

*Corporations Act*

*A Company Limited by Guarantee*

# **CONSTITUTION**

**of**

**MACQUARIE COMMUNITY COLLEGE**

ABN 71 103 790 665

*Corporations Act*

A Company Limited by Guarantee

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**MACQUARIE COMMUNITY COLLEGE**

**NAME**

1. The name of the company is Macquarie Community College.

**REPLACEABLE RULES DISPLACED**

2. The provisions of the Corporations Act 2001 (Cth) which operate as replaceable rules do not apply to the company.

**INTERPRETATION**

3. (a) In this constitution:

**“the board”** or **“the board of directors”** means the directors of the company holding office pursuant to this constitution;

**“the company”** means Macquarie Community College;

**“general meeting”** means a meeting of the company’s members;

**“regulation”** means a regulation made by the board in accordance with paragraph 44(b)(v);

**“the seal”** means the common seal (if any) of the company;

**“secretary”** means any person appointed to perform the duties of a secretary of the company and includes an honorary secretary; and

**“the incorporated association”** means the incorporated body formerly known as Macquarie Community College Incorporated.

- (b) In this Constitution, unless the contrary intention appears:

- (i) the singular includes the plural and vice versa and words importing a gender include either gender;

- (ii) words importing natural persons include corporations;

- (iii) headings are for ease of reference only and do not affect the construction of this Constitution; and

- (iv) a reference to the Corporations Act is a reference to the Corporations Act 2001 as modified or amended from time to time.
- (c) 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 *Corporations Act*, the same meaning as in that provision of the *Corporations Act*.

## OBJECTS

4. The company is a not-for-profit, non-government, apolitical, non-sectarian, community-based organisation. The company creates and provides affordable and inclusive learning opportunities that meet the needs of individuals, organisations and communities.

The company's objects include the pursuit of the following charitable purpose(s):

- (a) To provide relief to people suffering from poverty, distress, misfortune, helplessness or disability in the community through the provision of education, training, mentoring or other services, including (but not limited to):
    - (i) provision of courses designed for non-English speaking migrants and refugees who are isolated, socially disengaged or financially in necessitous circumstances so as to assist them to adjust and transition to, and be able to better cope with and manage, their changed circumstances;
    - (ii) provision of courses in the areas of language, literacy, numeracy, digital literacy or other basic skills for employment for persons who are in, or are at risk of, long-term unemployment;
    - (iii) assisting elderly persons who are experiencing distress and grief due to illness, isolation and cultural, physical or technology barriers to participate in social and community activities, and thereby providing a sense of belonging; and
    - (iv) assisting marginalised individuals, such as persons affected by family violence, the 'at-risk' youth who are disengaged from school or persons with disability, poverty, drug or alcohol dependency, learning difficulties or mental health issues, and thereby enabling them to be independent and enjoy a normal quality of life.
  - (b) To create sustainable growth consistent with the purpose and vision of the company in a way that reflects the quality, innovation and value of the range of services offered, with surpluses generated by its activities reinvested to underpin the long term financial autonomy of the company.
  - (c) To do such other things as are incidental or ancillary to the attainment of the objects of the company.
5. Solely for the purpose of carrying out the aforesaid objects and not otherwise, the company has the following powers:
- (a) To make such grants to or in aid of or to make donations or give assistance to or to make contracts with such individuals, trusts, corporations, associations, societies, institutions or other organisations or authorities whether within or outside the Commonwealth of Australia as may be necessary or desirable;
  - (b) To print, publish and distribute any papers, journals and other publications that the company may think desirable for the promotion of its objects;

- (c) As far as the law will permit and subject to the provisions of any relevant statute, rule, regulation, by-law or any licence issued in pursuance thereof to collect funds and to solicit, receive, enlist and accept financial and other aid, subscriptions, donations and bequests from individuals, trusts, companies, associations, societies, institutions and other organisations or authorities, and from governments and public bodies;
- (d) To undertake and execute any trusts the undertaking of which may be necessary or desirable for the carrying out of any of the objects of the company;
- (e) To accept any gift, endowment or bequest made to the company generally or for the purpose of any specific object and to carry out any trusts attached to any gift, endowment or bequest, provided that the company must deal with any property which is subject to any trusts only in such manner as is allowed by law having regard to such trusts;
- (f) To subscribe to, become a member of, cooperate with or amalgamate with any other association or organisation, whether incorporated or not, whose objects are similar to those of the company;
- (g) To buy, sell and deal in all kinds of apparatus and all kinds of provisions, liquid and solid, required by the members of the company or persons frequenting the company's premises;
- (h) To purchase, take on lease or in exchange, hire and otherwise acquire any lands, building, easement or property, real and personal, and any rights or privileges which may be requisite for the purposes of, or capable of being conveniently used in connection with, any of the objects of the company;
- (i) To enter into any arrangements with any government or authority, Commonwealth, State, municipal, local or otherwise, that may seem conducive to the company's objects or any of them and to obtain from any such government or authority any rights, privileges and concessions which the company may think it desirable to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;
- (j) To appoint, employ, remove or suspend such managers, clerks, secretaries, servants, workmen and other persons as may be necessary or convenient for the purposes of the company;
- (k) To establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or past employees of the company or the dependants or connections of any such persons; and to grant pensions and allowances; and to make payments towards insurance; and to subscribe or guarantee money for charitable or benevolent objects; or for any public, general or useful object;
- (l) To construct, improve, maintain, develop, work, manage, carry out, alter or control any houses, buildings, grounds works or conveniences which may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidise or otherwise assist and take part in the construction, improvement, maintenance, development, working, management, carrying out, alteration or control thereof;
- (m) To insure against fire or otherwise any insurable property of the company and to pay premiums on insurance or assurance policies which the company may acquire by any means;

- (n) To invest and deal with the money of the company not immediately required in such manner as may be permitted by an Act of the Commonwealth, a State Act, or a law of a Territory of the Commonwealth for the investment of trust funds without special authorisation but the company may hold or retain any property or gift including any stocks funds and shares in the original form in which it was received by the company without selling or converting it into money and the powers authorities and discretions in relation to securities conferred upon trustees by the applicable State Trustee Act as amended apply to any such property or gift;
- (o) To borrow or raise or secure the payment of money in such manner as the company may think fit and to secure the same for the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the company in any way and in particular by the issue of mortgages, charges or debentures, perpetual or otherwise, charged upon all or any of the company's property (both present and future), and to purchase, redeem or pay off such securities;
- (p) To make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments;
- (q) To sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;
- (r) To take or hold mortgages, liens and charges to secure payment of the purchase price or any unpaid balance of the purchase price, of any part of the company's property of whatsoever kind sold by the company or any money due to the company from purchasers and others;
- (s) To take any gift of property whether subject to any special trust or not, for any one or more of the objects of the company;
- (t) To hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection therewith;
- (u) To purchase or otherwise acquire and undertake all or any part of the property, assets, liabilities and engagements of any one or more of the companies, institutions, societies or associations with which the company is authorised to amalgamate;
- (v) To transfer all or any part of the property, assets, liabilities and engagements of the company to any one or more of the companies, institutions, societies or associations with which the company is authorised to amalgamate;
- (w) To ensure that the company complies with the requirements in regard to ethical and other standards for human and animal experimentation imposed from time to time by institutions or organisations which may provide accommodation or premises for use by the company;
- (x) To do all such acts as are required to ensure compliance with the standards and registration requirements laid down from time to time by any accrediting or registering body relevant to the objects of the company as set out in clause 4; and
- (y) To do all such other acts matters and things and to enter into and make such agreements as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

6. The powers set forth in subsection 124(1) of the *Corporations Act* do not apply to the company except in so far as they are included in clauses 4 and 5.

#### **INCOME AND PROPERTY**

7. (a) The income and property of the company whencesoever derived must be applied solely towards the promotion of the objects of the company as set forth in this constitution.
- (b) Subject to clause 8, no portion of the income and property of the company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever to members or directors of the company

#### **PAYMENTS TO DIRECTORS AND MEMBERS**

8. (a) The payment of directors' fees, in whatever form, is prohibited to directors for serving in that capacity.
- (b) Despite subclause (a), payments may be made to a director or a member:
- (i) for out-of-pocket expenses incurred on behalf of the company including, in the case of a director, in carrying out the duties of a director, where the payments do not exceed an amount previously approved by the board;
  - (ii) for any service rendered to the company in a professional or technical capacity, where the provision of that service has the prior approval of the board and the amount payable is approved by a resolution of the board and is on reasonable commercial terms;
  - (iii) of any amount expended on or in connection with the promotion and setting up of the company;
  - (iv) of consideration for goods supplied in the ordinary and usual way of business;
  - (v) of interest on money lent to the company at a rate not exceeding the rate of interest charged by the company's principal bankers from time to time on its overdrawn account or, if the company's account with its principal bankers is not overdrawn at the relevant time, the rate of interest certified by the company's principal bankers as the rate which they would charge the company if its account were overdrawn at that time;
  - (vi) of reasonable and proper rent for premises leased to the company; or
  - (vii) as an employee of the company, where the terms of employment have been approved by a resolution of the board.

#### **LIABILITY OF MEMBERS LIMITED**

9. The liability of the members of the company is limited.

## GUARANTEE BY MEMBERS

10. Every member of the company undertakes to contribute to the property of the company, in the event of its being wound up while the member is a member or within one year after the member ceases to be a member, for payment of the debts and liabilities of the company contracted before the member ceases to be a member and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding the annual subscription current for the year in which the company commences to be wound up.

## WINDING UP

### 11.1 Surplus assets not to be distributed to members

If the company is wound up, any surplus assets must not be distributed to a member or a former member of the company, unless that member or former member is an incorporated entity that is a charity described in clause 11.2 and the decision is made without direct or indirect contravention of clauses 8, and 44 of this constitution.

### 11.2 Distribution of surplus assets

- (a) The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the company may apply to the Supreme Court to make that decision.
- (b) Each Member undertakes to contribute to the company's property as defined under clause 10.
- (c) Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets that remain after the company is wound up must be distributed to one or more charities:
- (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 4, and
  - (ii) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the company.
- (d) Where the company has been endorsed as a deductible gift recipient as an organisation or in relation to a public fund under the Income Tax Assessment Act 1997 (Cth), then where:
- (i) the company is wound up; or
  - (ii) the gift fund is wound up; or
  - (iii) the endorsement under Subdivision 30-BA of the Income Tax Assessment Act 1997 (Cth) is revoked;
- then any surplus assets of the company or gift fund remaining after payment of all liabilities must be transferred to an institution or fund that:
- (iv) complies with clause 11.2 (c); and
  - (v) is an endorsed deductible gift recipient; and

- (vi) where the company is endorsed as a public benevolent institution and is similarly endorsed.
- (e) Where the company operates more than one fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the Income Tax Assessment Act 1997 (Cth) is revoked only in relation to one of those funds then it may transfer any surplus assets of the fund after payment of all liabilities to any other fund for which it is endorsed as a deductible gift recipient.
- (f) For the purpose of this clause:
  - (i) 'gift fund' means:
    - (a) gifts of money or property for the principal purpose(s) of the company
    - (b) contributions made in relation to a fund-raising event held for the principal purpose(s) of the company, and
    - (c) money received by the company because of such gifts and contributions.
  - (ii) 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the Income Tax Assessment Act 1997 (Cth).

#### **FINANCIAL RECORDS**

- 12. Financial records must be kept by the company in accordance with Part 2M.2 of the Corporations Act.

#### **MEMBERSHIP**

- 13. The members of the incorporated association at the date of incorporation of the company are the first members of the company.
- 14. Thereafter, the members of the company are to be such persons as the board admits to membership pursuant to this constitution and the regulations.
- 15. Every applicant for membership must:
  - (a) Sign an application for membership in such form as may from time to time be prescribed by regulation; and
  - (b) Undertake, as a condition of admission, to pay to the company such entrance fee (if any) and annual subscription as may from time to time be payable to the company in accordance with this constitution.
- 16. (a) When an applicant has completed his or her membership form, the secretary shall submit such membership application to the board of the company for approval.
  - (b) At the next meeting of the board after the receipt of any application for membership, that application must be considered by the board, which must thereupon determine upon the admission or rejection of the applicant. In no case is the board required to give any reason for the rejection of an applicant.
- 17. (a) A person shall only become a member of the company after approval of that person's membership by the board of the company and upon payment of the fees referred to in paragraph (b) hereof



- (b) Upon payment of the entrance fee (if any) and first annual subscription, the applicant becomes a member of the company.
  - (c) If the payment is not made within two calendar months after the date of the notice, the board may in its discretion cancel its acceptance of the application for membership of the company.
- 18.
- (a) The entrance fee (if any) and annual subscriptions payable by members are as prescribed from time to time by regulation.
  - (b) All annual subscriptions become due and payable in advance on 1 January in every year.
  - (c) The board may, if hardship or other sufficient cause is shown, reduce or remit any entrance fee or annual subscription payable by a member.
  - (d) No member of the unincorporated association who, prior to the date of incorporation of the company, has paid his or her subscription due to the unincorporated association for the year ending 31 December 2002 is liable to pay any further sum by way of annual subscription to the company for the period prior to that date.

#### **CESSATION OF MEMBERSHIP**

19. If the subscription of a member remains unpaid for a period of two calendar months after it becomes due then the member may after notice of the default has been sent to him or her by the secretary or honorary treasurer be debarred by resolution of the board from all privileges of membership, but the board may reinstate the member on payment of all arrears if the board thinks fit to do so.
20. A member may at any time by giving notice in writing to the secretary resign his or her membership of the company, but continues to be liable for any annual subscription and all arrears due and unpaid at the date of his or her resignation and for all other moneys due by him or her to the company and in addition for any sum not exceeding the then current annual subscription for which he or she is liable as a member of the company under clause 10.
21. Subject to clause 22, if any member wilfully refuses or neglects to comply with the provisions of the constitution of the company or is guilty of any conduct which in the opinion of the board is unbecoming of a member or prejudicial to the interests of the company, the board may by resolution censure, suspend or expel the member from the company.
- 22.
- (a) At least one week before the meeting of the board at which a resolution of the kind mentioned in clause 21 is to be considered, the member concerned must be given written notice of the meeting and of what is alleged against him or her and of the intended resolution, and the member must at that meeting and before the passing of that resolution be given an opportunity to give orally or in writing any explanation which the member may think fit.
  - (b) Any such member may by notice in writing lodged with the secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the board, elect to have the question dealt with by the company in general meeting.
  - (c) If any such member elects to have the matter dealt with by the company in general meeting, a general meeting of the company must be called for the purpose and, if at the general meeting such a resolution is passed by a majority of two-thirds of those present and voting (such vote to be taken by ballot) the member concerned will be punished accordingly, and in the case of a resolution for his or her expulsion, the member will be expelled.

## GENERAL MEETINGS

23. An annual general meeting of the company must be held in accordance with the provisions of the *Corporations Act*.
24. Any director may whenever he or she thinks fit convene a general meeting. General meetings may also be convened on such requisition or in default may be convened by such requisitionists as provided by sections 249D or 249E of the *Corporations Act*.
25. Subject to the provisions of the *Corporations Act* relating to special resolutions and agreements for shorter notice, 21 days notice at least (exclusive of the day on which the notice is served or taken to be served, and exclusive of the day for which notice is given) must be given to such persons as are entitled to receive such notices from the company.
26. A notice of general meeting 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);
  - (b) State the general nature of the business to be transacted at the meeting;
  - (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.

## PROCEEDINGS AT GENERAL MEETINGS

27.
  - (a) No business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
  - (b) No resolution may be passed at any general meeting unless a quorum of members is present at the time when the resolution is put to the vote of the meeting.
  - (c) Save as herein otherwise provided, 10 members constitute a quorum.
28. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, is dissolved; in any other case it stands adjourned to the same day in the next week at the same time and place, or to such other day and at such other time and place as the board may determine. If at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present (being not less than 6) constitute a quorum.
29. The chairman must preside at every general meeting of the company, or if there is no chairman, or if he or she is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act, the deputy chairman must be the chairman or if the deputy chairman is not present or is unwilling to act then the members present may elect one of their number to be chairman of the meeting.
30. The chairman may, with the consent of any meeting at which a quorum is present (and must if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting. Save as aforesaid it is not necessary to give any notice of an adjournment or the business to be transacted at an adjourned meeting.

31. At any general meeting a resolution put to the vote of the meeting is to be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:

- (a) By the chairman; or
- (b) By at least 10 members present in person.

Unless a poll is so demanded a declaration by the chairman that a resolution has on a show of hands 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 proceedings of the company is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

32. If a poll is duly demanded it must be taken in such manner and either at once or after an interval or adjournment or otherwise as the chairman directs, and the result of the poll is the resolution of the meeting at which the poll was demanded but a poll demanded on the election of a chairman or on a question of adjournment must be taken forthwith.

33. In the case of an equality of votes, whether on a show of hands or on a poll, the chairman of the meeting at which the show of hands takes place or at which the poll is demanded is entitled to a second or casting vote.

34. A member must vote in person.

### THE BOARD OF DIRECTORS

35. (a) The Board of Directors shall comprise the following persons:

- (i) 8 Directors elected by the members of the Company;
- (ii) 2 Directors who are employees of the Company;
- (iii) 1 principal of a primary school located in the geographical area served by the Company; and
- (iv) 1 principal of a secondary school located in the geographical area served by the Company.

(b) The office-bearers of the company consist of a chairman, a deputy chairman and an honorary treasurer, all of whom must be members of the company.

36. The following named persons constitute the first board of directors:

Chairman	[REDACTED]
Deputy Chairman	[REDACTED]
Honorary Treasurer	[REDACTED]
Director	[REDACTED]
Director	[REDACTED]
Director	[REDACTED]
Director	[REDACTED]
Director	[REDACTED]

All directors elected by the members must retire at the first annual general meeting, but are eligible for re-election.

37. (a) Thereafter the board is to consist of the office-bearers and up to 9 other members of the company, all of whom must be elected or appointed as herein provided.
- (b) A maximum of 2 persons employed by the company shall be elected to the board of the company. Such persons shall be the Chief Executive Officer of the company ex officio, and one member of staff elected by the staff of the company in accordance with the regulations determined by the board from time to time. The latter shall retire as director in accordance with the terms and conditions of his/her employment and any resolution of the board.
- (c) In addition, the principals of all primary and secondary public schools offering service to the company may respectively elect on an annual basis 1 primary school principal and 1 secondary school principal to the board in accordance with the regulations determined by the board from time to time. Otherwise, the board may invite a representative from each of the sectors to join the board.
38. (a) At the first annual general meeting of the company, the office-bearers and 5 directors are to be elected from among the members of the company.
- (b) At the next annual general meeting 4 members of the board must retire but they are eligible for re-election and thereafter 4 members of the board shall retire by rotation at each annual general meeting of the company.
- (c) The directors of the company shall elect the office-bearers of the company.
- (d) The board shall be entitled to invite 2 persons to become directors of the company at any time and their appointment shall continue until the conclusion of the next annual general meeting of the association.
39. The election of the directors who are to be elected at an annual general meeting must take place in the following manner:
- (a) Any two members of the company may nominate any other member to serve as a director.
- (b) The nomination, which must be in writing and signed by the member and his or her proposer and seconder, must be lodged with the secretary at least 14 days before the annual general meeting at which the election is to take place.
- (c) Balloting lists must be prepared (if necessary) containing the names of the candidates only in alphabetical order. Each member present at the annual general meeting is entitled to vote for any number of such candidates not exceeding the number of vacancies.
- (d) If there is not a sufficient number of candidates nominated the board may fill up the remaining vacancy or vacancies.
- (e) Where any person being considered for election is aged 72 or over then that candidate must disclose that he or she is aged 72 or over but otherwise there shall not be any requirement for a separate vote to allow that person to stand as a director of the company.
40. A director elected in accordance with this constitution takes office at the conclusion of the annual general meeting at which he or she is elected and, subject to this constitution, holds office for 2 years.
41. The company may by resolution of which notice pursuant to section 203D of the *Corporations Act* has been given remove any office-bearer or other director before the expiration of his or her period of office, and may by a resolution appoint another person in his or her stead; the person so appointed holds office only until the next annual general meeting.

42. The office of a director becomes vacant if the director:
- (a) Becomes an insolvent under administration or makes any arrangement or composition with his or her creditors generally;
  - (b) Becomes prohibited from being a director of a company by reason of any order made under the *Corporations Act*;
  - (c) Ceases to be a director by operation of section 201C of the *Corporations Act*;
  - (d) 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;
  - (e) Resigns his or her office by notice in writing to the company;
  - (f) For more than six months is absent without permission of the board from meetings of the board held during that period;
  - (g) Holds any office of profit under the company otherwise than as provided by clause 8;
  - (h) Ceases to be a member of the company; or
  - (i) Is suspended from membership of the company by virtue of clause 21 or clause 22.
43. If a casual vacancy occurs on the board, the board may appoint another member to fill the vacancy for the balance of the term of office which the former office-bearer or other director would otherwise have served.

#### **POWERS AND DUTIES OF THE BOARD**

44. (a) Subject to the Corporations Act and to any other provision of this constitution, the business and affairs of the company are to be managed by the board, which may exercise all such powers of the company as are not, by the Corporations Act or by this constitution, required to be exercised by the company in general meeting; subject, nevertheless, to such directions, not being inconsistent with the Corporations Act or this constitution, as may be given by the company in general meeting, but no such direction invalidates any prior act of the board which would have been valid if that direction had not been given.
- (b) Without limiting the generality of subclause (a), the board may exercise all the powers of the company:
- (i) to borrow and raise money;
  - (ii) to charge any property or business of the company and to issue debentures or give any other security for a debt, liability or obligation of the company or of any other person;
  - (iii) to determine who is entitled on behalf of the company to sign, draw, accept, endorse or otherwise execute cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, receipts, acceptances, endorsements, releases, contracts and documents;
  - (iv) to pay the costs, charges and expenses incidental to the promotion, management and regulation of the company; and
  - (v) to make, amend and repeal regulations, not being inconsistent with the Corporations Act or this constitution, in relation to the affairs of the company.

45. Any regulation for the time being in force is binding on the members of the company as if it were included in this constitution.
46. The board must cause minutes to be made:
  - (a) Of all appointments of officers and servants;
  - (b) Of the names of the directors present at all meetings of the company and of the board; and
  - (c) Of all proceedings at all meetings of the company and of the board.

Such minutes must be signed by the chairman of the meeting at which the proceedings were held or by the chairman of the next succeeding meeting.

### **PROCEEDINGS OF THE BOARD OF DIRECTORS**

47. The board may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. A director may at any time and the secretary must on the requisition of a director convene a meeting of the board
48. Subject to this constitution questions arising at any meeting of the board are to be decided by a majority of votes and a determination by a majority of the directors present is for all purposes taken to be a determination of the directors. In case of an equality of votes the chairman of the meeting has a second or casting vote.
49. The quorum necessary for the transaction of the business of the board is 6 or such greater number as may be fixed by the directors.
50. The continuing directors may act notwithstanding any vacancy in the board, but if and so long as their number is reduced below the number fixed by clause 49 as the necessary quorum of the board, the continuing director or directors may act for the purpose of increasing the number of directors to that number or of convening a general meeting of the company, but for no other purpose.
51. The chairman must preside at every meeting of the board, or if there is no chairman, or if at any meeting he or she is not present within ten minutes after the time appointed for holding the meeting or if being present he or she is unwilling to preside, the deputy chairman must be chairman or if the deputy chairman is not present at the meeting then the directors may choose one of their number to be chairman of the meeting.
52. A director may not vote in respect of any contract or proposed contract with the company in which he or she is interested, and if the director does so vote his or her vote is not to be counted.
53. The board may delegate any of its powers and/or functions (not being duties imposed on the board as the directors of the company by the *Corporations Act* or the general law) to one or more committees consisting of such member or members of the company as the board thinks fit. Any committee so formed must conform to any regulations that may be given by the board and subject thereto has power to co-opt any member or members of the company and all members of such committees have one vote in the committee but any members of such committees not being a director of the company shall not have any vote at a board meeting.
54. The board may appoint one or more advisory committees consisting of such member or members of the board as the board thinks fit. Such advisory committees act in an advisory capacity only. They must conform to any regulations that may be given by the board and subject thereto have power to co-opt any member or members of the company and all members of such advisory committees have one vote.

55. Every committee or advisory committee may meet and adjourn as it thinks proper. Questions arising at any meeting are to be determined by a majority of votes of the members present, and in the case of an equality of votes the chairman has a second or casting vote.
56. All acts done by any meeting of the board or of a committee or by any director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any such board, committee or director, or that the directors or any of them were disqualified, as valid as if every such person had been duly appointed and was qualified to be a director or committee member.
57. (a) If all of the directors have signed a document containing a statement that they are in favour of a resolution of the board in terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held on the day on which the document was signed and at the time at which the document was last signed by a director or, if the directors signed the document on different days, on the day on which, and at time at which, the document was last signed by a director.
- (b) For the purpose of subclause (a), two or more separate documents containing statements in identical terms each of which is signed by one or more directors are together taken to constitute one document containing a statement in those terms signed by those directors on the respective days on which they signed the separate documents.
- (c) A reference in subclause (a) to all of the directors does not include a reference to a director who, at a meeting of the board, would not be entitled to vote on the resolution.
58. (a) If all of the directors consent, the directors may participate in a meeting of the board by means of any technology allowing all persons participating in the meeting to hear each other at the same time. Any director participating in such a meeting is for the purposes of this constitution taken to be personally present at the meeting.
- (b) The consent of a director to the use of such technology may be a standing one.
- (c) Any consent of a director to the use of such technology may be withdrawn only within a reasonable period prior to a meeting at which the technology is to be used.

#### **SECRETARY**

59. The board may in accordance with section 204D of the *Corporations Act* appoint a secretary for such term, and upon such conditions as it thinks fit, and any secretary so appointed may be removed by it. Nothing herein prevents the board from appointing a director of the company as honorary secretary.

#### **SEAL**

60. (a) If the company has a seal, the board must provide for its safe custody.
- (b) The seal may be used only by the authority of the board or of a committee of the board authorised by the board to authorise the use of the seal, and every instrument to which the seal is affixed must be signed by a director and be countersigned by another director or by a secretary.

## INSPECTION OF BOOKS

61. The directors may determine whether and to what extent, and at what time and places and under what conditions, the books of the company or any of them will be open to the inspection of members other than directors, and a member other than a director has no right to inspect any document of the company except as provided by law or authorised by the directors or by the company in general meeting.

## FINANCIAL REPORT

62. The board must distribute copies of every:
- (a) Annual financial report;
  - (b) Report of the Chairman for the year; and
  - (c) Report of the auditor or auditors on the financial report as required by the Corporations Act.
63. The board must lay before each annual general meeting:
- (a) The financial report;
  - (b) The report of the Chairman; and
  - (c) The report of the auditor or auditors for the last financial year ended before the annual general meeting.

## AUDIT

64. A properly qualified auditor or auditors must be appointed and his or their duties regulated in accordance with section 327 of the *Corporations Act*.

## NOTICE

65. (a) A notice may be given by the company to any member either by serving it on the member personally or by sending it by post to the member at his or her registered address or the address if any supplied by the member to the company for the giving of notices to the member.
- (b) Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, pre-paying and posting a letter containing the notice, and to have been effected, in the case of a notice of a meeting, on the second day after the date of its posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) Notwithstanding the foregoing, if a member has supplied to the company a facsimile number or an email address for the service of notices on the member, then any notice may be served by the company on that member by facsimile or by email.
- (d) A notice sent by facsimile (provided a status report is received by the sender which shows the notice has been transmitted) is taken to be served immediately upon completion of sending if such completion is within business hours in the place where the addressee's facsimile machine is located, but if not, then at 9:00 am next occurring during business hours at such place.



- (e) A notice sent by email is taken to be served immediately upon completion of sending if such completion is within business hours in the place where the addressee's email address is located, but if not, then at 9.00am next occurring during business hours at such place.
  - (f) For the purposes of this clause, "**business hours**" means from 9.00 am to 5.00 pm on a day on which the major trading banks are open for business at the place or in the postal district where the addressee's facsimile machine is located.
66. (a) Notice of every general meeting must be given in the manner authorised by clause 65 to:
- (i) every member except those members for whom the company has no registered address or other address for the giving of notices to him or her; and
  - (ii) the auditor or auditors for the time being of the company.
- (b) No other person is entitled to receive notices of general meetings.

#### **INDEMNITY**

67. Except to the extent that it is prohibited from doing so by the *Corporations Act*, the company:
- (a) Indemnifies every person who is or has been a director or secretary of the company or of any related body corporate of the company against:
    - (i) any liability (other than a liability for legal costs) incurred in that capacity; and
    - (ii) any liability for legal costs incurred in connection with proceedings relating to, or in defending an action for a liability incurred in, that capacity; and
  - (b) May pay or agree to pay a premium in respect of a contract insuring any such person against any such liability.