

FINLAYSONS  
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# CONSTITUTION

Sports Association for Adelaide Schools Incorporated

20 May 2021

**FINLAYSONS LAWYERS**  
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## 1. DEFINITIONS AND INTERPRETATION

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### 1.1 Definitions

In this Constitution, unless the context otherwise requires, the following terms have the following meanings:

**Act** means the *Associations Incorporation Act 1985 (SA)*.

**AGM** means an annual General Meeting convened in accordance with clause 9.

**Associate Member** means a Member which meets the eligibility criteria in clause 6.3.

**Association** means Sports Association for Adelaide Schools Incorporated (ABN 60 546 568 741).

**Board** means the committee of management of the Association, as appointed from time to time under this Constitution.

**Board Member** means a member of the Board, as appointed from time to time under this Constitution.

**Board Meeting** means a meeting of the Board Members convened under clause 11.

**Business Day** means a day other than a Saturday, Sunday, or public holiday in Adelaide, South Australia.

**By-Laws** means the by-laws, charters, rules, regulations, policies and/or codes of the Association (as amended from time to time) made in accordance with clause 23.

**Chairperson** means a person appointed or elected to the office of Chairperson of the Association in accordance with clause 11.9.

**Code of Conduct** means the code of conduct adopted in accordance with clause 11.16 of this Constitution, as amended from time to time.

**Committee** has the meaning as defined in clause 12.1(a).

**Deputy Chairperson** means a person appointed or elected to the office of Deputy Chairperson of the Association in accordance with clause 11.9.

**Entrance Fee** means the sum (if any) payable by a successful applicant for membership, as determined by the Board from time to time.

**Executive Officer** means a person appointed as the Executive Officer of the Association in accordance with clause 14 and includes a person acting in that position.

**Financial Year** means each 12-month period ending on 30 June.

**Full Member** means a Member which meets the eligibility criteria in clause 6.2(c).

**General Meeting** means a meeting of the Members for the purpose of conducting the business of the Association and includes an AGM and a Special General Meeting.

**Mediator** has the meaning as defined in clause 18(e).

**Member** means any person who is admitted to the membership of the Association and whose name is entered into the Register and includes any category of member.

**Objects** means the Objects of the Association as set out in clause 3.

**Office** means the registered office of the Association from time to time.

**Register** means the register of Members maintained by the Association in accordance with the Act.

**School Head** has the meaning as defined in clause 10.1.

**Special General Meeting** means a General Meeting of the Members of the Association other than an AGM.

**Special Resolution** means a special resolution as defined in the Act.

**Subscription** means the sum (if any) payable annually by a Member, as determined by the Board from time to time.

**Voting Member** means a Full Member. No other Members have the right to vote at General Meetings.

## 1.2 Interpretation

In this Constitution, unless the contrary intention appears:

- (a) a reference to this Constitution is a reference to this Constitution as amended, varied or substituted from time to time;
- (b) the singular includes the plural and conversely;
- (c) if a word or phrase is defined, its other grammatical forms have the corresponding meaning;
- (d) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity;
- (e) a reference to a person includes the person's successors, permitted substitutes and permitted assigns (and, where applicable, their legal personal representatives);
- (f) an obligation, covenant or agreement on the part of two or more persons binds them jointly and severally;
- (g) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or annexure to, this Constitution;
- (h) a reference to legislation is to be construed as a reference to that legislation and any subordinate legislation or regulations under it, as amended, re-enacted or replaced from time to time;
- (i) references to communications in writing include communications made by email;
- (j) a reference to dollars and \$ is to Australian currency;
- (k) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions;
- (l) references to agree, approve or consent are references to agreement, approval or consent (as the case may be) in writing; and
- (m) an expression has, in a provision of this Constitution which relates to a particular provision of the Act, the same meaning as in that provision of the Act.

## 1.3 Severance

If any provision of this Constitution or any phrase contained in it is invalid or unenforceable, the phrase or provision is to be read down if possible, so as to be valid and enforceable, and otherwise it will be severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Constitution.

## 1.4 Model rules

The model rules under the Act are expressly displaced by this Constitution.

## 1.5 Headings

The headings and table of contents are for convenience only and do not affect interpretation.

## **2. NAME**

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The name of the Association is “Sports Association for Adelaide Schools Incorporated”.

## **3. OBJECTS**

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The objects of the Association are to:

- (a) facilitate, promote and conduct various sporting activities and competitions between Member schools and their students, with an emphasis on Saturday organised sports;
- (b) provide educational purpose and educational value to Member schools and their students through encouraged participation in organised sporting activities and competitions of the highest standard;
- (c) promote universal values of friendship, integrity, mutual respect, dignity, collegiality and fellowship between Member schools and their students;
- (d) foster a culture of fair behaviour, good sportspersonship and ethical participation in sporting activities between Member schools and their students; and
- (e) undertake and or do all such things or activities which are necessary, incidental or conducive to the advancement of the above Objects.

## **4. POWERS OF THE ASSOCIATION**

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### **4.1 General**

The Association has the following powers:

- (a) the powers set out in section 25 of the Act;
- (b) the power to affiliate, amalgamate, co-operate and enter into reciprocal arrangements with another association or body having objects similar to those of the Association provided that such other association or body has objects and powers not inconsistent with the Objects; and
- (c) the power to do all such other acts and things as are reasonably necessary for, or in connection with or incidental to, the performance, exercise, or discharge of its functions or the Objects.

### **4.2 Actions authorised by law**

Where applicable law authorises or permits an association to do any matter or thing if so authorised or permitted by its constitution, the Association is and will be taken by this clause to be authorised or permitted to do that matter or thing.

## **5. MEMBERSHIP**

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### **5.1 Register of Members**

- (a) The Board must keep the Register containing the full names and addresses of all Members, and other such particulars as the Board may prescribe from time to time.
- (b) Every Member is required to communicate any change in their (physical or email) address to the Association in writing no later than 28 days after the date of the change, and any



such change of address will be entered in the Register. The latest address in the Register is deemed to be the Member's registered address.

- (c) Subject to the Act, confidentiality considerations and privacy laws, the Register may be used to further the Objects, in such manner as the Board considers appropriate.

## **5.2 Application for membership**

- (a) Any person who meets the eligibility criteria specified in clauses 6.2(c) or 6.3(c) (as applicable) may apply to the Board to be admitted as a Member of the Association.
- (b) Unless otherwise approved by the Board, an application for Full Membership or Associate Membership must be provided to the Board before 30 June in the calendar year preceding the year in which the applicant proposes to start participating in sports facilitated or promoted by the Association.
- (c) Any application for Full Membership or Associate Membership must clearly specify which category of membership is being applied for and otherwise be:
  - (i) in writing;
  - (ii) made in a form determined by the Board from time to time;
  - (iii) signed by or on behalf of the applicant;
  - (iv) accompanied by a lodgement fee (if any) determined by the Board from time to time.

## **5.3 Chairperson to make recommendation**

- (a) Following receipt of an application for membership, the application will be considered by:
  - (i) the Executive Officer; or
  - (ii) if no Executive Officer has been appointed, the Chairperson,who will make and submit to a written recommendation regarding the application to the Board as soon as reasonably practicable.
- (b) Failure by the Executive Officer or Chairperson to make a written recommendation before the relevant Board Meeting mentioned in clause 5.4(a) will not prevent the application from being considered and determined by the Board.

## **5.4 Admission of Members**

- (a) The Board will consider all applications for membership at:
  - (i) the first Board Meeting after the application has been received; or
  - (ii) where the application has been received less than 2 weeks before the Board Meeting mentioned in clause 5.4(a)(i), at the next Board Meeting.
- (b) All Board Members must be provided with notice of a person's application for membership prior to the Board determining that person's application for membership.
- (c) An applicant for membership of the Association is to be admitted as a Member on the approval of the Board.
- (d) When an applicant has been accepted for membership, the Board will notify the applicant of the acceptance and request payment of the Entrance Fee (if any).

- (e) If the applicant does not pay the Entrance Fee (if any) within the time prescribed by the Board, the acceptance of the applicant's application for membership is cancelled, unless the Board decides otherwise.

### **5.5 Rejected applications**

- (a) The Board is not required to give any reason for rejecting an application for membership.
- (b) An applicant whose application is rejected by the Board is entitled to make a personal representation to the Board in support of their application. Having heard that representation the Board may in its absolute discretion confirm or reverse its original decision to reject the nomination and is not obliged to give reasons for such decision.

### **5.6 No liability**

Except as otherwise provided by law, a Member is not liable to contribute to the payment of the debts and liabilities of the Association or the costs, charges and expenses in winding up of the Association.

### **5.7 Rights of membership are personal**

The rights and privileges of every Member are not transferable by any manner to another person.

## **6. MEMBER CATEGORIES**

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### **6.1 Member categories**

- (a) The Association will have 2 categories of Member, as specified in this clause 6; Full Members and Associate Members.
- (b) In order to be admitted (and remain) as a Member in any of the 2 categories mentioned in this clause 6, the applicant must meet the applicable eligibility criteria.

### **6.2 Full Members**

- (a) Full Members will be entitled to participate in the sporting competitions and other activities which are promoted and facilitated by the Association from time to time.
- (b) Full Members have:
  - (i) full voting rights at each General Meeting of the Association (1 x vote per Full Member); and
  - (ii) representation on the Board through their nominated Board Directors from time to time (subject to clause 10).
- (c) In order to be admitted (and remain admitted) as a Full Member, the applicant must meet the following eligibility criteria:
  - (i) it must be a R-12 or 7-12 school in the greater metropolitan Adelaide region; and
  - (ii) it must have at least 25 teams which participate in organised school sports facilitated or promoted by the Association during each calendar year; and
  - (iii) it must comply with clause 10 (by ensuring that where required, its School Head is available to hold, or otherwise holds, office as a Board Member); and
  - (iv) it must make available to the Association its 'director of sport' or 'sports coordinator' (or similar) to participate in the Committees of the Association from time to time.

### **6.3 Associate Members**

- (a) Associate Members will be entitled to participate in the sporting competitions and other activities which are promoted and facilitated by the Association from time to time.
- (b) Associate Members are not entitled to:
  - (i) voting rights at General Meetings of the Association;
  - (ii) the right to have representation on the Board through nominated Board Members or to participate in Board Meetings.
- (c) In order to be admitted (and remain admitted) as an Associate Member, the applicant must meet the following eligibility criteria:
  - (i) it must be a R-6, R-12 or 7-12 school in the greater metropolitan Adelaide region;
  - (ii) it must have at least 1 team which participates in organised school sports facilitated or promoted by the Association during each calendar year; and
  - (iii) it must demonstrate an intention to grow its sport program (from lower primary or lower secondary) and its involvement in organised school sports facilitated or promoted by the Association over time.

## **7. MEMBERSHIP FEES**

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### **7.1 Entrance Fee**

- (a) The Board may determine that an Entrance Fee is payable by an applicant for membership of the Association.
- (b) The Board may determine the amount of the Entrance Fee from time to time.
- (c) The Board may prescribe different amounts for, or defer or waive the requirement to pay, the Entrance Fee in respect of any person or category of person applying to become a Member or category of Member.

### **7.2 Annual Subscriptions**

- (a) Full Members and Associate Members must pay Subscriptions to the Association, which are to be paid annually in advance.
- (b) The Board may determine the amount of the Subscriptions payable by the Members from time to time.
- (c) The Board may prescribe different amounts for, or defer or waive the requirement to pay, Subscriptions in respect of any Member or category of Member.

### **7.3 Non-payment of annual Subscription**

- (a) If a Member's Subscriptions (or any part of its Subscriptions) remains unpaid after they become due, the Board may give notice to the Member of that fact and notify the Member that it must pay the outstanding Subscriptions within a specified period (as determined by the Board).
- (b) If a Member's Subscriptions (or any part of its Subscriptions) remains unpaid on the expiration of the period specified in the notice issued pursuant to clause 7.3(a), the Member will be taken to be in breach of this Constitution for the purposes of clause 8.2.

### **7.4 Fees are non-refundable**

Unless otherwise determined by the Board, all Entrance Fees and Subscriptions are non-refundable (upon suspension, relegation or cessation of a membership or otherwise).

## **8. CESSATION OF MEMBERSHIP**

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### **8.1 Resignation**

A Member may at any time, by giving notice in writing to the Board, resign as a Member. The resignation will be effective from the end of the then current school year and that Member's name will be removed by the Register.

### **8.2 Suspension, relegation and expulsion by Board**

Subject to clause 8.3, if any Member:

- (a) is in breach of the provisions of this Constitution or any By-Laws;
- (b) is guilty of any act or omission which, in the opinion of the Board, is unbecoming of a Member, prejudicial to the interests of the Association or otherwise brings the Association into disrepute; or
- (c) no longer, in the reasonable opinion of the Board, meets the eligibility criteria for its category of membership as specified in clause,

the Board may:

- (d) if the member is Full Member, relegate the Member's membership status (so that it becomes an Associate Member); or
- (e) suspend or expel the Member from membership of the Association and, in the case of expulsion, remove the Member's name from the Register.

### **8.3 Opportunity to address the Board**

The Board may not suspend, relegate or expel a Member under clause 8.2 unless:

- (a) reasonable notice has been given to the Member, stating the date, time and place at which the question of suspension or expulsion of that Member is to be considered by the Board, and the nature of the alleged breach or act or omission; and
- (b) the Member has been provided with an opportunity to address the Board in respect of the alleged breach, act or omission or failure to meet the required eligibility criteria.

### **8.4 Automatic cessation**

A Member will automatically cease to be a Member if it becomes insolvent, has an external administrator (or similar) appointed to manage its affairs or a controller or managing controller is appointed over any of its assets (as such terms are defined in the *Corporations Act 2001* (Cth)).

## **9. MEETINGS OF MEMBERS**

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### **9.1 AGMs**

- (a) The AGM of the Members is to be held in accordance with the time period stated in section 39 of the Act each year (and in any event before the end of term 3 of the school year each year).
- (b) The ordinary business of an AGM is:
  - (i) to confirm the minutes of the previous AGM and of any Special General Meeting held since the previous AGM;

- (ii) to consider the financial statements and related reports for the preceding year;
  - (iii) to appoint auditors in accordance with this Constitution;
  - (iv) to discuss the general business of the Association; and
  - (v) to transact any other business which under this Constitution or the Act ought to be transacted at an AGM.
- (c) The AGM may transact special business of which notice is given in accordance with clause 9.3(a)(i).

## 9.2 Special General Meetings

- (a) The Board may, when it thinks fit, call a Special General Meeting of the Association at any time.
- (b) The Board must, on the written requisition of 3 or more Voting Members, call a Special General Meeting.
- (c) A requisition for a Special General Meeting under clause 9.2(b):
  - (i) must state the purpose of the meeting;
  - (ii) must be signed on behalf of each Voting Member making the requisition;
  - (iii) must be delivered to the Board;
  - (iv) may consist of several documents in like form, each signed by one or more of the Members making the requisition.
- (d) If the Board does not call a Special General Meeting to be held within 28 days after the delivery of the requisition under clause 9.2(b) (**Expiry Date**), the Voting Members making the requisition may call a Special General Meeting to be held not later than 2 months after the Expiry Date.
- (e) A Special General Meeting called by Voting Members must be called in the same way as nearly as possible as one which is called by the Board.
- (f) All reasonable expenses which are validly incurred in calling a Special General Meeting must be borne by the Association.

## 9.3 Notices of General Meetings

- (a) A notice of General Meeting will specify the place, the day, the hour and the format of the meeting and the general nature of the business to be transacted at the meeting and must:
  - (i) where a Special Resolution is proposed, be given to all Members at least 21 days before the General Meeting; and
  - (ii) in any other case, be given to all Members at least 14 days before the General Meeting; and
  - (iii) contain any other information required by the Act.
- (b) Notice of every General Meeting must be given to:
  - (i) every Member;
  - (ii) each Board Member; and
  - (iii) the auditor of the Association (if any).
- (c) Other than those persons specified by clause 9.3(b), no other person is entitled to receive notice of a General Meeting.

- (d) In computing the period of notice under clause 9.3(a), both the day on which the notice to Members is given or taken to be given and the day of the meeting convened by it are to be disregarded.
- (e) Subject to clause 9.8(c), notice of adjourned General Meetings, or business to be transacted at an adjourned General Meeting, need not be given.
- (f) The non-receipt of a notice convening a General Meeting by, or the accidental omission to give notice to, any person entitled to receive notice will not invalidate the proceedings at, or any resolution passed at, that meeting.

#### **9.4 Business of General Meetings**

- (a) The only business that can be transacted at a General Meeting is the business set out in the notice convening the meeting.
- (b) A proposition or motion under clause 9.4(a) must be included in the relevant notice of General Meeting unless the Board has resolved, acting reasonably, that the proposition or motion is either frivolous, unlawful, defamatory, or otherwise inappropriate.

#### **9.5 Quorum**

- (a) No business will be transacted at any General Meeting unless a quorum of Voting Members is present personally or by proxy at the time when the meeting proceeds to business.
- (b) Except as otherwise provided for in this Constitution, at least 50% of all Voting Members as recorded in the Register must be present personally or by proxy for a quorum to be achieved.

#### **9.6 If quorum not achieved**

If a quorum is not present within 30 minutes after the time appointed for the General Meeting:

- (a) where the meeting was convened on the requisition of Voting Members, the proposed meeting will be dissolved; and
- (b) in any other case:
  - (i) the meeting stands adjourned to a day and at a time and format as the Board decides or, if no decision is made by the Board, to the same day in the next week at the same time and format; and
  - (ii) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting will be dissolved.

#### **9.7 Chairperson**

- (a) Subject to clause 9.7(b), the Chairperson or, in the Chairperson's absence, the Deputy Chairperson will preside as chair at every General Meeting.
- (b) Where a General Meeting is held and:
  - (i) there is no Chairperson or Deputy Chairperson present; or
  - (ii) the Chairperson or Deputy Chairperson is not present within 15 minutes after the time appointed for the meeting,the Board Members present will choose one of the Board Members present to chair the meeting.
- (c) In the absence of all Board Members, a Member elected by the General Meeting will chair the meeting.

**9.8 Adjournments**

- (a) The chair of the General Meeting may, with the consent of the meeting at which a quorum is present, and will if directed by the meeting, adjourn the meeting from time to time and from place to place.
- (b) No business may be transacted at any adjourned General Meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (c) When a General Meeting is adjourned for 30 days or more, notice of the adjourned General Meeting must be given as in the case of an original General Meeting.

**9.9 Conduct at a General Meeting**

- (a) Subject to any By-Laws, the Act, and this Constitution, the chair of the meeting may give necessary directions for the conduct of any General Meeting and the ruling of the chair of the meeting will be final unless overruled by a resolution of the General Meeting.
- (b) The chair of the meeting must allow Voting Members a reasonable opportunity to ask questions.
- (c) The chair of the meeting may disallow debate on business that is not within the notice of meeting or required by the Act.
- (d) Any question requiring a decision must be in the form of a motion which must be submitted in writing prior to the meeting and be proposed and seconded before being discussed.

**9.10 General Meetings using technology**

- (a) Subject to the Act and this Constitution, the Association may hold a General Meeting at 2 or more locations using any technology approved by the Board that gives the Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- (b) Subject to the Act, anyone using such technology is taken to be present in person at the General Meeting.
- (c) If the Association holds a General Meeting using technology in accordance with this clause 9.10, in addition to the matters prescribed by clause 9.3 of the Constitution, the Association must ensure that a notice of such General Meeting sets out that the Association is holding a General Meeting using technology in accordance with clause 9.10 and provide each Voting Member with all information reasonably required to participate in that General Meeting and to vote at that General Meeting (including via direct vote or proxy).

**9.11 Voting at General Meetings**

- (a) Any resolution to be put to a vote at a General Meeting is to be determined by a show of hands (of all Voting Members) unless a poll is demanded.
- (b) A declaration by the chair of the General Meeting that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting will be taken as conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (c) A poll for a resolution may be demanded by:
  - (i) the chair of the General Meeting; or
  - (ii) as otherwise provided for by the Act.
- (d) A demand for a poll may be withdrawn.

- (e) Subject to this Constitution and the Act, all Voting Members entitled to attend and vote at General Meetings are entitled to 1 x vote and may vote:
  - (i) personally;
  - (ii) by proxy;
  - (iii) by direct vote; or
  - (iv) by any other way prescribed by the Board.

**9.12 Procedure for poll**

- (a) Subject to any By-Laws, a poll will be taken in the manner and at the time the chair of the General Meeting directs.
- (b) The result of the poll will be a resolution of the General Meeting at which the poll was demanded.
- (c) The demand for a poll will not prevent a General Meeting from continuing for the transaction of any business other than that on which a poll has been demanded.

**9.13 Chair’s casting vote**

In the case of an equality of votes on a show of hands or on a poll, the chair of the General Meeting has a casting vote in addition to any deliberative vote to which the chair may be entitled as a Member.

**9.14 Restriction on voting rights**

A Voting Member is not entitled to vote at a General Meeting unless all sums due and payable by the Voting Member in respect of membership of the Association have been paid.

**9.15 Objections to qualification to vote**

- (a) An objection to a person's qualification to vote may be raised only at the General Meeting or adjourned General Meeting at which the vote objected to is tendered.
- (b) Any objection will be referred to the chair of the meeting, whose decision will be final.
- (c) A vote allowed after an objection will be valid for all purposes.

**9.16 Proxies**

- (a) A Voting Member who is entitled to attend and cast a vote at a General Meeting may appoint another Member as the Member's proxy to attend and vote for the Voting Member at the meeting.
- (b) An instrument appointing a proxy must be in writing, be duly signed for or on behalf of the appointor, and contain the following information:
  - (i) the Association’s name;
  - (ii) the appointor’s full name and registered address;
  - (iii) the proxy’s full name and office held by the proxy; and
  - (iv) the meeting(s) at which the proxy may be used.
- (c) An undated proxy is taken to be dated on the day that it is received by the Office of the Association.
- (d) The Board has the power to prescribe the form of an instrument appointing a proxy from time to time. In the absence of a prescribed form of proxy, any instrument



appointing a proxy which complies with the requirements contained within this Constitution is valid.

- (e) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution, and where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.
- (f) In the absence of any direction contained in the instrument appointing a proxy specifying the manner in which the proxy is to vote in respect of a particular resolution, the proxy may vote as the proxy thinks fit on any motion or resolution.

#### **9.17 Lodgement of proxies**

For an instrument appointing a proxy to be valid, the instrument appointing the proxy must be received by the Association (at the Office or at such other place as is specified for that purpose in the notice convening the General Meeting) no less than 48 hours before the time for holding the General Meeting at which the person named in the instrument proposes to vote.

#### **9.18 Validity of proxies**

- (a) A vote cast in accordance with the terms of an instrument of proxy will be valid even if before the vote was cast the appointor revoked the proxy or power, unless written notification of the revocation is received by the Office of the Association before the meeting, adjourned meeting or the taking of the poll at which the relevant instrument was used. The chair's decision as to whether a proxy has been revoked will be final and conclusive.
- (b) A proxy will be revoked by the appointor attending and taking part in any meeting.

#### **9.19 Where proxy is incomplete**

- (a) No instrument appointing a proxy will be treated as invalid merely because it does not contain:
  - (i) the address of the appointor or of a proxy;
  - (ii) the proxy's name or the name of the office held by the proxy; or
  - (iii) in relation to any or all resolutions, an indication of the manner in which the proxy is to vote.
- (b) Where the instrument does not specify the name of a proxy, the instrument will be taken to be given in favour of the chair of the General Meeting.

#### **9.20 Direct voting**

- (a) The Board may determine that at any General Meeting, a Voting Member is entitled to a direct vote in respect of that resolution.
- (b) In this clause 9, a "direct vote" includes a vote delivered to the Association by post or electronic means approved by the Board, and "direct voting" means the process associated with the making of a direct vote.
- (c) The Board may prescribe By-Laws to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes, including for the purposes of determining a quorum.

#### **9.21 Treatment of direct votes**

A direct vote on a resolution at a General Meeting in accordance with clause 9.20 is of no effect and will be disregarded, if:

- (a) at the time of the resolution, the person who cast the direct vote:
  - (i) is not entitled to vote on the resolution; or
  - (ii) would not be entitled to vote on the resolution if the person were present at the meeting at which the resolution is considered;
- (b) had the vote been cast in person at the meeting at which the resolution is considered:
  - (i) the vote would not be valid; or
  - (ii) the Association would be obliged to disregard the vote;
- (c) subject to any By-Laws prescribed by the Board, the person who cast the direct vote is present in person at the meeting at the time the resolution is considered; or
- (d) if the direct vote was cast otherwise than in accordance with any By-Laws prescribed by the Board under clause 9.20(c).

## **10. BOARD MEMBERS**

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### **10.1 Board Members**

The Board will be constituted by a maximum of 10 Board Members, all of whom must be a head, headmaster or principal (**School Head**) of a Full Member in order to hold office.

### **10.2 Requirement to hold office**

- (a) During any period where there are 10 or less Full Members, the School Head of each Full Member is required to hold office as a Board Member at all times for the relevant Full Member to continue to meet the eligibility criteria for Full Membership in clause 6.2(c).
- (b) During any period where there are more than 10 Full Members, the School Heads of 10 Full Members (determined in accordance with clauses 10.3, 10.4 and 24) are required to hold office as Board Members at all times for such Full Members to continue to meet the eligibility criteria for Full Membership in clause 6.2(c).

### **10.3 Increase to more than 10 Full Members**

- (a) Where the membership of the Association increases from 10 Full Members to more than 10 Full Members:
  - (i) the existing Board Members will remain as Board Members (and clause 10.4(b) will apply in respect of the Full Members who have appointed them); and
  - (ii) the new Full Member(s), will not be required (or entitled) to appoint a Board Member until it is their turn as per clause 10.4(e).
- (b) Where the membership of the Association increases from less than 10 Full Members to more than 10 Full Members as a result of multiple new Full Members being appointed on the same date:
  - (i) the existing Board Members will remain as Board Members (and clause 10.4(b) will apply in respect of the Full Members who have appointed them); and
  - (ii) the existing Board Members will determine by lot in a random draw which of the new Full Members will be required to appoint their School Heads as Board Members (in order to achieve a Board of 10 Board Members).
- (c) Following the process in clause 10.3(b)(ii):

- (i) clause 10.4(b) will apply in respect of the new Full Member(s) which are required to ensure that their School Head holds office as a Board Member; and
- (ii) the other new Full Member(s) will not be required (or entitled) to appoint a Board Member until it is their turn as per clause 10.4(e).

#### **10.4 More than 10 Full Members – rotation of the Board**

- (a) Where the Association has more than 10 Full Members, the initial Board of 10 Board Members will be constituted by the School Heads of each Full Member who is required to ensure its School Head holds office as a Board Member pursuant to clause 10.3 or 24 (as the case may be).
- (b) Each Full Member whose School Head sits on the initial Board of 10 Board Members must ensure that its School Head remains as a Board Member at all times for the relevant Full Member to continue to meet the eligibility criteria for Full Membership in clause 6.2(c), subject to the following rotation rules.
- (c) During any period that the Association has more than 10 Full Members, on the date of each AGM:
  - (i) one Board Member will vacate their office in accordance with clause 10.4(d)(i) and the Full Member who appointed them will cease to be required (or entitled) to appoint a Board Member; and
  - (ii) the Board will determine which Full Member will be required to appoint a replacement Board Member in accordance with clause 10.4(d)(ii).
- (d) If clause 10.4(c) applies:
  - (i) the Board Member which vacates their office on the date of each AGM in accordance with clause 10.4(c) will be:
    - (A) as agreed by the Board; or
    - (B) failing agreement, determined by lot in a random draw, provided that the persons currently serving as Chairperson and Deputy Chairperson will not be eligible to participate in the draw; and
  - (ii) the Full Member who is required to appoint a replacement Board Member will be:
    - (A) subject to clause 10.4(d)(ii)(B), the Full Member that has not had their School Head on the Board for the longest period of time; or
    - (B) where two or more Full Members have not had their School Head on the Board for an equally long period of time, the Full Member determined by the Board by lot in a random draw.
- (e) Where, as a result of any rotations under clause 10.4(d), it is a Full Member's turn to appoint a Board Member, that Full Member must ensure that its School Head holds office as a Board Member at all times in order to continue to meet the eligibility criteria for Full Membership in clause 6.2(c), subject to the rotation rules above.

#### **10.5 Vacation of office of Board Member**

- (a) If a Member ceases to be a Full Member of the Association and its School Head is sitting on the Board, its School Head will automatically be taken to have vacated the office of Board Member.
- (b) If when clause 10.5(a) applies (or when a Full Member who is required to appoint its School Head as a Board Member otherwise ceases to be a Full Member) there are 10

or more Full Members remaining, the Board must determine which Full Member will be required to appoint a replacement Board Member so as to ensure that the Board has 10 Board Members (following the process in accordance with clause 10.4(d)(ii)10.4(d)(i)). That Full Member must ensure its School Head holds office as a Board Member at all times in order to continue to meet the eligibility criteria for Full Membership in clause 6.2(c), subject to the rotation rules in clause 10.4.

- (c) In addition to the circumstances in which the office of a Board Member becomes vacant under this clause 10 or the Act, the office of a Board Member becomes vacant if the Board Member:
- (i) resigns or is removed from its position as head, headmaster or principal of its Full Member School;
  - (ii) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
  - (iii) becomes bankrupt, insolvent or an insolvent under administration (as defined in the *Bankruptcy Act 1966* (Cth) or the *Corporations Act 2001* (Cth));
  - (iv) is not present, at meetings of the Board for a continuous period of 12 months, without leave of absence from the Board; or
  - (v) resigns from the office by notice in writing to the Association.
- (d) As soon as reasonably practicable following a Board Member's office becoming vacant under clause 10.5(c)(i) to 10.5(c)(v) the relevant Full Member may nominate its replacement School Head to become a Board Member.

## **10.6 Appointment of Board Members**

The Board:

- (a) has the power to appoint Board Members from time to time in accordance with this clause 10; and
- (b) must take all necessary steps to duly appoint a School Head of a Full Member as a Board Member where that Full Member is required to ensure its School Head holds such office to continue to meet the eligibility criteria in clause 6.2(c).

## **10.7 Remuneration and expenses**

- (a) Board Members must not be remunerated by the Association.
- (b) A Board Member may not be reimbursed for expenses incurred in its capacity as Board Member, unless approved by a resolution of the Board.

## **11. BOARD POWERS AND PROCEEDINGS**

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### **11.1 General powers of Board**

- (a) The affairs of the Association will be managed and controlled by the Board which in addition to any powers and authorities conferred by this Constitution may exercise all such powers and do all such things as are within the Objects.
- (b) The Board constitutes the 'committee' for the purposes of the Act.
- (c) The Board has the management and control of the funds and other property of the Association.

- (d) Without limiting clause 11.1(a), the Board has the power to do all things which are not, by the Act or this Constitution, required to be approved by the Association in General Meeting.

### **11.2 Specific powers of Board**

Without limiting the generality of clause 11.1, the Board may exercise all the powers of the Association to borrow or raise money, to charge (of grant any security interest over) any property or business of the Association and to issue debentures or give any other security for a debt, liability or obligation of the Association or of any other person.

### **11.3 Association funds**

The Board may determine the manner in which and persons by whom cheques, promissory notes, bankers' drafts, bills of exchange, other negotiable instruments and electronic funds transfers, and receipts for money paid to the Association, may be signed, drawn, accepted, endorsed, authorised, transmitted or otherwise executed.

### **11.4 Appointment of attorney**

- (a) The Board may, by power of attorney, appoint any person or persons to be the attorney or attorneys of the Association, for the purposes and with the powers, authorities and discretions vested in or exercisable by the Board Members, for such period and subject to such conditions as they think fit.
- (b) Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Board thinks fit and may also authorise the attorney to delegate (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions vested in the attorney.

### **11.5 Proceedings**

Subject to this Constitution and the law, the Board may decide its own procedure.

### **11.6 Meetings**

- (a) The Board must meet at regular intervals at least 4 times per calendar year (with 1 of the 4 Board Meetings to occur on the same date as the AGM) but may meet as often as they deem necessary.
- (b) The Executive Officer must, on the request of any Board Member, convene a Board Meeting.
- (c) Reasonable notice must be given to every Board Member of the place, date and time of every Board Meeting.

### **11.7 Meetings by technology**

- (a) For the purposes of the Act, each Board Member, on becoming a Board Member (and on the adoption of this Constitution or any update or replacement of it), consents to the use of the following technology for calling or holding a Board Meeting:
  - (i) video conference;
  - (ii) teleconference;
  - (iii) any other technology which permits each Board Member to communicate with every other Board Member in real time; or
  - (iv) any combination of the technologies described in clauses 11.7(a)(i), 11.7(a)(ii) and 11.7(a)(iii).

- (b) Where the Board Members are not all in attendance at one place and are holding a Board Meeting using technology and each Board Member can communicate with the other Board Members:
  - (i) the participating Board Members will, for the purpose of every provision of this Constitution concerning Board Meetings, be taken to be assembled together at a meeting and to be present at that meeting; and
  - (ii) all proceedings of those Board Members conducted in that manner will be as valid and effective as if conducted at a Board Meeting at which all of them were present.

### **11.8 Quorum at Board Meetings**

At a Board Meeting:

- (a) at least 3 Board Members must be present to achieve a quorum; and
- (b) no business may be conducted unless a quorum is present.

### **11.9 Chairperson and Deputy Chairperson**

- (a) The Board must elect:
  - (i) a Board Member to hold office as Chairperson; and
  - (ii) another Board Member to hold office as Deputy Chairperson.
- (b) The Chairperson or, in the Chairperson's absence, the Deputy Chairperson, is to chair any Board Meeting.
- (c) The Board will determine the period of time that a Board Member elected to the office of Chairperson or Deputy Chairperson may hold such office.
- (d) Where a Board Meeting is held and:
  - (i) neither a Chairperson nor a Deputy Chairperson has been elected as provided by clause 11.9(a); or
  - (ii) the Chairperson and Deputy Chairperson are not present at the time appointed for the holding of the meeting,

the Board must elect another Board Member to be chair of the meeting.

### **11.10 Decisions at Board Meetings**

- (a) Questions arising at a Board Meeting must be decided by a majority of votes of Board Members present and voting and any such decision will for all purposes be taken to be a decision of the Board.
- (b) Each Board Member is entitled to one vote on a matter arising for a decision by the Board.
- (c) In the case of an equality of votes, the chair of the Board Meeting has a casting vote in addition to any deliberative vote.

### **11.11 Circulating resolutions**

- (a) If a document:
  - (i) is sent to all Voting Members entitled to receive notice of a Board Meeting at which a resolution could be put;
  - (ii) contains the terms of a resolution and a statement that the signatories to it are in favour of that resolution; and

- (iii) has been signed by a majority of the Board Members entitled to vote on that resolution,

a resolution in those terms is passed on the day on which and at the time at which the document was signed by a majority of Board Members and the document has effect as a minute of the resolution.

- (b) For the purposes of clause 11.11(a), two or more separate documents containing statements in identical terms each of which is signed by one or more Board Members will together be taken to constitute one document containing a statement in those terms signed by those Board Members at the time at which the last of those documents to be signed was signed by a Board Member.

#### **11.12 Conflicts of interest**

- (a) The Board Members must comply with sections 31 and 32 of the Act regarding disclosure of interests and voting on contracts in which a Board Member has an interest.
- (b) A Board Member must declare their interest in any contractual, selection, disciplinary, or financial matter in which a conflict of interest arises or may arise and must, unless otherwise determined by the Board, absent themselves from discussions of such matters and will not be entitled to vote in respect of such matters. If the Board Member casts a vote, the vote must not be counted.
- (c) In the event of any uncertainty as to whether it is necessary for a Board Member to absent themselves from discussions and refrain from voting, the issue should be immediately determined by vote of the Board. If this is not possible, the matter will be adjourned or deferred.

#### **11.13 Disclosure of interests**

- (a) The nature of the interest of a Board Member must be declared at the meeting of the Board at which the relevant matter is first taken into consideration, if the interest then exists. In any other case, the interest should be revealed to the Board at the next meeting of the Board. If a Board Member becomes interested in a matter after it is made or entered into, the declaration of the interest must be made at the first meeting of the Board held after the Board Member becomes interested.
- (b) All disclosed interests must also be disclosed at each AGM in accordance with the Act.

#### **11.14 General disclosure**

A general notice stating that a Board Member is a member of, or associated with, any entity and that they are 'interested' in all transactions with that entity is sufficient declaration under clause 11.13. After the distribution of the general notice, it is not necessary for the Board Member to give a special notice regarding any particular transaction with that firm or company.

#### **11.15 Recording disclosures**

Any declaration made, any disclosure or any general notice given by a Board Member in accordance with clauses 11.12, 11.13, and/or 11.14 must be recorded in the minutes of the relevant Meeting.

#### **11.16 Board Code of Conduct**

- (a) The Board will adopt and keep in force, and may from time to time amend, a "Code of Conduct" by which all:
  - (i) Board Members; and

- (ii) members of Committees (whether those persons are Board Members or Members of the Association or not),  
for the time being are, and will be, bound.
- (b) A copy of the Code of Conduct, as amended and in force from time to time, will be provided to each Board Member and Committee member upon election or appointment to the Board or Committee and at any subsequent time when that document is amended.

## **12. COMMITTEES**

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### **12.1 Establishment of Committees**

- (a) The Board may establish committees to advise the Association on any matter relating to the Association (**Committees**).
- (b) The Board may delegate any of its powers to Committees consisting of such member or members of the Board and other individuals as the Board thinks fit. Any Committee must exercise its delegate powers pursuant to any restrictions imposed on it by the Board.
- (c) A Committee to which the Board has delegated any powers must exercise the powers delegated in accordance with any directions of the Board. Any such delegated power exercised by a Committee will be taken to have been exercised by the Board.

### **12.2 Composition and role of Committees**

- (a) Unless inconsistent with this Constitution, the Board may:
  - (i) appoint and remove Committee members, or make provision for the appointment and removal of Committee members;
  - (ii) specify that the Committee consists of a single individual or a number of individuals; and
  - (iii) determine the functions of any Committee.
- (b) The membership of Committees is not restricted to Board Members or Members.

### **12.3 Committee decisions**

- (a) If the Board establishes a Committee for a particular matter, then the Board must obtain the opinion of that Committee before the Board makes any decision on that matter.
- (b) The opinion or decisions of a Committee are recommendations only and do not bind the Board in any way.

### **12.4 Committee rules**

The Board may make and amend rules for each Committee.

## **13. DEFECTS IN APPOINTMENTS**

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- (a) All acts done by any Board Meeting, a Committee, or a person acting as a Board Member are as valid as if each person was duly appointed and qualified to be a Board Member or a member of the Committee.
- (b) Clause 13(a) applies even if it is afterwards discovered that there was some defect in the appointment of a person to be a Board Member or a member of a Committee or to



act as a Board Member or Committee member or that a person so appointed was disqualified.

## **14. OFFICERS AND OTHER DELEGATIONS**

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### **14.1 Executive Officer**

- (a) The Board may appoint an Executive Officer on such terms and conditions, as to remuneration and otherwise, as the Board decides.
- (b) Subject to clause 14.1(a), a Board Member may hold the office of Executive Officer.
- (c) The Board may at any time terminate the appointment of the Executive Officer, subject to applicable laws and the terms of the Executive Officer's employment agreement.

### **14.2 Executive Officer to act as public officer**

If an Executive Officer has been appointed, it will act as secretary and public officer of the Association for the purposes of the Act and effect the necessary notifications required by law.

### **14.3 Delegation of powers to Executive Officer**

- (a) The Board may delegate to the Executive Officer the power (subject to such reservations on the power as are decided by the Board) to conduct the day-to-day management and control of the business and affairs of the Association.
- (b) Delegation to the Executive Officer may include the power and responsibility to:
  - (i) develop business plans, budgets, strategies, policies, processes and codes of conduct for consideration by the Board and to implement them to the extent approved by the Board;
  - (ii) act as treasurer of the Association and manage the financial and other reporting mechanisms of the Association;
  - (iii) approve and incur expenditure subject to specified expenditure limits;
  - (iv) sub-delegate their powers and responsibilities to employees or internal management committees of the Association;
  - (v) make recommendations to the Board regarding new Members;
  - (vi) make recommendations to the Board regarding changes to Entrance Fees and Subscriptions from time to time;
  - (vii) prepare agendas for Board and General Meetings;
  - (viii) attend all Board and General Meetings;
  - (ix) report regularly on the activities of, and issues relating to, the Association;
  - (x) in consultation with the Board, employ such personnel as are deemed necessary or appropriate from time to time; and
  - (xi) have any other powers and responsibilities which the Board considers appropriate to delegate to the Executive Officer.
- (c) The Executive Officer is entitled, subject to a determination otherwise by the Board, to attend all meetings of the Association, all meetings of the Board and any Committees and may speak on any matter, but does not have a vote (unless the Executive Officer is also a Board Member, in which case the Executive Officer may vote, but only in their capacity as a Board Member).

**14.4 Secretary, treasurer or other officers**

- (a) The Board may from time to time:
  - (i) create any other position or positions in the Association, for example, secretary or treasurer with the powers and responsibilities as the Board may from time to time confer; and
  - (ii) appoint any person, whether or not a Board Member, to any position or positions created under clause 14.4(a)(i).
- (b) The Board may at any time terminate the appointment of a person holding a position created under clause 14.4(a)(i) and / or may abolish the position.

**14.5 Delegations**

Where the context permits and subject to any provision to the contrary under the Act or any other law, any function or power of the Board, Executive Officer under this Constitution may be delegated in writing:

- (a) in the Board's case, by Board resolution; and
- (b) otherwise, in accordance with and subject to resolutions of the Board and delegation and authority policies determined by the Board from time to time.

**15. COMMON SEAL AND EXECUTING DOCUMENTS**

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- (a) The Association may have a common seal. If the Association has a common seal, it may also have a duplicate common seal.
- (b) A seal may be used only by the authority of the Board, or of a Committee authorised by the Board to use the seal. Every document to which the seal is affixed must be signed by:
  - (i) two (2) Board Members; or
  - (ii) a Board Member and the Executive Officer (or another person appointed by the Board to countersign that document or a class of documents in which that document is included).
- (c) This clause 15 does not limit the ways in which the Association may execute a document.

**16. FINANCIAL REPORTING**

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**16.1 Accounts and auditor**

- (a) The Association must cause proper accounts to be kept of its financial affairs and must for each Financial Year, prepare a statement of accounts that present fairly the results of the activities of the Association.
- (b) Where required by the Act, a properly qualified auditor or auditors must be appointed by the Board and the remuneration of such auditor or auditors fixed and duties regulated in accordance with the Act.
- (c) If an auditor has been appointed, the accounts and statements of accounts of the Association must for each Financial Year be audited by auditors appointed at the AGM.
- (d) The following people may not be appointed as an auditor:
  - (i) an officer of the Association, including a Board Member (and any partners, employers or employees of officers); or

- (ii) an employee of the Association, including the Executive Officer (and any partners, employers or employees of employees).
- (e) The auditor may be removed by the Board.
- (f) The auditor has a right of access at all reasonable times to the accounting records and other records of the Association and is entitled to require from any officer of the Association such information and explanations as he or she desires for the purpose of an audit.
- (g) The auditor must provide the Board with reports that comply with the Act with sufficient time for the Board to lay such material before the Members as and when required (including for the AGM).
- (h) The reasonable fees and expenses of the auditor are payable by the Association.

### **16.2 Inspection of records**

- (a) Subject to the Act, the Board may authorise a Member to inspect books of the Association (to the extent, at the time and places and under the conditions the Board considers appropriate).
- (b) A Member (other than a Board Member) does not have the right to inspect any document of the Association except as provided by the Act or authorised by the Board.

## **17. WINDING UP**

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- (a) The Association may be wound up in a manner provided for in the Act.
- (b) If the Association is wound up, the assets remaining after paying all liabilities must not be paid or distributed among the members, former members or Associates of members or former members but must be transferred to an institution or institutions:
  - (i) having similar purposes to those of the Association;
  - (ii) which prohibits or prohibit the distributions of its or their income among members to an extent at least as great as is imposed on the Association by this Constitution, or
  - (iii) which a General Meeting by Special Resolution decides.

## **18. DISPUTE RESOLUTION**

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- (a) The dispute resolution procedure set out in this clause 18 applies to disputes arising under or in relation to this Constitution between:
  - (i) a Member and another Member; and
  - (ii) a Member and the Board.
- (b) In this clause 18, 'Member' includes any former Member who was a Member not more than six months before the dispute occurred and who is involved in the dispute.
- (c) The parties to a dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (d) If the parties are unable to resolve the dispute at the meeting referred to in clause 18(c), or if a party fails to attend that meeting, then the parties must, within 10 days, attend a meeting with the Executive Officer to try and resolve the dispute.

- (e) If the parties are unable to resolve the dispute at the meeting with the Executive Officer pursuant to clause 18(d), or if a party fails to attend that meeting, then the parties must, within 10 days, arrange to hold a meeting in the presence of a registered mediator (**Mediator**).
- (f) The Mediator must be:
  - (i) a person chosen by agreement between the parties; or
  - (ii) in the absence of agreement:
    - (A) in the case of a dispute between a Member and another Member, a person appointed by the Board; or
    - (B) in the case of a dispute between a Member and the Board, a person who is a mediator appointed by the President of the Law Society of South Australia.
- (g) Subject to clause 18(h), a Member of the Association can be a Mediator.
- (h) The Mediator must not be a person who:
  - (i) has a personal interest in the dispute; or
  - (ii) is biased in favour of or against any party.
- (i) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (j) The Mediator, in conducting the mediation, must:
  - (i) give the parties to the mediation process every opportunity to be heard;
  - (ii) allow due consideration by all parties of any written statement submitted by any party; and
  - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.
- (k) The Mediator must not determine the dispute.
- (l) The Mediation must be confidential and without prejudice.
- (m) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute by other means, including instituting legal proceedings.
- (n) Nothing in this clause 18 prevents a party to the dispute instituting proceedings to seek injunctive or other urgent declaratory relief in respect of the dispute.

## **19. NOTICES**

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### **19.1 How notices are to be given**

- (a) Any Member who has not provided the Association a notice containing its up-to-date physical or email address (for registration in the Register) at or to which all notices and documents of the Association may be served or sent will not be entitled to receive any notice.
- (b) A notice may be given by the Association to any Member by:
  - (i) serving it on the Member personally;
  - (ii) sending it by post to the Member or leaving it at the Member's address as shown in the register or the address supplied by the Member to the Association for the giving of notices; or

- (iii) transmitting it electronically to the email address given by the Member to the Association for giving notices.
- (c) A notice may be given by a Member to the Association by:
  - (i) sending it by post to the Office or leaving it at the Office; or
  - (ii) transmitting it electronically to the email address for the Association of the Executive Officer as specified on the Associations' website from time to time.

### **19.2 When notices are taken to be effected**

- (a) Where a notice is sent by post, service of the notice will be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and to have been effected 7 Business Days after the date of posting.
- (b) Where a notice is sent by email or other electronic transmission, service of the notice will be taken to be effected by properly addressing and sending or transmitting the notice and, unless a delivery failure notice or similar has been received by the sender, to have been effected on the day it is sent.
- (c) If the result under this clause 19.2 is that a notice would be taken to have been effected on a day that is not a Business Day, then it will be taken to have been effected on the next Business Day.

## **20. INDEMNITY AND INSURANCE**

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- (a) The Association is to indemnify each officer of the Association out of the assets of the Association to the relevant extent against any liability incurred by the officer in or arising out of the conduct of the business of the Association or in or arising out of the discharge of the duties of the officer.
- (b) Where the Board considers it appropriate, the Association may execute a documentary indemnity in any form in favour of any officer of the Association.
- (c) Where the Board considers it appropriate, the Association may:
  - (i) make payments by way of premium in respect of any contract effecting insurance on behalf of or in respect of an officer of the Association against any liability incurred by the officer in or arising out of the conduct of the business of the Association or in or arising out of the discharge of the duties of the officer; and
  - (ii) bind itself in any contract or deed with any officer of the Association to make the payments.
- (d) Where the Board considers it appropriate, the Association may give a former Board Member access to certain papers, including documents provided or available to the Board and other papers referred to in those documents.
- (e) In this clause 20:
  - (i) "officer" means:
    - (A) a Board Member or secretary, Executive Officer or employee; or
    - (B) a person appointed as a trustee by, or acting as a trustee at the request of, the Association,
 and includes a former officer;

- (ii) “duties of the officer” includes, in any particular case where the Board considers it appropriate, duties arising by reason of the appointment, nomination or secondment in any capacity of an officer by the Association;
- (iii) “to the relevant extent” means:
  - (A) to the extent the Association is not precluded by law from doing so;
  - (B) to the extent and for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including, but without limitation, an insurer under any insurance policy); and
  - (C) where the liability is incurred in or arising out of the conduct of the business of another corporation or in the discharge of the duties of the officer in relation to another corporation, to the extent and for the amount that the officer is not entitled to be indemnified and is not actually indemnified out of the assets of that corporation; and
- (iv) “liability” means all costs, charges, losses, damages, expenses, penalties and liabilities of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

## **21. INCOME AND PROPERTY OF THE ASSOCIATION**

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- (a) The income and property of the Association must be applied solely towards the promotion of the Objects.
- (b) Except as prescribed in this Constitution or the Act:
  - (i) no portion of the income or property of the Association may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to any Member, Board Member or Committee member; and
  - (ii) no remuneration or other benefit in money or money's worth may be paid or given by the Association to any Member, Board Member or Committee member.
- (c) Nothing in clause 21(b) will prevent payment to any Member, Board Member or Committee member:
  - (i) any services actually rendered to the Association whether as an employee, Board Member or otherwise; or
  - (ii) goods supplied to the Association in the ordinary and usual course of operation;
  - (iii) interest on money borrowed from any Member;
  - (iv) rent for premises demised or let by any Member to the Association; or
  - (v) any out-of-pocket expenses incurred by the Member, Board Member or Committee member on behalf of the Association,

provided that any such payments must not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction and there is no conflict of interest in making the payment.

## **22. AMENDING THIS CONSTITUTION**

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No amendment of or addition to this Constitution may be made except by Special Resolution at a General Meeting of the Members. Any alteration must be registered with Consumer and Business Services, as required by the Act.

## **23. BY-LAWS, RULES, REGULATIONS, POLICIES AND CODES**

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- (a) The Board may from time to time make, alter and repeal by-laws, charters, rules, regulations, policies and codes in relation to:
  - (i) the management of the Association and the carrying out of this Constitution;
  - (ii) defining the duties and powers of the Committees and any sub-committees;
  - (iii) the conduct of the proceedings of its own meetings.
- (b) All such by-laws, charters, rules, regulations, policies and codes, unless inconsistent with this Constitution, are binding upon all Members of the Association.

## **24. TRANSITIONAL PROVISIONS**

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### **24.1 When this clause applies**

- (a) This clause 24 operates despite any other clause in this Constitution to the contrary.
- (b) There will be a transitional period (**Transitional Period**) of 1 month from the date on which this Constitution is adopted (**Adoption Date**) during which:
  - (i) the existing Members of the Association will be converted into Full Members, or Associate Members, as the case may be; and
  - (ii) the existing Board of the Association will be transitioned into a Board that is constituted solely by the School Heads of Full Members.

### **24.2 Transitional Board**

- (a) Any Board Members who hold office on the Adoption Date may, despite any clause in this Constitution to the contrary, continue to hold office as a Board Member of the Association during the Transitional Period (**Transitional Board Members**).
- (b) The Transitional Board Members will have all of the powers of validly appointed Board Members of the Association (subject to this clause 24) and must take all steps and do all things reasonably necessary to ensure that:
  - (i) the affairs of the Association continue and are not detrimentally impacted by the adoption of this Constitution;
  - (ii) the Board of the Association is transitioned so as to be constituted in accordance with clause 10 (and where applicable, clause 24.4) as soon as reasonably practicable following the Adoption Date; and
  - (iii) once this Board transition process has been completed, the Transitional Board Members who no longer qualify to hold office as Board Members resign from their position,

to enable the harmonious transition of the Board in a manner which ensures continuity at Board level and the preservation of the good governance of the Association.

### **24.3 Membership conversion**

- (a) No later than 14 days after the Adoption Date (**Conversion Date**), each existing Member of the Association must provide a signed application form to the Board to convert its membership to Full Membership or Associate Membership.
- (b) The membership of such Members will be taken to have converted into their desired membership category on the final day of the Transitional Period.
- (c) Any Members who do not provide a signed application form to the Board to convert their membership to Full Membership or Associate Membership by the Conversion Date will be deemed to be Associate Members.

#### **24.4 Initial Board on adoption**

Where there are more than 10 Members who have applied for conversion to Full Membership as at the Conversion Date, the initial Board for the purposes of clause 10.4(a) will be determined as follows:

- (a) any Transitional Board Members who are School Heads of Members who have applied for conversion to Full Membership as at the Conversion Date will remain on the Board (and clause 10.4(b) will apply to the Full Members who have appointed them); and
- (b) the Full Members required to appoint the remaining number of Board Members (to ensure the Board has 10 eligible Board Members holding office as soon as reasonably practicable following the Adoption Date) will be determined as follows:
  - (i) the School Heads of all Members who have applied for conversion to Full Membership as at the Conversion Date will be eligible to become a Board Member; and
  - (ii) the Transitional Board Members (acting as a transitional Board) will decide which additional Full Members will be required to appoint their School Head as a Board Member by lot in a random draw.
- (c) Clause 10.4(b) will apply in respect of each Full Member which is required to appoint its School Head as a Board Member pursuant to clause 24.4(b)(ii).

#### **24.5 End of Transitional Period**

The office of any Transitional Board Member, other than such Transitional Board Members who will continue to hold office under clause 24.4(a), will immediately be taken to have become vacant as at the end of the Transitional Period.



Constitution Version Control

Clauses amended	Description of change	General Meeting
		Date of Approval
All	Constitution replaced in its entirety	20/05/2021