



CONSTITUTION

of

AUSTRALIAN COUNCIL FOR PRIVATE EDUCATION AND TRAINING

ACN 054 953 758

Council Limited by Guarantee

Adopted by Members

27 August 2015

Table of Contents

1.	Definitions and Interpretation.....	3
2.	Objects.....	5
3.	Winding-up	5
4.	Members	6
5.	Representatives	8
6.	Termination of Membership	9
7.	Subscriptions	10
8.	Register of Members.....	10
9.	General Meetings.....	10
10.	Proceedings at General Meetings	11
11.	Board of Directors - Appointment	14
12.	Board of Directors - Conduct	17
13.	Board of Directors - Chair	17
14.	Board of Directors – State and Territory Director Elections and Vacancies.....	18
15.	Board of Directors - Powers and Duties	19
16.	Board of Directors - Proceedings	19
17.	Chief Executive Officer	20
18.	Committees	21
19.	Rules and By-laws	21
20.	Company Secretary	22
21.	Minutes	22
22.	The Seal	22
23.	Assets and Income	24
24.	Cheques, Bills, etc	24
25.	Accounts	24
26.	Audit.....	24
27.	Approved Schemes.....	25
28.	Notices.....	25
29.	Indemnity of Officers	25
30.	Secrecy.....	26
31.	Amendments to this Constitution.....	26

CONSTITUTION

of

AUSTRALIAN COUNCIL FOR PRIVATE EDUCATION AND TRAINING

ACN 054 953 758

Name

The name of the company is **Australian Council for Private Education and Training** ACN 054 953 758 a special purpose not for profit public company limited by guarantee incorporated on 29 January 1992 (“Council”)

Operative Provisions

1. Definitions and Interpretation

1.1 Definitions

In this Constitution, unless the context requires otherwise:

ACPET or **Council** means Australian Council for Private Education and Training

Act means the *Corporations Act 2001 (Cth)* as modified from time to time;

Affiliate Member has the meaning set out in sub-clause 4.1(b);

Annual General Meeting means an Annual General Meeting in accordance with clause 9.1;

Associate means an associate within the meaning of section 9 of the Act; **Auditor** means an Auditor appointed in accordance with section 26;

Board means the Board of Directors of the Council;

Board Appointed Director means a director appointed by the Board in accordance with clause 14.11;

By-law means any by-law made in accordance with section 19;

Casual Director means a director appointed by the Board in accordance with either clause 11.7 or 11.10;

Category or **sub-categories** means the categories of Membership as determined by the Board from time to time in accordance with clauses 4.1 to 4.3;

Chair means a Director appointed as Chair in accordance with section 13;

Chief Executive Officer means the senior executive of the Council appointed by the Board in accordance with section 17;

Committees means any Committee formed in accordance with this Constitution;

Company Secretary means the secretary to the Board appointed in accordance with section 20;

Constitution means this Constitution as altered or added to from time to time and any reference to a clause by number is a reference to the clause of that number in this Constitution;

Corporate Member has the meaning set out in sub-clause 4.1(e);

Deputy Chair means a Director appointed as Deputy Chair in accordance with section 13;

Director means a Director of the Board being either a State or Territory Director; a Casual Director; or a Board Appointed Director;

Financial Year means a period of 12 months ending 30 June in each year or such other period (whether longer or shorter than 12 months) not exceeding 18 months as the Board resolves;

Life Member has the meaning set out in sub-clause 4.1(d);

Member has the meaning set out in sub-clause 4.1(a) and unless otherwise specified includes a Corporate Member;

Membership means:

- (a) Members;
- (b) Affiliate Members;
- (c) Partner in Education Members;
- (d) Life Members; and
- (e) Corporate Members

being the Categories of Membership as more particularly specified in clause 4.1;

Membership Year means the 12 months commencing on the date that an organisation is approved for membership by the Board;

Office means the registered office from time to time of the Council;

Partner in Education Member has the meaning set out in sub-clause 4.1(c);

Provider or **Providing** means the giving or facilitating of education and/or training and/or educational assessment services;

Register of Members means a Register of Members in accordance with section 8;

Representative means a natural person who is a principal of or who is employed in a senior position by a Member or Affiliate Member and who is nominated by a Member or Affiliate Member and approved by the Board in accordance with clause 5.1;

Rules means any Rules made in accordance with section 19;

Sector means private education and training delivered by providers in Australia or offshore;

State or Territory Director means a director described in clause 11.9(a) elected in accordance with clause 14;

Subscriptions mean the annual amounts payable by the Membership in accordance with section 7;

Writing and **Written** includes printing, typing, lithography and other modes of reproducing words in a visible form.

1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) words which are given a special meaning by the Act will have the same meaning in this Constitution;

- (b) a reference to the Act or any other statute or regulations thereof shall be read as though the words "or any statutory modification thereof or any statutory provision substituted therefor" were added to such reference;
- (c) the references to notices in clauses 28.1 to 28.4 include not only formal notices of meeting but also all documents and other communications from the Council to the Members but do not include cheques;
- (d) words importing the singular include the plural and vice versa;
- (e) the headings shall not affect the construction of this Constitution;
- (f) words denoting individuals will include corporations, partnerships, joint ventures, councils whether incorporated or unincorporated, authorities and trusts, and vice versa unless a contrary intention is expressed;
- (g) words importing one gender include all other genders;
- (h) each of the provisions of the sections or sub-sections of the Act which would but for this clause apply to the Council as a replaceable rule within the meaning of the Act are displaced and do not apply to the Council except insofar as they are repeated in this Constitution;
- (i) unless otherwise specified, provisions in this Constitution which represent changes from the provisions of prior Memorandum & Articles of Association or Constitutions shall not act retrospectively.

2. Objects

- 2.1. The objects for which the Council is established are to promote and enhance the provision of private education and training in Australia, in particular through:
- (a) representation and advocacy;
 - (b) provision of services to Members; and
 - (c) promotion of private education and training.

- 2.2. The Council may do all such things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the Council.

3. Winding-up

- 3.1. The liability of the Membership of the Council is limited.
- 3.2. Each Member and Affiliate Member undertakes to contribute to the assets of the Council in the event of it being wound up while he is a Member or Affiliate Member or within one year after he ceases to be a Member or Affiliate Member for:
- (a) payment of the debts and liabilities of the Council, contracted before he ceased to be a Member or Affiliate Member; and
 - (b) the costs and charges of such winding up;
 - (c) such amount as may be required but not exceeding \$50.00.

- 3.3. If upon the winding up or dissolution of the Council there remains after satisfaction of all its debts and liabilities any property or assets, the same shall not be paid to or distributed amongst the Membership but shall be given or transferred to some institution or institutions having objects similar to the objects of the Council and whose memorandum or constitution shall prohibit the distribution of its income and property amongst its members to an extent at least as great as is imposed on the Council under this clause, such institution or institutions to be determined by the Membership at or before the time of dissolution or in default of such determination by such Judge of the applicable Court as may have or acquire jurisdiction in the matter.

4. Members

- 4.1. The following persons are eligible to apply for membership of the Council and may be accepted for membership by the Board upon payment of the relevant subscriptions and fees payable under this Constitution:

(a) **Member**

A person, body, company, entity or organisation:

- (i) that complies with national, State or Territory requirements, or the requirements of any other organisation recognised by the Board, for devising and/or delivering registered and accredited education and training and/or educational assessment services to the public; but
- (ii) which is not a publicly owned or operated institution deemed by the Board to be ineligible,

may apply to become a **Member**.

(b) **Affiliate Member**

A person, body, company, entity or organisation:

- (i) who does not fall within clause 4.1(a); and
- (ii) who is not an employee of a Member; and
- (iii) whose employment or business is significantly exposed to the Sector; and
- (iv) who is not a publicly owned or operated institution; and
- (v) who operates in Australia,

may apply to become an **Affiliate Member**.

(c) **Partner in Education Member**

The Board may at its sole discretion award **Partner in Education** status to any organisation that does not fit the Member or Affiliate Member classifications but has a significant exposure to the sector. Such an organisation must be prepared to sign the Council's Code of Ethics and support the principles of a competitive training and education market in Australia.

(d) **Life Member**

The Board may at its sole discretion award the honour of **Life Member** to persons who have provided distinguished and meritorious service to ACPET.

(e) **Corporate Member**

Where a Member has business operations in more than one State or Territory they are a **Corporate Member** .

- 4.2. Members will be divided into sub-categories as determined by the Board from time to time which sub-categories shall specify the level of subscriptions payable by the Members and the number of votes exercisable by the Members.
- 4.3. The Membership shall be divided into the following Categories:

Category	Criteria	Votes
Affiliate Member	All Affiliate Members	1
Life Member	All Life Members	1
Member	Members will be divided into sub-categories 2 to 8 (inclusive) in accordance with their annual turnover as determined by the Board from time to time. The sub-category of the Member will correspond with the number of votes able to be exercised by that Member. (i.e. a sub-category 4 Member receives 4 votes)	2 to 8
Corporate Member	All Corporate Members	9
Partner in Education Member	All Partner in Education Members	0

- 4.4. An application for Membership of the Council shall be required to comply with this Constitution and meet the criteria for Membership eligibility of the Council from time to time prescribed in the By-laws and the Board shall be solely responsible for the classification of Membership into sub-categories which shall be in the absolute discretion of the Board.
- 4.5. An application by a prospective member for Membership of the Council shall be made in writing in such form and be accompanied by such evidence as is required by the Board from time to time and shall be lodged with the Company Secretary.
- 4.6. As soon as practicable after the receipt of an application, the Company Secretary shall refer that application to the Board. Upon an application being referred to the Board, the Board shall, in its sole discretion and in the strictest confidence, determine whether to approve or to reject the application. In doing so the Board shall consider, but shall not be limited to considering, the criteria set out in clause 4.1 and whether the applicant has engaged in or is likely to have engaged in, conduct which is referred to in clause 6.2 or which is contradictory to the Council's objects.
- 4.7. Upon an application being rejected by the Board, the Company Secretary shall, in the strictest confidence and as soon as practicable, notify the applicant in writing of the rejection.

- 4.8. Upon an application being approved by the Board, the Company Secretary shall, in the strictest confidence and as soon as practicable, notify the applicant in writing of the conditional approval for Membership. The Company Secretary shall also notify the applicant of the Subscription and fees payable as a precondition to gaining Membership and shall request payment of such fees within 28 days.
- 4.9. The Company Secretary shall, upon payment of the amounts referred to in clause 4.8 within the period referred to in that clause, enter the applicant's full name and the details required by this Constitution in the Register of Membership and, upon the name and all details being so entered, the applicant shall join the Membership.
- 4.10. A right, privilege or obligation of a Member of any category of Membership:
 - (a) is not capable of being transferred or transmitted to another Member; and
 - (b) terminates upon the cessation of the Membership.
- 4.11. Members and Affiliate Members will advise the Chief Executive Officer of any changes to their directors or chief executive officer as and when they occur, but no later than 30 days after such changes occur.
- 4.12. The Membership may only use logos or other trademarks of the Council in any correspondence, documentation or representations of whatever nature as the Council may permit from time to time.

5. Representatives

- 5.1. A Member or Affiliate Member must, by notice in writing deposited at the Office, appoint a principal or a senior employee to act as its Representative, and such principal or employee may represent and vote, subject to clause 10.19, on behalf of that Member or Affiliate Member at general meetings of the Council, provided however that no such appointment shall be valid until the Company Secretary has approved the appointment provided always that such approval shall not be unreasonably withheld.
- 5.2. A duly appointed Representative shall (except to the extent to which the Representative is specifically directed by the Member or Affiliate Member to vote for or against any proposal) have the power to act generally at general meetings of the Council for the relevant Member or Affiliate Member.
- 5.3. A vote given in accordance with the terms of an instrument appointing a Representative shall be valid notwithstanding the previous revocation of the appointment provided no intimation in writing of the revocation shall have been received at the Office before the meeting.
- 5.4. The Board may by resolution and in its sole discretion (following consultation with the relevant Member or Affiliate Member) withdraw its approval of a Representative if it is of the reasonable opinion that it is in the interests of the Council to do so. For the purposes of this clause, the Board shall apply the principles of natural justice before determining to withdraw the approval of a Representative. In the event that the Representative is a State or Territory Director, the provisions of clause 14.10 shall apply.

6. Termination of Membership

- 6.1. A Member or Affiliate Member who has paid all moneys due and payable to the Council may resign from Membership by giving at least 90 day's notice in writing to the Company Secretary of its intention to resign. Upon the expiration of that period of notice, the Member or Affiliate Member ceases to be a Member or Affiliate Member. Any Member or Affiliate Member intending to resign from the Council may withdraw its notice of resignation prior to the expiration of that period of notice.
- 6.2. Subject to this Constitution, the Board may by resolution and in its sole discretion terminate the membership of a Member or Affiliate Member or change the category or sub-category of membership of a Member if the Board is of the reasonable opinion that the Member or Affiliate Member:
- (a) has refused or neglected to comply with this Constitution or any Rules or By-laws or a reasonable direction of the Board;
 - (b) has engaged in conduct which amounts to impropriety affecting professional character and which is indicative of a failure either to understand or practise the values required by the Council;
 - (c) has engaged in unsatisfactory professional conduct where the conduct is such that it involves a substantial or consistent failure to reach reasonable standards of competence and diligence;
 - (d) has engaged in conduct that is or could reasonably be considered as likely to be prejudicial to the interests of the Council;
 - (e) in the case of a Member, has had a change of turnover warranting a change of sub- category;
 - (f) has failed to pay subscriptions or fees payable to the Council within 30 days after such fees fell due, and such fees remain unpaid after the Board has provided the Member or Affiliate Member with 28 day's written notice of its intention to terminate the membership; or
 - (g) no longer complies with Membership criteria prescribed by the Board (or a Committee of the Board as the case may be) from time to time.
- 6.3. For the purposes of the preceding clause, any Member or Affiliate Member may, by notice in writing lodged with the Company Secretary within 7 days after the passing of a resolution by the Board for the termination of membership or change of Category, elect to have the question dealt with by the Council in General Meeting. It is understood that reasonable costs set out in the By-laws must be met by the Member prior to the calling of the General Meeting. Once these requirements are met a General Meeting of the Council shall be called for the purpose and if, at the meeting such a resolution is confirmed by a simple majority (i.e. more than 50%) present by Representative or proxy, the Member or Affiliate Member concerned shall be terminated or the change of Category confirmed. In the event that the Member concerned is reinstated, the costs of the General Meeting shall be paid by the Council and the costs paid by the Member shall be refunded.
- 6.4. A Member or Affiliate Member who is terminated from the Council shall cease to be eligible for all services and membership of schemes and committees defined by the By-laws unless the Board resolves otherwise.
- 6.5. A Member or Affiliate Member who is terminated from the Council or who is placed into a lower sub-category of membership is not entitled to a reimbursement of any subscriptions or fees paid to the Council.

- 6.6. A Member who is placed into a higher sub-category of membership shall pay any applicable additional subscriptions and fees within 28 days.

7. Subscriptions

- 7.1. The Board may require each new Member or Affiliate Member to pay a joining fee, the amount of which shall be set by the Board from time to time.
- 7.2. The annual fee to be paid by Members and Affiliate Members shall be determined by the Board from time to time and shall be payable in advance by each Member and Affiliate Member on or before the first day of each Membership Year, except for the first annual fee of a new Member or Affiliate Member, which shall be payable pro rata for the period of membership in the first year. The Board will notify existing Members and Affiliate Members of the annual fee by no later than 31 May prior to the start of the next Membership Year.
- 7.3. The Council may, from time to time in general meeting, set a special fee or fees to be payable by Members, Affiliate Members or by certain Categories of Members of the Council.
- 7.4. The Board may from time to time set a special fee or fees which shall be payable by such Members or Affiliate Members as the Board determines.

8. Register of Members

- 8.1. The Company Secretary shall keep and maintain a Register of Members in which shall be entered the full name, address, telephone and facsimile numbers and email addresses and the date of entry of the name of each Member, Affiliate Member, Life Member, Corporate Member and Partner in Education Member together with the full name and date of appointment and withdrawal or resignation of each Representative.
- 8.2. The Register of Members shall not be available for inspection except as required by the Act or otherwise by law.

9. General Meetings

- 9.1. Subject to the provisions of the Act, a general meeting shall be held at least once in every year and within the period of five months after the end of the Financial Year. Each such general meeting shall be held at such times and places as may be determined by the Board. Such general meetings (before which the annual accounts of the Council are to be laid) shall be called the Annual General Meetings.
- 9.2. A general meeting of the Council may be convened by the Board when and at such times and places as it thinks fit and shall be convened at the times and in the manner prescribed by the Act.
- 9.3. For the purposes of these Articles, a general meeting shall mean:
- (a) a meeting of the Membership assembled in person on the same day at the same time and place; or
 - (b) the Membership communicating with each other by any technological means whereby they are able simultaneously to participate in discussion or transfer of information notwithstanding they are not physically present in the same place.

- 9.4. Subject to the provisions of the Act relating to special resolutions, not less than 14 days' notice of any general meeting, specifying the place, day and hour of the meeting and, in the case of special business, the general nature of such business, shall be given in the manner hereinafter provided to the Membership entitled to be present at the meeting and to the Auditor. Without prejudice to the provisions of the Act, with the consent of all the Membership entitled to receive notice of any particular meeting, that meeting may be convened by such shorter notice and in such manner as the Membership may think fit.
- 9.5. Subject to subsection 1322(3) of the Act, the non-receipt of a notice by or the accidental omission to give a notice to any of the Membership of any general meeting shall not invalidate any resolution passed at any such meeting.
- 9.6. The Board shall on the requisition of Membership who are together entitled to not less than 5% of the total voting rights of the Membership, call an extraordinary general meeting to be held in accordance with the provisions of the Act but, in any case, not later than 60 days after receipt by the Council of the requisition.
- 9.7. The requisition for an extraordinary general meeting shall state the objects of the meeting and shall be signed by the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves in the same manner as nearly as possible as that in which meetings are convened by the Board, call a meeting, but a meeting so convened shall not be held after the expiration of 90 days from the said date of the deposit of the requisition.
- 9.8. If the Board does not within 21 days after the deposit of the said requisition proceed to convene an extraordinary general meeting, the requisitionists, or any of them representing more than one-half of the total voting rights of all of them, may themselves in the same manner as nearly as possible as that in which meetings are convened by the Board, call a meeting, but a meeting so convened shall not be held after the expiration of 90 days from the said date of the deposition of the requisition.
- 9.9. Any reasonable expenses incurred by the requisitionists by reason of the failure of the Board to convene an extraordinary general meeting, shall be paid to the requisitionists by the Council.
- 9.10. Subject to the provisions of the Act relating to special resolutions and agreements for shorter notice, 14 days notice at least, exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which the notice is given specifying the place, day and the hour of the meeting and in the case of special business the general nature of that business, shall be given to such persons as are entitled to receive notices from the Council.
- 9.11. Any notice given pursuant to this Article shall be validly given if forwarded by ordinary post or if forwarded by facsimile transmission or if forwarded electronically.
- 9.12. Subject to section 5, each Member or Affiliate Member may appoint in writing one person to represent it at a particular general meeting or at all general meetings.

10. Proceedings at General Meetings

- 10.1. The business of an Annual General Meeting shall be:
 - (a) to receive and consider the balance sheet and the profit and loss account;
 - (b) to receive and consider the reports of the Board and of the Auditor;
 - (c) to appoint Directors; and

- (d) to transact any other business which, under the Act or this Constitution, ought to be transacted at any Annual General Meeting and any business which is brought under consideration by any reports of the Board issued with the notice convening the meeting.

Unless otherwise required by the Act, all other business transacted at an Annual General Meeting and all business transacted at any other general meeting shall be deemed ordinary. The Auditor shall be entitled to attend and be heard on any part of the business of any general meeting which concerns them as Auditor.

- 10.2. The quorum for a general meeting shall be one-tenth in number of the Members for the time being, or the closest whole number above that fraction, at the time the meeting is held, present in person or by duly appointed Representative and entitled to vote.
- 10.3. No business shall be transacted at any general meeting except the election of a chair and the adjournment of the meeting, unless the requisite quorum is present at the commencement of business or within 15 minutes after the appointed time for the meeting.
- 10.4. The Chair and in their absence the Deputy Chair shall preside as Chair of any general meeting, but if the Chair and the Deputy Chair are not present or being present are both unwilling to act at the time appointed for holding such meeting, the persons present and entitled to vote at a general meeting may choose one of their number to be Chair of the meeting.
- 10.5. If within 15 minutes from the time appointed for the general meeting a quorum is not present, the meeting, if convened upon a requisition, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week at the same time and place, and, if at such adjourned meeting a quorum is not present within 15 minutes from the time appointed for holding the meeting, the meeting shall be dissolved.
- 10.6. The Chair of a general meeting may with the consent of the meeting adjourn the same from time to time and 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.
- 10.7. At any general meeting a resolution put to the vote of the meeting shall be decided on the show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded either by the Chair or by at least 3 Members present in person or by proxy.
- 10.8. Unless a poll is so demanded a declaration by the Chair that a resolution has on a show of hands been carried unanimously or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the book containing the minutes of proceedings of the Council shall be conclusive evidence of the fact without particulars of the number or proportion of the votes recorded in favour of or against the resolution.
- 10.9. The demand for a poll may be withdrawn.
- 10.10. If a poll is duly demanded, it shall be taken in such manner or either at once or after an interval or adjournment or otherwise as the Chair directs and the result of the poll shall be the resolution of the meeting at which the poll was demanded, but a poll demanded on the election of a chair or on a question of adjournment shall be taken forthwith.
- 10.11. For the avoidance of doubt, it is hereby provided that the majority required for the passage of an ordinary resolution requires a simple majority to pass (i.e. more than 50%) and that a tied vote means that the resolution is lost.

- 10.12. At any meeting, a declaration by the Chair that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Council, signed by the Chair of that 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.
- 10.13. At any general meeting a Member or Affiliate Member may vote in person or by proxy, attorney or Representative.
- 10.14. On a show of hands, the Membership or their Representative present shall each have one vote.
- 10.15. On a poll, the Membership present in person or by proxy or attorney or other duly authorized Representative shall be entitled to cast on their own behalf a number of votes and a number of votes they represent by proxy, attorney or otherwise in accordance with the voting entitlements for each Category of Member or as from time to time prescribed in the By-laws.
- 10.16. No objection shall be raised to the qualifications of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered and every vote not disallowed at such meeting shall be valid for all purposes. Any such objection made in due time shall be referred to the Chair of the meeting whose decision shall be final and conclusive.
- 10.17. If any general meeting shall be adjourned for more than 21 days, a notice of such adjourned meeting shall be given to all the Members in the same manner as notice was or ought to have been given of the original meeting.
- 10.18. An instrument appointing a proxy shall be in writing under seal or under the hand of an officer or attorney so authorised. A proxy must be a Member, Affiliate Member, Corporate Member Life Member or Board Appointed Director.
- 10.19. The instrument appointing a proxy must be deposited at the Office not less than 48 hours prior to the time for holding the general meeting or adjourned meeting at which the proxy proposes to vote. The appointment of a proxy for a general meeting shall apply, unless revoked by the Member or Affiliate Member, to any adjournment of that general meeting.
- 10.20. An instrument appointing a proxy may be in the usual form or any other form approved by the Board from time to time.
- 10.21. An instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll.
- 10.22. For the purposes of securing the widest participation of activities of the Council and the carrying out of its objects, the Board may from time to time invite representatives of any association, organisation, group, university or college or any branch thereof, Department of Government, (either Federal, State or Municipal) or any other person to attend a general meeting.
- 10.23. Any such representative or person so invited under the preceding sub-clause shall have the right to attend that general meeting and, with the consent of the Chair of the meeting, may take part in all discussions there at but shall not be entitled to vote.
- 10.24. No Member whose subscription is outstanding or unpaid by the date of any Meeting of the Council shall be permitted to be heard or vote at such Meeting.

11. Board of Directors - Appointment

- 11.1. The business of the Council shall be managed by and vested in the Board which may exercise all such powers of the Council as are not required by the Act or this Constitution to be exercised by the Council in general meeting.
- 11.2. The Board shall comprise not more than 12 persons from the following groups:
- (a) 1 Director shall be nominated by each of the 8 States and Territories (being a total of 8 directors);
 - (b) Up to 4 Directors may be appointed by the Board.
- 11.3. A nominee for election as a Director must be a principal or senior employee nominated in writing by the nominee's Member and confirmed by the individual seeking appointment.
- 11.4. A Director shall immediately cease to be a Director if:
- (a) he or she is no longer a principal or senior employee or nominee of the Member or the Member objects to the Director continuing to act as a Director; or
 - (b) the nominating Member ceases to be financial or ceases to operate in the applicable State or Territory.
- 11.5. For the purposes of sub-clause 11.4(a), a Director ceasing to be a Director under such circumstances will not be eligible for reappointment as a Director for a period of 12 months from the date of cessation.
- 11.6. For the purposes of sub-clause 11.4(b), the Director must resign immediately but is eligible for reappointment through nomination by another Member and is not subject to the ineligibility period specified in the preceding sub-clause.
- 11.7. The Board may appoint a Casual Director to fill a vacancy or replace a State or Territory Director elected pursuant to clause 11.2(a). Wherever possible a Casual Director will be drawn from the corresponding State or Territory but the Board is under no obligation to do so. A Casual Director shall only be appointed until the next annual general meeting.
- 11.8. At the conclusion of the applicable period defined for Directorship, the Directors of the Board shall resign.
- 11.9. For the purposes of clause 11.2, there shall be the following categories of Directors:
- (a) State and Territory Directors:
 - (i) Australian Capital Territory Board Director
 - (ii) New South Wales Board Director
 - (iii) Northern Territory Board Director
 - (iv) Queensland Board Director
 - (v) South Australian Board Director
 - (vi) Tasmanian Board Director
 - (vii) Victorian Board Director
 - (viii) West Australian Board Director

- (b) Board Appointed Directors
- (c) Casual Directors

11.10. In the event that no Director is elected in respect of any of the specified States or Territories as specified in clause 11.9, a Casual Director may be appointed by the Board until the next annual general meeting in respect of the applicable State or Territory referred to in Clause 11.9 with the intention that each State or Territory be represented on the Board.

11.11. No person shall be elected a Director under sub-clause 11.9(a) unless that person shall be ordinarily resident in the corresponding State or Territory and be a member or the director or the nominee of a Member engaged in the private education and training industry in that State or Territory.

11.12. The only Members entitled to vote in respect of each category of Directorship specified in sub-clause 11.9(a) shall be:

- (a) in respect of (i) any Member resident in the Australian Capital Territory.
- (b) in respect of (ii) any Member resident in New South Wales.
- (c) in respect of (iii) any Member resident in the Northern Territory.
- (d) in respect of (iv) any Member resident in Queensland.
- (e) in respect of (v) any Member resident in South Australia.
- (f) in respect of (vi) any Member resident in Tasmania.
- (g) in respect of (vii) any Member resident in Victoria.
- (h) in respect of (viii) any Member resident in Western Australia.

A Member will be determined to be resident in the State or Territory in which it has its registered office.

11.13. The procedure for the conduct of election ballots for Directors shall be election by "Preferential Voting" as conducted for elections to the Australian House of Representatives.

11.14. Ballots shall be conducted by secret postal or electronic ballot and otherwise as directed in the By-laws.

11.15. In addition to clause 11.4, a Director shall be deemed to have vacated office if:

- (a) he ceases to be a Director by virtue of the Act;
- (b) he becomes insolvent under administration;
- (c) he becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (d) he resigns his office by notice in writing to the Board;
- (e) he is absent without permission of the Board from two consecutive meetings thereof; or
- (f) he is directly or indirectly interested in any contract or proposed contract with the Council and fails to declare the nature of his interest in the manner required by the Law.

11.16. For the purposes of sub-clause 11.15, a Director deemed to have vacated office under such circumstances will not be eligible for reappointment as a Director for a period of 12 months from the date of vacation.

11.17. For the purposes of clause 11.12, a Life Member shall be entitled to vote in their elected State or Territory of domicile or residence.

- 11.18. For the purposes of sub-clause 11.12, a Corporate Member shall be entitled to vote in the State or Territory of their registered office or in the absence thereof their principal place of business but shall not be entitled to vote in more than one (1) State or Territory.

12. Board of Directors - Conduct

- 12.1. A Director shall not make improper use of any information acquired as a Director to gain directly or indirectly a pecuniary advantage for himself or for any other person or with intent to cause detriment to the Council irrespective of whether detriment was caused.
- 12.2. If a Director:
- (a) has a direct or indirect pecuniary interest in any contract or proposed contract with the Council or in any other matter in which the Council is concerned which is to be or likely to be considered or discussed at a meeting of the Board; or
 - (b) for any other reason has a conflict of interest or is unable to discharge their duties;
- the Director must:
- (i) if he intends to be present at the meeting, disclose the nature of the interest or conflict immediately before the consideration or discussion, or
 - (ii) if he does not intend to be present at the meeting, disclose in writing the nature of the interest or conflict to the Chair.
- 12.3. A Director may not participate in the consideration or discussion of any contract or proposed contract or conflict or other matter in which he has a direct or indirect pecuniary or other interest and shall not move or second a motion on any question relating to such contract proposed contract conflict or other matter.
- 12.4. A Director shall not participate in any deliberations in which he or the Member which he represents, has a conflict of interest.
- 12.5. A Director may attend all general meetings of the Council and be heard on any matter but unless he is also a Representative of a Member shall not be entitled to vote.

13. Board of Directors - Chair

- 13.1. There shall be a Chair and Deputy Chair of the Board who shall be elected by the Board from amongst the Directors at the first meeting of the Board held as soon as practicable after the annual general meeting of the Council.
- 13.2. The Chair and Deputy Chair shall hold office until ceasing to be a Director or the first meeting of the Board after each annual general meeting of the Council (whichever occurs first in time). At each first meeting of the Board after each annual general meeting thereafter, the election of the Chair shall take place as the first item of business.
- 13.3. The maximum term in office for a Chair is 4 years in aggregate.
- 13.4. The maximum term in office for a Deputy Chair is 4 years in aggregate.
- 13.5. The Chair shall not have a second or casting vote.

14. Board of Directors – State and Territory Director Elections and Vacancies

- 14.1. Nominees for election to the Board must state the specific State or Territory for which they seek election. Nominees for election to the Board may only nominate for one (1) State or Territory at any election. Any existing Director wishing to nominate for election in a different State or Territory must retire from office but shall be eligible for re-election.
- 14.2. A Director may not retain office for more than 3 calendar years without submitting for re-election and a Director may not be appointed or elected to office for more than an aggregate of 9 years.
- 14.3. At each annual general meeting of the Council one third of all the State and Territory Directors in office or, if their number is not a multiple of 3, the number nearest to but not less than one third, must retire from office. In ascertaining the number of the Directors to retire by rotation, Casual Directors, Directors retiring pursuant to Clause 14.2 and Directors vacating office for any other reason are to be taken into account in accordance with the procedures more particularly specified in the Rules or By-laws.
- 14.4. A retiring Director may act until the conclusion of the meeting at which the Director retires and is eligible for re-election.
- 14.5. The Directors to retire by rotation at each annual general meeting are those who have been longest in office and the length of time a Director has been in office is to be computed from the Director's first election.
- 14.6. As between Directors who have been in office an equal length of time, the Directors to retire are, in default of agreement between them, to be determined by drawing lots in any manner determined by the Chair or if the Chair is not able and willing to act by the Deputy Chair.
- 14.7. In ascertaining the identity of the Directors to retire by rotation, only State and Territory Directors are to be taken into account.
- 14.8. If the Council in general meeting alters the number of Directors it may also determine in what order of rotation the Director is to go out of office.
- 14.9. When any designated Director position is uncontested, a ballot for that position is unnecessary and will not be held.
- 14.10. The Council in general meeting may, by ordinary resolution (of which special notice shall have been given), remove any Director from office. The Board may thereafter appoint another person to hold office as a Casual Director. Such a person shall hold office only until the next annual general meeting of the Council. If the person removed from office was the Chair or Deputy Chair, the Directors shall elect one of their number as Chair or Deputy Chair.
- 14.11. A Board Appointed Director shall be appointed for a term of up to three (3) depending upon the requirements of the Board. The term of appointment of a Board Appointed Director shall be specified at the time of appointment years. At the end of the term the Board may choose to reappoint or replace the Board Appointed Director or leave the position vacant. A Board Appointed Director is not subject to election and there is no limit to the number of times a Board Appointed Director can be appointed by successive Boards. The person appointed need not necessarily be a Member or Representative of a Member.

15. Board of Directors - Powers and Duties

- 15.1. The Board shall engage the Chief Executive Officer and any other senior officers as it may consider necessary and shall regulate their duties and fix their salaries.
- 15.2. The Board shall cause minutes to be made:
 - (a) of all appointments of officers;
 - (b) of the names of Directors of the Board present at all general meetings and meetings of the Board; and
 - (c) of all proceedings of general meetings and meetings of the Board.
- 15.3. The Board shall cause a draft of the minutes referred to in sub-clause 15.2 to be entered, within 30 days after the relevant meeting is held, in the Minute Book. Such minutes shall be subsequently signed by the Chair of the meeting at which the proceedings took place or by the Chair of the next succeeding meeting.
- 15.4. A Director is empowered to liaise and cooperate with government towards the betterment of education and training nationally and globally but shall not represent or advance the interests of any entities deemed to be ineligible for Membership of the Council in any public capacity without the prior approval of the Board.
- 15.5. A Director is empowered to liaise and cooperate with other education and training industry and/or professional associations towards the betterment of education and training nationally and globally but shall not represent or advance the interests of any other education and training industry and/or professional association in a public capacity without the prior approval of the Board.

16. Board of Directors - Proceedings

- 16.1. The Board shall meet at such times and places as may be determined from time to time by it and in the absence of any such determination at such times and places as the Chair shall notify to members thereof.
- 16.2. Every Director shall have one vote, and in the event of there being an equality of votes, the motion shall be lost.
- 16.3. Subject to Clause 16.4, not less than 7 days notice shall be given to every Director of any meeting thereof specifying the time, place and general nature of the business of such meeting, but where the Chair considers an emergency exists the Chair may take such steps as considered necessary to notify Directors of the proposed meeting notwithstanding that 7 days notice shall not have been given.
- 16.4. A Director shall be entitled to receive all notices and such notices shall be forwarded to the Director's address as recorded by the Company Secretary and all Directors shall upon election to the Board be required to provide within 7 days of election the following details required for service of notices, namely:
 - (a) the address at which notices are to be served;
 - (b) the residential address and telephone number of the Director;
 - (c) the business address and telephone number of the Director;
 - (d) the facsimile telephone number of the Director at which notices may be served;

- (e) the email address of the Directors at which notices may be served;
 - (f) any other form of communication by which notices may be served.
- 16.5. A quorum for a meeting of the Board shall be one half in number of the Directors thereof for the time being or the closest whole number above that fraction.
- 16.6. The Directors of the Board may act, notwithstanding any vacancy in their body.
- 16.7. At every meeting of the Board the Chair shall preside as Chair or in the event of his absence, the Deputy Chair, or if there is no Chair or Deputy Chair or if he is not present within 15 minutes of the time appointed for the holding of the meeting or is unwilling to act, the Directors of the Board present, provided they constitute a quorum, may elect one of their number as Chair of the meeting.
- 16.8. All acts done by any meeting of the Directors of the Board or by any person acting as a Director thereof shall, notwithstanding that it be afterwards discovered there was some defect in the appointment of any such Directors or person 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 Director.
- 16.9. A resolution in writing signed by all the Directors entitled to receive notice of a meeting thereof shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held. Any such resolution may consist of several documents in like form, either original or by facsimile or electronic transmission each signed by one or more Directors of the Board.
- 16.10. For the purposes of this Constitution, a meeting of the Directors of the Board shall mean:
- (a) a meeting of the Directors of the Board assembled in person on the same day at the same time and place; or
 - (b) the Directors of the Board communicating with each other by any technological means whereby they are able simultaneously to communicate with each other and participate in discussion notwithstanding they are not physically present in the same place.
- 16.11. Any notice to be given to a Director pursuant to this Clause shall be validly given if forwarded by whatever means to the addresses for service provided by the Director.
- 16.12. All Directors shall observe strict confidentiality in respect of all matters which come before the Board for consideration and shall not, without the consent of the Board, communicate to any other person details of any matters discussed at a meeting of the Board, except where by law required to do so.
- 16.13. The Directors shall not be remunerated for acting as Directors but shall be reimbursed their reasonable expenses incurred in the course of undertaking their duties on behalf of the Board and the Council.

17. Chief Executive Officer

- 17.1. The Directors shall appoint a person to the office of Chief Executive Officer for the period and on such terms as they think fit, including the grant of power for the Chief Executive Officer to delegate all or part of his or her authorities to another person during any temporary absence. Subject to the terms of any agreement entered into in a particular case, the Directors may at any time revoke any appointment.

- 17.2. The Chief Executive Officer shall not be a Director but shall attend all Board meetings and report to and engage with the Board on the strategic direction, management and administration of the Council.
- 17.3. The Board shall determine the terms of any agreement between the Chief Executive Officer and the Council and the Chief Executive Officer may receive remuneration as the Directors determine.
- 17.4. The Directors may, on the terms and conditions and with any restrictions as they think fit, confer on the Chief Executive Officer any of the powers exercisable by them. Any powers so conferred may be concurrent with the powers of the Directors. The Directors may at any time withdraw or vary any of the powers conferred on the Chief Executive Officer.

18. Committees

- 18.1. The Board may delegate any of its powers and duties to such Committees as it thinks fit from time to time. Any such Committee shall consist of at least one Director of the Board and such other persons as it may determine.
- 18.2. The powers and duties delegated to such a Committee shall be upon such terms and conditions as the Board may determine, including the fixing of a quorum for a meeting thereof.
- 18.3. The Chair shall be ex-officio a member of any such Committee.
- 18.4. Any Director of the Board shall be at liberty to attend any meeting of any Committee but shall not be entitled to vote unless that Director has been appointed to the Committee by the Board.
- 18.5. No member of a Committee or individual representing a member of a Committee shall be empowered to represent the Council in private or in public without the written approval of the Board which authority to so approve may be delegated to a Director of the Board if the Board so decides. A representative of the Council thus approved by the Board or by the delegated Director of the Board shall submit a summary of that representation to the Board or to the delegated Director following each representation (for example, private meeting, committee meeting, conference or any other representation). The summary shall highlight the important issues arising from that representation for the Board to pursue on behalf of the Council.

19. Rules and By-laws

- 19.1. The Board may by resolution make, repeal and alter Rules not inconsistent with this Constitution or any matter within the Board's power to regulate.
- 19.2. The Board shall have power from time to time to make such By-laws as are in its opinion necessary and desirable to provide criteria for membership eligibility and voting requirements (including continuing membership) and accreditation status for membership of the Council and for the proper control, administration and management of the Council's affairs, operations, finances, interests, effects and property and to amend and repeal from time to time such By-laws.
- 19.3. Notwithstanding the foregoing provisions of this Clause, the Council in general meeting, may amend or repeal any Rule or By-law made by the Board.
- 19.4. A By-law shall:
 - (a) be subject to this Constitution;
 - (b) not be inconsistent with any provision contained in this Constitution; and

- (c) when in force, shall be binding on all members and Directors and shall have the same effect as this Constitution.

20. Company Secretary

- 20.1. There shall be a Company Secretary of the Council who shall be appointed by the Board for such term, at such remuneration and upon such conditions as it may think fit.
- 20.2. The Board shall have the power to suspend or remove the Company Secretary.
- 20.3. The Board may vest in the Company Secretary such powers, duties and authorities as it may from time to time determine and the Company Secretary shall exercise all such powers and authorities subject at all times to the control of the Board.
- 20.4. The Company Secretary may only be a member of the Board if not a permanent employee of the Council but shall attend its meetings and all general meetings of the Council and may be heard on any matter.
- 20.5. The Company Secretary shall observe strict confidentiality in respect of all matters which come before him in the course of his duties and shall not, without the consent of the Board, communicate to any other person details of any matter discussed at a Meeting of the Board at which he is represent except where by law required to do so.

21. Minutes

- 21.1. The Board shall cause minutes to be duly entered in books provided for the purpose:
 - (a) of the names of the Directors present at each meeting of the Board and of any Committee;
 - (b) of all orders made by the Board and any Committee; and
 - (c) of all resolutions and proceedings of general meetings and of meetings of the Board and any Committee.
- 21.2. Any such minutes of any meeting of the Board or of any Committee or of the Council, if purporting to be signed by the Chair of such meetings or by the Chair of the next succeeding meeting, shall be receivable as prima facie evidence of the matters stated in such minutes. Such minutes shall be entered in the relevant books within 30 days after the relevant meeting is held and shall be signed by the Chair as a true record once approved by the Board.

22. The Seal

- 22.1. The Board shall provide for the safe custody of the Seal which shall never be used except by the authority of a resolution of the Board.
- 22.2. Every instrument to which the Seal is affixed shall be signed by a Director and countersigned by the Company Secretary or by a second Director or by some other person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

22.3. The Council may from time to time exercise the powers conferred by section 127 of the Act and such powers shall be vested in the Board.

23. Assets and Income

- 23.1. The assets and income of the Council howsoever derived shall be applied solely towards the promotion of the objects of the Council and no portion thereof shall be paid or transferred directly or indirectly by way of dividend bonus or otherwise howsoever by way of profit to the Members.
- 23.2. Nothing in this Constitution shall prevent the payment in good faith of remuneration to any officers or employees of the Council or to any Member or Affiliate Member or any other person in return for any service actually rendered to the Council nor prevent payment of interest at a rate not exceeding the rate for the time being charged by the Council's bankers for overdrawn accounts on money lent.

24. Cheques, Bills, etc

All cheques, bills of exchange and promissory notes shall be signed, drawn, made, accepted or endorsed (as the case may be) for and on behalf of the Council by two Directors, or by one Director and the Company Secretary or some other officer authorised by the Board, or in such other manner as the Board may from time to time determine and authorise.

25. Accounts

- 25.1. The Council shall keep such accounting records as correctly record and explain the transactions of the Council and the financial position of the Council and shall keep its accounting records in such a manner as will enable the preparation from time to time of true and fair accounts of the Council and shall keep its accounting records in such a manner as will enable the accounts of the Council to be conveniently and properly audited in accordance with the Act. The accounting records shall be kept at the Office or at such place or places as the Board thinks fit.
- 25.2. The Board shall, subject to the provisions of the Act, from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting records of the Council or any of them shall be open to inspection of the Members, and no Member shall have any right to inspect any account or book or document of the Council unless and except as conferred by statute or any agreement between all of the Members from time to time, or as authorised by the Board or by a resolution of the Council in general meeting.
- 25.3. The Board shall cause to be laid before each Annual General Meeting a copy of the profit and loss account and balance sheet in respect of the last completed financial year of the Council made out in accordance with the provisions of the Act. Every account of the Council, when approved or adopted by the general meeting, shall be conclusive, except as regards any error discovered therein within 90 days next after the approval or adoption thereof. Whenever any such error is discovered within that period, the account shall be forthwith corrected.
- 25.4. The Council shall observe the provisions of the Act as to the dispatch of a copy of the profit and loss account balance sheet and other documents to all persons entitled to receive notice of general meetings of the Council.

26. Audit

The Council shall appoint an Auditor in accordance with the Act. In the event of the removal or retirement of the Auditor, another Auditor shall be appointed as soon as practicable.

27. Approved Schemes

- 27.1. The Council may promote, either by itself or in conjunction with any other party, an insurance fidelity or indemnity scheme or schemes or trust accounts to apply to the Membership to protect advance monies paid to members by those categories of students or prospective students specified in the By-laws in respect of services provided by the member concerned.
- 27.2. The Council may, by its By-laws, make membership of an approved scheme, the holding of an approved policy and compliance with specified banking arrangements, requirements for registration, recognition, licensing or accreditation of any Member or of any course of training conducted by a Member.
- 27.3. The Council may promote and operate such tuition assurance scheme as prescribed under the Education Services for Overseas Students Act 2000 (ESOS Act) as amended, or such other schemes as the Board may consider appropriate, and may make By-laws for its operation.

28. Notices

- 28.1. A notice may be served by the Council either personally, by facsimile transmission, by electronic means or by sending it through the post in a postage paid envelope or wrapper addressed to such address listed in the Register of Members at that time. Any notice sent through the post shall be posted in Australia.
- 28.2. Any notice sent by post shall be deemed to have been served at the expiration of two business days after it is posted and in proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed and posted.
- 28.3. The signature to any notice to be given by the Council may be written or printed.
- 28.4. Subject to the Act, where a given number of days' notice or notice extending over any other period is required to be given, either the day of service or the day upon which the notice will expire (but not both) shall be reckoned in the number of days or other period.

29. Indemnity of Officers

- 29.1. In clauses 29.2 and 29.3:
 - (a) the term "**Proceedings**" means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his capacity as such an Officer or in the course of acting in connection with the affairs of the Council or a subsidiary of the Council or otherwise arising out of the Officer holding such office (including proceedings alleging that he was guilty of negligence, default, breach of trust or breach of duty in relation to the Council or a subsidiary of the Council).
 - (b) the term "**Officer**" has the meaning given to that term in the Act.

29.2. To the extent permitted by the Act:

- (a) the Council indemnifies every person who is or has been an Officer of the Council or of a subsidiary of the Council against any liability for costs and expenses incurred by that person in defending any Proceedings in which judgement is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any Proceedings in which the Court grants relief to the person under the Act; and
- (b) the Council indemnifies every person who is or has been an Officer of the Council or of a subsidiary of the Council against any liability incurred by the person, as an Officer of the Council or of a subsidiary of the Council, to another person (other than the Council or a related body corporate of the Council) unless the liability arises out of conduct involving a lack of good faith.

29.3. To the extent permitted by the Act the Council may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Council or of a subsidiary of the Council against a liability:

- (a) incurred by the person in his capacity as an Officer of the Council or a subsidiary of the Council or in the course of acting in connection with the affairs of the Council or a subsidiary of the Council or otherwise arising out of the Officer's holding such office provided that the liability does not arise out of conduct involving a willful breach of duty in relation to the Council or a subsidiary of the Council or a contravention of sections 232(5) or (6) of the Act; or
- (b) for costs and expenses incurred by that person in defending Proceedings, whatever their outcome.

30. Secrecy

Subject to any other provision of this Constitution and to the Act, every person who by reason of his office in the Council or connection with the Council is exposed to, learns of or has access to information or knowledge concerning Members must keep confidential all such information and knowledge and is not entitled to communicate or divulge those affairs or any part of them in such a way that the name of the Member concerned is identified or likely to be identified unless with the prior consent in writing of that Member.

31. Amendments to this Constitution

A resolution to amend, modify, add to or delete from this Constitution shall only be effective if, not contrary to the Act, and passed by more than 75% per cent of Members present by Representative or proxy at a General Meeting of Council