



Hills  
Grammar

Approved: Annual General Meeting 24/5/06

As amended 26/4/17

# Constitution

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The Hills Grammar School ACN 002 512 370

MinterEllison

L A W Y E R S

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# Constitution of The Hills Grammar School

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<b>PRELIMINARY</b>	<b>5</b>
1. Defined terms	5
2. Interpretation	6
3. Replaceable rules	6
<b>OBJECTS</b>	<b>6</b>
4. Objects	6
Income and property of Company	7
5. Income and property of Company	7
<b>MEMBERSHIP</b>	<b>7</b>
6. Admission	7
7. Ceasing to be a Member	8
8. Representatives	9
General meetings	9
9. Annual general meeting	9
10. Calling general meeting	9
11. Notice of general meeting	9
<b>PROCEEDINGS AT GENERAL MEETINGS</b>	<b>10</b>
12. Member	10
13. Quorum	10
14. Chairperson	11
15. Adjournment	11
16. Decision on questions	11
17. Taking a poll	12
18. Casting vote of chairperson	12
19. Offensive material	12
<b>VOTES OF MEMBERS</b>	<b>12</b>

20.	Attendance and entitlement to vote	12
21.	Objections	13
22.	Votes by proxy	13
23.	Document appointing proxy	13
24.	Lodgment of proxy	14
25.	Validity	14
	<b>APPOINTMENT AND REMOVAL OF COUNCILLORS</b>	<b>14</b>
26.	Number of Councillors	14
27.	Composition of Councillors	14
28.	Qualifications of Councillors	15
29.	Appointment and removal of Councillors	15
30.	Additional and casual Councillors	15
31.	Retirement	15
32.	Filling vacated office	16
33.	Nomination of Councillor	16
34.	Vacation of office	16
35.	Appointment and removal of Office Bearers	17
	<b>POWERS AND DUTIES OF COUNCILLORS</b>	<b>18</b>
36.	Powers and duties of Councillors	18
	<b>PROCEEDINGS OF COUNCILLORS</b>	<b>18</b>
37.	Council meetings	18
38.	Decision on questions	19
39.	Remaining Councillors	19
40.	Chairperson of Council meetings	19
41.	Delegation	19
42.	Written resolutions	20
43.	Validity of acts of Councillors	20
44.	Minutes and Registers	20
	<b>PAYMENTS TO COUNCILLORS</b>	<b>21</b>

45.	Payments to Councillors	21
46.	Councillors' interests	21
	<b>ATTORNEYS AND AGENTS</b>	<b>22</b>
47.	Appointment of attorneys and agents	22
	<b>SECRETARY</b>	<b>22</b>
48.	Secretary	22
	<b>SEALS</b>	<b>23</b>
49.	Common Seal	23
50.	Duplicate Seal	23
	<b>INSPECTION OF RECORDS</b>	<b>23</b>
51.	Inspection of records	23
	<b>NOTICES</b>	<b>23</b>
52.	Service of notices	23
53.	Persons entitled to notice	24
	<b>AUDIT AND ACCOUNTS</b>	<b>24</b>
54.	Audit and accounts	24
	<b>WINDING UP</b>	<b>25</b>
55.	Winding up	25
	<b>INDEMNITY</b>	<b>25</b>
56.	Indemnity	25
	<b>EXECUTION OF DOCUMENTS</b>	<b>26</b>
57.	Execution of documents	26

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## PRELIMINARY

### 1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

**Amendment Date** means the date this document was adopted as the Constitution of the Company.

**Auditor** means the Company's auditor.

**Chairperson** means the person elected to, and occupying, the office of chairperson under clause 35.

**Company** means The Hills Grammar School ACN 002 512 370.

**Constitution** means the constitution of the Company as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company.

**Council or Councillors** means all or some of the Councillors acting as a board.

**Councillor** includes any person occupying the position of director of the Company.

**Deputy Chairperson** means the person elected to, and occupying, the office of deputy chairperson under clause 35.

**Honorary Secretary** means the person elected to, and occupying, the office of honorary secretary under clause 35.

**Member** means a member under clause 6.

**Office Bearer** has the meaning given in clause 35.1.

**Register** means the register of Members of the Company.

**Representative** means a person appointed as such under clause 8.

**School** means The Hills Grammar School.

**Seal** means the Company's common seal (if any).

**Secretary** means any person appointed by the Councillors to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of those joint secretaries.

1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

## 2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions.

## 3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Company.

## OBJECTS

### 4. Objects<sup>1</sup>

4.1 The objects for which the Company is established are:

- (a) to establish and operate a co-educational independent school, being the School, to cater for students of all ages;
- (b) to offer an education program which emphasises the attainment of excellence;
- (c) to develop in School students qualities of self-reliance, leadership, tolerance and respect for the rights of others, free of bias, particularly with respect to matters of race, gender, religion or disability;
- (d) to keep abreast of, and to apply for the benefit of School students, developments in educational theory and practice;
- (e) to seek and engage the services of persons having outstanding education qualities, to enable fulfilment of these objectives; and
- (f) to do any other thing that is necessary for, in connection with, conducive or incidental to, or for the purpose of carrying out, the above objects, including, without limitation:
  - (i) to purchase, lease, construct or otherwise acquire all assets (including real property) required for the administration and operation of the School and to maintain, improve or dispose of any such assets;

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<sup>1</sup> For the effect of this objects clause see section 125(2) of the Corporations Act and the general law.

- (ii) to obtain all services required for the administration and operation of the School;
- (iii) to engage employees or contractors as may be necessary or convenient for the purposes of the Company;
- (iv) to borrow, raise or secure the payment of, money in such manner as the Company may think fit;
- (v) to invest and deal with the money of the Company;
- (vi) to make donations for charitable purposes; and
- (vii) to hold or arrange competitions and provide or contribute towards the provision of prizes, awards and distinctions in connection with such competitions.

4.2 The Company may only pursue the objects set out in this clause 4.

## **INCOME AND PROPERTY OF COMPANY**

### **5. Income and property of Company**

5.1 The income and property of the Company will only be applied towards the promotion of the objects of the Company set out in clause 4.

5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:

- (a) in return for any services rendered to the Company by a Member in a professional or technical capacity (other than in the capacity as a Member), where the services has the prior approval of the Company and the cost is not more than an amount which is commercially reasonable for that service; or
- (b) in return for goods supplied in the ordinary and usual course of business to the Company;  
or
- (c) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

## **MEMBERSHIP**

### **6. Admission**

6.1 The number of Members shall not exceed 50 unless the Council determines otherwise.

6.2 The Members of the Company are:

- (a) the persons who are recorded in the Register as Members as at the Amendment Date; and
- (b) any other persons whom, or corporations or organisations which, the Councillors admit to membership in accordance with this Constitution.

6.3 An applicant for membership must be proposed and seconded by a Councillor.

6.4 Applications for membership of the Company must be in writing, signed by the applicant and the Councillor proposing the applicant and in a form approved by the Councillors in their absolute discretion.

- 6.5 The Councillors will consider each application for membership at the next meeting of Councillors after the application is received. In considering an application for membership, the Councillors may:
- (a) accept or reject the application; or
  - (b) ask the applicant to give more evidence of suitability for membership.
- 6.6 If the Councillors ask for more evidence under clause 6.5, their determination of the application for membership is deferred until the evidence is given.
- 6.7 The Councillors do not have to give any reason for rejecting an application for membership.
- 6.8 As soon as practicable following acceptance of an application for membership, the Secretary will send the applicant written notice of the acceptance.
- 6.9 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law.

## **7. Ceasing to be a Member**

- 7.1 A Member's membership of the Company will cease:
- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
  - (b) if a majority of three-quarters of the Councillors present and voting at a Council meeting by resolution terminate the membership of a Member:
    - (i) whose conduct in their opinion renders it undesirable that that Member continue to be a Member of the Company; but
    - (ii) only after:
      - (A) the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the Council meeting at which the resolution is proposed; and
      - (B) if before or at the Council meeting at which the resolution is proposed, the Member requests that the termination of his or her membership be put to the Members, the Company in general meeting (at which the Member has had the opportunity to be heard) by resolution approves the Councillors' resolution to terminate his or her membership;
  - (c) where the Member is an individual, if the Member:
    - (i) dies;
    - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
    - (iii) is convicted of an indictable offence;
  - (d) where the Member is not an individual, if:
    - (i) a liquidator is appointed in connection with the winding-up of the Member; or
    - (ii) an order is made by a Court for the winding-up or deregistration of the Member.



7.2 Any Member ceasing to be a Member will remain liable for and will pay to the Company all moneys which were due to the Company by the Member at the date of ceasing to be a Member.

## **8. Representatives**

8.1 Any corporation or organisation which is a Member may by written notice to the Secretary:

- (a) appoint a natural person to act as its Representative in all matters connected with the Company as permitted by the Corporations Act; and
- (b) remove a Representative.

8.2 A Representative is entitled to:

- (a) exercise at a general meeting all the powers which the corporation or organisation which appointed him or her could exercise if it were a natural person;
- (b) stand for election as an office bearer or Councillor; and
- (c) be counted towards a quorum on the basis that the Member corporation or organisation is to be considered personally present at a general meeting by its Representative.

8.3 A certificate executed in accordance with section 127 of the Corporations Act is rebuttable evidence of the appointment or of the removal of the appointment (as appropriate) of the Representative.

8.4 The chairperson of a general meeting may allow a Representative to vote on the condition that he or she subsequently establishes his or her status as a Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.

8.5 The appointment of a Representative may set out restrictions on the Representative's powers.

## **GENERAL MEETINGS**

### **9. Annual general meeting**

9.1 The Company shall hold an annual general meeting at least once in every calendar year if required to do so by, and in accordance with the requirements of, the Corporations Act.

### **10. Calling general meeting**

10.1 Any two Councillors may, at any time, call a general meeting.

10.2 A Member may:

- (a) only request the Councillors to call a general meeting in accordance with section 249D of the Corporations Act; and
- (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

### **11. Notice of general meeting**

11.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served

or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.

- 11.2 A notice calling a general meeting:
- (a) must specify the place, date and time of 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) must state the general nature of the business to be transacted at the meeting; and
  - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 11.3 A notice of an annual general meeting need not state that the business to be transacted at the meeting includes:
- (a) the consideration of the annual financial report, Councillors' report and the Auditor's report;
  - (b) the election of directors; or
  - (c) the appointment and fixing of the remuneration of the Auditor.
- 11.4 The Councillors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 10.2).
- 11.5 The Councillors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 53.1 entitled to receive notices from the Company.
- 11.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or the non-receipt of a notice (or form) by any Member does not invalidate the proceedings at or any resolution passed at the general meeting.

## PROCEEDINGS AT GENERAL MEETINGS

### 12. Member

In clauses 13, 14, 16 and 20, **Member** includes a Member present in person or by proxy, attorney or Representative.

### 13. Quorum

- 13.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 13.2 A quorum of Members is five Members.
- 13.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Councillors; and

- (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

## **14. Chairperson**

- 14.1 The Chairperson, or in the Chairperson's absence the Deputy Chairperson will be the chairperson at every general meeting.
- 14.2 The Councillors present may elect a chairperson of a general meeting if:
  - (a) there is no Chairperson or Deputy Chairperson; or
  - (b) neither the Chairperson nor Deputy Chairperson is present within 15 minutes after the time appointed for holding the general meeting; or
  - (c) the Chairperson and Deputy Chairperson are unwilling to act as chairperson of the general meeting.
- 14.3 If no election is made under clause 14.2, then:
  - (a) the Members may elect one of the Councillors present as chairperson; or
  - (b) if no Councillor is present or is willing to take the chair, the Members may elect one of the Members present as chairperson.
- 14.4 If there is a dispute at a general meeting about a question of procedure, the chairperson may determine the question.

## **15. Adjournment**

- 15.1 The chairperson of a general meeting at which a quorum is present:
  - (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 15.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 15.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 15.4 Notice of an adjourned general meeting must only be given in accordance with clause 11.1 if a general meeting has been adjourned for more than 21 days.

## **16. Decision on questions**

- 16.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- 16.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 16.3 Unless a poll is demanded:
  - (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and

(b) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.

16.4 The demand for a poll may be withdrawn.

16.5 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.

## **17. Taking a poll**

17.1 A poll will be taken when and in the manner that the chairperson directs.

17.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.

17.3 The chairperson may determine any dispute about the admission or rejection of a vote.

17.4 The chairperson's determination, if made in good faith, will be final and conclusive.

17.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.

17.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## **18. Casting vote of chairperson**

The chairperson of the meeting has a casting vote in addition to the chairperson's votes as a Member, proxy, attorney or Representative.

## **19. Offensive material**

A person may be refused admission to, or required to leave and not return to, a meeting if the person:

(a) refuses to permit examination of any article in the person's possession; or

(b) is in possession of any:

(i) electronic or recording device;

(ii) placard or banner; or

(iii) other article,

which the chairperson considers to be dangerous, offensive or liable to cause disruption.

## **VOTES OF MEMBERS**

### **20. Attendance and entitlement to vote**

20.1 A Member may attend, speak and vote at any general meeting.

20.2 A Member entitled to vote has one vote.

## **21. Objections**

- 21.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 21.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 21.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

## **22. Votes by proxy**

- 22.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 22.2 A proxy need not be a Member.
- 22.3 A proxy may demand or join in demanding a poll.
- 22.4 A proxy or attorney may vote on a poll.
- 22.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

## **23. Document appointing proxy**

- 23.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporations Act. The Councillors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 23.2 For the purposes of clause 23.1, an appointment received at an electronic address will be taken to be signed by the Member if:
  - (a) a personal identification code allocated by the Company to the Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Councillors.
- 23.3 A proxy's appointment is valid at an adjourned general meeting.
- 23.4 A proxy may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 23.5 Unless otherwise provided for in the proxy's appointment, the appointment of the proxy will be taken to confer authority:
  - (a) to vote on:
    - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,even though the appointment may specify the way the proxy is to vote on a particular resolution; and

- (b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.
- 23.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more directors or the Secretary.

## **24. Lodgment of proxy**

- 24.1 The written appointment of a proxy must be received by the Company, at least 24 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:
- (a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or
  - (b) the taking of a poll on which the appointee proposes to vote.
- 24.2 The Company receives an appointment of a proxy or other authority under which it was executed when they are received at:
- (a) the Company's registered office;
  - (b) a facsimile number at the Company's registered office; or
  - (c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **25. Validity**

A vote cast in accordance with an appointment of proxy is valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated; or
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the relevant general meeting or adjourned general meeting.

## **APPOINTMENT AND REMOVAL OF COUNCILLORS**

### **26. Number of Councillors**

- 26.1 There will not be less than four nor more than 12 Councillors unless the Company in general meeting by resolution changes the maximum number.
- 26.2 The Councillors immediately after the Amendment Date shall continue as Councillors until they cease to hold office in accordance with this Constitution.

### **27. Composition of Councillors**

Unless the Council determines otherwise, a majority of Councillors must be persons other than:

- (a) parents or grandparents of students currently enrolled in the School; or
- (b) current members or representatives of the parent body of the School.

## **28. Qualifications of Councillors**

- 28.1 Only a Member may be a Councillor.
- 28.2 An employee of the Company, or person otherwise involved in the day to day management of the School, including the School's principal, deputy principal or a teacher at the School, is not eligible to be appointed a Councillor.

## **29. Appointment and removal of Councillors**

- 29.1 The Company may by resolution passed in general meeting:
  - (a) subject to clause 27, appoint new Councillors;
  - (b) subject to clause 26.1 increase or reduce the number of Councillors;
  - (c) remove any Councillor before the end of the Councillor's period of office; and
  - (d) subject to clause 27, appoint another person in the Councillor's place.
- 29.2 A person appointed under clause 29.1(d) will hold office for the period for which the Councillor replaced would have held office if the Councillor had not been removed.
- 29.3 If the conduct or position of any Councillor is such that continuance in office appears to the majority of the Councillors to be prejudicial to the interests of the Company, a majority of Councillors at a meeting of the Councillors specifically called for that purpose may suspend that Councillor.
- 29.4 Within 14 days of the suspension, the Councillors must call a general meeting, at which the Members may either confirm the suspension and remove the Councillor from office in accordance with clause 29.1(c) or annul the suspension and reinstate the Councillor.

## **30. Additional and casual Councillors**

- 30.1 Subject to clauses 26.1 and 27, the Councillors may appoint any Member as a Councillor to fill a casual vacancy or as an addition to the existing Councillors.
- 30.2 A Councillor appointed under clause 30.1 will hold office until the next general meeting of the Company when the Councillor may be re-elected.

## **31. Retirement**

- 31.1 One third of the Councillors (or, if the number of Councillors is not a whole number multiple of three, the number of Councillors nearest to but not more than one third of the Councillors) must retire from office at the conclusion of each annual general meeting after the Amendment Date.
- 31.2 The Councillors who are to retire pursuant to clause 31.1 shall be those Councillors who have been longest in office since their last election as a Councillor provided that if two or more Councillors have been in office for the same length of time and only some but not all of their number are required to resign pursuant to clause 31.1, as amongst those Councillors, the

Councillor or Councillors to retire shall be agreed between those Councillors or failing such agreement by a majority of all the Councillors.

- 31.3 A retiring Councillor will be eligible for re-election, provided that as from 1 January 2016 a Councillor who has already served nine consecutive years as a Councillor, shall not be entitled or eligible to be elected as a Councillor.

## **32. Filling vacated office**

- 32.1 When a Councillor retires at an annual general meeting, the Company shall by ordinary resolution elect a person to fill the vacated office.
- 32.2 If the vacated office is not filled and the retiring Councillor has offered himself or herself for re-election then subject to Clause 31, the retiring Councillor will be deemed to have been re-elected unless, at the meeting at which he or she retires:
- (a) it is resolved not to fill the vacated office; or
  - (b) the resolution for the re-election of the Councillor is put and lost.

## **33. Nomination of Councillor**

- 33.1 A person other than a retiring Councillor is not eligible for election as a Councillor at a general meeting unless the person, or a Member who intends to propose the person, has left at the Company's registered office a written notice signed by him or her:
- (a) giving the person's consent to the nomination; and
  - (b) stating either that the person is a candidate for the office of Councillor or that the Member intends to propose the person for election.
- 33.2 A notice given in accordance with clause 33.1 must be left at the Company's registered office at least 21 days before the relevant general meeting.
- 33.3 A written notice referring to all Councillor vacancies and each candidate for election, must be sent to all Members at least seven days before every general meeting at which an election of a Councillor will take place.

## **34. Vacation of office**

The office of a Councillor immediately becomes vacant if the Councillor:

- (a) is prohibited by the Corporations Act from holding office as a director or continuing as a Councillor;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Councillors incapable of performing his or her duties;
- (c) resigns by notice in writing to the Company; or
- (d) is removed by a resolution of the Company;
- (e) is absent from Council meetings for six consecutive months without leave of absence from the Councillors;



- (f) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act or otherwise contravenes clause 46;
- (g) dies;
- (h) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (i) is convicted on an indictable offence;
- (j) ceases to be a Member; or
- (k) ceases to be eligible to be appointed a Councillor pursuant to clause 28.2.

### **35. Appointment and removal of Office Bearers**

35.1 The Councillors must hold a Council meeting as soon as possible, and no later than 7 days, after each annual general meeting, at which the Councillors must elect from their number the following office bearers:

- (a) chairperson;
- (b) deputy chairperson;
- (c) honorary secretary; and
- (d) honorary

treasurer, each an 'Office Bearer'.

35.2 An Office Bearer elected under clause 35.1 shall hold office from the close of the Council meeting at which he or she was elected an Office Bearer until, subject to clause 35.3, the next Council meeting held for the purposes of clause 35.1.

35.3 The office of an Office Bearer immediately becomes vacant if the Office Bearer:

- (a) retires as a Councillor pursuant to clause 31.1 (except in the case of the Honorary Secretary who shall continue to hold that office (though not holding the office of Councillor) until he or she ceases to hold that office in accordance with clause 35.2);
- (b) vacates the office of Councillor pursuant to clause 34;
- (c) is removed as an Office Bearer pursuant to clause 35.4; or
- (d) resigns the office by notice in writing to Company.

35.4 The Councillors may at a Council meeting remove an Office Bearer from that office and appoint another person in the Office Bearer's place who will hold office for the period for which the Office Bearer replaced would have held office if the Office Bearer had not been removed.

35.5 If an Office Bearer ceases to hold office because the Office Bearer vacates the office of Councillor pursuant to clause 34 or notifies the Company in writing that he or she resigns as an Office Bearer, the Councillors may appoint another Councillor in the Office Bearer's place who will hold office for the period for which the Office Bearer replaced would have held office if the Office Bearer had ceased to hold office.

## **POWERS AND DUTIES OF COUNCILLORS**

### **36. Powers and duties of Councillors**

- 36.1 The business of the Company is managed by the Councillors who may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting.
- 36.2 Without limiting the generality of clause 36.1, the Councillors may exercise all the powers of the Company to:
- (a) borrow money;
  - (b) charge any property or business of the Company;
  - (c) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person; and
  - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

## **PROCEEDINGS OF COUNCILLORS**

### **37. Council meetings**

- 37.1 Any two Councillors may at any time, and the Secretary must on the request of any two Councillors, call a Council meeting.
- 37.2 A Council meeting must be called on at least 48 hours' written notice of a meeting to each Councillor and each Councillor's proxy.
- 37.3 It is not necessary to give notice of a meeting of the Councillors to an Australian resident whom the Secretary, when giving notice to the other Councillors, reasonably believes to be temporarily outside Australia.
- 37.4 Subject to the Corporations Act, a Council meeting may be held by the Councillors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 37.5 The Councillors need not all be physically present in the same place for a Council meeting to be held.
- 37.6 Subject to clause 46, a Councillor who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 37.7 Clauses 37.4 to 37.5 apply to meetings of Councillors' committees as if all committee members were Councillors.
- 37.8 The Councillors may meet together, adjourn and regulate their meetings as they think fit.
- 37.9 A quorum is a majority of Councillors for the time being.
- 37.10 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Councillors, the chairperson may call a general meeting to deal with the matter.

37.11 Notice of a meeting of Councillors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Councillors.

## **38. Decision on questions**

38.1 Subject to this Constitution, questions arising at a meeting of Councillors are to be decided by a majority of votes of the Councillors present and voting and, subject to clause 46, each Councillor has one vote.

38.2 The chairperson of a meeting has a casting vote in addition to his or her deliberative vote.

## **39. Remaining Councillors**

39.1 The Councillors may act even if there are vacancies on the board.

39.2 If the number of Councillors is not sufficient to constitute a quorum at a Council meeting, the Councillors may act only to:

- (a) appoint a Councillor; or
- (b) call a general meeting.

## **40. Chairperson of Council meetings**

40.1 Subject to clause 40.2, the Chairperson, or in his or her absence, the Deputy Chairperson, shall chair Council meetings.

40.2 If:

- (a) neither the Chairperson nor the Deputy Chairperson are present at any Council meeting within ten minutes after the time appointed for the meeting to begin; or
- (b) the Chairperson and Deputy Chairperson are unwilling to act as chairperson of a Council Meeting,

the Councillors present must elect a Councillor to be chairperson of the meeting.

## **41. Delegation**

41.1 The Councillors may delegate any of their powers, other than those which by law must be dealt with by the Councillors as a board, to a committee or committees.

41.2 The Councillors may at any time revoke any delegation of power to a committee.

41.3 At least one member of each committee must be a Councillor.

41.4 A committee must exercise its powers in accordance with any directions of the Councillors and a power exercised in that way is taken to have been exercised by the Councillors.

41.5 A committee may be authorised by the Councillors to sub-delegate all or any of the powers for the time being vested in it.

41.6 Meetings of any committee of Councillors will be governed by the provisions of this Constitution which deal with Council meetings so far as they are applicable and are not inconsistent with any directions of the Councillors. The provisions apply as if each member was a Councillor.

## **42. Written resolutions**

- 42.1 The Councillors may pass a resolution without a Councillors' meeting being held if all the Councillors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Councillor signs.
- 42.2 For the purposes of clause 42.1, separate copies of a document may be used for signing by Councillors if the wording of the resolution and statement is identical in each copy.
- 42.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 42.4 The minutes of Council meetings must record that a meeting was held in accordance with this clause.
- 42.5 This clause applies to meetings of Councillors' committees as if all members of the committee were Councillors.

## **43. Validity of acts of Councillors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Councillor, or member of a Councillors' committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Councillors or the Councillors' committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **44. Minutes and Registers**

- 44.1 The Councillors must cause minutes to be made of:
- (a) the names of the Councillors present at all Council meetings and meetings of Councillors' committees;
  - (b) all proceedings and resolutions of general meetings, Council meetings and meetings of Councillors' committees;
  - (c) all resolutions passed by Councillors in accordance with clause 42;
  - (d) all appointments of officers;
  - (e) all orders made by the Councillors and Councillors' committees; and
  - (f) all disclosures of interests made under clause 46.
- 44.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 44.3 The Company must keep all registers required by this Constitution and the Corporations Act.

## **PAYMENTS TO COUNCILLORS**

### **45. Payments to Councillors**

No payment will be made to any Councillor of the Company other than payment:

- (a) of out of pocket expenses incurred by the Councillor in the performance of any duty as Councillor of the Company where the amount payable does not exceed an amount previously approved by the Councillors; and
- (b) relating to an indemnity in favour of the Councillor and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

### **46. Councillors' interests**

46.1 Subject to clause 45, a Councillor or a body or entity in which a Councillor has a direct or indirect interest must not without the prior approval of the Councillors:

- (a) enter into any commercial agreement or arrangement with the Company;
- (b) hold any office or place of profit in the Company; or
- (c) act in a professional capacity for the Company.

46.2 A Councillor who has a material personal interest in a matter that is being considered at a Council meeting must not:

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

unless permitted by the Corporations Act to do so, in which case the Councillor may:

- (c) be counted in determining whether or not a quorum is present at any meeting of Councillors considering that contract or arrangement or proposed contract or arrangement;
- (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

46.3 Without the prior approval of the Councillors, a Councillor may not be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise but if the Council does give approval for a Councillor to do so, the Councillor is not accountable to the Company for any remuneration or other benefits received by the Councillor as a director or officer of, or from having an interest in, that body corporate.

## ATTORNEYS AND AGENTS

### 47. Appointment of attorneys and agents

- 47.1 The Councillors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Company:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Councillors under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions, determined by the Councillors.
- 47.2 An appointment by the Councillors of an attorney or agent of the Company may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any company;
  - (c) the members, directors, nominees or managers of any company or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Councillors.
- 47.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Councillors think fit.
- 47.4 The Councillors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Company.
- 47.5 An attorney or agent appointed under this clause may be authorised by the Councillors to sub- delegate all or any of the powers authorities and discretions for the time being vested in it.

## SECRETARY

### 48. Secretary

- 48.1 If required by the Corporations Act, there must be at least one secretary of the Company appointed by the Councillors:
- (a) in the case of the Honorary Secretary (who may be a secretary of the Company), under and in accordance with clause 35; or
  - (b) in the case of any other secretary, subject to this Constitution (including clauses 45 and 46), for a term and at a remuneration and on conditions determined by the Councillors.
- 48.2 The Councillors may, subject:

- (a) to clause 35 in the case of the Honorary Secretary; and
- (b) the terms of a Secretary's employment contract (if any),  
suspend, remove or dismiss a Secretary.

## **SEALS**

### **49. Common Seal**

If the Company has a Seal:

- (a) the Councillors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Councillors or a Councillors' committee authorised to use the Seal; and
- (c) every document to which the Seal is affixed must be signed by a Councillor and be countersigned by another Councillor, the Secretary or another person appointed by the Councillors to countersign the document.

### **50. Duplicate Seal**

If the Company has a Seal, the Company may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face; and
- (b) must not be used except with the authority of the Councillors.

## **INSPECTION OF RECORDS**

### **51. Inspection of records**

- 51.1 Except as otherwise required by the Corporations Act, the Councillors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Councillors.
- 51.2 Except as otherwise required by the Corporations Act, a Member other than a Councillor does not have the right to inspect any financial records or other documents of the Company unless the Member is authorised to do so by a court order or a resolution of the Councillors.

## **NOTICES**

### **52. Service of notices**

- 52.1 Notice may be given by the Company to any person who is entitled to notice under this Constitution:
  - (a) by serving it on the person; or

- (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Company for sending notices to the person.
- 52.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.
- 52.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its despatch.
- 52.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Company's registered office.
- 52.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 52.
- 52.6 A certificate in writing signed by a Councillor, Secretary or other officer of the Company that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 52.7 Subject to the Corporations Act the signature to a written notice given by the Company may be written or printed.
- 52.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

### **53. Persons entitled to notice**

- 53.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Councillor or Councillor's proxy
  - (c) any Auditor.
- 53.2 No other person is entitled to receive notice of a general meeting.

## **AUDIT AND ACCOUNTS**

### **54. Audit and accounts**

- 54.1 The Councillors must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 54.2 The Councillors must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.



## WINDING UP

### 55. Winding up

55.1 If the Company is wound up:

- (a) each Member; and
  - (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Company for the:
    - (c) payment of debts and liabilities of the Company (in relation to clause 55.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
    - (d) adjustment of the rights of the contributories amongst themselves,
- such amount as may be required, not exceeding \$100.

55.2 If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to another corporation which, by its constitution, is:

- (a) required to pursue charitable purposes only;
  - (b) required to apply its profits (if any) or other income in promoting its objects; and
  - (c) prohibited from making any distribution to its members or paying fees to its directors,
- such corporation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of New South Wales for determination.

## INDEMNITY

### 56. Indemnity

56.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment); or
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Company (including legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

56.2 The amount of any indemnity payable under clauses 56.1(a) or 56.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

56.3 For the purposes of this clause, **officer** means:

- (a) a Councillor; or
- (b) a Secretary.

## **EXECUTION OF DOCUMENTS**

### **57. Execution of documents**

The Company may execute a document:

- (a) in accordance with section 127(1) of the Corporations Act;
- (b) if the Company has a Seal, in accordance with section 127(2) of the Corporations Act and clauses 49 and 50; or
- (c) in any other way approved by the Councillors and permitted by law.