

# Constitution

English Australia Ltd  
ABN 86 003 959 037



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## CORPORATIONS ACT 2001 (CTH)

### A Public Company limited by Guarantee

## CONSTITUTION

### of

## ENGLISH AUSTRALIA LIMITED

## 1. Definitions and interpretation

1.1 In this Constitution so far as is consistent with the subject or context:

- (a) **Act** means the *Corporations Act 2001* (Cth).
- (b) **Annual Subscription** means the annual subscription payable by Members pursuant to clause 15.
- (c) **Associate Member** means:
  - (i) any incorporated Centre, which offers a course or courses (among others) of at least five (5) hours instruction per week in English to students whose first language is other than English, and which has applied for and been admitted to Associate Membership of the Association; or
  - (ii) any person who represents an unincorporated Centre, which offers a course or courses (among others) of at least five (5) hours instruction per week in English to students whose first language is other than English, who has applied for and been admitted to Associate Membership of the Association,unless it has ceased to be an Associate Member.
- (d) **Association** means English Australia Limited.
- (e) **Board** means the board of Directors.
- (f) **Centre** means a college, school, institution or other teaching establishment.
- (g) **Chair** means the person appointed to and holding that office pursuant to clause 43.1(a), and includes any assistant or acting Chair.
- (h) **Constitution** or **this Constitution** means the Constitution of the Association as amended or supplemented from time to time.
- (i) **Deputy Chair** means any person appointed to and holding that office pursuant to clause 43.1(b), and includes any assistant or acting Deputy Chair.

- (j) **Director** means any person holding the position of a director of the Association and **Directors** means the directors for the time being of the Association or, as the context permits, such number of them as have authority to act for the Association.
- (k) **ELICOS** means English Language Intensive Courses for Overseas Students.
- (l) **ELICOS Centre** means a Centre which is registered under the Private Overseas Student Program or any successor or substantially similar program with the Commonwealth Department of Employment, Education and Training (or such other body as may take over such function) to teach English and which offers a course or courses (among others) of at least five (5) hours instruction per week in English to students whose first language is other than English.
- (m) **English Australia Tuition Assurance Scheme** means the tuition assurance scheme operated by the Association.
- (n) **Entrance Fee** means the entrance fee payable by Members pursuant to clause 15.
- (o) **Full Member** means:
  - (i) any incorporated ELICOS Centre that has been admitted to Full Membership of the Association; and
  - (ii) any person who represents an unincorporated ELICOS Centre and has been admitted to Full Membership of the Association,unless they have ceased to be a Full Member.
- (p) **Levy** means the levy payable by Members pursuant to clause 16.
- (q) **Member** means a member of the Association pursuant to clause 6 (and **Membership** has a corresponding meaning) and includes:
  - (i) Full Members; and
  - (ii) Associate Members.
- (r) **Member Centre** means:
  - (i) a Member that is a Centre; and
  - (ii) where a Member is an individual, means the Centre represented by that individual.
- (s) **Month** means calendar month.
- (t) **Office** means the registered office for the time being of the Association.
- (u) **Officer** has the meaning given to it by the Act.
- (v) **Register** means the register of Members to be kept pursuant to the Act.

- (w) **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Act.
  - (x) **Representative** means a person appointed to represent an incorporated Member in accordance with clause 9.
  - (y) **Secretary** means any person appointed to perform the duties of the secretary of the Association.
  - (z) **Special Resolution** has the meaning given to it by the Act.
  - (aa) **TESOL** means Teachers of English to Speakers of Other Languages.
- 1.2 (a) In this Constitution, unless there is something in the subject or context which is inconsistent:
- (i) the singular includes the plural and vice versa;
  - (ii) each gender includes the other two genders;
  - (iii) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
  - (iv) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
  - (v) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
  - (vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;
  - (vii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (b) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
- (c) Headings do not form part of or affect the construction or interpretation of this Constitution.
- 1.3 This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

## 2. Objects

### 2.1 The objects of the Association are:

- (a) to assist Member Centres to provide high quality educational programs for their students;
- (b) to establish a high professional ethical standard in the work of Member Centres;
- (c) to promote the ELICOS sector of the TESOL profession in Australia and overseas;
- (d) to assist the professional growth of Member Centres through the exchange of educational ideas and the professional development of staff;
- (e) to liaise with State, Territory and Federal Government departments and instrumentalities on all matters relevant to the ELICOS industry in Australia;
- (f) to assist, strengthen and promote the interests and welfare of Members and Member Centres;
- (g) to hold or provide for the holding of lectures, meetings, seminars or conferences calculated directly or indirectly to advance or provide a knowledge or understanding of any matter affecting Members collectively or individually or any of the staff of any Member Centre and to obtain assistance from or involvement of any technical or educational authority or body or any person, firm, company or corporation in the holding of such lectures, meetings, seminars or conferences;
- (h) the operation of a Tuition Assurance Scheme; and
- (i) anything else ancillary to the objects set out in this clause 2.1.

### 2.2 In the interpretation of this clause:

- (a) the meaning and effect of any object shall not be restricted by any other object and each object shall be construed and have effect independently; and
- (b) the clause is to be construed so as to widen and not restrict the powers of the Association.

### 2.3 The Association may only exercise the powers in section 124(1) of the Act to:

- (a) carry out the objects in this clause 2.1; and
- (b) do all things incidental or convenient in relation to the exercise of power under clause 2.3(a),

where there is no express prohibition to the exercising of such powers in this Constitution.

- 2.4 All income and property of the Association shall be applied solely towards the promotion of the objects of the Association set out in clause 2.1, and no portion thereof shall be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to any Member of the Association. However, nothing in this clause shall prevent the payment, in good faith to a Member, of:
- (a) reasonable and proper remuneration in return for any services actually rendered to the Association;
  - (b) any out-of-pocket expenses properly incurred on behalf of the Association while actually rendering any services to the Association; and
  - (c) interest on money borrowed from a Member of the Association for any of the objects of the Association.
- 2.5 The Directors may be paid:
- (a) such remuneration, and on such conditions, as the Board thinks fit;
  - (b) out of pocket expenses incurred by the Directors in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board; and
  - (c) for any service rendered to the Association by the Directors in a professional or technical capacity, other than in the capacity as Director (for which the Director may be remunerated pursuant to clause 2.5(a)) where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

### **3. Amendment to Constitution**

Subject to the Act, the provisions of this Constitution may be altered, added to or omitted from time to time only by Special Resolution of the Full Members of the Association.

### **4. Liability of Members**

- 4.1 The liability of the Members is limited.
- 4.2 Each Member undertakes to contribute to the property of the Association in the event of its being wound up while it is a Member or within one year after it ceases to be a Member, for:
- (a) payment of the debts and liabilities of the Association contracted before it ceases to be a Member;
  - (b) the costs, charges and expenses of winding up; and
  - (c) the adjustment of the rights of the contributories among themselves.
- 4.3 The amount that each Member is liable to pay is limited to twenty dollars (\$20.00).

## 5. Winding up

Any property which remains after the winding up or dissolution of the Association and satisfaction of all its debts and liabilities shall not be paid to or distributed among the Members, but shall be given or transferred to some other institution which has objects similar to the objects of the Association and prohibits the distribution of its income and property among its members at least to the extent imposed on the Association under clause 2.4. Such institution shall be determined by the Full Members of the Association at or before the time of dissolution and, in default thereof, by the Supreme Court of New South Wales and if and so far as effect cannot be given to this clause, then to some charitable object.

## MEMBERS

### 6. Members

- 6.1 A Centre, or person representing an unincorporated Centre, may only be admitted to Membership if the Centre is, or the person is, eligible for Full Membership or Associate Membership, as the case may be.
- 6.2 Full Members shall be entitled to all the privileges of Membership, including the right to attend, speak and vote at general meetings.
- 6.3 Subject to clauses 6.4 and 6.5, Associate Members shall be entitled to such rights and privileges of Membership as the Board may determine from time to time.
- 6.4 Associate Members shall be entitled to attend and speak at general meetings, but shall not be entitled to vote except for the election of State/Territory Delegates pursuant to clause 41.1(e) and clause 44.3.
- 6.5 The Members acknowledge that a determination by the Board to vary or cancel rights and privileges of Associate Members, in accordance with clause 6.3, is a procedure for the variation or cancellation of rights of Associate Members, for the purposes of s246B of the Act.

### 7. Unincorporated Centres

- 7.1 Where a Centre which is an unincorporated entity wishes to become a Member of the Association, it shall appoint a person to apply for Membership on its behalf, and such person shall upon acceptance of the application become a Member of the Association on behalf of that Centre.
- 7.2 Any person who is admitted to Membership on behalf of an unincorporated Centre may be removed from Membership and another person appointed in his or her stead by the Board upon the Board being advised by the unincorporated Centre that the person removed no longer has the support of the unincorporated Centre which he or she represents, and that the person appointed to fill the position has such support, and in performing its functions under this clause, the Board shall adopt such procedures and forms as it deems fit.

- 7.3 Except where the context otherwise requires, a reference in this Constitution to a Member, Full Member or Associate Member shall include an incorporated Centre and a person appointed to represent an unincorporated Centre.

## 8. Admission to Membership

- 8.1 The Board may establish:

- (a) conditions upon which an applicant may be admitted to Membership including, without limitation:
  - (i) the number of Members required to nominate an applicant for Membership; and
  - (ii) the minimum amount of public liability insurance that a Member Centre must have;
- (b) the frequency with which applications will be considered; and
- (c) the form in which applications for Membership must be made.

- 8.2 An application for Membership must be accompanied by the requisite Entrance Fee.

- 8.3 An incorporated Centre and/or a person representing an unincorporated Centre shall not be admitted as a Member unless:

- (a) the Centre or person does all things required to be done by it in order to become a member of the English Australia Tuition Assurance Scheme; and
- (b) it is elected to Membership at a Board meeting by an affirmative vote of not less than two thirds (2/3) of those Directors present and entitled to vote at the meeting. The Board may reject any application for Membership without assigning any reason for such rejection.

- 8.4 Not less than thirty (30) days' written notice of intention to apply for Membership of the Association shall be given to the Secretary by the applicant before such application may be considered by the Board.

- 8.5 If the Board accepts an application for Membership, the Secretary must notify the applicant of the acceptance and register:

- (a) the applicant's name;
- (b) the applicant's class of Membership;
- (c) if a representative of an unincorporated Centre, the name of the unincorporated Centre, in the Register.

- 8.6 If the Board rejects an application for Membership, the Secretary must notify the unsuccessful applicant and any moneys lodged by that applicant shall be returned to the applicant.

- 8.7 Subject to the Act, a successful applicant becomes a Member on the registration of that applicant's name in the Register.

## 9. Representative

- 9.1 An incorporated Member must appoint one or more natural persons to be its Representative, who shall exercise all the rights of Membership due to that Member but only one Representative may exercise the incorporated Member's powers at any one time.
- 9.2 The name and address of the Representative will be entered in the Register as the representative of the incorporated Member.
- 9.3 All correspondence and notices from the Association will be served on that Representative and any notice served on a Representative will be deemed to be service on the incorporated Member which is represented by that particular Representative.
- 9.4 If the appointment of a Representative by the incorporated Member is made by reference to a position held, the appointment must identify the position.
- 9.5 Despite clause 12, an incorporated Member may remove and replace a Representative where the incorporated Member gives written notice to the Board in a form approved by the Board.
- 9.6 A signature by a Representative of an incorporated Member on behalf of that incorporated Member is taken to be the signature of that incorporated Member for the purposes of this Constitution.
- 9.7 Any power or right of an incorporated Member as granted by this Constitution can be exercised by the Representative of that particular incorporated Member.
- 9.8 Incorporated Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to clause 31.
- 9.9 Each Representative will comply with the terms of this Constitution in all matters pertaining to the Association as if a Member himself or herself.
- 9.10 The instrument appointing a Representative shall be in writing and under the seal of a Member or under the hand of an officer or attorney of the Member duly authorised.
- 9.11 The appointment of a Representative shall be in or substantially in the following form or on such other form as may be approved by the Board:

..... *(insert name of Member) appoints*

..... *(insert name of Representative) being its duly appointed Representative to attend, speak and, if eligible, vote at any meeting of the Association or at any adjournment thereof.*

*signed ..... this ..... day of .....*

- 9.12 A duly executed appointment of a Representative of a Member in the form set out in clause 9.11 shall be prima facie evidence of the appointment of the Representative.
- 9.13 Any person claiming to be the Representative of a Member shall not be entitled to exercise the rights of a Member unless prior to the meeting that person produces to the Chair evidence of his appointment.
- 9.14 Any action, attendance, statement or vote by a Representative shall be deemed to be the action, attendance, statement or vote of the Member and shall bind the Member unless the Association has received prior written notice from the Member of the revocation of the Representative's appointment.

## 10. Constitution available to Members

A copy of the Constitution shall be supplied to a Member on request being made to the Secretary and, if demanded by the Secretary, on payment of any fee that may be prescribed by the Act.

## 11. Change of address

Members shall advise the Secretary of any change in their address and contact details.

## 12. Membership Entitlements Not Transferable

- 12.1 A right, privilege or obligation which a person has by reason of being a Member of the Association:
- (a) is not capable of being transferred or transmitted to another person or organisation; and
  - (b) terminates on cessation of the person's Membership.

## 13. Resignation, Cessation, Suspension and Removal from Membership

- 13.1 A Member may at any time, by giving written notice to the Secretary, resign from Membership of the Association. The resignation shall take effect from the date on which the notice is received by the Secretary.
- 13.2 The Membership of a Member shall cease:
- (a) if that Member or, in the case of a Member who represents an unincorporated Centre, that Centre:
    - (i) in the case of a Full Member, ceases to be an ELICOS Centre;
    - (ii) in the case of an Associate Member, ceases to be a Centre;

- (iii) ceases to be registered by or with or accredited by, as the case may be, any governmental statutory or other body where such registration or accreditation is required for the lawful operation of the Centre;
    - (iv) is wound up or an order is made for it to be wound up or it goes into liquidation;
    - (v) ceases to carry on business or ceases to carry on educational activities;
    - (vi) ceases to comply with the criterion for Membership established by the Board from time to time; or
    - (vii) subject to clause 15.2, fails to pay to the Association any monies due by the Member in accordance with the timeframes set out in clause 17;
  - (b) if, in the case of a Member who represents an unincorporated Centre, that Member is declared bankrupt;
  - (c) if, in the case of a Member who represents an unincorporated Centre, that Member dies; or
  - (d) if the Association in a general meeting resolves by a Special Resolution to terminate the Membership of a Member:
    - (i) who has refused or neglected to comply with a provision of the Constitution; or
    - (ii) who has wilfully acted in a manner prejudicial to the interests of the Association; or
    - (iii) whose conduct or circumstances in the opinion of the Association renders it undesirable that that Member continue to be a Member of the Association.
- 13.3 Subject to clause 13.7 the Membership of a Member shall be deemed to be suspended immediately if that Member Centre at any time is not, or ceases to be, a member of the English Australia Tuition Assurance Scheme. This clause 13.3 does not apply to any Member Centre which is not, at the date of inclusion of this paragraph in the Constitution, a member of the English Australia Tuition Assurance Scheme, unless and until such Member Centre becomes a member of the English Australia Tuition Assurance Scheme.
- 13.4 If a Member is deemed to be suspended pursuant to clause 13.3 and that Member Centre becomes a member of the English Australia Tuition Assurance Scheme before that Member has been removed or deemed to be removed from Membership of the Association under clause 13.5, that suspension will cease immediately upon that Member Centre becoming a member of the English Australia Tuition Assurance Scheme.
- 13.5 A Member shall be removed or shall be deemed to be removed from Membership of the Association if, in the case of a suspension of a Member pursuant to clause 13.3, that Member has been suspended for a continuous period of one (1) Month.

- 13.6 The Board or the Full Members of the Association may resolve that a Member shall not be removed from Membership of the Association notwithstanding the foregoing if, prior to the date of effect of such removal, the:
- (a) Board; or
  - (b) Full Members of the Association,
- as the case may be, passes a Special Resolution to that effect.
- 13.7 The Board may make by-laws under clause 48 relating to:
- (a) the conduct of Members;
  - (b) disciplinary procedures;
  - (c) the reprimanding, suspension and expulsion of Members; and
  - (d) determining the minimum amount of public liability insurance that a Member must have.

## **14. Resolution of Disputes Between Members**

- 14.1 Disputes between Members (in their capacity as Members), shall be referred to the Board which must take steps to resolve the dispute.
- 14.2 If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of it being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.
- 14.3 Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the New South Wales Law Society.
- 14.4 The costs of the mediator appointed pursuant to clause 14.2 or clause 14.3 (as the case may be) shall be shared equally between the Members party to the dispute.
- 14.5 At least seven (7) days before a mediation session established by a mediator appointed pursuant to clause 14.2 or clause 14.3 (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

## ENTRANCE FEES, ANNUAL SUBSCRIPTIONS AND LEVIES

### 15. Entrance Fees and Annual Subscriptions

- 15.1 The Board may from time to time determine the amount (if any) payable by a Member as an:
- (a) Entrance Fee in respect of its application for Membership of the Association; and
  - (b) Annual Subscription.
- 15.2 The Board may in its discretion:
- (a) determine that no Entrance Fee or Annual Subscription is payable by a Member, a class of Members or any Members in a given year; or
  - (b) determine that a discounted Entrance Fee or Annual Subscription is payable by a Member, a class of Members or any Members in a given year; and
  - (c) extend the time for payment of an Entrance Fee or Annual Subscription by any Member.
- 15.3 No part of any Entrance Fee or Annual Subscription shall be refunded to a Member who ceases to be a Member in accordance with clause 13.
- 15.4 An increase in the Annual Subscription shall take effect no earlier than fourteen (14) days after the date of the Board resolution approving the increase.

### 16. Levies

- 16.1 Subject to clause 16.2, the Board shall have the power to impose Levies on Members for general or special purposes.
- 16.2 Levies in excess of the amount of a Member's Annual Subscription shall not be raised in any year unless they are first approved by a general meeting of Members.
- 16.3 The imposition of a Levy shall take effect no earlier than fourteen (14) days after the date of the Members' resolution approving the imposition.

### 17. Forfeiture of Membership

- 17.1 Any sum that, by the terms of this Constitution, becomes payable by a Member on joining or at a fixed date, whether by way of Entrance Fee, Annual Subscription or Levy, shall for the purposes of this Constitution be deemed to be duly payable on the date specified in this Constitution or such other date as is specified by the Board from time to time.
- 17.2 If a Member fails to pay any sum payable to the Association pursuant to clause 17.1, the Board may, at any time thereafter during such time as such sum remains unpaid, serve a notice on the Member requiring payment of so much of such sum as is unpaid, together with any interest imposed by the Board which may have accrued. Should interest be imposed by the Board, interest

will be calculated at a rate equal to 2% above the rate prescribed for the purposes of section 101 of the *Civil Procedure Act 2005* (NSW).

- 17.3 The notice shall name a further day (not earlier than the expiration of fourteen (14) days from the date of service of the notice) on or before which the payment required by the notice is to be made and shall state that, in the event of non-payment at or before the time appointed, the Member shall cease to be a Member of the Association.

## 18. Liability for unpaid monies

Any Member ceasing to be a Member of the Association pursuant to clause 13 or clause 16.3 shall remain liable for:

- (a) any Annual Subscription or Levy and all arrears and interest thereon due and unpaid at the date of cessation of Membership of the Association;
- (b) any other monies due to the Association at the date of cessation of its Membership or for which it is or may become liable under clause 4.2.

## GENERAL MEETINGS

### 19. Annual general meeting

A general meeting called the annual general meeting shall be held at least once every calendar year at such time and place as may be determined by the Board, but no later than five (5) Months after the close of the Association's financial year. All meetings other than annual general meetings shall be called general meetings.

### 20. Business

The business of an annual general meeting may include:

- a) any of the following matters, even if not referred to in the notice of meeting:
  - (i) consideration of the annual financial report, directors' report and auditors' report prescribed by Chapter 2M of the Act;
  - (ii) election of Directors;
  - (iii) appointment of the auditor (if any);
  - (iv) fixing the auditor's remuneration (if any);
- b) any business which under this Constitution or the Act is required to be transacted at an annual general meeting; and
- c) any other business which may lawfully be transacted at a general meeting.

## 21. Convening of general meetings

- 21.1 The Board may whenever it thinks fit convene a general meeting, in accordance with the provisions of the Act.
- 21.2 Members shall be entitled to require a general meeting to be convened in accordance with the provisions of the Act.
- 21.3 A general meeting may be held at two or more venues simultaneously using any technology that gives the Members as a whole a reasonable opportunity to participate.

## 22. Notice

- 22.1 A notice of general meeting shall (unless the Act otherwise permits):
  - (a) set out the place, the day and the hour of 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 the intention to propose the Special Resolution and state the Special Resolution; and
  - (d) contain a statement setting out the following information:
    - (i) that the Member has a right to appoint a proxy;
    - (ii) whether or not the proxy needs to be a Member of the Association; and
    - (iii) that a Member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise.
- 22.2 Notice of every general meeting must be given to:
  - (a) each Member;
  - (b) each Director; and
  - (c) the auditor of the Association (if any).
- 22.3 Subject to the provisions of the Act allowing general meetings to be held with shorter notice, at least twenty one (21) days written notice must be given to Members of any general meeting.
- 22.4 A general meeting shall not be invalidated by reason only of the accidental omission to give notice of the meeting or the non-receipt of the notice of the meeting by any of the persons referred to in clause 22.2.

## 23. Cancellation and postponement of general meetings

- 23.1 Subject to the provisions of the Act and this Constitution, the Board may cancel a general meeting of the Association:
- (a) convened by the Board; or
  - (b) which has been convened by a Member or Members pursuant to the Act upon receipt by the Association of a written notice withdrawing the requisition signed by that same Member or those same Members.
- 23.2 The Board may postpone a general meeting not being a meeting requisitioned by Members to the same day in the next week at the same time and place or to such other day, time and place as the Board may determine but such period shall not exceed twenty one (21) days.
- 23.3 It shall not be necessary to give any notice of the postponement or of the business to be transacted at the postponed general meeting.

## PROCEEDINGS AT GENERAL MEETINGS

### 24. Chair

- 24.1 The Chair shall be entitled to take the chair at every general meeting. If the Chair is:
- (a) not present within thirty (30) minutes after the time appointed for the holding of such meeting; or
  - (b) unwilling or unable to act,
- then a Deputy Chair shall chair the meeting, but if a Deputy Chair is not present or willing to act then the Directors present at the meeting may elect one of their number to be chair of the meeting.
- 24.2 If there are no Directors present, then the Full Members present shall elect one of their number to be the chair of the meeting.
- 24.3 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall have a second or casting vote.

### 25. Quorum

- 25.1 No business shall be transacted at any general meeting of the Association unless a quorum of Full Members is present in person, by their Representatives or by proxy at the time when the meeting proceeds to business.
- 25.2 The quorum at any general meeting shall be sixty percent (60%) of the Full Members entitled to vote.

## 26. Adjournment

- 26.1 If a quorum is not present within thirty (30) minutes from the time appointed for the holding of the meeting:
- (a) the meeting shall be dissolved if convened upon the requisition of Full Members (for the purposes of sections 249D and 249F of the Act, only Full Members can requisition a general meeting); or
  - (b) in any other case to such other day time and place as the Board may determine but such period shall not exceed twenty one (21) days from the date of the original meeting.
- 26.2 If at such adjourned meeting a quorum is not present within sixty (60) minutes from the time appointed for the holding of the meeting, the Full Members who are in person, by their Representatives or by proxy present and entitled to vote shall be a quorum and may transact the business for which the meeting was called.
- 26.3 The chair of a meeting may, with the consent of the meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 26.4 A resolution passed at any adjourned meeting shall for all purposes be treated as having been passed on the date when it was in fact passed and shall not be deemed to have been passed on any earlier date.
- 26.5 It shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## 27. Attendance and voting

- 27.1 Subject to clause 27.3, a Full Member may attend, speak and vote at any general meeting.
- 27.2 Subject to clause 27.3, an Associate Member may attend and speak but not vote at any general meeting, unless it is for the purpose of complying with clause 41.1(e).
- 27.3 A Member is not entitled to attend or vote at a general meeting unless all Entrance Fees, Annual Subscriptions, Levies and other sums presently payable by the Member in respect of Membership of the Association have been paid.
- 27.4 Subject to clause 27.3, on a show of hands or on a poll every Full Member present in person or by its Representative or by proxy shall have one vote.

## 28. Decisions

- 28.1 At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is demanded by:
- (a) a Member entitled to vote on that resolution; or
  - (b) the chair.
- 28.2 Before a vote on a resolution is taken, the chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.
- 28.3 Unless a poll is so demanded, a declaration by the chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Association, which has been signed by the chair of the meeting or the next succeeding meeting, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## 29. Polls

- 29.1 A poll may be demanded:
- (a) before a vote on a resolution is taken;
  - (b) before the voting results on a show of hands are declared; or
  - (c) immediately after the voting results on a show of hands are declared.
- 29.2 If a poll is demanded it must be taken in such manner and at such time and place as the chair of the meeting directs, subject to clause 29.5.
- 29.3 The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.
- 29.4 The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 29.5 A poll demanded on the election of the chair or on a question of adjournment shall be taken forthwith.
- 29.6 A demand for a poll may be withdrawn.

## 30. Objection to Member's entitlement to vote

- 30.1 An objection may only be raised to the qualification of a Member to vote at a general meeting at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- 30.2 Any such objection shall be referred to the chair of the meeting, whose decision is final.
- 30.3 A vote not disallowed pursuant to such an objection is valid for all purposes.

## 31. Right to Appoint a Proxy

- 31.1 A Member who is entitled to attend and vote at a general meeting of the Association (or its Representative) may appoint a person as the Member's proxy to attend and vote for the Member at the meeting.
- 31.2 If a Member (or its Representative) appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

## 32. Appointing a Proxy

- 32.1 The instrument appointing a proxy must be in writing signed by the appointor or the appointor's attorney duly authorised in writing.

## 33. Instrument of Proxy

- 33.1 The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
- (a) the name and address of the Member (and the Representative, if applicable);
  - (b) the name of the Association;
  - (c) the proxy's name or the name of the office of the proxy; and
  - (d) the meetings at which the instrument of proxy may be used.
- 33.2 An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.
- 33.3 An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by clause 33.1.
- 33.4 An instrument of proxy may be revoked at any time by notice in writing to the Association.

## 34. Lodgement of Proxies

- 34.1 An instrument appointing:
- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
  - (b) an attorney to exercise a Member's or Representative's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at the Office or at such other place as is specified for that purpose in the notice convening the general meeting not less than forty eight (48) hours (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote, and in default the instrument of proxy or the power of attorney will not be treated as valid.

- 34.2 For the purposes of this clause 34, it will be sufficient that any document required to be lodged by a Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Member and the document shall be regarded as received at the time the facsimile was received at that place.
- 34.3 For the purposes of this clause 34, it will be sufficient that any document required to be lodged by a Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Association.

## 35. Validity of Proxies

- 35.1 A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:
- (a) the death or unsoundness of mind of the Member;
  - (b) the bankruptcy or liquidation of the Member;
  - (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Association has not received at its Office written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least forty eight (48) hours (or such shorter period as the Board may allow) prior to the time appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

- 35.2 A proxy who is not entitled to vote on a resolution as a Member, may vote as a proxy for another Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

## 36. Rights of Proxies and Attorneys

- 36.1 The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- 36.2 Unless a Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.
- 36.3 A proxy will not be revoked by the appointor attending and taking part in any general meeting, but if the appointor votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointor shall not be entitled to vote in that capacity in respect of the resolution.
- 36.4 The chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the chair that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity, he may be excluded from voting either upon a show of hands or upon a poll.

## 37. Minutes

Minutes of all resolutions and proceedings at general meetings shall be kept in accordance with the Act and any such minute shall be signed by the chair of the meeting to which it relates or by the chair of the next succeeding meeting and if purporting to be so signed shall be prima facie evidence of the proceedings to which it relates.

## 38. Right of Non-Members to Attend General Meeting

38.1 The chair of a general meeting may invite any person who is not a Member to attend and address a meeting.

38.2 Any auditor of the Association shall be entitled to attend and address a general meeting.

## THE BOARD

## 39. Composition of the Board

39.1 The Board shall consist of:

- (a) Eight (8) General Appointees;
- (b) One (1) State/Territory Delegate for each State or Territory in which three or more Members are situated; and
- (c) One (1) State/Territory Delegate to represent Members in all States and Territories in which one or two Members are situated.

39.2 At each annual general meeting one half of the General Appointees, being those who have been longest in office, (if their number is not 2 or a multiple of 2 then the next highest whole number in excess of one half) shall retire from office. These resignations shall take effect from the conclusion of the annual general meeting.

39.3 As between two or more who have been in office an equal length of time, the General Appointees to retire shall, in default of agreement between themselves, be determined by ballot. The length of time a General Appointee has been in office shall be computed from their last election. For the avoidance of doubt, an election pursuant to clause 44.1 constitutes an election for the purposes of calculating when a General Appointee was last elected.

39.4 A retiring Director shall be eligible for re-election.

39.5 Only persons who:

- (a) in the case of a Full Member which is an incorporated ELICOS Centre, are directors, employees or office holders of a Full Member or who are engaged in the administration or management of a Full Member; or

- (b) in the case of a Full Member who represents an unincorporated ELICOS Centre, are directors, employees or office holders of the ELICOS Centre or who are engaged in the administration or management of the ELICOS Centre,

shall be eligible to stand for and be elected to the Board.

## 40. Election of Board – General Appointees

40.1 Prior to each annual general meeting an election shall be held to appoint the number of General Appointees as are needed so that immediately following the retirement of General Appointees pursuant to clause 39.2, there shall be eight (8) General Appointees in accordance with clause 39.1(a).

40.2 The election to the Board of General Appointees shall take place as follows:

- (a) No later than forty nine (49) days before the date of the annual general meeting, the Chair shall nominate a returning officer to conduct an election for General Appointees.
- (b) The returning officer shall forthwith call for nominations from Full Members for General Appointees, to close no later than thirty five (35) days before the date of the annual general meeting.
- (c) Each person standing for election shall be nominated and seconded in writing, by a Full Member for the position or positions for which the person is nominated and shall signify his or her willingness to serve as a Director.
- (d) If the number of candidates for election is equal to, or fewer than, the number of vacancies to be filled, the candidate or candidates shall be declared elected.
- (e) If the number of candidates for election exceeds the number of vacancies to be filled, an election shall be conducted by ballot, in a form determined by the returning officer.
- (f) Only Full Members may vote in any election conducted pursuant to **clause 40.2(e)**.
- (g) Any tied vote shall be determined by drawing lots.
- (h) The voting shall be concluded no later than twenty one (21) days before the date of the annual general meeting.
- (i) The returning officer shall advise the Secretary of the result of the election. Any Member shall be entitled to know the result of the election.
- (j) If the number of vacancies to be filled will not be filled following a declaration pursuant to **clause 40.2(d)** or an election pursuant to **clause 40.2(e)**, nominations for the positions, with the consent of the nominee, may be made orally by a Full Member and seconded by a Full Member at the annual general meeting. If the number of candidates so nominated is equal to the number of vacancies to be filled, the candidates shall be declared elected. If the number of candidates so nominated exceeds the number of vacancies to be filled, a ballot shall be taken.

- (k) Where a ballot is held pursuant to **clause 40.2(j)**, and there is an equality of votes in favour of two (2) or more candidates, the chair of the meeting shall draw lots between the candidates having an equality of votes so as to ensure any vacancies are filled.
  - (l) Following the annual general meeting, any vacant positions on the Board shall be deemed to be casual vacancies.
  - (m) General Appointees elected pursuant to this **clause 40.2** shall hold office from the conclusion of the annual general meeting following their election.
- 40.3 A person who is a director, employee or officeholder of a Full Member or is engaged in the administration or management of a Full Member, or in the case of a Full Member who represents an unincorporated ELICOS Centre, is a director, employee or officeholder of the unincorporated ELICOS Centre or is engaged in the administration or management of the unincorporated ELICOS Centre, may not hold office as a Director if another person who is a director, employee or office holder of, or is engaged in the administration or management of, the same Full Member or same unincorporated ELICOS Centre holds office as a Director at the same time.
- 40.4 If two or more people who are directors, employees or officeholders of, or are engaged in the administration or management of, the same Full Member or the same unincorporated ELICOS Centre stand for election at the same time and both would have been elected if it were not for clause 40.3, only the person with the most votes, or where the votes are equal only the person whose lot was drawn shall be declared elected.

## 41. Election of Board - State/Territory Delegates

- 41.1 The election to the Board of State/Territory Delegates shall take place as follows:
- (a) No later than twenty one (21) days before the date of the annual general meeting, the Chair shall nominate:
    - (i) a returning officer for each State and Territory where there are three or more Members situated to conduct an election in that State or Territory for a State/Territory Delegate;
    - (ii) one returning officer to conduct an election to appoint one State/Territory Delegate to represent all States and Territories where there are one or two Member(s) situated.
  - (b) Each returning officer shall forthwith call for nominations from Full Members in that State/Territory for a State/Territory Delegate, to close no later than fourteen (14) days before the date of the annual general meeting.
  - (c) If only one candidate is nominated for a particular Delegate position, the candidate shall be declared elected.
  - (d) If more than one candidate is nominated for a particular Delegate position, the returning officer shall conduct an election by ballot, in a form determined by the returning officer.

- (e) Both Full Members and Associate Members located in that State/Territory may vote in any election conducted pursuant to clause 41.1(d).
- (f) Any tied vote shall be determined by drawing lots.
- (g) The voting shall be concluded no later than two (2) days before the date of the annual general meeting.
- (h) Before the annual general meeting, the returning officer shall advise the Secretary of the result of the election.
- (i) State/Territory Delegates elected pursuant to this **clause 41.1** shall hold office from the conclusion of the annual general meeting following their election.

41.2 Each State/Territory Delegate shall hold office until the conclusion of the next annual general meeting following their election.

## 42. Conduct of elections

42.1 Unless otherwise directed by the general meeting, the Chair shall determine how any ballot is to be conducted at that meeting.

42.2 Votes may be cast in person or by proxy.

## 43. Office-Bearers

43.1 The office-bearers shall be the:

- (a) Chair; and
- (b) two (2) Deputy Chairs.

43.2 The Board shall, at the first meeting of the Board held after an annual general meeting, appoint from amongst the General Appointees sitting on the Board at the time of the Board meeting an Office-Bearer to fill each of the Office-Bearer positions in **clause 43.1**.

43.3 Subject to **clause 43.4**, the Office-Bearers shall hold office for a term of approximately one (1) year until the start of the first meeting of the Board following the next annual general meeting.

43.4 Office-Bearers shall not hold office beyond their retirement or removal from the Board as a General Appointee.

## 44. Casual vacancies

44.1 In the event of a casual vacancy occurring amongst the General Appointees, a postal ballot to choose an eligible person to fill the casual vacancy shall take place as follows:

- (a) Within seven (7) days of a casual vacancy arising amongst the General Appointees, the Chair shall nominate a returning officer to conduct a vote amongst Full Members to fill the casual vacancy.

- (b) The returning officer shall forthwith call for nominations for the General Appointee position, to close no later than fourteen (14) days after the date of the call for such nominations.
  - (c) The vote shall be conducted by postal ballot, in a form determined by the returning officer.
  - (d) Any tied vote shall be determined by drawing lots.
  - (e) The voting shall be concluded no later than twenty eight (28) days after the date that the returning officer was nominated by the Chair.
  - (f) Immediately following the counting of votes the returning officer shall advise the Secretary of the result of the postal ballot and this will constitute conclusive proof of the voting for the General Appointee position.
- 44.2 A person elected to the Board in accordance with clause 44.1 shall hold office until required to resign pursuant to clause 39.2.
- 44.3 In the event of a casual vacancy occurring amongst the State/Territory Delegates, a postal ballot to choose an eligible person to fill the casual vacancy shall take place as follows:
- (a) Within seven (7) days of a casual vacancy arising amongst the State/Territory Delegates, the Chair shall nominate a returning officer in the State and Territory where Members are represented by the State/Territory Delegate whose office has become vacant to conduct a vote amongst Full Members and Associate Members in that State or Territory to fill the relevant State/Territory Delegate vacancy.
  - (b) The returning officer shall forthwith call for nominations for the relevant State/Territory Delegate position, to close no later than fourteen (14) days after the date of the call for such nominations.
  - (c) The vote shall be conducted by postal ballot, in a form determined by the returning officer.
  - (d) Any tied vote shall be determined by drawing lots.
  - (e) The voting shall be concluded no later than twenty eight (28) days after the date that the returning officer was nominated by the Chair.
  - (f) Immediately following the counting of votes the returning officer shall advise the Secretary of the result of the postal ballot and this will constitute conclusive proof of the voting for the relevant State/Territory Delegate position.

- 44.4 A person appointed to the Board in accordance with clause 44.3 shall hold office until required to resign pursuant to clause 41.2.
- (a) In the event of a vacancy occurring in the position of Chair or Deputy Chair, the Board shall appoint from amongst the General Appointees sitting on the Board at the time of the Board meeting an Office-Bearer to fill the vacant Office-Bearer position.
  - (b) Any new Office-Bearer appointed to hold office pursuant to clause 44.5(a) shall hold office until the next annual general meeting.
- 44.5 If any Office-Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another General Appointee to act in the vacant position during the absence or inability of the Office-Bearer.
- 44.6 Nothing in clauses 44.5 or 44.6 permits any person to simultaneously hold more than one position of Office-Bearer.

## 45. Vacation of office

- 45.1 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act or this Constitution, the office of a Director becomes vacant if:
- (a) he becomes bankrupt;
  - (b) he dies;
  - (c) he is convicted of a serious felony;
  - (d) he 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) he is absent without the consent of the Board from three (3) consecutive meetings and the Board resolves that his office be vacated;
  - (f) he resigns his office by written notice to the Secretary;
  - (g) he becomes prohibited from being a Director by reason of any order made under the Act;
  - (h) he is removed from office by the Association in general meeting (in accordance with the Act);
  - (i) in the case of a person whose eligibility to be appointed as a Director arises due to his or her involvement with an incorporated Full Member in accordance with clause 39.7(a), that Full Member withdraws or revokes its nomination of that person for the Board; or
  - (j) in the case of a person whose eligibility to be appointed as a Director arises due to his or her involvement with an unincorporated ELICOS Centre, the Full Member who represents the unincorporated ELICOS Centre withdraws or revokes its nomination of that person for the Board;

- (k) in the case of a person whose eligibility to be appointed as a Director arises due to his or her involvement with an incorporated Full Member, the Full Member ceases to be a Full Member;
- (l) in the case of a person whose eligibility to be appointed as a Director arises due to his or her involvement with an unincorporated ELICOS Centre, the Full Member who represents the unincorporated ELICOS Centre, ceases to be a Full Member and is not replaced by another person appointed as Full Member to represent that unincorporated ELICOS Centre; or
- (m) he fails to declare the nature of his interests whether direct or indirect in any contract or proposed contract with the Association as required by the Act.

## POWERS AND DUTIES OF BOARD

### 46. Duties

The Board shall be responsible for the management of the business and affairs of the Association.

### 47. Powers

The Board may exercise all such powers of the Association as are not, by the Act or this Constitution, required to be exercised by the Association in general meeting.

### 48. By-laws

The Board may make by-laws from time to time that are binding on Members of the Association subject to the proposed by-laws being first approved by a general meeting of Members and provided such by-laws do not contradict this constitution. The said by-laws may be repealed or amended at any time by the Board after such repeal or amendment is approved by a general meeting of Members.

## PROCEEDINGS OF THE BOARD

### 49. Meetings

- 49.1 The Board may meet together for the despatch of business and adjourn and otherwise regulate its meetings as it thinks fit provided that reasonable notice of such meetings shall be given to Directors.
- 49.2 Notice of a meeting of the Board need not be in writing.
- 49.3 The Chair may at any time and the Secretary shall, upon the request of not less than three (3) Directors, convene a meeting of the Board.

- 49.4 Subject to clauses 8.3(b) and 13.6, questions arising at any meeting of the Board shall be decided by a majority of votes of Directors present in person and entitled to vote and any such decision shall for all purposes be deemed a decision of the Board.
- 49.5 Each Director shall have one (1) vote.
- 49.6 In case of an equality of votes, the Chair of the meeting shall have a casting vote in addition to a deliberative vote.
- 49.7 All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.
- 49.8 A Director is not permitted to appoint an alternate director.

## 50. Quorum

- 50.1 At a meeting of the Board the number of Directors whose presence is necessary to constitute a quorum shall be eight (8) Directors personally present.
- 50.2 A quorum must be present at all times during the meeting.
- 50.3 A Director who is disqualified from voting on a matter pursuant to clause 57 shall be counted in the quorum despite that disqualification.

## 51. Chair

- 51.1 The Chair shall chair each meeting of the Board or, if the Chair is absent, a Board meeting shall be chaired by a Deputy Chair.
- 51.2 Where a meeting of the Board is held and the Chair, or in his absence a Deputy Chair, is not present within thirty (30) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Directors present shall elect one of their number to be chair of the meeting.

## 52. Vacancies

In the event of a vacancy or vacancies in the offices of Directors, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum, the Board may act only:

- (a) for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum; or
- (b) to convene a general meeting of the Association; or
- (c) in an emergency.

## 53. Delegation of powers

- 53.1 The Board may form and delegate any of its powers to a committee consisting of such Directors and other persons as it thinks fit and may from time to time revoke such delegation.
- 53.2 A committee must in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- 53.3 The meetings and proceedings of any committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- 53.4 A minute of all the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made entered and signed. A copy of such committee minutes shall be tabled at the next Board meeting.

## 54. Validation of acts

All acts done:

- (a) at a meeting of the Board; or
- (b) at a meeting of a Board committee; or
- (c) by any Director,

are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a Director or member of a Board committee or that a person so appointed was disqualified, valid as if the person had been duly appointed and was qualified to be a Director, or a member of the Board committee.

## 55. Written resolutions

- 55.1 The Board may pass a resolution without a Board meeting being held if all the Directors 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. For this purpose, signatures can be contained in more than one document.
- 55.2 A facsimile transmission which is received by the Association and which purports to have been signed by a Director shall, for the purposes of this clause 55, be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Association in legible form.
- 55.3 An email transmission which is received by the Association and which purports to have been sent by a Director shall, for the purposes of this clause 55 be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Association.

- 55.4 Where a resolution is passed in accordance with this clause 55, the Board must ensure that it complies with the provisions of clause 58, causing minutes to be kept of such resolutions.

## 56. Teleconference meetings

- 56.1 A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- 56.2 A minute of the proceedings at the teleconference meeting shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified to be a correct minute by the Chair of the meeting.

## 57. Directors' Interests

- 57.1 The Association may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions which apply to such contracts or arrangements.
- 57.2 A Director must disclose an interest in accordance with the Act and the Secretary must record all declarations in the minutes of the relevant meeting.
- 57.3 A Director who has an interest in a contract or arrangement made by the Association and has disclosed this interest to the Board, subject to compliance with section 195 and related provisions of the Act, may still, with the consent of the majority of the Board:
- (a) vote on the matter;
  - (b) be counted in determining whether or not a quorum is present at any meeting of the Board considering that contract or arrangement or proposed contract or arrangement;
  - (c) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (d) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 57.4 A Director's failure to make disclosure under this clause 57 does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.
- 57.5 A general notice given to the Board by a Director that the Director is an Officer, a member of, or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Association and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

## 58. Minutes

- 58.1 The Board must cause minutes to be kept in accordance with the Act for the purposes of recording:
- (a) the names of the Directors present at each meeting of the Board and of Directors present at each meeting of a committee;
  - (b) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of committees;
  - (c) such matters as are required by the Act to be recorded in the record books of the Association including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- 58.2 Such minutes shall be signed by the chair of the meeting, or the chair of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

## 59. Secretary

The Board shall appoint a Secretary who shall hold office on such terms and conditions, as to remuneration, duties and otherwise, as the Board determines.

## 60. Execution of Documents

- 60.1 Without limiting the manner in which the Association may execute any contract, including as permitted under section 126 of the Act, the Association may execute any agreement, deed or other document by:
- (a) two Directors signing the same; or
  - (b) one Director and one Secretary signing the same.
- 60.2 Nothing in this Constitution requires the Association to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Association.

# ACCOUNTS AND AUDIT

## 61. Proper Accounts and Records

The Board shall cause proper accounts and records to be kept with respect to the financial affairs of the Association in accordance with the Act.

## 62. Location of Accounts and Records

- 62.1 The books of account shall be kept at the Office or at such other place as the Board thinks fit.
- 62.2 The Association shall at all reasonable times make its accounting records available in writing for the inspection of Directors and any other persons authorised or permitted by or under the Act to inspect such records.

## 63. Financial Year

The financial year of the Association shall commence on the first day of July and end on the last day of June in each year or such other period as having regard to the Act, the Board may determine.

## 64. Auditors

Where required by the Act, auditors shall be appointed and their duties regulated in accordance with the Act.

# NOTICES

## 65. Notices

- 65.1 A notice may be given by the Association to any Member either in person, or by sending it by post, facsimile transmission or electronic notification to the person at the address of the Member as shown in the Register or the address supplied by such Member to the Association for the giving of notices.
- 65.2 Where the Association sends a notice by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting, on the third day after the date of its posting and, in any other case, at the time at which the letter would have been delivered in the ordinary course of post.
- 65.3 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.
- 65.4 Any Member which has no last known address recorded in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- 65.5 Where a Member sends a notice to the Association by post, service of the notice shall be deemed to be effected if and when the notice is physically delivered to the Office.

## INDEMNITY TO OFFICERS

### 66. Indemnity

- 66.1 To the extent permitted by law every Officer (and former Officer) of the Association shall be indemnified out of the funds of the Association against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Association under this clause unless:
- (a) it is in respect of a liability to another person (other than the Association or a related body corporate to the Association) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
  - (b) it is in respect of a liability for costs and expenses incurred:
    - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
    - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

### 67. Payment of Indemnity Policy Premium

- 67.1 To the extent permitted by law the Association may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Association against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
- (a) a liability arising out of conduct involving a wilful breach of duty in relation to the Association; or
  - (b) a contravention of sections 182 or 183 of the Act.
- 67.2 The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- 67.3 Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions, then the Association shall not be required to indemnify the Officer under clause 66 except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

### 68. Indemnity to Continue

- 68.1 The indemnity granted by the Association contained in clauses 66 and 67 shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.