | B | | B | |
| | Ordinary Shares | Convertible Shares | Ordinary Shares | Convertible Shares | Ordinary Shares | Convertible Shares |
| COMMONWEALTH | | | | | | |
| • new shares issued | | | 135 | 25 | 84 | - |
| • total shares held after issue | 270 | 125 | 405 | 150 | 489 | 150 |
| NEW SOUTH WALES | | | | | | |
| • new shares issued | | | 68 | 25 | 41 | - |
| • total shares held after issue | 140 | 125 | 208 | 150 | 249 | 150 |
| VICTORIA | | | | | | |

| | | | | | | |
|---------------------------------|----|-----|-----|-----|-----|-----|
| • new shares issued | | | 35 | 25 | 18 | - |
| • total shares held after issue | 65 | 125 | 100 | 50 | 118 | 150 |
| WESTERN AUSTRALIA | | | | | | |
| • new shares issued | | | 12 | 25 | 7 | - |
| • total shares held after issue | 25 | 125 | 37 | 150 | 44 | 150 |
| 5TH STATE | | | | | | |
| • new shares issued | - | - | - | 150 | - | - |
| • total shares held after issue | - | - | - | 150 | - | - |
| 6TH STATE | | | | | | |
| • new shares issued | - | - | - | - | - | 150 |
| • total shares held after issue | - | - | - | - | - | 150 |

SCHEDULE 4

CONTRIBUTIONS TO NRC FUNDING REQUIREMENTS

| | 1991-1992 | 1992-1993 | 1993-1994 | 1994-1995 | 1995-1996 | 1996-1997 | TOTAL |
|--------------|------------------|------------------|------------------|------------------|------------------|------------------|--------------|
| | \$M | \$M | \$M | \$M | \$M | \$M | \$M |
| CWLTH | 40.0 | 131.6 | 58.7 | 37.1 | 22.3 | 6.1 | 295.8 |
| NSW | - | - | 9.5 | 14.0 | 23.6 | 28.5 | 75.6 |
| VIC | - | - | 2.2 | 11.7 | 11.7 | 9.5 | 35.1 |
| WA | - | - | 1.0 | 2.0 | 2.5 | 2.5 | 8.0 |
| TOTAL | 40.0 | 131.6 | 71.4 | 64.8 | 60.1 | 46.6 | 414.5 |