

# CORPORATIONS ACT

A Company Limited by Guarantee

## Constitution of the RANZCOG RESEARCH FOUNDATION

ACN 004 303 744

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 In this Constitution -

**'Act'** means the Corporations Act, 2001 (C'th);

**'College'** means The Royal Australian and New Zealand College of Obstetricians and Gynaecologists;

**'Constitution'** means this constitution of the Foundation as amended from time to time;

**'Board'** means the Board of Directors of the Foundation appointed under this Constitution;

**'Board Member'** means a member of the Board, each member of which shall be a Director of the company;

**'Foundation'** means the RANZCOG Research Foundation constituted as a company limited by guarantee under this Constitution;

**'Member'** means a person specified in the Register as a member;

**'Membership Financial Year'** means the membership financial year of the Foundation, from 1 July to 30 June;

**'Office'** means the registered office for the time being of the Foundation;

**'Chairperson'** means the person for the time being appointed to that office by the Board;

**'Register'** means the Register of Members required to be kept under this Constitution and the Act;

**'Regulation'** means any Regulation made in accordance with clause 8.3;

**'Trainee'** means a person recognised by the College as a participant in the College Fellowship Training Program.

## 1.2 References to the Act

Unless the context otherwise requires, a reference to –

- (a) the Act includes any Regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; and
- (b) a section of the Act includes any corresponding section for the time being in force.

## 1.3 Presumptions of Interpretation

Unless the context otherwise requires, a word which denotes –

- (a) the singular includes the plural and vice versa;
- (b) a person includes an individual, a body corporate, a partnership, a firm, unincorporated association or institution and a government body; and
- (c) a notice includes any consent, publication or other written communication.

## 1.4 Application of the Act

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

## 1.5 Headings

Headings do not affect the interpretation of this Constitution.

## 1.6 Replaceable Rules

The replaceable rules in the Act do not apply.

## 2. OBJECTS

2.1 The objects for which the Foundation is established are to -

- (a) encourage and promote research, education and the advancement of practice in obstetrics and gynaecology, women's health and reproductive sciences;
- (b) in support of such objects, encourage and develop the work of clinical researchers and scientists in the fields of obstetrics, gynaecology, women's health and reproductive sciences through the awarding of grants, scholarships, fellowships, prizes and awards from the funds of the Foundation;
- (c) support and encourage the research aspirations of College trainees and members, with particular emphasis on promising trainees and early career Fellows;
- (d) promote the importance of high quality and innovative clinical and scientific research in the fields of obstetrics, gynaecology, women's health and reproductive sciences; and
- (e) promote and raise awareness of research in obstetrics, gynaecology, women's health and reproductive sciences with a view to improving outcomes in the areas of prevention, cure and care in disorders associated with women's health.

2.2 In pursuit of the achievement of those objects, the Foundation may -

- (a) raise funds to support the Foundation's objects;
- (b) at its discretion, accept any gift, endowment or bequest made to the Foundation generally or for the purpose of any specific object and to carry out and administer as trustee any trusts attached to any such gift, endowment or bequest;
- (c) foster contributions to the Foundation from Fellows, medical practitioners, Governments, industry, philanthropic organisations and the community generally;
- (d) work closely with the College, hospitals, universities, relevant institutes and other bodies to promote opportunities for research training for College trainees and members, with particular emphasis on trainees and early career Fellows;
- (e) maintain the Foundation as a public development and philanthropic fund in support of its objects; and
- (f) do all such other things as are incidental or conducive to the attainment of the objects and shall have all powers to do so, save as required or limited by law.

### **3. MEMBERSHIP OF THE FOUNDATION**

#### **3.1 Members**

Membership of the Foundation shall be open to -

- Fellows and members of The Royal Australian and New Zealand College of Obstetricians and Gynaecologists; and
- other persons who have an interest in the aims and objectives of the Foundation.

#### **3.2 Admission to Membership**

3.2.1 Any person seeking to become a member of the Foundation shall apply in writing in such form as the Foundation from time to time prescribes. The application must be accompanied by such evidence of the person's qualifications or eligibility as the Foundation may require.

3.2.2 Every application for membership which is in the required form must be submitted to the next meeting of the Board after the receipt of the application. The Board shall consider the application and shall determine the admission or rejection of the applicant.

3.2.3 The Foundation forthwith shall give notice in writing to any person who has been admitted to membership, together with advice of any entrance fee and / or subscription payable. The admission to membership of any person shall not be of effect unless and until that person has paid any entry fee or subscription payable.

#### **3.3 Names to be entered in the Register**

The name of any person admitted to membership of the Foundation shall be entered in the Register.

#### **3.4 Right to Refuse Membership**

The Foundation has the absolute right to refuse to admit to membership any person without giving any reason for that decision.

### **3.5 Representation of Corporations**

Any corporation which is a member of the Foundation may authorise in writing any person it considers fit to act as its representative at any general meeting of the Foundation. Any person so authorised shall be entitled to exercise the same powers on behalf of the corporation he / she represents as that corporation could exercise if the corporation was an individual member of the Foundation.

### **3.6 Regulation**

The Board may, by regulation, specify membership criteria, classes of members and the rights and privileges of members and otherwise not inconsistent with this Constitution.

## **4. MEMBERSHIP SUBSCRIPTIONS**

4.1.1 The entrance fee (if any) and the annual subscription fee payable by members of the Foundation shall be determined by the Board. The Board shall review the fees each year.

4.1.2 All membership subscriptions shall become due and payable in advance on 1 July each year.

4.1.3 If the subscription of a member remains unpaid for a period of six calendar months after it becomes due, the member may be debarred from all privileges of membership by resolution of the Board. The Board may, if it thinks fit, reinstate the member upon payment of all arrears.

## **5. CESSATION OF MEMBERSHIP**

### **5.1 Automatic termination of membership**

Subject to this Constitution, the membership of any member terminates if the member -

- (a) delivers to the Foundation a written notice of resignation as a member of the Foundation;
- (b) dies;
- (c) becomes a person whose estate or person is liable to be dealt with in any way under the law relating to mental health or disability;
- (d) fails to pay the annual subscription due to the Foundation for a period of twelve months after the due date for payment.

### **5.2 Termination of membership by resolution of the Board**

5.2.1 Subject to this Constitution, the Board may at any time terminate the membership of a member if the member -

- (b) refuses or neglects to comply with the provisions of this Constitution or any applicable Regulation made by the Board;
- (c) engages in conduct which in the opinion of the Board is unbecoming of members or is prejudicial to the interests of the Foundation; or
- (d) is found guilty by a Court of an indictable offence.

5.2.2 A decision of the Board under subclause 5.2.1 is not effective unless -

- (a) the member concerned is given a notice of the resolution to be considered by the Board and a copy of any business papers circulated to Board Members regarding the resolution not less than 14 days prior to the date of the meeting. If the business papers do not contain particulars of any allegations supporting the resolution that is to be considered, a statement setting out those allegations must be given;

- (b) the member has been invited and permitted to attend that part of the meeting of the Board at which the resolution is considered and permitted to make submissions to the meeting in writing and orally;
- (c) the member is given an opportunity to respond to any matters raised in the meeting. The Board may ask the member to leave the meeting during its deliberations once submissions from all interested parties are complete; and
- (d) notice of the decision of the Board is given promptly to the member.

### **5.3 Name to be removed from Register**

The name of any person ceasing to be a member of the Foundation shall be removed from the Register.

### **5.4 Continuing obligations**

5.4.1 Any person who ceases to be a member of the Foundation shall forfeit all the rights and privileges of membership and shall have no rights in or claim upon the Foundation for the property or funds of the Foundation except as a creditor.

5.4.2 Termination of membership for any reason does not affect the liabilities and obligations of a member (whether they arise under this Constitution or otherwise) existing at the date of termination or which arise or become known after that date out of or by reason of facts or circumstances occurring or in existence at or before that date.

## **6. GENERAL MEETINGS OF THE FOUNDATION**

### **6.1 Annual General Meeting**

6.1.1 An Annual General Meeting of the members must be held before the end of November in each year.

6.1.2 Subject to subclause 6.1.1, the Board shall determine the time and the place of the Annual General Meeting.

### **6.2 Calling Meetings of Members**

6.2.1 The Board may call a meeting of members.

6.2.2 The Board must call a general meeting as required under the Act or if the Foundation receives a written request from the lesser of -

- (a) at least 5% of members who are entitled to vote at the general meeting; or
- (b) at least 100 members who are entitled to vote at the general meeting;

and the written request -

- (c) states the resolutions to be proposed at the general meeting; and
- (d) is signed by all the members making the request.

6.2.3 If members requisition a general meeting in accordance with subclause 6.2.2,

- (a) the Board must call the general meeting within 21 days after the request is given to the Foundation; and
- (b) the meeting must be held within 2 months after the request is given to the Board.

6.2.4 If the Board does not call a general meeting that was requisitioned by members in accordance with subclause 6.2.3 within 21 days after the request is given to the Foundation, then members with more than 50% of the votes of all the members who made the request under subclause 6.2.2 may call and arrange to hold a general meeting.

### 6.3 Notice requirements

6.3.1 At least 21 days notice must be given of a meeting of members unless the Corporations Act permits shorter notice.

6.3.2 Subject to subclause 6.3.1, a notice of a meeting of members must -

- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
- (b) state the general nature of the meeting's business; and
- (c) if a special resolution is to be proposed at the meeting-set out an intention to propose the special resolution and state the resolution; and
- (d) if a member is entitled to appoint a proxy, contain a statement setting out that the member has a right to appoint a proxy.

## 7. PROCEDURE AT A GENERAL MEETING

### 7.1 Annual General Meeting Business

The business of the Annual General Meeting shall be to -

- (a) receive and consider the report of the Board;
- (b) consider the annual financial report and auditor's report;
- (c) consider any proposed alteration to the Constitution;
- (d) in accordance with the Constitution, declare the result of the election of members of the Board in place of those retiring; and
- (e) transact any other business which ought to be transacted at an Annual General Meeting.

### 7.2 Quorum at a general meeting

7.2.1 Business may not be transacted at a general meeting unless a quorum of members is present at the time when the meeting proceeds to business and while business is being conducted.

7.2.2 Except as otherwise set out in this Constitution, 7 members present in person and entitled to vote at a general meeting is a quorum.

7.2.3 If a quorum is not present within 15 minutes of the time appointed for a general meeting, or a longer period allowed by the Chairperson, the meeting shall stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Chairperson.

7.2.4 At an adjourned meeting, if a quorum is not present within 15 minutes of the time appointed for the meeting, the members present and entitled to vote shall be a quorum and may transact the business for which the meeting was called.

### 7.3 Chairperson

7.3.1 A general meeting shall be chaired by -

- (a) the Chairperson of the Board; or
- (b) if the Chairperson is absent or unable or unwilling to act, the Deputy Chairperson of the Board; or
- (c) if both the Chairperson and the Deputy Chairperson are absent or unable or unwilling to act, a Board Member elected by the members present.

7.3.2 Subject to this Constitution, the Chairperson's ruling on all matters relating to the order of business and the procedure and conduct of a general meeting (including any poll or ballot) is final and no motion of dissent from a ruling of the Chairperson may be moved.

#### **7.4 Adjournment of meetings**

7.4.1 The Chairperson may, with the consent of any meeting at which a quorum is present and must if directed by the meeting, adjourn the meeting to another time and to another place.

7.4.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

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

#### **7.5 Voting**

7.5.1 At a general meeting a resolution put to the vote of the meeting is decided on a show of hands unless a ballot is (before or on the declaration of the result of the show of hands) demanded.

7.5.2 Subject to this Constitution, every member present in person has one vote on a show of hands and every member present in person or by proxy has one vote on a ballot.

7.5.3 If there is an equality of votes, whether on a show of hands or on a ballot, the Chairperson has a casting vote in addition to the Chairperson's deliberative vote.

7.5.4 An objection to the qualification of a voter must be referred to the Chairperson who must rule on the objection before a vote is taken.

7.5.5 If a ballot is not duly demanded, a declaration by the Chairperson that, on a show of hands, a resolution has been carried or carried unanimously or by a particular majority, or lost and an entry to that effect in the book containing the minutes of the general meetings of members is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

#### **7.6 Conduct of a ballot**

7.6.1 A ballot may not be taken on the election of a Chairperson or on a question of adjournment.

7.6.2 A ballot may be demanded by -

- (a) the Chairperson; or
- (b) any five Members present in person or by proxy entitled to vote.

The demand for a ballot may be withdrawn.

7.6.3 The demand for a ballot does not prevent the continuance of a meeting for the transaction of business other than the question on which the ballot is demanded.

7.6.4 If a ballot is duly demanded, it must be taken in the manner and at such time as the Chairperson directs. The result of the ballot is the resolution of the meeting on the question concerned.

#### **7.7 Proxies**

7.7.1 A document appointing a proxy (which for the purposes of this Constitution includes a power of attorney of a member appointing another member to vote on the first mentioned member's behalf) may be in the form issued with the notice of the meeting or in a common or usual form approved by the Board.

7.7.2 A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution other than as specified in the document (if any).

7.7.3 The document appointing a proxy and any power of attorney or other authority (if any) under which the proxy is signed (or a copy of that power or authority certified to be a true copy by a legal practitioner or justice of the peace) must be given (and may be given by facsimile) to the Foundation at the Office, or at another place specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting.

7.7.4 A vote given in accordance with the terms of a document appointing a proxy is valid despite the occurrence of any one or more of the following events if no notice in writing of any of those events has been received by the Secretary at the Office before the commencement of the meeting or adjourned meeting at which the document is used -

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed; or
- (c) the termination of membership of the member.

### **7.8 Only financial members to vote**

No member is entitled to -

- (a) be present;
- (b) vote on any question either personally or by proxy; or
- (c) be reckoned in a quorum,

at any general meeting of the Foundation if his or her annual membership subscription remains unpaid beyond the due date by more than six months.

### **7.9 Postal Ballot**

7.9.1 In respect of any business which validly may be considered at a general meeting (including an Annual General Meeting) pursuant to this Constitution, the Board may (in lieu of a meeting) conduct a Postal Ballot of members (referred to in this Constitution as a 'Postal Ballot').

7.9.2 At least 30 days prior to the closing date of a Postal Ballot, the Secretary shall send to each member entitled to vote ballot papers, giving particulars of the business in relation to which the Postal Ballot is being conducted, an explanation of the method of voting and a voting form (all in a form and with such content as the Board may approve) and shall give members notice of the closing date of the ballot.

7.9.3 The Secretary shall receive all voting forms received from members in respect of a Postal Ballot and shall promptly advise the Board of the result of the Postal Ballot. Any voting form received at the office after 1700 hours on the closing date of a Postal Ballot shall be deemed invalid and shall not be counted.

7.9.4 In the event of an equal number of votes in respect of any business for which a Postal Ballot is conducted, the Chairperson shall have a second or casting vote.

7.9.5 In all other respects, subject to this Constitution, the Board shall determine any other procedures in relation to the conduct of any Postal Ballot and shall have power to make Regulations for that purpose.

7.9.6 In the event of any dispute by any member in relation to the validity or conduct of any Postal Ballot the member shall, within 30 days of the closing date of the Postal Ballot, give notice in writing to the Board stating the grounds of his or her complaint. The Board itself may investigate the complaint or may appoint a committee for that purpose. After hearing the complaint, the Board shall determine the matter and its decision thereon shall be final.

## **8. BOARD OF DIRECTORS**

### **8.1 Manage general business of the Foundation**

8.1.1 The business of the Foundation shall be managed by the Board of Directors which may exercise all powers of the Foundation as are not required, by the Act or by this Constitution, to be exercised by the Foundation in general meeting or prescribed by the Foundation in general meeting. No resolution or Regulation made by the Foundation in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution or Regulation had not been passed or made.

8.1.2 The Board shall invest the funds of the Foundation not immediately required for the purposes of the Foundation in any one or more of the modes of investment from time to time authorised by law for the investment of trust funds.

8.1.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Foundation shall be signed, drawn, accepted, endorsed or otherwise executed as the Board from time to time determines.

### **8.2 Power to delegate**

8.2.1 The Foundation may delegate any of its powers (other than that of delegation) to committees comprising persons appointed by the Board.

8.2.2 The Board may revoke any delegation of its powers by ordinary resolution.

8.2.3 Any committee exercising the delegated power of the Board shall comply with any conditions or limitations imposed by the Board.

### **8.3 Regulations**

8.3.1 The Board shall have power from time to time to make, amend and repeal all such Regulations as it deems necessary or desirable for the proper conduct and management of the Foundation, the Regulation of its affairs and the furtherance of its objectives.

8.3.2 Without in any way limiting the power of the Board under subclause 8.3.1, the Board may make, amend and repeal Regulations in relation to -

- (a) procedural matters in relation to application for membership of the Foundation;
- (b) fees and annual subscriptions payable by members of the Foundation;
- (c) rights and privileges to be accorded to members of the Foundation;
- (d) the nomination and election of Board Members and the Chairperson of the Foundation;
- (h) the conduct of postal ballots of members of the Foundation; and
- (i) the membership, purpose and proceedings of committees of the Foundation.

8.3.4 No Regulation shall be inconsistent with, nor shall it affect the repeal or modification of, anything contained in this Constitution.

8.3.5 Any Regulation made by the Board may be set aside by a special resolution of a general meeting of the Foundation.

8.3.6 Subject to sub-clause 8.3.5, all Regulations shall be binding upon all members. A record of all Regulations shall be kept in such place as the Foundation determines.

## 9. BOARD MEMBERS

### 9.1 Composition of Board

9.1.1 The Board shall consist of

- (a) the President for the time being of The Royal Australian and New Zealand College of Obstetricians and Gynaecologists;
- (b) one other member of the College Council nominated by the College;
- (c) the Chairman appointed for the time being of the Scholarship Selection Committee;
- (d) up to five other members of the Foundation;
- (e) a qualified accountant / auditor; and
- (f) a qualified legal advisor.

9.1.2 The College representative elected under subclause 9.1.1(b) shall not reside in the same country as the President.

9.1.3 Subject to clause 9.3, the Board Members appointed under subclause 9.1.1(d) shall be nominated and elected by the members of the Foundation at each Annual General Meeting.

9.1.4 The accountant / auditor and the legal advisor appointed under subclauses 9.1.1 (e) and (f) shall be appointed to the Board by the remaining Board Members on the joint recommendation of the Chairperson and the College President at the first Board meeting held after each Annual General Meeting.

9.1.5 A majority of the total Board members must be Fellows of the College.

9.1.6 The composition of the Board and / or the number of Board Members may be varied by the Foundation in general meeting from time to time.

9.1.7 The Board may co-opt up to 3 additional members with specific expertise as it may determine from time to time.

### 9.2 Procedure for the Election of Board Members

9.2.1 Every candidate for election as a Board Member under subclause 9.1.1(d) shall be a financial member of the Foundation and shall be nominated in writing, in a form approved by the Foundation, by two other financial members.

9.2.2 Every such candidate shall confirm his / her candidature by countersigning the nomination, which must be left at or received by post at the office not later than the closing time for nominations advised at the time nominations are invited.

9.2.3 At the expiration of the time for receiving nominations the Secretary shall prepare a list containing the names of all persons nominated and eligible for election.

9.2.4 If the number of nominations for the positions of Board Member does not exceed the number of vacancies, the candidate or candidates so nominated shall be declared elected at the Annual General Meeting.

9.2.5 If the number of nominations for election to the Board exceeds the number of vacancies, a postal ballot of members entitled to vote shall be taken.

9.2.6 A postal ballot of the members entitled to vote shall be conducted in accordance with subclause 7.9 or such Regulations as the Board may make for this purpose from time to time.

9.2.7 The candidate or candidates for any position(s) of Board Member who receive most votes shall be declared elected at the Annual General Meeting. In the case of two or more candidates for any position receiving an equal number of votes, the Secretary shall determine the candidate deemed to have the higher number of votes by lot.

9.2.8 If the number of nominations for the position of Board Member is less than the number of vacancies then a casual vacancy or casual vacancies as the case may be shall be deemed to have arisen in relation to that position.

### 9.3 Term of Office of Board Members

9.3.1 The elected term of office of Board Members shall be two years commencing at the Annual General Meeting in the year of their election.

9.3.2 A Board Member who has served his / her two year term of office as prescribed in subclause 9.3.1 shall retire from office at the second Annual General Meeting held after that Board Member is confirmed elected.

9.3.3 Retiring Board Members shall be eligible for re-election provided that, subject to subclause 10.4.5, no person shall serve more than three consecutive terms as a Board Member.

9.3.4 Notwithstanding subclause 9.3.2, no more than three of the five Board Members elected pursuant to subclause 9.1.1(d) shall be required to retire from office at the same time. Where the effect of subclause 9.3.2 would be to require more than three Board Members to retire at the same time, the three Board Members who shall retire at that time shall be determined having regard in the first instance to subclause 9.3.3 and otherwise shall be determined by lot conducted by the Secretary.

9.3.5 Where pursuant to subclause 9.3.4 a Board Member continues as a Board Member beyond the end of that Board Members' term of office, the Board Member shall retire at the next Annual General Meeting. The additional one year served by that Board Member shall not be deemed to be a term of office for the purposes of subclause 9.3.3.

### 9.4 Removal of Board Members

9.4.1 A Board Member may be removed from office by ordinary resolution of a general meeting of the Foundation.

9.4.2 If a Board Member is removed from office by ordinary resolution of a general meeting of the Foundation, that meeting may appoint another qualified person to fill the vacancy created for the remaining term of the Board Member who was removed from office. If the meeting does not appoint another person to fill the vacancy, the vacancy may be filled by the Board.

### 9.5 Termination of Office of Board Members

9.5.1 The office of a Board Member becomes vacant if the Board Member -

- (a) resigns that office by notice in writing to the Foundation;
- (b) ceases to be a member of the Foundation;
- (c) is absent from two consecutive meetings of the Board (other than meetings of the Board called on less than 48 hours notice) without leave of absence;
- (d) is directly or indirectly interested in any contract or proposed contract with the Foundation and fails to declare that interest in the manner required by the Corporations Act (or at the first meeting of the Board after the relevant facts have come to the Board Member's knowledge) and the Board determines that the Board Member should no longer be a Board Member;
- (e) is removed from office pursuant to subclause 9.4.1;
- (f) becomes bankrupt;

- (g) becomes a person whose estate or person is liable to be dealt with in any way under the law relating to mental health or disability; or
- (h) is removed from office by operation of the Act.

## **9.6 Casual Vacancies**

9.6.1 A casual vacancy shall mean any vacancy in the membership of the Board caused otherwise than by the retirement of a Board Member at the end of his / her term.

9.6.2 If the office of a Board Member becomes vacant during the Board Member's term of office that position shall be filled by election from the members eligible to stand for that position.

9.6.3 Any Board Member appointed pursuant to this clause shall hold office only until the next election of Board Members and shall be eligible for re-election in accordance with this Constitution.

9.6.5 For the purposes of this clause, the period of time served pursuant to subclause 9.6.3 shall not be counted as a period of office.

## **10. MEETINGS OF THE BOARD**

### **10.1 Meetings**

10.1.1 The Board may meet for the transaction of business and adjourn and otherwise regulate its meetings as it thinks fit.

10.1.2 The Secretary must convene a meeting of the Board on the requisition of the Chairperson or any two Board Members.

### **10.2 Notice of Board Meetings**

10.2.1 At least 24 hours notice of a meeting of the Board must be given to each Board Member specifying the place, time and date of the meeting and the general nature of items to be discussed.

10.2.2 Shorter notice may be given if at least 75% of the Board Members agree or if the Chairperson considers that the business of the meeting is urgent.

### **10.3 Quorum**

10.3.1 The quorum necessary for the transaction of the business of the Board is one half of the total membership of the Board, unless the Board resolves that a greater number shall constitute a quorum.

10.3.2 If at any time the number of Board Members is less than a quorum, the Board may meet only for the purpose of filling any casual vacancies or for calling a general meeting of members.

10.3.3 The Board may act notwithstanding any vacancy on the Board.

### **10.4 Chairperson and Deputy Chairperson**

10.4.1 At the first meeting of the Board after each Annual General Meeting, the Board Members shall elect from their number a Chairperson and / or a Deputy Chairperson, where the occupant of either of those positions has completed his / her two-year term in that position.

10.4.2 Only Board Members who have served at least one term on the Board shall be eligible to stand for election as Chairperson.

10.4.3 The Chairperson shall take the Chair at all meetings of the Board.

10.4.4 If the Chairperson is not present at any meeting of the Board within fifteen minutes after the time appointed for holding the meeting, the Deputy Chairperson shall take the chair. In the absence of both the Chairperson and the Deputy Chairperson, the Board Members present shall elect another Board Member to be Chairperson of the meeting.

10.4.5 Notwithstanding subclause 9.3.2, the Chairperson shall be entitled to stand for re-election for not more than two further consecutive two-year terms as Chairperson. That is, a person may serve no more than three consecutive terms as Chairperson.

10.4.6 In the event that a Chairperson who has served at least three consecutive terms on the Board in any capacity exercises the right to stand for re-election and is re-elected to the Board but is not re-elected as Chairperson, that person shall forfeit his / her place on the Board forthwith and the vacated position on the Board shall be filled as a casual vacancy.

## 10.5 Voting

10.5.1 Questions arising at a meeting of the Board shall be decided by a majority of votes of Board Members present and voting. A decision by a majority of the Board Members present and voting is for all purposes a decision of the Board.

10.5.2 The Chairperson of the meeting has a casting vote in addition to a deliberative vote where there is an equality of votes.

## 10.6 Written resolution

10.6.1 A written resolution signed or approved by electronic mail by all Board Members (other than any Board Member on leave of absence) is taken to be a decision of the Board Members passed at a meeting of the Board Members duly convened and held.

10.6.2 The written resolution may consist of -

- (a) several documents in like form, each signed by one or more Board Members and, if so signed, takes effect on the last date on which a Board Member signs one of the documents; or
- (b) the printed record of several electronic mail messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last Board Member sends such a message.

## 10.7 Telephone or Video Conference Meetings

A meeting of Board may be held with one or more of the Board Members taking part by telephone or other means of audio or audio-visual communication and when each of the Board Members participating in the communication is able to read the written contributions or hear each of the other participating Board Members. A meeting of the Board may only be held in this manner where all of the Board Members (other than any Board Member on leave of absence) have access to the communication facilities to be used for the meeting.

## 10.8 Defects in appointment or qualification of a Board Member

All acts done in good faith by a meeting of the Board or of a committee of the Board or by any person acting as a Board Member or committee member of the Foundation will be valid and effective notwithstanding that it is afterwards discovered that there was some defect in the appointment of that person or that the person was disqualified from acting for any reason.

## 10.9 Board Member's interest

10.9.1 This clause 10.9 applies if -

- (a) a Board Member has an interest or duty in relation to a matter that is not a material personal interest; or
- (b) a Board Member with a material personal interest in relation to the Foundation's affairs -
  - (i) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Foundation's affairs before acting in a matter that relates to the interest; or
  - (ii) does not have to disclose his or her material personal interest to the other Board Members under the Act.

10.9.2 Subject to clause 10.10, the Board Member is not in breach of his or her duties to the Foundation merely because he or she acts in matters that relate to the Board Member's interest.

10.9.3 In relation to any transactions that relate to the Board Member's interest -

- (a) the transactions may proceed;
- (b) the Foundation cannot avoid the transactions merely because of the Board Member's interest; and
- (c) the Board Member may retain benefits under the transactions despite the Board Member's interest.

## 10.10 Participation by interested Board Member

10.10.1 This clause applies to a Board Member who has a material personal interest in a matter that is being considered at a Board meeting.

10.10.2 Subject to subclause 10.10.5, the Board Member must not -

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.

10.10.3 The Board Member is not in breach of duty to the Foundation merely because he or she does not act in relation to the matter.

10.10.4 The Board may vote on matters that relate to the Board Member's interest in the Board Member's absence.

10.10.5 The prohibition in subclause 10.10.2 does not apply if -

- (a) the Board Member does not have to disclose his or her material personal interest to the other Board Members under the Act; or
- (b) Board Members who do not have a material personal interest in the matter have passed a resolution that -
  - (i) identifies the Board Member, the nature and extent of the Board Member's interest in the matter and its relation to the affairs of the Foundation; and
  - (ii) states that those Board Members are satisfied that the interest should not disqualify the Board Member from voting or being present.

## 11. REMUNERATION

### 11.1 Remuneration of Board Members

11.1.1 The income and property of the Foundation must be applied solely towards the promotion of the objects of the Foundation as set out in this Constitution. Subject to this clause, no income or property of the Foundation may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to any Board Member.

- 11.1.2 Nothing in this clause prevents –
- (a) the payment in good faith of –
    - (i) remuneration to any Board Member for services actually rendered to the Foundation;
    - (ii) an amount to any Board Member in return for any services actually rendered to the Foundation or for goods supplied in the ordinary course of business;
    - (iii) interest (at a rate not exceeding any rate which may at any time be fixed for the purpose of this clause by regulation but not exceeding the highest rate charged by trading banks carrying on business in Australia on overdraft accounts of less than \$100,000) on money borrowed from any Board Member; or
    - (iv) reasonable rent for premises let by any Board Member; or
  - (b) the Foundation from providing services or information to members on terms which are different from the terms under which services or information are provided to persons who are not members.
- 11.1.3 No remuneration or other benefit in money or money's worth shall be paid or given by the Foundation to any Board Member except –
- (a) for the payment of out-of-pocket expenses incurred by the Board Member in the performance of any duty as Board Member, where the amount payable does not exceed any amount previously approved by the Board; or
  - (b) for payment for any service rendered to the Board by the Board Member in a professional or technical capacity, other than in the capacity of Board Member member, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and commercially would be reasonable payment for the service.
- 11.1.4 No Board Member may be appointed to any salaried office of the Foundation.

## **12. MINUTES OF MEETINGS**

### **12.1 Secretary to attend meetings**

Unless directed otherwise by the Board, the Secretary must attend all meetings of the Board and all general meetings of the Foundation and ensure that a record of the proceedings of those meetings is kept.

### **12.2 Preparation, circulation and approval of minutes**

12.2.1 The Secretary must cause draft minutes of all meetings to be promptly circulated to all Board Members for information and approval.

12.2.2 Subject to any objection, the Chairperson of the meeting or the next such meeting must sign the minutes to certify that they are a true and correct record of the proceedings of the meeting.

### **13. COMMITTEES AND ADVISORY COMMITTEES**

#### **13.1 Committees**

The Board may delegate any of its powers and / or functions to one or more committees consisting of such persons from time to time as the Board thinks fit. Any committee so formed shall conform to any Regulations that may be made by the Board. The Board shall appoint the Chairperson of each committee.

#### **13.2. Advisory Committees**

The Board may appoint one or more advisory committees consisting of such persons from time to time as the Board thinks fit. Advisory committees shall act in an advisory capacity only. An advisory committee shall conform to any Regulations that may be made by the Board. The Board shall appoint the Chairperson of each advisory committee.

#### **13.3 Conduct of Committees**

13.3.1 Every committee or advisory committee may meet and adjourn as it thinks proper. Subject to any Regulation made by the Board, each member of a committee or advisory committee shall have one vote.

13.3.2 Questions arising at any meeting shall be determined by a majority of votes of the members present. In the event of an equality of votes, the chairperson of the meeting shall have a second or casting vote.

13.3.3 The Chairperson shall be *ex officio* a member of each committee and advisory committee.

13.3.4 The Board, by resolution, may remove any member of a committee or advisory committee and where considered necessary may appoint another person in his / her place.

### **14 SECRETARY**

14.1 The Board shall appoint a Secretary for the purposes of the Act who shall be -

- (a) the Chief Executive Officer of the College; or
- (b) a member of the Foundation appointed as an honorary Secretary in the event that the office of Chief Executive Officer is vacant.

14.2 The duties of the Secretary shall include -

- (a) ensure that due notice is given, agendas prepared and accurate minutes kept of all meetings of the Foundation, its Board and any Committees;
- (b) cause copies of the minutes of all meetings to be forwarded to all members entitled to receive such minutes;
- (c) ensure the sending, receipt and proper filing of all correspondence;
- (d) issue notices of all resolutions, decisions and amendment to the Constitution;
- (e) notify the Board Members and all members of committees of their election or appointment and issue notices of all meetings;
- (f) maintain all statutory registers including the Register which shall record each member's name, home address, the date on which his or her membership commenced and the date on which membership ceased and any other information specified by the Board from time to time; and
- (g) file all statutory notices and returns.

## 15. ACCOUNTS

### 15.1 The Foundation to keep accounts

The Board must cause proper books of account to be kept in accordance with the Act.

### 15.2 Where accounts to be kept

The books of account must be kept at the Office or, subject to the Act, at such other place or places as the Board thinks fit.

### 15.3 Accounts open for inspection

The books of account must always be open for the inspection of Board Members.

Subject to the Act, the Board may from time to time determine at what times and places and under what conditions the accounts and books of the Foundation or any of them may be open for inspection by members.

### 15.4 Annual Accounts

The Board must cause to be prepared, circulated to and laid before the members in general meeting such income and expenditure accounts, balance sheets, group accounts (if any) and reports as are from time to time required by the Act.

## 16. AUDIT

15.1 Auditors of the Foundation must be appointed and removed and their duties regulated in accordance with the Corporations Act.

## 17. NOTICES

### 17.1 Means of giving notices

17.1.1 A notice pursuant to this Constitution must be given in writing and may be sent by -

- (a) mail (postal service);
- (b) facsimile - or
- (c) electronic mail,

to the appropriate address or number of the addressee.

17.1.2 A Board Member, Secretary or other person authorised by the Board may give notices on behalf of the Board. The signature on a notice given by the Foundation may be written, photocopied, printed or stamped.

17.1.3 Notices given to the Foundation must be marked for the attention of the Secretary.

### 17.2 Address for service

17.2.1 The address for service is -

- (a) in the case of a member or Board Member, the home address (or postal address, electronic mail address or facsimile number in the case of postal, electronic mail or facsimile dispatch) of the member or Board Member specified in the Register; and
- (b) in the case of the Foundation, the address (or any postal address, electronic mail address or facsimile number in the case of postal or electronic or facsimile dispatch) of the Office for the time being specified on the official stationery of the Foundation.

### 17.3 Notification of change of address

17.3.1 If the home address, postal address, electronic mail address or facsimile number of a member changes, the member must promptly give notice of the change to the Foundation.

17.3.2 The Foundation must promptly notify members of any change in its address.

### 17.4 Time notices are effective

17.4.1 Except if a later time is specified in a clause dealing with a notice or other communication, a notice is to be regarded as given, served, received and as having come to the attention of the addressee -

- (a) if delivered to the home address of the addressee, at the time of delivery;
- (b) if it is sent by post to the home address or postal address, on the third business day (or the seventh business day outside Australia) after sending, unless it is actually delivered earlier; or
- (c) if sent by electronic mail or facsimile to the electronic mail address or facsimile number of the addressee, at the time transmission is completed.

### 17.5 Proof of giving notices

17.5.1 Proof of the sending of a notice by facsimile and the time of completion of transmission may be established by production of a transmission report by the machine from which the facsimile or electronic transmission was sent which indicated that the facsimile or electronic mail was sent in its entirety to the facsimile number or electronic mail address of the addressee.

17.5.2 A certificate signed by a Board Member or the Secretary that a notice was delivered or posted at a particular time is conclusive evidence that the notice was delivered or posted at that time.

17.5.3 A certificate signed by a Board Member or the Secretary that a notice was sent by electronic mail at a particular time and that an "undeliverable mail" message has not been received in relation to it is conclusive evidence that the notice was sent and received at that time.

## 18. WINDING UP

18.1 Every member of the Foundation undertakes to contribute to the assets of the Foundation in the event of it being wound up while that member is a member, or within one year of that member ceasing to be a member, such amount as may be required not exceeding 20 dollars for the payment of the debts and liabilities of the Foundation contracted before ceasing to be a member and to the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

18.2 Where, on the winding-up or dissolution of the Foundation, there is a surplus of assets after satisfying all the Foundation's liabilities and expenses, the surplus shall not be paid to or distributed amongst the members but shall be given or transferred to some other institution having similar objects to those described in this Constitution situate within the Commonwealth of Australia and which –

- is required by its Constitution to apply its profits or income in promoting its objects;
- is prohibited from paying any profits or dividends to its members to the same extent as set out in this Constitution; and
- itself, is exempt from income tax.

18.3 That institution shall be determined by the Board prior to the dissolution of the Foundation or failing such determination, by application to an appropriate Court.

**19. INDEMNITY**

19.1 Every officer and past officer of the Foundation must be indemnified by the Foundation to the fullest extent permitted by law against a liability incurred by that person as an officer of the Foundation or a subsidiary of the Foundation including legal costs and expenses incurred in participating, being involved in or defending any legal proceedings. This indemnity does not extend to any liability incurred by the officer arising from any claim made by that officer against the Foundation (whether that claim is made solely by the officer or otherwise).

19.2 For the purposes of clause 19.1, 'legal proceedings' means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigations, whether civil or criminal, which relates to or arises in connection with the officer or agent being an officer or agent of the Foundation.

**20. LIABILITY INSURANCE**

To the extent permitted by the Corporations Act, the Foundation may enter into (and pay premiums on) a contract of insurance in relation to a person who is or has been an officer or agent of the Foundation or any other person.

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