

Constitution of National Institute of Dramatic Art

Australian Company Number (ACN) 000 257 741

A company limited by guarantee

This is a copy of the Constitution approved at the Annual General Meeting of the National Institute of Dramatic Art on 19 May 2016 and updated at the 24 May 2018 Annual General Meeting.

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Preliminary

1. Name of the Company

The name of the company is National Institute of Dramatic Art (the **Company**).

2. Type of company

The Company is a not-for-profit public company limited by guarantee.

3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

4. The guarantee

Each member must contribute an amount not more than \$100 (the guarantee) to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for the:

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

Definitions and Interpretation

5. Definitions

In this constitution:

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

Board means the board of directors elected in accordance with the Company's constitution.

Chairman means a person elected by the directors to be the Company's chair under clause 43(a).

Commissioner of Taxation has the meaning given in the Taxation Administration Act 1953 (Cth).

Company means the company referred to in clause 1.

Corporations Act means the Corporations Act 2001 (Cth).

Deputy Chair means a person elected by the directors to be the Company's deputy chair under clause 43(b).

General Meeting means a meeting of members and includes the annual general meeting.

Member Present means, in connection with a General Meeting, a member present in person, by attorney or by proxy at the venue or venues for the meeting.

Registered Charity means a charity that is registered under the ACNC Act.

Special Resolution means a resolution:

- (a) of which notice has been given under clause 22(e)(iii); and
- (b) that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution.

Surplus Assets means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

Tax Act means the Income Tax Assessment Act 1997 (Cth).

UNSW means The University of New South Wales ABN 57 195 873 179, a body corporate established pursuant to the *University of New South Wales Act 1989* (NSW).

UNSW Nominee has the meaning given in clause 41.

Vice-Chancellor means the Vice-Chancellor of UNSW, or a person acting in that role.

6. Interpretation

- (a) The words '**including**', '**for example**', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression.
- (b) Reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).

7. Reading this constitution with the Corporations Act

- (a) The replaceable rules set out in the Corporations Act do not apply to the Company.
- (b) While the Company is a Registered Charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- (c) If the Company is not a Registered Charity (even if it remains a charity), the Corporations Act overrides any clause in this constitution which is inconsistent with that Act.
- (d) A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

Purposes and powers

8. Object

8.1 Principal Purpose of the Company

The principal purpose of the Company is to promote and encourage expertise in the practice, knowledge, appreciation, understanding and enjoyment of drama, music, opera, ballet and any other art of the theatre in all their expressions including film, television, multimedia and other forms of technology and media whether now known or developed in the future, either directly or indirectly, by:

- (a) teaching training and instructing persons and promoting education and research;
- (b) establishing and conducting schools lectures, courses, seminars, workshops and other forms of education in any format including face to face, flexible and online formats;
- (c) conferring degrees, diplomas, certificates or other awards;

- (d) awarding scholarships, fellowships, bursaries and other financial assistance; and
- (e) presenting plays, opera, ballet and any other form of theatre art,
anywhere in the world.

8.2 Ancillary Purpose of the Company

In furtherance of the principal purpose of the Company described in clause 8.1, the Company has the following purposes:

- (a) to take any gift of property whether subject to any special trust or not;
- (b) to take such steps by person or written appeals public meetings or otherwise as may from time to time be deemed expedient for the purpose of procuring contributions either to the general funds of the Company or to any particular fund or funds of the Company in the shape of donations, sponsorships, annual subscriptions or otherwise;
- (c) to arrange for organise co-operate with and assist persons to obtain contributions of and generally to raise moneys funds and all kinds of property to be used for all or any of the purposes of the Company and for the purposes of this sub-clause but without limiting the generality of the foregoing to provide accommodation for any such persons in any property of the Company;
- (d) to purchase, take on lease or in exchange, take on license or concession, hire, hold, receive, accept and whether by way of purchase, gift or otherwise acquire any property whatsoever which may be deemed necessary or convenient for any of the purposes of the Company and in such manner and on such terms as the Company thinks fit;
- (e) to construct, maintain and alter any buildings or works necessary or convenient for the purposes of the Company;
- (f) to borrow or raise money and secure the payment thereof with interest and other charges and also the payment of any past debt or obligation of the Company with interest and other charges by the issue of debentures payable to bearer or otherwise (perpetual or otherwise) bonds bills or notes payable to bearer or otherwise mortgage or charge or other securities of or upon or over the whole or any part of the property present or future of the Company at once or from time to time upon such terms and in such manner as the directors shall think fit or without any such security and to purchase redeem or pay off any such securities;
- (g) to guarantee (either alone or jointly with any other person) or (either alone or jointly as aforesaid) to become liable for the payment of moneys or for the performance of any obligations by any person whatsoever or whomsoever and for the purpose of securing the payment of any moneys or the performance of any obligations for which this Company has or may become liable under or by virtue of any guarantee or other contract entered into by this Company pursuant to this or any other provision of this Constitution to mortgage or charge in such manner as the Company may think fit all or any of the Company's property both present and future;
- (h) to sell, manage, lease, license, grant concessions over mortgage dispose of or otherwise deal with all or any part of the property of the Company and should the property be subject to any trusts the Company shall only deal with the same in such manner as is allowed by law having regard to such trusts;
- (i) to invest moneys of the Company not immediately required for any of its objects in such investments and in such manner as may from time to time be determined

provided that any such moneys shall be invested only in such forms of investment as are authorised by law for the investment or trust funds;

- (j) in furtherance of the principal purpose of the Company as set out in clause 8.1 to lend and advance money to any person without security or upon such securities and terms and subject to such conditions as may seem expedient provided that the rate of interest charged on money lent shall, not exceed standard market rates of interest;
- (k) to enter into any arrangements or contracts with any Governments or other companies, corporations, public bodies or other authorities municipal local or otherwise that may seem conducive to the Company's purposes or any of them and to obtain from any such Government, company, corporation, public body or authority any arrangements, rights, privileges and concessions which the Company may think it desirable to obtain and to carry out exercise and comply with any such arrangements, rights, privileges and concessions;
- (l) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants, debentures, bonds and other negotiable or transferable instruments;
- (m) to undertake and execute any trusts the undertaking whereof may seem desirable and either gratuitously or otherwise;
- (n) to obtain any provisional order or Act of Parliament for enabling the Company to carry any of its objects into effect or for effecting any modification of the Company's constitution or for any other purpose which may seem expedient and to oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the Company's interests;
- (o) to establish or promote or concur or assist in establishing forming or promoting any other company or corporation whose purposes shall be in any manner calculated to enhance either directly or indirectly the interests of this Company and to conduct and carry on or liquidate or wind up any such company or corporation and to take or otherwise acquire and hold shares, stock or securities of any guarantee and payment of any securities by or under any obligations of any such company or corporation provided that the Company shall not establish or promote or concur in or assist in the formation or promotion of any company or corporation unless such company or corporation prohibits the distribution of its income and property to an extent at least as great as that provided in clause 11;
- (p) to establish and regulate whether in or out of New South Wales agencies for any purposes of the Company and to establish local boards to appoint attorneys and agents and to do all acts and things of whatsoever nature necessary to procure the Company to be registered incorporated or legally recognised or constituted in foreign countries the several States and Territories of the Commonwealth of Australia or elsewhere and to secure to this Company the same rights and privileges in any States Territory or country as are possessed by local companies or partnerships of a similar nature;
- (q) to pay the costs, charges, stamp duties and expenses preliminary or incidental to the formation establishment and registration of the Company and the preparation and printing of the constitution of the Company;
- (r) to do all or any of the above things in any part of the world as principals agents directors trustees or otherwise and by or through trustees agents or otherwise and either alone or in conjunction with others; and
- (s) to do all such other lawful things as are incidental or conducive to the attainment of the above purposes.

9. Gift Fund

For as long as the Company is endorsed or otherwise duly authorised by the Commissioner of Taxation of the Commonwealth of Australia (or such other person or entity as is authorised or constituted for such purpose) as an entity that is a deductible gift recipient for the purposes of the Tax Act as amended (or any enactment in substitution thereof) as a cultural organisation:

- (a) the Company must maintain a gift fund pursuant to such endorsement that is a public fund; and
- (b) the Company must on the earlier of:
 - (i) the winding up of the Company; or
 - (ii) the Company having its said endorsement or authorisation revoked,
transfer any surplus assets of that gift fund to an institution or institutions in Australia:
 - (iii) having a purpose similar to the principal purpose of the Company as set out in clause 8;
 - (iv) which prohibits the distribution of its or their income and property amongst its or their members to an extent at least as great as is imposed on the Company under or by virtue of clause 11;
 - (v) is endorsed or otherwise duly authorised by the Commissioner of Taxation of the Commonwealth of Australia (or such other person or entity as is authorised or constituted for such purpose) as an entity that is a deductible gift recipient for the purposes of the Tax Act as amended (or any enactment in substitution thereof); and
 - (vi) which maintains a gift fund pursuant to such endorsement,
such institution or institutions to be determined by the members or in default thereof by the court.

10. Powers

Subject to clause 11, the Company has the following powers, which may only be used to carry out its purpose(s) set out in clause 8:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

11. Not-for-profit

- (a) The company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 11(b) and 72.
- (b) Clause 11(a) does not stop the Company from doing the following things, provided they are done in good faith:
 - (i) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or

- (ii) making a payment to a member in carrying out the Company's charitable purpose(s).

12. Amending the constitution

- (a) Subject to clause 12(b), the members may amend this constitution by passing a Special Resolution.
- (b) The members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

Members

13. Membership and register of members

- (a) The members of the Company are the current members of the Company and any other person that the directors allow to be a member, in accordance with this constitution.
- (b) The directors may, from time to time, set a limit on the maximum number of members.
- (c) Directors who are members and who hold the office of director after 1 January 2016 are not counted in the maximum number of members determined in accordance with clause 13(b):
 - (i) for the duration they hold the position of director; and
 - (ii) for the duration referred to in clause 18(d) after ceasing to be a director.
- (d) The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
 - (i) for each current member:
 - A. name;
 - B. address;
 - C. any alternative address nominated by the member for the service of notices; and
 - D. date the member was entered on to the register.
 - (ii) for each person who stopped being a member in the last 7 years:
 - A. name;
 - B. address;
 - C. any alternative address nominated by the member for the service of notices; and
 - D. dates the membership started and ended.
- (e) The Company must give current members access to the register of members.
- (f) Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

- (g) The rights and privileges of every member are personal to the member and may not be transferred by any act of the member or by operation of law.

14. Who can be a member

The following persons are eligible to apply to be member of the Company under clause 15:

- (a) an individual who supports the purposes of the Company;
- (b) a person who is elected or appointed as a director of the Company; and
- (c) a person who is appointed as a secretary of the Company.

15. How to apply to become a member

A person who is eligible under clause 14 may apply to become a member of the Company by writing to the secretary stating that they:

- (a) want to become a member;
- (b) support the purpose(s) of the Company; and
- (c) agree to comply with this constitution, including paying the guarantee under clause 4 if required.

16. Directors decide whether to approve membership

- (a) The directors must consider an application for membership within a reasonable time after the secretary receives the application.
- (b) If the directors approve an application, the secretary must as soon as possible:
 - (i) enter the new member on the register of members; and
 - (ii) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 17).
- (c) If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected, but does not have to give reasons.
- (d) For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 15(a), 15(b) or 15(c). In that case, by applying to be a member, the applicant agrees to those three matters.

17. When a person becomes a member

A person will become a member when they are entered on the register of members.

18. When a person stops being a member

A person immediately stops being a member:

- (a) if they die, become bankrupt, become of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health;

- (b) if the directors resolve that they are of the opinion that the person has engaged in conduct which may bring NIDA into disrepute, including (but not limited to) because the person has been convicted of a serious offence, including offences related to fraud, dishonesty, violence or abuse of children;
- (c) if they resign, by writing to the secretary;
- (d) if that member is a director, five years after ceasing to be a director, or such longer period as the Board may agree before the expiry of that five years;
- (e) if they have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member; or
- (f) 7 years after entry on the register of members unless the Board grants an extension of membership for a period, or periods, of up to 5 years in its absolute discretion (successive extensions may be granted).

General meetings of members

19. General meetings called by directors

- (a) The directors may call a General Meeting.
- (b) If members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the directors must:
 - (i) within 21 days of the members' request, give all members notice of a General Meeting; and
 - (ii) hold the General Meeting within 2 months of the members' request.
- (c) The percentage of votes that members have (in clause 19(b)) is to be worked out as at midnight before the members request the meeting.
- (d) The members who make the request for a General Meeting must:
 - (i) state in the request any resolution to be proposed at the meeting;
 - (ii) sign the request; and
 - (iii) give the request to the Company.
- (e) Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

20. General meetings called by members

- (a) If the directors do not call the meeting within 21 days of being requested under clause 19(b), 50% or more of the members who made the request may call and arrange to hold a General Meeting.
- (b) To call and hold a meeting under clause 20(a) the members must:
 - (i) as far as possible, follow the procedures for General Meetings set out in this constitution;

- (ii) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost; and
 - (iii) hold the General Meeting within three months after the request was given to the Company.
- (a) The Company must pay the members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

21. Annual General Meeting

- (a) A General Meeting, called the annual General Meeting, must be held at least once in every calendar year and within such time after the end of the Company's financial year as may be required by law.
- (b) Even if these items are not set out in the notice of meeting, the business of an annual General Meeting may include:
- (i) a review of the Company's activities;
 - (ii) a review of the Company's finances;
 - (iii) any auditor's report;
 - (iv) the election of directors; and
 - (v) the appointment and payment of auditors, if any.
- (c) Before or at the annual General Meeting, the directors must give information to the members on the Company's activities and finances during the period since the last annual General Meeting.
- (d) The chair of the annual General Meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

22. Notice of General Meetings

- (a) Notice of a General Meeting must be given to:
- (i) each member entitled to vote at the meeting;
 - (ii) each director; and
 - (iii) the auditor (if any).
- (b) Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- (c) Subject to clause 22(d), notice of a meeting may be provided less than 21 days before the meeting if:
- (i) for an annual General Meeting, all the members entitled to attend and vote at the annual General Meeting agree beforehand; or
 - (ii) for any other General Meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

- (d) Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - (i) remove a director;
 - (ii) appoint a director in order to replace a director who was removed; or
 - (iii) remove an auditor.
- (e) Notice of a General Meeting must include:
 - (i) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
 - (ii) the general nature of the meeting's business;
 - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution;
 - (iv) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
 - A. the proxy does not need to be a member of the Company;
 - B. the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
 - C. the proxy form must be delivered to the Company at least 48 hours before the meeting.
- (f) If a General Meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.

23. Quorum at General Meetings

- (a) For a General Meeting to be held, at least 20% of members (a quorum) must be present (in person, by proxy or by attorney) at the start of the meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is an attorney or proxy of more than one member).
- (b) No business may be conducted at a General Meeting if a quorum is not present at the start of the meeting.
- (c) If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chair specifies. If the chair does not specify one or more of those things, the meeting is adjourned to:
 - (i) if the date is not specified – the same day in the next week;
 - (ii) if the time is not specified – the same time; and
 - (iii) if the place is not specified – the same place.
- (d) If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

24. Auditor's right to attend meetings

- (a) The auditor (if any) is entitled to attend any General Meeting and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- (b) The Company must give the auditor (if any) any communications relating to the General Meeting that a member of the Company is entitled to receive.

25. Using technology to hold meetings

- (a) The Company may hold a General Meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Anyone using this technology is taken to be present in person at the meeting.

26. Chair for General Meetings

The chair of General Meetings will be:

- (a) the Chairman, if the Chairman:
 - (i) is present at the General Meeting (or within 30 minutes after the starting time set for the meeting); and
 - (ii) willing to act as chair of the meeting;
- (b) the Deputy Chair, if
 - (i) the Chairman is not so present at the General Meeting or willing to act as chair; and
 - (ii) the Deputy Chair is present at the General Meeting (or within 30 minutes after the starting time set for the meeting) and willing to act as chair;
- (c) any other director as the directors present may choose to be the chair for that meeting, if
 - (i) the Chairman and Deputy Chair are not so present at the General Meeting and willing to act as chair; and
 - (ii) the elected director is present at the General Meeting (or within 30 minutes after the starting time set for the meeting) and willing to act as chair; or
- (d) such other person (who is a member) as the members present and entitled to vote at a General Meeting may choose to be the chair for that meeting, if neither the Chairman, the Deputy Chair, nor any other director is so present and willing to act as chair.

27. Role of the chair

- (a) The chair is responsible for the conduct of the General Meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor).
- (b) The chair does not have a casting vote.

28. Adjournment of meetings

- (a) If a quorum is present, a General Meeting must be adjourned if:
 - (i) the chair declares that the General Meeting is adjourned; or
 - (ii) a majority of members present direct the chair to adjourn it.
- (b) Only unfinished business may be dealt with at a meeting resumed after an adjournment.

Members' resolutions and statements

29. Members' resolutions and statements

- (a) Members with at least 5% of the votes that may be cast on a resolution may give:
 - (i) written notice to the Company of a resolution they propose to move at a General Meeting (members' resolution); and/or
 - (ii) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (members' statement).
- (b) A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- (c) A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- (d) Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- (e) The percentage of votes that members have (as described in clause 29(a)) is to be worked out as at midnight before the request or notice is given to the Company.
- (f) If the Company has been given notice of a members' resolution under clause 29(a)(i), the resolution must be considered at the next General Meeting held more than two months after the notice is given.
- (g) This clause does not limit any other right that a member has to propose a resolution at a General Meeting.

30. Company must give notice of proposed resolution or distribute statement

- (a) If the Company has been given a notice or request under clause 29:
 - (i) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the Company's cost, or
 - (ii) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving members notice of the proposed members' resolution or a copy of the members'

statement. However, at a General Meeting, the members may pass a resolution that the Company will pay these expenses.

- (b) The Company does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:
 - (i) it is more than 1,000 words long;
 - (ii) the directors consider it may be defamatory;
 - (iii) clause 30(a)(ii) applies, and the members who proposed the resolution or made the request have not paid the Company enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
 - (iv) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the members.

31. Circular resolutions of members

- (a) Subject to clause 31(c), the directors may put a resolution to the members to pass a resolution without a General Meeting being held (a circular resolution).
- (b) The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- (c) Circular resolutions cannot be used:
 - (i) for a resolution to remove an auditor, appoint a director or remove a director;
 - (ii) for passing a Special Resolution; or
 - (iii) where the Corporations Act or this constitution requires a meeting to be held.
- (d) A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 31(e) or clause 31(f).
- (e) Members may sign:
 - (i) a single document setting out the circular resolution and containing a statement that they agree to the resolution; or
 - (ii) separate copies of that document, as long as the wording is the same in each copy.
- (f) The Company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

Voting at General Meetings

32. How many votes a member has

Each member has one vote.

33. Challenge to member's right to vote

- (a) A member or the chair may only challenge a person's right to vote at a General Meeting at that meeting.
- (b) If a challenge is made under clause 33(a), the chair must decide whether or not the person may vote. The chair's decision is final.

34. How voting is carried out

- (a) Voting must be conducted and decided by:
 - (i) a show of hands;
 - (ii) a vote in writing; or
 - (iii) another method chosen by the chair that is fair and reasonable in the circumstances.
- (b) Before a vote is taken, the chair must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- (c) On a show of hands, the chair's decision is conclusive evidence of the result of the vote.
- (d) The chair and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

35. When and how a vote in writing must be held

- (a) A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
 - (i) at least three members present in person or by proxy;
 - (ii) members present in person or by proxy with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
 - (iii) the chair.
- (b) A vote in writing must be taken when and how the chair directs, unless clause 35(c) applies.
- (c) A vote in writing must be held immediately if it is demanded under clause 35(a):
 - (i) for the election of a chair under clause 26(d); or
 - (ii) to decide whether to adjourn the meeting.
- (d) A demand for a vote in writing may be withdrawn.

36. Appointment of proxy or attorney

- (a) A member may appoint a person as their proxy or attorney to attend and vote at a General Meeting on their behalf.
- (b) A proxy or attorney does not need to be a member.

- (c) A proxy or attorney appointed to attend and vote for a member has the same rights as the member to:
 - (i) speak at the meeting;
 - (ii) vote in a vote in writing (but only to the extent allowed by the appointment); and
 - (iii) join in to demand a vote in writing under clause 35(a).
- (d) An appointment of proxy (proxy form) or attorney (power of attorney) must be signed by the member appointing the proxy or attorney and must contain:
 - (i) the member's name and address;
 - (ii) the Company's name;
 - (iii) the name of the proxy or attorney or the name of the office held by the proxy or attorney; and
 - (iv) the meeting(s) at which the appointment may be used.
- (e) A proxy or attorney appointment may be standing for no more 3 months after the proxy form or power of attorney is received by the Company.
- (f) Forms of appointment of a proxy or attorney must be received by the Company at the address stated in the notice under clause 22(e)(iv) or at the Company's registered address at least 48 hours before a meeting.
- (g) A proxy or attorney does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- (h) Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy or attorney votes, a vote cast by the proxy or attorney is valid even if, before the proxy or attorney votes, the appointing member:
 - (i) dies;
 - (ii) is mentally incapacitated;
 - (iii) revokes the appointment of the proxy or attorney; or
 - (iv) revokes the authority of the attorney or agent who appointed the proxy.
- (i) A proxy appointment may specify the way the proxy or attorney must vote on a particular resolution.

37. Receipt of appointments

- (a) An appointment of proxy or attorney of a member for a General Meeting is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a member may give the Company an appointment of a proxy or attorney, a proxy or attorney given at that electronic address or by that other electronic means is taken to have been given by the member and received by the Company if the requirements set out in the notice of meeting are complied with.

38. Voting by proxy or attorney

- (a) A proxy or attorney is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy or attorney from voting as a member on a show of hands).
- (b) When a vote in writing is held, a proxy or attorney:
 - (i) does not need to vote, unless the proxy or attorney appointment specifies the way they must vote;
 - (ii) if the way they must vote is specified on the proxy form or power of attorney, must vote that way; and
 - (iii) if the proxy or attorney is also a member or holds more than one proxy appointment or power of attorney, may cast the votes held in different ways.

Directors

39. Number of directors

The Company must have:

- (a) at least 5 directors; and
- (b) no more than 12 directors or such lesser number as the Board may from time to time fix in accordance with the Corporations Act (excluding the UNSW Nominee and the chief executive officer if those persons are elected or appointed as a director).

40. Election and appointment of directors

- (a) The members may elect a director by a resolution passed in a General Meeting.
- (b) A person is not eligible to be elected or appointed as a director if they are not eligible to be a director under the Corporations Act and the ACNC Act, notwithstanding the terms of any other clause of this constitution.
- (c) Each of the directors must be elected by a separate resolution, unless:
 - (i) the members present have first passed a resolution that the appointments may be voted on together; and
 - (ii) no votes were cast against that resolution.
- (d) The Company will, no earlier than 12 weeks and no later than 8 weeks before the scheduled date of the annual General Meeting, give notice to the members calling for persons who wish to nominate as a director.
- (e) A person is eligible for election as a director of the Company if the person is nominated by the Board or, no later than 6 weeks before the scheduled date of the annual General Meeting, the following documents are received by the Company:
 - (i) a brief resume of the person's skills and experience;
 - (ii) a signed consent to act as a director of the Company and a disclosure of interests of the person; and

- (iii) a document nominating the person as a candidate signed by two members of the Company, or
 - (iv) in the case of a UNSW Nominee, a document signed by the Chancellor or Vice-Chancellor of UNSW nominating the person as the UNSW Nominee.
- (f) The directors may appoint a person as a director to fill a casual vacancy or as an additional director if that person gives the Company:
- (i) a brief resume of the person's skills and experience; and
 - (ii) a signed consent to act as a director of the Company and a disclosure of interests of the person.
- (g) If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.
- (h) Directors who are retiring by rotation or who are required to stand for election at the annual General Meeting following their appointment to fill a casual vacancy or as an additional director are eligible to stand for re-election without going through the procedure in clause 40(e).
- (i) The Board may, in its sole discretion, waive any failure of compliance with the nomination procedure.

41. UNSW right to nominate a director for election or appointment

- (a) UNSW may nominate a person as a candidate for election by members as a director or to be appointed as a director to fill a casual vacancy or as an additional director (**UNSW Nominee**). Any person who was a director as at 31 December 2015 who was nominated by UNSW to be a director will be deemed to be a UNSW Nominee.
- (b) The UNSW Nominee is only eligible for election or appointment if the UNSW Nominee complies with clause 40(e) or clause 40(f) and is approved by the Chairman in writing.
- (c) If a UNSW Nominee stands for election but is not elected by the members, the Board may appoint the UNSW Nominee or any other person nominated as a UNSW Nominee as a director in accordance with clause 40(f).
- (d) At any given time, the Board is to be comprised of no more than one UNSW Nominee.
- (e) UNSW may withdraw the nomination of a person as the UNSW Nominee by giving to the Company a document to that effect signed by the Chancellor or Vice-Chancellor. The person will cease to be a director at a date specified in the document which must not be earlier than the date it is given to the Company and must not be later than 7 days after that date or such later date as the Chairman may agree in writing. If no date is specified in the document or agreed by the Chairman, the person will cease to be a director 7 days after the document is given to the Company.

42. Chief Executive Officer

- (a) The Board may appoint the chief executive officer as a director of the Company.

- (b) A person who is a chief executive officer ceases to be a director:
 - (i) when they cease to hold the position of chief executive officer;
 - (ii) at the end of the Board meeting following an annual General Meeting, unless the Board re-confirms that appointment at that meeting; or
 - (iii) in accordance with clause 45.

43. Election of Chairman and Deputy Chair

- (a) The directors must elect a director as the Company's Chairman.
- (b) The directors may elect a director (other than the director elected as Chairman) as the Company's Deputy Chair.
- (c) The office of Chairman and Deputy Chair are automatically vacated at the commencement of the first directors' meeting after each annual General Meeting. The directors must elect the Chairman as the first item of business at that meeting (and may elect a Deputy Chair).

44. Term of office

- (a) At each annual General Meeting:
 - (i) any director appointed under clause 40(f) by the directors to fill a casual vacancy or as an additional director since the previous annual General Meeting, must retire; and
 - (ii) any director (other than the chief executive officer) who was in office and did not stand for election by members at the 2 preceding annual General Meetings, must retire.
- (b) Other than a director appointed under clause 40(f), a director's term of office starts immediately following the end of the General Meeting at which they are elected and ends at the end of the General Meeting at which they retire.
- (c) A director who retires under clause 44(a) may nominate for election, subject to clause 44(d) and 44(e).
- (d) A director who will have held office at 6 consecutive annual General Meetings is only eligible to be elected at that sixth annual General Meeting if the director's candidacy has been approved by a resolution of the directors passed by a majority of at least 75% of the directors.
- (e) No director will be eligible for election at an annual General Meeting if the director has completed three consecutive terms as a director at the end of that Annual General Meeting and may not be appointed to a casual vacancy under clause 40(f) or elected as a director at a subsequent Annual General Meeting until after the end of at least the second Annual General Meeting subsequent to that Annual General Meeting at which the director retired.

45. When a director stops being a director

A director stops being a director if they:

- (a) give written notice of resignation as a director to the Company;
- (b) die;

- (c) are removed as a director by a resolution of the members;
- (d) are absent for 3 consecutive directors' meetings without approval from the directors; or
- (e) become ineligible to be a director of the Company under the Corporations Act or the ACNC Act.

Powers of directors

46. Powers of directors

- (a) The directors are responsible for managing and directing the activities of the Company to achieve the purpose(s) set out in clause 8.
- (b) The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- (c) The directors must decide on the responsible financial management of the Company including:
 - (i) any suitable written delegations of power under clause 47; and
 - (ii) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- (d) The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a General Meeting.

47. Delegation of directors' powers

- (a) The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company (such as a chief executive officer) or any other suitably qualified person, as they consider appropriate.
- (b) The delegation must be recorded in the Company's minute book.

48. Payments to directors

- (a) The Company must not pay fees to a director for acting as a director.
- (b) The Company may:
 - (i) pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done; or
 - (ii) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- (c) Any payment made under clause 48(b) must be approved by the directors.
- (d) The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

49. Execution of documents

The Company may execute a document without using a common seal if the document is signed by:

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

Duties of directors

50. Duties of directors

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

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 8;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to keep confidential all information obtained as a director and disclose any such information only in the proper performance of their duties as a director;
- (f) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 51;
- (g) to ensure that the financial affairs of the Company are managed responsibly; and
- (h) not to allow the Company to operate while it is insolvent.

51. Conflicts of interest

- (a) A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
 - (i) to the other directors; or
 - (ii) if all of the directors have the same conflict of interest, to the members at the next General Meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- (c) Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 51(d):
 - (i) be present at the meeting while the matter is being discussed; or

- (ii) vote on the matter.
- (d) A director may still be present and vote if:
 - (i) their interest arises because they are a member of the Company, and the other members have the same interest;
 - (ii) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 69);
 - (iii) their interest relates to a payment by the Company under clause 68 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act;
 - (iv) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
 - (v) the directors who do not have a material personal interest in the matter pass a resolution that:
 - A. identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company; and
 - B. says that those directors are satisfied that the interest should not stop the director from voting or being present.

Directors' meetings

52. When the directors meet

The directors may decide how often, where and when they meet.

53. Calling directors' meetings

- (a) A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- (b) A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

54. Chair for directors' meetings

- (a) The Chairman is entitled to chair directors' meetings.
- (b) If the Chairman is:
 - (i) not present within 30 minutes after the starting time set for the meeting; or
 - (ii) present but does not want to act as chair of the meeting,
 the chair for that meeting will be:
 - (iii) the Deputy Chair if present and willing to act as chair of the meeting; or

- (iv) such other person as the directors at that directors' meeting may choose to act as chair of the meeting.

55. Quorum at directors' meetings

- (a) The quorum for a directors' meeting is 5 directors.
- (b) A quorum must be present at the start of the directors' meeting.
- (c) No business may be conducted at a directors' meeting if a quorum is not present at the start of the meeting.
- (d) If the number of directors of the Company is fewer than 5, the Board must not act except to appoint directors up to that number or to call and arrange to hold a General Meeting.

56. Using technology to hold directors' meetings

The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by the directors.

57. Passing directors' resolutions

A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.

58. Circular resolutions of directors

- (a) The directors may pass a circular resolution without a directors' meeting being held.
- (b) A circular resolution must be sent to all directors and is passed if 75% of the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 58(c) or clause 58(d).
- (c) Each director may sign:
 - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (ii) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- (d) The Company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- (e) A circular resolution is passed when the last of the directors representing 75% of the total number of directors entitled to vote sign or otherwise agree to the resolution in the manner set out in clause 58(c) or clause 58(d).

Secretary

59. Appointment and role of secretary

- (a) The Company must have at least one secretary, who may also be a director.

- (b) A secretary must be appointed by the directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the directors.
- (c) The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- (d) The role of the secretary includes:
 - (i) maintaining a register of the Company's members; and
 - (ii) maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and circular resolutions.

Minutes and records

60. Minutes and records

- (a) The Company must, within one month, make and keep the following records:
 - (i) minutes of proceedings and resolutions of General Meetings;
 - (ii) minutes of circular resolutions of members;
 - (iii) a copy of a notice of each General Meeting; and
 - (iv) a copy of a members' statement distributed to members under clause 30.
- (b) The Company must, within one month, make and keep the following records:
 - (i) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
 - (ii) minutes of circular resolutions of directors.
- (c) The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:
 - (i) the chair of the meeting; or
 - (ii) the chair of the next meeting.
- (d) The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.

61. Financial and related records

- (a) The Company must make and keep written financial records that:
 - (i) correctly record and explain its transactions and financial position and performance; and
 - (ii) enable true and fair financial statements to be prepared and to be audited.
- (b) The Company must also keep written records that correctly record its operations.

- (c) The Company must retain its records for at least 7 years.
- (d) The directors must take reasonable steps to ensure that the Company's records are kept safe.

By-laws

62. By-laws

- (a) The directors may pass a resolution to make by-laws to give effect to this constitution.
- (b) Members and directors must comply with by-laws as if they were part of this constitution.

Notice

63. What is notice

- (a) Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 64 to 66, unless specified otherwise.
- (b) Clauses 64 to 66 do not apply to a notice of proxy under clause 36(f).

64. Notice to the Company

Written notice or any communication under this constitution may be given to the Company, the directors or the secretary by:

- (a) delivering it to the Company's registered office;
- (b) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the Company to the members as the Company's email address or other electronic address; or
- (d) sending it to the fax number notified by the Company to the members as the Company's fax number.

65. Notice to members

- (a) Written notice or any communication under this constitution may be given to a member:
 - (i) in person;
 - (ii) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
 - (iii) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
 - (iv) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or

- (v) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).
- (b) If the Company does not have an address for the member, the Company is not required to give notice in person.

66. When notice is taken to be given

A notice:

- (a) delivered in person, or left at a the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 65(a)(v) is taken to be given on the business day after the notification that the notice is available is sent.

Financial year

67. Company's financial year

The Company's financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

Indemnity, insurance and access

68. Indemnity

- (a) The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- (b) In this clause, '**officer**' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- (c) In this clause, '**to the relevant extent**' means:
 - (i) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
 - (ii) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- (d) The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

69. Insurance

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring a person

who is or has been an officer of the Company against any liability incurred by the person as an officer of the Company.

70. Directors' access to documents

- (a) A director has a right of access to the financial records of the Company at all reasonable times.
- (b) If the directors agree, the Company must give a director or former director access to:
 - (i) certain documents, including documents provided for or available to the directors; and
 - (ii) any other documents referred to in those documents.

Winding up

71. Surplus Assets not to be distributed to members

If the Company is wound up, any Surplus Assets must not be distributed to a member or a former member of the Company.

72. Distribution of Surplus Assets

- (a) Subject to the Corporations Act and any other applicable Act, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:
 - (i) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 8; and
 - (ii) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company.
- (b) The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.