

# Constitution

**AUSTRALIAN UNIVERSITIES  
QUALITY AGENCY**

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Corporations Law  
A Company Limited by Guarantee

**CONSTITUTION**  
**of**  
**AUSTRALIAN UNIVERSITIES QUALITY AGENCY**

**1. DEFINITIONS, INTERPRETATION AND STATUS**

**1.1 Definitions**

In this Constitution:

**"Board"** means the board of directors of the Company.

**"Company"** means the company named above whatever its name may be from time to time.

**"Corporations Law"** has the meaning given to that term by Part 3 of the *Corporations (Vic) Act 1990*, to the extent to which it applies to the Company.

**"Director"** means a director, for the time being, of the Company and includes, where the context so requires, an alternate director appointed in accordance with the Corporations Law.

**"Member"** means a person who is a member of the Company pursuant to the Corporations law.

**"Membership"** means membership of the Company.

**"Non-Self Accrediting Institution"** means an institution authorised to offer higher education programs which is not a Self Accrediting Institution.

**"Office"** means the registered office for the time being of the Company.

**"Officer"** has the meaning given in:

(a) section 241(4) of the *Corporations Law*, in the case of Article 21; and

(b) section 82A of the *Corporations Law*, in all other cases.

**"Relevant Act"** means an Act of the jurisdiction of any Member.

**"Secretary"** means the secretary for the time being of the Company, and if there are joint secretaries, any one or more of such joint secretaries.

**"Self Accrediting Institution"** means an institution offering higher education programs which has authority by or under a Relevant Act to certify the quality and standards of its own academic programs.

**"Technology"** includes radio, telephone, closed circuit television or other electronic means or telecommunications device for audio or audio-visual communication.

## **1.2 Application of *Corporations Law***

Except so far as a contrary intention appears anywhere in this Constitution:

- (a) section 110B of the *Corporations Law* is to operate to apply provisions of the *Corporations Law* in the interpretation of this Constitution so far as they can apply and with such changes as are necessary as if this Constitution were an instrument made under the *Corporations Law*, but is not to so apply sections 105, 109D, 109X and 109Y of the *Corporations Law*;
- (b) an expression used in a particular Part or Division of the *Corporations Law* which is given a special meaning by any provision of that Part or Division for the purposes of the whole or any part of that Part or Division has, in any provision of this Constitution which deals with a matter dealt with by the whole or any part of that Part or Division, the same meaning as in that Part or Division;
- (c) an expression which is given a general meaning by any provision of the *Corporations Law* has the same meaning in this Constitution; and
- (d) section 110C of the *Corporations Law* (which deals amongst other things with severance of invalid provisions) applies in the interpretation and operation of this Constitution as if it was an instrument made under the *Corporations Law*.

## **1.3 Replaceable rules**

Each of the provisions of the sections or sub-sections of the *Corporations Law* referred to as a replaceable rule in accordance with section 135(1) of the *Corporations Law* shall apply to the Company unless and to the extent expressly displaced in this Constitution.

## **1.4 Company limited by guarantee**

- (a) The Company is a company limited by guarantee.
- (b) Each Member undertakes to contribute an amount not exceeding 50 cents to the property of the Company if the Company is wound up at a time when that person is a Member for:
  - (i) payment of the debts and liabilities of the Company contracted before that person ceased to be a Member;
  - (ii) payment of the costs, charges and expenses of winding up the Company; and
  - (iii) adjustment of the rights of the contributories among themselves.

## 1.5 Objectives of the Company

### AUQA's Mission

AUQA is the principal national quality assurance agency in higher education with the responsibility of providing public assurance of the quality of Australia's universities and other institutions of higher education, and assisting in enhancing the academic quality of these institutions.

### AUQA's Objectives

AUQA is established to be the principal national quality assurance agency in higher education, with responsibility for quality audits of higher education institutions and accreditation authorities, reporting on performance and outcomes, assisting in quality enhancement, advising on quality assurance; and liaising internationally with quality agencies in other jurisdictions, for the benefit of Australian higher education.

Specifically, the objectives of AUQA are as follows:

- (a) Arrange and manage a system of periodic audits of:
  - (i) the quality of the academic activities, including attainment of standards of performance and outcomes of Australian universities and other higher education institutions;
  - (ii) the quality assurance arrangements intended to maintain and elevate that quality;
  - (iii) compliance with criteria set out in the National Protocols for Higher Education Approval Processes;and monitor, review, analyse and provide public reports on the quality of outcomes in Australian universities and higher education institutions.
- (b) Arrange and manage a system of periodic audits of the quality assurance processes, procedures, and outcomes of State, Territory and Commonwealth higher education accreditation authorities including their impact on the quality of higher education programs; and monitor, review, analyse and report on the outcomes of those audits.
- (c) Publicly report periodically on matters relating to quality assurance, including the relative standards and outcomes of the Australian higher education system and its institutions, its processes and its international standing, and the impact of the National Protocols for Higher Education Approval Processes on Australian Higher Education, using information available to AUQA from its audits and other activities carried out under these Objectives, and from other sources.
- (d) Develop partnerships with other quality agencies in relation to matters directly relating to quality assurance and audit, to facilitate efficient cross-border quality assurance processes and the international transfer of knowledge about those processes.

## 1.6 Independence of Operations

In performing its functions, the Company will be responsive to the policies of the Members but will act independently of the Members and will develop and adhere to its own policies, procedures and priorities consistent with the objects for which it was formed.

## 1.7 Powers of Company

Subject to the *Corporations Law*, the Company has all the powers necessary to achieve its objects, including the power to deal with real and personal property and the power to employ persons.

## 1.8 Distribution to Members

The Company will apply the income and property of the Company solely towards promoting the objects of the Company and no portion thereof will be distributed or paid to Members by way of dividend or otherwise except for:

- (a) the payment of any surplus on a winding up of the Company; or
- (b) the payment in good faith of:
  - (i) reasonable remuneration in consideration for services rendered or goods supplied to the Company in the ordinary course of business;
  - (ii) interest at a reasonable rate on money borrowed by the Company; or
  - (iii) reasonable rent for premises demised or let to the Company.

## 1.9 Amendment to the Constitution

In addition to any requirements imposed by the *Corporations Law*, any amendment to this Constitution shall require the approval of 2/3rds of the Members after considering the advice of the Board.

# 2. MEMBERSHIP

## 2.1 Membership

The members of the Company will be:

- (a) the Minister responsible from time to time for higher education in the Commonwealth (the "**Commonwealth Minister**"); and
- (b) the Minister responsible from time to time for higher education in each of the States and the Minister responsible from time to time for higher education in each of the Northern Territory and the Australian Capital Territory (the "**State and Territory Ministers**"),

each in his or her capacity as Minister of the Crown (each a "Minister" and collectively the "Ministers").

## **2.2 Membership not transferable**

Membership is not transferable.

## **2.3 Member can resign**

A Minister may resign as a Member by giving to the other Members and the Company 12 months notice and upon the expiration of that 12 month notice period, that Minister shall cease to be a Member.

## **3. CERTIFICATES**

Every Member will be entitled to one Certificate where required under the Corporations Law.

## **4. CONTRIBUTIONS**

Subject to the Corporations Law, the Ministers may from time to time agree to pay fees or levies to the Company (in accordance with a formula (agreed by the Ministers prior to incorporation of the Company or as changed by agreement between the Ministers from time to time) for determining the proportionate share of such contributions by the Members (the "**Contribution Formula**").

## **5. MEETINGS OF MEMBERS**

### **5.1 Calling meetings of Members**

- (a) The provisions of section 249C of the Corporations Law that apply as a replaceable rule are displaced.
- (b) The Members may call and arrange to hold general meetings in accordance with the Corporations Law.

### **5.2 Annual general meetings**

Where the *Corporations Law* requires the Company to hold annual general meetings, the Company will hold those annual general meetings in accordance with the *Corporations Law*.

### **5.3 Notice of Members' Meetings**

Notice of a meeting of Members must be given in accordance with the Corporations Law.

### **5.4 Persons entitled to notice of meeting of Members**

Notice of a meeting of Members is not required to be given to any person other than the persons entitled to receive notices of meetings of Members under the Corporations Law.

### **5.5 Persons entitled to attend meetings of Members**

All Members are entitled to attend meetings of Members as well as any other persons entitled to attend under the *Corporations Law*.

## **6. PROCEEDINGS AT MEETINGS OF MEMBERS**

### **6.1 Meetings**

Subject to the Corporations Law, the Members shall determine the procedures for conducting meetings of Members.

### **6.2 Quorum**

- (a) The provisions of section 249T(1) of the Corporations Law that apply as a replaceable rule are displaced. The remaining provisions of section 249T shall continue to apply as a replaceable rule.
- (b) A quorum for a meeting of Members is [5] Members.

### **6.3 Chairperson**

- (a) The provisions of section 249U of the Corporations Law that apply as a replaceable rule are displaced.
- (b) The Chairperson of the Ministerial Council, or a Minister nominated by the Chairperson of the Ministerial Council, will preside as chairperson at every meeting of Members.

### **6.4 General conduct of meetings**

- (a) Subject to the *Corporations Law*, the chairperson will be responsible for the general conduct of meetings of Members and for the procedures to be adopted at meetings of Members.
- (b) The chairperson may delegate the powers conferred by this Article to such person or persons as he or she thinks fit.
- (c) Nothing contained in this Article 6.4 will be taken to limit the powers conferred on the chairperson by law.

## **7. VOTES AT MEETINGS OF MEMBERS**

- (a) The provisions of section 250E of the Corporations Law that apply as a replaceable rule are displaced.
- (b) On a show of hands and on a poll at a meeting of Members, every Member present has one vote.

## **8. PROXIES**

### **8.1 Right to appoint proxy or attorney**

- (a) A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person (whether a Member or not) as the Member's proxy to attend and vote for the Member at the meeting.

- (b) A proxy may be appointed for all meetings or for any number of meetings or for a particular purpose.

## **8.2 Authority conferred on proxy**

Unless otherwise provided in the instrument, an instrument appointing a proxy will be taken to confer authority:

- (a) to agree to a meeting of Members being called by shorter notice than is required by the *Corporations Law*; and
- (b) to vote on a show of hands in accordance with the directions (if any) given in the instrument.

## **8.3 Deposit of proxy form before meeting**

An instrument appointing a proxy, to be effective, must be received by the Company:

- (a) at the place, fax number or electronic address as is specified in the notice of meeting of Members to which the proxy or attorney relates; or
- (b) at the Office or a fax number at the Office,

not less than one hour before the time scheduled for commencement of the meeting (or any adjournment of that meeting) at which the person named in the instrument intends to vote.

## **8.4 How proxy is to vote**

A Member may, but need not, specify the manner in which a proxy is to vote on a particular resolution.

# **9. DIRECTORS: APPOINTMENT AND REMOVAL**

## **9.1 Number of Directors**

- (a) The Company will have twelve (12) Directors each of which will be a person with significant experience in the business, government or academic sector which is appropriate to the objects for which the Company was formed comprising:
  - (i) eleven (11) Directors appointed by the Members in accordance with Article 9.1(b); and
  - (ii) one (1) Director appointed by the Board in accordance with Article 9.1(f).
- (b) The Members shall appoint the eleven (11) persons described in Articles 9.1(c) and (d) to be Directors.
- (c) Five (5) persons will be elected by the Chief Executive Officers of higher education institutions as follows:

- (i) Four (4) persons will be elected by the Chief Executive Officers of Self Accrediting Institutions; and
  - (ii) One (1) person will be elected by the Chief Executive Officers of Non-Self Accrediting Institutions.
- (d) Six (6) persons will be nominated by the Ministers as follows:
- (i) three (3) persons will be nominated by the Commonwealth Minister; and
  - (ii) three (3) persons will be nominated jointly by the State and Territory Ministers, at least one of whom will be a person with extensive knowledge and experience of higher education accreditation processes.
- (e) The Members shall determine a process for the election of the candidates for appointment as Directors contemplated by Article 9.1(c).
- (f) The Board may appoint one (1) person to be a Director, which Director shall be appointed by them as the Executive Director of the Company in accordance with Article 10, and to replace any such Director who resigns or otherwise ceases to hold office.
- (g) The first Directors will be 3 persons appointed as an interim Board by the persons who were specified in the application for the Company's registration under the *Corporation Law* as persons who consented to become Members and will hold office for such interim period as the Members determine pending the appointment of Directors pursuant to Article 9.1(b).
- (h) Subject to Article 9.1(i), the Directors shall elect one of the persons appointed under Article 9.1(b) who is not the Chief Executive Officer of a Self Accrediting Institution or a Non-Self Accrediting Institution to act as Chairman for a term of up to 3 years, which term may be renewed.
- (i) The first Chairman shall be either a person with extensive academic and administrative experience in higher education or extensive experience in industry and knowledge of higher education, who is not the Chief Executive Officer of a Self Accrediting Institution or a Non-Self Accrediting Institution, nominated by the Commonwealth Minister from among the members of the Board following consultation with the State and Territory Ministers and the higher education industry.

## **9.2 Term of Office**

- (a) Subject to Articles 9.2(b), (c), (d) and (e), all Directors appointed under Article 9.1(b) will be appointed for a three year term.
- (b) The first 4 Directors nominated under Article 9.1(c)(i) will be appointed:
  - (i) two of them for a 2 year term each; and

- (ii) two of them for a 3 year term each.
- (c) The first Director nominated under Article 9.1(c)(ii) will be appointed for a 3 year term.
- (d) The first 3 Directors nominated under Article 9.1(d)(i) will be appointed:
  - (i) two of them for a 2 year term each; and
  - (ii) one of them for a 3 year term.
- (e) The first 3 Directors nominated under Article 9.1(d)(ii) will be appointed:
  - (i) two of them for a 2 year term each; and
  - (ii) one of them for a 3 year term.
- (f) No Director appointed under Article 9.1(b) may hold office for more than 2 successive terms.

### **9.3 Director must not be Member**

A Member must not be a Director.

### **9.4 Appointment of fill vacancy**

Subject to the provisions of this Constitution, the Company in general meeting may by ordinary resolution appoint a person nominated in accordance with Article 9.1(b) as a Director to fill up all or any vacated offices resulting from one or more of the Directors appointed in accordance with Article 9.1(b) retiring, resigning or ceasing to hold office.

### **9.5 Resignation of Directors**

A Director may resign from office on giving the Company notice in writing.

### **9.6 Vacation of office of Director**

- (a) Each Director will remain in office until his or her office is vacated pursuant to Article 9.6(b).
- (b) The office of a Director is vacated if that Director:
  - (i) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (ii) is absent without the consent of the Directors for 3 consecutive meetings of the Directors and the Directors resolve that his or her office be vacated;
  - (iii) resigns the office of Director in accordance with this Constitution;
  - (iv) is removed under this Constitution;

- (v) ceases to be a Director by virtue of Article 10.4;
- (vi) becomes an insolvent under administration (within the meaning of the *Corporations Law*); or
- (vii) otherwise ceases to be, or becomes prohibited from being, a Director by virtue of the *Corporations Law*.

## **10. EXECUTIVE DIRECTOR**

### **10.1 Appointment of Executive Director**

The Board will appoint the person referred to in Article 9.1(f) to the office of managing director of the Company (which office shall bear the title "**Executive Director**"):

- (a) either for a fixed term or without any limitation as to the period for which the person appointed is to hold the office; and
- (b) subject to this Constitution, on such terms and conditions that the Board determines, including the terms on which the Board will appoint a person as a temporary substitute for the Executive Director while he or she is absent or unable to act.

### **10.2 Removal, suspension, replacement of absent Executive Director**

- (a) Subject to the provisions of any contract between the Executive Director and the Company, the Directors may:
  - (i) remove or dismiss or suspend the Executive Director from that office and appoint another in his or her place; or
  - (ii) appoint a temporary substitute for the Executive Director while the Executive Director is absent or unable to act.
- (b) The Executive Director is not entitled to attend or vote at any meeting of Directors while under suspension from office.

### **10.3 Retirement of Executive Director**

Subject to the provisions of any contract between the Executive Director and the Company, the Executive Director:

- (a) is subject to the same provisions in this Constitution as to resignation and removal as the other Directors; and
- (b) will immediately cease to be a Executive Director if for any reason he or she ceases to hold the office of Director.

### **10.4 Executive Director ceasing to be an employee**

- (a) The Executive Director ceases to be a Director on ceasing to be an employee of the Company.

- (b) A person ceasing to be a Director by virtue of this Article will not for that reason alone be rendered ineligible for appointment or election as a Director under any other Article.

#### **10.5 Powers of Executive Director**

- (a) The Directors may entrust to and confer on the Executive Director such of the powers exercisable under this Constitution by the Directors as the Directors think fit.
- (b) Notwithstanding any provision of this Constitution, the Executive Director will at all times and in all respects be subject to the control of the Directors.

### **11. POWERS OF COMPANY AND ITS DIRECTORS**

- (a) The business of the Company is to be managed by or under the direction of the Directors.
- (b) The Directors may exercise all the powers of the Company and do all such acts and things which the Company is authorised or permitted to exercise and do and which are not by this Constitution or by the Corporations Law directed or required to be exercised or done by the Company in general meeting.

### **12. REMUNERATION OF DIRECTORS**

#### **12.1 Remuneration of Directors**

- (a) The provisions of Section 202A of the Corporations Law which apply as a replaceable rule are displaced.
- (b) The Members shall determine the amount of any remuneration payable to any Director other than the Executive Director. The Board shall determine the amount of remuneration payable to the Executive Director and all other staff of the Company.
- (c) The remuneration of any Director who is an employee of the Company will be by way of fixed salary.

#### **12.2 Payments on retirement, loss of office or death of Director**

Subject to the *Corporations Law*, the Directors may give a prescribed benefit including an exempt benefit to a person in connection with the retirement of a person from a prescribed office in relation to the Company.

#### **12.3 Remuneration of Directors - payment of expenses**

The Company will pay all reasonable travelling, accommodation and other expenses incurred by a Director in consequence of his or her attendance at meetings of Directors and otherwise in the execution of his or her duties as a Director.

### **13. DIRECTORS' CONTRACTS WITH COMPANY**

#### **13.1 Director may hold other office of profit**

A Director may hold any other office or place of profit in the Company (except that of auditor) in conjunction with the office of Director, on such terms as the Directors arrange.

#### **13.2 When Director may vote**

- (a) A Director who has an interest in a matter that is being considered at a meeting of Directors, may, despite that interest, vote, be present and be counted in a quorum at that meeting, unless that is prohibited by the Corporations Law.
- (b) No act of the Company is invalid or voidable by reason only of a failure of the Director to comply with a prohibition on voting, whether imposed by the *Corporations Law* or otherwise, in relation to a matter in which the Director is interested.

#### **13.3 Director may act in professional capacity**

Subject to the *Corporations Law*:

- (a) any Director may act by himself or herself or the Director's organisation may act in a professional capacity for the Company; and
- (b) that Director and that Director's organisation will be entitled to remuneration for professional services as if that Director were not a Director,

but nothing in this Article 13.3 authorises a Director or that Director's organisation to act as an auditor of the Company.

#### **13.4 Director may affix Seal notwithstanding interest**

Notwithstanding that a Director is interested in a contract or arrangement, that Director may be appointed as the Director to sign on behalf of the Company or in whose presence the Seal of the Company is to be affixed to any instrument to which the interest relates.

#### **13.5 Disclosure of interest**

A Director who is in any way, whether directly or indirectly, interested in a matter in which the Company has an interest will declare the nature of the interest at a meeting of the Directors as soon as practicable after the relevant facts have come to the Director's knowledge.

#### **13.6 Record of disclosures by Directors**

It is the Secretary's duty to record in the minutes any disclosure given by a Director under this Article 13.

## **14. PROCEEDINGS OF DIRECTORS**

### **14.1 Meetings of Directors**

- (a) The Directors may hold a meeting, adjourn and otherwise regulate their meetings as they think fit.
- (b) The Board may include observers at meetings of the Board and may determine that all or part of a meeting be held in camera.

### **14.2 Quorum for meetings of Directors**

- (a) The provisions of Section 248F of the Corporations Law which apply as a replaceable rule are displaced.
- (b) The quorum necessary for the transaction of business shall be the number which is one more than half the total number of Directors then in office.
- (c) A meeting of the Directors during which a quorum is present is competent to exercise all or any of the authorities, powers and discretions under this Constitution for the time being vested in or exercisable by the Directors generally.
- (d) Where a quorum cannot be established for a meeting of Directors (or consideration of a particular matter) a Director may convene a general meeting of Members to deal with the matter or the matters in question.
- (e) For the purposes of determining whether a quorum is present, an alternate director who is present in both his or her own capacity as a Director and as an alternate director will be counted only once.
- (f) The Directors do not need to be present in the same place to satisfy the quorum requirement.

### **14.3 Calling meetings of Directors**

- (a) The provisions of Section 248C of the Corporations Law which apply as a replaceable rule are displaced.
- (b) Meetings of the Directors shall be called by the Chairman, the Executive Director or any 4 Directors.

### **14.4 Notice of meetings of Directors**

- (a) Notice of every Directors' meeting must be given to each Director.
- (b) Notice of a meeting of Directors may be given:
  - (i) in writing, by electronic mail to an electronic address or by any Technology; and

- (ii) provided it accords with Article 14.4(b)(i), in different ways to different Directors.
- (c) If notice of a meeting of Directors cannot be given to a particular Director in accordance with Article 14.4(b), written notice served on:
  - (i) the usual residential address of that person;
  - (ii) the alternative address of that person notified under the Corporations Law; or
  - (iii) such other address (including an electronic address) provided to the Company by that person for the purpose of serving notice on that person,

will constitute notice to that person of that meeting for the purposes of this Article 14.4.

#### **14.5 Meetings by using Technology**

- (a) Without limiting the discretion of the Directors to regulate their meetings under Article 14.1, the Directors may, if they think fit, confer by any Technology.
- (b) Notwithstanding that the Directors are not present together in one place at the time of the conference, a resolution passed by the conference will be deemed to have been passed at a meeting of the Directors held on the day on which and at the time at which the conference was held.
- (c) The provisions of this Constitution relating to proceedings of Directors apply to the conference to the extent that they are capable of applying, and with the necessary changes.
- (d) A Director present at the commencement of the conference will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the conference.
- (e) Any minutes of a conference of the type referred to in Article 14.5(a) purporting to be signed by the chairperson of that conference or by the chairperson of the next succeeding meeting of Directors will be sufficient evidence of the observance of all necessary formalities regarding the convening and conduct of the conference.
- (f) When, by the operation of Article 14.5(b), a resolution is deemed to have been passed at a meeting of the Directors, that meeting will be deemed to have been held at such place as is determined by the chairperson of the relevant conference, provided that at least one of the Directors who took part in the conference was at that place for the duration of the conference.

#### **14.6 Votes at meetings of Directors**

- (a) The provisions of Section 248G of the Corporations Law which apply as a replaceable rule are displaced.

- (b) Motions and resolutions arising at any meeting of the Directors will be decided by a majority of votes and each Director has one vote.
- (c) Subject to the *Corporations Law*, in case of an equality of votes the chairman of a meeting of Directors will have a casting vote in addition to any vote he or she has in his or her capacity as a Director.

#### **14.7 Chairman and deputy chairman of Directors**

- (a) The provisions of Section 248E of the Corporations Law which apply as a replaceable rule are displaced.
- (b) The Directors may elect a chairman of Directors.
- (c) The Directors may also elect a deputy chairman who, in the absence of the chairman at a meeting of the Directors, may exercise all the powers and authorities of the chairman.
- (d) The Directors may determine the period for which a person elected as chairman or deputy chairman is to hold office.
- (e) If the Directors do not make a determination under Article 14.7(d), the person concerned will hold office until otherwise resolved by the Directors or until the person ceases to be a Director.

#### **14.8 Defects in appointment or qualifications of Director**

All acts:

- (a) done at any meeting of the Directors; or
- (b) by any person acting as a Director,

will be as valid as if every such person had been duly appointed and every Director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that:

- (c) there was some defect in the appointment of a Director or of the person acting; or
- (d) any Director was disqualified or not entitled to vote.

#### **15. MINUTES**

The Directors will cause minutes of:

- (a) all proceedings and resolutions of meetings of Members;
- (b) all proceedings and resolutions of meetings of the Directors, including meetings of committees of Directors;
- (c) all resolutions passed by Members without a meeting; and

- (d) all resolutions passed by the Directors without a meeting of Directors in accordance with this Constitution,

to be duly entered in books kept for that purpose in accordance with the Corporations Law.

## **16. SECRETARY**

A Secretary or Secretaries will be appointed (and may be removed) by the Directors in accordance with the *Corporations Law*.

## **17. ACCOUNTS**

### **17.1 Company to keep accounts**

The Company will keep all accounting and other records of the business of the Company as it is required to keep by the *Corporations Law*.

## **18. AUDITORS: APPOINTMENT AND REMOVAL**

The auditors of the Company will:

- (a) be appointed and may be removed as provided in the *Corporations Law*; and
- (b) perform the duties and have the rights and powers as may be provided in the *Corporations Law*.

## **19. RECORDS AND SECRECY**

### **19.1 Members entitled to inspect records**

The accounting records of the Company and its published audit reports will be open to the inspection of Members.

### **19.2 Officers of Company not to disclose information**

- (a) Every Officer auditor, trustee, agent, or accountant of the Company is bound to observe confidentiality with respect to all transactions of the Company.
- (b) If required by the Directors, every such person will, before commencing that person's duties or employment or at any time afterwards, sign and make a declaration in a book to be kept for that purpose that they will not reveal or make known any of the matters, affairs or concerns which may come to their knowledge as Officer, auditor, trustee, agent, or accountant of the Company and whether relating to transactions of the Company with its customers or the state of the account of any individual or to anything else, to any person or persons except:

- (i) in the course and in the performance of their duties; or
- (ii) under compulsion or obligation of law; or
- (iii) when officially required so to do by the Directors or by the auditors for the time being, or by any general meeting of Members.

## **20. WINDING UP**

### **20.1 Distributions**

If on a winding up of the Company there remains a surplus, the liquidator must give or transfer the property comprising that surplus to the Members to be divided between them in accordance with the Contribution Formula.

## **21. INDEMNITIES AND INSURANCE**

### **21.1 Indemnity against liabilities**

To the extent permitted by law, the Company:

- (a) indemnifies every person who is, or has been, a Director or Secretary; and
- (b) may, by deed, indemnify or agree to indemnify a person who is, or has been, an Officer of a Group Company,

against a liability incurred by that person, in his or her capacity as such a Director, Secretary or Officer, to another person (other than the Company or a related body corporate of the Company) provided that the liability does not arise out of conduct involving a lack of good faith.

### **21.2 Indemnity for costs and expenses**

To the extent permitted by law, the Company:

- (a) indemnifies every person who is, or has been, a Director or Secretary; and
- (b) may, by deed, indemnify or agree to indemnify a person who is, or has been, an Officer of a Group Company,

against a liability for costs and expenses incurred by that person:

- (c) in defending any Proceedings in which judgment is given in that person's favour, or in which that person is acquitted; or
- (d) in connection with an application in relation to any Proceedings in which the Court grants relief to that person under the *Corporations Law*.

### 21.3 Insurance

To the extent permitted by law, the Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is, or has been, an Officer of a Group Company against a liability:

- (a) incurred by that person:
  - (i) in his or her capacity as an Officer of a Group Company;
  - (ii) in the course of acting in connection with the affairs of a Group Company; or
  - (iii) otherwise arising out of the person holding office as an Officer of a Group Company, provided that the liability does not arise out of conduct involving:
  - (iv) a willful breach of duty in relation to a Group Company; or
  - (v) a contravention of sections 232(5) or 232(6) of the *Corporations Law*; or
- (b) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

I, the person to be specified in the application for the Company's registration as consenting to be a member of the Company, agree to the terms of this Constitution.

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Consenting Members

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.....  
The Hon. John Della Bosca, MLC  
Minister for Education & Training  
(New South Wales)

.....  
The Hon. Jacinta Allan, MLA  
Minister for Skills, Education Services and  
Employment  
(Victoria)

.....  
The Hon. Rod Welford, MP  
Minister for Education, Training and  
the Arts  
(Queensland)

.....  
The Hon. Paul Caica, MP  
Minister for Employment, Training and  
Further Education  
(South Australia)

.....  
The Hon. Mark McGowan, MLA  
Minister for Education and Training  
(Western Australia)

.....  
The Hon. David Bartlett, MHA  
Minister for Education  
(Tasmania)

.....  
The Hon. Paul Henderson, MLA  
Minister for Employment, Education and  
Training  
(Northern Territory)

.....  
Mr Andrew Barr, MLA  
Minister for Education and Training  
(Australian Capital Territory)

.....  
The Hon. Julie Bishop, MP  
Minister for Education, Science and Training  
(Commonwealth)

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**DATE:** 18 April 2007