

Australian Securities & Investments Commission

A Company Limited By Shares

Constitution

Of

**PEAK CARE EQUIPMENT PTY LTD**

A.C.N. 121 552 672

Date of Registration: 04/09/06



# Certificate of Registration of a Company

This is to certify that

**PEAK CARE EQUIPMENT PTY LTD**

**Australian Company Number 121 552 672**

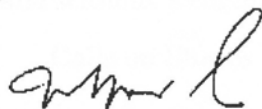
is a registered company under the Corporations Act 2001 and  
is taken to be registered in New South Wales.

The company **is limited by shares.**

The company is a **proprietary** company.

The day of commencement of registration is  
**the fourth day of September 2006.**

Issued by the  
Australian Securities and Investments Commission  
on this fourth day of September, 2006.



Jeffrey Lucy  
Chairman



CERTIFICATE

**Corporations Act 2001**  
**A Company Limited by Shares**  
**Constitution of**  
**PEAK CARE EQUIPMENT PTY LTD**

1. This is the Constitution of the company.

**Interpretation**

2. (a) "the Act" or "the Corporations Act" means the Corporations Act 2001 or any act that amends or replaces it.  
  
(b) The rules in this Constitution apply to the company and to the extent that the replaceable rules from time to time contained in the Corporations Act apply to the company, the replaceable rules are modified as expressly provided in this Constitution.  
  
(c) Except in so far as the contrary intention appears, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

**Director Interested in Contract with Company**

3. The replaceable rule in section 194 is deleted and the following rule is substituted subject to section 191 of the Corporations Act: -
  - (a) No director shall be disqualified by his or her office from holding any office or place of profit under the company or under any company in which this company shall be a shareholder or otherwise interested or from contracting with the company either as vendor purchaser or otherwise.
  - (b) No such contract or any contract or arrangement entered into by or on behalf of the company in which any director shall be in any way interested shall be avoided nor shall any director 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 such director holding that office or of the fiduciary relations thereby established.
  - (c) A director may vote in respect of any contract or arrangement in which he or she is interested. A director may sign a document even though he or she is interested in the contract or arrangement to which the document relates.

**Director's Discretion to Refuse to Register Transfers**

4. The replaceable rule in section 1072G is deleted and the following rule is substituted:  
  
The directors of the company may refuse to register a transfer of shares in the company for any reason and without assigning any reason for that refusal.

**Calls on Shares**

5. (a) The directors may make calls upon the members in respect of any money unpaid on the shares of the members and not by the terms of issue of those shares made payable at fixed times, except that no call shall exceed one quarter of the issue price of the shares or be payable earlier than one month from the date fixed for the payment of the last preceding call.

- (b) Each member shall, upon receiving at least 14 days' notice specifying the time or times and place of payment, pay to the company at the time or times and place so specified the amount called on their shares.
- (c) The directors may revoke or postpone a call.
- (d) A call shall be deemed to have been made at the time when the resolution of the directors authorising the call was passed and may be required to be paid by installments.
- (e) The joint holders of a share are jointly and severally liable to pay all calls in respect of the share.
- (f) If a sum called in respect of a share is not paid before or on the day appointed for payment of the sum, the person from whom the sum is due shall pay interest on the sum from the day appointed for payment of the sum to the time of actual payment at such rate not exceeding 8% per annum as the directors determine, but the directors may waive payment of that interest wholly or in part.
- (g) Any sum that, by the terms of issue of a share, becomes payable on issue or at a fixed date shall for the purposes of this Constitution be deemed to be a call duly made and payable on the date on which by the terms of issue the sum becomes payable, and, in case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.
- (h) 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.
- (i) The directors may accept from a member the whole or a part of the amount unpaid on a share although no part of that amount has been called up.
- (j) The directors may authorise payment by the company of interest upon the whole or any part of an amount so accepted, until the amount becomes payable, at such rate, not exceeding the prescribed rate, as is agreed upon between the directors and the member paying the sum. The prescribed rate of interest is:
  - (i) if the company has, by resolution, fixed a rate - the rate so fixed;
  - and
  - (ii) in any other case - 8% per annum.

### **Forfeiture of Shares**

- 6. (a) If a member fails to pay a call or installment of a call on the day appointed for payment of the call or installment, the directors may, at any time after that day during such time as any part of the call or installment remains unpaid, serve a notice on the member requiring payment of so much of the call or installment as is unpaid, together with any interest that has accrued.
- (b) The notice shall name a further day (not earlier than the expiration of 14 days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the shares in respect of which the call was made will be liable to be forfeited.

- (c) If the requirements of a notice served under this rule are not complied with, any share in respect of which the notice has been given may after service of the notice and before the payment required by the notice has been made be forfeited by a resolution of the directors to that effect.
- (d) Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.
- (e) A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and, at any time before a sale or disposition, the forfeiture may be cancelled on such terms as the directors think fit.
- (f) A person whose shares have been forfeited ceases to be a member in respect of the forfeited shares, but remains liable to pay to the company all money that, at the date of forfeiture, was payable by the member to the company in respect of the shares (including interest at the rate of 8% per annum from the date of forfeiture on the money for the time being unpaid if the directors think fit to enforce payment of the interest), but their liability ceases if and when the company receives payment in full of all the money (including interest) so payable in respect of the shares.
- (g) A statement in writing declaring that the person making the statement is a director or a secretary of the company, and that a share in the company has been duly forfeited on a date stated in the statement, is prima facie evidence of the facts stated in the statement as against all persons claiming to be entitled to the share.
- (h) The company may receive the consideration (if any) given for a forfeited share on any sale or disposition of the share and may execute a transfer of the share in favour of the person to whom the share is sold or disposed of.
- (i) Upon the execution of the transfer, the transferee shall be registered as the holder of the share and is not bound to see to the application of any money paid as consideration.
- (j) The title of the transferee to the share is not affected by any irregularity or invalidity in connection with the forfeiture, sale or disposal of the share.
- (k) The provisions of these rules as to forfeiture apply in the case of nonpayment of any sum that, by the terms of issue of a share, becomes payable at a fixed time, as if that sum had been payable by virtue of a call duly made and notified.

### **Indemnity and Insurance**

- 7. (a) Except to the extent prohibited by law and unless otherwise unlawful, every officer of the company must be indemnified out of the property of the company against any liability (including legal costs) to another person (other than the company or a related Body Corporate).
- (b) Except to the extent prohibited by law and unless otherwise unlawful, the company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the company against any liability for costs and expenses incurred by such person in defending proceedings, whether civil or criminal and whatever their outcome.
- (c) Except to the extent prohibited by law and unless otherwise unlawful, the company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the company against any liability incurred by the person as such an officer.

## **Share capital**

8. Without limiting any power to issue shares, issued shares may include:-

### **ordinary shares A Class shares**

### **non voting shares B Class shares**

9.1 A member being the holder of an "A", **Class share** holds that share subject to the following rights privileges and conditions:-

- (a) the right to attend and vote at all meetings of the company and on a show of hands or poll to one vote for every share held.
- (b) the right to participate in the dividends (if any) declared on that share;
- (c) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
- (d) a member can hold a maximum of 100 shares.

9.2 A member being the holder of an "B", **Class share** holds that share subject to the following rights privileges and conditions:-

- (a) the right to participate in the dividends (if any) declared on that share;
- (b) in a winding up of the company to repayment of the paid issue price of such share and to participate in the division of surplus assets or profits of the company and in this regard to rank equally with all other shareholders so entitled.
- (c) a member can hold a maximum of 100 shares.

## **Participation Fee**

10. A non-refundable participation fee to be introduced to all new members and is to be reviewed annually. The participation fee is to be set at \$5,000 for the 2008 financial year and is payable in 2 installments. The 1<sup>st</sup> payment of \$2,500 being payable on joining and the 2<sup>nd</sup> payment of \$2,500 being payable at 6 months after joining.

## **Loan Clause**

11. Peak Care Equipment cannot make loans to directors or members or shareholders.

## **Credit Policy**

12. To ensure that all members comply with terms of trade, in that full payment of monies due are made by the 21<sup>st</sup> day of the following month unless stated otherwise the following will apply:

- I. Members will be reminded that monies are due 2 days prior to payment being due.
- II. Any monies not paid on that day will receive an email reminder that payment is overdue.
- III. Any monies not received by 26<sup>th</sup> of the month will be reminded once again by a telephone call from the relevant employee.
- IV. Any monies unpaid at the end of the month will automatically put the members account on stop supply until all overdue monies are paid.

In the case of any exceptional circumstances a request to extend credit shall be made to the Treasurer by 28<sup>th</sup> of the month and the Executive will consider the application.

### **Directors Attendance**

13. Elected Directors of the Peak Care Equipment Board are required to attend at least 80% of scheduled board meeting per year. If a Director has not attended the requisite number of meetings then that Directors position will automatically be offered for re-election at the next AGM.

### **Marketing Fund**

14. Peak Care Equipment will establish and administer a marketing fund to be used to establish the Peak Care Equipment brand.

### **Corporate Identification by Member**

15. All members will prominently display the Peak Care Equipment Logo on their premises, vehicles, marketing materials and stationary identifying their company as a "Member of the Peak Care Equipment Group".

### **Obligations of Members to Peak Care Equipment**

- 15.1 Members will comply with Peak Care's credit terms as advised from time to time.
- 15.2 Members will adhere to procedures put in place from time to time in regards to warranty policies & procedures.
- 15.3 All members will comply with relevant Peak Care purchasing & order receipt procedures.
- 15.4 Members will assist Peak Care in its forward planning by providing forecasts, within the reasonably stated timeframe, of estimated purchases to allow Peak Care to accurately plan container shipments, estimate the viability of new product for members and assist manufacturers to hold realistic stock to meet Peak Care member expectations.
- 15.5 Members are requested to provide feedback on product suitability for their market and product quality to ensure the consistency of quality that is the hallmark of the Peak Care brand.
- 15.6 Members will only place orders for realistic dollar amounts. This will assist both Peak Care with its administrative costs and also save the members money in excessive freight costs. Generally orders under \$200.00 should not be placed unless for urgent spare parts.
- 15.7 When placing purchase orders, members are required to ensure that the correct product code number is used both to ensure ease of processing by Peak Care staff and also to ensure staff cannot misinterpret their order resulting in incorrect supply.
- 15.8 Any prices negotiated by Peak Care Equipment on behalf of members are confidential and not to be revealed or discussed with any persons or companies who are not a member of Peak Care.
- 15.9 Any agreements between Peak Care Equipment and suppliers are confidential and not to be revealed or discussed with any persons or companies who are not a member of Peak Care.
- 15.10 No member shall, without prior approval of the Board, attempt to negotiate any prices or pricing structure with any supplier on behalf of Peak Care.

- 15.11 Members are encouraged to prominently display the Peak Care logo on their shopfronts, delivery vehicles and company stationery.
- 15.12 Members will be expected to maintain purchases from Peak Care in proportion to the population of the area they service and the type of business they conduct.
- (i) Members in major metropolitan areas will be expected to spend in excess of \$400,000pa with Peak Care
  - (ii) Members in regional and remote areas would be expected to spend in excess of \$200,000pa with Peak Care
  - (iii) Consideration will be given to members whose business model does not allow larger purchases to be made through Peak Care
- 15.13 Members will be expected to attend the Annual General Meeting and associated information/planning sessions held at the same time.
- 15.14 Members will be expected to attend the majority of state and regionally based meetings having an impact on their company.

### **Peak Care Obligations to Members**

- 16.1 Peak Care shall source quality product from reputable suppliers who comply with Australian or International Standards.
- 16.2 Peak Care will ensure all products required to be listed with the TGA are appropriately listed.
- 16.3 Peak Care will provide specification sheets and appropriate documentation for Peak Care branded products sourced from overseas.
- 16.4 Peak Care will liaise with other manufacturers & importers to provide specification sheets and appropriate documentation for Peak Care and for its members use.
- 16.5 Peak Care will provide assistance within its abilities to help members develop their businesses by:
- (i) Providing forums for members to discuss openly their experiences with legislative requirements and how various marketing initiatives they have tried have succeeded or otherwise
  - (ii) Provide a network so that members can refer to each other and help other members grow their business
  - (iii) Running marketing campaigns to raise the awareness of Peak Care products and their benefits over those of other suppliers
- 16.6 Peak Care will consider tendering on behalf of members for Government tenders, major nursing home group tenders and other tenders that may arise from time to time with all sales resulting from these being passed onto member companies.
- 16.7 When considering new members the Board of Peak Care Equipment will discuss any new applications with relevant members in the area from which the application is submitted and give major consideration to any negative impact this could have on current members before making a decision on the application.

### **Sanctions and Disciplinary Actions**

- 17.1 Where an identified breach of the Code of Practice is minor, the Business Manager will issue a warning and suggest actions, where appropriate, to prevent repetition. All



serious, or repeated, breaches of the Code will result in the Business Manager making a recommendation to the Board of Peak Care Equipment in regards to any possible action

- 17.2 The nature of the breach will be identified to the Code Member in writing, and they will be given the opportunity of a right of reply. Such right must be exercised within 30 days of the notification.
- 17.3 The Board's decision may include one or more of the following:
- (i) no further action be taken
  - (ii) the Code Member be required to undertake a specified course of remedial action (such as re-training of a particular staff member)
  - (iii) the Code Member be issued with a formal warning
- 17.4 From establishing that a serious breach has occurred through to final decision of the Executive Committee and instigation of any action should take no more than 90 days.
- 17.5 The company may refuse to sell goods to a member if:
- (a) The member is in breach of their obligations or requirements under this constitution or Code of Practice, and
  - (b) Such breach may, in the opinion of the Board, adversely and materially affect the reputation of the company.

The "Code of Practice" means the code of practice adopted by members as amended from time to time.

- 17.6 If a member is found by the Board to be in breach of the Code of Practice or this Constitution. The Board may resolve that the company buy-back the shares of that member. Any such buy-back will be conducted in accordance with and subject to the law relating to share buy-backs, including any exemption that may be given to the company by a regulator. The consideration or amount paid to the member for the shares will equal the issue price paid by the member for those shares.

## **SCHEDULE 1**

### **1. Notices**

A Notice must be in writing and served personally on the Member or sent by prepaid mail (airmail if overseas) or by facsimile to the address or facsimile number of the Member as recorded in the Company Register.

### **2. General**

- (a) The Member must provide the Company with such information as the Company may at any time require.
- (b) A statement in writing by the Company setting out the Member's debt or any component parts shall be prima facie evidence of those amounts.
- (c) The Member agrees that time is of the essence in relation to the performance of its obligations under this Agreement.
- (d) Each provision of this Agreement shall be deemed to be separate and severable from the others of them. If any provisions of this Agreement are determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of the Agreement which shall remain in full force and effect as if such provision had not been made a part thereof, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.

- (e) This Agreement is governed by the laws from time to time in force in the State or Territory in which the Company is incorporated.
- (f) The Parties shall execute such other agreements and do all such acts, matters and things as shall be necessary or desirable in order to implement and give full effect to the provisions and purposes of this Agreement.

### **3. Joint and Several Liability**

Any agreement, warranty, representation or obligation which binds or benefits two or more persons under this Agreement, whether expressed or implied, binds or benefits those persons jointly and severally.

### **4. Inconsistency**

If there is any inconsistency between the provisions of Division 7A of the ITAA 1936 and this Agreement then this Agreement shall be deemed varied to the extent necessary to ensure that any Loan is not treated as a dividend.

## **Replaceable Rules**

### **Directors**

#### **1. 201G Company may appoint a director** (replaceable rule - see section 135).

Rule for number of Directors

The Board of Directors will consist of 7 directors elected at an Annual General Meeting.

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The Board of Directors will consist of 7 directors elected at an Annual General Meeting for a 3-year term on a rotating basis so that a maximum of 3 directors can be replaced at any one Annual General Meeting.

#### **2. 201H Directors may appoint other directors** (replaceable rule - see section 135).

Appointment by other directors:

The directors may appoint a person as a director if a vacancy falls within the current year

Proprietary company - confirmation by meeting within 2 months:

1) If a person is appointed by the other directors as a director of a proprietary company, the company must confirm the appointment by resolution within 2 months after the appointment is made. If the appointment is not confirmed, the person ceases to be a director of the company at the end of those 2 months.

2) The executive committee (Chairman, Secretary and Treasurer) are to be elected annually by the Board at the Annual General Meeting.

#### **3. 201J Appointment of managing directors** (replaceable rule - see section 135)

The directors of a company may appoint 1 or more of themselves to the office of

managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.

**4. 201K Alternate directors** (replaceable rule - see section 135)

Appointment:

- (1) With the other directors' approval, a director may appoint an alternate to exercise some or all of the director's powers for a specified period.

Notice of meetings:

- (2) If the appointing director requests the company to give the alternate notice of directors' meetings, the company must do so.

Exercise of Powers:

- (3) When an alternate exercises the director's powers, the exercise of the power is just as effective as if the powers were exercised by the director.

Termination of appointment:

- (4) The appointing director may terminate the alternate's appointment at any time.

Requirement of writing:

- (5) An appointment or its termination must be in writing. A copy must be given to the company.

Note: ASIC must be given notice of the appointment and termination of appointment of an alternate (see subsections 205B(2) and (5)).

**5. 198A Powers of directors** (replaceable rule - see section 135)

Management of business:

- (1) The business of a company is to be managed by or under the direction of the directors.

Note: See section 198E for special rules about the powers of directors who are the single director/shareholder of proprietary companies.

Exception:

- (2) The directors may exercise all the powers of the company except any powers that this Act or the company's constitution (if any) requires the company to exercise in general meeting.

Note: For example, the directors may issue shares, borrow money and issue debentures.

**6. 198B Negotiable instruments** (replaceable rule see section 135)

Number of directors for execution:

Any 2 of the Chair, Treasurer, Secretary or Business Manager may sign, draw, accept, endorse or otherwise execute a negotiable instrument.

**7. 198C Managing director** (replaceable rule - see section 135)

Conferral of powers:

- (1) The directors of a company may confer on a managing director any of the powers that the directors can exercise.

Revocation or variation:

- (2) The directors may revoke or vary a conferral of powers on the managing director.

**8. 203F Termination of appointment of managing director** (replaceable rule - see section 135)

Ceasing to be a director:

- (1) A person ceases to be managing director if they cease to be a director.

Revocation or variation of appointment:

- (2) The directors may revoke or vary an appointment of a managing director.

**9. 203C Removal by members - proprietary companies** (replaceable rule - see section 135)

A proprietary company:

- (a) may by resolution remove a director from office; and
- (b) may by resolution appoint another person as a director instead.

**10. 203 A Director may resign by giving written notice to company** (replaceable rule - see section 135)

A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.

**11. 194 Voting and completion of transactions -directors of proprietary companies** (replaceable rule -see section 135)

If a director of a proprietary company has a material personal interest in a matter that relates to the affairs of the company and:

- (a) under section 191 the director discloses the nature and extent of the interest and its relation to the affairs of the company at a meeting of the directors; or
- (b) the interest is one that does not need to be disclosed under section 191; then
- (c) the director may vote on matters that relate to the interest; and
- (d) any transactions that relate to the interest may proceed; and
- (e) the director may retain benefits under the transaction even though the director has the interest; and
- (f) the company cannot avoid the transaction merely because of the existence of the interest.

If disclosure is required under section 191, paragraphs (e) and (f) apply only if the disclosure is made before the transaction is entered into.

Note: A director may need to give notice to the other directors if the director has a material personal interest in a matter relating to the affairs of the company (see section 191).

**12. 202A Remuneration of directors** (replaceable rule -see section 135)

Determined by resolution:

- (1) The directors of a company are to be paid the remuneration that the

company determines by resolution.

Note: Chapter 2E makes special provision for the payment of remuneration to the directors of public companies.

Travelling and other expenses:

- (2) The company may also pay the directors' travelling and other expenses that they properly incur:
  - (a) in attending directors' meetings or any meetings of committees of directors; and
  - (b) in attending any general meetings of the company; and
  - (c) in connection with the company's business.

### **Director Resolutions**

#### **13. 248A Circulating resolutions of companies with more than 1 director** (replaceable rule-see section 135)

Resolutions

- (1) The directors of a company may pass a resolution without a directors' meeting being held if all the directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.

Copies

- (2) Separate copies of a document may be used for signing by directors if the wording of the resolution and statement is identical in each copy.

When the resolution is passed

- (3) The resolution is passed when the last director signs.

Note: Passage of a resolution under this section must be recorded in the company's minute books (see section 251A).

### **Directors' meetings**

#### **14. 248C Calling directors' meetings** (replaceable rule see section 135)

A director giving reasonable notice individually to every other director may call a directors' meeting.

Note: A director who has appointed an alternate director may ask for the notice to be sent to the alternate director (see subsection 201K(2)).

#### **15. 248E Chairing directors' meetings** (replaceable rule see section 135)

Director may be elected to chair meetings for specified period:

- (1) The directors may elect a director to chair their meetings. The directors may determine the period for which the director is to be the chair.

Election of director present at meeting:

- (2) The directors must elect a director present to chair a meeting, or part of it, if:
  - (a) a director has not already been elected to chair the meeting; or

- (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.

**16. 248F Quorum at directors' meetings** (replaceable rule see section 135)

Quorum should consist of two thirds (2/3rds) of directors for a Director's Meeting.

**17.2 48G Passing of directors' resolutions** (replaceable rule see section 135)

Majority of votes:

- (1) A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution.

Chair to have casting vote:

- (2) The chair has a casting vote if necessary in addition to any vote they have in their capacity as a director.

Note: The chair may be precluded from voting, for example, by a conflict of interest.

**Meetings of Members**

**18. 249C Calling of meetings of members by a director** (replaceable rule -see section 135)

A director may call a meeting of the company's members.

**19. 249J(2) Notice to joint members** (replaceable rule -see section 135)

Notice to joint members must be given to the joint member named first in the register of members.

**20. 249J(4) When notice by post or fax is given** (replaceable rule -see section 135)

A notice of meeting sent by post is taken to be given 3 days after it is posted. A notice of meeting sent by fax, or other electronic means, is taken to be given on the business day after it is sent.

**21. 249M Notice of adjourned meetings** (replaceable rule -see section 135)

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

**22. 249T Quorum** (replaceable rule -see section 135)

- (1) There must be two thirds (2/3rds) of shareholders present for an Annual General Meeting or an Extraordinary General Meeting.

Determination of existence of quorum:

- (2) Meeting to be adjourned if no quorum present within 30 minutes:
- (3) A meeting of the company's members that does not have a quorum present within 30 minutes after the time for the meeting set out in the notice of meeting is adjourned to the date, time and place the directors specify. If the directors do not specify 1 or more of those things, the meeting is adjourned to:
- (a) if the date is not specified-the same day in the next week; and
  - (b) if the time is not specified-the same time; and
  - (c) if the place is not specified-the same place

Where no quorum present at resumed meeting:

- (4) If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

**23. 249U Chairing meetings of members** (replaceable rule - see section 135)

Directors may elect individual:

- (1) The directors may elect an individual to chair meetings of the company's members.

Where chair has not previously been elected or unavailable:

- (2) The directors at a meeting of the company's members must elect an individual present to chair the meeting (or part of it) if an individual has not already been elected by the directors to chair it or, having been elected, is not available to chair it, or declines to act, for the meeting (or part of the meeting).

Where member may elect chair:

- (3) The members at a meeting of the company's members must elect a member present to chair the meeting (or part of it) if:
  - (a) a chair has not previously been elected by the directors to chair the meeting; or
  - (b) a previously elected chair is not available, or declines to act, for the meeting (or part of the meeting).

Adjournment of meeting:

- (4) The chair must adjourn a meeting of the company's members if the members present with a majority of votes at the meeting agree or direct that the chair must do so.

**24. 249W(2) Business at adjourned meetings** (replaceable rule -see section 135)

Only unfinished business is to be transacted at a meeting resumed after an adjournment.

**25. New paragraphs for Constitution relating to selling and/or marketing Peak Care equipment as a group.**

- (1) Peak Care Equipment will register with appropriate Government and other purchasing bodies to receive Request for Tender (RFT) documents for the purpose of preparing and submitting Tenders on behalf of the members.
- (2) PCE will prepare and submit supply proposals for any RFT, which requires delivery in more than one (1) member territory.
- (3) PCE will advise all members of which Tenders it is bidding for to ensure that no member will be unfairly disadvantaged.
- (4) All members will agree that PCE will be the "Responding" body of these competitive Tenders.
- (5) Each member will be responsible for servicing successful tenders in their respective territories.

**27. 250E How many votes a member has** (replaceable rule - see section 135)

Company with share capital

- (1) Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital:
  - (a) on a show of hands, each member has 1 vote; and
  - (b) on a poll, each member has 1 vote for each share they hold.

Note: Unless otherwise specified in the appointment, a body corporate representative has all the powers that a body corporate has as a member (including the power to vote on a show of hands).

Company without share capital

- (2) Each member of a company that does not have a share capital has 1 vote, both on a show of hands and a poll.

Chair's casting vote

- (3) The chair has a casting vote, and also, if they are a member, any vote they have in their capacity as a member.

Note 1: The chair may be precluded from voting, for example, by a conflict of interest.

Note 2: For rights to appoint proxies, see section 249X.

**28. 250F Jointly held shares** (replaceable rule - see section 135)

If a share is held jointly and more than 1 member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.

**29. 250G Objections to right to vote** (replaceable rule - see section 135) A

challenge to a right to vote at a meeting of a company's members:

- (a) may only be made at the meeting; and
- (b) must be determined by the chair, whose decision is final.

**30. 250J How voting is carried out** (replaceable rule - see section 135)

Show of hands:

- (1) A resolution put to the vote at a meeting of a company's members must be decided on a show of hands unless a poll is demanded.

Declaration of chair conclusive evidence of result:

- (2) On a show of hands, a declaration by the chair is conclusive evidence of the result provided that the declaration reflects the show of hands and the votes of the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

Note: Even though the chair's declaration is conclusive of the voting results, the members present may demand a poll (see paragraph 250L(3)(c)).

**31. 250M When and how polls must be taken** (replaceable rule - see section 135)



Polls other than on the election of chair:

- (1) A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.

Election of chair:

- (2) A poll on the election of a chair or on the question of an adjournment must be taken immediately.

### **Company Secretary**

#### **32. 204F Terms and conditions of office for secretaries** (replaceable rule - see section 135)

A secretary holds office on the terms and conditions (including as to remuneration) that the directors determine.

### **Inspection of books**

#### **33. 247D Company or directors may allow member to inspect books** (replaceable rule see section 135)

The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect books of the company.

### **Shares**

#### **34. 254D Pre-emption for existing shareholders on issue of shares in proprietary company** (replaceable rule - see section 135)

Shares of a particular class first to be offered to existing holders:

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

Statement setting out terms of the offer:

- (2) To make the offer, the directors must give the shareholders a statement setting out the terms of the offer, including:
  - (a) the number of shares offered; and
  - (b) the period for which it will remain open. Shares

not taken up in offer under subs (1):

- (3) The directors may issue any shares not taken up under the offer under subsection (1) as they see fit.

Exemption to compliance with subs (1):

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

#### **35. 254U Other provisions about paying dividends** (replaceable rule - see section 135)

Amount, time and method of payment:

- (1) The directors may determine that a dividend is payable and fix:

- (a) the amount; and
- (b) the time for payment; and
- (c) the method of payment.

The methods of payment may include the payment of cash, the issue of shares, the grant of options and the transfer of assets.

Interest:

- (2) Interest is not payable on a dividend.

**36. 254W(2) Shares in proprietary companies** (replaceable rule -see section 135)

Subject to the terms on which shares in a proprietary company are on issue, the directors may pay dividends as they see fit.

**Transfer of shares**

**37.** Shares will not be automatically transferred on the sale of a members business.

Shares are to be redeemed by Peak Care Equipment and offered to the new buyer at current value.

**1072A Transmission of shares on death** (replaceable rule - see section 135)

If shares not held jointly:

- (1) If a shareholder who does not own shares jointly dies, the company will recognise only the personal representative of the deceased shareholder as being entitled to the deceased shareholder's interest in the shares.

Where information given by personal representative re entitlement:

- (2) If the personal representative gives the directors the information they reasonably require to establish the representative's entitlement to be registered as holder of the shares:

- (a) the personal representative may:
  - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
  - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
- (b) the personal representative is entitled, whether or not registered as holder of the shares, to the same rights as the deceased re holder.

Election:

- (3) On receiving an election under subparagraph (2)(a)(i), the company must register the personal representative as the holder of the shares.

Transfer:

- (4) A transfer under subparagraph (2)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

If shares held jointly:

- (5) If a shareholder who owns shares jointly dies, the company will recognise only the survivor as being entitled to the deceased shareholder's interest in the shares. The estate of the deceased shareholder is not released from any liability in respect of the shares.

**38. 1072B Transmission of shares on bankruptcy** (replaceable rule see section 135)

- (1) If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as holder of the shares, the person may:
  - (a) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or
  - (b) by giving a completed transfer form to the company, transfer the shares to another person.
- (2) On receiving an election under paragraph (1)(a), the company must register the person as the holder of the shares.
- (3) A transfer under paragraph (1)(b) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.
- (4) This section has effect subject to the Bankruptcy Act 1966.

**39. 1072D Transmission of shares on mental incapacity** (replaceable rule - see section 135)

Where information given to establish entitlement:

- (1) If a person entitled to shares because of the mental incapacity of a shareholder gives the directors the information they reasonably require to establish the person's entitlement to be registered as the holder of the shares:
  - (a) the person may:
    - (i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; and
    - (ii) by giving a completed transfer form to the company, transfer the shares to another person; and
  - (b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.

Election:

- (2) On receiving an election under subparagraph (1)(a)(i), the company must register the person as the holder of the shares.

Transfer:

- (3) A transfer under subparagraph (1)(a)(ii) is subject to the same rules (for example, about entitlement to transfer and registration of transfers) as apply to transfers generally.

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**40. 1072F Registration of transfers** (replaceable rule - see section 135)

Transferor to remain holder until registration:

- (1) A person transferring shares remains the holder of the shares until the transfer is registered and the name of the person to whom they are being transferred is entered in the register of members in respect of the shares.

Circumstances where registration required:

- (2) The directors are not required to register a transfer of shares in the company unless:
  - (a) the transfer and any share certificate have been lodged at the company's registered office; and
  - (b) any fee payable on registration of the transfer has been paid; and
  - (c) the directors have been given any further information they reasonably require to establish the right of the person transferring the shares to make the transfer.

Refusal of registration:

- (3) The directors may refuse to register a transfer of shares in the company if:
  - (a) the shares are not fully-paid; or
  - (b) the company has a lien on the shares.

Suspension of registration:

- (4) The directors may suspend registration of transfers of shares in the company at the times and for the periods they determine. The periods of suspension must not exceed 30 days in any 1 calendar year.

**41. 1072G Additional general discretion for directors of proprietary companies to refuse to register transfers** (replaceable rule - see section 135)

The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.

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