

Replaceable Rules Outline

This information sheet is to be used as a guide only. You should consult the Corporations Act 2001 and Corporations Regulations 2001 on any specific matter of law.

Under Australian law, company's internal management may be governed by provisions of the *Corporations Act 2001* (Cth) (the **Corporations Act**) that apply to the company as "replaceable rules"¹, by a constitution, or by a combination of both. There are additional requirements concerning internal management contained in ordinary provisions of this Act and also in common law. A company may modify some or all of the replaceable rules by adopting a constitution.

The following table sets out the provisions of the Corporations Act that apply as replaceable rules. Readers should note that the Corporations Act outlining these rules may be altered and companies should always refer to a current version of the Corporations Act for a definitive reference to the replaceable rules at any given time.

Please note: The text quoted for each section in this information sheet is only that part of the section that is the replaceable rule. The full section needs to be read in some instances, as other conditions may need to be met subsequent to following a replaceable rule

Ref No	Provisions that apply as replaceable rules	Corporations Act Section No
Officers and Employees		
1	Voting and completion of transactions – directors of proprietary companies	<p>194 If a director of a proprietary company has a material personal interest in a matter that relates to the affairs of the company and:</p> <p>(a) under section 191 the director discloses the nature and extent of the interests and its relation to the affairs of the company at a meeting of the directors; or</p> <p>(b) the interest is one that does not need to be disclosed under section 191; then</p> <p>(c) the director may vote on matters that relate to the interest; and</p> <p>(d) any transaction that relate to the interest may proceed; and</p> <p>(e) the director may retain benefits under the transaction even though the director has the interest; and</p> <p>(f) the company cannot avoid the transaction merely because of the existence of the interest.</p> <p>If disclosure is required under section 191, paragraph (e) and (f) apply only if the disclosure is made before the transaction is entered into.</p> <p>Note: A Director may need to give notice to the other directors if the director has material personal interest in a matter relating to the affairs of the company (see s191)</p>
2	Powers of directors	<p>198A The business of the company is to be managed by or under the direction of the directors. The directors may exercise all the powers of the company except any powers that this Act or the company's</p>

¹ Replaceable rules apply to companies registered after the commencement of s135(1) of the Corporations Act, and to companies registered prior to the commencement that repeal their constitution after 1 July 1998.

Replaceable rules do not apply to sole member/director companies if the member/director is the same person. Please see s198E, 201F, 202C of the Corporations Act, for special provisions that apply to these companies

		constitution (if any) requires the company to exercise in a general meeting. For example, the directors may issue shares, borrow money and issue debentures.
3	Negotiable instruments	198B Any two directors of a company that has two or more directors, or the director of a proprietary company that has only one director, may sign, draw, accept, endorse or otherwise execute a negotiable instrument. The directors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.
4	Managing director	198C The directors of a company may confer on a managing director any of the powers that the directors can exercise. The directors may revoke or vary a conferral of powers on the managing director.
5	Company may appoint a Director	201G A company may appoint a person as a director by resolution passed in general meeting
6	Directors may appoint other directors	201H The directors of a company may appoint a person as a director. A person can be appointed as a director in order to make up a quorum for a directors' meeting even if the total number of directors of the company is not enough to make up that quorum. The company must confirm the appointment by resolution within 2 months after the appointment by a proprietary company, or at the next AGM for a public company.
7	Appointment of managing directors	201J The directors of a company may appoint 1 or more of themselves to the office of managing director of the company for the period, and on the terms (including as to remuneration), as the directors see fit.
8	Alternate directors	201K 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. The appointment and terms of appointment must be notified to ASIC (refer to s205B)
9	Remuneration of directors	202A The directors of a company are to be paid the remuneration that the company determines by resolution. The company may also pay the directors' travelling and other expenses that they incur in attending meetings and in conjunction with the company's business. (Refer also to Chapter 2E for public companies)
10	Director may resign by giving written notice to company	203A A director of a company may resign as a director of the company by giving a written notice of resignation to the company at its registered office.
11	Removal by members - proprietary company	203C A proprietary company may by resolution remove a director from office and appoint another person as a director instead.
12	Termination of appointment of managing director	203F A person ceases to be managing director if they cease to be a director. The directors may revoke or vary an appointment of a managing director.

13	Terms and conditions of office for secretaries	204F A secretary holds office on the terms and conditions (including the remuneration) that the directors determine
Inspection of books		
14	Company or directors may allow member to inspect books	247D The directors of a company, or the company by a resolution passed at a general meeting, may authorise a member to inspect the books of the company.
Directors' Meetings		
15	Circulating resolutions of companies with more than 1 director	248A 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. 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. The resolution is passed when the last director signs.
16	Calling directors' meetings	248C A directors' meeting may be called by a director giving reasonable notice individually to every other director. A director who has appointed an alternate director may ask for the notice to be sent to the alternate director
17	Chairing directors' meetings	248E 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. 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 meetings; and (b) a previously elected chair is not available or declines to act, for the meeting or the part of the meeting.
18	Quorum at directors' meetings	248F Unless the directors determine otherwise, the quorum for a directors' meeting is two directors and the quorum must be present at all times. <i>For resolutions of single director proprietary companies without meetings see s248B.</i> <i>For special quorum rules for public companies, see s195.</i>
19	Passing of directors' resolutions	248G A resolution of the directors must be passed by a majority of the votes cast by directors entitled to vote on the resolution. The chair has the casting vote, if necessary, in addition to any vote they have in their capacity as a director.

Meetings of Members

20	Calling of meetings of members by a director	249C A director may call a meeting of the company's members
21	Notice to joint members	249J(2) Notice to joint members must be given to the joint member named first in the register of members.
22	When notice by post or fax is given	249J(4) A notice of meeting sent by post is taken to be given three 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.
23	Notice of adjourned meetings	249M When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more
24	Quorum	<p>249T The quorum for a meeting of the company's members is two members and the quorum must be present at all times during the meeting.</p> <p><i>For single member companies, see s249B.</i></p>
25	Chairing meetings of members	249U The directors may elect an individual to chair meetings of the company's members
26	Business at adjourned meetings	249W(2) Only unfinished business is to be transacted at a meeting resumed after an adjournment.
27	Who can appoint a proxy? (proprietary co. only)	249X A member of a company who is entitled to attend and cast a vote at a meeting of the company's members may appoint a person as the member's proxy to attend and vote for the member at the meeting.
28	Proxy vote valid even if member dies, revokes appointment etc	<p>250C(2) Unless the company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes, a vote cast by the proxy will be valid even if, before the proxy votes:</p> <ul style="list-style-type: none"> (a) the appointing member dies; or (b) the member is mentally incapacitated; or (c) the member revokes the proxy's appointment; or (d) the member revokes the authority under which the proxy was appointed by a third party; or (e) the member transfers the shares in respect of which the proxy was given. <p><i>A proxy's authority to vote is suspended while the member is present at the meeting (see s249Y(3)).</i></p>

29	How many votes a member has	<p>250E Subject to any rights or restrictions attached to any class of shares, at a meeting of members of a company with a share capital.</p> <p>(a) on a show of hands each member has one vote; and</p> <p>(b) on a poll each member has one vote for each share they hold.</p>
30	Jointly held shares	<p>250F If a share is held jointly and more than one member votes in respect of that share, only the vote of the member whose name appears first in the register of members counts.</p>
31	Objection to right to vote	<p>250G A challenge to a right to vote at a meeting of a company's members may only be made at the meeting and must be determined by the chair, whose decision is final.</p>
32	How voting is carried out	<p>250J 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. Before a vote is taken the chair must inform the meeting whether any proxy votes have been received and how the proxy vote must be cast.</p> <p>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 the proxies received. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.</p>
33	When and how polls must be taken	<p>250M 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. A poll on the election of a chair or on the question of an adjournment must be taken immediately.</p>
Shares		
33A	Pre-emption for existing shareholders on issue of shares in proprietary company	<p>254D Before issuing shares of a particular class, the directors of the proprietary company must offer them to the existing holders of the 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.</p> <p>To make the offer, the directors must give the shareholders a statement setting out the terms of the offer including the number of shares offered and the period for which it will remain open.</p> <p>The directors may issue any shares not taken up under the offer as they see fit.</p> <p>The company may by resolution passed at a general meeting authorise the directors to make a particular issue of shares without complying with the requirement of offering them to existing shareholders section.</p>
33B	Other provisions about paying dividends	<p>254U The directors may determine that a dividend is payable and fix the amount, the time for payment, and the method of payment.</p> <p>The methods of payment may include the payment of cash, the issue of</p>

		shares, the grant of options and the transfer of assets.
34	Dividend rights for shares in proprietary companies	254W(2) 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		
35	Transmission of shares on death	1072A 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.
36	Transmission of shares on bankruptcy	1072B If a person entitled to shares because of the bankruptcy of a shareholder gives the directors the information they reasonably require to establish the persons entitlement to be registered as holder of shares, the person may, by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or by giving a completed transfer form to the company, transfer the shares to another person.
37	Transmissions of shares on mental incapacity	<p>1072D 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</p> <p>(a) the person may:</p> <p style="padding-left: 40px;">(i) by giving a written and signed notice to the company, elect to be registered as the holder of the shares; or</p> <p style="padding-left: 40px;">(ii) by giving a completed transfer form to the company, transfer the shares to another person; and</p> <p>(b) the person is entitled, whether or not registered as the holder of the shares, to the same rights as the shareholder.</p>
38	Registration of transfers	1072F 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.
39	Additional general discretion for directors of proprietary companies to refuse to register transfers	1072G The directors of a proprietary company may refuse to register a transfer of shares in the company for any reason.