
Constitution of “Preshil” the Margaret Lyttle Memorial School

ABN 12 004 248 631

As amended by Special Resolution passed at an extraordinary general meeting on **4 December 2006**; and

As amended by Special Resolution passed at an annual general meeting on **23 May 2019**.

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**CONSTITUTION OF "PRESHIL" THE MARGARET LYTTLE MEMORIAL SCHOOL
ABN 12 004 248 631**

1. PRELIMINARY

1.1 Company limited by guarantee

The Association is limited by guarantee and the liability of members is limited as provided in this constitution.

1.2 Objects of the Association

The objects of the Association are:

- (a) To provide for girls and boys from pre-school age a progressive education by which they are helped to develop naturally along their own lines and to provide opportunities for members of teaching staff and others to become familiar with and practise such new and progressive methods of education as a changing society requires.
 - (b) To acquire the school heretofore carried on under the name of "Preshil Preparatory School" with the land and buildings plant stock and other properties connected with the school and the benefit of all pending contracts together with any other rights and privileges relating to the said school vested in or held on behalf of Bazil John Parkinson and Alexander Llewellyn Wetteshall (Executors of the Will of Margaret Jane Ruth Lyttle deceased) and Margaret Alice Elizabeth Lyttle or any of them.
 - (c) To acquire by purchase or by renting or otherwise freehold or leasehold properties for use in connection with an educational establishment or any other object of the Association.
 - (d) To found or take over and carry on from time to time whenever may be thought desirable any similar educational establishment and houses of residence and to amalgamate with any other institution or institutions having objects similar to or in part similar to those of the Association and to affiliate the Association with any university school or association provided in all cases that the Association does not lose its identity as "Preshil" The Margaret Lyttle Memorial School.
 - (e) If thought desirable to found and endow scholarships bursaries and exhibitions within the Association itself or at any other school or university and to provide award payments or assistance to present or past students of the Association.
 - (f) To undertake and execute any trusts for the benefit of the Association or in furtherance of its objects.
 - (g) To accept subscriptions guarantees and donations whether of real or personal estate and bequests for all or any of the objects of the Association and either with or without a conditional right of repayment.
 - (h) To do all such other things as are incidental to the attainment of the above objects or any of them.
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1.3 **Application of income and property**

Subject to rules 1.4 and 10, the Association must apply its income solely towards promoting the objects of the Association as stated in rule 1.2. No part of the Association's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members.

1.4 **Certain payments allowed**

Rule 1.3 does not prevent the payment of:

- (a) reasonable remuneration to any officer or employee of the Association or to any member of the Association or other person in return for service rendered to the Association;
- (b) interest on money lent by a member to the Association at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (c) reasonable remuneration for goods supplied by a member to the Association in the ordinary course of business; and
- (d) reasonable rent for premises leased by a member to the Association.

In the case of payments to Council Members, this rule is subject to rule 10.1.

1.5 **Requirements to omit "Limited" from name**

The Association must notify ASIC as soon as practicable in accordance with section 150(2) if any of the requirements or prohibitions included in rules 1.3, 1.4 and 10.1 to satisfy section 150(1) are not complied with or if this constitution is modified to remove any of those requirements or prohibitions.

1.6 **Replaceable rules**

The replaceable rules referred to in section 141 do not apply to the Association and are replaced by the rules set out in this constitution.

1.7 **Definitions**

The following definitions apply in this constitution.

Act means the *Corporations Act 2001* (Cth).

Alternate means an alternate Council Member appointed under rule 4.1.

Appointor in relation to an Alternate, means the Council Member who appointed the Alternate.

Association means the Association named at the beginning of this constitution whatever its name is for the time being.

Council means the Council Members acting collectively under this constitution.

Council Member means a person who is, for the time being, a director of the Association including, where appropriate, an Alternate. Each Council Members holding office when rule 3.3 is adopted is taken to have been appointed or elected under the paragraph of rule 3.3 which is most closely equivalent to the article under which they were appointed or elected.

financial member means a member who is a Life Member or who has paid any subscription payable by that member under rule 2.2.

Life Member means a member who was a life member as at 26 April 2006 or who has been declared to be a Life Member under rule 2.3.

member means a person whose name is entered in the Register as a member of the Association.

ordinary resolution means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

Parent means a parent or guardian of a student enrolled at a school operated by the Association.

President means a President appointed under rule 18.1.

Principal means a principal appointed under rule 7.1 (and the principal holding office when rule 7.1 is adopted is taken to have been appointed under that rule).

See sections 168
and 169

Register means the register of members kept as required by sections 168 and 169.

school means a school operated by the Association.

Secretary means, during the term of that appointment, a person appointed as a secretary of the Association in accordance with this constitution.

special resolution has the meaning given by section 9.

Teacher means a person employed by the Association as a teacher.

Treasurer means a Treasurer appointed under rule 18.1.

Vice-President means a Vice-President appointed under rule 18.1.

1.8 Interpretation of this constitution

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

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- (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Association, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
 - (c) A word which suggests 1 gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.
 - (g) A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
 - (h) A reference to a power is also a reference to authority or discretion.
 - (i) A reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form.
 - (j) A word (other than a word defined in rules 1.7 or 1.8) which is defined by the Act has the same meaning in this constitution where it relates to the same matters as the matters for which it is defined in the Act.
 - (k) A reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Act.

2. **MEMBERSHIP**

2.1 **Membership**

The Council may, in its absolute discretion, enter in the Register the name of a person who:

- (a) agrees in writing to become a member;
- (b) has been nominated in writing to the Council to be a member; and

-
- (c) is accepted by the Council at any of its meetings or at the annual general meeting of the Association.

2.2 **Subscription**

Each member, other than a Life Member, must pay to the Association an annual subscription of 20 dollars which is payable on the first day of each financial year.

2.3 **Life Members**

The Council may declare to be a Life Member a member who:

- (a) has been nominated by a member; and
- (b) in the opinion of the Council, has rendered outstanding service to the Association.

2.4 **Limited liability of members**

If the Association is wound up each member undertakes to contribute to the assets of the Association up to an amount not exceeding 2 dollars for payment of the debts and liabilities of the Association including the costs of the winding up. This undertaking continues for 1 year after a person ceases to be a member.

2.5 **Resigning as a member**

A member may resign from the Association by giving written notice to the Council.

2.6 **Expelling a member**

- (a) The Association must expel a member and remove the member's name from the Register where:
 - (i) a general meeting is held to expel a member; and
 - (ii) a resolution is passed at the meeting by a majority of three-fourths of those present and voting for the member to be expelled. The vote must be taken by ballot.
- (b) A member expelled from the Association does not have any claim on the Association, its funds or property.

2.7 **Ceasing to be a member**

A member ceases to be a member on:

- (a) resigning under rule 2.5;
- (b) expulsion under rule 2.6; or
- (c) any subscription payable by the member under rule 2.2 becoming more than 4 months in arrears.

3. COUNCIL MEMBERS

3.1 Number of Council Members

The Association must have at least 5 Council Members and, until otherwise decided by ordinary resolution, not more than 12 Council Members.

3.2 Eligibility

A Council Member must be a member. Neither the auditor of the Association nor any partner, director or employee of the auditor is eligible to act as a Council Member.

3.3 Composition

The Council consists of:

- (a) The Principal;
- (b) 1 person, preferably an educator, appointed by the Principal to hold office until the end of the next annual general meeting;
- (c) not more than 8 persons elected under rule 3.6; and
- (d) not more than 2 persons appointed by the School Council to hold office for a term of three years.

3.4 Automatic retirement

Any Council Member appointed under rule 3.3(b) automatically retires at the end of the annual general meeting at the end of their term unless they are re-appointed before that annual general meeting in the manner contemplated by rule 3.3 or they are elected at that general meeting under rule 3.6.

3.5 Casual vacancies

Subject to this constitution and to the number of Council Members for the time being fixed under rule 3.1 not being exceeded:

- (a) the Council may fill any casual vacancy under rule 3.3(c) or (d) or any vacancy resulting where the Association has not elected the maximum number of Council Members under rule 3.3(c); and
- (b) casual vacancies under rules 3.3(b) or (e) must be filled by the person or persons entitled to make the appointment under the relevant rule.

Any Council Member appointed under this rule:

- (c) automatically retires at the end of the next annual general meeting unless they are re-appointed before that annual general meeting in the manner contemplated by rule 3.3 or they are elected at that general meeting under rule 3.6; and

-
- (d) is not taken into account in deciding the rotation or retirement of Council Members or the number of them to retire under rule 3.8 at that general meeting.

3.6 **Election by general meeting**

Replaces section
201G

Subject to this constitution and to the number of Council Members for the time being fixed under rule 3.1 not being exceeded, the Association may elect up to 6 Council Members by ordinary resolution. A Council Member appointed to replace one removed from office under rule 3.12 must retire when the Council Member replaced would have been required to retire if not removed and is eligible for re-election.

3.7 **Eligible candidates**

The Association in general meeting cannot validly elect a person as a Council Member unless:

- (a) the person retires under rule 3.4, 3.5, 3.6 or 3.8 and seeks election or re-election under rule 3.6;
- (b) the Council recommends the appointment; or
- (c) at least 14 days before the general meeting at which the relevant resolution will be considered, the Association receives both:
 - (i) a nomination of the person by a member (other than the person); and
 - (ii) a consent to act as a Council Member signed by the person.

The Association must notify members of every candidate for election as a Council Member at least 7 days before the relevant general meeting.

3.8 **One third of elected Council Members retire annually**

At each annual general meeting:

- (a) one third (or if that is not a whole number, the whole number nearest to one third) of the Council Members elected by the Association under rule 3.6; and
- (b) any Council Member elected by the Association under rule 3.6 who would, if that Council Member remained in office until the next annual general meeting, have held that office for more than 3 years,

must retire from office and are eligible for re-election.

Council Members elected by the Association before the adoption of rule 3.6 are taken to be elected under rule 3.6 for the purpose of this rule.

3.9 **Selection of Council Members ineligible for immediate re-election**

Subject to rule 3.6, the Council Members who retire under rule 3.8(a) are those who have held office the longest since last being elected. If 2 or more Council Members have been

in office for the same period, those Council Members may agree which of them will retire. If they do not agree, they must draw lots to decide which of them must retire.

3.10 **Time of retirement**

A Council Member's retirement under rule 3.5 or 3.8 takes effect at the end of the relevant annual general meeting.

3.11 **Cessation of Council Member's appointment**

A person automatically ceases to be a Council Member if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Association under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend 3 consecutive Council meetings without permission from the Council;
- (e) resigns by notice in writing to the Association;
- (f) is removed from office under rule 3.12;
- (g) ceases to be eligible to act as a Council Member under rule 3.2; or
- (h) in the case of the Principal, ceases to hold that office.

Rule 3.11(e)
replaces section
203A

3.12 **Removal from office**

Whether or not a Council Member's appointment was expressed to be for a specified period, the Association by ordinary resolution may remove a Council Member from office. The power to remove a Council Member under this rule is in addition to section 203D.

3.13 **Too few Council Members**

If the number of Council Members is reduced below the minimum required by rule 3.1, the continuing Council Members may act as the Council only:

- (a) to appoint Council Members under rule 3.5 up to that minimum number;
- (b) to convene a meeting of members; and
- (c) in emergencies.

4. ALTERNATE COUNCIL MEMBERS

4.1 Appointment of Alternates

Subject to rule 3.2, a Council Member (other than an Alternate) may with the approval of the Council (without the vote of the Appointor) appoint a member to act as Alternate for a specified period or each time the Appointor is unable to attend a Council meeting or act as a Council Member.

4.2 Notice of Council meetings

If the Appointor requests the Association to give the Alternate notice of Council meetings, the Association must do so. Unless the Appointor has requested it, the Association need not give notice of Council meetings to an Alternate.

4.3 Obligations and entitlements of Alternates

An Alternate:

- (a) may attend and vote in place of the Appointor at a Council meeting at which the Appointor is not present;
- (b) if also a Council Member, has a separate right to vote as Alternate;
- (c) must not act as an Alternate for more than 1 Appointor;
- (d) when acting as Alternate, is an officer of the Association and subject to all the duties, and entitled to exercise all the powers and rights, of the Appointor as a Council Member; and
- (e) with the approval of the Council, is entitled to reasonable travelling, accommodation and other expenses incurred in attending meetings of the Council or of the Association or while otherwise engaged on the business of the Association on the same basis as other Council Members but is not entitled to any other remuneration from the Association (but the Appointor may further remunerate the Alternate).

4.4 Termination of appointment

The Appointor may at any time revoke the appointment of a person as an Alternate whether or not that appointment is for a specified period. Any appointment of an Alternate immediately ceases if:

- (a) the Appointor ceases to be a Council Member; or
- (b) the Alternate ceases to be a member; or
- (c) an event occurs which would cause the Alternate to cease to be a Council Member under rule 3.11 if the Alternate were a Council Member.

4.5 **Appointments and revocations in writing**

The Appointor must appoint, and revoke the appointment of, any Alternate in writing. The appointment or revocation is not effective until a copy is provided to the Association.

5. **POWERS OF THE COUNCIL**

5.1 **Powers generally**

Replaces section
198A

- (a) Except as otherwise required by the Act, any other applicable law or this constitution, the Council:
 - (i) has power to manage the business of the Association; and
 - (ii) may exercise every right, power or capacity of the Association to the exclusion of the Association in general meeting and the members.
- (b) Without limiting rule 5.1(a), the Council has power:
 - (i) to manage direct supervise and control the activities and affairs of the Association;
 - (ii) to provide for the maintenance and protection of the property of the Association;
 - (iii) to arrange for the payment of all salaries and of all bills and accounts;
 - (iv) to fill from time to time any vacancy in the office of Principal;
 - (v) to determine the Principal's salary, duties, powers and authorities;
 - (vi) after consultation with the Principal, to determine the number and salaries of other Teachers and other employees;
 - (vii) to fix all other allowances and outgoings payable out of the funds of the Association;
 - (viii) to fix the annual and other periodical fees charges and payments made for tuition of pupils and the terms and conditions upon which pupils may be received as pupils and/or as boarders;
 - (ix) to fix the days of opening and closing of school terms and vacations;
 - (x) to delegate to the Principal or other officers, under rule 7 or 8, such powers and authorities as the Council shall determine; and
 - (xi) to cause to be kept to a correct register of all pupils, their ages, the date of entering and departure from the school together with the names and addresses of their parents or guardians.

5.2 **Exercise of powers**

A power of the Council can be exercised only:

- (a) by resolution passed at a meeting of the Council or otherwise in accordance with rule 12; or
- (b) in accordance with a delegation of the power under rule 7 or 8.

6. **EXECUTING NEGOTIABLE INSTRUMENTS**

Replaces section
198B

Negotiable instruments can be executed, accepted or endorsed for and on behalf of the Association by being signed by the Principal and countersigned by such other persons as the Council may from time to time appoint or in such other manner as the Council may from time to time decide. The Association may execute, accept, or endorse negotiable instruments only in the manner so determined.

7. **PRINCIPAL**

7.1 **Appointment and power of Principal**

Replaces section
198C and 201J

- (a) The Council may appoint a person to fill from time to time any vacancy in the office of Principal. The Council may appoint a Principal either for a specified term (but not for life) or without specifying a term. The Principal must be a member. Subject to this constitution, the Principal has all the duties, and can exercise all the powers and rights, of a Council Member.
- (b) Subject to any regulations made by Council, the Principal is responsible, and accountable to Council, for:
 - (i) the appointment, performance and removal of all Teachers and other employees; and
 - (ii) the general discipline and efficiency of the school.

7.2 **Delegation to the Principal**

The Council may delegate any of the powers of the Council to the Principal:

- (a) on the terms and subject to any restrictions the Council decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Council, and may revoke the delegation at any time.

This rule does not limit rule 8.

7.3 **Retirement and removal of Principal**

The Principal is not:

- (a) required to retire under rule 3.4 or 3.5; or
- (b) required to retire, or, for the avoidance of doubt, to be taken into account in determining the number of Council Members to be ineligible for immediate re-election under rules 3.8 and 3.9,

but (subject to any contract between the Association and that Principal) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Council Members.

7.4 **Termination of appointment of Principal**

The appointment of the Principal terminates if the Council removes the Principal from the office of Principal (which, without affecting the rights of the Principal under any contract between the Association and the Principal, the Council has power to do), whether or not the appointment was expressed to be for a specified term.

8. **DELEGATION OF COUNCIL POWERS**

8.1 **Power to delegate**

The Council may delegate any of its powers as permitted by section 198D.

8.2 **Power to revoke delegation**

The Council may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

8.3 **Terms of delegation**

A delegation of powers under rule 8.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Council decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Council thinks appropriate.

8.4 **Proceedings of committees**

Subject to the terms on which a power of the Council is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this constitution which regulate the meetings and proceedings of the Council.

9. COUNCIL MEMBERS' DUTIES AND INTERESTS

9.1 Compliance with duties under the Act

Each Council Member must comply with sections 180 to 183.

9.2 Council Member can hold other offices etc

A Council Member may:

- (a) hold any office or place of profit or employment other than that of the Association's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including the Association) or partnership other than the Association's auditor; or
- (c) be a creditor of any corporation (including the Association) or partnership; or
- (d) enter into any agreement with the Association.

9.3 Disclosure of interests

Each Council Member must comply with section 191.

9.4 Council Member interested in a matter

Each Council Member must comply with section 195 in relation to being present, and voting, at a Council meeting that considers a matter in which the Council Member has a material personal interest. Subject to section 195:

- (a) a Council Member may be counted in a quorum at a Council meeting that considers, and may vote on, any matter in which that Council Member has an interest;
- (b) the Association may proceed with any transaction that relates to the interest and the Council Member may participate in the execution of any relevant document by or on behalf of the Association;
- (c) the Council Member may retain benefits under the transaction even though the Council Member has the interest; and
- (d) the Association cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191, paragraph (c) applies only if it is disclosed before the transaction is entered into.

9.5 **Agreements with third parties**

The Association cannot avoid an agreement with a third party merely because a Council Member:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Council meeting that considers or votes on that agreement.

9.6 **Obligation of secrecy**

Every Council Member and Secretary must keep the transactions and affairs of the Association and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of the Association;
- (b) by the Council or the Association in general meeting; or
- (c) by law.

The Association may require a Council Member, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Council Member or Secretary must do so if required by the Association.

10. **COUNCIL MEMBERS' REMUNERATION**

10.1 **Restrictions on payments to Council Members**

The Association must not pay fees to a Council Member and must not make any other payment to a Council Member except in accordance with rule 10.2.

10.2 **Payments to Directors with Council approval**

With the approval of Council the Association may pay to a Council Member:

- (a) reasonable out-of-pocket expenses (including travelling and accommodation) incurred in carrying out duties as a Council Member where the amount payable does not exceed an amount previously approved by Council;
- (b) reasonable remuneration for any service rendered by the Council Member to the Association in a professional or technical capacity, other than in the capacity as Council Member, where the provision of the service has the prior approval of Council;
- (c) reasonable remuneration where the Council Member is an employee of the Association and the terms of employment have been approved by Council;
- (d) interest on money lent by the Council Member to the Association at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;

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- (e) reasonable remuneration for goods supplied by the Council Member to the Association in the ordinary course of business;
 - (f) reasonable rent for premises leased by the Council Member to the Association; and
 - (g) any payment required or authorised by rule 11.

11. OFFICERS' INDEMNITY AND INSURANCE

11.1 Indemnity

Subject to and so far as permitted by Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, and subject to any approval required under rule 10.2:

- (a) the Association must, to the extent the person is not otherwise indemnified, indemnify every officer of the Association and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than the Association or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Association or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Association may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

11.2 Insurance

Subject to the Act and any other applicable law, the Association may enter into, and pay premiums on, a contract of insurance in respect of any person.

11.3 Former officers

The indemnity in favour of officers under rule 11.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of the Association or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

11.4 Deeds

Subject to the Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, the Association may, without limiting a person's rights under this rule 11, enter into an agreement with a person who is or has been an officer of the Association or any of the Association's subsidiaries, to give effect to the rights of the person under this rule 11 on any terms and conditions that the Council thinks fit.

12. COUNCIL MEETINGS

12.1 Convening Council meetings

Replaces section
248C

A Council meeting may be convened by any of:

- (a) the President;
- (b) 3 Council Members; or
- (c) the Principal,

and the Secretary must convene a Council meeting on request by any of the above.

12.2 Notice of Council meeting

The convenor of each Council meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to:
 - (i) each Council Member who is in Victoria; and
 - (ii) each Alternate in respect of whom the Appointor has given notice under rule 4.2 requiring notice of Council meetings to be given to that Alternate or whose Appointor is not given notice due to being outside Victoria; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Council Member does not result in a Council meeting being invalid.

12.3 Use of technology

A Council meeting may be held using any means of audio or audio-visual communication by which each Council Member participating can hear and be heard by each other Council Member participating or in any other way permitted by section 248D. A Council meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Council Members present at the meeting is located or, if an equal number of Council Members is located in each of 2 or more places, at the place where the chair of the meeting is located.

12.4 Chairing Council meetings

Replaces section
248E

The President is entitled to chair Council meetings. In the absence of the President, the Vice-President is entitled to chair Council meetings. If neither the President nor the Vice-President is present within 15 minutes after the time for which a Council meeting is called or neither is willing to chair the meeting, the Council Members present must elect a Council Member present to chair the meeting.

12.5 **Quorum**

Replaces section
248F

Unless the Council decides otherwise, the quorum for a Council meeting is the greater of 3 or not less than half the number of Council Members then in office. An Alternate who is also a Council Member may only be counted once toward a quorum. A Council Member is treated as present at a meeting held by audio or audio-visual communication if the Council Member is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D, the Council must resolve the basis on which Council Members are treated as present.

12.6 **Majority decisions**

Replaces section
248G

A resolution of the Council must be passed by a majority of the votes cast by Council Members entitled to vote on the resolution. If an equal number of votes is cast for and against a resolution, the chair of the meeting has a casting vote.

12.7 **Procedural rules**

The Council may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

12.8 **Written resolution**

Replaces section
248A

If all the Council Members entitled to receive notice of a Council meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Council resolution in those terms is passed at the time when the last Council Member signs.

12.9 **Additional provisions concerning written resolutions**

For the purpose of rule 12.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Council Members, are treated as 1 document;
- (b) signature of a document by an Alternate is not required if the Appointor of that Alternate has signed the document;
- (c) signature of a document by the Appointor of an Alternate is not required if that Alternate has signed the document in that capacity; and
- (d) a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Council Member that is sent to the Association is a document signed by that Council Member at the time of its receipt by the Association.

12.10 **Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Council Member or member of a committee is valid even if it is later discovered that:

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- (a) there was a defect in the appointment of the person; or
 - (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

13. MEETINGS OF MEMBERS

13.1 Annual general meeting

The Association must hold an annual general meeting in accordance with section 250N and within 4 months after the end of its financial year.

13.2 Calling meetings of members

- (a) A meeting of members:
 - (i) may be convened at any time by the Council;
 - (ii) must be convened by the Council when required by rule 13.2(b), section 249D or 250N or by order made under section 249G.
- (b) The Council must convene a meeting of members on the request of not less than 5 members who are entitled to vote at the general meeting. The request must:
 - (i) be in writing; and
 - (ii) state any resolution to be proposed at the meeting; and
 - (iii) be signed by the members making the request; and
 - (iv) be given to the Association.
- (c) If the Council does not, within 21 days after a request under rule 13.2(b) is given, call a meeting, the members who made the request or any 5 members may call and arrange to hold a meeting of members. The meeting must be called in the same way, so far as is possible, in which general meetings of the Association may be called.

Rule 13.2(a)
replaces section
249C

13.3 Notice of meeting

Subject to rule 13.4, at least 21 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Council Member (other than an Alternate); and
- (c) to the auditor.

Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

13.4 **Short notice**

Subject to sections 249H(3) and (4):

- (a) if the Association has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

13.5 **Postponement or cancellation**

Subject to sections 249D(5) and 250N, the Council may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting.

13.6 **Fresh notice**

Replaces section
249M

If a meeting of members is postponed or adjourned for 1 month or more, the Association must give new notice of the resumed meeting.

13.7 **Technology**

See section 249S

The Association may hold a meeting of members at 2 or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

13.8 **Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

14. **PROCEEDINGS AT MEETINGS OF MEMBERS**

14.1 **Member present at meeting**

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

14.2 Quorum

Replaces sections 249T(1) and (2)

The quorum for a meeting of members is 7 members. Each individual present may only be counted once toward a quorum. If a member has appointed more than 1 proxy or representative only 1 of them may be counted towards a quorum.

14.3 Quorum not present

Replaces sections 249T(3) and (4)

If a quorum is not present within 40 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D or rule 13.2(b), the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Council decides and notifies to members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
 - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

14.4 Chairing meetings of members

Replaces sections 249U(1) to (3)

The President is entitled to chair meetings of members. In the absence of the President, the Vice-President is entitled to chair meetings of members. If neither the President nor the Vice-President is present within 10 minutes after the time for which a meeting of members is called or neither is willing to chair the meeting, the members present must elect a member or Council Member present to chair the meeting.

14.5 Attendance at general meetings

See section 249V

- (a) Every member has the right to attend all meetings of members.
- (b) Every Council Member has the right to attend and speak at all meetings of members.
- (c) The auditor has the right to attend any meeting of members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

14.6 Adjournment

Replaces section 249U(4)

Subject to rule 13.6, the chair of a meeting of members at which a quorum is present:

- (a) may; and
- (b) must, if directed by ordinary resolution of the meeting, adjourn it to another time and place.

14.7 **Business at adjourned meetings**

Replaces section
249W(2)

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

15. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

15.1 **Appointment of proxies**

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to the Association:

See section 249X

- (a) that complies with section 250A(1); or
- (b) in any other form and mode that is, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Council.

15.2 **Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the Appointor is an individual, the power of attorney must be signed in the presence of at least 1 witness.

15.3 **Deposit of proxy appointment forms, powers of attorney and proxy appointment authorities**

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by the Association at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours (or any lesser period specified in the notice of meeting) before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

15.4 **Corporate representatives**

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

15.5 **Standing appointments**

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

15.6 **Suspension of proxy or attorney's powers if member present**

A proxy or attorney has no power to act for a member at a meeting at which the member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a member at a meeting at which the member is present by attorney.

15.7 **Priority of conflicting appointments of attorney or representative**

If more than 1 attorney or representative appointed by a member is present at a meeting of members and the Association has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 15.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

15.8 **More than 1 current proxy appointments**

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Association receives a further appointment of proxy from that member which would result in there being more than 1 proxy of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

15.9 **Continuing authority**

Replaces section
250C(2)

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Association has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

16. ENTITLEMENT TO VOTE

16.1 Number of votes

Replaces section
250E(2)

Subject to section 250A(4):

- (a) each financial member has 1 vote on a show of hands or a poll; and
- (b) a financial member who is present and entitled to vote and is also a proxy, attorney or representative of another financial member has:
 - (i) on a show of hands, 1 vote only;
 - (ii) on a poll, an additional 1 vote for each financial member for whom the member acts as a proxy, attorney or representative.

16.2 Casting vote of chair

If an equal number of votes is for and against a resolution at a meeting of members and:

Replaces
section 250E(3)

- (a) the chair of the meeting is a member, the chair has a casting vote; or
- (b) the chair of the meeting is not a member, the matter is decided in the negative.

16.3 Voting restrictions

If:

- (a) the Act requires that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those members have no right to vote on that resolution and the Association must not count any votes purported to be cast by those members. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and the Association must not count it and on a poll rule 17.3(c) applies.

16.4 Decision on right to vote

Replaces section
250G

A member or Council Member may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chair of the meeting, whose decision is final.

17. HOW VOTING IS CARRIED OUT

17.1 Method of voting

Replaces sections
250J(1) and (2)

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 17.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the declaration by the chair of the meeting of a decision on a show of hands is final.

17.2 Demand for a poll

See section 250L

A poll may be demanded on any resolution (except a resolution concerning the election of the chair of a meeting) by:

- (a) at least 2 members entitled to vote on the resolution; or
- (b) the chair of the meeting.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

17.3 When and how polls must be taken

Replaces section
250M

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 17.3(c), in the manner that the chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 17.3(c), in the manner that the chair of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be treated as cast in that way;
- (d) a person voting who has the right to cast 2 or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

18. OFFICE BEARERS

18.1 Appointment

At the first meeting of Council after the annual general meeting (which must be held as soon as practicable, and in any event within 21 days after the annual general meeting) the Council must:

- (a) elect from among Council Members, a President and a Vice-President; and

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- (b) appoint a Secretary and a Treasurer.

18.2 **Terms and conditions of office**

Replaces
section 204F

A Secretary or Treasurer holds office on the terms (including as to remuneration) that the Council decides. The Council may vary any decision previously made by it in respect of a Secretary or Treasurer.

18.3 **Cessation of Secretary/Treasurer's appointment**

The person automatically ceases to be a Secretary or Treasurer if the person:

- (a) is not permitted by Act (or an order made under the Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage the Association under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Association; or
- (e) is removed from office under rule 18.4.

18.4 **Removal from office**

The Council may remove a Secretary or Treasurer from that office whether or not the appointment was expressed to be for a specified term.

19. **MINUTES**

19.1 **Minutes must be kept**

The Council must cause minutes of:

- (a) proceedings and resolutions of meetings of the Association's members;
- (b) the names of Council Members present at each Council meeting or committee meeting;
- (c) proceedings and resolutions of Council meetings (including meetings of a committee to which Council powers are delegated under rule 8);
- (d) resolutions passed by Council Members without a meeting; and
- (e) disclosures and notices of Council Members' interests,

to be kept in accordance with sections 191, 192 and 251A.

19.2 **Minutes as evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

19.3 **Inspection of minute books**

The Association must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B.

20. **COMPANY SEALS**

20.1 **Common seal**

The Council:

- (a) may decide whether or not the Association has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

20.2 **Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Council. The Council must not authorise the use of a seal that does not comply with section 123.

20.3 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by 2 Council Members;
- (b) by 1 Council Member and 1 Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Council.

21. **FINANCIAL REPORTS AND AUDIT**

21.1 **Association must keep financial records**

The Council must cause the Association to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Council Member and the auditor to inspect those records at all reasonable times.

21.2 **Financial reporting**

The Council must cause the Association to prepare a financial report and a directors' report that comply with Part 2M.3 and must report to members in accordance with section 314 no later than the deadline set by section 315.

21.3 **Audit**

The Council must cause the Association's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

21.4 **Conclusive reports**

Audited financial reports laid before the Association in general meetings are conclusive except as regards errors notified to the Association within 3 months after the relevant general meeting. If the Association receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

21.5 **Inspection of financial records and books**

Replaces section
247D

Subject to rule 19.3 and section 247A, a member who is not a Council Member does not have any right to inspect any document of the Association except as authorised by the Council or by ordinary resolution.

22. **REGISTER OF MEMBERS**

The Association must set up and maintain a register of members.

In accordance with section 169, the Register must contain the following information:

- (a) the name and address of each member;
- (b) the date on which the entry of the member's name in the Register is made;
- (c) the name and details of each person who stopped being a member within the last 7 years;
- (d) the date on which the person stopped being a member; and
- (e) an index of members' names if the Association has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

23. **WINDING UP**

If the Association is wound up any surplus property must not be paid to members but must be paid or transferred to a company or institution which:

- (a) has objects similar or in part similar to the objects of the Association; and

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- (b) prohibits the distribution of income and property among its or their members to an extent at least as great as is imposed on the Association under rule 1.3,

such company or institution to be determined by the members of the Association at or before dissolution and in default by a court having jurisdiction in the matter.

24. NOTICES

24.1 Notices by Association

A notice is properly given by the Association to a person if it is:

- (a) in writing signed on behalf of the Association (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

24.2 Overseas members

A member whose registered address is not in Australia may notify the Association in writing of an address in Australia to which notices may be sent.

24.3 When notice is given

A notice to a person by the Association is regarded as given and received:

- (a) if it is delivered personally:
 - (i) by 5 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
- (b) if it is sent by fax or electronic message:
 - (i) by 5 pm (local time in the place from which it is sent or given) on a business day - on that day; or

Replaces section
249J(4)

-
- (ii) after 5 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
 - (c) if it is sent by mail:
 - (i) within Australia - 1 business day after posting; or
 - (ii) to a place outside Australia - 3 business days after posting.

A certificate in writing signed by a Council Member or Secretary stating that a notice was sent is conclusive evidence of service.

24.4 **Business days**

For the purposes of rule 24.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

24.5 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

24.6 **Notices to "lost" members**

If:

- (a) on 2 or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Council believes on other reasonable grounds that a member is not at the address shown in the Register or notified to the Association under rule 24.2,

the Association may give effective notice to that member by exhibiting the notice at the Association's registered office for at least 48 hours.

This rule ceases to apply if the member gives the Association notice of a new address.