

Constitution
of
Hunter TAFE Foundation Limited

ACN 092 210 332
ABN 55 092 210 332

A company limited by guarantee

27 November 2017

Newcastle

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1 Name

The name of the Company is Hunter TAFE Foundation Limited (referred to in this constitution as **the Company**).

2 Objects

The object of the Company is to pursue the following charitable purpose:

- (a) The promotion and furtherance of education at TAFE NSW, particularly for, but not limited to, students attending Hunter and Central Coast region campuses.

3 Non-profit Company

3.1 The income and property of the Company shall be applied solely towards the promotion of the objects of the Company as set forth in this constitution.

3.2 No income or property of the Company may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to any Member of the Company except as:

- (a) remuneration to any Member employed by the Company in return for services actually rendered to the Company;
- (b) payment to a Member in return for goods or services supplied to the Company in the ordinary course of business;
- (c) interest (at a rate not exceeding interest at the rate for the time being charges by bankers in Sydney for overdrawn accounts on money lent) on money borrowed by the Company from a Member; or
- (d) reasonable rent of premises let by any Member to the Company.

4 Honorary service by directors

4.1 No director shall be appointed to any salaried office of the Company or any office of the Company paid by fees, and no holder of such an office shall be appointed to the Board.

4.2 No remuneration or other benefit in money or money's worth shall be paid or given by the Company to any director except for the payment of out-of-pocket expenses incurred by the director in the performance of a duty as a director where the payments do not exceed an amount previously approved by the Board.

5 Liability of Members

Each Member must contribute an amount not more than \$20.00 (the **Guarantee**) to the property of the company if the company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:

- (a) debts and liabilities of the company incurred before the Member stopped being a Member; or
- (b) costs of winding up.

6 Winding up and revocation

6.1 The Members or former Members shall have no right to any surplus assets remaining after the completion of the winding up or dissolution of the Company.

6.2 If upon the winding up or dissolution of the Company, there remains after satisfaction of all its debts and liabilities, any property, it must be distributed to one or more charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the purpose in clause 2; and
 - (b) which also prohibit the distribution of any surplus assets to its Members to at least the same extent as the company; and
 - (c) which is exempt from the payment of income tax and is endorsed as a DGR under the provisions of the Income Tax Assessment Act 1997.
- 6.3 If the Company's deductible gift recipient endorsement is revoked (whether or not the Company is to be wound up), any surplus Deductible Contributions must be transferred to one or more charities that meet the requirements of clause 6.2.
- 6.4 The Board may determine the identity of the charity or charities for the purpose of clauses 6.2 and 6.3 at the time of dissolution or revocation.
- 6.5 If the Board fail to determine the identity of the charity or charities under clauses 6.2 and 6.3, the Supreme Court of New South Wales may make that determination.

7 Financial records

- 7.1 The Company shall keep accounting records to correctly record and explain the transactions of the Company, (including any transactions as trustee), and the financial position of the Company.
- 7.2 The Company shall keep its accounting records in a manner that shall enable:
- (a) the preparation of true and fair accounts of the Company; and
 - (b) the accounts of the Company to be conveniently and properly audited in accordance with the Corporations Law.
- 7.3 Each Member shall have the right to inspect the financial records of the Company. The Board may restrict the manner and times at which such inspections may take place.
- 7.4 At least once in every year the accounts of the Company shall be examined by a qualified auditor who shall report to the Members in accordance with the provisions of the Corporations Law.

8 Membership

- 8.1 The Company shall have two types of Members, namely, full Members and honorary Members. Full Members shall comprise two sub-categories of membership, namely Council Members and Non-Council Members.

9 Eligibility for membership

- 9.1 A person is eligible to apply to become a full Member of the company in the Council sub-category if they:
- (a) support the purposes of the Company;
 - (b) are representing or have represented TAFE NSW (or its predecessor organisation/s or campuses) on a board, council or advisory committee with a primary focus on education; and
 - (c) their representation or residence is or was in, or connected with, the Hunter or Central Coast regions.
- 9.2 A person is eligible to apply to become a full Member of the company in the Non-Council sub-category if they:

- (a) support the purposes of the Company;
- (b) have experience and skills that will enhance the Company's operations and governance; and
- (c) their experience or residence is or was in, or connected with, the Hunter or Central Coast regions.

9.3 A person is eligible to apply to become an honorary Member of the Company if they support the purposes of the Company.

10 Applications for membership

10.1 An application for full membership of the Company shall:

- (a) be in writing;
- (b) state that they want to become a Member of the Company;
- (c) agree to comply with the constitution;
- (d) consent to paying the guarantee under clause 5 if required;
- (e) be signed by the applicant and lodged with the Secretary ;
- (f) in the case of an application for full membership will, be supported by two full Members of the Company who know the applicant; and
- (g) in the case of an application for honorary membership of the Company be accompanied by the annual membership fee.

10.2 An application for membership shall be considered by the Board as soon as practicable after it is received. The Board may decide to accept, defer or reject an application for membership. The Board shall not be required to provide reasons for its decision concerning an application for membership.

10.3 Where the Board decides to accept an application for membership, the Secretary shall, as soon as practicable after that decision, notify the applicant of that approval and request the applicant to pay within a period of 28 days the annual membership fee, if any such fee has been set.

10.4 The Secretary shall, on payment by the applicant of the annual membership fee, within 28 days enter the name of the applicant in the register of full Members in the nominated sub-category or in the register of honorary Members, as the case may require. Upon the name being entered in the register the applicant becomes a Member of the Company.

11 Cessation of membership

11.1 A person shall cease to be a Member of the Company if the person:

- (a) dies;
- (b) resigns from membership by notice in writing to the Secretary;
- (c) has membership terminated under clause 15 and/or clause 16;
- (d) has not responded within three months to a written request (including in electronic form) from the secretary that they confirm in writing (including in electronic form) that they want to remain a Member; or
- (e) fails to pay the annual membership fee within 6 months of the due date.

12 Rights associated with membership

- 12.1 Each full Member of the Company shall have the following rights:
- (a) to receive notice of, attend and vote at general meetings of the Company; and
 - (b) be eligible for election or appointment to the Board.
- 12.2 Each honorary Member of the Company shall have the right to receive information about the activities of the Company. An honorary Member shall not be entitled to attend or vote at company meetings, or to hold a position on the Board.

13 Register of Members

- 13.1 The Secretary shall establish and maintain a register of full Members and a register of honorary Members of the Company. These registers shall contain the name and address of each person who is a Member of the Company together with the date on which the person became a Member.
- 13.2 The registers of Members shall be kept at the principal place of administration of the Company and shall be open for inspection, free of charge, by any Member of the Company at any reasonable hour.

14 Membership fees

- 14.1 The Board may set a membership fee, but is not required to do so.

15 Complaints about Members

- 15.1 A complaint may be made by any Member of the Company that some other Member of the Company:
- (a) has persistently refused or neglected to comply with a provision of the constitution; or
 - (b) has persistently and wilfully acted in a manner prejudicial to the interests of the Company.
- 15.2 On receiving such a complaint, the Board shall:
- (a) cause notice of the complaint to be served on the Member concerned;
 - (b) give the Member at least 14 days from the time the notice is served to make submissions to the Board in connection with the complaint; and
 - (c) take into consideration any submissions made by the Member in connection with the complaint.
- 15.3 The Board may, by resolution, terminate the Member's membership in accordance with clause 16 or suspend the Member's membership for a specified period from the Company if, after considering the complaint and any submissions made in connection with the complaint, it is satisfied that the allegations complained of have been proven.
- 15.4 If the Board terminates or suspends the Member's membership, the Secretary shall within 7 days give written notice to the Member of:
- (a) the action taken;
 - (b) the reasons given by the Board for having taken that action; and
 - (c) the Member's right of appeal.

- 15.5 The termination or suspension shall not take effect:
- (a) until the expiration of the period within which the Member is entitled to appeal against the resolution concerned; or
 - (b) if within that period the Member exercises the right of appeal, unless and until the Company confirms the resolution, whichever is the later.
- 15.6 An affected Member may appeal to the Company in a general meeting against a resolution of the Board to terminate or suspend the Member's membership, within 7 days after notice of the resolution is served on the affected Member, by lodging with the Secretary a notice to that effect.
- 15.7 The notice may, but need not, be accompanied by a statement of the grounds on which the Member intends to rely for the purposes of the appeal.
- 15.8 On receipt of a notice from a Member, the Secretary shall notify the Board which is to convene a general meeting of the Company to be held within 28 days after the date on which the Secretary received the notice.
- 15.9 At the general meeting of the Company:
- (a) no business other than the question of the appeal is to be transacted;
 - (b) the Board and the Member shall be given the opportunity to state their respective cases orally or in writing, or both; and
 - (c) the Members present shall vote by secret ballot on the question of whether the resolution should be confirmed or revoked.

16 Resolution of internal disputes

- 16.1 In the event of a dispute arising between Members (in their capacity as Members), or between a Member and the Company, or between a Member and the Board, the following procedure shall apply before any person initiates proceedings in a Court in respect of the dispute.
- 16.2 Each side of the dispute shall nominate a representative who is not directly involved in the dispute. Those representatives shall then attempt to settle the dispute by negotiation.
- 16.3 Should the nominated representatives be unable to resolve the dispute within 14 days (or such other period as they may agree upon) the dispute shall be referred to a person mutually agreed upon for mediation.
- 16.4 In the event that no person can be agreed upon to mediate the dispute it shall be a person chosen by either the Commissioner of the ACNC or the president of the law institute or society in the state or territory in which the company has its registered office.
- 16.5 If the dispute has not been resolved within 60 days of referral to mediation, either side is free to initiate proceedings in a Court.
- 16.6 Nothing in this clause prevents a person seeking interlocutory relief in a Court.

17 General meetings

- 17.1 A general meeting called the Annual General Meeting shall be held:
- (a) at least once in every calendar year;
 - (b) within five (5) months of the end of the financial year of the Company; and

- (c) at a time and place determined by the Board.
- 17.2 Any two Members of the Board may convene a general meeting of the Company. A general meeting shall also be convened on the requisition of Members entitled to exercise at least 5% of the total voting rights in the Company. In either case the general meeting shall be held in accordance with the Corporations Law.
- 17.3 Every notice convening a general meeting shall be in given in accordance with clause 42 and shall specify the place, the day and the time of the meeting, if applicable any special resolutions that are proposed, the general nature of the business to be transacted and a statement as to the Members right to appoint proxies.
- 17.4 The period of notice required for the calling of a general meeting shall be twenty-one (21) days unless:
 - (a) all the full Members entitled to attend and vote at the annual general meeting agree to a shorter period of notice for that meeting beforehand; or
 - (b) full Members with 95% of the votes that may be cast at any other meeting agree to a shorter period of notice for that meeting beforehand,
 except as a prohibited by the Law.
- 17.5 The above period of notice shall be exclusive of the day upon which notice is served but inclusive of the day on which the meeting is to be held.
- 17.6 The business of the Annual General Meeting shall be:
 - (a) to receive and consider the accounts, statements and reports prescribed by the Corporations Law;
 - (b) to elect the directors for the ensuing year;
 - (c) to appoint the auditor (where necessary); and
 - (d) to deal with any other business included in the notice of meeting.
- 17.7 A copy of the accounts, statements and reports prescribed by the Corporations Law to be presented at the Annual General Meeting shall be provided to full Members at least twenty- one (21) days before the annual general meeting.

18 Using technology to hold meetings

- 18.1 The company may hold a general meeting at two or more venues using any technology that gives the Members, as a whole, a reasonable opportunity to participate, including to hear and be heard.
- 18.2 Anyone using this technology is taken to be present in person at the meeting.

19 Circular resolutions of Members

- 19.1 Subject to clause 19.3, the directors may put a resolution to the Members to pass a resolution without a general meeting being held (**a circular resolution**).
- 19.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to Members, and set out the wording of the resolution.
- 19.3 Circular resolutions cannot be used:
 - (a) for a resolution to remove an auditor, appoint a director or remove a director;
 - (b) for passing a special resolution; or

- (c) where the Corporations Act or this constitution requires a meeting to be held.
- 19.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 19.5 or clause 19.6.
- 19.5 Members may sign:
 - (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (b) separate copies of that document, as long as the wording is the same in each copy.
- 19.6 The company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

20 Proceedings and quorum at general meetings

- 20.1 Four (4) Members present in person (being Members entitled under these this constitution to vote at a general meeting) constitute a quorum for the transaction of the business of a general meeting.
- 20.2 If a quorum is not present within 30 minutes after the appointed time for the commencement of a general meeting, then:
 - (a) the meeting, if convened upon the requisition of Members, shall be dissolved; or
 - (b) in any other case, the meeting shall be adjourned to a date, time and place determined by the person chairing the meeting
- 20.3 If at the adjourned meeting a quorum is not present within 30 minutes after that time appointed for the commencement of the meeting, the full Members present (being not less than 3) shall constitute a quorum.

21 Presiding Member

- 21.1 The President shall act as Presiding Director at each meeting of the Company and each meeting of the Board.
- 21.2 If the President is absent from a meeting or unwilling to act, the persons present at the meeting and entitled to vote shall elect one of their number to preside at the meeting.
- 21.3 The President shall supervise the affairs of the Company and shall be an ex-officio Member of all committees established by the Board.

22 Adjournment

- 22.1 The Presiding Director of a general meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting to a specified time, date and place. No business shall be transacted at an adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 22.2 Where a general meeting is adjourned for 14 days or more, the Secretary shall give written or oral notice of the adjourned meeting to each full Member of the Company stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.

23 Voting

- 23.1 At a general meeting a motion put to the vote of the meeting shall be decided on a show of hands unless a ballot is (before or on the declaration of the result of a show of hands) demanded by:
- (a) the Presiding Director; or
 - (b) any two full Members.
- 23.2 Every full Member present in person shall have one vote on a show of hands. Every full Member present in person shall have one vote on a ballot.
- 23.3 If there is an equality of votes, whether on a show of hands or on a ballot, the Presiding Director of the meeting shall be entitled to a second or casting vote.
- 23.4 If a ballot is not demanded, a declaration by the Presiding Director that a motion has been carried, or carried unanimously or by a particular majority, or lost, and an entry to that effect in the minutes is conclusive evidence of the fact without proof of the number or proportion of votes recorded in favour of or against the motion.
- 23.5 If a ballot is demanded, it shall be taken in the manner determined by the Presiding Director.
- 23.6 The demand for a ballot may be withdrawn.

24 Proxies

- 24.1 A full Member may appoint a proxy to attend and vote for the full Member at a meeting.
- 24.2 An appointment of a proxy is valid if it is in writing and signed by the full Member making the appointment and includes the full Member's name and address, the Company's name, the proxy's name or the name of the office held by the proxy, and the meetings at which the appointment may be used.
- 24.3 If the proxy specifies the manner in which the appointed proxy must vote, the appointed proxy must vote in that manner.
- 24.4 Proxy documents must be received by the Company at least 48 hours before the meeting or adjourned meeting. The Company receives a proxy appointment when it is received at the Company's registered office, a fax number at the Company's registered office or a place, fax number, e-mail or electronic address specified for the purpose of notice of meeting.
- 24.5 Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a proxy votes a vote cast by the proxy will be valid even if, before the proxy votes, the appointing full Member:
- (a) revokes the proxy's appointment;
 - (b) dies;
 - (c) is mentally incapacitated; or
 - (d) revokes the authority under which the proxy was appointed by a third party.
- 24.6 A proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

25 Board of directors

- 25.1 The Board shall consist of not less than five (5) directors and not more than nine (9) directors. The Company may at any time by ordinary resolution increase the number of directors.
- 25.2 A person is eligible for election as a director of the Company if they:
- (a) are a natural person who is a full Member of the Company and at least 18 years of age;
 - (b) are nominated by two full Members entitled to vote;
 - (c) give the Company their signed consent to act as a director of the Company; and
 - (d) are not ineligible to be a director under the Corporations Law or the ACNC Act.

26 Election of chairperson

The Board shall elect its own President.

27 Term of office

- 27.1 At a general meeting any director appointed by the directors to fill a casual vacancy or as an additional director must retire.
- 27.2 At a general meeting:
- (a) at which a director retires; or
 - (b) at the commencement of which there is a vacancy in the office of director,
- there will be a vote of the voting members conducted in accordance with this constitution to fill the vacancy or vacancies.
- 27.3 Other than a director appointed to fill a casual vacancy, a director's term of office starts at the end of the general meeting at which they are elected and ends at the end of the general meeting at which they retire.
- 27.4 Each director must retire at least once every three years.
- 27.5 A director who retires under clause 27.4 may nominate for election or re-election, subject to clause 27.6.
- 27.6 A director who has held office for a continuous period of twelve (12) years or more may only be re-appointed or re-elected by a special resolution.

28 Election and appointment of directors

- 28.1 The election of the directors of the Board shall take place in the following manner:
- (a) Any two full Members of the Company may nominate any other full Member for election to the Board.
 - (b) The nomination shall be in writing, signed by the candidate, the proposer and the seconder and lodged with the Secretary at least 7 days before the general meeting at which the election is to take place.
 - (c) Each full Member of the Company present at the general meeting shall be entitled to vote for any number of candidates not exceeding the number of vacancies.

- (d) In situations where insufficient advance nominations are received to fill all Board positions, nominations may be accepted from the floor of the meeting in relation to the unfilled Board positions only.
- 28.2 The Board shall have the power to appoint any full Member of the Company to the Board to fill a casual vacancy. Any Member so appointed to the Board shall hold office until the next general meeting.
- 28.3 The Company may, by ordinary resolution, remove any director before the expiration of the period of office of the Member and may, by ordinary resolution, appoint another person in the place of the Member. The person so appointed shall hold office until the next general meeting.

29 When a director stops being a director

- 29.1 The office of a director shall become vacant if the director:
 - (a) dies;
 - (b) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (c) becomes prohibited from becoming a director by reason of any order made under the Corporations Law, Charities Act or ACNC Act;
 - (d) ceases to be a director by operation of the Corporations Law, Charities Act or ACNC Act;
 - (e) 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;
 - (f) resigns office by notice in writing to the Company;
 - (g) is absent from meetings of the Board for more than six months without permission of the Board; or
 - (h) ceases to be a full Member of the Company.

30 Powers of directors

- 30.1 The business and operations of the Company shall be managed and controlled by the Board, and for that purpose the Board may exercise the powers of the Company as if they had been expressly conferred on the Board by a general meeting of the Company.
- 30.2 The powers of the Board shall be subject to any restrictions imposed by the Corporations Law, Charities Act or ACNC Act or by the constitution of the Company.
- 30.3 The acts of a director shall be valid despite any defect that may afterwards be discovered in the appointment or qualification of the director.

31 Proceedings of the Board

- 31.1 Meetings of the Board shall be held as often as necessary to conduct properly the business of the Company, and shall in any case be held at least quarterly.
- 31.2 Questions arising at any Board meeting shall be decided by a majority of votes.
- 31.3 In the case of an equality of votes, the Presiding Director may have second or casting vote.

- 31.4 The President or any two directors may, and the Secretary shall, if requested by the President or any two directors at any time, call a meeting of the Board.
- 31.5 The quorum necessary for the transaction of business by the Board shall be three (3) directors.
- 31.6 Except in special circumstances determined by the Presiding Director, at least 48 hours' notice shall be given to the directors of all meetings of the Board.
- 31.7 The Board may function validly provided its number is not reduced below the quorum. Should the number of directors fall below the quorum, the remaining directors may act only to appoint new directors.

32 Using technology to hold directors' meetings

- 32.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 32.2 The directors' agreement may be a standing (ongoing) one.
- 32.3 A director may only withdraw their consent within a reasonable period before the meeting.

33 Transaction of business outside board meetings

- 33.1 The Board may transact any of its business:
 - (a) by the circulation of papers among all the directors (including by email), and a resolution in writing by a majority of those directors shall be taken to be a decision of the Board;
 - (b) at a meeting at which directors (or some directors) participate by telephone, closed-circuit television or other means, but only if any director who speaks on a matter before the meeting, can be heard by the other director.
- 33.2 A resolution approved under the above clause shall be recorded in the minutes of the meetings of the Board.

34 Board delegation and board committees

- 34.1 The Board may, by resolution, delegate to a director or committee of two or more directors, the exercise of such of the powers of the Board (other than this power of delegation) as are specified in the resolution. The Company or the Board may by resolution revoke wholly or in part any such delegation.
- 34.2 A delegation under the above clause may be made subject to conditions or limitations as to the exercise of any of the powers delegated, or as to time or circumstances.
- 34.3 Notwithstanding a delegation under this rule, the Board may continue to exercise all or any of the powers delegated.
- 34.4 A committee may elect a Presiding Director of its meetings. If no such Presiding Director is elected, or, if at any meeting the Presiding Director is not present within 5 minutes after the time appointed for holding the meeting, then the Members present may choose one of their number to be Presiding Director of the meeting.
- 34.5 A committee may meet and adjourn as it thinks proper. Questions arising at any meeting shall be determined by a majority of votes of the Members present and voting.

In case of an equality of votes the Presiding Director may have a second or casting vote.

35 Duties of directors

The directors must comply with their duties as directors under legislation and common law (**judge-made law**), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the company;
- (b) to act in good faith in the best interests of the company and to further the charitable purpose(s) of the company;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out below;
- (f) to ensure that the financial affairs of the company are managed responsibly; and
- (g) not to allow the company to operate while it is insolvent.

36 Conflicts of interest

- 36.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors; or
 - (b) if all of the directors have the same conflict of interest, to the Members at the next general meeting, or at an earlier time if reasonable to do so.
- 36.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 36.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under this clause:
- (a) be present at the meeting while the matter is being discussed; or
 - (b) vote on the matter.
- 36.4 A director may still be present and vote if:
- (a) their interest arises because they are a Member of the company, and the other Members have the same interest;
 - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the company;
 - (c) their interest relates to a payment by the company under clause 43 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;

- (d) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the company; and
 - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

37 Minutes

- 37.1 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings
 - (b) minutes of circular resolutions of members
 - (c) a copy of a notice of each general meeting, and
 - (d) a copy of a members' requisition under clause 17.
- 37.2 The company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of Board meetings (including meetings of any committees), and
 - (b) minutes of circular resolutions of directors.
- 37.3 The confirmation of minutes shall be the first business at the next succeeding meeting of the Company, Board or committee to which the minutes relate. If it is impracticable for the minutes to be confirmed at that meeting, then the minutes shall be confirmed at the next succeeding meeting.
- 37.4 The minutes shall be kept in the English language.

38 Appointment of officers, employees, etc.

- 38.1 The Board shall have the power to appoint, remove or suspend officers, employees, agents and contractors, and to fix their powers, duties and remuneration.
- 38.2 The Board may delegate any of its powers under clause 34 to an officer or employee of the Company, subject to any conditions or limitations which the Board sees fit to impose.
- 38.3 The Board may, at any time, revoke or vary a delegation made under clause 34.
- 38.4 Notwithstanding any delegation made under this constitution, the Board may continue to exercise all or any of its powers.

39 Secretary

- 39.1 The Secretary shall be appointed by the Board for such term, upon such conditions as it thinks fit. The Board may, by resolution, remove the Secretary at any time. The Board may appoint an assistant Secretary to carry out the duties of the Secretary in the absence of the Secretary, who shall for the purpose of this constitution be deemed to be and may be referred to as the Secretary.

40 Auditor

- 40.1 Auditors of the Company shall be appointed and removed and their duties regulated in accordance with the Corporations Law.

41 Execution of documents

The company may execute a document by having the document signed by:

- (a) two (2) directors of the Company; or
- (b) a director and the secretary.

42 Notice

- (a) The Company may give the notice to any Member:
- (i) personally, and is deemed to have been served when delivered;
 - (ii) by sending it by post to the address of the Member in the register of Members or the alternative address (if any) nominated by the Member, and is deemed to have been served 3 days after the date of posting;
 - (iii) by sending it to the fax number (if any) or electronic address nominated by the Member, and is deemed to have served the day after it is sent; or
 - (iv) by any other means authorised by the Act.
- 42.2 Notice of every general meeting shall be given to every full Member and the auditor of the Company.

43 Indemnity

- 43.1 Every Director, auditor and other officer of the Company shall be entitled to be indemnified out of the property of the Company against any liability incurred by the Director, auditor or officer in that capacity:
- (a) in defending any proceedings, whether civil or criminal, in which judgment is given in favour of the Director, auditor or officer, or in which the Director, auditor or officer is acquitted; or
 - (b) in connection with any application in relation to those proceedings in which relief is granted to the Director, auditor or officer by the court.
- 43.2 The indemnity under this clause will be limited to the amount of the liability after deducting the amount in respect of which the person is otherwise entitled to be indemnified and is otherwise actually indemnified by another person (including, in particular, an insurer under any insurance policy).
- 43.3 To the maximum extent permitted by the Corporations Law, "liability" in this clause means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind, including in particular, legal costs (calculated on a Solicitor/client basis) incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any Court, Tribunal, Government Authority or otherwise).

44 Definitions and interpretation

- 44.1 In this constitution:

ACNC means Australian Charities and Not-for-profit Commission.

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

Board means the whole or any number of the directors assembled at a meeting of directors, being not less than a quorum or a majority, as the case may require.

Charities Act means the *Charities Act 2013* (Cth).

Company means the company referred to in clause 1.

Corporations Law means the *Corporations Act 2001* (Cth).

Council Member means a person admitted to full membership under this sub-category of the Company under clause 9 of this constitution.

Deductible Contribution means a donation or gift of money or property as described in the *Income Tax Assessment Act 1997* (Cth).

DGR means an entity endorsed by the Australian Taxation Office or other applicable regulatory authority as a deductible gift recipient pursuant to the *Income Tax Assessment Act 1997* (Cth), permitting gifts to the entity to be tax deductible.

Members include both full Members and honorary Members.

Non Council Member means a person admitted to full membership of the Company other than as a Council Member under clause 9 of this constitution.

President means the person for the time being holding that office in accordance with this constitution.

Secretary means the person for the time being appointed to the office of Secretary under this constitution.

- 44.2 Words importing only the singular number include the plural and vice versa.
- 44.3 Words importing a gender include other genders.
- 44.4 Person includes an individual, a body corporate, a partnership, a firm, unincorporated association or institution and a government body.
- 44.5 A reference to an clause or appendix is to an clause or an appendix of or to this constitution.
- 44.6 A reference to a statute (or to a provision of a statute) means the statute or provision as modified or amended and in operation for the time being or any statute or provision enacted in lieu thereof and includes any regulation or rule for the time being in force under the statute or provision.
- 44.7 Except where the contrary intention appears in this constitution, an expression has, in a provision of this constitution which deals with a matter dealt with by a relevant provision of the Corporations Law, the same meaning as in that provision of the Corporations Law.
- 44.8 Headings do not affect the interpretation of this constitution.