

**ECA HIGHER EDUCATION INSTITUTE PTY LIMITED**

**A.C.N. 627 475 790**

Trading as ECA College of Health Sciences

**CONSTITUTION**

Approved by the Shareholder

## ECA Higher Education Institute Pty Limited Constitution

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<b>References &amp; Legislation</b>	<ol style="list-style-type: none"><li>1. The Tertiary Education Quality and Standards (TEQSA) Act 2011 (Cth);</li><li>2. the Higher Education Standards Framework (Threshold Standards) 2015;</li><li>3. the Education Services for Overseas Students Act 2000 (Cth);</li><li>4. the Education Services for Overseas Students Regulations 2001; and</li><li>5. the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018; and</li><li>6. the Higher Education Support Act 2003 (Cth)</li></ol>

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## 1. INTERPRETATION

1.1. In this Constitution unless the contrary intention appears:

- 1.1.1. **“Academic Board”** means the Academic Board constituted pursuant to Rule 25, and which:
  - 1.1.1.1. sets and oversees policies and processes necessary to achieve intended academic outcomes (quality and integrity) consistent with the Institute’s overall directions; and
  - 1.1.1.2. sets academic standards and monitors academic outcomes; and ultimate responsibility and accountability to the Governing Board
- 1.1.2. **“Act”** means the *Corporations Act 2001* as amended from time to time;
- 1.1.3. **“By-laws”** means the by-laws determined by the Governing Board pursuant to Rules 17.4.1 and 24.2 and for the time being in force;
- 1.1.4. **“Chair of the Academic Board”** means the person engaged by the Company to preside over the Academic Board meetings and to ensure that the Academic Board discharges its responsibilities regarding oversight of academic standards, curriculum review and approval, academic rules and regulations governing award of degrees and diplomas and other essential academic tasks in an independent and consistent manner pursuant to the requirements of the State and Commonwealth laws and regulations applicable to Higher Education Institutions and Higher Education Providers as the case may be.
- 1.1.5. **“Chair of the Governing Board”** means the independent and non-executive Director and Chair of the Governing Board from time to time in office pursuant to Rule 19, and normally with higher education experience appointed by the Members of the Company to preside over the Governing Board meetings, promote the Company, preside over degree granting and other ceremonies of the Company.
- 1.1.6. **“Institute”** means ECA Higher Education Institute Pty Limited, A.C.N. 627 475 790;
- 1.1.7. **“Institute Crest”** means the Crest which may be adopted and used by the Institute;
- 1.1.8. **“Company”** means ECA Higher Education Institute Pty Limited, whose Members have adopted this Constitution;
- 1.1.9. **“Deputy Chair of the Governing Board”** means the independent, non-executive Director and Deputy Chair of the Governing Board from time to time in office pursuant to Rule 19, and normally with higher education experience appointed by the Members of the Company to preside over the Governing Board meetings, promote the Company, preside over degree

granting and other ceremonies of the Company, when the Chair of the Governing Board is not present.

- 1.1.10. **“Director”** means a member for the time being of the Governing Board;
- 1.1.11. **“For cause”** means, when used in connection with removal from an elected or appointed position as a Member or Governing Board Director, incompetence and/or conduct where there is a persistent failure to uphold the objects of the Institute and which in the opinion of the Members at general meeting, by a Special Resolution, brings the Institute into disrepute;
- 1.1.12. **“Governing Board”** means the board of directors of the Company, and which
  - 1.1.12.1. sets overall strategic directions and the framework of policies and procedures, and is ultimately responsible to shareholders and stakeholders for both corporate and academic outcomes;
  - 1.1.12.2. means all of the directors of the Company or such number of directors acting as the Governing Board in accordance with this Constitution
- 1.1.13. **“Incompetence”** means in connection with the performance or conduct of a Member or Governing Board Director:
  - 1.1.13.1. a breach of the duties of a Governing Board Director or Member as defined in the Act or the unwritten law of the States and Territories of Australia, including but not limited to the duties of loyalty and good faith and care and diligence; and/or
  - 1.1.13.2. a failure to meet the performance standards reasonably expected of a Governing Board member or the Principal or other officeholders in the Company’s circumstances;
- 1.1.14. **“Members”** means shareholders of the Company;
- 1.1.15. **“Principal”** means the person appointed pursuant to Rule 20 by the Governing Board;
- 1.1.16. **“Registered Office”** means the registered office of the Company as required by the Act, and which will be situated in the Commonwealth of Australia;
- 1.1.17. **“Regulations”** means the Regulations of the Institute made under Rules 6.1.12 and 9.2.12;
- 1.1.18. **“Seal”** means the common seal of the Company;
- 1.1.19. **“Secretary”** means a person appointed by the Company to perform the duties of the Company Secretary;

1.1.20. **"Special Resolution"** means a resolution passed by at least 75% of the votes cast by Members entitled to vote on the resolution, in accordance with the Act; and

1.1.21. **"General Regulations"** means the General Regulations of the Institute made by the Governing Board under Rule 24.

1.2. Words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Act.

1.3. Words importing one gender include all other genders.

1.4. Words importing the singular include the plural and vice versa.

1.5. Clause or rule headings are used for convenience and do not affect the construction of the Constitution.

## **2. NAME**

2.1. The name of the Company is "ECA Higher Education Institute Pty Limited" ("the Institute").

## **3. PROPRIETARY LIMITED COMPANY**

3.1. The Company is registered as a proprietary Company and accordingly must be limited by shares.

## **4. MEMBERS**

4.1. The Members the Company are: The Education Centre of Australia Pty Ltd (A.C.N. 111 918 775).

## **5. OBJECTS OF THE COMPANY**

5.1. The principal object of the Company is to provide, promote and undertake higher education, scholarship and research, with governance and management of the Institute's Australian higher education operations located in Australia.

5.2. Without limiting the generality of rule 5.1, the Company may pursue the principal object through supplementary objects that may include the following:

5.2.1. To foster, promote and undertake higher education, scholarship and research and through the higher education programs of the Institute provide and promote the preparation and continuing development of persons inspired by the Institute's values who will be capable of assuming positions of responsibility in business and society and in particular:

5.2.1.1. to provide academic programs of appropriate higher education standard;

- 5.2.1.2. to create an environment for the achievement of excellence in scholarship and research; and
- 5.2.1.3. to bring students to a high standard of professional development; and
- 5.2.2. to establish, operate, maintain and promote the Institute, in accordance with its values, vision and mission;
- 5.2.3. to develop governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals of the Institute, and that are sufficient to ensure the integrity of the College's academic programs;
- 5.2.4. to furnish and allocate funds and resources in accordance with the educational objectives of the Institute;
- 5.2.5. to establish facilities to enable the Institute to implement its objectives;
- 5.2.6. to award and confer academic qualifications as authorised by the relevant accrediting authority according to relevant law;
- 5.2.7. to participate in commercial ventures and activities to expand Institute revenue and to support the objectives of the Institute; and
- 5.2.8. do all such things as are, in the opinion of the Governing Board, ancillary or conducive to the attainment of all or any of the above objects.

## 6. POWERS OF THE COMPANY

- 6.1. In pursuance of the foregoing, the Company has, subject to the objects set out in this Constitution and the provisions of Rule 6.1, the powers set out in §124 of the Act, except §124 (1) (a), (c), (d), (g) and (h). The powers include, but without limiting the generality of those powers or of the foregoing, power to:
  - 6.1.1. carry on educational work;
  - 6.1.2. carry on the operation of the Institute;
  - 6.1.3. acquire take and hold real and personal property [including shares and including intellectual property] upon trusts either general or specific and either alone or in conjunction with any other person or company;
  - 6.1.4. acquire any rights or privileges that the Company may regard as necessary, desirable or expedient for the primary purposes hereof or for promoting its interests;
  - 6.1.5. purchase take on lease or exchange hire or otherwise acquire any real or personal property and maintain erect or alter any buildings or works

- necessary or convenient for the carrying out of any or all of the objects of the Company;
- 6.1.6. subject to sub-rule 6.1.4, sell improve lease or otherwise deal with all or any part of the property of the Company;
  - 6.1.7. invest any moneys of the Company not immediately required by the Company upon such securities as may from time to time be determined;
  - 6.1.8. borrow money with the approval of and in the manner approved by the Members or receive money on deposit;
  - 6.1.9. lend money for such purposes as may be germane to the objects of the Company and on such terms as may seem expedient and as approved by the Members;
  - 6.1.10. draw, make, accept, endorse, discount, execute, or issue promissory notes, bills of exchange, bills of lading, warrants, debentures, deposit receipts, and other transferable instruments with the approval of and in the manner approved by the Members;
  - 6.1.11. obtain any order or Act of Parliament for enabling the Company to carry any of its objects into effect or for effecting any alteration of the Company's Constitution or for any other purpose which may seem expedient and oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the interests or objects of the Company or any of them;
  - 6.1.12. make Regulations for the management of the business of the Company, its officers, servants, and agents, and do all such other things as may be incidental or conducive to the attainment of the objects of, or to the government and maintenance of the Company;
  - 6.1.13. sell or dispose of the assets of the Company or any part thereof in accordance with the Regulations for such consideration as the Company may think fit and in particular for debentures or securities of any other company or association having similar objects and activities, subject to the prior approval of the Members of the Company by resolution in general meeting;
  - 6.1.14. establish, maintain and operate a separate bank account or separate bank accounts for gifted funds, and operate within the Commonwealth guidelines for deductible gift recipient status;
  - 6.1.15. do all such other things as are or may be incidental or conducive to the attainment of any of the above objects; and
  - 6.1.16. without prejudice to the provisions of Rule 5.1 of this Constitution, the Company has power if in the opinion of the Governing Board, the management, conduct or affairs of the Institute require the Company so:



- 6.1.16.1. to be a member of a limited company, association, partnership or joint venture formed or entered into anywhere in the world; or
- 6.1.16.2. to form or participate in the formation of a limited company, association, partnership or joint venture formed or entered into anywhere in the world the objects or purposes of which include one or more of the following objects or purposes:
  - 6.1.16.2.1. providing facilities or services for study, research or education;
  - 6.1.16.2.2. undertaking research, development, consultancy or other services for commercial organisations, public bodies or individuals;
  - 6.1.16.2.3. aiding or engaging in the development or promotion of research or the application or use of the results of such research;
  - 6.1.16.2.4. any other object or purpose which, in the opinion of the Governing Board, is conducive to the attainment of the Company's objects;
- 6.1.16.3. to exercise its powers outside the State if that is necessary or convenient for the purposes of its objects.

## **7. REGISTRATION AS A HIGHER EDUCATION PROVIDER**

- 7.1. The Company shall apply to TEQSA for registration as a higher education provider under The Tertiary Education Quality and Standards (TEQSA) Act 2011 (Cth) and the provisions of the *Higher Education Standards Framework (Threshold Standards) 2015*.
- 7.2. The Company shall at all times comply with the requirements of:
  - 7.2.1. the *Tertiary Education Quality and Standards (TEQSA) Act 2011* (Cth);
  - 7.2.2. the *Higher Education Standards Framework (Threshold Standards) 2015*;
  - 7.2.3. the *Education Services for Overseas Students Act 2000* (Cth);
  - 7.2.4. the *Education Services for Overseas Students Regulations 2001*; and
  - 7.2.5. the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018*; and
  - 7.2.6. the *Higher Education Support Act 2003* (Cth)
  - 7.2.7. all amendments made to the above Laws and Regulations

## **8. GENERAL MEETING OF MEMBERS**

- 8.1. General meetings shall be held once in every year at such time and place (or places in accordance with rule 8.2) either in or outside New South Wales as may be prescribed by

the Company in general meeting and if no time or place is so prescribed such time and place either in or outside of New South Wales may be determined upon by the Governing Board. The abovementioned general meetings shall be called "ordinary meetings" and all other meetings shall be called "extraordinary meetings."

8.2. This sub-rule replaces replaceable rule §249C of the Act.

In addition to the ordinary meetings referred to in 6.1, the Governing Board may call a meeting of the Company's Members at any time and for any purpose connected with Company business.

8.3. The Company may hold a meeting of its Members, in accordance with §249S of the Act, at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

8.4. Meetings shall be held on requisition of Members in accordance with the provisions of §249D of the Act.

8.5. Not less than twenty-one days' notice (if given by advertisement) or less than fourteen days' notice (if given otherwise than by advertisement) of any general meeting (exclusive both of the day on which the notice is served or deemed to be served and of the day of the meeting) specifying those matters required to be specified by §249L of the Act, including the day, hour, and place or places of the meeting, and in case of special business the general nature of the business to be transacted, shall be given in manner hereinafter mentioned or in such other manner as may from time to time be prescribed by the Company in general meeting; but the accidental omission to give notice of any meeting to or the non-receipt of such notice by any of the Members shall not invalidate any resolution passed at any general meeting. A general meeting may be convened at shorter notice in accordance with §249H of the Act.

## 9. PROCEEDINGS AT A MEETING OF MEMBERS

9.1. The business of an ordinary meeting shall be to receive and consider the balance sheet, income and expenditure account, and the reports of the Governing Board and the auditors; to elect auditors; and to transact any other business which under this Constitution ought to be transacted at a general meeting.

9.2. Pursuant to the powers conferred by the Act or by this Constitution, the Members of the Company in general meeting have the power to:

9.2.1. change the Company's name by special resolution, pursuant to §157 (1) of the Act;

9.2.2. change the Company's type to certain types of company by special resolution, pursuant to §162 (1) of the Act;

9.2.3. approve certain related party transactions that confer a financial benefit on a related party of the public Company by resolution, pursuant to §208 of the Act;

9.2.4. remove an auditor by resolution, pursuant to Sec 329 (1) of the Act;

- 9.2.5. apply to the Court for a compulsory winding-up by special resolution, pursuant to §461 (1) (a) of the Act;
  - 9.2.6. apply to the Court for a voluntary winding-up, upon a special resolution, pursuant to §491 (1) of the Act;
  - 9.2.7. deal with matters referred by the Directors where the Directors are precluded from dealing with the matters themselves on the grounds that there are insufficient Directors to form a quorum as a result of Directors being precluded from voting due to a material personal interest in a matter, pursuant to §195 (4) and §195 (1) of the Act;
  - 9.2.8. appoint persons as Directors pursuant to sub-rule 15.3;
  - 9.2.9. remove a Director before the end of the Director's period of office by ordinary resolution, in accordance with the Act and this Constitution;
  - 9.2.10. determine the remuneration of Directors pursuant to Rule 18.4;
  - 9.2.11. alter this Constitution pursuant to Rule 36.1; and
  - 9.2.12. make Regulations, being not inconsistent with this Constitution and the Act, pursuant to Rule 6.1.12.
- 9.3. All other business transacted at any ordinary meeting and all business transacted at an extraordinary meeting shall be deemed special.
- 9.4. This Rule replaces replaceable rule §249T of the Act:
- 9.4.1. no business shall be transacted at a general meeting unless the majority of Members are present at the time for the meeting to proceed to business
  - 9.4.2. all Members must be present at all times during the meeting.
- 9.5. This Rule replaces replaceable rule §249U of the Act:
- The Chair and Chief Executive of Education Centre of Australia shall be entitled to preside as chair of every general meeting of the Company.
- 9.6. The Chair may with the consent of the meeting adjourn any 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.
- 9.7. This Rule replaces replaceable rule §250J of the Act:
- 9.7.1. a resolution is carried by a majority of votes of those entitled to vote, save where otherwise stipulated by this Constitution or the Act; and

9.7.2. at any general meeting, a declaration by the chair that a resolution has been carried on a show of hands and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

9.8. Voting of Members shall take place on the following basis:

9.8.1. subject to sub-rule 9.8.2, every Member shall have one vote, and no more, on a show of hands; and

9.8.2. the chair has a casting vote.

9.9. The Secretary of the Company or such other person as the Members may determine, shall cause minutes to be kept of all proceedings of meetings of Members, and such other matters required by the Act.

## **10. INCOME AND PROPERTY OF THE COMPANY**

10.1. The income and property which the Company receives or holds shall be held and applied largely for the purposes and for the benefit of the Institute, assuring that the Institute is able to meet its statutory obligations.

## **11. LIMITED LIABILITY**

11.1. The liability of the Members of the Company is limited.

11.2. The Company's right of indemnity:

11.2.1. is limited to income and property received and held for application pursuant to rule 10.1; and

11.2.2. does not permit personal recovery from any recipient of income and/or property pursuant to rule 10.1.

## **12. COMPANY ACCOUNTS**

12.1. True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Constitution for the time being in force the same shall be open to the inspection of the Members of the Company. Once at least in every year the accounts of the Company shall be examined by one or more registered company auditors who shall report to the Members of the Company in accordance with the provisions of the Act.

## **13. DISSOLUTION**

13.1. The Education Centre of Australia Pty Limited undertakes to contribute to the assets of the Company in the event of the same being wound up during the time that they are a Member or within one year afterwards for the payment of the debts and liabilities of the

Company contracted before the time at which they cease to be a Member and of the costs, charges and expenses of winding up the same and for the adjustment of the rights of the contributories among themselves such amount as may be required not exceeding two dollars.

- 13.2. The Chairman and Chief Executive Officer of Education Centre of Australia Pty Limited is not personally liable to contribute to the payment of debts and liabilities associated with the dissolution of the Company.
- 13.3. The Chief Financial Officer of Education Centre of Australia Pty Limited is not liable to contribute to the payment of debts and liabilities associated with the dissolution of the Company.
- 13.4. The Principal of the Institute is not liable to contribute to the payment of debts and liabilities associated with the dissolution of the Company.
- 13.5. If the Company should at any time by reason of statutory proceedings or from any other cause whatsoever be placed in liquidation or in the course of winding up and if upon the winding-up or dissolution of the Company, there remains after the satisfaction of all debts and liabilities any property and assets whatsoever these shall revert to the Education Centre of Australia Pty Limited.

#### **14. GOVERNING AUTHORITY**

- 14.1. The governing authority of the Company shall be the Governing Board.
- 14.2. The Governing Board:
  - 14.2.1. means all of the directors of the Company or such number of directors acting as the Governing Board in accordance with this Constitution
  - 14.2.2. sets overall strategic directions and the framework of policies and procedures, and is ultimately responsible to shareholders and stakeholders for both corporate and academic outcomes;

#### **15. COMPOSITION OF THE GOVERNING BODY**

- 15.1. The Governing Board shall have no less than five (5) voting members and no more than nine (9) voting members.
- 15.2. The Governing Body shall consist of the following persons:
  - 15.2.1. An independent, non-executive Director and Chair of the Governing Body appointed by the Company;
  - 15.2.2. An independent, non-executive Director Deputy Chair of the Governing Body appointed by the Company;
  - 15.2.3. At least one further independent, non-executive Director appointed by the Company;
  - 15.2.4. One executive Directors who is nominees of Education Centre of Australia Pty Limited (the sole shareholder);
  - 15.2.5. The Principal
  - 15.2.6. A non-voting Company Secretary appointed by the Company
- 15.3. The Chair or Deputy Chair of the Governing Body will normally have high-level experience of higher education
- 15.4. Of the five (5) Directors, including the Chair and Deputy Chair, at least one will have high-level experience of each of:
  - 15.4.1. higher education;
  - 15.4.2. economics, finance or accounting; and
  - 15.4.3. corporate governance, risk management, law or human resource management.
- 15.5. Persons appointed to Governing Board:

- 15.5.1. pursuant to sub-rules 15.2 and 15.3, must have high-level experience in the areas specified, which requirement shall be satisfied by relevant experience at a senior managerial or professional level in the public or private sector; and
- 15.5.2. in all cases, must have expertise and experience relevant to the functions exercisable by the Governing Board and an appreciation of the object, values, functions and activities of the Institute.
- 15.6. The majority of members of Governing Board must be independent, non-executive, external persons.
- 15.7. In appointing Directors, the Company and the Governing Board must have regard to and consider the gender balance of the Governing Board, with the goal of the Governing Board to achieve gender balance over time.
- 15.8. Subject to these Rules and to the Statutes, the term of office of Directors shall be as follows:
  - 15.8.1. The Chair shall be appointed for an initial term of three years, and may be further appointed by the Company, subject to satisfactory performance against agreed performance indicators, for a further three-year term (a maximum of six years);
  - 15.8.2. The Deputy Chair shall be appointed for an initial term of three years, and may be further appointed by the Company, subject to satisfactory performance against agreed performance indicators, for a further three-year term (a maximum of six years);
  - 15.8.3. Independent, non-executive Directors not holding the Chair or Deputy Chair shall be appointed for an initial term of three years, and may be further appointed by the Company, subject to satisfactory performance against agreed performance indicators, for a further three-year term (a maximum of six years);
  - 15.8.4. The term of appointment of the executive Director who is a nominee of Education Centre of Australia Pty Limited shall be determined by the Education Centre of Australia Pty Limited.

## 16. DIRECTORS

- 16.1. This sub-rule replaces replaceable rule §201G of the Act

Where permitted by this Constitution, the Company may appoint persons as Directors by resolution in general meeting.

- 16.2. The Company may, by ordinary resolution, remove a Governing Board Director before the end of the Governing Board Director's period of office, in accordance with the Act.
- 16.3. Directors shall vacate their office:

- 16.3.1. if they become an insolvent under administration;
  - 16.3.2. if they cannot manage the Company because of mental incapacity;
  - 16.3.3. if they fail to meet the Fit and Proper Person's test<sup>1</sup>;
  - 16.3.4. if they are, or become, disqualified from acting as a Director of a company or managing corporations under Part 2, D.6 of the Act as in force from time to time; or
  - 16.3.5. should they choose to retire.
- 16.4. The Company may, by ordinary resolution, but also by exception, remove a Governing Board Director before the end of the Governing Board Director's period of office, in order to ensure that the Governing Board's skills base is current and matches the Institute's operating context and strategic direction. Such removal shall follow consultation between the Director and the Governing Board Chair.
- 16.5. A Director of the Company may resign as a Director by giving a written notice of resignation to the Company at its Registered Office.
- 16.6. The replaceable rule contained in §201K of the Act shall not apply to the Company.
- 16.7. No vacancy or vacancies in the office of a member of the Governing Board shall affect the authority or powers of the Governing Board and subject to the provisions as to a quorum such authority and the members may exercise powers for the time being holding office.
- 16.8. The replaceable rules contained in §198C, §201J and §203F of the Act shall not apply to the Company.
- 16.9. The Governing Board shall be deemed to be duly constituted and shall discharge its duties and functions and may exercise its powers and authorities notwithstanding that a member of the Governing Board shall not have been elected as contemplated by the foregoing Rules and notwithstanding any vacancy on the Governing Board provided that the number of members of Governing Board for the time being is not less than five (5).
- 16.10. In exercising their powers and discharging their duties as Directors, Directors must:
- 16.10.1. be responsible and accountable to the Governing Board;
  - 16.10.2. act always in the best interests of the Company as a whole, with this obligation to be observed in priority to any duty a Director may owe to those electing or appointing him or her;
  - 16.10.3. act in good faith, honestly and for a proper purpose;
  - 16.10.4. exercise appropriate care and diligence as defined in §180 of the Act;

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<sup>1</sup> See the Tertiary Education Quality and Standards Agency and Proper Person Determination 2018 dated 6 December 2018 (Instrument) under s 7A(2) of TEQSA Act 2011.



- 16.10.5. not improperly use their position to gain an advantage for themselves or someone else; and
  - 16.10.6. disclose and avoid conflicts of interest.
- 16.11. Disclosure of conflict of interest
- 16.11.1. A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest in accordance with §191 and §192 of the Act, and the details must be recorded in the Governing Board minutes.
  - 16.11.2. All Governing Board Directors must sign annually a Disclosure of Interest statement.

## **17. POWERS AND DUTIES OF THE GOVERNING BOARD**

- 17.1. The governance and control of the Company shall be vested in the Governing Board, who in addition to the powers and authorities by this Constitution expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the Company and are not hereby or by statute expressly directed or required to be exercised or done by the Company in general meeting, but subject nevertheless to any Regulations from time to time made by the Company in general meeting provided that no Regulation shall be contrary to the objects, values and obligations of the Institute as a higher education provider. The Governing Board may without any further authority carry out all or any of the objects of the Company contained in this Constitution and do all other acts and things in relation thereto as they shall deem appropriate.
- 17.2. Hence, the Governing Board solely determines and monitors the framework of roles, relationships systems and processes within and by which authority is exercised and controlled in the company in order to achieve its objectives and meet the *Higher Education Standards Framework (Threshold Standards) 2015* and its other statutory obligations.
- 17.3. Without prejudice to the general powers conferred by Rule 15.1 and the other powers conferred by this Constitution, the Governing Board shall be responsible for:
  - 17.3.1. monitoring the performance of the Principal (whose appointment is regulated by Rule 20.1);
  - 17.3.2. ensuring that the processes of the Governing Board are carried out in accordance with the constitution of the governing body;
  - 17.3.3. approving the values, vision, mission and strategic direction of the Company, as well as the annual budget and business plan;
  - 17.3.4. appointing an Audit and Risk Committee that consists of at least 2 independent, non-executive Directors and excluding the Chair of the Governing Body;

- 17.3.5. establishing policy and procedural principles consistent with legal requirements and community expectations;
- 17.3.6. approving and monitoring systems of control and accountability, including general overview of any controlled entities within the meaning of the Act as in force from time to time;
- 17.3.7. overseeing and reviewing the management of the Institute and its performance as a higher education provider;
- 17.3.8. overseeing and monitoring the assessment and management of risk across the Company, including commercial undertakings;
- 17.3.9. monitoring academic operations and standards of the Institute;
- 17.3.10. ensuring academic autonomy and freedom of inquiry;
- 17.3.11. monitoring quality assurance;
- 17.3.12. approving significant commercial activities;
- 17.3.13. reviewing its own performance annually, including
  - 17.3.13.1. an appraisal of Governing Board performance
  - 17.3.13.2. an appraisal of the Governing Board's compliance with its obligations under all statutes and regulations applying to the Company
  - 17.3.13.3. actions in relation to induction and professional development of Directors, including needed skills and expertise for the future
- 17.3.14. appointing a Governance Committee, that consists of at least 3 Directors, a majority of whom are independent non-executive Directors, and which meets once a year and compiles a report for the Governing Board's consideration on Governing Board performance in the preceding period with recommendations to improve performance.
- 17.3.15. in executing these responsibilities, the Governing Board shall ensure that it executes its responsibilities under the *Higher Education Standards Framework 2015* and other related Acts or regulations including National Code 2018:
  - 17.3.15.1. *Risk management* – ECA Higher Education Institute's Governing Board shall ordinarily monitor operational risks four times a year through regular review of its Risk Plan and Risk Register, led by the Governing Board's Audit and Risk Committee.

The Principal shall alert the Governing Board to consider severe, acute risks at any time.
  - 17.3.15.2. *Delegations* - ECA Higher Education Institute's

Governing Board shall establish, implement and monitor a comprehensive list of delegations. The Governing Board shall monitor and review its delegations list annually as part of the review, led by the Governing Board's Governance Committee.

- 17.3.15.3. *Strategic planning* - ECA Higher Education Institute's Governing Board shall review the Strategic Plan and supporting business plans and budgets at least once annually to ensure that these are current and effective.

The Governing Board shall review progress against the Plan by the Executive Management team, including status of key performance indicators at each ordinary Governing Board meeting.

- 17.3.15.4. *Academic governance* - Responsibility for academic governance at the Institute is delegated to the Institute's Academic Board, the roles and responsibilities of which are articulated in the Academic Board Charter.

The Governing Board is ultimately responsible for academic performance of the Institute and shall satisfy itself that the Institute's obligations with regards to academic governance are fully met.

The Governing Board shall monitor academic governance of the Institute through regular reports by the Academic Board Chair and review of the minutes of the Academic Board meeting.

The Governing Board shall assess the conduct and assure the performance of Academic Board annually concurrent with the Governing Board's own annual review.

- 17.3.15.5. *Maintaining academic standards* - Primary responsibility for the maintenance of academic standards at ECA Higher Education Institute's is delegated by the Governing Board to CHS's Academic Board.

- 17.3.15.6. *Quality assurance* - Primary responsibility for the quality assurance of academic programs in ECA Higher Education Institute's is delegated by the Governing Board to the Institute's Academic Board.

The assurance of the quality of non-academic processes is monitored by the Governing Board, through its Audit and Risk Committee.

- 17.4. Without prejudice to the general powers conferred by the last preceding rule and of the other powers conferred by this Constitution, the Governing Board may:

- 17.4.1. from time to time make, vary, and repeal its own by-laws or policies for the management of the business of the Company, its officers, servants, and agents, provided that it may not vary or repeal Regulations made by the Company in general meeting;
  - 17.4.2. determine who shall be entitled to sign on the Company's behalf, bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts, and all other documents and deeds;
  - 17.4.3. make and give receipts, releases, and other discharges for money payable to the Company and for the claims and demands of the Company;
  - 17.4.4. enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute and do all such acts, deeds, and things in the name and on behalf of the Company as they may consider appropriate for or in relation to the purposes of the Company;
  - 17.4.5. take steps to protect intellectual property rights including the registration of trademarks;
  - 17.4.6. adopt all such other measures and do all such acts as they may consider advisable for the purposes of the Company.
- 17.5. The Governing Board may by resolution
- 17.5.1. delegate any of its functions under this Constitution to any committee, officer or officers of ECA Higher Education Institute Pty Ltd provided such delegation does not contravene the provisions of the Act or the *Higher Education Standards 2015*;
  - 17.5.2. revoke or vary a delegation provided under Rule 17.5.1.
- 17.6. The Governing Board establishes and monitors the performance of the overall Company-wide decision-making *Governance Framework* that has three principle components relating to corporate governance, academic governance and executive management:
- 17.6.1. *The Governing Board* itself, led by an independent, non-executive Governing Board Chair (normally with high-level higher education experience), which
    - 17.6.1.1. sets overall strategic directions and the framework of policies and procedures necessary to achieve the Institute's objectives
    - 17.6.1.2. is ultimately responsible to shareholders and/or stakeholders for both corporate and academic outcomes
  - 17.6.2. *The Academic Board*, led by an external Academic Board Chair, appointed by the Governing Board), which
    - 17.6.2.1. sets and oversees the policies and processes necessary to achieve the planned academic outcomes (quality and integrity) consistent with the Institute's overall strategic directions

- 17.6.2.2. sets academic standards and monitors academic outcomes
- 17.6.2.3. is ultimately responsible and accountable is to the Governing Board
- 17.6.3. *The Executive Management team*, led by the Principal, which
  - 17.6.3.1. implements policies, programs and processes, including making decisions about staffing, budgets and infrastructure, guided by the Institute's values, vision, mission and following the Institute's Business Plan, Strategic Plan, Academic Management Plan, Risk Management Plan and functional plans
  - 17.6.3.2. is ultimately responsible and accountable to the Governing Board for achievement of both corporate and academic objectives
- 17.6.4. The Governing Board, the Academic and the Executive Management Team have interdependent and overlapping functions to some degree but their principal roles and responsibilities are distinct and separate to ensure that governance is effective. This separation is achieved by formal delegations from the Governing Board under its overarching responsibility for all operations.
- 17.7. The Governing Board may from time to time entrust to and confer upon the Governing Board Chair or Governing Board Deputy Chair, being members of the Governing Board, such of the powers exercisable by the Governing Board as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions (if any) as they think appropriate, and may from time to time revoke, withdraw, alter, or vary all or any of such powers.
- 17.8. The Governing Board may establish branch offices and agencies at places other than New South Wales and appoint any person or persons to be representatives or agents, local Governing Boards or members of such local Governing Boards in any country or place out of the said state with such powers and authorities upon such terms and with such remuneration as the Governing Board shall think fit and from time to time delegate to such representatives, agents, local Governing Boards, or members of such local Governing Boards, all or any of their powers authorities and discretions.

## **18. PROCEEDINGS OF THE GOVERNING BOARD**

- 18.1. This Rule replaces replaceable rules §248F and §248G of the Act

The members of the Governing Board may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit. The quorum of members of the Governing Board necessary for the transaction of business shall be half of the number of Directors, plus one, provided that independent, non-executive directors are in the majority. Questions arising at any meeting of the Governing Board shall be decided by a majority of votes of those entitled to vote on the resolution, and each member of

the Governing Board shall have one vote only; in case of an equality of votes the Chair shall have a second or casting vote.

18.2. This Rule replaces replaceable rule §248E of the Act

18.2.1. The Chair shall chair the Governing Board meetings. In the absence of the Chair, the Deputy Chair shall chair the meeting.

18.2.2. If both the Chair and Deputy Chair are not available to chair a meeting of the Governing Board, the Chair must delegate an independent, non-executive Director present to chair the meeting.

18.2.3. Where the meeting is held by means of a technology consented to by all of the Directors of the Company as allowed by §248D of the Act, and neither the Chair nor Deputy Chair is available to chair the meeting, the Chair must delegate an independent, non-executive Director taking part to chair the meeting.

18.3. This Rule replaces replaceable rule §248C of the Act

18.3.1. The Chair or any three members of the Governing Body may at any time (and the Company Secretary shall upon the request in writing of the said three members of the Governing Board) convene a meeting of the Governing Board. The meetings of the Governing Board shall ordinarily be held in such place or places in the State of New South Wales as the Governing Board shall from time to time determine, but any of such meetings may be held in any other place in the Commonwealth of Australia or elsewhere that the Governing Board may from time to time determine.

18.4. This Rule replaces replaceable rule §202A of the Act

Subject to rule 10 above, the Directors of the Company are to be paid the remuneration that the Company in general meeting determines by resolution. The Company may also pay the Director's travelling and other expenses that they properly incur in any of:

18.4.1. attending Directors' meetings or any meetings of committees of Directors;

18.4.2. attending any general meetings of the Company; and

18.4.3. in connection with the Company's business.

18.5. The provisions contained in §198D of the Act shall not apply to the Company

The Governing Board may delegate any of their powers to committees consisting of such persons as they think fit, other than the power to make Statutes, (and such delegation must be recorded in the Company's minute book), and any committee so formed:

18.5.1.1. shall in exercise of the powers so delegated conform to any terms or by-laws that may be imposed on them by the Governing Board (and the effect of the committee exercising a power in this way is the same as if the Governing Board Directors had exercised the power);

- 18.5.1.2. may obtain and consider the advice of a person or persons with relevant expertise (as determined by the Governing Board on reasonable grounds), whether or not such persons are members of the Governing Board, at any meeting(s) of the said committee;
  - 18.5.1.3. shall make, in considering the advice referred to in 18.6.12, by the individuals constituting the committee, an independent assessment of the information or advice.
- 18.6. A committee shall have as chair of its meetings such person as is designated by the Governing Board as chair of the committee, and if no such chair is designated or if such designated person is not present at the time appointed for the holding of a committee meeting, the members present shall choose one of their number to be Chair of such meeting.
- 18.7. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chair shall have a second or casting vote.
- 18.8. All acts done by any meeting of the Governing Board or of a committee or a member or members of the Governing Board shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any member or members of the Governing Board or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Governing Board.
- 18.9. This Rule replaces replaceable §248A of the Act
- 18.9.1. This rule replaces the replaceable rule of the Act entitled “Circulating resolutions of companies with more than 1 director”.
  - 18.9.2. A resolution in writing (other than a resolution modifying or repealing any rule or sub-rule of this Constitution and other than a resolution reserved for the determination of members at a general meeting of members) signed by the majority of the members of the Governing Board and containing a statement that they are in favour of the resolution set out in the document shall be as valid as if it had been passed at a meeting of the Governing Board duly-called and constituted.
  - 18.9.3. For the purpose of sub-rule 18.9.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
  - 18.9.4. For the purpose of sub-rule 18.9.1, a Director may signify assent to a resolution in writing by:
    - 18.9.4.1. signing the document in which the resolution is set out and providing it to the Company by: personal delivery; or post or facsimile; or
    - 18.9.4.2. notifying the Director’s assent by sending:

- 18.9.4.2.1. an electronic message from the electronic address notified to the Company by the Director; or
  - 18.9.4.2.2. such other form of electronic communication consented to by the Governing Board and which contains a statement that the Director is in favour of the resolution set out in the document and which complies with any other verification of the transmission that the Governing Board may require from time to time.
- 18.9.5. For the purpose of sub-rule 18.9.2, if a Director signifies a desire for the resolution to be discussed at a meeting of the Governing Board or a response not indicating assent the resolution shall be held over to the next meeting of the Governing Board.
- 18.10. The minutes of resolutions recorded applying rule 18.9 shall outline the Directors who have indicated assent and shall be confirmed at the next meeting of the Governing Board.
- 18.11. The Secretary shall cause minutes to be entered:
  - 18.11.1. of all appointments of officers;
  - 18.11.2. of the delegation of any of the Governing Board's powers to a committee of the Governing Board;
  - 18.11.3. of the names of the members of the Governing Board present at each meeting of the Governing Board and any committee created by Governing Board;
  - 18.11.4. of all orders made by the Governing Board and committees created by the Governing Board;
  - 18.11.5. of all resolutions and proceedings of meetings of the Governing Board and committees and any such minutes of any such meetings of the Governing Board or of any committee or of the Company, if purporting to be signed by the Chair of such meeting or by the Chair of the next succeeding meeting, shall be received as prima facie evidence of the matters stated in such minutes.
- 18.12. A member of the Governing Board shall not be disqualified from holding any office or place of profit with the Company (other than that of auditor) but at any meeting of the Governing Board that person shall not vote on any question relating to that appointment or tenure of such office or place of profit.

## **19. GOVERNING BOARD CHAIR AND GOVERNING BOARD DEPUTY CHAIR**

- 19.1. The Chair and Deputy Chair of the Governing Board shall be appointed by the Members of the Company.



- 19.2. Upon the expiration of the term of office or when the Chair or Deputy Chair ceases to perform the expected duties, or whenever a vacancy occurs, the Company shall appoint another person, to the office of Chair or Deputy Chair for such period and on such conditions as the Company determine.
- 19.3. The Chair and Deputy Chair may without specific appointment exercise the right of membership of any board or standing committee within the Institute.

## **20. APPOINTMENT OF PRINCIPAL**

- 20.1. The Governing Board shall from time to time appoint a person (whether or not then a Member or a Governing Board Director) as Principal of the Institute for such period and on such conditions as the Governing Board determines.
- 20.2. The Principal, subject to the Company's Constitution, shall possess such powers and perform such duties as the Constitution, Regulations and Statutes prescribe or, subject to the Constitution, Regulations and Statutes, as the Governing Board determines.
- 20.3. A person from time to time appointed as Principal, shall contemporaneously with such appointment become a member *ex officio* of the Governing Board.
- 20.4. A person from time to time appointed as Principal, shall contemporaneously with such appointment become a non-voting member *ex officio* of the Academic Board.
- 20.5. The Governing Board may remove the Principal from office for incompetence and/or poor performance and/or conduct where there is a persistent failure to uphold the objects of the Institute or conduct that in the opinion of the Governing Board brings the Institute into disrepute.
- 20.5.1. Notice of intention to move a resolution to dismiss the Principal must be given to the directors, including the Principal, at least two weeks before the meeting is to be held.
- 20.5.2. The Principal is entitled to put their case to the Governing Board either
- 20.5.3. by giving the Chair a written statement of less than 1,000 words which is to be distributed to the directors before the meeting or, if there is not enough time to distribute the statement before the meeting, to be read out at the meeting before the resolution is voted on; and
- 20.5.4. speaking to the motion at the meeting.

## **21. APPOINTMENT OF ACTING PRINCIPAL**

- 21.1. If a person is appointed pursuant to the Statutes of the Institute as an Acting Principal during the absence or ill-health of the Principal or otherwise, the person so appointed shall, during the period of his appointment have all the powers and duties of the Principal and shall be a member of the Governing Board *ex officio* in place of the Principal.

- 21.2. If a person appointed as Acting Principal is already a member of the Governing Board then their place thereon shall not be vacated.
- 21.3. The Governing Board may remove an Acting Principal from office for incompetence and/or poor performance and/or conduct where there is a persistent failure to uphold the objects of the Institute or conduct which in the opinion of the Governing Board brings the Institute into disrepute.
- 21.3.1. Notice of intention to move a resolution to dismiss an Acting Principal must be given to the directors and to the office-holder in question at least two weeks before the meeting is to be held. The office-holder in question is entitled to put their case to the Governing Board either
- 21.3.1.1. by giving the Chair a written statement of less than 1,000 words which is to be distributed to the directors before the meeting or, if there is not enough time to distribute the statement before the meeting, to be read out at the meeting before the resolution is voted on; and
- 21.3.1.2. speaking to the motion at the meeting.
- 21.4. The Acting Principal's appointment ceases automatically when the Governing Board appoints a person to the Office of Principal and the appointee takes up his appointment.

## **22. RE-ELECTION OR RE-APPOINTMENT**

- 22.1. Subject to the Act and to this Constitution, nothing contained in these Rules shall prevent any person from being immediately, or at any time, re-elected to any office or place under the Company if they are otherwise qualified for the time being of holding that office or place.

## **23. APPOINTMENT OF SECRETARY, DEAN AND OTHER KEY EXECUTIVES**

- 23.1. The Secretary shall in accordance with the Corporations Act be appointed as Company Secretary by the Company for such term and upon such terms and conditions as to remuneration or otherwise as it thinks fit, and any person so appointed may be removed by it.
- 23.2. Upon consultation with the Governing Board the Principal may appoint a person as Dean of the Institute for such term and upon such terms and conditions as to remuneration or otherwise as he thinks fit in line with the approved position descriptions, and any person so appointed may be removed by him.
- 23.3. Upon consultation with the Governing Board the Principal may appoint a person to a key role in the Institute for such term and upon such terms and conditions as to remuneration or otherwise as he thinks fit in line with the approved position descriptions, and any person so appointed may be removed by him.

## **24. STATUTES AND BY-LAWS**

- 24.1. The Governing Board may from time to time make Statutes not inconsistent with the Company's Constitution or Regulations with respect to any matter whatsoever pertaining to the Institute and, in particular and without prejudice to the generality of the foregoing, with respect to the following matters:
- 24.1.1. the method of recommending appointment or election of members of the Governing Board;
  - 24.1.2. the manner and time of convening, holding and adjourning the meetings of the Governing Board, and the conduct and record of the business of the Governing Board;
  - 24.1.3. the establishment and appointment of committees of the Governing Board and the Academic Board;
  - 24.1.4. the employment of teaching and research staff and other officers and employees of the Institute;
  - 24.1.5. the admission of students;
  - 24.1.6. the granting of such degrees, diplomas and other academic awards as are accredited by the relevant accrediting authority according to Commonwealth law;
  - 24.1.7. the granting of fellowships, scholarships, bursaries and prizes;
  - 24.1.8. credit in courses of the Institute for academic achievements obtained elsewhere;
  - 24.1.9. fees charged by the Institute;
  - 24.1.10. the affiliation, association or connection with the Institute of any educational institution or professional bodies wheresoever situated;
  - 24.1.11. research, development, consultancy and other services undertaken by the Institute for commercial organisations, public bodies or individuals;
  - 24.1.12. recognition of institutions or bodies at which:
    - 24.1.12.1. work is undertaken by students of the Institute for the purpose of satisfying degree requirements of the Institute; or
    - 24.1.12.2. research is or may be undertaken by teaching or research staff of the Institute.
  - 24.1.13. property, buildings and traffic;
  - 24.1.14. discipline;
  - 24.1.15. copyright and patents;

- 24.1.16. any other matter in relation to which:
- 24.1.16.1. the Governing Board by virtue of another provision of these Rules may make Statutes; or
  - 24.1.16.2. it is necessary to make Statutes for the good governance of the Institute or for the management of its affairs.
- 24.2. The Governing Board, or a duly authorised sub-committee of Governing Board, may make By-laws not inconsistent with the Company's Constitution, Regulations or the Statutes for the carrying into effect of all or any of the provisions of the Company's Constitution and of the Statutes.
- 24.3. The Governing Board may by resolution repeal, rescind, revoke, alter, vary, amend or otherwise modify any Statute, By-law or part thereof.

## **25. ACADEMIC BOARD**

- 25.1. The Governing Board shall ensure that there is an Academic Board with delegated authority for academic governance.
- 25.2. The Academic Board:
- 25.2.1. shall be responsible for review, approval and oversight of academic policies, for administering the learning, teaching, research and other activities of the Institute, for contributing to strategic plans and initiatives with reference to the academic activities of the Institute, and for academic quality assurance.
    - 25.2.1.1. in discharging its academic governance responsibilities, the Academic Board shall establish the following standing committees
      - 25.2.1.1.1. Learning and Teaching Committee
      - 25.2.1.1.2. Scholarship and Research Committee
      - 25.2.1.1.3. Board of Examiners
    - 25.2.1.2. In further discharging its academic governance responsibilities, the Academic Board may establish the following non-standing committees
      - 25.2.1.2.1. Appeals Committee
      - 25.2.1.2.2. Curriculum Advisory Committee
    - 25.2.1.3. The Academic Board may further establish ad hoc committees as it sees fit in discharging its academic governance responsibilities

- 25.2.2. may discuss and forward to the Governing Board an opinion on any matter whatsoever relating to the Institute and in particular may make to the Governing Board any recommendation as to studies and disciplines in the Institute;
- 25.2.3. shall report to the Governing Board on all matters submitted to it by the Governing Board for report;
- 25.2.4. shall have such other powers and duties as are conferred or delegated upon it by these Rules and the Statutes and Regulations of the Institute;
- 25.2.5. subject to the Statutes and Regulations of the Institute may regulate its own proceedings.

## 26. COMPOSITION OF THE ACADEMIC BOARD

- 26.1. The Academic Board shall consist of the following persons:
  - 26.1.1. An external member and Chair of the Academic Board appointed by the Governing Board;
  - 26.1.2. An external member and Deputy Chair of the Academic Board appointed by the Governing Board;
  - 26.1.3. At least one further external member appointed by the Governing Board;
  - 26.1.4. One member of continuing academic staff elected by the continuing academic staff of the Institute;
  - 26.1.5. One enrolled student of the Institute elected by all enrolled students of the Institute;
  - 26.1.6. The Dean of the Institute – an *ex officio* member with voting rights;
  - 26.1.7. The Principal of the Institute – a non-voting *ex officio* member;
  - 26.1.8. The Institute Academic Registrar – a non-voting *ex officio* member;
  - 26.1.9. A non-voting Secretary
- 26.2. Persons appointed to Academic Board in all cases, must have expertise and experience relevant to the functions exercisable by the Academic Board and the disciplinary base of the Institute, and an appreciation of the object, values, functions and activities of the Institute.
- 26.3. In appointing Academic Board members, the Governing Board must have regard to and consider the gender balance of the Academic Board, with the goal of the Academic Board to achieve gender balance over time.

- 26.4. Subject to these Rules and to the Statutes, the term of office of members shall be as follows:
- 26.4.1. The Chair of the Academic Board shall be appointed for an initial term of three years, and may be further appointed by the Governing Board, subject to satisfactory performance against agreed performance indicators, for a further one three-year term (a maximum of six years);
- 26.4.2. The Deputy Chair shall be appointed for an initial term of three years, and may be further appointed by the Governing Board, subject to satisfactory performance against agreed performance indicators, for a further one three-year term (a maximum of six years);
- 26.4.3. External members not holding the Chair or Deputy Chair shall be appointed for an initial term of three years, and may be further appointed by the Governing Board, subject to satisfactory performance against agreed performance indicators, for a further one three-year term (a maximum of six years);
- 26.4.4. *Ex officio* members will sit whilst holding their office.

## **27. PROCEEDINGS OF ACADEMIC BOARD**

- 27.1. The proceedings of Academic Board are defined in the Academic Board Charter

## **28. SEAL**

- 28.1. The Governing Board shall provide a common seal of the Company and such seal shall be kept by such person and in such place and in such manner as the Governing Board may think fit, and the Governing Board shall have power to use such seal in the execution of all or any of the powers hereby vested in them; but it shall not be affixed to any document except pursuant to a resolution of the Governing Board. The affixing of the seal shall be attested by the Chair or Secretary and at least one other member of the Governing Board, or in such other way as the Governing Board may from time to time determine, and such attestation shall be sufficient evidence of the authority to affix the seal. Documents not requiring the seal to be affixed may be signed by the Chair or the Secretary or if approved by a resolution of the Governing Board by at least one member of the Governing Board.

## **29. INSTITUTE CREST**

- 29.1. If and when the Company adopts an Institute Crest, the Governing Board shall provide for its safe custody and the Institute Crest shall only be used by the authority of the Governing Board or of a delegate of the Governing Board authorised by the Governing Board in that regard.

## **30. ACCOUNTS**

- 30.1. The Governing Board shall cause true accounts to be kept of the sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place, and of all the property, assets, credits, and liabilities of the Company.

- 30.2. The books of accounts shall be kept at the registered office of the Company, or at such other office or offices as the Governing Board may from time to time think fit.
- 30.3. The Governing Board shall from time to time determine at what times and places and under what terms or by-laws the accounts and books of the Company or any of them shall be open to the inspection of the Members.
- 30.4. The Governing Board shall lay before the Company at each annual general meeting a Profit and Loss Account for the period since the preceding account made up for a period ending on a date not earlier than six months before the date of the meeting, and shall cause to be made up and to be laid before the Company at each annual general meeting with the Profit and Loss Account a balance sheet as at the date to which the Profit and Loss Account is made up.
- 30.5. There shall be attached to the accounts of the Company statements made and signed in accordance with the provisions of Section 295 of the Act.
- 30.6. The accounts and report shall be available for inspection of the Members of the Company at the office of the Company for a period of seven days prior to the meeting to which they are to be submitted and all accounts of the Company required by the Act or by this Constitution to be laid before the Company at each annual general meeting accompanied by copies of the statements and of the reports referred to in Section 314 of the Act shall not less than twenty-one days before each annual general meeting after the end of the accounting year or four months after the end of the accounting year (whichever is the earlier) be sent to all persons entitled to receive notice of general meetings of the Company.

### **31. AUDIT**

- 31.1. The Company shall make an annual return in accordance with the requirements of the Act.
- 31.2. The Members in General Meeting shall appoint an external auditor or auditors to the Company and its associated entities. The Act shall regulate their qualification, appointment, remuneration, removal rights and duties. The auditor's management report shall be provided to the Audit Committee and to the Governing Board.

### **32. ANNUAL REPORT**

- 32.1. The annual report of the Company should be compiled annually starting with its second anniversary of its start date and be used for reporting on high level outcomes required for monitoring performance.

### **33. NOTICES**

- 33.1. Any notice required by law or under the Act to be given to any Member, shall be given by serving it on him or her personally or sending it by post, facsimile or email to him or her at his registered address, or (if a Member has no registered address within Australia) to the address, if any, supplied by such Member to the Company for the giving of notices. Where a notice is delivered personally, it shall be deemed to have been given when

delivered. Where a notice is sent 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 day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post. Where a notice is sent by facsimile it shall be deemed to have been given at the end of transmission provided that if the time of dispatch is not before 4pm (local time) on a day on which business is generally carried on in the place to which such communication is sent, it shall be deemed to have been given at the commencement of business on the next such day at that place.

- 33.2. Any notice if served by post shall be deemed to have been served at ten a.m. of the morning of the third day after the day when the letter containing the notice was posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and stamped and put into a post office in New South Wales. Any notice if served by fax or by other electronic means is taken to be given on the business day after it is sent and in proving such service it is sufficient to prove the transmission of the notice and produce the transmission record.
- 33.3. Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- 33.3.1. every Member who is entitled to receive notices in accordance with the Act;  
and
- 33.3.2. the auditor or auditors for the time being of the Company.
- 33.4. No other person shall be entitled to receive notices of general meetings.

#### **34. INDEMNITY**

- 34.1. In rule 30:
- 34.1.1. “legal action” means any legal proceeding or action whatsoever, and, without limiting the generality of the above, includes a threatened or prospective legal action, a quasi-judicial proceeding and investigative or disciplinary proceeding conducted by a Government authority or pursuant to statute against an officer of the Company, but does not include a legal proceeding to which the Company itself or a related body corporate is or is proposed to be a party, having an interest adverse to that of the officer.
- 34.1.2. “liabilities” include, but are not limited to, expenses, awards of damages and compensation, amounts paid in settlement, fines, penalties, interest, legal costs (on a solicitor and client basis) and disbursements, but “liabilities” do not include a liability to the Company itself or to a related body corporate, other than a liability for costs and expenses incurred by the officer.
- 34.1.2.1. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted; or



- 34.1.2.2. in connection with an application, in relation to such proceedings, in which the Court grants relief to the officer under the Act;
- 34.1.3. and “liabilities” do not include liability for a pecuniary penalty order under the Act or liability for a compensation order in relation to an application for a pecuniary penalty order under the Act.
- 34.1.4. “officer” when used in Rule 34 of this Constitution, means a Governing Board Director, a Secretary, the Principal and any Deputy or acting Principal, or an Academic Board member or any key person of the Institute.
- 34.1.5. “performance of duties” includes an attempt to perform duties and a failure to perform duties.
- 34.2. Subject to sub-rule 34.3 and to §199A of the Act, the Company shall indemnify an officer against all liabilities incurred in consequence of any legal action to which that officer is a party or to which it is proposed that the officer be a party arising out of or in connection with the officer’s performance of duties as an officer.
- 34.3. The indemnity granted by rule 34.2 does not extend to liabilities incurred as a result of:
  - 34.3.1. legal action initiated or threatened by the officer without the prior written consent of the Governing Board, unless the Governing Board in its absolute discretion, otherwise determines;
  - 34.3.2. the deliberate commission of a tort or other civil wrong, or dishonest or malicious conduct by the officer;
  - 34.3.3. the commission of a criminal offence by the officer
    - 34.3.3.1. unless the officer did not intentionally commit the acts or omissions constituting the offence; or,
    - 34.3.3.2. where the liability is to the Company itself or to a related body corporate, unless the liability is for costs and expenses incurred by the officer
      - 34.3.3.2.1. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted; or
      - 34.3.3.2.2. in connection with an application, in relation to such proceedings, in which the Court grants relief to the officer under the Act;
  - 34.3.4. conduct (including omissions) of an officer, where that officer fails to satisfy the Governing Board that he or she held an honest and reasonable belief that the conduct would further the legitimate interests of the Company;

- 34.3.5. liabilities (other than those imposed by a court or other public authority without the consent of the officer) incurred by the officer without the prior written consent of the Governing Board, such consent not to be unreasonably withheld, unless the Governing Board, in its absolute discretion, otherwise determines.
- 34.4. No indemnity shall be granted under sub-rule 34.2 unless the officer gives notice in writing to the Governing Board as soon as is reasonably practicable after becoming aware of any occurrence which may result in an indemnity being sought under Rule 34.2, unless the Governing Board, in its absolute discretion, otherwise determines.
- 34.5. It is a condition of the grant of an indemnity under Rule 34.2 that the Company or its nominee shall be entitled to take over and conduct in the name of the officer the conduct and settlement of the legal proceeding (other than the defence to a criminal prosecution), and that the officer shall not admit any civil liability or settle any claim against that officer without the consent of the Governing Board.
- 34.6. Where the officer is not eligible for an indemnity under Rule 34.2:
- 34.6.1. The Governing Board may, in its absolute discretion but subject to §199A of the Act, pay all or part of the legal costs (on a solicitor and client basis) of an officer who is in name or substance a defendant to any legal action, whether civil or criminal, where the Governing Board considers, in its absolute discretion, that the reasons the officer has been made a defendant include the fact that he or she is an officer, and that it would be just and proper for the Company to make the payment;
- 34.6.2. The Governing Board shall be under no legal obligation to make a payment authorised under Rule 34.6.1 or to consider whether a payment should be made in any individual case;
- 34.6.3. The Governing Board may impose such conditions as in its absolute discretion it sees fit on the making of a payment under Rule 34.6.1.
- 34.6.4. Nothing in rule 34 is intended to prevent ratification by the Members in a general meeting of an officer's abuse of power or an officer's exceeding power, where such ratification does not offend §199A of the Act.

### **35. CONDUCT OF MEETINGS USING COMMUNICATIONS MEDIA**

- 35.1. Meetings of Members and meetings of Governing Board Directors may be duly convened and held by way of telephone, video conferencing link-up or other medium for electronic communication available for such purpose from time to time as long as:
- 35.1.1. the number and category of persons participating and physically present would represent a quorum for the purposes of the Rules;
- 35.1.2. due notice of the meeting and of intention to use a medium of electronic communication has been given to all persons entitled to notice of the meeting;
- 35.1.3. each of the participants acknowledges:

- 35.1.3.1. such participant's presence to the chairman;
  - 35.1.3.2. that the meeting is being convened as a duly constituted meeting;
  - 35.1.3.3. that the participant can hear the other participants;
  - 35.1.3.4. the chair is satisfied with the identification of each of the participants at the commencement of the meeting and the presence of a quorum; and
  - 35.1.3.5. voting of the participants on all issues can be clearly ascertained by the chair.
- 35.1.4. No person participating in any meeting conducted pursuant to this Rule shall disconnect communication during the course of any meeting without the consent of the chairman and in default of such consent or proven failure of the connection all participants at the commencement of the meeting shall be deemed to have been present and to have formed part of the quorum during the whole of that meeting.
- 35.1.5. The chair shall sign minutes of the proceedings conducted as aforesaid and such minutes shall be prima facie evidence of the matters discussed and resolutions passed thereat.

### **36. ALTERATION OF THIS CONSTITUTION**

- 36.1. A resolution altering or repealing any rule or sub-rule of this Constitution (including this rule) must be passed by Special Resolution of the Company.

***DOCUMENT ENDS HERE***