

# Constitution of Australian College of Optometry

A public company limited by guarantee

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# Australian College of Optometry

## ACN 004 235 250

A public company limited by guarantee

## 1 Definitions and interpretation

### 1.1 Definitions

In this constitution:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth) and includes any regulations and instruments made under the ACNC Act and any consolidations, amendments, re-enactments or replacements of any of them.

**Act** means the *Corporations Act 2001* (Cth) and includes any regulations and instruments made under the Act and any consolidations, amendments, re-enactments or replacements of any of them.

**ASIC** means the Australian Securities and Investments Commission.

**Auditor** means a person appointed as an auditor of the College under clause 12.1 who has not vacated his or her office.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

**Chief Executive Officer** means a person appointed as the chief executive officer of the College under clause 5.4(a) from time to time.

**College** means Australian College of Optometry ACN 004 235 250.

**Council** means the Councillors acting as a board of Councillors.

**Councillor** means a councillor of the College from time to time and, unless the context otherwise requires, includes the Chief Executive Officer.

**Endowment Funds** means:

- (a) The Beresford Cambridge Bequest Trust (Australian Business Number 792 834 741 89);
- (b) The NVRI Governors Endowment Fund Trust (Australian Business Number 802 915 594 89); and
- (c) The Schulz Laubman Schultz Endowment Fund Trust (Australian Business Number 754 288 275 48).

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**Executive Committee** means the committee referred to in clause 6.3.

**Financial Member** means a Member who has paid up any and all membership and other fees which are due to the College from time to time in respect of their membership.

**General Meeting or general meeting**, unless the context otherwise requires, includes an annual general meeting, extraordinary annual general meeting and special meeting.

**Government Authority** means any governmental, semi-governmental, municipal, statutory, judicial or quasi-judicial authority, department, agency, body, entity, organisation, commission or tribunal.

**Honorary Member** means each person entered in the Register of Members from time to time as an honorary member in accordance with clause 4.2(c).

**Honorary Life Member** means each person entered in the Register of Members from time to time as an honorary life member in accordance with clause 4.2(b).

**Honorary Treasurer** means the honorary treasurer of the College from time to time as elected by the Council.

**ITAA 1997** means *Income Tax Assessment Act 1997* (Cth) and includes any regulations and instruments made under the ITAA 1997 and any consolidations, amendments, re-enactments or replacements of any of them.

**Member** means a person entered in the Register of Members as a member of the College under clause 4.8.

**NVRI** means The National Vision Research Institute of Australia, the research division of the College.

**President** means the president of the College at any given point in time as elected by the Council.

**Registered Office** means the registered office of the College.

**Register of Members** means the register listing each person who is a Member which the College maintains under the Act.

**Secretary** means a person appointed under clause 11 as a secretary of the College.

**Tax Acts** means the *Income Tax Assessment Act 1936* (Cth) and ITAA 1997 and includes any regulations and instruments made under the Tax Acts and any consolidations, amendments, re-enactments or replacements of any of them.

**Vice President** means the vice president of the College from time to time as elected by the Council.

**Voting Member** means a Financial Member, an Honorary Member, an Honorary Life Member and a Member of any other class that the Council from time to time determines has the right to vote.

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## 1.2 Interpretation

In this constitution, headings are inserted for convenience only and do not affect the interpretation of this constitution and unless the context otherwise requires:

- (a) subject to clause 1.1, an expression in a clause that is used in the Act has the same meaning as in the Act;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes the other gender;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) the meaning of general words is not limited by specific examples introduced by 'includes', 'including', 'for example', 'such as' or similar expressions;
- (f) a reference to a person includes an individual, a partnership, a corporation or other corporate body, a joint venture, a firm, a trust, an association (whether incorporated or not) and a government agency or authority;
- (g) a reference in clause 8 of this constitution to the Act is intended to operate in relation to the College notwithstanding the operation of section 111L(1) of the Act to the extent that it provides that the relevant provisions of the Act do not apply to the College; and
- (h) a period of time dating from a given day or the day of a given act or event is to be calculated exclusive of that day.

## 1.3 Constitution and the Act

- (a) Subject to clause 1.3(b), this constitution is subject to the Act and where there is any inconsistency between a clause of this constitution and the Act, the Act will prevail to the extent of the inconsistency.
- (b) To the maximum extent permitted by the Act, the provisions of the Act that apply as replaceable rules do not apply to the College.
- (c) For the purposes of the Act, the words "College", "Council" and "Councillor" apply as if they were substituted for the words "Company", "Board" and "Director" respectively.
- (d) While the College is a registered charity (as defined under and for the purposes of the Tax Acts), if a clause in this constitution is inconsistent with the Tax Acts or would prevent the College from complying with a provision of the Tax Acts, this constitution will not apply to the extent of that inconsistency or to the extent it would prevent compliance with the Tax Acts.

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## **1.4 Transitional provisions**

This constitution must be interpreted in a way that every Councillor, the Chief Executive Officer and Secretary in office in that capacity immediately before this constitution is adopted continues in office subject to, and is taken to have been appointed or elected under, this constitution.

## **2 Nature of the College**

### **2.1 Public company**

The College is a public company limited by guarantee.

### **2.2 Not for profit**

The income and property of the College must be used and applied solely in promotion of its objects and no portion will be dismantled, paid or transferred directly or indirectly by way of dividend, bonus or by way of profit to Members.

### **2.3 Limitation of the College**

The College does not have the power to:

- (a) issue shares of any kind; or
- (b) apply, pay or transfer, whether directly or indirectly, any portion of the income and property of the College for the benefit of, or to, a Member, other than payments in good faith as provided in clauses 5.5 and 15.

### **2.4 Guarantee of Members**

- (a) The liability of Members is limited.
- (b) Each Member undertakes to contribute a maximum of \$50.00 to the College for payment of:
  - (i) the debts and liabilities of the College;
  - (ii) the costs, charges and expenses of any winding up; and
  - (iii) the adjustment of the rights of Members among themselves,in the event that the College is wound up:
  - (iv) while the Member is a Member; or



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- (v) within one year after the Member ceases to be a Member.

## **2.5 Objects of the College**

The object of the College is to undertake public charitable activities primarily in Australia to promote the prevention and / or the control of disease in human beings, including:

- (a) to provide affordable eye care, principally to communities experiencing disadvantage, through the provision of comprehensive public health eye care services and an integrated service model that includes health promotion and prevention, community education, primary care and specialist services, and referral pathways to ophthalmology and other appropriate health care;
- (b) to advance eye and vision care through research aimed at preservation of sight, prevention of blindness, improvements in vision care and treatment, and graduate education;
- (c) to enter into such agreements and affiliation with the University of Melbourne, the Royal Victorian Eye & Ear Hospital and other universities and institutions as will advance the study of optometry, the provision of optometric care and the visual sciences generally and assist the education of optometrists and students pursuing courses of study in optometry or otherwise advance the interests and activities of the College;
- (d) to support the education and development of current and new generations of optometrists, through the provision of teaching, resources, facilities, educational awards and the setting of professional standards, the provision of advice and support services to the optometry profession and to Members of the College;
- (e) to formulate, adopt, encourage and promote high standards of optometric practice and high standards of ethical and professional conduct for fellows and Members of the College and to take all such action deemed appropriate to ensure compliance with such standards;
- (f) to engage, and enter into and carry out such agreements or arrangements, with Commonwealth, State, and municipal governments or any company, association or other person concerned with or interested in the provision of health services as will advance, assist or otherwise facilitate the training of current and future generations of optometrists or the provision of optometric services or research by the College or its Members or that otherwise may be conducive to any of the objectives of the College;
- (g) to encourage and foster research into optometry and the visual sciences generally and to establish, promote, support (financially or otherwise) or co-operate with research groups institutions or other bodies;
- (h) to actively solicit funds from the public to support the pursuit by the College of the objectives stated in this clause 2.5; and
- (i) to do any other thing ancillary to, and not inconsistent with, these objectives.

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## **2.6 Scope of powers**

- (a) Subject to any restrictions set out in this constitution, and provided that its capacities and powers are exercised directly or indirectly in the furtherance of the objectives set out in clause 2.5 or are incidental or conducive to the attainment thereof, the College will have the legal capacity and powers set out in the Act.
- (b) Without limiting the generality of clause 2.6(a), the Council may make regulations, by-laws and rules relating to the conduct and activities of the College and its Members provided that such regulations, by-laws and rules are consistent with and give effect to the objectives stated in clause 2.5.

## **3 Internal management of the College**

The internal management of the College will be governed by this constitution.

## **4 Members**

### **4.1 Eligibility for Membership**

Subject to clause 4.2, a Member must be a person who:

- (a) is 18 years of age or over; and
- (b) either:
  - (i) is currently registered to practice optometry in Australia; or
  - (ii) holds a qualification in optometry that would enable that person to obtain registration as an optometrist in Australia; or
  - (iii) has a special interest in optometry or an allied field and who has received an invitation from the Council to apply for membership; and
- (c) is a person of good standing and, in the case of a person who engages in the practice of optometry, does so in a way that conforms to the standards of optometric practice, ethical and professional conduct acceptable to the College.

### **4.2 Classes of Membership**

- (a) General

The Council may:

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- (i) establish different classes of Members including, but not limited to, Honorary Life Members and Honorary Members;
  - (ii) prescribe the qualifications to become, and rights (including voting rights), privileges and obligations of persons who become, a Member of a class;
  - (iii) change the membership class of a Member; and / or
  - (iv) vary or cancel the rights attaching to any class of Members only if the variation or cancellation is permitted by the Act and approved by special resolution of each of:
    - (A) the Members of all classes voting as a single class; and
    - (B) the Members of the relevant class.

The Council must give written notice of the variation or cancellation to the Members of the relevant class within seven days of a variation or cancellation.

(b) Honorary Life Membership

- (i) The Council may, by resolution passed with a majority of votes in favour, confer honorary life membership upon any person in recognition of distinguished and honourable service to the College or the profession of optometry.
- (ii) Except as otherwise determined by the Council, Honorary Life Members:
  - (A) are entitled to notice of, to attend and to vote on any matters to be considered at a general meeting of the College; and
  - (B) are not required to pay any annual membership fees.
- (iii) Any person elected as an Honorary Life Member must be entered in the Register of Members as an Honorary Life Member.

(c) Honorary Membership

- (i) Every person appointed by the University of Melbourne to be a Councillor of the College in accordance with this constitution will, while a Councillor, be ex-officio, an Honorary Member.
- (ii) In addition to persons who become Honorary Members under clause 4.2(c)(i), each Member who:
  - (A) has been a Member for at least 30 consecutive years;
  - (B) is 65 years of age or more; and
  - (C) has retired from full time practice of optometry,will upon achieving the last of those milestones be entitled to be appointed as an Honorary Member.

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- (iii) Except as otherwise determined by the Council, Honorary Members:
    - (A) are entitled to notice of, to attend and to vote on any matters to be considered at a general meeting of the College; and
    - (B) are not required to pay any annual membership fees.
  - (iv) Each Honorary Member must be entered in the Register of Members as an Honorary Member.

### **4.3 Application for Membership**

An application for membership must be made in the form approved by the Council from time to time. Each application must contain:

- (a) an undertaking on the part of the applicant to be bound by this constitution and any rules, regulations and by-laws of the College in force from time to time; and
- (b) the residential address, postal address, telephone number and electronic mail address (if any) of the applicant and every place at which the applicant practices optometry; and
- (c) adequate particulars of the applicant's qualifications for membership; and
- (d) the signature of the applicant, or such other form of authentication (electronic or otherwise) approved by the Council from time to time.

### **4.4 Lodging of applications**

An application for membership must be accompanied by the applicable membership fee and must be lodged with the College at the place approved by the Council from time to time.

### **4.5 Determination of application by the Council**

- (a) The Council must determine whether or not to approve each application for membership as soon as reasonably practicable after receipt of the application.
- (b) The Council may require an applicant to give such further information as it requires before approving or refusing the admission of an applicant for membership.
- (c) An applicant for membership is taken to be admitted as a Member upon the Council approving the application and the name, address, facsimile number and electronic mail address (if any) of the applicant being entered in the Register of Members.
- (d) The Council may refuse any application for membership at its discretion and is not required to give reasons for any such refusal.
- (e) The Council may determine the class of membership appropriate for each membership application (if applicable).

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#### **4.6 Notification of change in qualifications**

Each Member must promptly notify the College of any change in the qualification of the Member to be a Member of the College.

#### **4.7 Fees and charges**

- (a) The Council may set fees and other charges to be paid by Members.
- (b) The Council may set separate fees with respect to the different classes of membership (if applicable).
- (c) All fees and other charges will be due and payable as determined by the Council from time to time.
- (d) Annual membership fees will be deemed to be paid in respect of the period from 1 January to 31 December provided that fees paid by any person who becomes a Member after 30 November in any year will be deemed to have been paid in respect of the following year.

#### **4.8 Register of Members**

- (a) The Councillors must cause the College to keep a Register of Members in accordance with the Act, in which are entered:
  - (i) the name of each Member;
  - (ii) the residential address, postal address and electronic mail address (if any) for notices last notified by the Member;
  - (iii) the class of membership (if applicable);
  - (iv) the date of becoming a Member; and
  - (v) in the case of former Members, the date of ceasing to be a Member.
- (b) Each Member must notify the College in writing of the change in any detail kept in the Register of Members within one month after the change.

#### **4.9 Rights and obligations**

- (a) Every Member must further to the best of his or her ability the objects, influence and interests of the College.
- (b) Every Member must observe this constitution and all rules, regulations and by-laws of the College made pursuant to this constitution.
- (c) A Member who has been suspended in accordance with clause 4.11 is not eligible to participate in the activities of the College during their period of suspension.

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- (d) The rights of Members are not transferable and end when the Member ceases to be a Member and shall cease on his/her death or his/her failure in any year to pay his/her annual membership fee on or before the date set out in the annual invoice.

#### 4.10 Resignation of Members

A Member may resign at any time by giving written notice of resignation to the Secretary at the Registered Office.

#### 4.11 Suspension and termination of Membership

- (a) Any Member who:
  - (i) ceases to satisfy the criteria for admission to membership of the College set out in clause 4.1;
  - (ii) breaches any of the provisions of this constitution or any of the rules, regulations or by-laws of the College;
  - (iii) in the opinion of the Council, has been guilty of any act or practice or conduct which may:
    - (A) bring discredit on the College or the profession of optometry; or
    - (B) lower the status of the College or the profession of optometry; or
  - (iv) engages in any act or practice or conduct which results in that person being disqualified from practising optometry in Australia for any period,  
  
may be reprimanded, fined, suspended or expelled as a Member by the Council by special resolution of votes in favour at a Council meeting.
- (b) The Council must notify any Member who may be reprimanded, fined, suspended or expelled in accordance with clause 4.11(a) by giving not less than 7 days' notice in writing before the date of the relevant Council meeting and such notice must include the reasons for the reprimand, suspension or expulsion (as applicable).
- (c) The Member the subject of a notice referred to in clause 4.11(b) may attend the Council meeting and will have a right to speak at the meeting but is not entitled to be present at the voting otherwise than as the Council allows.
- (d) A Member whose membership is suspended or expelled in accordance with this clause 4.11 or fined an amount greater than three times the annual membership fee payable by Members of the same class of membership as that to which the Member belongs may appeal the Council's decision by giving notice in writing (**Appeal Notice**) to the President not later than 7 days after the date of the meeting at which the Council resolved to suspend, expel or fine the Member.
- (e) If an Appeal Notice is given in accordance with clause 4.11(d), the Council must call a special meeting of the College within 21 days after the receipt of the Appeal Notice, at

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which meeting the subject of the suspension, expulsion or fine (as the case may be) is to be considered. The Member the subject of the Appeal Notice may attend the special meeting and will have a right to speak at the meeting but is not entitled to vote on the matters the subject of the Appeal Notice. A majority of the Voting Members present (in person or by proxy) at such special meeting will have power to affirm the suspension, expulsion or fine of a Member, or annul the suspension, expulsion or fine subject to the performance of any conditions which the meeting may think fit to impose.

- (f) If an Appeal Notice is not given in accordance with clause 4.11(d), the Council's decision will be final and binding. A Member so expelled shall forfeit all claim to a return of the money paid by him or her to the College by way of annual membership fees and shall cease to be a Member.

#### **4.12 Cessation**

- (a) A Member ceases to be a Member if the Member:
- (i) resigns under clause 4.10;
  - (ii) dies, becomes bankrupt, makes a composition with or assigns the Member's estate for the benefit of the Member's creditors;
  - (iii) ceases to satisfy the criteria for admission to membership of the College set out in clause 4.1; or
  - (iv) has his or her membership terminated under clause 4.11.
- (b) If a Member ceases to be a Member, the Councillors must cause the College without delay to make the necessary entry in the Register of Members.
- (c) If a Member ceases to be a Member, that Member remains liable to pay to the College any money which that Member owes to the College and any amount for which that Member has guaranteed under clause 2.4.

## **5 Councillors**

### **5.1 Number and eligibility of Councillors**

- (a) Number of Councillors
- (i) The College must have at least three Councillors. The maximum number of Councillors is to be fixed by the Councillors, but must not be more than eleven unless the Voting Members in general meeting resolve otherwise.
  - (ii) The Council is to consist of:
    - (A) nine Councillors comprising:

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- (1) up to six Councillors elected by the Voting Members of the College in accordance with this constitution; and
      - (2) up to three Councillors appointed by the Council;
    - (B) the Chief Executive Officer of the College; and
    - (C) one Councillor appointed by the University of Melbourne.
  - (iii) The College may from time to time in general meeting increase or reduce the number of Councillors and may also determine in what rotation the increased or reduced number is to go out of office.
- (b) Eligibility for appointment as Councillor
- (i) To be eligible to be elected or appointed as a Councillor a person must:
    - (A) be an individual;
    - (B) be at least 18 years old; and
    - (C) not be otherwise ineligible or disqualified from holding office under this constitution or the Act or any other applicable legislation (including the ACNC Act).
  - (ii) A person must be a Voting Member of the College in order to be eligible to become a Councillor under clause 5.1(a)(ii)(A)(1). Otherwise, a person is not required to be a Member (with voting rights or otherwise) to become a Councillor.
- (c) Non eligibility of Auditor and Staff
- The following persons are ineligible to be elected or appointed as a Councillor:
- (i) any current or former Auditor of the College;
  - (ii) any partner or employee or employer of any current or former Auditor; and
  - (iii) any person who is employed by the College as a common law employee but only while they are employed by the College (other than the Chief Executive Officer of the College while employed in that position).
- (d) Other offices held by Councillors
- A Councillor may hold any other office or position of profit in the College (other than as Auditor or as an employee (other than the Chief Executive Officer of the College while employed in that position)) together with the role as councillor on the conditions as determined by the Council.
- (e) Period of appointment of Councillors



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- (i) A Councillor continues in office until the Councillor dies or vacates, resigns or is removed from office under clause 5.3, or the term for which they are appointed or elected expires.
  - (ii) Each Councillor who is elected or appointed under clause 5.1(a)(ii)(A) is elected or appointed for a term of two years, except that one of the Councillors who is elected under clause 5.1(a)(ii)(A)(1) at the second annual general meeting following Member approval of the amendment to this constitution to provide for Voting Members to elect six (rather than eight) Councillors, will be elected for a term of only one year. The Councillor who is to have a one year term will be chosen by the Secretary (by a method of random selection) from the longest serving Councillors who are elected at that annual general meeting.
  - (iii) A Councillor elected or appointed under clause 5.1(a)(ii)(A) shall retire from office at the annual general meeting in the year in which their term expires in accordance with clause 5.1(e)(ii).
  - (iv) Subject to clauses 5.3(a)(ii) and 5.3(c), a retiring Councillor shall be eligible for re-election. For the avoidance of doubt, at the first annual general meeting following Member approval of the amendment to this constitution referred to in clause 5.1(e)(ii), while all of the retiring Councillors (subject to clause 5.1(b) will be eligible for re-election, there will be only two vacancies to be filled at that annual general meeting. Any office vacated by expiration of term of office shall be filled in accordance with clause 5.2 and in default the retiring Councillor shall be deemed to have been re-elected.
  - (v) The Council may fill up any vacancies on the Council (other than a vacancy created by the death or retirement of the Councillor appointed by the University of Melbourne, which vacancy the University shall fill) which may occur between annual general meetings and the person so appointed (other than a Councillor appointed by the Council under clause 5.1(a)(ii)(A)(2)) will hold office until the next annual general meeting at which time, subject to this constitution, they will be eligible for election. For the avoidance of doubt, a Councillor appointed by the Council to fill a vacancy under clause 5.1(a)(ii)(A)(2) is appointed for a term that ends at the annual general meeting in the year that is two years after their appointment.
  - (vi) Subject to clause 5.3(d), the Council may act notwithstanding any vacancy in its body and any business so transacted shall be valid and binding.

## **5.2 Election of Councillors**

- (a) No Member shall be entitled to vote at any election for Councillors unless he or she is, at the time the election is conducted, a Voting Member.
- (b) Subject to compliance with the Act, all elections for Councillors shall be by electronic ballot or postal ballot, as prescribed by the Council from time to time, and each Voting Member shall be entitled to vote for no more than the number of Council positions to be filled at the election.

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- (c) A person standing for election as a Councillor of the College shall be a Voting Member and shall be nominated by at least two other Voting Members.
  - (d) Every nomination shall be in the form contained in Annexure A or any other form which the Council approves from time to time (**Nomination Form**).
  - (e) The President shall not less than 35 days before the annual general meeting appoint a polling day, being not less than seven days prior to the annual general meeting and shall fix a date and time before which nominations shall be received to fill those positions of Councillors elected by the Voting Members under clause 5.1(a)(ii)(A)(1) whose term of office shall expire and are to be filled at such meeting. The President shall cause all Voting Members to be notified in writing of the date of the election, the date up to which nominations therefore will be received and the place of such reception.
  - (f) At any election conducted pursuant to this clause the returning officer shall be the Secretary or such other person as the President may appoint.
  - (g) The returning officer shall post to all Voting Members, not less than 14 days before the date fixed for the close of nominations, a notice setting out the date of the election and the date and time up to which nominations therefor will be received and the place of such reception and shall enclose a Nomination Form.
  - (h) Where at the close of nominations, the number of persons properly nominated:
    - (i) does not exceed the number of persons required to be elected, the returning officer shall declare the persons so nominated to be duly elected; or
    - (ii) exceeds the number of persons to be elected, a ballot shall be conducted in the manner prescribed by the Council under clause 5.2(b).
  - (i) Electronic ballot
    - (i) Where an electronic ballot is conducted, the Council must ensure a secure method of identifying a Member by reference to a personal identification code or any other manner approved by the Council from time to time.
    - (ii) Every Member wishing to vote must do so by completing the electronic voting process no later than 12 noon in Melbourne, Australia on the polling day.
  - (j) Postal ballot
    - (i) Where a postal ballot is conducted, the returning officer shall:
      - (A) cause ballot papers to be printed in the form contained in Annexure B or any other form which the Council approves from time to time containing the names of the candidates in the order determined by a random draw conducted by the returning officer; and
      - (B) not less than 14 days before polling day send by post or cause to be delivered to every Voting Member one such ballot paper duly signed or initialled by the returning officer with a voter's declaration form in the form contained in Annexure C or any other form which the Council approves

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from time to time, an envelope marked "ballot paper" and an addressed return envelope.

- (ii) When the voter has marked his or her vote on the ballot paper he or she shall:
  - (A) place it in the envelope marked ballot paper and seal the envelope;
  - (B) sign his or her name and state his or her address on the voter's declaration form;
  - (C) enclose both the ballot paper envelope and the voter's declaration form in the addressed return envelope; and
  - (D) stamp and post it or deliver it or cause it to be delivered in time to reach the returning officer not later than 12 noon on the polling day.
- (k) Upon a voter making and transmitting to the returning officer a declaration in writing that he or she has not received a ballot paper or that the ballot paper received or returned by him or her has been lost, spoiled or destroyed and that he or she has not already voted, the returning officer may issue a new ballot paper to such voter.
- (l) Counting of votes
  - (i) The returning officer shall not admit to the count an electronic vote or a ballot paper where:
    - (A) any of the directions for casting a vote have not been complied with;
    - (B) the person who exercised the vote is not a Voting Member;
    - (C) the electronic voting process is completed or the ballot paper is received after 12 noon on the polling day; or
    - (D) in the case of a postal ballot, the ballot paper is posted without the postage thereon being fully prepaid.
  - (ii) Every candidate may nominate in writing one scrutineer to be present during the taking of the poll.
  - (iii) The returning officer is responsible for the counting of votes that are received by 12 noon on the polling day appointed under clause 5.2(e), and must ensure that the College completes counting all votes (other than those rejected), as recorded through the electronic voting process or on ballot papers, prior to the next annual general meeting.
  - (iv) The returning officer may appoint two persons to assist him or her during the taking of the poll.
  - (v) The returning officer shall declare the candidate receiving the highest number of votes to be the first elected candidate, the person receiving the second highest to be the second elected candidate, and in a similar manner declare other candidates elected until the required number of persons have been elected.

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- (vi) In case of equality of votes the returning officer shall decide by lot in the presence of at least two scrutineers, or if there be no scrutineers, two assistants appointed by the President which candidate shall be elected.
  - (vii) Where any question arises as to the validity or regularity of any vote the decision of the returning officer shall be final and binding.
  - (viii) The returning officer shall report the result of the election to the annual general meeting.
- (m) Other matters
- (i) The returning officer may destroy the ballots three months after the date of the election concerned unless the Council directs otherwise.
  - (ii) Where public circumstances exist which could or would cause delay in the delivery of a notice to a Voting Member or returned by a Voting Member pursuant to clauses 5.2(g), 5.2(j)(i)(B) and 5.2(j)(ii)(D) beyond the time which such service would be made in the ordinary course of the post, the President may extend the due date by not more than ten days.
  - (iii) If a total of twenty Voting Members petition the President within fourteen days of the annual general meeting that the election held immediately prior to such annual meeting was invalid, the President shall have the power to declare such election invalid and to order that a new election be held. The decision of the President shall be final and binding.
  - (iv) If such a new election is ordered by the President the provisions in clauses 5.2(a) to 5.2(m)(iii) shall apply to such election mutatis mutandis with the exception that:
    - (A) the President shall call an extraordinary annual general meeting to be held not more than 40 days after the declaration by the President that the original election was invalid;
    - (B) wherever the words "annual general meeting" appear in clause 5.2(e) and 5.2(m) such words shall read as extraordinary annual general meeting.

### **5.3 Resignation, cessation and termination of a Councillor**

- (a) Vacation of office
  - (i) A Councillor vacates office if the Councillor:
    - (A) resigns his or her office by written notice to the College under clause 5.3(b);
    - (B) is removed from the office of a Councillor by a resolution of the Voting Members under clause 5.3(c);

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- (C) fails to attend three consecutive Council meetings without leave of absence from the Council;
  - (D) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
  - (E) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors generally;
  - (F) is convicted on an indictment of an offence and the Councillors do not within one month after that conviction resolve to confirm the Councillor's appointment or election (as the case may be) to the office of Council;
  - (G) ceases to be eligible to be a Councillor under this constitution or becomes prohibited from being a director of a company under the Act or any other applicable legislation (including the ACNC Act); or
  - (H) was appointed by a person who was specified in this constitution but this constitution is amended to no longer provide for a Councillor to be appointed by that person, with the vacation of that office to take effect on the date the amendment takes effect.
- (ii) A Councillor whose office is vacated under clause 5.3(a)(i)(B) to 5.3(a)(i)(G) is not eligible for re-election unless and until the relevant prohibition no longer applies (if applicable).
- (b) Councillor may resign
    - (i) A Councillor may resign as a Councillor of the College by written notice to the College.
    - (ii) If the resignation of a Councillor under clause 5.3(b)(i) will cause the number of Councillors to fall below the minimum number required by this constitution or by the Act, the Councillor must not resign or otherwise vacate his or her office voluntarily until a replacement Councillor has been appointed.
- (c) Removal of a Councillor by Voting Members
    - (i) The College in general meeting may:
      - (A) remove a Councillor (other than the Chief Executive Officer) from office; and
      - (B) appoint another person as a Councillor in that Councillor's place.
    - (ii) If a Councillor was appointed by University of Melbourne, as specified in clause 5.1(a)(ii), that Councillor's removal under clause 5.3(c)(i) has no effect until a replacement to represent the interests of University of Melbourne has been appointed.

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- (iii) If the removal of a Councillor under clause 5.3(c)(i) will cause the number of Councillors to fall below the minimum required by this constitution or the Act, the removal has no effect until a replacement has been appointed.
  - (iv) Notice of intention to move the resolution referred to in clause 5.3(c)(i) must be given to the College at least two months before the meeting is to be held except if a general meeting is called after the notice of intention is given under this clause.
  - (v) The College must give the Councillor a copy of the notice as soon as practicable after it is received.
  - (vi) The Councillor is entitled to put his or her case to Voting Members by:
    - (A) giving the College a written statement for circulation to Voting Members; and
    - (B) speaking to the motion at the general meeting (whether or not the Councillor is a Member of the College).
  - (vii) The written statement in clause 5.3(c)(vi) is to be circulated by the College to Voting Members by:
    - (A) sending a copy to everyone to whom notice of the general meeting is sent if there is time to do so; or
    - (B) if there is not time to comply with clause 5.3(c)(vii)(A), having the statement distributed to Voting Members attending the general meeting and read out at the meeting before the resolution is voted on.
  - (viii) The Councillor's statement does not have to be circulated to Voting Members if it is more than 1,000 words long or defamatory.
  - (ix) If a person is appointed to replace a Councillor removed under this clause 5.3(c) and the Councillor who was removed was appointed or elected for a particular term, the time at which the replacement Councillor or any other Councillor is to retire is to be worked out as if the replacement Councillor had become Councillor on the day on which the replaced Councillor was last appointed a Councillor.
- (d) Number of Councillors below minimum

If the number of Councillors is reduced below the minimum number fixed under clause 5.1(a), the continuing Councillors may act for the purpose of appointing additional Councillors or calling a general meeting of the College but for no other purpose.

## **5.4 Chief Executive Officer**

The Council:

- (a) may appoint a Chief Executive Officer for the period and on the terms (including as to remuneration) as the Council determines;

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- (b) may confer on a Chief Executive Officer any of the powers that the Council may exercise; and
  - (c) subject to the terms of appointment, may revoke, terminate or vary:
    - (i) the appointment of the Chief Executive Officer; or
    - (ii) any of the powers conferred on the Chief Executive Officer.

## **5.5 Remuneration of Councillors**

- (a) No Councillors' fees

No Councillor (other than the Chief Executive Officer) may be paid any remuneration for serving as Councillor.

- (b) Other payments

Subject to the Act, if the Councillors or Members (as applicable) request a Councillor to perform services in addition to those provided in his or her capacity as a Councillor, the Councillors may determine that the College remunerate the Councillor for those services.

- (c) Reimbursement of expenses incurred by Councillor

Subject to the Act and clause 5.5(d), a Councillor is entitled to reimbursement of the travelling and other expenses that the Councillor properly incurs:

- (i) in attending Council meetings or any meetings of a committee of Councillors;
- (ii) in attending any general meeting of the College;
- (iii) in connection with the College's business; or
- (iv) in the case of a Chief Executive Officer, in connection with carrying out or managing the College's business.

- (d) Payment to be approved by Councillors

Any payment or payments proposed to be made to a Councillor which, within a period of three months, will exceed an aggregate of \$5,000, must first be approved by the other Councillors.

- (e) Financial benefit

- (i) A Councillor must ensure that the requirements of the Act are complied with in relation to any financial benefit given by the College to the Councillor or to any other related party of the Councillor.
- (ii) The College must not make loans to Councillors or provide guarantees or security for obligations undertaken by Councillors except as may be permitted by the Act.

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## 5.6 Conflicts of interest

(a) Prohibition on being present or voting

Subject to the Act, a Councillor who has a material personal interest in a matter that is being considered at a Council meeting:

- (i) must not vote on the matter; and
- (ii) must not be present while the matter is being considered at the meeting.

(b) Councillors' interests

Subject to this constitution and the Act:

- (i) a Councillor or a body or entity in which a Councillor has a direct or indirect interest may:
  - (A) enter into any agreement or arrangement with the College;
  - (B) hold any office or place of profit (other than Auditor) in the College; and
  - (C) act in a professional capacity (other than as Auditor) for the College,and the Councillor or the body or entity may receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the College or from holding an office or place of profit in or acting in a professional capacity with the College;
- (ii) the fact that a Councillor holds office as a director and has fiduciary obligations arising out of that office:
  - (A) does not void or render voidable a contract made by the Councillor with the College;
  - (B) does not void or render voidable a contract or arrangement entered into by or on behalf of the College and in which the Councillor may have an interest; and
  - (C) does not require the Councillor to account to the College for any profit realised by or under any contract or arrangement entered into by or on behalf of the College and in which the Councillor may have an interest;
- (iii) a Councillor may be or become a director or other officer of, or otherwise be interested in:
  - (A) any related body corporate of the College; or
  - (B) any other body corporate promoted by the College or in which the College may be interested as a shareholder or otherwise,



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and is not accountable to the College for any remuneration or other benefits received by the Councillor from having an interest in that body corporate; and

(iv) any Councillor:

- (A) may exercise the voting power conferred by the interest held by the College in another company in favour of a resolution appointing him or herself or any Councillor as a director or other officer of the other company;
- (B) may vote at a Council meeting in favour of a resolution that the College exercises its voting power conferred by the interest held by the College in the other company to appoint that Councillor as a director or other officer of the other company;
- (C) may be appointed as representative of the College and may vote at a general meeting of the other company in favour of a resolution appointing that Councillor as a director or other officer of the other company; and
- (D) if also a director of the other company, may vote as a director of the other company in whatever manner he or she sees fit, including voting in favour of a resolution appointing the Councillor to any other office in the other company and a resolution appointing any other Councillors as directors or other officers of the other company.

(c) Material personal interest - Councillor's duty to disclose

- (i) A Councillor who has a material personal interest in a matter that relates to the affairs of the College must give the other Councillors notice of the interest unless an exception in the Act applies.
- (ii) A notice required by clause 5.6(c)(i) must:
  - (A) include details of:
    - (1) the nature and extent of the interest; and
    - (2) the relation of the interest to the affairs of the College; and
  - (B) be given at a Council meeting as soon as practicable after the Councillor becomes aware of his or her interest in the matter.

(d) Councillor may give standing notice about a material personal interest

- (i) A Councillor required to give notice under clause 5.6(c) may give standing notice of the nature and extent of the interest in the matter in accordance with the Act and this constitution.
- (ii) The notice may be given at any time and whether or not the matter relates to the affairs of the College at the time the notice is given.
- (iii) A notice under clause 5.6(d)(i) must be given:

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- (A) at a Council meeting either orally or in writing; or
  - (B) to the other Councillors individually in writing.
- (iv) If the standing notice is given to the other Councillors individually in writing:
- (A) the notice is effective when it has been given to every Councillor; and
  - (B) the notice must be tabled at the next Council meeting after it is given.
- (v) The Councillor must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

## **6 Management of business by Council**

### **6.1 General Powers of Council**

- (a) The business of the College is to be managed by or under the direction of the Council.
- (b) The Council may exercise all of the powers of the College except any powers that any provision of the Act or this constitution require the College to exercise in general meeting.
- (c) Without limiting the generality of clause 6.1(b), the Council may exercise all the powers of the College to:
  - (i) borrow money, to charge any property or business of the College or give any other security for a debt, liability or obligation of the College or of any other person; and
  - (ii) invest any of the moneys of the College not immediately required upon such securities as it shall from time to time think fit, and from time to time vary transpose or realise such investments.

### **6.2 Council must keep transactions confidential**

Every Councillor and other agent or officer of the College must:

- (a) keep confidential all aspects of all transactions of the College, except:
  - (i) to the extent necessary to enable the person to perform his or her duties to the College;
  - (ii) as required by law; or
  - (iii) when requested by the Council to disclose information to the Auditor or a general meeting; and

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- (b) if requested by the Council, sign and make a declaration that he or she will not disclose or publish any aspect of any transaction of the College.

### 6.3 Executive Committee

- (a) Subject to clause 6.3(b) and clause 6.3(c), the Council will elect from amongst the Councillors persons to the offices of:
  - (i) President;
  - (ii) Vice-President; and
  - (iii) Honorary Treasurer.
- (b) The Council may only elect the President from amongst those Councillors who are elected by the Voting Members of the College under clause 5.1(a)(ii)(A)(1).
- (c) Neither the Chief Executive Officer nor the Councillor appointed by the University of Melbourne will be eligible to be elected to the office of President, Vice President or Honorary Treasurer.
- (d) The persons occupying the offices referred to in clause 6.3(a), together with:
  - (i) one other person elected by the Council from amongst the Councillors; and
  - (ii) the Chief Executive Officerwill form an Executive Committee.
- (e) The election of each member of the Executive Committee (other than the Chief Executive Officer) (each an **Elected Executive Committee Member**) will take place at the first meeting of the Council after each annual general meeting and will be for a term not exceeding 12 months.
- (f) A retiring Elected Executive Committee Member is eligible for re-election.
- (g) The Council may fill up any vacancies on the Executive Committee that may occur and the person so appointed will hold office for the remainder of the term for which their successor was elected.
- (h) Subject to clauses 6.3(i) and 6.3(j), the Executive Committee may act notwithstanding any vacancy and any business so transacted shall be valid and binding.
- (i) The Executive Committee may consider and deal with all matters of special importance and emergency as determined by the Executive Committee which:
  - (i) arise between Council meetings; and
  - (ii) the Executive Committee considers must be determined before the next Council meeting,

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provided that at least three members of the Executive Committee are in favour of such determinations.

- (j) The Executive Committee must:
  - (i) notify all Councillors of its intention to meet to determine any urgent issue, such notice to clearly state the matters to be considered and determined by the Executive Committee; and
  - (ii) report on its proceedings at the next Council meeting.
- (k) The chair of any meeting of the Executive Committee is to be the President and, in the absence of the President, is to be the Vice-President and, in the absence of both the President and the Vice-President, such other Executive Committee member as the members of the Executive Committee present so appoint, provided that in no circumstances will the Chief Executive Officer be appointed as the chair.

#### **6.4 Appointment of attorney for College**

The Council may, by power of attorney, appoint any company, firm, person or body of persons to be the attorney or representative of the College for:

- (a) any period; and
- (b) for the purposes and with the powers, authorities and discretions vested in or exercisable by the Council under this constitution.

#### **6.5 Delegation by the Council**

- (a) Subject to the Act, the Council may delegate any of its powers (other than this power of delegation and the power to make regulations, by-laws and rules) to:
  - (i) the Executive Committee;
  - (ii) a Councillor;
  - (iii) the Chief Executive Officer or any other employee of the College; or
  - (iv) any other person/s or committee.
- (b) The delegate/s must exercise the powers delegated to it or them under any directions of the Council.
- (c) The effect of the delegate exercising a power is the same as if the Council exercised it.
- (d) The Council may at any time revoke or vary any delegation to a person or committee and no such delegation shall prevent the exercise or discharge by the Council of any of its powers, authorities, duties or functions.

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## **6.6 Seals and execution of documents**

- (a) The Councillors must provide for the safe custody of any seal of the College.
- (b) If the College has a common seal or duplicate common seal:
  - (i) it must be used only by the authority of the Council; and
  - (ii) every document to which it is affixed must be signed by the President and the Secretary, or the Vice President and the Secretary, or such other person or persons appointed by the Council to sign that document or a class of documents in which that document is included.
- (c) The College may execute a document without using a common seal and the document will be taken to be duly executed by the College if it is signed by a Councillor and countersigned by another Councillor, a Secretary or another person appointed by the Council to countersign that document or a class of documents in which that document is included.

## **6.7 Negotiable instruments**

- (a) Any two Councillors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- (b) The Councillors may determine that a negotiable instrument may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

# **7 Council meetings**

## **7.1 Councillors' circulating resolution without a meeting**

- (a) The Council may pass a resolution without a Council meeting being held if a copy of the resolution is given to all Councillors together with notice by the Secretary (such notice to indicate that a Councillor may request that the matter be reserved for consideration and voting at a meeting of Council by giving notice to the Secretary within 48 hours of the giving of the notice) and:
  - (i) within 48 hours of the resolution being given, no Councillor gives notice to the Secretary that the resolution should be reserved for consideration and voting at a meeting of Council; and
  - (ii) if a majority of votes cast by the Councillors entitled to vote on the resolution sign a document (which may include a facsimile transmission or electronic mail) containing a statement that they are in favour of the resolution set out in the document.

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For the avoidance of doubt, the Chair shall not have a second or casting vote in relation to a resolution passed under this clause 7.1(a).

- (b) Separate copies of a document may be used for signing by Councillors if the wording of the resolution and statement is identical in each copy.
- (c) The resolution is passed when the last Councillor signs.

## **7.2 Calling Council meetings**

- (a) The Council may make such regulations as it thinks proper as to the summoning and holding of meetings and for the transaction of business at those meetings and may adjourn any meeting.
- (b) A meeting of the Council may be called by the President or the Vice President or upon the written requisition of any two members of the Council and such requisition must be forwarded to the Secretary at least two days before the proposed date of the meeting and must state clearly the object of the meeting.
- (c) The Council will meet not less than six times in a calendar year.

## **7.3 Notice of meeting**

Notice of every Council meeting must be given individually to each Councillor, but failure to give or receive that notice will not invalidate anything done or any resolution passed at the meeting provided the failure occurred by accident or inadvertent error, or the Councillor who failed to receive notice attended the meeting or waived notice of the meeting either before or after the meeting.

## **7.4 Conduct of Council meetings**

- (a) A Council meeting may be called and held:
  - (i) in person;
  - (ii) by telephone;
  - (iii) by audio-visual linkup; or
  - (iv) using any technology consented to by a majority of the Councillors before or during the relevant meeting.
- (b) Any consent under clause 7.4(a)(iv) may be a standing consent.
- (c) If a Councillor gives his or her consent under clause 7.4(a)(iv), that Councillor may only withdraw the consent within a reasonable period before the meeting commences.

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- (d) A Councillor is regarded as present at a meeting where that meeting is conducted by telephone, audio-visual linkup or other technology if the Councillor is able to hear, and to be heard by, all others attending the meeting.
  - (e) A meeting conducted by telephone, audio-visual linkup or other technology will be deemed to be held at the place agreed on by the Councillors attending that meeting provided at least one of the Councillors present at the meeting was at that place for the duration of the meeting.
  - (f) An original document, or a photocopy, facsimile or electronic copy of that document, which is in the possession of, or has been seen by, all Councillors attending the Council meeting before, or at the time of, that meeting, is deemed to be a document tabled at that meeting.
  - (g) Subject to this clause 7, the Councillors may adjourn and otherwise regulate Council meetings as they determine.

#### **7.5 Chairing Council meetings**

- (a) Subject to clause 7.5(b), the President will chair all Council meetings.
- (b) The Councillors present at a Council meeting may elect one of the Councillors present to chair that meeting, or part of it, if the President is not available or declines to act as chair for the meeting or part of the meeting.

#### **7.6 Voting by chair at Council meetings**

In case of an equality of votes on a resolution at a Council meeting, the chair of that meeting will have a second or casting vote on that resolution in addition to any vote the chair has in his or her capacity as a Councillor in respect of that resolution.

#### **7.7 Quorum at Council meetings**

- (a) Unless the Councillors determine otherwise, the quorum for a Council meeting is six Councillors and the quorum must exist at all times during the meeting.
- (b) If, and so long as, a quorum does not exist for the consideration of a particular matter at a Council meeting because one or more of the Councillors is prohibited from voting under clause 5.6(a), the Councillors, including the Councillors prohibited, are entitled to vote on a resolution to call, and put the matter before, a general meeting.

#### **7.8 Meeting competent to exercise all powers**

A Council meeting at which a quorum is present will be competent to exercise all or any of the powers and discretions vested in or exercisable by the Council generally.

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## **7.9 Passing of Council resolutions**

A resolution of the Council will be passed if a majority of votes cast by Councillors entitled to vote on the resolution are in favour of the resolution.

## **7.10 Resolution passed deemed to be a determination of the Council**

Any resolution properly passed at a duly called Council meeting at which a quorum is present will be deemed to be a determination by all the Councillors or the Council for the purposes of this constitution.

## **7.11 Committee powers and meetings**

- (a) The Council may by resolution constitute and appoint such committees as it thinks fit from time to time.
- (b) Each committee appointed by the Council may exercise the powers delegated to it by the Council under any directions that may from time to time be imposed on it by the Council. Every such delegation shall be revocable by resolution of the Council and no such delegation shall prevent the exercise or discharge by the Council of any of its powers, authorities, duties or functions.
- (c) The President shall be ex-officio a member of all committees of the Council.
- (d) The Council shall appoint the chair of all committees of the Council (other than the Executive Committee).
- (e) The meetings and proceedings of any committee will be governed by this constitution regulating the meetings and proceedings of the Council so far as they are applicable, except to the extent they are superseded by any direction made by the Council under this clause.

## **7.12 Validity of acts of Councillors**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Councillor or member of the Council or committee of Councillors; or
- (b) a person appointed to one of those positions or acting as a Councillor was disqualified or had vacated office or was otherwise not entitled to vote or act,

all acts of the Councillor, the Council or the committee of Councillors (as the case may be) before the discovery was made are as valid as if the person had been duly appointed and was not disqualified and was entitled to vote or act.



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## **8 General meetings**

### **8.1 Annual general meeting**

(a) College must hold annual general meeting

The College must hold a general meeting, to be called the annual general meeting, once in each calendar year and within five months after the end of its financial year or as otherwise required by law, subject to any extension of time granted under the Act.

(b) Business of the annual general meeting

(i) Whether or not stated in the notice of the annual general meeting, the business of the annual general meeting may include:

- (A) receiving and considering the annual financial report of the College and reports of the Councillors and of the Auditor;
- (B) electing Councillors;
- (C) appointing the Auditor; and
- (D) fixing the remuneration of the Auditor.

(ii) The business of the annual general meeting may also include any other business which under this constitution or the Act ought to be transacted at an annual general meeting.

(c) Voting Members' opportunity to ask questions

- (i) The chair of the annual general meeting must allow a reasonable opportunity for the Voting Members as a whole at the meeting to ask questions about or make comments on the management of the College.
- (ii) If the Auditor is at the meeting, the chair of the annual general meeting must allow a reasonable opportunity for the Voting Members as a whole at the meeting to ask the Auditor questions relevant to the conduct of the audit and the preparation and content of the Auditor's report.

### **8.2 Calling and attending general meetings**

(a) Calling a general meeting

- (i) The Councillors may, by written notice, call a general meeting at a time and place as the Councillors resolve.
- (ii) Members may requisition the holding of a general meeting only under the Act and the Councillors must call a general meeting as soon as practicable after receiving that requisition.

- 
- (iii) Members may call and arrange to hold a general meeting only under the Act.
  - (b) Right to attend general meetings
    - (i) Each Voting Member and any Auditor is entitled to attend a general meeting.
    - (ii) Each Councillor is entitled to attend and speak at a general meeting.
    - (iii) The Auditor is entitled to speak on any part of the business of the general meeting that concerns the Auditor in their capacity as Auditor.
    - (iv) A Voting Member's proxy may attend a general meeting only as provided by this constitution and the Act.

### **8.3 Notice of general meetings**

- (a) Amount of notice of general meetings

Subject to the Act, at least 21 days' notice must be given of a general meeting.

- (b) Calculation of period of notice

In computing the period of notice under clause 8.3(a), the day on which the notice is given or taken to be given is to be disregarded but the day of the general meeting is to be counted.

- (c) Right to notice of general meeting

Written notice of the general meeting must be given under clause 14 and must be given individually to each person entitled to receive notice under the Act including:

- (i) each Voting Member;
- (ii) each Councillor; and
- (iii) the Auditor (if any) of the College.

- (d) Content of notice

A notice calling a general meeting must comply with the Act and must:

- (i) set out the place, date and time for the general meeting (and if the general meeting is to be held in two or more places, the technology that will be used to facilitate the general meeting);
- (ii) state the general nature of the business to be considered at the general meeting;
- (iii) if a special resolution is to be proposed at the general meeting, set out an intention to propose a special resolution and state the resolution;
- (iv) if a Voting Member is entitled to appoint a proxy:

- 
- (A) contain a statement that the Voting Member has a right to appoint a proxy who is also a Voting Member of the College; and
  - (B) be accompanied by an instrument of proxy in the form contained in Annexure D or any other form which the Council may from time to time approve; and
  - (v) contain information that is worded and presented in a clear, concise and effective manner.

#### **8.4 Cancellation or postponement of a general meeting**

- (a) Councillors may cancel or postpone a general meeting
  - (i) The Councillors may cancel or postpone a general meeting by giving notice not less than three Business Days before the time at which the meeting was to be held to each person entitled to be given notice of a general meeting.
  - (ii) Clause 8.4(a)(i) does not apply to general meetings called by court order or under the Act:
    - (A) by the Councillors on the request of Members, unless the Members who requested the meeting consent to the postponement or cancellation; or
    - (B) by Members, unless the Members who called the meeting consent to the postponement or cancellation.

- (b) Contents of notice postponing or cancelling a general meeting

A notice of postponement or cancellation of a general meeting must specify:

- (i) the reasons for the postponement or cancellation; and
- (ii) if the general meeting is postponed:
  - (A) the postponed date and time for the holding of the general meeting;
  - (B) a place for the holding of the general meeting which may be either the same as or different from the place specified in the notice calling the general meeting; and
  - (C) if the general meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the general meeting in that manner.

- (c) Number of clear days for postponement of general meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed general meeting must not be less than the number of clear days' notice of the general meeting required to be given by this constitution or the Act.

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(d) Business at postponed general meeting

Subject to clause 8.1(b), the only business that may be transacted at a general meeting, the holding of which is postponed, is the business specified in the original notice calling the general meeting.

(e) Proxy at postponed general meeting

Where:

- (i) an instrument of proxy or power of appointment authorises a proxy to attend and vote at a general meeting to be held on a specified date or at a general meeting or general meetings to be held on or before a specified date; and
- (ii) the date for holding the general meeting is postponed to a date later than the date specified in the instrument of proxy,

then that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy unless the Voting Member appointing the proxy gives notice to the College to the contrary not less than 48 hours before the time to which the holding of the general meeting has been postponed.

(f) Validity of resolutions

The non-receipt of notice of a general meeting or cancellation or postponement of a general meeting by, or the accidental omission to give notice of a general meeting or cancellation or postponement of a general meeting to, a person entitled to receive notice does not invalidate any resolution passed at the general meeting or at a postponed meeting or the cancellation or postponement of a meeting.

## 8.5 Conducting general meetings

(a) Time and place for general meetings

A general meeting must be held at a reasonable time and place specified by the Council from time to time.

(b) Technology

A general meeting may be held at two or more venues using any technology that gives the Voting Members as a whole a reasonable opportunity to participate.

(c) Quorum for a general meeting

The quorum for a general meeting or an adjourned general meeting is fifteen Voting Members and the quorum must be present at all times during the meeting.

(d) Determination of quorum at general meeting

In determining whether a quorum is present at a general meeting:

- 
- (i) persons attending as proxies are to be counted;
  - (ii) if a Voting Member has appointed more than one proxy, only one of them is to be counted;
  - (iii) if an individual is attending both as a Voting Member and as a proxy, that person is to be counted only once; and
  - (iv) if an individual is attending as a proxy for more than one Voting Member, that person is to be counted only once.
- (e) Absence of quorum at a general meeting
- (i) If no quorum is present within 30 minutes after the time for the general meeting set out in the notice of general meeting, the general meeting:
    - (A) if called under the Act by the Councillors at the request of Members or by Members, is dissolved; and
    - (B) in any other case, is to be adjourned to a date, time and place as specified by the Councillors.
  - (ii) If the Councillors do not specify one or more of the requirements in clause 8.5(e)(i)(B), the general meeting is adjourned to:
    - (A) if the date is not specified, the same day of the following week;
    - (B) if the time is not specified, the same time; and
    - (C) if the place is not specified, the same place.
- (f) Absence of quorum at adjourned meeting
- If no quorum is present at the general meeting adjourned under clause 8.5(e) within 30 minutes after the time for the general meeting, the chair may, in their absolute discretion, declare the meeting dissolved or deem that those Voting Members present in person form a quorum and may transact the business for which the meeting was called.
- (g) Appointment and powers of chair at general meetings
- (i) The President will be entitled to take the chair at general meetings.
  - (ii) The President is granted the power and is responsible for the general conduct of general meetings and for the procedures to be adopted at general meetings.
  - (iii) Any decision of the President is final and binding.
  - (iv) The President may delegate any power conferred by this clause to any Voting Member.

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- (h) Absence of President at general meeting
- (i) If the President is unable to chair or declines to act at a general meeting, the Councillors may at any time prior to the commencement of that general meeting elect a Councillor to take the chair at that general meeting.
  - (ii) If a general meeting is held and the President, or the person elected under clause 8.5(h)(i), is not available within 15 minutes after the time appointed for the holding of the meeting or is unable to chair or declines to act, the following may take the chair of the meeting (in order of precedence):
    - (A) the deputy chair (if any);
    - (B) a Councillor chosen by a majority of the Councillors present;
    - (C) the only Councillor present;
    - (D) a person (whether a Member or not) chosen by a majority of the Council present; or
    - (E) a Voting Member chosen by a majority of the Voting Members present in person or by proxy.
  - (iii) If an acting chair becomes unable to chair or declines to act during the general meeting, the abovementioned persons may take the chair, in the same order of precedence, until the time (if any) as the previous acting chair becomes willing and able to take the chair at that meeting.
  - (iv) Any person taking the chair of the general meeting under this clause will have all the powers and responsibilities of the President in respect of the general meeting as are set out in this constitution.

## **8.6 Adjournment of general meetings**

- (a) Adjournment of general meetings by chair
- (i) The chair may, with the consent of any meeting at which a quorum is present (and shall if so directed by the meeting) during the general meeting, adjourn the meeting or any business, motion, resolution or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place.
  - (ii) The chair must adjourn a general meeting if the Voting Members present in person or by proxy with a majority of votes at the meeting agree or direct that the chair must do so.
  - (iii) If any general meeting is adjourned for fourteen days or more, a notice of the adjournment must be given to the Voting Members in the same manner as notice was or ought to have been given of the original meeting.

- 
- (b) Resumption of adjourned general meeting
    - (i) Only unfinished business is to be transacted at a meeting resumed after an adjournment under clause 8.6(a).
    - (ii) The resumed meeting may only be adjourned by the chair.

## **8.7 Resolutions, voting and polls at general meetings**

- (a) Members' resolutions

The Members may propose a resolution to be moved at a general meeting only in accordance with Division 4 of Part 2G.2 of the Act.

- (b) Resolution determined by majority

At a general meeting, all resolutions submitted to a general meeting will be decided by a simple majority of votes except where a greater majority is required by this constitution or the Act.

- (c) Voting by chair at general meetings

In case of an equality of votes on a resolution at a general meeting the chair of that meeting will have a second or casting vote on that resolution in addition to any vote the chair has in his or her other capacity.

- (d) How voting is carried out

- (i) A resolution put to the vote at a general meeting must be decided on a show of hands unless a poll is demanded under clause 8.7(f) or the Act either before, on or immediately after the declaration of the result of the vote on a show of hands.
- (ii) On a show of hands, either a declaration by the chair that a resolution has been carried or carried by a particular majority or not carried or an entry to that effect in the minutes signed by the chair is conclusive evidence of the result.
- (iii) Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against a resolution.

- (e) Matters on which a poll may be demanded at a general meeting

A poll may be demanded on any resolution.

- (f) Demand for poll

A poll may be demanded by:

- (i) the chair; or
- (ii) at least three Voting Members present in person or by proxy.

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(g) Conduct of poll

The chair may decide in each case the manner in which a poll is taken provided that a poll demanded:

- (i) on the election of a chair or on a question of adjournment shall be taken forthwith; and
- (ii) on any other question shall be taken at such a time as the chair of the meeting directs.

(h) Right to vote at general meetings

- (i) Only Voting Members shall be entitled to vote at any general meeting.
- (ii) Subject to this constitution, the Act, and any rights or restrictions attached to any class of Members, at a general meeting:
  - (A) on a show of hands, each Voting Member present in person or by proxy has one vote, provided that if an individual (whether or not also a Member) is attending as a proxy for one or more Voting Members, that individual will only have one vote; and
  - (B) on a poll:
    - (i) each Voting Member present in person or by proxy has one vote; and
    - (ii) a person that holds multiple proxies has one vote for each proxy.

(i) Objections to right to vote

A challenge to a right to vote at a general meeting:

- (i) may only be made at the general meeting or adjourned meeting; and
- (ii) must be determined by the chair whose decision if made in good faith is final and binding.

## 9 Proxies

### 9.1 Appointment of proxies

- (a) A Voting Member may appoint any other Voting Member as that Member's proxy to attend and cast a vote at any general meeting of the College.
- (b) An instrument appointing a proxy shall be in the form contained in Annexure D or any other form which the Council approves from time to time.



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- (c) Any proxy appointed under this clause must be appointed under Division 6 of Part 2G.2 of the Act, and will have the rights set out in that Division.

## **9.2 Appointment received at electronic mail address**

For the purposes of clause 9.1, an appointment received at an electronic mail address will be taken to be signed by the Voting Member or proxy, as applicable, if the appointment has been authenticated under the Act.

# **10 Council's and Members' minutes**

## **10.1 Minutes**

The Council must cause to be entered in the minute books of the College within one month of the relevant meeting, minutes containing details of:

- (a) the names of the Councillors present at each Council meeting and of any Executive Committee meeting;
- (b) all declarations made or notices given by any Councillor (either generally or specifically) of its interest in any contract or proposed contract or of its holding of any office or property where any conflict of duty or interest may arise; and
- (c) all resolutions and proceedings of general meetings of the College, meetings of the Councillors and meetings of any committee of the Councillors.

## **10.2 Minutes to be signed by chair**

Any minutes of any general meetings of the College, meetings of the Council or meetings of any Executive Committee must be signed by the chair of the meeting or by the chair of the next succeeding meeting and once signed will constitute prima facie evidence of the matters stated in the minutes.

## **10.3 Members' access to minutes**

- (a) The Council must ensure that the minute books for meetings of its Members are open for inspection by Members free of charge.
- (b) If requested by a Member in writing, the Council must ensure the College sends a copy of any minutes or extract of minutes of a general meeting requested within 14 days after the request or, if the Council determine that payment should be made for the copies, within 14 days after the College receives the payment.

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## **11 Secretary**

### **11.1 Appointment of Secretary**

- (a) The Councillors must appoint one or more persons to the office of secretary to the College.
- (b) No Councillor is eligible for appointment to the office of Secretary.
- (c) At least one Secretary must reside in Australia.

### **11.2 Terms and conditions of appointment**

- (a) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authority as the Council determines.
- (b) The exercise of those powers and authorities and the performance of those duties by a Secretary is subject at all times to the control of the Councillors.

### **11.3 Suspension or termination of appointment of Secretary**

The Councillors may suspend, remove or terminate the appointment of a Secretary, subject to any agreement between the College and the Secretary.

## **12 Auditor**

### **12.1 Appointment of Auditor**

If required by law, the Councillors must appoint one or more persons to the office of Auditor to the College unless the Voting Members at general meeting have appointed an Auditor.

### **12.2 Auditor and meetings of Members**

- (a) The Auditor is ineligible to be elected or appointed as a Councillor.
- (b) The Auditor is entitled to receive notice of, attend, and be heard at general meetings.

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## 13 College's books

### 13.1 Financial records and statements

(a) Financial records

- (i) The Council must cause financial records to be kept to correctly record and explain the transactions and financial position and performance of the College, to enable true and fair statements to be prepared to permit preparation of any other documents required by the ACNC Act, any other applicable legislation or this constitution.
- (ii) The financial records must be kept:
  - (A) in a manner which will enable them to be conveniently and properly audited;
  - (B) for seven years after the completion of the transactions or operations to which they relate; and
  - (C) at the Registered Office or at any other place as the Council determines and at all times be open to inspection by the Council.

(b) Financial, Councillors' and Auditor's reports

If required under the ACNC Act or any other applicable legislation, at each annual general meeting, the Council must lay before the College a financial report, a Councillors' report and an Auditor's report for the last financial year of the College that ended before that annual general meeting which comply with all applicable provisions of the ACNC Act or any other applicable legislation.

(c) Financial statements and reports

If required under any legislation, the College must cause copies of the College's financial statements and other reports to be lodged with the relevant Government Authority as, and to the extent, required by the applicable legislation.

### 13.2 Inspection

(a) Inspection of College books

- (i) A request by a Member to inspect the books of the College, including its financial records, must be in writing and must be delivered to the College at its Registered Office.
- (ii) Subject to applicable legislation, a majority of the Council or the Voting Members by special resolution may decide whether and to what extent and at what times and places and under what conditions a Member may inspect the books of the College, including its financial records.

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- (iii) This clause does not limit the rights of a Councillor or former Councillor to inspect the books of the College under the law.
  - (b) Copying financial records
    - (i) After inspecting the financial records a Member may request permission to copy them.
    - (ii) The request under clause 13.2(b)(i) must be in writing, must specify the financial records the Member wishes to copy and must be delivered to the College at its Registered Office.
    - (iii) Subject to applicable legislation, the Council must consider the request at the next meeting and may (but need not) consent to the request or any part of the request on any terms as they determine.

### **13.3 Audit**

- (a) Financial statements to be audited

If required under the ACNC Act or any other applicable legislation, the financial statements of the College for each financial year must be audited by the Auditors under the ACNC Act or any other applicable legislation.

- (b) Financial statements to be laid before the College

- (i) The financial statements of the College once laid before the College in general meeting will be conclusive except as regards any error identified within three months after the date of that meeting.
- (ii) If any error is identified within the period referred to in clause 13.3(b)(i), the financial statements must then be corrected and are then conclusive.

## **14 Service of documents**

### **14.1 Document includes notice**

In clause 14.2 to 14.7, a reference to a document includes a notice.

### **14.2 Giving a document to Members**

- (a) The College may give a document to a Member:
  - (i) in person;

- 
- (ii) by sending it by post to the postal address of the Member in the Register of Members or the alternative address (if any) nominated by that Member;
  - (iii) by sending it to the fax number or electronic mail address (if any) nominated by that Member; or
  - (iv) by sending it to the Member by other electronic means (if any) nominated by the Member.
- (b) If the address of a Member in the Register of Members is not within Australia, the College must send all documents to that Member by airmail, by air courier, by fax or by electronic means.

### **14.3 Evidence of service of a document on a Member**

A certificate in writing signed by a Councillor or Secretary stating that a document was sent is prima facie evidence of service.

### **14.4 Giving a document to a Councillor**

The College may give a document to a Councillor:

- (a) in person;
- (b) by sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person;
- (c) by sending it to the fax number or electronic mail address (if any) nominated by that person; or
- (d) by any other means agreed between the College and that person.

### **14.5 Giving a document to the College**

A person may give a document to the College:

- (a) by leaving it at the Registered Office;
- (b) by sending it by post to the Registered Office;
- (c) by sending it to the fax number at the Registered Office;
- (d) by sending it to the electronic mail address (if any) nominated by the College for that purpose; or
- (e) by any other means prescribed by the Act or other applicable legislation.

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## **14.6 Time of service of a document**

- (a) A document sent by post to an address within Australia is taken to be given:
  - (i) in the case of a notice of meeting, one Business Day after it is posted; or
  - (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (b) A document sent by post or airmail to an address outside Australia is taken to be given:
  - (i) in the case of a notice of meeting, five Business Days after it is posted; or
  - (ii) in any other case, at the time at which the document would be delivered in the ordinary course of post.
- (c) A document sent by air courier to a place outside Australia is taken to be given three Business Days after delivery to the air courier.
- (d) A document sent by fax or to an electronic mail address, or by other electronic means, is taken to be given on the Business Day it is sent, provided that the sender's transmission report shows that the whole document was sent to the correct fax number or electronic mail address.
- (e) A document given to a Member under clause 14.2(a)(i) is taken to be given on the day on which the Member is notified that the document is available.

## **14.7 Signatures**

Where, by a provision of this constitution, a document is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by the Act relating to electronic transmissions or in any other manner approved by the Council from time to time.

## **15 Proceedings involving officers**

### **15.1 Indemnity**

- (a) College to indemnify Officers
  - (i) Subject to clause 15.1(a)(ii), the College must indemnify:-
    - (A) any Councillor, Secretary or Auditor of the College;
    - (B) any officer or manager of either any division (including, for the avoidance of doubt, the NVRI) or related body corporate of the College; and

- 
- (C) any member of a subcommittee of the College, such division or such related body corporate,

who holds office on or after the date this constitution is adopted (including any such person after they have ceased to hold office) (together, **Officer**) out of the property of the College against:

- (D) any liability (other than legal costs dealt with in clause 15.1(a)(i)(E)) incurred by the person in that person's capacity as an Officer of the College; and

- (E) all legal costs incurred in defending or resisting proceedings brought against the person in that person's capacity as an Officer of the College.

- (ii) The indemnity in clause 15.1(a)(i) does not extend to any amount in respect of which:

- (A) the College is prohibited by the Act or any other applicable legislation from indemnifying against; or

- (B) an indemnity would otherwise be illegal, void, unenforceable or not permitted by law.

- (b) College may indemnify employee

The College may indemnify any employee of the College at the discretion of Council.

## **15.2 Payments and advances to Officer**

- (a) Payment of costs, losses and expenses

Subject to this constitution (including clause 5.5(d)), the Act, or any other applicable legislation, the College may pay all costs, losses and expenses which any Officer might incur or become liable to pay by reason of any contract entered into or act or thing done by them as such a person or in any way in discharge of their duties.

- (b) Advances on account of costs, losses and expenses

- (i) Subject to clause 5.5(d), the Act or any other applicable legislation, the Council may determine that the College pay, by way of a loan, advance or other type of payment and on whatever terms the Council determines, legal costs of the type referred to in clause 15.1(a)(i)(E) that are reasonably incurred or reasonably anticipated to be incurred by the person in defending or resisting proceedings brought against the person in that person's capacity as an Officer.

- (ii) Amounts paid by the College under clause 15.2(a) to a person referred to in clause 15.1(a) in relation to a liability incurred by the person in that person's capacity as an Officer must be repaid if:

- (A) that liability is or becomes a liability excluded by the Act or any other applicable legislation from the indemnity in clause 15.1(a);

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- (B) a court determines that the person is not entitled to be indemnified by the College for that liability; or
  - (C) the liability is covered by insurance and the person receives payment from an insurer in respect of that liability or an insurer pays, discharges or satisfies that liability directly.

### **15.3 Insurance**

- (a) College may pay premium

Subject to clauses 5.5(d) and 15.3(b), the College may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring an Officer against liability incurred by the person in that person's capacity as an Officer, including a liability for legal costs.

- (b) Payment of premium prohibited in certain circumstances

The College must not pay or agree to pay a premium under clause 15.3(a) where:

- (i) the College is prohibited by the Act or any other applicable legislation from paying or agreeing to pay such a premium; or
- (ii) the payment of such a premium would otherwise be illegal, void, unenforceable or not permitted by law.

## **16 Revocation of DGR endorsement**

- (a) If the College's endorsement as a deductible gift recipient is revoked other than in circumstances where the College is, or is to be, wound up or dissolved, any surplus of the following assets of the College must, at the direction of the Members, be given or transferred to another organisation in Australia to which income tax deductible gifts can be made:
  - (i) gifts of money or property that have been received and are held by the College for the principal purpose of the College;
  - (ii) contributions made in relation to an eligible fundraising event held by the College for the principal purpose of the College;
  - (iii) money received by the College because of such gifts and contributions.
- (b) For the purposes of clause 16(a), the Members must identify the institution or institutions at the time of the revocation.
- (c) For the purposes of clause 16(a), the assets of the College do not include any monies or property held by or on behalf of the Endowment Funds.



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## **17 Winding up**

### **17.1 Rights of Members on winding up**

If the College is wound up or dissolved, the Members have no right to participate in any distribution or payment of the assets or property of the College.

### **17.2 Distribution of assets**

- (a) If the College is wound up or dissolved and there remains after satisfaction of all debts and liabilities any property of the College whatsoever, that property must, at the direction of the Members, be given or transferred to some other charitable institution or charitable institutions in Australia having objects similar or in part similar to the College and to which income tax deductible gifts can be made.
- (b) For the purposes of clause 17.2(a), the Members must identify the institution or institutions at the time of the winding up or dissolution.
- (c) For the purposes of clause 17.2(a), the assets of the College do not include any monies or property held by or on behalf of the Endowment Funds.

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## Annexure A - Nomination Form

### NOMINATION FORM

Election of persons for appointment as Councillors of the Australian College of Optometry

I hereby nominate.....(Name in full)

Residential address.....

Postal address.....

for election as a person for appointment as a Councillor of the Australian College of Optometry if elected and appointed as from the.....day of.....20....

Name of nominator.....

Signature.....Address.....

Name of seconder.....

Signature.....Address.....

I agree to the above nomination and shall be prepared to serve as a Councillor of the Australian College of Optometry if elected and appointed. My name and address are correctly stated above

Dated this.....day of.....20..... Signature of nominee.....

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## Annexure B - Ballot Paper

### BALLOT PAPER

Election by persons who are Voting Members of the Australian College of Optometry of (number to be inserted).....persons to be Councillors of the Australian College of Optometry

Candidates' names

Initials of returning officer

Directions

- (1) The voter must mark his or her ballot paper by placing a cross X opposite the names of no more than the (number to be inserted).....candidates for whom he or she wishes to vote.
- (2) The voter must enclose his or her ballot paper in the ballot envelope, sign the voter's declaration form, place both in the addressed return envelope and post or deliver it (or cause it to be delivered) to the returning officer to reach that person not later than 12 noon on the.....day of .....20.....

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## Annexure C - Voter's Declaration

### VOTER'S DECLARATION FORM

Name of voter (in **BLOCK LETTERS**)

Address of voter

I hereby declare that I am a Voting Member of the College for the year ended the.....day  
of.....20.. (date to be inserted)

.....(Voter's signature) .....(Date)

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## Annexure D - Proxy Appointment Form

The Secretary  
Australian College of Optometry  
374 Cardigan Street  
Carlton 3053

I.....of.....being a Voting Member  
of the Australian College of Optometry hereby  
appoint.....of.....also a Voting Member of  
the College as my proxy to vote for me and on my behalf at the general meeting OR annual general  
meeting OR extraordinary annual general meeting OR special meeting [*delete whichever does not  
apply*] of the College to be held on the .....day of.....20... and at any adjournment  
thereof.

Signed this.....