

**ARTICLES OF ASSOCIATION
OF
SOUTH WEST IRRIGATION ASSET
CO-OPERATIVE LIMITED**

TABLE OF CONTENTS

DIVISION 1 - INTRODUCTION

1	TABLE "A" REGULATIONS	1
2	INTERPRETATION.....	1

DIVISION 2 – SHARE CAPITAL

3	SHARE CAPITAL.....	5
4	JOINT HOLDERS	5
5	SHARE CERTIFICATES AND LETTERS OF ALLOTMENT.....	6
6	TRANSFER OF SHARES.....	6
7	TRANSMISSION OF SHARES.....	7
8	ENTITLEMENTS OF EXECUTORS OR ADMINISTRATORS	8
9	LIEN ON SHARES	8
10	CALLS.....	9
11	DEFAULT IN PAYMENT OF SHARES	10
12	FORFEITURE OF SHARES	10
13	SHARE BUY-BACKS.....	11
14	QUALIFICATIONS FOR BECOMING MEMBER	12

DIVISION 3 - MEMBERS

15	CONDITIONS OF REMAINING A MEMBER	12
16	EQUAL VOTING POWER.....	13

DIVISION 4 – GENERAL MEETINGS

17	GENERAL MEETINGS	14
----	------------------------	----

18	EXTRAORDINARY GENERAL MEETINGS.....	14
19	NOTICE OF GENERAL MEETINGS.....	14
20	PROCEEDINGS AT GENERAL MEETINGS.....	14
21	QUORUM AT GENERAL MEETINGS.....	15
22	CHAIRPERSON AT GENERAL MEETINGS.....	15
23	ADJOURNED MEETINGS.....	15
24	VOTING AT GENERAL MEETINGS.....	15
25	POLL AT GENERAL MEETINGS.....	16
26	FORM AND VALIDITY OF PROXY.....	16
27	PROXY VOTING.....	17
28	POWER OF ATTORNEY.....	17

DIVISION 5 - DIRECTORS

29	FIRST DIRECTORS.....	18
30	SUBSEQUENT DIRECTORS.....	18
31	QUALIFICATION OF DIRECTORS.....	18
32	FILLING OF CASUAL VACANCIES.....	18
33	REMUNERATION.....	18
34	PERSONAL INTERESTS IN CONTRACTS.....	19
35	FINANCIAL DEALINGS WITH THE COMPANY.....	19
36	FILLING A VACATED OFFICE.....	19
37	ROTATION OF DIRECTORS.....	19
38	ALTERNATE DIRECTORS.....	21

39	VACATION OF OFFICE OF DIRECTOR.....	22
----	-------------------------------------	----

DIVISION 6 – POWER OF DIRECTORS

40	POWERS OF THE BOARD	23
41	PROCEEDINGS OF THE BOARD.....	23
42	QUORUM FOR BOARD MEETINGS.....	23
43	CHAIRPERSON OF THE BOARD	23
44	DELEGATION AND BOARD COMMITTEES.....	24
45	VALIDITY OF ACTS.....	24
46	MINUTES	24
47	MANAGEMENT	25
48	SECRETARY	25
49	INDEMNITY OF OFFICERS	25
50	ACCOUNTS	26
51	CHEQUES, BILLS, ETC	27

DIVISION 7 – TRANSFER RULES

52	TRANSFERS AND RESTRICTIONS	28
----	----------------------------------	----

DIVISION 9 – DISTRIBUTION OF SURPLUS

53	DISTRIBUTION OF SURPLUS.....	29
54	CONTRIBUTIONS, OPERATING EXPENSES, RESERVES AND CHARGES TO MEMBERS.....	29
55	DIVIDENDS AND OTHER DISTRIBUTIONS.....	30
56	DEBENTURES.....	31

57	CONVERSION OF DEBENTURES	32
DIVISION 9 - MISCELLANEOUS		
58	NOTICES	33
59	THE SEAL.....	33
60	BY-LAWS	34
61	AUDIT	34
62	DISPUTE RESOLUTION	35
63	DISPUTES PANEL	35
64	DISPUTES COMMITTEE.....	36
65	AMENDMENT OF MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION.....	37
66	WINDING UP	37
	Schedule 1 Proxy instrument	41

DIVISION 1 - INTRODUCTION

1 TABLE "A" REGULATIONS

- 1.1 The name of the Company is the South West Irrigation Asset Co-operative Limited.
- 1.2 The Regulations contained in "Table A" in the Second Schedule to the Companies (Co-Operative) Act 1943 do not apply to the Company.

2 INTERPRETATION

2.1 In these Regulations unless the context otherwise requires the following words will have the following meanings:

- (a) "**Act**" means the Companies (Co-operative) Act 1943. However, if another Act is passed in place of that Act, it shall mean that other Act and any reference to a section number shall be a reference to a corresponding provision in that other Act;
- (b) "**Asset Maintenance and Renewal Fund**" means the reserve fund established by the Company;
- (c) "**base allocation**" means the allocation:
- (i) issued or to be issued on 1 July 1997 to the Existing Irrigators being 9.2 megalitres per rated hectare, which total amount should then be rounded up to a whole megalitre; or
 - (ii) approved by the Board and issued to new members as their base allocation; or
 - (iii) includes the allocation permanently transferred to the Member being the total of the equivalent base allocation relating to the Permanent Transfer and any other existing base allocation the member holds on a permanent basis.
- (d) "**Board**" means the Board of Directors, from time to time, of the Company;
- (e) "**Call**" includes instalment of a call;
- (f) "**Capital**" means share capital. A reference to share includes all existing shares, whether part of the original capital or not;
- (g) "**Certificate**" means a certificate evidencing the shares in the Company;
- (h) "**Collie River**" means the area defined by the Board from time to time to be the Collie District;
- (i) "**Company**" means the abovenamed company;

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- (j) **“Company’s Nominee”** means the person or the persons appointed by the Company to hold shares on behalf of the Company;
- (k) **“Contribution”** means the Fixed Contribution and/or any other levy, fee or payment as determined by the Board from time to time;
- (l) **“Corresponding Water Entitlement”** means those Water Entitlements which correspond in the Register of Members particular shares of the Company;
- (m) **“Dispute”** means any dispute which may arise between any two or more Members or any Member and the Company or a valid application has been made to the Disputes Committee pursuant to Regulation 64;
- (n) **“District”** means the area comprising:
- (i) Harvey;
 - (ii) Waroona; and
 - (iii) Collie River,
- the boundaries of such districts being determined by the Board from time to time;
- (o) **“Diversion Point”** means any location from which South West Irrigation Management Co-Operative Limited takes its supply of water from the Water Corporation pursuant to a valid licence;
- (p) **“Existing Irrigator”** means a Land Owner as at 15 June 1996 as shown in the assessment records of the Water Corporation;
- (q) **“Extraordinary Meeting”** means a general meeting of the Company other than an Ordinary General Meeting;
- (r) **“Fixed Contribution”** is the amount of the Contribution based upon the Member’s total share holding;
- (s) **“Harvey”** means the area defined by the Board from time to time to be within the Harvey District;
- (t) **“Joint Land Owner”** means, in relation to a Land Holding, any person who holds an interest in land with another person either as a joint tenant or tenant in common;
- (u) **“Land Holding”** means a parcel of Rated Land individually identified by a Land Holding Reference Number in the Register of Rated Land within the Existing Area of Operations of the Company;
- (v) **“Land Holding Reference Number”** means a unique number entered in the Register of Rated Land used to identify a Land Holding;

- (w) “**Land Owner**” means the registered proprietor (or joint registered proprietors) of Rated Land within the South West Irrigation Area and includes the holder of a Crown lease or conditional Purchase Lease from the Crown, or any mortgagee, chargee or encumbrancee of the whole of the Land Holding, who has entered into and is in possession of the whole of the Land Holding or a lessee where the lease provides that the lessee is responsible for the payment of the assessment in which case the lessee is deemed to be the Land Owner to the exclusion of the registered proprietor or joint registered proprietor for the term of the lease;
- (x) “**Levy**” is the amount payable to the Company for the purpose of maintaining the Asset Maintenance and Renewal Fund;
- (y) “**Member**” means a person who has agreed to become a Member and whose name has been entered on the Register of Members;
- (z) “**Memorandum**” means the Company’s Memorandum of Association as altered from time to time;
- (aa) “**Month**” means calendar month;
- (bb) “**Non-member Director**” means a director who, although not a Member, holds the qualifications referred to in Regulation 31.2;
- (cc) “**Office**” means the registered office from time to time of the Company;
- (dd) “**Ordinary Meeting**” includes an Annual General Meeting of the Company held under the provision of the Act and any adjournment of the Annual General Meeting;
- (ee) “**Rated Land**” means all land in the South West Irrigation Area that is Rated Land pursuant to the records kept under Section 69A of the Water Agencies (Powers) Act 1984 where a water charge would have been payable on the basis of that entry as at 30 June 1996 within the South West Irrigation Area or such other land in the Register of Rated Land held by the Company;
- (ff) “**Register of Members**” means the register of Members maintained by the Company;
- (gg) “**Register of Rated Land**” means the Register of Rated Land kept pursuant to these Regulations;
- (hh) “**Regulations**” means these Articles of Association as altered or added to from time to time. A reference to Regulation by number is a reference to the Regulation of that number in these Regulations, as altered or added to from time to time;
- (ii) “**Reserves**” means the reserves referred to in Regulation 54.2(d);
- (jj) “**Seal**” means the Common Seal from time to time of the Company;

- (kk) **“Season”** means the period determined by the Board from time to time to be the period during which customers may be supplied with water for irrigation and such period must be advertised by the Co-operative in a newspaper circulating in the South West Irrigation Area;
- (ll) **“Secretary”** means the Secretary of the Company appointed from time to time, and includes any person appointed to perform the duties of a Secretary temporarily;
- (mm) **“South West Irrigation Area”** means that part of the South West Irrigation Area gazetted as a controlled area pursuant to section 11 of the Water Services Coordination Act 1995;
- (nn) **“Waroona”** means the area defined by the Board from time to time to be the Waroona District;
- (oo) **“Water Entitlements”** means a contractual right evidenced by a Certificate and by an entry in the Register of Members to supply in a Year a nominal quantity of 1 megalitre of water as though measured at a Diversion Point and includes a component for Transmission Losses, upon and subject to the terms of these Regulations;
- (pp) **“Year”** means the Company’s financial year;
- (qq) Words referring to individuals refer also to companies. Reference to “a person” or “persons” includes a corporation or other incorporated association;
- (rr) Words in the singular include the plural and vice versa. Words importing a gender include every other gender.

2.2 Except so far as the contrary intention appears in these Regulations, an expression has, in a provision of these Regulations that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.

DIVISION 2 - SHARE CAPITAL**3 SHARE CAPITAL**

3.1 The Board may from time to time issue shares which, subject to these Regulations, shall entitle their holders to:

- (a) being a Member of the Company; and
- (b) voting at any General Meeting of the Company.

3.2 The Board must not issue shares other than in accordance with Regulation 3.1.

3.3 The Board must not issue shares to a person unless:

- (a) the person is qualified in accordance with Regulation 14 to become a Member;
- (b) the person has made an appropriate Contribution (if any) to the Asset Maintenance and Renewal Fund as determined by the Board.

3.4 A person must not hold more than 20% of the issued shares of the Company. However, the Board may make rules to impose a lower limit on the number of shares that may be held by any one Member and also rules to provide that a Member may not be registered as the owner of less than a minimum number of shares. Those rules shall be binding as if they were contained in these Regulations.

3.5 Every application for issue of shares shall be in accordance with these Regulations. The Board may refuse to allot shares to any person or entity without giving any reason for the refusal.

3.6 The quotation of any shares in the Capital of the Company for sale purchase at any stock exchange or in any other public manner whatever is hereby prohibited.

4 JOINT HOLDERS

4.1 Where 2 or more persons are registered as the holders of any shares they shall be deemed to hold the shares as joint tenants with benefits of survivorship subject to the following:

- (a) the Company shall not be bound to register more than three persons as holders of any share. However, this shall not apply to the executors or trustees of the deceased holder;
- (b) the joint holders of any share shall be liable severally as well as jointly in respect of all payments which ought to be made in respect of the share;
- (c) on the death of any one of the joint holders the survivor(s) shall be the only persons recognised by the Company as having any title to the shares;
- (d) any one of the joint holders may give effectual receipt for any dividend, bonus or return of Capital payment to the joint owners;

- (e) only the person whose name stands first in the Register of Members as one of the joint holders of any share shall be entitled to delivery of the Certificate relating to the share or to receive notice from the Company. Any notice given to the person shall be deemed to be a notice to all joint holders.

5 SHARE CERTIFICATES AND LETTERS OF ALLOTMENT

5.1 The Certificates of Title to the shares shall be issued under the Seal of the Company and shall bear the manuscript signature of one director and the Secretary, or some other person appointed by the Board. Every Certificate of share shall specify the number of shares in respect of which it is issued and the amount paid up on those shares. Every such Certificate shall have printed or written on the Certificate:

- (a) the number of shares covered by the Certificate (including reference share numbers) and the amount paid up on those shares; and
- (b) details required by the Act.

5.2 If a Certificate, letter of allotment, transfer, receipt or other document of title to shares and Corresponding Water Entitlement is lost, defaced or destroyed, a duplicate may be issued by the Company in accordance with the Act. A replacement Certificate shall be marked as such.

6 TRANSFER OF SHARES

6.1 A Member may not transfer the Member's shares in the Company (or any of them) except together with a Permanent Transfer of the Corresponding Water Entitlements and in accordance with the Regulations.

6.2 The instrument of transfer of any share shall be:

- (a) signed by both the transferor and the transferee;
- (b) in writing in the usual common form, or in any other form as the Board may prescribe or in particular cases accept; and
- (c) accompanied by an amount being the payment of 10% of the nominal value of each share which is not a fully paid share.

6.3 No transfer shall be made to a person of a limited legal capacity. However, the Company shall not be bound to enquire as to the age or soundness of mind of any transferee.

6.4 The Board may decline to register any transfer of shares:

- (a) on which any Call or instalment shall be due and unpaid;
- (b) upon which the Company has a lien;
- (c) to a transferee who or which is not qualified to be a Member, or of whom the Board for any reason whatsoever does not approve; or

(d) which would result in breach of Regulation 3.4.

- 6.5 The Board shall not be bound to give any reason for the refusal to register any transfer of shares. If the Board refuses to register a transfer of any shares, it shall send to the transferee notice of the refusal within 28 days after the date on which the transfer was lodged with the Company.
- 6.6 Every instrument of transfer shall be given to the Company at the Office for registration accompanied by the Certificates and the shares to be transferred, and any other evidence the Board may require to prove the title of the transferor and of the right to transfer the shares. The Board may waive the production of any Certificates upon evidence satisfactory to them of its loss or destruction.
- 6.7 Upon the registration of a transfer a new Certificate specifying the shares transferred or transmitted shall be delivered to the transferee or transmittee. If the registration of any transferor is required in respect of some only of the shares specified in the Certificate delivered up to the Company, a new Certificate specifying the shares remaining untransferred shall be delivered to the transferor.
- 6.8 Every instrument of transfer which is registered shall be retained by the Company. However, any instrument of transfer which the Board refuses to register (except in the case of fraud) shall be returned to the persons depositing the instrument of transfer on demand.
- 6.9 The Register of Members may, subject to the giving of notice to Members, be closed during such time as the Board thinks fit.
- 6.10 A Member who is a Land Owner pursuant to a lease must obtain the consent of the registered proprietor of the relevant land prior to applying for a transfer of shares. The Board must be satisfied that the consent has been obtained prior to approving the transfer.

7 TRANSMISSION OF SHARES

- 7.1 In the case of the death of a Member, the survivor where the deceased was a joint holder, and the legal personal representatives of the deceased where the deceased was a sole holder, shall be the only persons recognised by the Company as having any title to the deceased's interest in the shares, but this Regulation does not release the estate of the deceased joint holder from any liability in respect of a share that had been jointly held by the deceased with other persons.
- 7.2 Subject to the *Bankruptcy Act 1966*, a person becoming entitled to a share in consequence of the death or bankruptcy of a Member may, upon such information being produced as is properly required by the directors, elect either to be registered himself or herself as holder of the share or to have some other person nominated by him/her registered as the transferee of the share.

If the person becoming entitled elects to be registered himself (or herself), the person shall deliver or send to the Company a notice in writing signed by the person stating that he or she so elects.

If the person becoming entitled elects to have another person registered, the person becoming entitled shall execute a transfer of the share to the other person.

All the limitations, restrictions and provisions of these Regulations relating to the right to transfer, and the registration of transfer of, shares are applicable to any such notice or transfer as if the death or bankruptcy of the Member had not occurred and the notice of the transfer were a transfer signed by that Member.

- 7.3 Where the registered holder of a share dies or becomes bankrupt, the personal representative of the registered holder or the trustee of the registered holder's estate, as the case may be, is, upon the production of such information as is properly required by the directors, 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 entitled to if the registered holder had not died or become bankrupt.

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

- 7.4 The Board shall have the same right to refuse to register a person entitled by transmission to any shares (or the person's nominee) as if the person were the transferee named in an ordinary transfer presented for registration.

8 ENTITLEMENTS OF EXECUTORS OR ADMINISTRATORS

- 8.1 The executor or administrator of a deceased Member (not being one of several joint holders) shall be the only person recognised by the Company as having any title to the shares registered in the name of the Member.

9 LIEN ON SHARES

- 9.1 The Company shall have a first and paramount lien or charge upon all the shares registered in the name of any Member (whether solely or jointly with others) for the Member's debts, liabilities and engagements solely or jointly with any other person to, or with the Company, whether the time for their payment, fulfilment or discharge has actually arrived or not. The lien or charge shall extend to all dividends and bonuses from time to time declared in respect of the shares. However, if the Company registers any transfer of any shares upon which it has a lien, without giving to the transferee notice of its claim, those shares shall be freed and discharged from the lien of the Company.

- 9.2 For the purposes of enforcing a lien or charge, the Board may sell (in any manner as it thinks fit) the shares on which the Company has a lien or charge. However, no sale shall be made until:

- (a) notice in writing of the intention to sell has been served on the Member or the Member's representatives; and
- (b) default has been made by the Member (or Members) in the payment or discharge of the debts, liabilities or engagement for 7 days after the notice.

- 9.3 The net proceeds of any such sale shall be applied in or towards satisfaction of the Member's debts, liabilities or engagements. The residue (if any) shall be paid to the Member or the Member's executors, administrators or assigns.
- 9.4 In the case of a re-sale or a re-allotment of forfeited shares, or of the sale of shares to enforce a lien or charge, an entry in the minute book of the Company that the shares have been duly forfeited, re-allotted or sold in accordance with the Regulations of the Company shall be sufficient evidence of that fact as against all persons entitled to the shares immediately before their forfeiture or sale.
- 9.5 A Certificate to that effect, and the receipt of the Company for the price of the shares, shall constitute a good title to the shares. A Certificate of proprietorship shall be delivered to the purchaser or allottee, who shall then be deemed the holder of the shares prior to the purchase or allotment. The purchaser or allottee shall not be bound to see to the regularity of the proceedings or to the applications of the purchase money or consideration, nor shall title to the shares be affected by any fact, omission or irregularity in the proceedings in reference to the sale, forfeiture or re-allotment.
- 9.6 The holder of the Certificate of any shares so sold shall be bound to deliver the Certificate to the Board. The net proceeds of any such sale shall be applied first in the payment of all costs of the sale, next in satisfaction of the moneys due to the Company and the residue (if any) paid to the Member or as the Member may direct.

10 CALLS

- 10.1 The Board may, subject to the terms on which any shares may have been issued from time to time, make Calls upon the Members in respect of all monies unpaid on their shares. Calls are not valid unless at least 14 days notice is given of the Calls, specifying the time and place for payment.

Each Member shall be liable to pay, to the persons and at the times and places appointed by the Board, the amount of Calls so made. Calls may be made payable by instalments.

- 10.2 A Call shall be deemed to have been made at the time when the resolution of the Board authorising the Call was passed.
- 10.3 If any Call payable in respect of any shares is not paid on or before the day appointed for payment of the Call, the holder for the time being of the share in respect of which the Call shall be due, shall pay interest on the same at the rate of 10% per annum from the day appointed for the payment to the time of actual payment (or at any lesser rate as the Board may determine). The Board shall be at liberty to remit altogether (or in part) any sum paid or payable for interest under this Regulation.
- 10.4 If by conditions of allotment any amount is payable in respect of shares by instalments, every such instalment shall be payable as if it were a Call duly made by the Board of which due notice has been given. All provisions with respect to the payment of Calls, interest on the Calls, or to the forfeiture of shares for non-

payment of Calls, shall apply to the instalments and to the shares in respect of which they are payable.

- 10.5 The Board may if it thinks fit, receive from any Member willing to advance it, all or part of the money uncalled and unpaid upon all or any of the shares held by that Member (either as a loan repayable or as a payment in advance of Calls). Upon all or any of the money advanced, the Board may pay interest to cover the time between the advancement and the time that the money would otherwise have been payable on the shares. The rate of interest may be agreed upon by the Member paying the sum in advance and the Board.
- 10.6 The non-receipt of the notice of any Call by the accidental omission to give notice of a Call to any Member shall not invalidate the Call.

11 DEFAULT IN PAYMENT OF SHARES

- 11.1 If any Member fails to pay any amount payable on or in respect of any shares, either by allotment moneys, Calls or instalments by the day appointed for payment, the Board may, while the amount remains unpaid, serve a notice on the Member requiring payment of the amount, together with interest accrued, and all expenses incurred by the Company by reason of the non-payment.
- 11.2 The notice shall name a date (not earlier than 14 days from the date of the notice) by which the sum, interest and expenses (if any) are to be paid and the place(s) where payment is to be made. The notice shall also state that in the event of non-payment by the time and place appointed, the shares in respect of which the sum is payable may be forfeited.
- 11.3 If the requirements of the notices are not complied with, then any shares for which the notice has been given may at any time afterwards (before payment of all allotment moneys, Calls or instalments interest and expenses (if any) due in respect of the shares), be forfeited by a resolution of the Board. The forfeiture shall include all dividends, interest and other monies payable in respect of the forfeited shares and not actually paid before the forfeiture.

12 FORFEITURE OF SHARES

- 12.1 If a Member fails to pay a Call or instalment of a Call on the day appointed for payment of the Call or instalment, the directors may, at any time thereafter during such time as any part of the Call or instalment remains unpaid, serve a notice on the Member requiring payment of so much of the Call or instalment as is unpaid, together with any interest that has accrued.

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.

- 12.2 If the requirements of a notice served under Regulation 12.1 are not complied with, any share in respect of which the notice has been given may at any time

thereafter, before the payment required by the notice has been made, be forfeited by resolution of the directors to that effect.

Such a forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture.

13 SHARE BUY-BACKS

- 13.1 Subject to the Act, the Company may purchase out of its reserve funds any shares of a Member of the Company. Any shares purchased by the Company shall not be deemed to be cancelled but may be sold or disposed of by the Company in accordance with the provisions of these Regulations.
- 13.2 The Company may, by letter addressed to the last known address of any inactive or ineligible Member, advise that Member of the Company's intention to re-purchase that Member's shares. The re-purchase of the shares shall be at a price:
- (a) not exceeding the paid up value of those shares, and
 - (b) not less than 50% of the paid up value of the shares.
- 13.3 The Member shall, without delay, surrender that Member's share Certificates in exchange for the payment of the amount offered by the Company. If the Member does not surrender that Member's share Certificates within a period of 21 days, as required by this Regulation , then the Company may dispatch a cheque to the Member at the Member's last known address in full payment for the shares. If the Member makes default in transferring the shares, the Secretary of the Company shall sign the necessary instrument of transfer of the shares as attorney for and on behalf of the Member. The instrument of transfer shall be registered in the Register of Members.
- 13.4 An inactive Member is a Member in the Company who has not had dealings with the Company within the period of 3 years immediately preceding the proposed purchase of that Member's shares in the Company.
- 13.5 Shares purchased by the Company from a Member may be sold and disposed of by the Board at the time, price, and on the terms and conditions, as the Board shall determine. All dividends declared and payable in respect of the shares after their purchase, but before their sale, by the Company shall be income of the Company.
- 13.6 Save as is otherwise provided in these Regulations, the Company shall be entitled to treat the registered holder of any share as the absolute owner of the share. Accordingly, the Company shall not (except as ordered by a court of competent jurisdiction or as required by Statute) be bound to recognise any equitable or other claim to, or interest in the share, on the part of any other person.

DIVISION 3 - MEMBERS**14 QUALIFICATIONS FOR BECOMING MEMBER**

14.1 A person shall not be entitled to become a Member of, and hold shares in, the Company unless the person first proves to the reasonable satisfaction of the Board to be:

- (a) subject to Regulation 14.3 a Land Owner who would use not less than 9.2 megalitres of irrigation water from the South West Irrigation Area; or
- (b) an owner of drainage assets in the South West Irrigation Area.

With the exception of Regulation 14.3, the Membership qualifications do not apply to Existing Irrigators.

14.2

- (a) Existing Irrigators may apply to be Members after payment of the irrigation charge for the year 1996/1997. After receiving the application for membership and confirming that the irrigation charge has been paid in part or in full, the Board must enter the Existing Irrigators name in the Register of Members. The Board must issue 1 fully paid share for each megalitre of water held as a Corresponding Water Entitlement.
- (b) Existing Irrigators who were Members as at 1 July 1996 may apply for additional shares after payment of the irrigation charge for 1996/1997. After receiving the application for additional shares, the Board may issue, after taking into account the shares already held by the Existing Irrigator, 1 share fully paid for each megalitre of water held as a Corresponding Water Entitlement.

14.3 In the case of a Land Owner who is a lessee, if the Board is reasonably satisfied that the registered proprietor of the relevant land has agreed the membership, Corresponding Shares and Corresponding Water Entitlements should be held in the name of and by the lessee.

14.4 An applicant for Membership of the Company pursuant to regulation 14(1)(b) must take a minimum allotment of 1 share.

15 CONDITIONS OF REMAINING A MEMBER

15.1 It is a condition of being a Member of the Company that the Member:

- (a) is a Member who has not entered with another person into an agreement, arrangement or understanding under which the Member would exercise their vote at a general meeting of the Company in accordance with the agreement, arrangement or understanding, or in accordance with the instructions of that other person; and
- (b) is a Land Owner in the South West Irrigation Area.

- 15.2 A Member who becomes aware or suspects that they are or may be in breach of any of the above conditions must without delay notify the Company of that breach or potential breach.
- 15.3 If the Board has a reasonable ground to believe that a Member has breached the condition in Regulation 15.1(a), the Board may immediately give that Member a written notice and then cancel the Member's shares after giving the Member a reasonable opportunity to be heard.
- 15.4 If a Member has not in the opinion of the Board satisfied the other conditions set out in Regulation 15.1 for a period exceeding 12 Months, the Board may notify the Member that in its opinion the Member does not satisfy the conditions for being a Member. If the Board does issue such a notice, the Member ceases to be a Member on the first anniversary of that notice having been made.
- 15.5 Where a Member ceases to be a Member under Regulation 15, the Company shall cancel the shares of that Member. However, the Company may offer the person a reasonable compensation, not exceeding the amount which the Company would pay if the shares were purchased under Regulation 13.

16 EQUAL VOTING POWER

- 16.1 Every Member qualified to vote shall have an equal voting power irrespective of the number of shares held by that Member.

DIVISION 4 - GENERAL MEETINGS**17 GENERAL MEETINGS**

- 17.1 The first general meeting or statutory meeting shall be held at any time not being less than 1 Month nor more than 4 months from the date of incorporation of the Company and at any place as the Board may determine. Subsequent general meetings shall be held once at least in every year following the year of incorporation at any times and at any places as may be prescribed by the Board, provided that the subsequent general meetings shall be held at intervals of not more than 15 months. The general meetings shall be called ordinary general meetings.
- 17.2 All other meetings of the Company shall be called extraordinary general meetings.

18 EXTRAORDINARY GENERAL MEETINGS

- 18.1 An extraordinary general meeting of the Company may be convened by the Board when it thinks fit, and shall be convened at the times and in the manner as prescribed by Section 117 of the Act.

19 NOTICE OF GENERAL MEETINGS

- 19.1 Subject to Section 119 of the Act relating to special resolutions, 14 days notice of any general meeting specifying the place, day and hour of the business shall be given in the manner provided in these Regulations to all registered holders of shares, and to all other persons as may be entitled to receive the notice from the Company.
- 19.2 The non-receipt of a notice by, or the accidental omission to give a notice to, any of the Members of the general meeting shall not invalidate any resolution passed at the meeting.

20 PROCEEDINGS AT GENERAL MEETINGS

- 20.1 The business of an ordinary general meeting other than the statutory meeting shall be all (or any) of the following:
- (a) to receive and consider the balance sheet and profit and loss account for the previous financial account period;
 - (b) the report of the Board;
 - (c) report of the auditors;
 - (d) to elect directors and other officers in the place of those retiring;
 - (e) to fix remuneration of the Board and the auditors;
 - (f) to transact any other business which under these Regulations ought to be transacted at an ordinary general meeting.

20.2 All other business transacted at an ordinary general meeting and all business transacted at an Extraordinary Meeting shall be deemed special.

21 QUORUM AT GENERAL MEETINGS

21.1 The quorum for a general meeting shall be 20 Members present in person eligible to vote.

21.2 The quorum for an extraordinary meeting shall be 10% of all Members of the Company present in person. No business shall be transacted at any meeting (other than adjourned meetings), except the election of a chairperson and the adjournment of the meeting, unless the requisite quorum is present at the commencement of business.

21.3 If within 15 minutes from the time appointed for the meeting a quorum is not present the meeting, if convened upon a requisition of Members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place. At the adjourned meeting a quorum may transact the business for which the meeting was called.

22 CHAIRPERSON AT GENERAL MEETINGS

22.1 The chairperson of the Board shall be entitled to take the chair at every general meeting. If there is no chairperson, or at any meeting the chairperson is not present at the time appointed for holding the meeting, or is unwilling to act as chairperson of the meeting, the deputy chairperson shall act as chairperson of the meeting. If the deputy chairperson is not present, the Members may elect one of the Board to take the chair or if all the Board present decline to take the chair, the Members present shall choose one of their number to be chairperson.

23 ADJOURNED MEETINGS

23.1 The chairperson of a general meeting may, with the consent of the meeting, adjourn the meeting from time to time and place to place. However, no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

23.2 If any general meeting shall be adjourned for more than 21 days, a notice of the adjournment shall be given to all the Members in the same manner as notice was (or ought to) have been given of the original meeting.

24 VOTING AT GENERAL MEETINGS

24.1 Every question submitted to a meeting shall be decided in the first instance by a show of hands of the Members personally present and entitled to vote.

24.2 On a show of hands every Member present in person and entitled to vote shall have one vote, irrespective of the number of shares held by that Member. Upon a poll every Member present in person or by proxy and entitled to vote shall have one vote.

- 24.3 Where there are joint registered holders of any share, only the person whose name stands first in the Register of Members in respect of the share shall be entitled to vote.
- 24.4 The Board shall 21 days prior to the calling of a General Meeting close the Register of Members for the purposes of establishing voting entitlements and no changes to voting entitlements between that date and the close of the General Meeting will be acknowledged without a resolution of the Board to that effect.
- 24.5 Subject to these Regulations, votes may be exercised personally, by proxy or by attorney.
- 24.6 A Member shall not be entitled to be present or to vote on any question, either personally, by proxy or attorney for another Member at any meeting, adjourned meeting, or upon a poll, or to be reckoned in a quorum if:
- (a) any Call is due and payable to the Company by the Member;
 - (b) any other debt exceeding \$100.00 is due and payable by the Member to the Company, and has been outstanding for 12 months or more.
- 24.7 Any Member who is (or intends to be) absent or resident abroad may deposit in the Office an instrument duly stamped (if necessary) appointing a proxy valid for all meetings whatever during the absence or residence and until revocation.
- 24.8 At any meeting (unless a poll be demanded by the chairperson or by at least 6 Members present personally or by proxy) a declaration by the chairperson that a resolution has been passed or lost having regard to the majority required on a show of hands or a count of votes, and an entry to the effect in the book to be kept of the proceedings of the Company signed by the chairperson at that or the next succeeding meeting, shall be conclusive evidence of the fact. No proof is needed of the number or proportion of the votes recorded in favour of, or against, the resolution.
- 24.9 Prior to the election of directors being called the Board must appoint a person to act as the returning officer who is not a director, member or employee of the Company. If the returning officer is appointed in their professional capacity as an accountant, auditor or solicitor the Company may only pay that person's normal fees and disbursements in relation to them acting as the returning officer.

25 POLL AT GENERAL MEETINGS

- 25.1 If a poll is demanded, it shall be taken in the manner, time and place that the chairperson of the meeting directs, and either at once, after an interval or adjournment or otherwise. The result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any Dispute as to the admission or rejection of a vote the chairperson shall determine the Dispute. A determination made in good faith shall be final and conclusive.
- 25.2 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 or for the election of a chairperson of a meeting. A poll demanded on or any question of adjournment shall be undertaken at the meeting and without adjournment.

26 FORM AND VALIDITY OF PROXY

26.1 The instrument appointing a proxy shall be in writing under the hand of the appointor or the appointor's attorney, or if the appointer is a corporation, under its common seal.

26.2 The instrument appointing a proxy (and the power of attorney (if any) under which it is signed or proof of it to the satisfaction of the Board) shall be deposited at the Office not earlier than 24 hours before the time for holding the meeting, adjourned meeting or poll at which the person named in the instrument proposes to vote. However, no instrument appointing a proxy shall (except as provided in Regulation 24.7) be valid after the expiration of 4 months from the date of its execution.

26.3 A vote given in accordance with the terms of an instrument of proxy or power of attorney shall be valid notwithstanding:

- (a) the previous death of the principal;
- (b) revocation of the proxy or power of attorney; or
- (c) transfer of the shares in respect of which the vote is given;

provided no intimation in writing of the death, revocation or transfer has been received at the Office before the meeting.

26.4 A proxy shall not be revoked by the principal attending and taking part in the meeting, unless the principal actually votes on the poll at the meeting of the resolution for which the proxy is proposed to be used.

27 PROXY VOTING

27.1 No person may be a proxy who is not a Member of the Company and entitled on their own behalf to be present and to vote at the meeting for which the proxy is given. However, any corporation or company (being a Member and entitled to vote), may, by resolution of its own directors or other governing body or by an instrument of proxy, authorise any person (whether a Member of the Company or not) to act as its representative at meetings. The representative shall be entitled to exercise the same powers on behalf of the corporation or company which the corporation or company could exercise if it were an individual of the Company.

27.2 No Member other than the Chairperson may hold more than two instruments of proxy.

28 POWER OF ATTORNEY

28.1 Any Member may, by power of attorney duly executed, appoint an attorney (who shall be a Member of the Company) to act on the Member's behalf at all meetings of the Company. Before the attorney is entitled to act, the power of attorney (or its

proof to the satisfaction of the Board) shall, (without prejudice to Regulation 15.2) be produced for inspection at the Office, together with such evidence of the due execution of the attorney as the Board may require. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

DIVISION 5 - DIRECTORS**29 FIRST DIRECTORS**

29.1 The first directors of the Company shall be the subscribers to the Memorandum of Association of the Company.

30 SUBSEQUENT DIRECTORS

30.1 The maximum number of directors shall be 5.

30.2 There must be no more than 2 member directors from either Collie River, Waroona or Harvey, no more than 2 non-member directors and no less than two districts represented.

31 QUALIFICATION OF DIRECTORS

31.1 Subject to these Regulations, only persons who are Members of the Company, or representatives of any legal entity which is a Member of the Company, are eligible to be appointed as directors of the Company (except for a Non-member Director).

31.2 A Non-member Director may be nominated by the Board with skills, experience or knowledge in the engineering, industrial, legal, commercial or financial sectors.

31.3 A partner, employer, or employee of an auditor of the Company shall not be appointed a director or alternate director of the Company.

31.4 The acts of a Director are valid despite any defect that may afterwards be discovered in the appointment or qualifications of the Director.

32 FILLING OF CASUAL VACANCIES

32.1 The Board shall have power (subject to Regulation 36.1) from time to time and at any time to appoint other qualified persons as directors to fill casual vacancies, However, any director so appointed shall hold office only until the next following ordinary general meeting, but shall then be eligible for re-election.

33 REMUNERATION

33.1 Directors shall receive remuneration for their services as approved by the Company in general meeting.

33.2 Directors shall be entitled to be paid their reasonable travelling and other expenses incurred by them in the performance of their duties. If any director of the Company (being willing) is called upon to perform extra services or make any special exertions on behalf of the Company, the Company in general meeting may remunerate them by a fixed sum. The remuneration may be either in addition to, or in substitution for, the director's remuneration.

33.3 All directors, other than a director with recognised qualifications, shall, within twelve months or such other time as may be agreed to by the Chairperson, undertake such training in respect to the duties of a director as determined in conjunction with the Chairperson, and shall regularly attend courses or undertake

other activities for the purpose of attaining or maintaining skills appropriate to directors of an irrigation co-operative.

34 PERSONAL INTERESTS IN CONTRACTS

- 34.1 A director who is in any way (whether directly or indirectly) interested personally in a contract (or proposed contract) with the Company shall not be qualified to vote on resolutions concerning matters related to that contract. The director must disclose the interest to the Board and the Board must record it in the Board minutes. A director is not to be held to be personally interested in a contract solely because of being a director of the Company or being a representative of the District which is to obtain the benefit of such a contract.

35 FINANCIAL DEALINGS WITH THE COMPANY

- 35.1 Provided they disclose the nature of their interest in a transaction to the Company, any director of the Company may:
- (a) lend money to the Company at interest with or without security;
 - (b) guarantee the repayment of any money borrowed by the Company, for a commission or profit; and
 - (c) underwrite or guarantee the subscription of shares or securities of this (or any Company in which this Company may be interested) without being liable to account to this Company for any commission or profit.

36 FILLING A VACATED OFFICE

- 36.1 The first directors of the Company are those directors specified in Regulation 29.1
- For the purposes of each election of directors to the Board on a rotational basis (pursuant to these Regulations), whether the positions on the Board to be filled at each election shall be designated:
- (a) a representative of the Collie River District; or
 - (b) a representative of the Harvey District; or
 - (c) a representative of the Waroona District; or
 - (d) a Non-member Director

shall be dependent on the number and category of directors (if any) remaining on the Board after the retirement of the directors who shall retire in each year in accordance with the rotation of directors referred to in these Regulations.

37 ROTATION OF DIRECTORS

- 37.1 At the first Annual General Meeting one member director shall retire. Subject to these Regulations this director is eligible for re-election.

- 37.2 At the second Annual General Meeting the member director longest in office shall retire. Subject to these Regulations this director is eligible for re-election.
- 37.3 At the third Annual General Meeting the member director longest in office shall retire. Subject to these Regulations these Directors are eligible for re-election.
- 37.4 The following provisions shall apply to all directors:
- (a) At every ordinary general meeting one third of the Board (or if their number is not a multiple of three then the number nearest to one third) shall retire from office. A retiring director shall retain office until the conclusion of the meeting at which a successor is nominated or elected.
 - (b) In every year the one third (or other nearest number) who has been longest in office shall retire. As between the two or more directors who have been in office an equal length of time the director to retire shall (in default of agreement between them) be determined by ballot. The length of time a director has been in office shall be computed from the last election where the director had previously vacated office and been re-elected. The retiring director shall be eligible for re-election.
 - (c) If, at any general meeting at which an election of directors ought to take place and places of the retiring directors are not filled up, any of them as have not had their places filled up shall continue in office until the annual meeting in the next year, and so on from year to year until their places are filled up, unless it shall be determined at the meeting to reduce the number of directors.
 - (d) Subject as provided in these Regulations, the Company in general meeting may from time to time increase (or reduce) the number of directors.
 - (e) The Company in general meeting may at any time (as special business by resolution passed as an ordinary resolution by the Members voting personally, by proxy or by attorney at such meeting) remove any director before the expiration of their period of office and may appoint another qualified person instead. The person so appointed shall hold office only during the time the director in whose place the person is appointed would have held office if they had not been removed. If the director so removed was a member director or a Non-member director, then the director appointed in their place shall also be a member director or be a Non-member director.
 - (f) No person (not being a retiring director) shall be eligible for election to the office of director at any general meeting unless:
 - (i) the person (or some other Member intending to propose the person) has at least 21 days before the meeting left at the Office a notice in writing of the candidature (or the intention of the Member to propose that person); or

- (ii) the person has been recommended by the Board for election and notice in writing of the recommendation has been left at the Office at least 15 clear days before the meeting.
- (g) Notice of each and every candidate for the position of director, noting whether the candidate is a member director or a Non-member shall be served on Members at least 14 days previously to the meeting at which the election is to take place.

37.5 The members may elect a Non-member director at any general meeting for a period of not more than 3 years.

38 ALTERNATE DIRECTORS

Each director shall have power from time to time (subject to the provisions of this Regulation to appoint another Member of the Company (who shall first be approved of by a majority of the Board), to act as an alternate director in place of the director whenever (through illness or otherwise) the director is temporarily unable to attend to any duties as a director. The alternate directors shall be appointed for a stated period not exceeding 6 months or until the happening of a specified event, whichever is the shorter. The following provision shall apply to any alternative directors:

- (a) they may be removed or suspended from office by written notice or other form of visible communications from the director by whom they were appointed to the Company;
- (b) they shall be entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the director by whom they were appointed is not present;
- (c) they shall be entitled to exercise all powers and perform all the duties of a director in so far as the director by whom they were appointed has not exercised or performed them;
- (d) they shall be required to be a Member of the Company and hold any share qualifications applicable;
- (e) the remuneration of an alternate director shall be payable out of the remuneration payable to the nominating director and shall consist of such portion of the last mentioned remuneration as shall be agreed between the alternate director and the nominating director;
- (f) they shall vacate office when the director by whom they were appointed vacates office or at the expiration of 6 months whichever is the shorter period;
- (g) they shall while acting as a director be responsible to the Company for their own acts and defaults and shall not be deemed to be the agent of the director by whom they were appointed; and

- (h) any director who wishes to appoint an alternate director shall advise the Board in writing of that director's proposed nominee to act as an alternate director. The Board shall advise the director proposing to appoint an alternate director whether that director's proposed nominee is approved of by a majority of the Board within 7 days of receipt of a notice of nomination.

39 VACATION OF OFFICE OF DIRECTOR

39.1 The office of a director shall be vacated:

- (a) if a director becomes bankrupt, suspends payment, liquidates by arrangement, compounds with or assigns that director's estate for the benefit of creditors;
- (b) if a director becomes unsound of mind;
- (c) except for a Non-member Director, if a director ceases to hold the number of shares and Corresponding Water Entitlements (if any) required to qualify the director for office;
- (d) except for a Non-member Director, if a director ceases to be qualified for Membership;
- (e) if a director resigns office by notice in writing to the Company addressed to it at the Office; or
- (f) if a director is removed from office by the Company in general meeting under Regulation 37.4(e).

DIVISION 6 - BOARD OF DIRECTORS**40 POWERS OF THE BOARD**

- 40.1 Subject to the Act and other provisions of these Regulations, the Board may exercise all the powers conferred on the Company by the Act, including day to day management and control of the affairs of the Company.
- 40.2 The Board may execute and exercise all contracts, powers, acts, matters, transfers, assurances, deeds and things required and necessary to give effect to the above powers and authorities, and to all or any sale or sales or disposition provided that:
- (a) any sale of the Company's main undertaking or assets is first approved by the Company in general meeting; and
 - (b) no commission or fee is paid or payable to a director (or directors) of the Company on such sale.

41 PROCEEDINGS OF THE BOARD

- 41.1 The Board may meet together for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit.
- 41.2 Where a resolution has been circulated (including circulated by facsimile transmission) among all members of the Board, a resolution in writing signed by a majority of the Board shall be as valid and as effectual as if it had been passed at a meeting of the Board duly called and constituted.
- 41.3 Subject to these Regulations, questions arising at a Board meeting shall be decided by a majority of votes of directors present and voting, and any such decision shall for all purposes be deemed to be a decision of the Board.
- 41.4 A director may at any time, and the Secretary shall on the requisition of a director, convene a Board meeting.
- 41.5 In case of an equality of votes, the chairperson of the meeting, in addition to their deliberative vote (if any), has a casting vote.

42 QUORUM FOR BOARD MEETINGS

- 42.1 The Board may determine the quorum necessary for the transaction of business. Until otherwise determined 3 directors shall be a quorum.

43 CHAIRPERSON OF THE BOARD

- 43.1 The Board may elect a chairperson and a deputy chairperson and determine the period(s) for which they are to hold office. However, if no chairperson is elected, or if at any meeting neither the chairperson nor the deputy chairperson is present at the time appointed for holding the meeting, the Board present shall choose one of their number to be chairperson of the meeting.

44 DELEGATION AND BOARD COMMITTEES

- 44.1 The Board may delegate any of its powers to a committee consisting of any director(s) or Member(s) of the Company, and may at any time revoke all (or any) of the powers so delegated. Any committee so formed shall, in the exercise of powers so delegated, conform to any Regulations that may be imposed on them by the Board.
- 44.2 A committee may elect a chairperson of their meetings. If no chairperson is elected, or is not present at the time appointed for holding any meeting, the Members present shall choose one of their number to be chairperson of the meeting.
- 44.3 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Members present.
- 44.4 A director who is a member of a committee must report to the Board on a regular basis.

45 VALIDITY OF ACTS

- 45.1 All acts done by any meeting of the Board or of a committee of directors or by any person acting as a director shall (notwithstanding that it be afterwards discovered that there was some defect in the appointment of the director or person or that they or any of them were disqualified) be as valid as if the person had been duly appointed and was qualified to be a director.

46 MINUTES

- 46.1 The Board shall cause minutes to be kept in relation to all their proceedings, including:
- (a) appointments of directors and Secretaries;
 - (b) which Districts the directors represent or whether the director is a Non-member director;
 - (c) the names of the Board present at each meeting;
 - (d) details of personal interests declared by directors in contracts entered into by the Company;
 - (e) the Regulations and by-laws made by the Board; and
 - (f) general meetings of the Company.
- 46.2 Any such minutes, if purporting to be signed by the chairperson of the meeting, by the chairperson of the next succeeding meeting or by a director present when the resolution was passed, shall be received in evidence in all legal proceedings. Furthermore, until the contrary is proved, every general meeting of the Company and the meetings of directors in respect of the proceedings of which minutes have been made, shall be deemed to have been duly held and convened and all resolutions passed thereat held to have been duly passed.

47 MANAGEMENT

47.1 The Board may from time to time appoint a manager (or managers) of the Company either for a fixed term or without any limitations as to period for which the manager (or managers) is (or are) to hold such office. The Board may from time to time remove or dismiss the manager (or managers) from office and appoint others in the manager's (or managers') place (or places). The manager's (or managers') remunerations shall be fixed by the Board and may be by salary, commission, participation in profit or by any or all of these modes.

47.2 The Board may from time to time entrust to and confer upon a manager for the time being any other powers exercisable by the Board under these Regulations as it thinks fit. The Board may confer such power:

- (a) for any time;
- (b) to be exercised for any objects and purposes;
- (c) upon any terms and conditions; and
- (d) with any restrictions;

as it thinks expedient.

The Board may confer the power either collaterally with, or to the exclusion of, and in substitution for, all or any of the powers of the Board on their behalf, and may from time to time revoke, withdraw, alter or vary all or any of the powers.

47.3 If a director of the Company is appointed as a manager then the provisions of Section 151(1) of the Act shall apply while such manager remains a director of the Company.

48 SECRETARY

48.1 The Board shall appoint a Secretary who may be any such person as it approves. The duties and powers of the Secretary shall be as the Board may determine or sanction, and the Secretary shall (under the direction of the Board) have charge of the books and accounts of the Company.

48.2 The Board may from time to time appoint a temporary substitute for the Secretary. Any person so appointed shall (for the purpose of these Regulations) be deemed during the term of the appointment to be the Secretary.

49 INDEMNITY OF OFFICERS

49.1 The Company may indemnify its officers and agents out of the funds of the Company against all costs, charges, losses, damages and expenses which they shall respectively incur, or be put to, in the execution of their respective offices, or by reason on account of any contract, act, deed or matter or thing which shall be made done, permitted, entered into or executed by them respectively on behalf of, or bona fide in the interests of, or with the view to benefiting, the Company, notwithstanding that these may be ultra vires in point of law.

Directors, trustees or other officers shall be chargeable only for so much money as they shall actually receive. They respectively shall not be answerable for:

- (a) the acts, receipts or defaults of each other, but each of them for their own acts, receipts, defaults or neglects only;
- (b) any solicitor, banker, broker, collector or other person appointed by the Board or trustees with whom or into whose hands any property or money of the Company may be deposited or come;
- (c) the insufficiency of any title to the estate or property which may from time to time be purchased by order of the Board on behalf of the Company;
- (d) the insufficiency of any security upon which any of the monies of the Company shall be invested by order of the Board or trustees;
- (e) for any loss or damage which may happen in the execution of their respective duties, unless this occurs or arises through their own respective wilful neglect or fault.

49.2 However, nothing in these Regulations shall exempt any director, manager or officer of the Company or any person (whether an officer of this Company or not), employed by this Company as auditors, from, or indemnify the person against, any liability which by virtue of any rule or law would otherwise attach to the person in respect of any negligence, default, breach of duty or breach of trust of which the person may be guilty in relation to the Company (except for the cases set out in paragraph (c) of the proviso to Section 157 of the Act).

49.3 The Company may take out such indemnity insurance cover as may be resolved upon from time to time in order to protect and indemnify the Board in respect of all actions taken by them in good faith in their capacity as directors of the Company.

50 ACCOUNTS

50.1 The Board shall cause to be kept proper books of account in which shall be kept full accounts of the affairs and transactions of the Company.

50.2 The books of accounts shall be kept at the Office or at any place (or places) as the Board think fit.

50.3 The Board shall (subject to the provisions of the Act) from time to time determine whether, to what extent, to what times and places, under what conditions or Regulations, the accounts and books of the Company or any of them shall be open to the inspection of the Members. No Member shall have any right of inspecting any account or book or document of the Company, unless and except as conferred by statute or authorised by the Board or by a resolution of the Company in general meeting.

50.4 At the ordinary general meeting in each year the Board shall lay before the Company a:

- (a) profit and loss account; and

(b) balance sheet made up:

- (i) in the case of the first balance sheet, from the date first available;
- (ii) in the case of subsequent balance sheets, from the time when the last preceding account and balance sheet were made up, to a date as near as the day of meeting as can conveniently be fixed.

50.5 Every account of the Board when audited and approved or adopted by the general meeting shall be conclusive, except as regards any error discovered in the account within 3 months, after its approval or adoption. Whenever any such error is discovered within the period the account shall be corrected and from then on shall be conclusive.

50.6 The accounts of the Company shall disclose the total remuneration (of whatsoever nature) paid (or payable) to all directors of the Company and directors of all subsidiary companies (if any) during the period to which the accounts relate.

50.7 Every such balance sheet shall be accompanied by a report of the Board stating the net profit on the year's trading and:

- (a) the amount of dividends or rebates paid or allocated during the Year; and
- (b) the amount carried to the reserve fund.

The Board report and balance sheet shall be signed by two directors.

50.8 A copy of the report and balance sheet (including every document required by law to be annexed to the report and balance sheet) shall be made available to all Members attending the Annual General Meeting and shall be made available to all Members on application.

51 CHEQUES, BILLS, ETC

51.1 All cheques, bills of exchange and promissory notes shall be signed, drawn, accepted, made or endorsed, as the case may be, on behalf of the Company, and in any other manner as the Board may from time to time determine.

DIVISION 7 - TRANSFER RULES**52 TRANSFERS AND RESTRICTIONS**

- 52.1 Where an application has been made to South West Irrigation Management Cooperative Limited in relation to an Internal Permanent Transfer or External Permanent Transfer which has the effect of reducing the Water Entitlements referable to a Land Holding to a number which is less than 60% of the Water Entitlements referable to the Land Holding as at 1 July 1997, a Member must make an application to the Company and must, if requested by the Board, make the payment of an excision fee to compensate the Company.

DIVISION 8 - COMPANY FUNDS**53 DISTRIBUTION OF SURPLUS**

53.1 The surplus profits that may accrue to the Company in the conduct of its business shall be divided amongst its Members in the following manner:

(a) All surplus profits (in any year in which a dividend for the year shall be declared after setting aside to the credit of any reserve fund of the Company) shall be distributed by way of rebate dividend or bonus shares or debentures in proportion to:

- (i) the business done by Members with the Company; or
- (ii) profits earned by the Company on the Members' business;

provided that the Company may at any time elect to treat the amount of the accretion to the reserve fund in any year as being surplus profits for the year available for distribution by way of bonus under this paragraph.

(b) The decision of the Board as to the amount of surplus profits available for division amongst Members shall be final and conclusive. The allocation by the Board of the amount of surplus profits under sub-paragraph 53.1(a) to be paid to each Member (on the basis of the business done by that Member or the profit earned by the Company on the Member's business) shall also be final and conclusive.

(c) The Board may put a special resolution to a general meeting that the surplus be distributed by way of bonus share issue or debentures including subordinated debt to Members in proportion to their base allocation.

(d) The Board shall prepare a report for submission to the Members at each Ordinary meeting. The report shall (amongst other things) state the total surplus profit on the year's trading and:

- (i) the amount of the surplus profit divided amongst the holders of shares by way of dividend; and
- (ii) the amount of the surplus profit divided amongst Members entitled under sub-paragraph 53.1(b).

(e) The report of the Board under Regulation 53.1(c) as to the amount of surplus profit divided amongst Members entitled under sub-paragraph 53.1(c) shall be binding and conclusive (except so far as the Board desires to rectify inadvertent errors or omissions).

54 CONTRIBUTIONS, OPERATING EXPENSES, RESERVES AND CHARGES TO MEMBERS

54.1 The Board may from time to time determine what (if any) Contributions are payable by each Member.

- 54.2 In determining contributions for a Year, the Board shall calculate Contributions so as to cover the costs and expenses and overheads of the Company in carrying out its objects, including (but not limited) to:
- (a) the anticipated costs of the operation by the Company of its business and the performance by the Company of its functions for the relevant Year;
 - (b) the costs of regular repairs, refurbishment, maintenance and constructions in relation to the Company's assets for the relevant years;
 - (c) meeting claims on, or contingent liabilities of, the Company;
 - (d) such reserves as the Company may from time to time determine are prudent and reasonable to enable the Company to carry on its objects as a long term and substantial business.
- 54.3 The Company shall arrange and provide such directions from time to time to South West Irrigation Management Co-operative Limited to collect Asset Maintenance Renewal Fund Levies on behalf of the company.
- 54.4 The Board may distribute to Members as cash or bonus shares all (or part) of the amount carried to Reserve in any past Year (or years) in proportion to the business done with the Company by Members or in proportion to the profits earned by the Company on such business. The calculation by the Board of a Member's entitlement shall be final and conclusive.

55 DIVIDENDS AND OTHER DISTRIBUTIONS

- 55.1 The Board may, in arriving at the net profits of the Company, first set aside any sum as in their opinion is proper to provide for bad and doubtful debts to replace wasting property, to write down the valuation of the Company's intangible assets and to maintain the plant works and property used in the Company's business or any part of it.
- 55.2 The Board may issue or allocate bonus shares in satisfaction of a dividend, and at their discretion in any Year, issue or allocate the bonus shares to some Members and pay cash dividends to other Members.
- 55.3 Unless otherwise directed, any payment by cheque or certificate of bonus shares sent through the post to the registered address of the Member entitled (or in the case of joint holders to the registered address of that one whose name stands first in the Register in respect of the joint holding) and every cheque so sent, shall be made payable to the person to whom it is sent and shall be at that person's risk.
- 55.4 The Board shall determine the amount of bonus to which a Member is entitled, and may have regard to the amount of business (or value of business) done by the Member, or the amount of business (or value of business) done by an entity in which the Member has a significant interest, in arriving at a distributable amount.
- 55.5 The fixing of the actual amount allocated to Members shall in each case be at the absolute discretion of the Board, whose decision shall be final.

55.6 As soon as practicable, or from time to time, the Board shall distribute among all Members who are entitled to it, the amount available for division amongst Members by way of cash or bonus shares or debentures (or in any one or more of such methods). The Board shall advise each Member so entitled of the amount of cash or number of shares or debentures to which the Member is entitled. If the amount to which any Member is entitled is less than \$20.00 the amount may be retained by the Company.

56 DEBENTURES

56.1 Debentures shall not be issued for less than \$20.00. The principal of, and interest on, the debentures shall be paid and payable at the registered office of the Company only to the registered proprietor of the debenture, on production of the debenture. Interest shall be payable yearly at the rate (but not exceeding 10% per annum cumulative) as the Board shall at the time of issue determine. The principal money shall be paid and payable only on the death of the registered proprietor and on proof of the death to the satisfaction of the Board.

However, the Company may redeem the debentures at any time without notice on payment to the registered proprietor of their face value. No bonus debentures shall operate directly or indirectly as a mortgage or charge upon the property or assets of the Company.

56.2 The Company shall have a first and paramount lien upon all debentures registered in the name of any Member (whether solely or jointly with another or others) for the Member's debts, liabilities and engagements (solely or jointly with any other person or persons) to or with the Company, whether the time for their payment fulfilment or discharge has actually arrived or not. The lien shall extend to all interest from time to time payable in respect of the debentures. Unless otherwise agreed, the registration of a transfer of debentures shall operate as a waiver of the Company's lien on the debentures. The Board may retain the possession of a debenture certificate in respect of which the Company is entitled to a lien until the lien has been discharged. In the meantime, the Board may receive all interest payable on the debenture and utilise this in the discharge or reduction of the respective Member's debts liabilities and engagements.

56.3 The principal of, and/or interest on, a debenture may be paid by cheque sent through the post to the registered address of the Member entitled (or in case of joint holders to the registered address of that one whose name stands first in the Register in respect of the joint holdings). Every cheque so sent shall be made payable to the person to whom it is sent and be at that person's risk.

56.4 No debenture shall be transferred unless the written consent of the Board is first obtained.

56.5 The Board shall cause to be kept as separate a register of all debentures and all dealings and transactions involving the debentures, and may make regulations as to:

- (a) the registration of debentures and the methods of transfer; and

- (b) the form of Certificates; replacements of Certificates defaced, worn out, lost or destroyed; the cancellation of Certificates; and the issue of new (and/or consolidated) Certificates.

57 CONVERSION OF DEBENTURES

- 57.1 Any person who is entitled to receive, or is the registered holder of, debentures and is in other respects qualified to become a Member of the Company, may apply in writing for a share or shares of equal amount to be allotted and issued to them. Then, the Board may, if they think fit, (but subject always to any limitations on maximum shareholdings otherwise in the Company) issue and allot to the applicant shares accordingly. However, debenture stock to the value of the shares applied for shall first be given up by the applicant and cancelled by the Board.
- 57.2 The registered holder of a share shall be deemed a full Member of the Company except where otherwise expressly provided by these Regulations.

DIVISION 9 - MISCELLANEOUS**58 NOTICES**

- 58.1 A notice may be served by the Company upon any Member either personally or by sending it through the post in a prepaid envelope or wrapper addressed to the Member at the Member's address appearing in the share registry, or the Member's last known address.
- 58.2 Each registered holder of shares whose registered place of address is not in the State of Western Australia may notify the Company in writing of an address in Western Australia which shall be deemed the Member's registered place of address within the meaning of the Regulation 58.1. If any Member whose registered address is outside Western Australia does not give an address to the Company for the above purpose, a notice exhibited in the registered office of the Company for a period of 48 hours shall be deemed to have been duly served on the Member.
- 58.3 Any notice required to be given by the Company to the Member (or any of them) and not expressly provided for by these Regulations shall be sufficiently given if given by advertisement.
- 58.4 Any notice required to be (or which may be) given by advertisement shall be advertised once in a daily newspaper.
- 58.5 Any notice sent by post shall be deemed to have been served at the expiration of 24 hours after the envelope or wrapper containing the notice is posted.
- 58.6 The signature to any notice to be given by the Company may be written or printed.
- 58.7 Every person who (by operation of law, transfer or other means whatsoever) shall become entitled to any shares, shall be bound by any and every notice which, previous to the person's name and address being entered on the Register in respect of the shares, shall have been duly given to the persons from whom the Member derives title to the shares.
- 58.8 Any notice or document delivered, sent by post, or left at the registered address or address for service of any Member in pursuance of these Regulations shall (notwithstanding the Member is then deceased and whether or not the Company has notice of the decease) be deemed to have been duly served in respect of any registered shares (whether held solely or jointly with other persons by the Member) until some other person is registered in the Member's stead as the holder or joint holder of the shares. The service shall for all purposes be deemed as sufficient service of the notice or document on the heirs, executors or administrators of the deceased Member, and all persons (if any) jointly interested with the Member in the share.

59 THE SEAL

- 59.1 The Board shall provide for the safe custody of the Company's common seal.

59.2 The Company's common seal shall never be used except by the authority of the Board and in the presence of:

- (a) one director; and
- (b) the Secretary; or any other person as the Board may appoint for the purpose.

That director and the Secretary (or other person as above) shall sign every instrument to which the Seal of the Company is so affixed in their presence.

59.3 Notwithstanding the provisions of 59.2 the Company Seal may be used in the sole presence of the Secretary for the purpose of issuing share certificates resulting from land and/or water transactions but not for any other purpose. The signature of a director need not also be affixed in this case.

59.4 The Company may from time to time exercise the powers conferred in Section 44 of the Act in respect of overseas business or transactions. The powers shall be vested in the Board.

60 BY-LAWS

60.1 The Board may make by-laws not inconsistent with these Regulations or the licences to govern the Company's conduct and dealings with Non-members.

60.2 The Board may also make by-laws in relation to the distribution of water to Members consistent with these Regulations and the licences.

61 AUDIT

61.1 At least once in every Year the accounts of the Company shall be examined, and the correctness of the profit and loss account and the balance sheet ascertained by one (or more) auditor (or auditors). The Company's share register shall be audited at least once a Year.

61.2 The Company shall, at each ordinary general meeting, appoint an auditor (or auditors) to hold office until the next ordinary general meeting.

61.3 The remuneration of the auditor (or auditors) shall be fixed by the Company in general meeting. However, the remuneration of the first auditor (or auditors), or any auditor appointed to fill any casual vacancy, may be fixed by the Board. The general meeting may authorise the Board to fix the remuneration of the auditors.

61.4 If any casual vacancy occurs in the office of auditor, the surviving or continuing auditor may act. However, if there is no auditor, the Board shall, without delay, call an extraordinary general meeting of the Company for the purpose of appointing an auditor (or auditors).

61.5 No person shall be appointed as an auditor who is by the Act disqualified from acting as an auditor.

61.6 No person (not being a retiring auditor) shall be eligible for election to the office of auditor at any general meeting, unless a Member intending to propose the person

has, at least 15 days before the meeting, left at the Office of the Company a notice in writing of the intention of the Member to propose the person.

62 DISPUTE RESOLUTION

62.1 At each annual general meeting of the Company, the Members will elect a panel (which shall be referred to as a "Disputes Panel"), to hold office until the next annual general meeting. From the Disputes Panel a committee, (which shall be known as "the Disputes Committee") may be formed to advise the Board in relation to any disputes ("a Dispute") which may arise between any two or more Members, or any Member and the Company.

63 DISPUTES PANEL

63.1 The chairperson of the Board of Directors of the Company will determine the size of the Disputes Panel, provided that it will comprise of not less than 5 and not more than 7 persons, including at least:

- (a) any 3 directors; and
- (b) any 2 Members of the Company who are not directors.

63.2 Subject to the provisions of Regulation 63.1, any Member may nominate any person to be elected to the Disputes Panel.

63.3 Nominations for election to the Disputes Panel shall be:

- (a) in writing;
- (b) signed by the nominating Member;
- (c) in a form (if any) prescribed by the Board; and
- (d) shall provide in relation to the person nominated all the information required by the Board from time to time.

63.4 Nominations shall be lodged with the Secretary of the Company at least 7 days before the date specified in the notice of an annual general meeting as the date on which the annual general meeting is to be held.

63.5 The election of persons as Members of the Disputes Panel shall not be dealt with in business of the annual general meeting until after the conclusion of:

- (a) the election of replacements for those Members of the Board who have retired; and
- (b) all other business of the meeting which is required in order for the Company to comply with the provisions of the Act.

63.6 The election of persons to constitute the Disputes Panel shall be proceeded with in a manner similar to that for the election of the Board.

64 DISPUTES COMMITTEE

- 64.1 Casual vacancies in any duly constituted Disputes Committee may be filled by the nomination by the Board of a suitably experienced person who need not be a Member of the Company.
- 64.2 Upon receiving an application from a Member in relation to a Dispute, the Secretary of the Company shall form a Disputes Committee. The Secretary of the Company will determine the size of each Disputes Committee, provided that it will be constituted by not less than 5, and not more than 7 Members of the Disputes Panel which includes at least:
- (a) 3 directors of the Company; and
 - (b) 2 Members of the Company who are not directors.
- 64.3 In determining whether to appoint a person from the Disputes Panel to a Disputes Committee to resolve a Dispute, the Secretary shall act in good faith, to encourage an objective and unbiased consideration of the Dispute. In so doing, the Secretary shall have regard to:
- (a) the availability of the person;
 - (b) that person's area of expertise; and
 - (c) the relationship (if any) between the applicant and the person being considered for the Disputes Commission (including but without limitation whether the proposed person is a neighbour of the applicant).
- 64.4 The Disputes Committee shall conduct its business in the same manner as is specified in these Regulations for the conduct of meetings of the Board (subject to the qualifications and limitations set out in this Regulation).
- 64.5 A Disputes Committee shall be empowered to consider, and to make recommendations to the Board, in relation to any matter affecting any Member of the Company, and the Company, arising out of:
- (a) these Regulations (other than this Regulation); and/or
 - (b) any order, supply contract, Distribution Rules, by-laws or other provisions determined from time to time by the Company.
- 64.6 A Disputes Committee may not consider any matter or issue otherwise than on the application of either:
- (a) a Member (or Members) of the Company; or
 - (b) a Member (or Members) of the Board.
- 64.7 The application shall:
- (a) be in writing;

- (b) be signed by the applicant;
 - (c) be in a form (if any) prescribed by the Board;
- and provide in relation to the matter (or issue) which is the subject of the Dispute:
- (d) an accurate description of any affected Land Holding;
 - (e) the nature of the Dispute and the date on which the Dispute commenced;
 - (f) copies of any correspondence, notices, plans, data or other information which may be directly relevant to the matter or issue;
 - (g) a succinct statement of the result, remedy or outcome sought by the applicant; and
 - (h) a succinct statement of the basis upon which the applicant believes that result, remedy or outcome to be just and reasonable.

64.8 A Disputes Commission may request additional information from the applicant, from the Board, or from another Member. The applicant, the Board or that other Member shall provide that information (subject to rights or privileges and to the law relating to secrecy and confidential information) to the Disputes Committee so constituted, within the time prescribed by the Disputes Committee (or otherwise within a reasonable time).

64.9 The determination by a Disputes Committee of a Dispute shall be final and binding on the parties to the Dispute.

65 AMENDMENT OF MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

65.1 Amendment of the Memorandum of Association or the Articles of Association shall be the subject of a special resolution duly passed in accordance with the terms of the Act.

66 WINDING UP

66.1 The winding up shall be in accordance with the Act.

66.2 The Company shall not be wound up voluntarily if its net assets are in excess of its subscribed Capital, except with:

- (a) the consent of not less than three-fourths of the Members present and voting; or
- (b) the sanction of the Supreme Court of Western Australia.

66.3 In the event of liquidation of the Company no Member shall receive from the liquidation any amount exceeding the Capital paid up in respect of the shares held by that Member.

66.4 The liquidator shall treat and apply any surplus funds in the hands of the liquidator after:

- (a) paying all debts and expenses of the winding up; and
- (b) paying to the Members the full amounts to which they are respectively entitled under the foregoing provision;

as if they were surplus profits available for distribution.

However, these surplus funds are payable:

- (c) only to the Members who have done business with the Company during the last 5 completed financial years; and
- (d) in proportion to the business done by the Member with the Company; or
- (e) at the election of a liquidator, in proportion to the profits earned by the Company on the Members' business.

If (for any reason) it is not possible to distribute surplus funds as above, then the funds shall pass to the Water Corporation of Western Australia or its successor in title.

DATED the _____ day of _____

SIGNATURE OF SUBSCRIBER

WITNESS TO SIGNATURE

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Signature

Signature

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Occupation

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