



Constitution

Australian Centre for Career Education Ltd

Prepared by:
gadens

Level 13, Collins Arch
447 Collins Street
Melbourne VIC 3000
Australia

T +61 3 9252 2555
F +61 3 9252 2500

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Corporations Act 2001

Public Company Limited by Guarantee

Australian Centre for Career Education Ltd ACN

1. General

1.1 Company Name

The name of the company is Australian Centre for Career Education Ltd (the **Company**).

1.2 Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretations clause at the back of this document.

1.3 Application of the Corporations Act

The Replaceable Rules in the Corporations Act are displaced by this Constitution in their entirety and do not apply to the Company.

2. Charitable purpose and Objects

2.1 Charitable purpose

The principal purpose of the Company is the advancement of education for the public benefit, particularly in relation to career development.

2.2 Objects

In pursuing its charitable purpose, the Company's Objects are to:

- (a) provide career development teaching programs to the public;
- (b) provide career development learning programs to the public;
- (c) develop relevant, innovative and quality career development professional learning and training programs, products and communications media;
- (d) develop, manage and promote quality career education and development projects, services and resources;
- (e) advocate for career education to benefit school leavers, indigenous people, disabled people, rural people, people for whom English is an additional language, the underemployed, and the unemployed in conjunction with schools, parent bodies, Principals, teachers and education groups, government departments, employer bodies, unions, employment agencies, disability and refugee organisations, and other stakeholders;
- (f) conduct and publish career research;

- (g) cooperate and collaborate with government, non-government organisations, as well as other charitable and not-for-profit institutions, or forming commercial or strategic alliances with the same, in pursuit of the Company's objects; and
- (h) do such other things as may be necessary, incidental or conducive to the attainment of the Company's objects and the exercise of its powers.

2.3 Powers under the Corporations Act

The Company has the powers set out in the Corporations Act but only to do all things that are necessary, convenient or incidental to carry out its charitable purpose and the Objects.

3. Income and property of the Company

3.1 Application of income and property

The income and property of the Company will only be applied towards the promotion of the Objects.

3.2 Restriction of transfer of income and property

Subject to clauses 3.3, 3.4 and 20.3, no portion of the income or property will be paid or transferred directly or indirectly to the Members.

3.3 Payment of Company expenses

Nothing in clause 3.2 prevents the payment in good faith of reasonable and proper:

- (a) subject to clause 3.4, payment to a Member for goods or services they have provided or expenses in the ordinary and usual course of business;
- (b) interest on money borrowed from a Member for any of the purposes of the Company (provided the interest rate does not exceed the rate charged by the Company's bank on similar borrowings); or
- (c) rent for premises let by a Member to the Company; or
- (d) payment to a Member in carrying out the Company's charitable purpose(s).

3.4 No Remuneration for Directors

No Remuneration or other benefit may be paid or given by the Company to any Director except:

- (a) for the reimbursement of out-of-pocket expenses incurred on reasonable commercial terms in carrying out the duties of a Director where the amount does not exceed an amount previously approved by a resolution of the Directors; or
- (b) for any service rendered to the Company in a professional or technical capacity, other than in a capacity as a Director, where the terms of service are on reasonable commercial terms and have been previously approved by a resolution of the Directors; or
- (c) relating to an indemnity in favour of the Director or a contract of insurance, as provided for in clause 21.

3.5 Application of Grants

Subject to clauses 3.1 and 3.2, the allocation, distribution, expenditure or appropriation of Grants (including any interest accrued in respect of Grants) must be made in accordance with the terms and conditions that may attach to them and in accordance with any policies and procedures specified in legislation, program guidelines and other conditions issued or prescribed or otherwise imposed by the relevant Government Agency or by its Minister, as applicable.

4. Membership

4.1 Overview of membership structure

There shall be such categories of membership of the Company as the Board may prescribe in By-Laws from time to time.

4.2 Admission to membership

- (a) The Board may admit as a member of the Company any person which:
 - (i) applies for membership to the Company;
 - (ii) meets the relevant eligibility criteria for membership set out in the Membership By-Law;
 - (iii) agrees to be bound by this Constitution and any By-Laws, rules and conventions adopted by the Board from time to time.
- (b) The Board may prescribe a form for application to membership and procedures for processing applications and admission to membership.

4.3 Rights and obligations of Members

- (a) Subject to this clause 4.3 and clause 5.2(a), each Member is entitled to all the privileges of membership and must observe this Constitution and any By-Laws, rules and conventions adopted by the Board from time to time.
- (b) The Board may prescribe in By-Laws that Members holding membership in certain membership categories are not entitled to:
 - (i) be counted in determining a quorum at a general meeting;
 - (ii) vote at a general meeting or in an election of Directors; or
 - (iii) nominate a candidate to stand for election to the Board.
- (c) The rights of a Member are not transferable.

4.4 Member representative

- (a) Each Member that is not a natural person may appoint a natural person as a representative to exercise all or any of the powers the Member may exercise:
 - (i) at meetings of Members; or
 - (ii) at meetings of creditors; or
 - (iii) relating to resolutions to be passed without meetings.

- (b) The appointment may be a standing one.
- (c) The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.
- (d) Each such Member may appoint no more than three representatives. In the event that more than one representative is appointed at any time, only one representative may exercise the Member's powers at any one time, and the remaining representatives will have the right to attend general meetings and contribute to any discussion but not vote.
- (e) Unless otherwise specified in the appointment, the representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting or in voting on a resolution (as applicable).

4.5 Register of Members

- (a) A Register of Members must be kept by the Company, showing in respect of each Member:
 - (i) the full name or the corporate identifier of the Member, as applicable;
 - (ii) the address, telephone and electronic mail address of the Member;
 - (iii) the date of admission to and cessation of membership; and
 - (iv) such other information as the Board may require.
- (b) The electronic mail address of a Member in the Register may serve as the address of the Member for the purpose of service of any notices to the Member, unless otherwise notified by the Member.

4.6 Change of Member details

Each Member must notify the Company in writing of any change in their details within one (1) month after the change.

4.7 Members' liability

The liability of the Members is limited.

5. Subscription Fee

5.1 Payment of Subscription Fee

- (a) The Board may require payment by Members, as a condition of membership, a Subscription Fee of such amount and payable at such times and in such manner as it may determine.
- (b) Each Member must continue to pay the Subscription Fee at the times and at the rate established by the Board unless notified of any change in relation to the Subscription Fee.
- (c) Subscription Fees levied under this Constitution may be recovered as a debt due and payable to the Company in any court of competent jurisdiction.

5.2 Where Subscription Fee unpaid

- (a) Where a Subscription Fee remains due and unpaid by a Member, the Member will not be entitled to:
 - (i) receive notices of meetings of Members; or
 - (ii) nominate a candidate to stand for election to the Board (as applicable); or
 - (iii) attend a meeting of Members; or
 - (iv) be counted in forming a quorum for, or exercise any vote(s) at, any general meeting or election of Directors (as applicable).
- (b) Where a Subscription Fee remains due and unpaid by a Member for 60 days, such Member will cease to hold membership with the Company.

6. Cessation or suspension membership

6.1 Cessation of membership

A Member will cease to hold membership with the Company if that Member:

- (a) has resigned from membership in accordance with clause 6.2;
- (b) is expelled in accordance with clause 6.3;
- (c) has not paid the Subscription Fee as provided for in clause 5.2(b);
- (d) dies;
- (e) is insolvent;
- (f) has an administrator, liquidator or receiver appointed to it; or
- (g) is dissolved or wound up.

6.2 Resignation

A Member may at any time resign its membership of the Company by giving notice in writing to the Company. The resignation of a Member may take immediate effect or with effect from a specified date not more than six (6) months from the date such notice is given to the Company.

6.3 Board suspension or expulsion

- (a) The Board may by resolution suspend or expel a Member in accordance with this clause 6.3 if the Member:
 - (i) has refused or neglected to comply with its obligations under this Constitution or any By-Laws, including ceasing to comply with the Membership By-Law; or
 - (ii) has engaged in conduct which in the opinion of the Board is unbecoming of a Member or prejudicial to the interests of the Company.
- (b) The Company must give the Member:

- (i) written notice which sets out what is alleged against the Member; and
 - (ii) an opportunity to rectify the matter following the provision of such notice.
- (c) If the Board intends to consider a resolution to suspend or expel a Member, the Member who is liable to be suspended or expelled from the Company shall be served with at least one (1) week notice in writing of the Board meeting at which a motion to suspend or expel the Member is to be considered. Such notice must:
- (i) set out the date, place and time of the Board meeting;
 - (ii) set out the intended resolution to expel the Member and the grounds on which it is based; and
 - (iii) inform the Member that it will be given an opportunity to be heard at such meeting in explanation of its conduct, either by oral or written submissions.
- (d) During the term of a Member's suspension, the Member will have no rights or privileges of membership, including without limitation the right to vote at any general meeting or election of Directors.
- (e) If a resolution for the Member's expulsion is passed at the Board meeting, the Member's membership terminates automatically and the Member ceases to be a Member from that time.

6.4 Right of appeal

- (a) Any Member whose membership rights have been suspended or who has been expelled from membership under this clause 6 may give notice to the effect that the Member wishes to appeal against the suspension or expulsion.
- (b) The notice must be in writing and given:
 - (i) to the Board immediately after the vote to suspend or expel the Member is taken; or
 - (ii) to the Company not later than 48 hours after the vote suspend or expel the Member is taken.
- (c) If a person has given notice under clause 6.4(b), an appeal meeting must be convened by the Board as soon as practicable, but in any event not later than 21 days, after the notice is received.
- (d) Notice of the appeal meeting must be given to each Member of the Company who is entitled to vote as soon as practicable and must:
 - (i) specify the date, time and place of the meeting; and
 - (ii) state:
 - (A) the name of the Member suspended or expelled;
 - (B) the grounds for taking that action; and
 - (C) that at the appeal meeting the Members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.
- (e) At an appeal meeting:

- (i) no business other than the question of the appeal may be conducted;
 - (ii) the Board must state the grounds for suspending or expelling the Member and the reasons for taking that action; and
 - (iii) the Member who has been suspended or expelled must be given an opportunity to be heard.
- (f) Following completion of the process contemplated at clause 6.4(e), the Members present and entitled to vote at the appeal meeting must vote by secret ballot on the question of whether the decision to suspend or expel the Member should be upheld or revoked.
- (g) Members may not vote by proxy at an appeal meeting.
- (h) The decision of the Board is upheld if not less than three quarters of the Members present and voting at the appeal meeting vote in favour of the Board's decision.
- (i) If a decision to expel a Member is revoked at an appeal meeting, the Member's membership is reinstated automatically with effect from the date of the appeal meeting.

6.5 Effect of cessation of membership

Upon cessation of membership with the Company, a Member will not be relieved from liability for payment of any outstanding Subscription Fees or other money due or payable by it at the time of termination of membership.

7. Meetings and resolutions of members

7.1 Annual general meetings

The Company must hold an annual general meeting at least once each calendar year.

7.2 Extraordinary general meetings

All general meetings of the Company other than an annual general meeting will be called extraordinary general meetings. All business shall be deemed special that is transacted at a general meeting with the exception of the consideration of the accounts, balance sheet and other financial statements of the Company, the consideration of the ordinary reports to the Board of Directors and the report of the auditors at the annual general meeting.

7.3 Board may call a general meeting

The Board may, at any time, convene a general meeting of the Members of the Company.

7.4 Calling of general meetings pursuant to Members' request

- (a) The Board must call and arrange to hold a general meeting on the request of Members with at least 10% of the votes that may be cast at a general meeting.
- (b) The Members' request must be in writing, state any resolution to be proposed at the meeting, be signed by the Members making the request and otherwise comply with the Corporations Act.
- (c) The Board must call the meeting within twenty-one (21) days after the request is given to the Company pursuant to this clause 7.4, and the meeting must be held no later than 2 months after such request is given to the Company.

- (d) If the Board does not comply with clause 7.4(c), Members with more than 50% of the votes of all the Members who made a request under clause 7.4(a) may call and arrange to hold a general meeting. The meeting must be called in the same way, as far as is possible, in which general meetings of the Company may be called. Such a meeting must be held no later than three (3) months after the request is given to the Company.
- (e) In calling such a general meeting, the Members may ask the Company for a copy of the Register. The Company must give the Members a copy of the Register free of charge.
- (f) If such a general meeting is called, the Company must pay the reasonable expenses incurred by the Members resulting from the Directors' failure to call and arrange to hold the meeting.
- (g) The Company may recover the expenses under clause 7.4(f) from the Directors. However, a Director is not liable for the amount if they prove that they took all reasonable steps to cause the Directors to comply with clause 7.4(c). The Directors who are liable are jointly and individually liable for the amount.

7.5 Notice of general meeting

- (a) The notice calling a general meeting:
 - (i) must be given to every Member;
 - (ii) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this;
 - (iii) must state the general nature of the business to be transacted at the meeting and, if a Special Resolution of the Members is to be proposed at the meeting, set out an intention to propose the Special Resolution of the Members and state the resolution;
 - (iv) will contain a brief description of all special business to be conducted at the meeting; and
 - (v) may specify a place and electronic address for the purposes of proxy appointment.

7.6 Timing of notice of general meeting

- (a) In the case of a general meeting, at least 21 days' notice must be given unless Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- (b) A general meeting cannot be called with fewer than 21 days' notice if it is of a kind where a resolution will be moved to remove a Director or auditor, notwithstanding the preceding clause.

8. Proceedings at general meetings

8.1 Time and place for general meetings

A general meeting must be held at a reasonable time and place.

8.2 How general meetings may be held

- (a) A general meeting may be held:
 - (i) at one or more physical venues; or
 - (ii) at one or more physical venues and using virtual meeting technology; or
 - (iii) using virtual meeting technology only.
- (b) A person participating through the use of technology will be deemed to be present at the meeting in person.
- (c) If virtual technology is used and fails part way through the general meeting, the general meeting or that part of the general meeting affected by the technology failure will be valid unless a Member did not have a reasonable opportunity to participate and a majority of the Members attending agree to invalidate the meeting by a written declaration to that effect.

8.3 Quorum

- (a) No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- (b) The quorum for general meetings comprises ten (10) Members eligible to vote at a general meeting of the Company.
- (c) The quorum must be present at all times during the meeting.

8.4 No quorum present

In the event that a quorum is not present thirty (30) minutes after the time appointed for a meeting:

- (a) where it was convened upon a request made by Members, the meeting will be automatically dissolved;
- (b) in any other case:
 - (i) it will stand adjourned to the same day in the next week at the same time and place, or to such other day (not being more than 14 days after such meeting), time and place as the Board may determine; and
 - (ii) if at such an adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, those Members who are present and entitled to vote, being not less than five (5), will constitute a quorum and may transact the business of the meeting for which the same was called.

8.5 Chairing meeting of Members

- (a) The Chair of the Board will be the chair at every general meeting of the Company or, if the chair of the Board is absent or is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act, the Members present shall elect one of their number to be the chair of the meeting.
- (b) The chair is responsible for the conduct of the general meeting, and for this purpose must give Members a reasonable opportunity to make comments and ask questions (including to the Auditor).

- (c) The chair at any general meeting will be entitled to a deliberative vote and in the case of an equality of votes, whether on a show of hands or on a poll, the chair of a general meeting will be entitled to a second or casting vote.

8.6 Adjournment of meetings

- (a) The chair of a general meeting at which a quorum is present:
 - (i) in his or her discretion may adjourn the general meeting with the consent of the meeting;
 - (ii) must adjourn the general meeting if the meeting directs him or her to do so.
- (b) An adjourned meeting may take place at a different venue to the initial general meeting.
- (c) No business will be transacted at any adjourned meeting other than the business left unfinished at the general meeting from which the adjournment took place.
- (d) When a general meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

8.7 Voting

Subject to this Constitution:

- (a) A Member may vote in person or by proxy.
- (b) On a show of hands and on a poll every Member entitled to vote that is present in person or by proxy will have one vote.

8.8 Voting procedure

- (a) Except where a Special Resolution of the Members is required pursuant to this Constitution and subject to the Corporations Act, a resolution is carried if a majority of the votes cast on the resolution are in favour of the resolution.
- (b) Every question submitted to a meeting will be decided in the first instance by a show of hands unless a poll is demanded in accordance with the Corporations Act.
- (c) Unless a poll is demanded:
 - (i) a declaration by the Chair that a resolution has been carried, carried by a particular majority, or lost; and
 - (ii) an entry to that effect in the minutes of the meeting,

are conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution. The chair is under no obligation to make such a declaration if the chair considers it desirable that the question be decided on a poll and in such case the chair must direct a poll to be taken. In a contested election for Directors, a poll must be taken.

8.9 Poll

- (a) A poll may be demanded on any Members' resolution.
- (b) At a general meeting of the Members, a poll may be demanded by:

- (i) at least five (5) members entitled to vote on the resolution; or
 - (ii) the Chair.
- (c) If a poll is demanded or directed on a matter other than the election of a Chair or the question of an adjournment it must be taken in such manner and at such time and place as the Chair of the meeting directs and the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded. The demand of a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chair must determine the same and such determination made in good faith will be final and conclusive.
- (d) Any poll demanded on the election of a Chair of a meeting or on any question of adjournment must be taken at the meeting and without adjournment.
- (e) The demand for a poll will not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

8.10 Appointment of proxy

A Member who is entitled to attend and cast a vote at a meeting of Members may appoint a person who is a Member of the Company as the Member's proxy to attend and vote for the Member at the meeting.

8.11 Instrument appointing a proxy

- (a) The instrument appointing a proxy must be made in writing.
- (b) An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by subsection 250A(1) of the Corporation Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information contained in section 250A(1) of the Corporations Act.
- (c) The instrument appointing a proxy shall be deemed to confer authority to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- (d) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting as well as for the meeting for which it relates.
- (e) A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- (f) If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chair of a general meeting shall act as the Member's proxy.
- (g) The instrument appointing a proxy may be by letter or any method of electronic transmission, provided it is signed by the appointor and will be nearly as practicable in the following form and the wording shall be identical:

**To: The Secretary
Australian Centre for Career Education Ltd
ACN**

APPOINTMENT OF PROXY

I, _____ of _____
being a Member of **Australian Centre for Career Education Ltd** and entitled
to vote at the general meeting hereof, hereby appoint
of _____
being a Member of the Company or in his/her absence
_____ of _____ being a
Member of the Company as my proxy to vote for me on my behalf at the
general meeting of the Company, to be held on _____ and at
any adjournment of the meeting.

My proxy is authorised to vote:

- (a) in favour of/against* the resolution numbered (#) in the Notice of Meeting;
and
- (b) as my proxy thinks fit in respect of any other resolution.

Signed this _____ day of _____

Witness:

Name:

Signature:

NOTE: If the Member wishes to vote for or against any resolution it must
instruct its proxy accordingly. Unless otherwise instructed, the proxy may vote
as the proxy thinks fit.

* *Delete whichever is not desired.*

8.12 Lodgement of proxy

- (a) In order for an appointment of a proxy for a meeting of Members to be effective, the following documents must be received by the Company at least 48 hours before the time for holding the meeting or adjourned meeting at which the person names in the instrument proposes to vote, or in the case of a poll, at least 24 hours before the taking of the poll:
 - (i) the instrument appointing a proxy; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of the authority.
- (b) The Company receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:
 - (i) the Company's registered office; or
 - (ii) a place or electronic address specified for that purpose in the notice of meeting.

8.13 Validity of proxy

A vote cast in accordance with an appointment of proxy or power of attorney shall be valid even if before the vote was cast the appointor:

- (a) died;
- (b) became mentally incapacitated;
- (c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Company before the commencement of the meeting or adjourned meeting at which the instrument is used.

9. Board of Directors

9.1 Powers and duties of the Board

Subject to the Corporations Act and this Constitution, the business of the Company is to be managed by or under the direction of the Directors. The Directors may exercise all the powers of the Company that are not required by law or this Constitution to be exercised by the Members.

9.2 Number of Directors

- (a) The Board shall comprise a maximum of eight (8) Directors, being:
 - (i) a Chair;
 - (ii) a Deputy Chair;
 - (iii) a Secretary;
 - (iv) a Treasurer; and
 - (v) up to four (4) ordinary Directors.
- (b) The Members may from time to time increase or reduce the number of Directors, provided that the minimum number must always be four (4).

9.3 Secretary and Treasurer

Subject to the Corporations Act, the Secretary and the Treasurer shall have such functions as are prescribed by the Board from time to time.

9.4 Positions to be declared vacant

At each annual general meeting, following receipt of the financial accounts and reports of the Company, the chair of the meeting must declare vacant:

- (a) the positions on the Board of all Directors whose term has expired in accordance with clauses 9.9 and, where relevant, 9.10(b); and
- (b) any positions on the Board which are otherwise unoccupied, including without limitation by reason of the application of clause 9.11;

and hold elections for those positions, in accordance with clauses 9.5 to 9.8.

9.5 Nominations

- (a) Prior to the election of each vacant position, the chair of the meeting must call for nominations to fill that position.

- (b) A Member who is not an employee of the Company and is entitled to vote at the annual general meeting may:
 - (i) nominate himself or herself; or
 - (ii) with the Member's consent, be nominated by another Member entitled to vote at the general meeting.
- (c) A Member who is nominated for a position and fails to be elected to that position may be nominated for any other position for which an election is yet to be held.
- (d) A Member may be nominated for election to more than one position on the Board, but a Member who has been elected to a position on the Board is ineligible to be elected, appointed or to otherwise hold any other position on the Board.

9.6 Election of Chair etc.

- (a) At each annual general meeting, separate elections must be held for such of the following positions as are declared vacant in accordance with clause 9.4:
 - (i) Chair;
 - (ii) Deputy Chair;
 - (iii) Secretary;
 - (iv) Treasurer.
- (b) If only one Member is nominated for the position, the chair of the meeting must declare that Member elected to the position.
- (c) If more than one Member is nominated, a ballot must be held in accordance with clause 9.8.
- (d) On his or her election, the new Chair may take over as chair of the meeting.

9.7 Election of ordinary Directors

- (a) A single election may be held to fill all of the ordinary Director positions as are vacant.
- (b) If the number of Members nominated for the position of ordinary Director is less than or equal to the number to be elected, the Chairperson of the meeting must declare each of those Members to be elected to the position.
- (c) If the number of Members nominated exceeds the number to be elected, a ballot must be held in accordance with clause 9.8.

9.8 Ballot

- (a) If a ballot is required for the election for a position, the chair of the meeting must appoint a Member to act as returning officer to conduct the ballot.
- (b) The returning officer must not be a Member nominated for the position.
- (c) Before the ballot is taken, each candidate may make a short speech in support of his or her election.
- (d) The election must be by secret ballot and, otherwise, shall be conducted by the

returning officer in such manner as is prescribed by the Board from time to time.

9.9 Term

Subject to clause 9.10, each Director will hold office until the second annual general meeting following that at which the person was elected to office, unless the person's term of office ceases earlier in accordance with clause 9.11, after which the person must retire from office.

9.10 Inaugural Directors

Notwithstanding any other provision in this Constitution, the following transitional provision will apply to Directors in office at the date of incorporation of the Company:

- (a) The Inaugural Directors of the Company are the persons that comprised the committee of the Incorporated Association immediately prior to it changing its corporate type and incorporating as the Company and who have consented to act as Directors at the time of the incorporation of the Company.
- (b) The Inaugural Directors of the Company will remain in office until the expiry of their term of office on the committee of the Incorporated Association, unless their office becomes vacant earlier in accordance with clause 9.11. Upon the expiry of their term of office on the board of the Incorporated Association they will be eligible for re-election in accordance with the provisions of this clause 9.

9.11 Vacation of office

The office of Director is vacated automatically if the Director:

- (a) dies;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer their estate;
- (c) becomes bankrupt or makes any general arrangement or composition with his or her creditors;
- (d) becomes an employee of the Company;
- (e) becomes ineligible to be a Member;
- (f) submits his or her resignation in writing to the Company as a Director;
- (g) is removed by a resolution of the Members in accordance with section 203D of the Corporations Act;
- (h) is absent from more than three (3) consecutive meetings of Directors without the prior leave of the Board or fails to respond to three (3) consecutive requests for a circulatory resolution in accordance with clause 10.6 to be passed without a meeting of Directors, unless the Board determines otherwise;
- (i) becomes ineligible to be a Director under a Relevant Law; or
- (j) ceases to hold office by reason of any order made under a Relevant Law or ceases to be eligible to hold office under Relevant Law.

9.12 Casual vacancies

If a casual vacancy arises in the office of a Director at any time, then the vacancy may be filled by the Board. Any person so appointed will hold office until the next annual general meeting of the Company and is then eligible for election.

9.13 Less than minimum number of Directors

The continuing Directors may act despite any vacancy in their body. If the number falls below the minimum number fixed in accordance with this Constitution, the Directors may act only to fill a vacancy on the Board.

9.14 No alternates or proxies

A Director must not appoint an alternate or a proxy to represent the Director or exercise some or all of the Director's powers. For the avoidance of doubt, each Director must act and exercise the powers and responsibilities of the office of Director personally.

10. Directors' meetings

10.1 Directors' meetings

The Board may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit.

10.2 Use of technology to hold Directors' meetings

Subject to the Corporations Act, and without limiting the discretion of the Board to regulate its meetings under this Constitution, a meeting of the Board may, with the consent of all Directors (which consent may be standing), be held by the Directors communicating with each other by any technological means by which they are able to simultaneously hear each other and to participate in the discussion.

10.3 Quorum

A quorum of the Board comprises a majority of the Directors eligible to vote. The quorum must be present at all times during the meeting.

10.4 Chair

- (a) The Chair will preside at Directors' meetings.
- (b) Where a Directors' meeting is held and the Chair is absent or not present within 15 minutes of the time appointed for holding the meeting or is unwilling to act:
 - (i) the Deputy Chair (if one is appointed) will chair the meeting; or
 - (ii) if the Deputy Chair is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the Directors present must choose one of their number to be chair of such meeting.

10.5 Voting

- (a) At a Directors' meeting, each Director present will have one vote.
- (b) All questions arising at any Directors' meeting shall be decided by a majority of votes of the Directors present and entitled to vote and a determination by a

majority of Directors shall for all intents and purposes be deemed a determination of the Directors.

- (c) In case of an equality of votes, the Chair of the Board shall have a second or casting vote.

10.6 Circulatory resolutions of Directors

- (a) If a majority of the total number of Directors have provided consent in writing that they are in favour of a resolution of the Directors which has been circulated to the Directors, such resolution is treated as having been passed at a meeting of the Directors held on the day on which the written consent was provided. If the Directors provide written consent on different days, then a resolution is treated as having been passed on the day on which written consent was last provided by a Director thereby constituting a majority of the total number of Directors. A resolution is not treated as passed on that day if the circular resolution, by its terms, is said to take effect from another specified date.
- (b) For the purposes of this clause 10.6, two (2) or more separate documents containing written consent in identical terms each of which is signed by one or more Directors are together treated as constituting one document containing written consent in those terms signed by those Directors on the respective days on which they signed the separate documents.
- (c) The document or documents referred to in this clause 10.6 are treated as constituting a minute of that meeting and must be entered in books kept for that purpose.

10.7 Validity of acts of Directors

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director or member of a Committee; or
- (b) a person appointed to one of those positions was disqualified,

all acts of the Directors or the Committee before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

10.8 Delegation of Powers

- (a) The Directors may delegate any of their powers, other than those which by law must be dealt with by the Board, to one or more Directors, a Committee, the Chief Executive Officer, any other employee or any other person.
- (b) A delegate must exercise its powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- (c) A delegate may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- (d) The Directors may at any time revoke, withdraw, alter or vary all or any delegation of their powers. No delegation will prevent the exercise of any power by the Directors.

11. Observers

The Board may request the attendance at any meeting of the Board of any person who in the opinion of the Board may be able to assist the Board regarding any matter before it.

12. Committees

12.1 Establishment

The Board may establish one or more committees for such purposes as it thinks fit from time to time.

12.2 Terms of reference

Subject to this Constitution, each Committee will have terms of reference specified by the Board.

12.3 Membership

The membership of each Committee will be determined by the Board. At least one member of a Committee must be a Director, and the Board will appoint the Chair of each Committee.

12.4 Delegation to committee

Without limiting clause 10.8, the Board may delegate any of their powers (other than this power of delegation) to such committees as it thinks fit. The Board may at any time revoke, withdraw, alter or vary all or any of such powers. No delegation will prevent the exercise of any power by the Board.

12.5 Committee powers

Any Committee so formed must, in the exercise of the powers so delegated, or functions entrusted, conform to any directions that may at any time be imposed by the Board. Any power exercised by a Committee will be deemed to have been exercised by the Board.

13. Minutes and Registers

13.1 Minutes

- (a) The Board must keep minute books in which it will record:
 - (i) all appointments of Officers;
 - (ii) all proceedings and resolutions of general meetings, Board meetings and Committee meetings; and
 - (iii) all circular resolutions passed by the Board in accordance with clause 10.6.
- (b) Minutes of meetings or passing a circular resolution must be signed by the Chair within a reasonable time after the meeting is held or the resolution is passed (as applicable).

13.2 Registers

The Company must keep all registers required under the Corporations Act.

14. By-Laws

14.1 Power to make By-Laws

Subject to and consistent with this Constitution, the Board may from time to time make by-laws for or with respect to all matters relating to the organisation, management and good governance of the Company and in particular, without affecting the generality of the foregoing, for or with respect to:

- (a) the ethical standards and rules of the Company;
- (b) policies and procedures for the Company's Members, employees and volunteers;
- (c) the governance and management of the Company;
- (d) any other matter not being inconsistent with this Constitution or the Corporations Act which relates to the operations or conduct of the Company.

14.2 Variation of By-Law

The Board may, by resolution, repeal, revoke, alter, amend or otherwise modify any By-Law or part of a By-Law.

15. Execution of documents

- (a) Any document or instrument will be properly executed and binding on the Company if the document is signed by any two Directors or a Director and the Secretary. The Directors may from time to time determine or authorise that a document or instrument on behalf of the Company may be executed in a different way.
- (b) All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed in accordance with delegations authorised by the Board or as otherwise approved by the Board.

16. Chief Executive Officer

16.1 Appointment of Chief Executive Officer

The Board may appoint a person to be the Chief Executive Officer of the Company on such terms, conditions and Remuneration as the Board determines. The Chief Executive Officer shall be responsible to the Board for the leadership, stewardship and management of the Company.

16.2 Delegations to the Chief Executive Officer

Without limiting clause 10.8, the Board may from time to time delegate to the Chief Executive Officer such of the powers exercisable under this Constitution by the Board as it sees fit (including the powers of delegation), and may confer such powers for such objects and purposes, and upon such terms and conditions, and with such restrictions, as the Board thinks expedient, but not to the exclusion of, or in substitution for, all or any of the powers of the Board. The Board may at any time or times alter, revoke, withdraw or vary all or any of such delegations.

16.3 Board meetings

The Chief Executive Officer:

- (a) shall receive notice of and attend all Board meetings, except where otherwise requested by the Board;
- (b) may speak, but not vote, at Board meetings; and
- (c) is not to be counted towards quorum at Board meetings.

17. Accounts and audit

17.1 Preparation of accounts

- (a) The Board must cause the Company to prepare financial accounts in accordance with the law.
- (b) The Board must cause the Company to prepare a financial report, a Director's report and any other reports that comply with the ACNC Act and any other relevant legislation.

17.2 Auditing of financial report

The Board must cause the Company's financial report for each financial year to be audited by the Auditor and obtain an auditor's report in accordance with any requirements of the ACNC Act and any other relevant legislation. Audited financial reports provided to the Members are conclusive.

17.3 Inspection of books

- (a) The following persons may at any reasonable time access and inspect any financial record of the Company:
 - (i) the Auditor; and
 - (ii) any Director.
- (b) Subject to the Corporations Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them will be open for inspection by the Members or their representatives appointed under clause 4.4.

17.4 Appointment of Auditor

- (a) An Auditor or Auditors shall be appointed and their duties regulated in accordance with the Corporations Act and the ACNC Act.
- (b) The Remuneration of the Auditor is to be determined by the Directors.

17.5 Removal of Auditor

Subject to the requirements of the Corporations Act and the ACNC Act, the Company may remove an Auditor by resolution of the Members.

18. Notice

18.1 Notice by the Company

- (a) Notice may be given by the Company to any person who is entitled to notice under this Constitution:
 - (i) personally; or
 - (ii) by sending it by post to the address supplied by the person to the Company for sending notices to the person; or
 - (iii) by sending it to the electronic mail address (if any) or other electronic means of communication nominated by the person;
 - (iv) by any other means authorised by the Corporations Act.
- (b) A notice sent by post is taken to be given three (3) days after it is posted.
- (c) A notice sent by electronic mail or by other electronic means, is taken to be given on the Business Day after it is sent.
- (d) A notice of meeting given to a Member in accordance with section 110D(1)(d) of the Corporations is taken to be given on the Business Day after the day on which the member is notified that the notice of meeting is available.

18.2 Notice to Company

Any notice or other document required to be served upon the Company may be served by leaving it with the Secretary or by forwarding it through the post in a pre-paid letter addressed to the Company at its registered office or by other electronic means to the Secretary.

19. Amendments

- (a) Subject to clause 19(b), any amendments to this Constitution must be made by Special Resolution of the Members.
- (b) No amendment may be made to this Constitution which would prejudice the Company's registration as a charity with the ACNC, and any resolution or document purporting to make such an amendment shall be void and of no effect with respect to that amendment.

20. Winding up

20.1 Winding up

The Company must be wound up if the Members resolve that the Company should be wound up and/or if the Company is required to be wound up at law.

20.2 Contribution by Members

If the Company is wound up, each Member undertakes to contribute to the property of the Company for the payment of debts and liabilities of the Company and payment of costs, charges and expenses of winding up such amount as may be required, not exceeding \$10.

20.3 Distribution of surplus assets

- (a) Upon the winding up of the Company, any surplus remaining after the satisfaction of all its debts and liabilities shall be dealt with as follows:
- (i) where the surplus comprises of Grants (including any interest accrued in respect of Grants), such surplus is to be given, transferred or otherwise applied in accordance with the conditions attaching to the Grant; and
 - (ii) in any other case, the surplus must be given or transferred to a charitable institution, body, entity or organisation operated in Australia that has similar objects to the Company and the governing documents of which prohibit the distribution of its income and property among its members to an extent at least as great as is imposed on the Company under this Constitution,
- such institution, body, entity or organisation to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of Victoria for determination.
- (b) For the avoidance of doubt, the whole or any part of such surplus may be distributed to one or more Members, provided that each such Member meets the requirements of clause 20.3(a)(ii).

21. Indemnity and access

21.1 Indemnity for liability

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an Officer of the Company against any liability (other than for legal costs) incurred by that person as such an Officer of the Company (including liabilities incurred by the Officer as a director of a subsidiary of the Company where the Company requested the Officer to accept appointment as director).

21.2 Indemnity for reasonable legal costs

To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an Officer of the Company against reasonable legal costs incurred:

- (a) in defending an action for a liability incurred by that person as an Officer of the Company (including such legal costs incurred by the officer as a director of a subsidiary of the Company where the Company requested the Officer to accept appointment as director); or
- (b) in connection with or arising from any enquiry or investigation by an Authority or External Administrator involving that person as an Officer of the Company.

21.3 Indemnity in respect for premiums

To the extent permitted by law and subject to the restrictions in section 199B of the Corporations Act, the Company may at any time:

- (a) pay premiums in respect of a contract insuring a person (whether with others or not) who is, or has been, an Officer of the Company or a related body corporate; and

- (b) bind itself in any contract or deed with any person who is or has been an Officer of the Company or related body corporate to make the payments.

The liability insured against may not include that which the Corporations Act prohibits. Any such premium in relation to a Director is not regarded as Remuneration paid to a Director under this Constitution.

21.4 GST

The amount of any indemnity payable under clauses 21.1 or 21.2 or 21.3 will include an additional amount (**GST amount**) equal to any GST payable by the Officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST amount.

21.5 Documentary indemnity

Where the Board considers it appropriate, the Company may execute a documentary indemnity in any form in favour of a person who is or who has been an Officer of the Company, provided the terms of such documentary indemnity are not inconsistent with this clause 21.

21.6 Access to documents

Where the Board considers it appropriate, the Company may:

- (a) give a person who is or who has been an Officer of the Company, access to certain documents, including documents provided or available to the Board and other papers referred to in those documents; and
- (b) bind itself in any contract or deed with any person who is or has been an Officer of the Company to give the access.

21.7 Reporting on indemnities and insurances

Subject to any exception provided for in the Corporations Act, full particulars of the Company's indemnities and insurance premiums in relation to its Officers must be included each year in the Directors' report.

22. Interpretation

22.1 Definitions

In this Constitution unless the contrary intention appears:

ACNC means the Australian Charities and Not-for-profits Commission or its successor.

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

Auditor means any person appointed by the Board under clause 17.4.

Authority means:

- (a) a Royal Commission, Board of Inquiry, Parliamentary Committee or similar body;
- (b) the Australian Securities & Investments Commission, the Australian Competition and Consumer Commission, ACNC and any other regulatory authority;

- (c) a department of any Australian government or of any other jurisdiction;
- (d) a public authority;
- (e) an instrumentality, agent or appointee of the Crown in right of the Commonwealth, in right of a State or in right of a Territory or the equivalent of any of them in any other jurisdiction;
- (f) any other body exercising statutory or prerogative power;
- (g) a government, a governmental, semi-governmental or judicial person, authority, body or entity;
- (h) a statutory corporation; or
- (i) a person, authority, body or entity (whether autonomous or not) who is charged with the administration of law.

Board means the board of Directors, being the board of directors of the Company.

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

By-Law means a by-law of the Company made in accordance with clause 14.

Chief Executive Officer means the person appointed to serve as the chief executive officer of the Company in accordance with clause 16.

Committee means a committee established in accordance with clause 12.

Company means Australian Centre for Career Education Ltd ACN

Constitution means the constitution of the Company as amended from time to time.

Controller has the meaning given by the Corporations Act.

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

Directors means all or some of the Directors acting as the Board.

External Administrator means a liquidator, provisional liquidator, Controller or an administrator.

Financial Year has the same meaning as in section 9 of the Corporations Act.

Government Agency means any government or any governmental, semi-governmental or administrative department, entity, agency, authority, commission, corporation or body (including those constituted or formed under any statute) where the department, entity, agency, authority, commission, corporation or body is subject to the control or direction of the Commonwealth of Australia or a State or Territory of Australia.

Grant means a financial assistance arrangement or contribution, whether as capital or otherwise, provided by a State, the Commonwealth, a Government Agency, a private corporation or others, for a specific purpose and period, either by a progress payment or lump sum.

GST has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

Inaugural Directors means the initial Directors of the Company.

Incorporated Association means Career Education Association of Victoria Incorporated A0013239A.

Member means any person that is a member of the Company in accordance with clause 4.

Membership By-Law means the By-Law under this name adopted by the Board from time to time containing the eligibility requirements for membership to the Company.

Objects means the objects of the Company described in clause 2.

Officer has the meaning given by the Corporations Act.

Register means the register or registers of Members of the Company kept in accordance with clause 4.5.

Relevant Law means:

- (a) the *National Vocational Education and Training Regulator Act 2011* (Cth);
- (b) the *Standards for Registered Training Organisations (RTOs) 2015* (Cth);
- (c) the ACNC Act;
- (d) the *Charities Act 2013* (Cth);
- (e) the Corporations Act;
- (f) the *Income Tax Assessment Act 1997* (Cth)

Remuneration includes, without limitation, salaries, wages, commissions, fees, rewards, allowances or bonuses.

Replaceable Rules means the provisions referred to in section 141 of the Corporations Act.

Special Resolution of the Members means a resolution approved by at least 75% of votes cast by Members present (in person or by proxy) at a meeting of Members.

Subscription Fees means any fees for membership with the Company determined by the Board in accordance with clause 5 from time to time.

22.2 Interpretation

- (a) In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.
- (b) In this Constitution, except where the context otherwise requires:
 - (i) the singular includes the plural and vice versa, and a gender includes other genders;
 - (ii) another grammatical form of a defined word or expression has a corresponding meaning;

- (iii) a reference to an Act is a reference to that Act as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Company;
- (iv) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (v) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (vi) a reference to a Member present at a general meeting is a reference to Member present in person (including if participating electronically), by a representative (where relevant), or by proxy;
- (vii) a reference to **A\$, \$A, dollar** or **\$** is to Australian currency; and
- (viii) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.