

Constitution of The Royal College of Pathologists of Australasia

(Adopted by a special resolution of the Fellows of The Royal College of Pathologists of Australasia passed on 1 March 2015)

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Corporations Act 2001 (Cth)

Company limited by guarantee

Constitution

of

The Royal College of Pathologists of Australasia

Introduction

1 Replaceable rules excluded

1.1 The replaceable rules contained in the Act do not apply to the Company.

2 Definitions and interpretation

2.1 Definitions

In this constitution:

- (1) **Act** means the *Corporations Act 2001 (Cth)* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
- (2) **Advisory Committees** means certain committees of the Company which together are referred to as “Advisory Committees”, which are governed by the Advisory Committees Charter;
- (3) **Advisory Committees Charter** means the Advisory Committees Terms of Reference adopted by the Directors on the Transition Date (as amended from time to time by the Directors);
- (4) **auditor** means any person appointed for the time being to perform the duties of an auditor of the Company;
- (5) **Board of Education and Assessment** means the committee of the Company referred to as the “Board of Education and Assessment”, which is governed by the Board of Education and Assessment Terms of Reference adopted by the Directors on the Transition Date (as amended from time to time by the Directors);
- (6) **Board of Professional Practice and Quality** means the committee of the Company referred to as the “Board of Professional Practice and Quality”, which is governed by the Board of Professional Practice and Quality Terms of Reference adopted by the Directors on the Transition Date (as amended from time to time by the Directors);
- (7) **business day** means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Company has its registered office;
- (8) **Company** means The Royal College of Pathologists of Australasia ACN 000 173 231;

- (9) **Council** means the committee of the Company comprising the persons specified in rule 90 and having the role and responsibility set out in rule 94;
- (10) **Council Nominee** means a person referred to in rules 66.2(7), 66.2(8) and 66.2(9);
- (11) **Council Member** means a member of the Council;
- (12) **Councillor Office** has the meaning given to that expression in rule 90.3;
- (13) **Directors** means the directors for the time being of the Company or the directors assembled as a board;
- (14) **Directorial Office** has the meaning given to that expression in rule 66.3;
- (15) **Direct Vote** means a notice of a Fellow's voting intention delivered to the Company by post, fax or other electronic means approved by the Directors;
- (16) **Effective Date** means the date on which the adoption of this constitution as the constitution of the Company takes effect as set out in a resolution of the Fellows of the Company passed at a meeting of the Fellows;
- (17) **Elected Office** has the meaning given to that expression in rule 70.1;
- (18) **Faculty** means any faculty of the Company which is established under rule 17 and which, on the Transition Date, will comprise the Faculty of Oral and Maxillofacial Pathology and the Faculty of Science;
- (19) **Faculty Charter** means, in relation to a Faculty, the By-Laws relating to that Faculty adopted by the Directors (as amended from time to time by the Directors);
- (20) **Fellow** means a member of the Company;
- (21) **Old Constitution** means the constitution of the Company immediately prior to the Effective Date;
- (22) **RCPA QAP** means RCPA Quality Assurance Programs Pty Limited ABN 32 003 520 072;
- (23) **Register** means the register of Fellows to be kept pursuant to the Act;
- (24) **secretary** means any person appointed to perform the duties of secretary of the Company (including any person elected or appointed (as the case may be) to be the Secretary/ Treasurer in accordance with this constitution) and any person appointed to act temporarily as secretary;
- (25) **State and Regional Councillors** means those persons appointed to be the "State Councillors" or "Regional Councillors" in accordance with, and governed by, the State and Regional Councillors' Charter;
- (26) **State and Regional Councillors' Charter** means the State and Regional Councillors' Roles and Responsibilities Statement adopted by the Directors on the Transition Date (as amended from time to time by the Directors);
- (27) **Transition AGM** means the annual general meeting of the Company which is convened on the Transition Date; and
- (28) **Transition Date** means the date of the annual general meeting of the Company which is held in the calendar year ending 31 December 2013.

2.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular; and
 - (c) a person includes a body corporate.
- (2) Except so far as the contrary intention appears in this constitution:
 - (a) an expression has in this constitution the same meaning as in the Act; and
 - (b) if an expression is given different meanings for the purposes of different provisions of the Act, the expression has, in a provision of this constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (3) "Including" and similar expressions are not words of limitation.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this constitution or affect its interpretation.

3 Objects

3.1 The objects for which the Company is established are:

- (1) to promote the study of the science and practice of pathology in relation to medicine;
- (2) to promote the highest quality medical care and patient safety through education, training and assessment;
- (3) to encourage research in pathology and related sciences;
- (4) to bring together pathologists for their common benefit and for scientific discussions and demonstrations;
- (5) to educate and train the future generations of pathologists;
- (6) to maintain professional standards and ethics among pathologists through continuing professional development and other activities;
- (7) to seek improved health for all people by developing and advocating health policy in partnership with health consumers;
- (8) to support and develop pathologists as clinicians, public health practitioners, teachers and researchers;
- (9) to increase the evidence and knowledge on which the practice of pathology is based through research and dissemination of new knowledge and innovation to the profession and the community;
- (10) to disseminate knowledge of the principles and practice of pathology in relation to medicine by such means as may be thought fit (including any technological means);

- (11) to consider and advise as to any course of study and technical training and to disseminate any information, and to offer training programs in recognised areas of pathology within accredited laboratories as well as other agreed pathways, to promote and ensure the fitness of persons desirous of qualifying for Fellowship of the Company;
- (12) to institute and provide lectures, seminars, symposia and demonstrations upon sciences pertinent to the practice of pathology for the benefit of Fellows of the Company and to invite to and admit to such lectures, seminars, symposia and demonstrations persons who are not Fellows of the Company on such occasions and on such conditions as shall be deemed expedient by the Company;
- (13) to consider all questions affecting the interests of the Company and to promote or oppose any legislative or other measures affecting such matters concerned with pathology as are directly related to interests of the Company, or its Fellows, as may be deemed expedient by the Company;
- (14) to confer or correspond with any association, institution, society or body or individuals whether incorporated or not in relation to any of the objects of the Company or on any other matter of interest to its Fellows provided that the Company shall not amalgamate with any association, institute, society or body unless it shall prohibit the distribution of its income and property amongst its Fellows to the extent at least as great as is imposed on the Company under this constitution;
- (15) if and when considered advisable to apply or petition for or promote any legislation or regulation to be passed by any government for the purposes of the Company or for the re-incorporation thereof or for continuing or expanding the work thereof;
- (16) to acquire, establish, print, publish, issue and circulate such journals, magazines, periodicals, circulars, calendars or other literary or scientific works as may seem conducive to the promotion of the objects in this rule 3 or in any way beneficial to the Company;
- (17) to provide, establish, support or institute and to maintain offices, examination halls, lecture rooms, libraries, registries and museums with all requisite equipment;
- (18) to establish and support or aid in the establishment and support of any charitable or benevolent association or institutions connected with the purposes of the Company or calculated to further its objects, to subscribe or guarantee money for charitable and benevolent purposes in any way connected with the purposes of the Company or calculated to further its objects or connected with research and education in the science and practice of pathology, and to amalgamate or co-operate with any associations, societies, institutions or bodies whether incorporated or not formed for purposes similar to the purposes of the Company provided that the Company shall not amalgamate with any association or institution unless it shall prohibit the distribution of its income and property among its Fellows to an extent at least as great as is imposed on the Company under this constitution; and
- (19) to promote, support and facilitate the provision of external quality assurance services in respect of pathology laboratories, including through the acquisition and ownership of shares in RCPA Quality Assurance Programs Pty Limited (ACN 003 520 072),

in the Commonwealth of Australia, New Zealand, the Hong Kong Special Administrative Region, the Republic of Singapore, Malaysia and such other jurisdictions as the Directors may determine from time to time.

- 3.2 The Company must pursue charitable purposes only and must apply its income in promoting those purposes.

4 Powers

[compare section 124]

- 4.1 The Company has all the powers of an individual and a body corporate but does not have the power to issue shares.
- 4.2 Despite rule 4.1 the powers of the Company are ancillary to and exercisable only to pursue the objects of the Company set out in rule 3.

5 Application of income and property

[compare sections 125 and 150]

- 5.1 The income and property of the Company, from wherever it is derived, must be applied solely towards the promotion of the objects of the Company set out in rule 3.

6 No distribution to Fellows

[compare sections 150 and 254SA]

- 6.1 No portion of the income or property of the Company may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Fellows of the Company except in relation to remuneration paid to a Fellow for the provision of services (including, without limitation, as a censor, examiner, lecturer or demonstrator) provided that at any time no more than 1/3rd of the number of Fellows of the Company at such time provide such services to the Company.

7 Limited liability

- 7.1 The liability of the Fellows is limited.

8 Guarantee

- 8.1 Every Fellow of the Company undertakes to contribute an amount not exceeding \$100 to the property of the Company in the event of its being wound up while the Fellow is a Fellow or within 1 year after the Fellow ceases to be a Fellow, if required for payment:
- (1) of the debts and liabilities of the Company (contracted before the Fellow ceases to be a Fellow);
 - (2) of the costs, charges and expenses of winding up; and
 - (3) for the adjustment of the rights of the contributories among themselves.

Fellowship

9 Number of Fellows

- 9.1 The number of Fellows for which the Company proposes to be registered is unlimited.

10 Fellowship

10.1 The Fellows of the Company are:

- (1) any persons that are Fellows of the Company as at the Effective Date; and
- (2) any other persons the Directors admit to Fellowship in accordance with this constitution,

who do not subsequently cease to be Fellows of the Company in accordance with this constitution.

11 Categories of Fellowship

11.1 The categories of Fellowship are:

- (1) ordinary Fellows;
- (2) honorary Fellows; and
- (3) Faculty Fellows.

11.2 Additional categories of Fellows, if recommended by the Directors, may be created from time to time by the Fellows in general meeting.

12 Application for ordinary Fellowship

12.1 Any individual who is not less than 18 years of age at the date of application and who satisfies all of the following requirements may apply for ordinary Fellowship of the Company:

- (1) a person who is a graduate in medicine of a university in Australia or New Zealand, a graduate in medicine of a university in his or her country of domicile or a graduate in medicine whose qualifications are approved by the Board of Education and Assessment;
- (2) a person who is entitled to be registered as a medical practitioner in a State or Territory of Australia or in New Zealand or is entitled to practise medicine in his or her country of domicile; and
- (3) a person who has satisfied all the examination, assessment, supervisory and practical requirements of the Board of Education and Assessment.

13 Form of application

13.1 An application for ordinary Fellowship must be:

- (1) in writing in a form approved by the Board of Education and Assessment, which contains an undertaking by the applicant that upon admission as an ordinary Fellow of the Company the applicant agrees to be bound by the constitution of the Company;
- (2) signed by the applicant;
- (3) signed by the proposer and seconder, each of whom must be Fellows; and

- (4) accompanied by any other documents or evidence as to qualification for ordinary Fellowship which the Board of Education and Assessment requires.

14 Admission to ordinary Fellowship

14.1 The Board of Education and Assessment must consider an application for ordinary Fellowship as soon as practicable after its receipt and must determine, and administer, the nature and number of examinations and/ or assessments to be passed by an applicant in order to be eligible to apply for admission to the Directors as an ordinary Fellow of the Company.

14.2 If the Board of Education and Assessment determines that:

- (1) an applicant is eligible to apply for ordinary Fellowship of the Company under rule 12.1; and
- (2) the applicant has achieved examination and/ or assessment results which are acceptable to the Board of Education and Assessment,

then the Board of Education and Assessment must recommend the applicant's application for ordinary Fellowship and report the recommendation to the Directors.

14.3 The Directors must consider an application for ordinary Fellowship by an applicant by considering any report and recommendations made by the Board of Education and Assessment in relation to the application and any other relevant information and materials made available to the Directors in relation to the application and determine, in their discretion, the admission or rejection of the applicant.

14.4 The Directors need not give any reason for the rejection of an application.

14.5 If an application for ordinary Fellowship is rejected, a secretary must notify the applicant in writing.

14.6 If an applicant is accepted for ordinary Fellowship, a secretary must:

- (1) notify the applicant in writing; and
- (2) request payment of:
 - (a) the application fee, if any, determined in accordance with rule 21; and
 - (b) the annual subscription, determined in accordance with rule 22.

14.7 The applicant becomes an ordinary Fellow upon payment of the application fee, if any, and the annual subscription. The name and details of the ordinary Fellow must be entered in the Register.

14.8 If payment of the application fee, if any, and the annual subscription is not received within 2 months after the date of the giving of the notice referred to in rule 14.6, the Directors may revoke their acceptance of the applicant for ordinary Fellowship.

14.9 The Directors may determine (in their discretion) to prescribe regulations from time to time relating to the review of any decision by the Directors not to admit an applicant as an ordinary Fellow or to terminate the Fellowship of an ordinary Fellow.

15 Notification by Fellows

- 15.1 Each Fellow must promptly notify a secretary in writing of the occurrence of any event referred to in rule 27.1(2) in respect of that Fellow.

16 Honorary Fellowship

- 16.1 If, in the opinion of the Directors, a person, not being a Fellow of the Company:
- (1) is a person of eminence;
 - (2) is a person who has rendered exceptional services to the science, practice or profession of pathology; or
 - (3) has made a significant contribution to the Company,
- the Directors may nominate that person as an honorary Fellow of the Company.
- 16.2 A person nominated under rule 16.1 becomes an honorary Fellow of the Company on the later to occur of:
- (1) the person consenting in writing to be an honorary Fellow; and
 - (2) the nomination being approved by an ordinary resolution of the Directors.
- 16.3 An honorary Fellow is subject to this constitution but has no rights and privileges of Fellowship, other than the right to receive notices of and attend and be heard at any general meeting, and will have the rights and privileges set out in rule 19.

17 Faculty Fellowship

- 17.1 The Company may establish any Faculty or Faculties as part of the Company or to terminate or otherwise put an end to any Faculty or Faculties.
- 17.2 The Company will regulate all matters in connection with any Faculty including its establishment or termination and the making, suspension and rescission of the Faculty Charter.
- 17.3 The Company will delegate to the governing body of a Faculty responsibility for furthering the objects and purposes for which that Faculty is established including the power to prescribe regulations and to amend, suspend or rescind the same from time to time as it sees fit provided that no regulation will be inconsistent with the constitution of the Company (including the objects of the Company set out in rule 3) or the Faculty Charter. The Company may delegate any other matter it sees fit to the governing body of that Faculty.
- 17.4 A Fellow of any Faculty (who is not also an ordinary Fellow of the Company) has no rights and privileges of Fellowship, other than those set out in rule 19, the right to receive notices of and attend and be heard at any general meeting and to vote on resolutions which the chairperson of the meeting determines that directly relate to the Faculty, and is otherwise subject to this constitution.
- 17.5 A Fellow of any Faculty (who is not also an ordinary Fellow of the Company) will not be deemed to be a Fellow of the Company for the purposes of rules 31.3 and 42.
- 17.6 The Company must establish a Faculty Charter in relation to each Faculty, which will be binding on the Fellows of that Faculty to the extent that such Faculty Charter is not inconsistent with the constitution of the Company.

- 17.7 No Faculty will be entitled to exercise any powers in excess of the powers conferred upon that Faculty pursuant to the Faculty Charter relating to that Faculty and no Faculty will be entitled to exercise any powers in excess of the powers of the Company.
- 17.8 The Directors may determine (in their discretion) to prescribe regulations from time to time relating to the review of any decision by the Directors not to admit an applicant as a Fellow of a Faculty or to terminate the Fellowship of a Fellow of a Faculty.

18 Affiliates and Associates

- 18.1 The Directors may admit the following persons as:
- (1) Affiliates of the Company, medical practitioners legally qualified to practise medicine in a State or Territory of Australia, New Zealand or any other country who, at the discretion of the Directors, are recognised as having speciality training in pathology; or
 - (2) Associates of the Company, university graduates, who have, in the opinion of the Directors, sufficiently distinguished themselves in a field associated with pathology.
- 18.2 The Directors may prescribe regulations governing procedures for the admission of Affiliates of the Company, the rights and privileges of Affiliates of the Company and the admission fee and annual subscription they are required to pay (if any). The Directors may prescribe regulations governing procedures for the admission of Associates of the Company, the rights and privileges of Associates of the Company and the admission fee and annual subscription they are required to pay (if any).
- 18.3 For the avoidance of doubt, Affiliates and Associates are not Fellows of the Company and will not be entitled to vote at any general meeting of the Company. Notwithstanding the previous sentence, an Affiliate or an Associate will have the rights and privileges set out in rule 19 and the right to receive notices of and attend and be heard at any general meeting.

19 Rights and privileges of Fellows, Affiliates and Associates

- 19.1 Subject to any determinations by the Directors (acting reasonably), all Fellows, Affiliates and Associates of the Company will be entitled to:
- (1) use the facilities of the Company (including the website of the Company);
 - (2) become a member of any committee of the Company (other than the Council);
 - (3) be admitted to all lectures, seminars, symposia, scientific meetings and demonstrations; and
 - (4) enjoy like or educational privileges that may from time to time be provided by the Company,
- and any other rights and privileges determined by the Directors from time to time.
- 19.2 For the avoidance of doubt, ordinary Fellows and Fellows of Faculties will be entitled to become Directors or Council Members on the terms set out in this constitution.

20 Register of Fellows

[compare sections 168 and 169]

- 20.1 The Company must keep a Register in accordance with the Act.

- 20.2 The following must be entered in the Register in respect of each Fellow:
- (1) the full name of the Fellow;
 - (2) the residential address, facsimile number and electronic mail address, if any, of the Fellow;
 - (3) the category of Fellowship;
 - (4) the date of admission to and cessation of Fellowship;
 - (5) the date of last payment of the Fellow's annual subscription; and
 - (6) such other information as the Directors require.
- 20.3 Each Fellow must notify a secretary in writing of any change in that person's name, address, facsimile number or electronic mail address within 1 month after the change.

Application fee and annual subscription

21 Application fee

- 21.1 The application fee payable by each applicant for Fellowship is the sum the Directors determine for each category of Fellowship.
- 21.2 No application fee is payable by any honorary Fellow.

22 Annual subscription

- 22.1 Subject to rule 24, the annual subscription payable by a Fellow of the Company is the sum the Directors determine from time to time.
- 22.2 Subject to rule 24, all annual subscriptions are due and payable in advance on 1 July in each year.
- 22.3 If a person is admitted to Fellowship of the Company during the months of August to June (inclusive) the Directors must reduce the annual subscription payable by the applicant on a pro-rata basis.
- 22.4 No annual subscription is payable by any honorary Fellow.

23 Unpaid annual subscriptions

- 23.1 Subject to rule 24, if:
- (1) the annual subscription of a Fellow remains unpaid for 4 months after it becomes payable; and
 - (2) a notice of default is given to the Fellow following a resolution of the Directors to do this,

the Fellow ceases to be entitled to any of the rights or privileges of Fellowship but these may be reinstated on payment of all arrears if the Directors see fit.

24 Release of annual subscription

- 24.1 The Directors may (in their discretion) release a Fellow of the Company who has retired from remunerated practice or employment from all further obligations to pay annual subscriptions which would otherwise be payable by the Fellow and upon such terms and conditions and for such time as the Directors see fit.
- 24.2 The Directors may (in their discretion) waive the whole or any part of the annual subscription which would otherwise be payable by a Fellow of the Company who, in the opinion of the Directors, is suffering from financial hardship or in such other circumstances as the Directors consider appropriate and upon such terms and conditions and for such time as the Directors see fit.
- 24.3 A Fellow of the Company who no longer wishes to pay the annual subscription because that Fellow falls under any of the circumstances referred to in rules 24.1 and 24.2 must apply to the Directors in writing (in a form agreed from time to time by the Directors) to be released from the obligation to pay the annual subscription.
- 24.4 The Directors must notify a Fellow of any decision made pursuant to rules 24.1 and 24.2 in relation to that Fellow.

Cessation of Fellowship

25 Resignation

- 25.1 A Fellow may resign from Fellowship of the Company by giving written notice to a secretary.
- 25.2 The resignation of a Fellow takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

26 Failure to pay

- 26.1 If a Fellow has not paid all arrears of annual subscriptions under rule 22 or, if paid, the Fellow's rights and privileges are not reinstated:
- (1) the Fellow remains liable for all the obligations and liabilities of Fellowship until the expiration of 6 months after the date of notification under rule 23.1(2); and
 - (2) the Fellow ceases to be a Fellow and the Fellow's name must be removed from the Register at the expiration of the 6 month period.

27 Cessation of Fellowship

- 27.1 A Fellow ceases to be a Fellow:
- (1) on the death of the Fellow;
 - (2) if:
 - (a) the Fellow is removed from the register of medical practitioners by a relevant medical registration authority in a State or Territory of Australia or in New Zealand, or by the relevant authority in the Fellow's country of domicile (**Competent Authority**); or

- (b) the Fellow's registration as a medical practitioner is suspended by a Competent Authority,

on the grounds of malpractice, misconduct, professional misconduct or unethical behaviour; or

- (3) if the Fellow is expelled under rule 28.

27.2 If a Fellow of the Company has ceased to be a Fellow pursuant to rule 27.1(2), the Fellow must be automatically reinstated as a Fellow of the Company within 14 days of the Fellow delivering a written notice to the Directors advising that:

- (1) where the Fellow has been removed from the register of medical practitioners by a Competent Authority, the Fellow's medical registration has been restored by the same Competent Authority or by another Competent Authority; or
- (2) where the Fellow's registration was suspended by a Competent Authority, that suspension has ended,

together with written evidence from a Competent Authority which proves that the Fellow's medical registration has been restored or that the suspension has ended.

27.3 An honorary Fellow or a Faculty Fellow ceases to be a Fellow:

- (1) in accordance with rule 27.1; or
- (2) if the Directors, for any reason, request in writing the resignation of the Fellow and the Fellow does not resign within 2 months after the request is sent.

27.4 For the avoidance of doubt, subject to rule 27.1, an ordinary Fellow of the Company will not cease to be an ordinary Fellow solely for the fact that the ordinary Fellow has ceased to practice pathology.

28 Disciplining Fellows

28.1 If any Fellow:

- (1) wilfully refuses or neglects to comply with the provisions of this constitution; or
- (2) is guilty of any conduct which, in the opinion of the Directors, is unbecoming of a Fellow or prejudicial to the interest of the Company,

the Directors may resolve to censure, fine, suspend or expel the Fellow from the Company and, in the case of expulsion, to remove the Fellow's name from the Register.

28.2 In exercising their powers under rule 28.1 the Directors must not fine a Fellow an amount exceeding the annual subscription of an ordinary Fellow (whether or not the Fellow is liable to pay an annual subscription).

28.3 At least 1 week before the meeting of the Directors at which a resolution of the nature referred to in rule 28.1 is passed the Directors must give to the Fellow notice of:

- (1) the meeting;
- (2) what is alleged against the Fellow; and
- (3) the intended resolution.

- 28.4 At the meeting and before the passing of the resolution, the Fellow must have an opportunity of giving orally or in writing any explanation or defence the Fellow sees fit.
- 28.5 A Fellow may, by notice in writing lodged with a secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Directors, elect to have the question dealt with by the Company in general meeting and, in that event, a general meeting of the Company must be called for that purpose.
- 28.6 If at the meeting a resolution to the same effect as the resolution which was to be considered by the Directors is passed by a majority of 2/3rd of those present and voting (and the vote must be taken by secret ballot), the Fellow concerned must be punished in the manner resolved and in the case of a resolution for expulsion the Fellow is expelled and the Fellow's name must be removed from the Register.
- 28.7 If any Fellow ceases to be a Fellow under rule 28.6, the Directors may reinstate the Fellow and restore the name of that Fellow to the Register upon and subject to any terms and conditions they see fit.

29 Effect of cessation of Fellowship

- 29.1 If any Fellow ceases to be a Fellow under this constitution, the Fellow remains liable to pay to the Company for any money which, at the time of the Fellow ceasing to be a Fellow, the Fellow owes to the Company on any account and for any sum not exceeding \$100 for which the Fellow is liable under rule 8 of this constitution.

Meetings of Fellows

30 Circulating resolutions

[compare section 249A]

- 30.1 This rule 30 applies to resolutions which the Act, or this constitution, requires or permits to be passed at a general meeting, except a resolution under section 329 of the Act to remove an auditor.
- 30.2 The Company may pass a resolution (not being a special resolution) without a general meeting being held if at least 50% of the Fellows entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The Company may pass a special resolution without a general meeting being held if at least 75% of the Fellows entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- 30.3 Separate copies of a document may be used for signing by Fellows if the wording of the resolution and statement is identical in each copy.
- 30.4 The resolution is passed when the last Fellow signs.
- 30.5 If the Company receives by facsimile or electronic mail transmission a copy of a document referred to in this rule 30 it is entitled to assume that the copy is a true copy.

31 Calling of a general meeting

[compare sections 250N, replaceable rule 249C and section 249D]

- 31.1 A majority of Directors may call a general meeting whenever they see fit.
- 31.2 Except as permitted by law, a general meeting, to be called the **annual general meeting**, must be held at least once in every calendar year.

31.3 Fellows may call a general meeting provided it is in accordance with the Act¹.

32 Amount of notice of meeting

[compare section 249H]

32.1 Subject to the provisions of the Act as to short notice, at least 30 days' notice of a general meeting must be given in writing to those persons who are entitled to receive notices from the Company.

33 Persons entitled to notice of general meeting

[compare sections 249J(1) and 249K, and replaceable rule 249J(2)]

33.1 Written notice of a meeting of the Company's Fellows must be given individually to:

- (1) each Fellow entitled to receive notice of the meeting under this constitution;
- (2) each Director; and
- (3) the Company's auditor.

33.2 The Company is only required to give notice of general meetings to those persons entitled to receive notice under this constitution and the Act.

34 How notice is given

[compare sections 249J(3) and 249J(3A)]

34.1 The Company may give the notice of meeting to a Fellow:

- (1) personally;
- (2) by sending it by post to the address for the Fellow in the Register or the alternative address (if any) nominated by the Fellow;
- (3) by sending it to the facsimile number or electronic address (if any) nominated by the Fellow;
- (4) by sending it by other electronic means (if any) nominated by the Fellow; or
- (5) by notifying the Fellow in accordance with rule 34.2.

34.2 If the Fellow nominates:

- (1) an electronic means (**nominated notification means**) by which the Fellow may be notified that notices of meeting are available; and
- (2) an electronic means (**nominated access means**) the Fellow may use to access notices of meeting;

the Company may give the Fellow notice of the meeting by notifying the Fellow (using the nominated notification means):

- (3) that the notice of meeting is available; and

¹ Under section 249D(1) of the Act, the directors of a company must call and arrange to hold a general meeting on the request of:

- (a) members with at least 5% of the votes that may be cast at the general meeting; or
- (b) at least 100 members who are entitled to vote at the general meeting.

- (4) how the Fellow may use the nominated access means to access the notice of meeting.

35 When notice is given

[compare replaceable rules 249J(4) and 249J(5)]

- 35.1 A notice of meeting sent by post anywhere in Australia is taken to be given 3 days after it is posted. A notice of meeting sent by post outside of Australia is taken to be given 7 business days after it is posted.
- 35.2 Except as provided by rules 35.3 and 35.4, a notice of meeting given to a Fellow under rule 34.1(3) is taken to be given on the business day after it is sent.
- 35.3 A notice of meeting given to a Fellow under rule 34.1(3) is not effective if:
 - (1) in the case of service by facsimile, the Company's facsimile machine issues a transmission report that the transmission was unsuccessful; or
 - (2) in either case, the addressee notifies the Company immediately that the notice was not fully received in a legible form.
- 35.4 A notice of meeting given to a Fellow under rule 34.1(3) by electronic mail will be deemed to be received in accordance with any regulations concerning security requirements for notices sent by electronic mail established by the Directors from time to time.
- 35.5 A notice of meeting given to a Fellow under rule 34.1(5) is taken to be given on the business day after the day on which the Fellow is notified that the notice of meeting is available.
- 35.6 A certificate signed by a manager, secretary or other officer of the Company that the notice was posted or given in accordance with this rule 35 is conclusive evidence of the matter.

36 Period of notice

- 36.1 Subject to the Act and this constitution where a specified number of days' notice or notice extending over any period is required to be given, the day of service is excluded, and the day upon which the notice expires is included.

37 Contents of notice

[compare replaceable rule 249L]

- 37.1 A notice of a general meeting must:
 - (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used);
 - (2) state the general nature of the meeting's business;
 - (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution;
 - (4) be worded and presented in a clear, concise and effective manner; and
 - (5) contain a statement setting out the following information:
 - (a) that the Fellow has a right to appoint a proxy; and

- (b) that the proxy must be an ordinary Fellow of the Company.

38 Notice of adjourned meeting

[replaceable rule 249M]

- 38.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

39 Accidental omission to give notice

[compare section 1322(3)]

- 39.1 The accidental omission to give notice of any general meeting to or the non-receipt of the notice by any person entitled to receive notice of a general meeting under this constitution does not invalidate the proceedings at or any resolution passed at the meeting.

40 Postponement of general meeting

- 40.1 The Directors may postpone the holding of any general meeting whenever they see fit (other than a meeting requisitioned by Fellows as provided by the Act) for not more than 42 days after the date for which it was originally called.
- 40.2 Whenever any meeting is postponed (as distinct from being adjourned under rule 42.3 or rule 43.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

41 Technology

[section 249S]

- 41.1 The Company may hold a meeting of its Fellows at 2 or more venues using any technology that gives the Fellows as a whole a reasonable opportunity to participate.

42 Quorum

[compare replaceable rule 249T]

- 42.1 The quorum for a meeting of the Company's Fellows is 20 Fellows and the quorum must be present at all times during the meeting.
- 42.2 In determining whether a quorum is present, individuals attending as proxies or attorneys are counted. However, if a Fellow has appointed more than 1 proxy or attorney, only 1 of them is counted. If an individual is attending both as a Fellow and as a proxy or attorney, the individual is counted only once.
- 42.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the notice of meeting:
- (1) where the meeting was called by the Fellows or upon the requisition of Fellows, the meeting is dissolved; or
 - (2) in any other case, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify 1 or more of those things, the meeting is adjourned to:
 - (a) if the date is not specified – the same day in the next week;

(b) if the time is not specified – the same time; and

(c) if the place is not specified – the same place.

42.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

43 Chair at general meetings

[compare replaceable rule 249U]

43.1 The President of the Company, if present, presides as chair at every general meeting.

43.2 Where a general meeting is held and:

(1) there is no President of the Company; or

(2) the President is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act,

the Vice-President of the Company if present presides as chair of the meeting or, if the Vice-President is not present or is unwilling to act, the Directors present may appoint 1 of their number to be chair of the meeting and in default of their doing so the Fellows present may appoint any 1 of their number to be chair of the meeting.

43.3 The chair may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place. In exercising this discretion, the chair may, but need not, seek the approval of the Fellows present. Unless required by the chair, no vote may be taken or demanded by the Fellows present in respect of any adjournment.

43.4 The chair of the meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at that meeting. The rulings of the chair of a meeting on all matters relating to the procedure and conduct of the meeting are final and no motion of dissent from those rulings may be accepted.

43.5 The chair of the meeting may in his or her absolute discretion refuse admission to, or require to leave and remain out of the meeting, any person who is not a Fellow, Director or auditor of the Company.

43.6 (1) The auditor of the Company from time to time and any assistant of the auditor who is not a Fellow is entitled to be present and to speak at any general meeting on any part of the meeting's business that concerns the auditor in the capacity as auditor of the Company.

(2) Any professional adviser of the Company (including, without limitation, a solicitor or financial adviser), at the request of any Director, is entitled to be present and, at the request of the chair, to speak at any general meeting. However, subject to the Act and this constitution, the Company is not obliged to send a notice of meeting to any professional adviser.

44 Business at adjourned meetings

[replaceable rule 249W(2)]

44.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

Proxies

45 Who can appoint a proxy

[compare mandatory rule 249X]

- 45.1 A Fellow who is entitled to attend and cast a vote at a meeting of the Company's Fellows may appoint another Fellow as the Fellow's proxy to attend and vote for the Fellow at the meeting. The proxy must be a Fellow of the Company who is entitled to attend and cast a vote at a general meeting of the Company.

46 Rights of proxies

[compare section 249Y]

- 46.1 A proxy appointed to attend and vote for a Fellow has the same rights as the Fellow:
- (1) to speak at the meeting;
 - (2) to vote (but only to the extent allowed by the appointment); and
 - (3) to join in a demand for a poll.
- 46.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.
- 46.3 A proxy's authority to speak and vote for a Fellow at a meeting is suspended while the Fellow is present at the meeting.
- 46.4 A proxy may be revoked at any time by notice in writing to the Company.

47 When proxy form must be sent to all Fellows

[section 249Z]

- 47.1 If the Company sends a Fellow a proxy appointment form for a meeting or a list of persons willing to act as proxies at a meeting:
- (1) if the Fellow requested the form or list – the Company must send the form or list to all Fellows who ask for it and who are entitled to appoint a proxy to attend and vote at the meeting; or
 - (2) otherwise – the Company must send the form or list to all its Fellows entitled to appoint a proxy to attend and vote at the meeting.

48 Appointing a proxy

[compare section 250A and Corporations Regulations 2001 reg 2G.2.01]

- 48.1 An appointment of a proxy is valid if it is signed or otherwise electronically authenticated (as referred to in regulation 2G.2.01 of the *Corporations Regulations 2001* and in rules 48.2 and 48.3) by the Fellow making the appointment and contains the following information:
- (1) the Fellow's name and address;
 - (2) the Company's name;
 - (3) the proxy's name or the name of the office held by the proxy; and

- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

48.2 An electronically authenticated appointment of a proxy must:

- (1) include a method of identifying the Fellow; and
- (2) include an indication of the Fellow's approval of the information communicated.

48.3 If the electronically authenticated appointment of a proxy is done through either email or internet-based voting:

- (1) the Fellow must be identified by personal details such as the Fellow's name, personal address and date of birth; and
- (2) the Fellow's approval must be communicated by a form of security protection (for example, the entering of a confidential identification number such as a Company membership identification number).

48.4 An undated appointment is taken to have been dated on the day it is given to the Company.

48.5 An appointment may specify the way the proxy is to vote on a particular resolution. If it does:

- (1) the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way;
- (2) if the proxy has 2 or more appointments that specify different ways to vote on the resolution – the proxy must not vote on a show of hands;
- (3) if the proxy is the chair – the proxy must vote on a poll, and must vote that way; and
- (4) if the proxy is not the chair – the proxy need not vote on a poll, but if the proxy does so, the proxy must vote that way.

If a proxy is also a Fellow, this rule 48.5 does not affect the way that the person can cast any votes the person holds as a Fellow.

48.6 An appointment does not have to be witnessed.

48.7 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

49 Form of proxy sent out by Company

49.1 A form of proxy sent out by the Company may be in a form determined by the Directors but must:

- (1) enable the Fellow to specify the manner in which the proxy must vote in respect of a particular resolution; and
- (2) leave a blank for the Fellow to fill in the name of the person primarily appointed as proxy.

49.2 The form may provide that if the Fellow leaves it blank as to the person primarily appointed as proxy or if the person or persons named as proxy fails or fail to attend, the chair of the meeting is appointed proxy.

49.3 Despite rule 49.1 an instrument appointing a proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

The Royal College of Pathologists of Australasia
ACN 000 173 231 (**Company**)

I/We, _____ of _____, being a Fellow/Fellows of the Company, appoint _____ of _____ or, in his or her absence, _____ of _____ as my/our proxy to vote for me/us on my/our behalf at the *annual general/*general meeting of the company to be held on _____ and at any adjournment of that meeting.

† This form is to be used *in favour of/*against the resolution.

Dated on _____ .

* Strike out whichever is not desired.

† To be inserted if desired.

50 Receipt of proxy documents

[compare section 250B]

50.1 For an appointment of a proxy for a meeting of the Company's Fellows to be effective, the following documents must be received by the Company at least 48 hours before the meeting:

- (1) the proxy's appointment; and
- (2) if the appointment is signed or otherwise authenticated by the appointor's attorney – the authority under which the appointment was signed or authenticated or a certified copy of the authority.

50.2 If a meeting of the Company's Fellows has been adjourned, an appointment and any authority received by the Company at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

50.3 The Company receives an appointment or authority:

- (1) when it is received at any of the following:
 - (a) the Company's registered office;
 - (b) a facsimile number at the Company's registered office; or
 - (c) a place, facsimile number or electronic mail address specified for the purpose in the notice of meeting; or
- (2) if the notice of meeting specifies other electronic means by which a Fellow may give the document – when the document given by those means is received by the Company and complies with rules 48.2 and 48.3.

- 50.4 An appointment of a proxy is ineffective if:
- (1) the Company receives either or both the appointment or authority at a fax number or electronic address; and
 - (2) a requirement (if any) in the notice of meeting that:
 - (a) the transmission be verified in a way specified in the notice; or
 - (b) the proxy produce the appointment and authority (if any) at the meeting;is not complied with.

51 Validity of proxy vote

[section 250C(1) and compare replaceable rule 250C(2)]

- 51.1 A proxy who is not entitled to vote on a resolution as a Fellow may vote as a proxy for another Fellow who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.
- 51.2 Unless the Company receives written notice of one of the following matters before the start or resumption of the meeting at which the proxy votes, a vote cast by the proxy will be valid even if:
- (1) the appointing Fellow dies;
 - (2) the Fellow is mentally incapacitated;
 - (3) the Fellow revokes the proxy's appointment; or
 - (4) the Fellow revokes the authority under which the proxy was appointed by a third party;
- before the proxy votes.
- 51.3 A proxy is not revoked by the Fellow attending and taking part in the meeting unless the Fellow actually votes at the meeting on a resolution for which the proxy is proposed to be used.

52 Attorney of Fellow

- 52.1 An attorney for a Fellow may do whatever the Fellow could do personally as a Fellow, but if the attorney is to vote at a meeting of Fellows or a class of Fellows the instrument conferring the power of attorney or a certified copy of it must be produced to the Company at least 48 hours before the meeting, in the same way as the appointment of a proxy.

Voting at meetings of Fellows

53 How vote may be exercised

- 53.1 Subject to rules 54 and 55 at any general meeting of Fellows, each ordinary Fellow present has 1 vote on a show of hands and on a poll.
- 53.2 The vote may be exercised in person or by proxy or attorney.

54 Voting disqualification

- 54.1 A Fellow is not entitled to vote at a general meeting if the annual subscription of the Fellow is more than 4 months in arrears at the date of the meeting or the postponed or adjourned meeting.

55 Objections to right to vote

[compare replaceable rule 250G]

- 55.1 A challenge to a right to vote at a meeting of Fellows:
- (1) may only be made at the meeting; and
 - (2) must be determined by the chair, whose decision is final.
- 55.2 A vote not disallowed following the challenge is valid for all purposes.

56 How voting is carried out

[compare replaceable rule 250J]

- 56.1 A resolution put to the vote at a meeting of the Company's Fellows must be decided on a show of hands unless a poll is demanded.
- 56.2 On a show of hands, a declaration by the chair is conclusive evidence of the result. Neither the chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.
- 56.3 Unless otherwise required by this constitution or the Act, all resolutions of the Company are ordinary resolutions which are resolutions passed by more than 50% of the votes cast by Fellows entitled to vote on the resolutions.

57 Matters on which a poll may be demanded

[compare section 250K]

- 57.1 A poll may be demanded on any resolution.
- 57.2 A demand for a poll may be withdrawn.

58 When a poll is effectively demanded

[compare section 250L]

- 58.1 At a meeting of the Company's Fellows, a poll may be demanded by:
- (1) at least 3 Fellows entitled to vote on the resolution;
 - (2) a Fellow or Fellows with at least 5% of the votes that may be cast on the resolution on a poll; or
 - (3) the chair.
- 58.2 The poll may be demanded:
- (1) before a vote is taken;
 - (2) before the voting results on a show of hands are declared; or

- (3) immediately after the voting results on a show of hands are declared.

59 When and how polls must be taken

[compare replaceable rule 250M]

- 59.1 A poll demanded on a matter other than the election of a chair or the question of an adjournment must be taken when and in the manner the chair directs.
- 59.2 A poll on the election of a chair or on the question of an adjournment must be taken immediately.
- 59.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
- 59.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

60 Chair's casting vote

[compare replaceable rule 250E(3)]

- 60.1 In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a Fellow or proxy.
- 60.2 The chair has a discretion both as to use of the casting vote and as to the way in which it is used.

61 Direct Voting

- 61.1 The Directors may determine that at any meeting of Fellows (including, but not limited to, a general meeting) a Fellow who is entitled to attend and vote on a resolution at that meeting is entitled to a Direct Vote in respect of that resolution.
- 61.2 The Directors may prescribe regulations, rules and procedures in relation to direct voting, including specifying the form, method and timing of giving a Direct Vote at a meeting in order for the vote to be valid.
- 61.3 The chairperson's decision as to whether a Direct Vote is valid is conclusive.

Annual general meeting

[compare section 250N]

62 Business of an annual general meeting

[compare sections 250R, 250S and 250T]

- 62.1 The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:
- (1) the consideration of the annual financial report, directors' report and auditor's report;
 - (2) the election of Directors;
 - (3) the appointment of the auditor; and
 - (4) the fixing of the auditor's remuneration.

All other business transacted at an annual general meeting and all business transacted at any other general meeting is special business.

- 62.2 The business of the annual general meeting also includes any other business which under this constitution or the Act ought to be transacted at an annual general meeting.
- 62.3 The chair of the annual general meeting must allow a reasonable opportunity for the Fellows as a whole at the meeting to ask questions about or make comments on the management of the Company.
- 62.4 If the Company's auditor or the auditor's representative is at the meeting, the chair of an annual general meeting must:
- (1) allow a reasonable opportunity for the Fellows as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit, the preparation and content of the auditor's report, the accounting policies adopted by the Company in relation to the preparation of the financial statements and the independence of the auditor in relation to the conduct of the audit; and
 - (2) allow a reasonable opportunity for the auditor or their representative to answer written questions submitted to the auditor under section 250PA of the Act.

63 Resolutions proposed by Fellows

[compare sections 249N and 249O]

- 63.1 A Fellow may not at any meeting move any resolution relating to special business unless:
- (1) Fellows with at least 5% of the votes that may be cast on the resolution have given the Company notice of the resolution or the requirements of section 249N of the Act have otherwise been satisfied, and 2 months notice has elapsed since the notice was given²; or
 - (2) the resolution has previously been approved by the Directors.

Transitional governance provisions

64 Transition of the governance provisions

- 64.1 Articles 9, 10, 11, 11A, 12, 23, 27, 28, 29, 29A, 30, 37, 38, 39, 42, 43, 45, 46, 47, 47A and 47B of the Old Constitution will continue to apply prior to the Transition Date. For the avoidance of doubt, no Article in the Old Constitution will apply at any time on or after the Transition Date.
- 64.2 Rules 66, 67, 69, 73, 74, 90, 91, 92, 93, 94, 95 and 118 of this constitution will apply with effect on and from the Transition Date. For the avoidance of doubt, all other rules in this constitution will apply with effect on and from the Effective Date.

² Under section 249N of the Act, the following members may give a company notice of a resolution that they propose to move at a general meeting:

- (a) members with at least 5% of the votes that may be cast on the resolution; or
- (b) at least 100 members who are entitled to vote at a general meeting.

65 Transition of the governance structure

65.1 At the Transition AGM, each person who is a Director of the Company immediately prior to the Transition Date will retire from the office of Director.

65.2 At the Transition AGM:

- (1) the President, Vice-President, Secretary/ Treasurer, the Chair of the Board of Education and Assessment and the Chair of the Board of Professional Practice and Quality will be elected by the Fellows of the Company in accordance with rules 70 and 71; and
- (2) the Vice-President (NZ) will be elected only by the Fellows of the Company who are residents in New Zealand in accordance with rules 70 and 71.

65.3 Immediately after the closing of the Transition AGM, the Council Nominees will be appointed by the Council in accordance with rule 68.3. Notwithstanding rule 90.1, for the purposes of this rule, the **Council** will comprise the following persons:

- (1) the President, Vice-President, Vice-President (NZ), Secretary/ Treasurer, the Chair of the Board of Education and Assessment and the Chair of the Board of Professional Practice and Quality;
- (2) each State or Regional Councillor;
- (3) the Chair of any Faculty;
- (4) the Chair of any Advisory Committee relating to a discipline; and
- (5) the Chair of the board of directors of RCPA QAP.

For the avoidance of doubt, any person holding position as a State or Regional Councillor, a Chair of any Faculty or a Chair of an Advisory Committee immediately prior to the Transition Date will continue to hold that position on and after the Transition Date until such person ceases to hold that position.

Appointment of directors

66 Number of directors

[compare section 201A]

66.1 The number of the Directors is 9.

66.2 The board of Directors must comprise the following persons:

- (1) the person elected or appointed (as the case may be) to be the President in accordance with this constitution for so long as they hold that position;
- (2) the person elected or appointed (as the case may be) to be the Vice-President in accordance with this constitution for so long as they hold that position;
- (3) the person elected or appointed (as the case may be) to be the Vice-President (NZ) in accordance with this constitution for so long as they hold that position;
- (4) the person elected or appointed (as the case may be) to be the Secretary/ Treasurer in accordance with this constitution for so long as they hold that position;

- (5) the person elected or appointed (as the case may be) to be the Chair of the Board of Professional Practice and Quality in accordance with this constitution for so long as they hold that position;
 - (6) the person elected or appointed (as the case may be) to be the Chair of the Board of Education and Assessment in accordance with this constitution for so long as they hold that position;
 - (7) the Council Nominee being the person appointed by the Council to be the nominee of the Chairs of the Advisory Committees in accordance with this constitution:
 - (8) the Council Nominee being the person appointed by the Council to be the nominee of the State and Regional Councillors in accordance with this constitution; and
 - (9) the Council Nominee being the person appointed by the Council to be the nominee of the Council in accordance with rule 68.3.
- 66.3 For the avoidance of doubt, any person holding office as President, Vice-President, Vice-President (NZ), Secretary/ Treasurer, Chair of the Board of Professional Practice and Quality, Chair of the Board of Education and Assessment or a Council Nominee (**Directorial Office**) on the Transition Date will continue to hold that Directorial Office until such person is required to resign under rule 68 or otherwise ceases to be a Director.

67 Directors' qualifications

- 67.1 Subject to rule 67.2, no person may be a Director unless that person is an ordinary Fellow of the Company.
- 67.2 Notwithstanding rule 67.1, a person is eligible to be the Director referred to in rule 66.2(9) if that person is a Fellow of a Faculty.
- 67.3 No person is eligible to be the Director referred to in rule 66.2(7) unless that person is a member of the Council and a Chair of an Advisory Committee. No person is eligible to be the Director referred to in rule 66.2(8) unless that person is a member of the Council and a State or Regional Councillor. No person is eligible to be the Director referred to in rule 66.2(9) unless that person is a member of the Council.
- 67.4 A person that ceases to be a Director of the Company at any time (other than as a result of, and in accordance with, the requirement in rule 68.2) is not eligible to be elected or appointed (as the case may be) as a Director of the Company during the 12 month period after that time.

68 Election and appointment of directors

- 68.1 The Directors of the Company will be elected or appointed (as the case may be) as follows:
- (1) the President, Vice-President, Secretary/ Treasurer, the Chair of the Board of Education and Assessment and the Chair of the Board of Professional Practice and Quality will be elected at an annual general meeting of the Company by the Fellows of the Company in accordance with rules 70 and 71;
 - (2) the Vice-President (NZ) will be elected at an annual general meeting of the Company only by the Fellows of the Company who are residents in New Zealand in accordance with rules 70 and 71; and
 - (3) the Council Nominees will be appointed by the Council in accordance with rule 68.3.

68.2 At the:

- (1) annual general meeting held in the calendar year ending 31 December 2014 and every alternate annual general meeting thereafter, the Vice-President (NZ), the Secretary/ Treasurer, the Chair of the Board of Professional Practice and Quality and the Council Nominees referred to in rules 66.2(8) and 66.2(9) must retire from office; and
- (2) annual general meeting held in the calendar year ending 31 December 2015 and every alternate annual general meeting thereafter, the President, the Vice-President, the Chair of the Board of Education and Assessment and the Council Nominee referred to in rule 66.2(7) must retire from office.

68.3 The Council may at any time appoint a person to be a Council Nominee (**Relevant Council Nominee**) who meets the following qualification:

- (1) if the Relevant Council Nominee is the nominee of the Chairs of the Advisory Committees, then the person must be a member of the Council and a Chair of an Advisory Committee;
- (2) if the Relevant Council Nominee is the nominee of the State and Regional Councillors, then the person must be a member of the Council and a State or Regional Councillor; and
- (3) if the Relevant Council Nominee is the nominee of the Council, then the person must be a member of the Council.

The new Relevant Council Nominee will take office immediately after the end of the next annual general meeting at which the current Relevant Council Nominee is required to retire from office.

69 Term of appointment of directors

69.1 Subject to rule 69.2, a Director may not hold office for a continuous period past the second annual general meeting following the Director's appointment, without submitting for re-election.

69.2 Notwithstanding anything to the contrary in rule 69.1, a Director:

- (1) may not hold the office of President for a continuous period past the second annual general meeting following the Director's appointment as President;
- (2) may not hold any position on the board of Directors (other than the office of President) for a continuous period past the sixth annual general meeting following the Director's appointment to such position; and
- (3) may not hold the office of Director for a continuous period past the tenth annual general meeting following the Director's appointment as a Director.

69.3 For the avoidance of doubt, where a Director is elected or appointed to a particular office prior to the Transition Date (**Relevant Time**) and holds that office for a continuous period commencing from the Relevant Time and which continues after the Transition Date then, for the purposes of this rule 69, in determining the continuous period during which that Director has held that office, that part of the continuous period prior to the Transition Date must be taken into account.

70 Nomination for election

70.1 Each candidate for election as a President, Vice-President, Vice-President (NZ), Secretary/Treasurer, the Chair of the Board of Education and Assessment or the Chair of the Board of Professional Practice and Quality (**Elected Office**) must:

- (1) be proposed by an ordinary Fellow; and
- (2) be seconded by another ordinary Fellow;

both of which Fellows must be current financial Fellows of the Company at the time of nomination.

70.2 No ordinary Fellow may propose more than 1 person as a candidate for any Elected Office but may second more than 1 nomination.

70.3 A nomination of a candidate for election must:

- (1) be in writing;
- (2) specify the Elected Office for which the candidate is being nominated for;
- (3) be signed by the candidate; and
- (4) be signed by the proposer and seconder.

70.4 A nomination of a candidate for election must be received at the registered office of the Company not later than 5pm on the day which is 60 days prior to the annual general meeting at which the candidate seeks election.

70.5 If there is more than one candidate for election in respect of an Elected Office, a ballot must be held for the election of the candidates for that Elected Office.

70.6 If a ballot is required in respect of an Elected Office, balloting lists must be prepared listing the names of the candidates only in alphabetical order for that Elected Office.

70.7 A ballot list of the candidates' names in alphabetical order in respect of each relevant Elected Office must be sent to Fellows with the notice of the annual general meeting and no later than 30 days prior to the annual general meeting at which the candidate seeks election.

70.8 Each person entitled to vote and voting on the ballot in respect of an Elected Office may vote for one candidate for that Elected Office by delivering the ballot to the Company at least 5 business days prior to the date of the annual general meeting at which the candidate seeks election.

70.9 Subject to this rule 70 a ballot is to be conducted in the manner the Directors determine.

71 Election procedure – directors

71.1 The election of the bearers of the Elected Offices will be held in the order in which the positions are listed in rule 66.2.

71.2 If there is only one candidate for election in respect of an Elected Office, the chair of the annual general meeting must declare that candidate to be duly elected as a Director holding that Elected Office.

- 71.3 If there is more than one candidate for election in respect of an Elected Office, the candidate receiving the greatest number of votes cast in their favour must be declared by the chair of the meeting to be elected as a Director holding that Elected Office.
- 71.4 If an equality of votes would otherwise prevent a successful candidate in respect of an Elected Office from being determined, the chair, prior to the declaration of the result for that Elected Office, in addition to his or her deliberative vote (if any) is entitled to a casting vote, except that if the chair:
- (1) does not exercise a casting vote; or
 - (2) is one of the candidates who received the same number of votes,
- then the names of the candidates who received the same number of votes must be put to a ballot immediately in respect of that Elected Office but if there is still an equality of votes the successful candidate must be determined by lot.
- 71.5 If a Director is elected to an Elected Office then his or her nomination, if any, for any other Elected Office must be treated as withdrawn before the election is held in respect of that other Elected Office of Offices.

72 Time appointment or retirement takes effect

- 72.1 Directors who are appointed at a meeting of Fellows take office immediately after the end of the meeting.
- 72.2 Directors who retire at a meeting of Fellows continue to hold office until the end of the meeting.

73 Office bearers

- 73.1 The office bearers of the Company are:
- (1) the President;
 - (2) the Vice-President; and
 - (3) the Secretary/ Treasurer.

Appointment of directors between AGMs

74 Casual vacancies and additional directors

[compare replaceable rules 201G and 201H]

- 74.1 The Company in general meeting may by resolution and the Directors may at any time appoint a person qualified to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, but so that the total number of Directors does not at any time exceed the number fixed in accordance with this constitution.
- 74.2 Any Director appointed under rule 74.1 holds office until the termination of the next annual general meeting of the Company and is then eligible for re-election at that annual general meeting.

75 Insufficient directors

[compare replaceable rule 201H]

- 75.1 In the event of a vacancy or vacancies in the office of a Director, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or convening a general meeting of the Company.

Alternate directors

[compare replaceable rule 201K]

76 Appointment

- 76.1 A Director may appoint any person who is qualified to be a Director and who is approved by a majority of the other Directors to act as an alternate Director in place of the appointing Director for a meeting or for a specified period.
- 76.2 An alternate Director is not taken into account for the purpose of rule 66.

77 Rights and powers of alternate director

- 77.1 An alternate Director is entitled to notice of meetings of the Directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.
- 77.2 Subject to the requirements of the Act, an alternate Director is entitled to a separate vote for each Director that the alternate Director represents in addition to any vote the alternate Director may have as a Director in his or her own right.
- 77.3 An alternate Director, when acting as a Director, is responsible to the Company for his or her own acts and defaults and is not to be taken as the agent of the Director by whom he or she was appointed.

78 Suspension or revocation of appointment

- 78.1 A Director may revoke or suspend the appointment of an alternate Director appointed by him or her.
- 78.2 The Directors may suspend or remove an alternate Director by resolution after giving the appointing Director reasonable notice of their intention to do so.

79 Form of appointment, suspension or revocation

- 79.1 An appointment, suspension or revocation under rules 76 or 78 takes effect only when the Company has received notice in writing of the appointment, suspension or revocation. The notice may be given by facsimile or electronic mail.

80 Termination of appointment

- 80.1 The appointment of an alternate Director automatically terminates:
- (1) if the appointor ceases to hold office as Director;

- (2) on the happening in respect of the alternate Director any event which causes a Director to vacate the office of Director; or
- (3) if the alternate Director resigns from the appointment by written notice left at the registered office of the Company.

81 Power to act as alternate for more than 1 director

- 81.1 A Director or any other person may act as alternate Director to represent more than 1 Director.
- 81.2 Subject to the Act, in determining whether a quorum is present at a meeting of Directors, an alternate Director who attends the meeting is to be counted as a Director for each Director on whose behalf the alternate Director is attending the meeting.

Powers of directors

82 Validation of acts of directors and secretaries

[compare sections 201M and 204E]

- 82.1 An act done by a Director or secretary of the Company is effective even if his or her appointment, or the continuance of his or her appointment is invalid because the Company, the Director or secretary did not comply with this constitution or any provision of the Act.
- 82.2 Rule 82.1 does not deal with the question whether an effective act by a Director or secretary:
 - (1) binds the Company in its dealings with other people; or
 - (2) makes the Company liable to another person.
- 82.3 Where a person whose office as Director of the Company is vacated under a provision of the Act purports to do an act as a Director of the Company, that act is as valid, in relation to a person dealing with the Company in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

83 General business management

[compare replaceable rule 198A]

- 83.1 The business of the Company is to be managed by or under the direction of the Directors.
- 83.2 The Directors may exercise all the powers of the Company except any powers that the Act or this constitution requires the Company to exercise in general meeting.
- 83.3 A rule made or resolution passed by the Company in general meeting does not invalidate any prior act of the Directors which would have been valid if that rule or resolution had not been made or passed.

84 Borrowing powers

- 84.1 Without limiting the generality of rule 83, but subject to rule 6, the Directors may exercise all the powers of the Company to borrow money, to charge any property or business of the Company and to issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person.

85 Training and examination powers

- 85.1 Without limiting the generality of rule 83, but subject to rule 6, the Directors may exercise all the powers of the Company to:
- (1) prescribe the course of training which shall be undertaken by applicants for admission as a Fellow of the Company and the nature of the examinations and/ or assessments to which such applicants will submit themselves in order to determine their suitability for admission as a Fellow and the fees payable by applicants for any such course of training examination or assessment; and
 - (2) hold, in any branch of pathology in relation to medicine, postgraduate examinations and/ or assessments, to examine and assess applicants and to issue to successful applicants such diplomas or certificates of proficiency in the subjects examined and assessed upon as will from time to time be determined by the Directors provided that every diploma or certificate will on the face of it show that it is a diploma or certificate granted upon an examination and/ or assessment by the Company or upon other qualifications prescribed by the constitution of the Company and that it does not take effect under any statute or law.

86 Appointment of attorney

- 86.1 The Directors may appoint any person or persons to be the attorney or attorneys of the Company for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Directors), for the period and subject to the conditions they see fit.
- 86.2 A power of attorney may contain the provisions for the protection and convenience of persons dealing with the attorney that the Directors see fit and may also authorise the attorney to delegate all or any of the powers and discretions vested in the attorney.

87 Negotiable instruments

[compare replaceable rule 198B]

- 87.1 Any 2 Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 87.2 The Directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

88 Delegation to committee of directors

[compare section 198D]

- 88.1 The Directors may delegate any of their powers to a committee of Directors and revoke the delegation.
- 88.2 A committee must exercise the powers delegated to it in accordance with any directions of the Directors. The exercise of the power by the committee is as effective as if the Directors had exercised it.
- 88.3 The meetings and proceedings of any committee of Directors are governed by the provisions in this constitution regulating the meetings and proceedings of the Directors.

89 Delegation generally

[compare rule 198D]

- 89.1 For managing any affairs of the Company in any specified locality the Directors may:
- (1) establish any local committees, boards or branches;
 - (2) appoint any Fellows of the Company to be a member of the local committee, board or branch;
 - (3) appoint any managers or agents, fix their remuneration and delegate to them any of the powers vested in the Directors; and
 - (4) authorise the members for the time being of the local committee, board or branch to fill any vacancies on it and to act despite vacancies.
- 89.2 In the exercise of delegated powers, any committee formed (including a committee of Directors and a local board or branch) or person or persons appointed to the committee must conform to any regulations that may be imposed by the Directors. The committee may be authorised to sub-delegate any of the powers vested in it.
- 89.3 A local committee, board or branch may remove any person appointed under rule 89.1(3) and may revoke or vary the delegation but no person dealing in good faith and without notice of the revocation or variation is affected by it.

Council

90 Composition of the Council

- 90.1 The Council must comprise the following persons:
- (1) the Directors of the Company from time to time;
 - (2) the persons elected or appointed (as the case may be) to be the State and Regional Councillors for so long as they hold those positions;
 - (3) the person elected or appointed (as the case may be) to be the Chair of any Faculty for so long as they hold that position;
 - (4) the persons elected or appointed (as the case may be) to be the Chairs of the Advisory Committees for so long as they hold those positions;
 - (5) the person elected or appointed (as the case may be) to be the nominee of RCPA QAP for so long as they hold that position; and
 - (6) the persons elected or appointed (as the case may be) to be the Chairs of the Lay Advisory Committee and the Trainee Advisory Committee for so long as they hold those positions.
- 90.2 The persons referred to in rule 90.1(6) will have the right to receive notices of and attend and be heard at any meeting of the Council but will not have the right to vote at a meeting of the Council.
- 90.3 For the avoidance of doubt, any person holding position as a State or Regional Councillor, the Chair of any Faculty, the Chair of an Advisory Committee or the nominee of RCPA QAP (**Councillor Office**) on the Transition Date will continue to hold that Councillor Office until such person ceases to be a Council Member.

91 Council Members' qualifications

- 91.1 No person may be a Council Member (other than a Council Member referred to in rule 90.1(6)) unless that person is an ordinary Fellow of the Company or a Fellow of a Faculty.
- 91.2 No person may hold more than one position on the Council.

92 Election and appointment of Council Members

- 92.1 Subject to rule 95, the Council Members will be elected, appointed, removed or replaced as follows:
- (1) each State or Regional Councillor will be elected, removed or replaced by Fellows of the Company who are constituents of the State or Region which that State or Regional Councillor represents in accordance with the State and Regional Councillors Charter;
 - (2) the Chair of any Faculty will be elected, removed or replaced by Fellows of the Company who are members of the Faculty in accordance with the Faculty Charter relating to the Faculty;
 - (3) each Chair of an Advisory Committee relating to a discipline will be elected, removed or replaced by Fellows of the Company who are members of that discipline in accordance with the Advisory Committees Charter; and
 - (4) the nominee of RCPA QAP will be the Chair of the board of directors of RCPA QAP or any other member of the board of directors of RCPA QAP appointed by the board of directors of RCPA QAP. The nominee of RCPA QAP will be appointed, removed or replaced by the board of directors of RCPA QAP.

93 Term of appointment of Council Members

- 93.1 Notwithstanding anything to the contrary, a Council Member who is not a Director of the Company:
- (1) may not hold any position on the Council for a continuous period of more than 6 years following the Council Member's appointment to such position; and
 - (2) may not hold the office of Council Member for a continuous period of more than 10 years following the Council Member's appointment as a Council Member.
- 93.2 For the avoidance of doubt, where a Council Member is elected or appointed to a particular office prior to the Transition Date (**Relevant Time**) and holds that office for a continuous period commencing from the Relevant Time and which continues after the Transition Date then, for the purposes of this rule 93, in determining the continuous period during which that Council Member has held that office, that part of the continuous period prior the Transition Date must be taken into account.

94 Role and Responsibility

- 94.1 The Council will be responsible for the review and development of policies and strategies for the Company and to provide the Directors with recommendations in relation to the strategic planning and policy formulation of the Company.

94.2 In addition to rule 94.1, the Directors may, upon terms and conditions and with any restrictions they see fit, confer on the Council any other responsibilities and powers that the Directors can exercise.

95 Removal and resignation of Council Members

95.1 The Directors may remove a Council Member from office.

95.2 A Council Member may resign as a Council Member by giving a written notice of resignation to the Company at its registered office.

Chief executive officer

[compare replaceable rule 201J]

96 Power to appoint

96.1 The Directors may appoint any person, not being a Director, to the position of chief executive officer for the period and on the terms (including as to remuneration) the Directors see fit.

97 Not a member of the board

97.1 The chief executive officer is not a member of the board of Directors of the Company and is not a Council Member but may attend meetings of the Directors and meetings of the Council except where the Directors otherwise request.

98 Powers

98.1 The Directors may, upon terms and conditions and with any restrictions they see fit, confer on a chief executive officer any of the powers that the Directors can exercise.

98.2 Any powers so conferred may be concurrent with, or to the exclusion of, the powers of the Directors.

99 Withdrawal of appointment or powers

99.1 The Directors may revoke or vary:

- (1) an appointment; or
- (2) any of the powers conferred on a chief executive officer.

100 Temporary appointments

100.1 If a chief executive officer becomes incapable of acting in that capacity the Directors may appoint any other person, not being a Director, to act temporarily as chief executive officer.

Removal and resignation of directors

101 Removal of directors

[compare section 203D]

101.1 The Company may by resolution remove a Director from office.

102 Resignation of director

[replaceable rule 203A]

102.1 A Director may resign as a Director of the Company by giving a written notice of resignation to the Company at its registered office.

103 Vacation of office of director

[compare section 206B]

103.1 In addition to any other circumstances in which the office of a Director becomes vacant under the Act, the office of a Director becomes vacant if the Director:

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) 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;
- (3) is not present (either personally or by an alternate Director) at 3 consecutive meetings of Directors without special leave of absence from the Directors and the Directors declare his or her seat to be vacant;
- (4) ceases to be qualified as a Director under rule 67;
- (5) becomes disqualified from being a Director under the Act or any order made under the Act;
- (6) is removed from office in accordance with rule 101; or
- (7) resigns from office in accordance with rule 102.

Directors' interests

104 Prohibition on being present or voting

[compare section 195]

104.1 Except where permitted by the Act a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

104.2 If a Director who has a material personal interest in a matter that is being considered at a meeting of the Directors is not prohibited by the Act from being present at the meeting and voting, the Director may be present, be counted in the quorum and may be heard but may not vote on the matter.

104.3 A Director who is interested in any matter may, despite that interest, witness the fixing of the seal to any document evidencing or otherwise connected with that matter.

105 Director to disclose interests

[compare section 191]

105.1 A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Company must, as soon as practicable after the relevant facts have come to the Director's knowledge, declare the nature of the interest at a meeting of the Directors or by written notice to a secretary of the Company.

105.2 A Director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as Director must declare at a meeting of the Directors of the Company or by written notice to a secretary of the Company the fact and the nature, character and extent of the conflict.

105.3 For the purposes of rules 105.1 and 105.2, a Director's interest or any conflict must be disregarded if it arises from or relates solely to:

- (1) a guarantee to be given by the Director (or by persons including the Director or by a body corporate of which the Director is a member or officer) in respect of a loan to the Company; or
- (2) the position of the Director as a director of a related body corporate.

106 Effect of interest in contract

[compare replaceable rule 194]

106.1 Subject to the Act, if a Director has an interest in a contract or proposed contract with the Company (other than as a Fellow), or a conflicting interest or duty in relation to any other matter being considered by the Directors, and the Director discloses the nature and extent of the interest or duty at a meeting of the Directors or by written notice to a secretary of the Company:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
 - (a) the Director may retain benefits under the contract even though the Director has an interest in the contract;
 - (b) the Company cannot avoid the contract merely because of the existence of the interest; and
 - (c) the Director is not disqualified from the office of director.

106.2 For the purposes of rule 106.1 **contract** includes an arrangement, dealing or other transaction.

107 Standing notice of interest

[compare section 192]

107.1 A Director who has an interest in a matter may give the other Directors standing notice of the nature and extent of the interest in the matter. The notice may be given at any time and whether or not the matter relates to the affairs of the Company at the time the notice is given.

107.2 A notice under the above rule may be given:

- (1) at a Directors' meeting (either orally or in writing); or
- (2) to the other Directors individually in writing.

107.3 If the standing notice is given to the other Directors individually in writing:

- (1) the notice is effective when it has been given to every Director; and
- (2) the notice must be tabled at the next Directors' meeting after it is given.

107.4 The Director must ensure that the nature and extent of the interest is recorded in the minutes of the meeting at which the standing notice is given or tabled.

108 Other interests

108.1 Without limiting rule 105 or rule 106 a Director may to the extent permitted by the Act:

- (1) hold any other office or place of profit under the Company (other than the office of auditor) in conjunction with the office of Director;
- (2) be interested in any operation, undertaking or business undertaken or assisted by the Company or in which the Company is or may be interested.

109 Extension of meaning of "Company"

109.1 For the purposes of rules 105, 106 and 107 **Company** includes any subsidiary of the Company and any other company in which the Company or any subsidiary of the Company is or becomes a shareholder or is otherwise interested.

110 Other directorships and shareholdings

110.1 A Director of the Company may be or become a director, officer, employee or member of any company promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable for any remuneration or benefits received as a director, officer, employee or member of the other company.

110.2 Subject to the Act:

- (1) the Directors of the Company may exercise the voting power conferred by the shares or other interest held by the Company in another company in favour of a resolution appointing themselves or any of them as directors or other officers of the other company;
- (2) any Director of the Company may vote at a meeting of Directors of the Company in favour of a resolution that the Company exercises its voting power conferred by the shares or other interest held by the Company in the other company to appoint that Director as a director or other officer of the other company;
- (3) any Director of the Company may be appointed as representative of the Company and may vote at a general meeting of the other company in favour of a resolution appointing that Director as a director or other officer of the other company; and
- (4) a Director of the Company who is also a director of the other company may vote as a director of the other company in whatever manner he or she sees fit, including

voting in favour of a resolution appointing the Director to any other office in the other company and a resolution appointing any other Directors of the Company as directors or other officers of the other company.

Directors' meetings

[compare sections 248A to 248G]

111 Circulating resolutions

[compare replaceable rule 248A]

- 111.1 The Directors may pass a resolution without a Directors' meeting being held if at least 75% of the Directors entitled to vote on the resolution (except a Director absent from their country of domicile who has not left a facsimile number or other contact details acceptable to the Directors, at which he or she may be given notice) sign a document containing a statement that they are in favour of the resolution set out in the document.
- 111.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 111.3 The resolution is passed when the last Director signs.
- 111.4 A facsimile or electronic mail addressed to or received by the Company and purporting to be signed or sent by a Director for the purpose of this rule 111 must be treated as a document in writing signed by that Director.
- 111.5 In this rule 111 a reference to all the Directors does not include a reference to an alternate Director whose appointor has signed the document, but an alternate Director may sign the document in the place of his or her appointor.

112 Meetings of directors

- 112.1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they see fit.

113 Calling directors' meetings

[compare replaceable rule 248C]

- 113.1 A Director may at any time, and a secretary must on the requisition of a Director, call a meeting of the Directors.

114 Notice of meeting

[compare replaceable rule 248C]

- 114.1 Reasonable notice of every Directors' meeting must be given to each Director and alternate Director except that it is not necessary to give notice of a meeting of Directors to any Director who:
- (1) has been given special leave of absence; or
 - (2) is absent from their country of domicile and has not left a facsimile number or other contact details acceptable to the Directors at which he or she may be given notice.
- 114.2 Any notice of a meeting of Directors may be given in writing or orally, and whether by facsimile, telephone, electronic mail or any other means of communication.

115 Waiver of notice

115.1 All resolutions of the Directors passed at a meeting where a quorum is present but where notice of meeting has not been given to each Director, or any act carried out under any of the resolutions, is as valid as if notice of meeting had been given to all Directors if each Director to whom notice was not given subsequently agrees to waive the notice.

116 Technology meeting of directors

[compare section 248D]

116.1 A Directors' meeting may be held using telephone or, if consented to by all Directors, other technology. The consent may be a standing one. A Director may only withdraw the consent within a reasonable period before the meeting.

116.2 If a Directors' meeting is held using any technology and all the Directors take part in the meeting, they must be treated as having consented to the use of the technology for that meeting.

116.3 The following provisions apply to a meeting using technology:

- (1) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
- (2) at the commencement of the meeting each Director must announce his or her presence to all the other Directors taking part in the meeting.

116.4 If a secretary is not present at a meeting using technology 1 of the Directors present or another person nominated by them present at the meeting must take minutes of the meeting.

116.5 A Director may not leave a meeting using technology by disconnecting his or her link to the meeting unless that Director has previously notified the chair of the meeting.

116.6 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a meeting using technology unless that Director has previously obtained the express consent of the chair to leave the meeting.

117 Chairing directors' meetings

[compare replaceable rule 248E]

117.1 The President is the chair of all meetings of the Directors.

117.2 At a meeting of Directors if:

- (1) no President has been elected as provided by rule 71; or
- (2) the President is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Vice-President is the chair of the meeting, but if:

- (3) no Vice-President has been elected as provided by rule 71; or
- (4) the Vice-President is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Directors present must elect a Director present to chair the meeting.

118 Quorum

[compare replaceable rule 248F]

- 118.1 The quorum for a Directors' meeting is 5 Directors entitled to vote or a greater number determined by the Directors. The quorum must be present at all times during the meeting.
- 118.2 An alternate Director is counted in a quorum at a meeting at which the Director who appointed the alternate is not present (so long as the alternate is, under the Act relating to Directors' interests, entitled to vote).

119 Passing of directors' resolutions

[compare replaceable rule 248G]

- 119.1 A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 119.2 The chair has a casting vote if necessary in addition to any vote he or she has as a Director. The chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- 119.3 A person who is an alternate Director is entitled (in addition to his or her own vote if he or she is a Director) to 1 vote on behalf of each Director whom he or she represents as an alternate Director at the meeting and who is not present at the meeting.

Remuneration of directors

120 No directors' remuneration

[compare section 150]

- 120.1 No Director may receive any remuneration for his or her services in his or her capacity as a Director of the Company.

121 Directors' expenses

- 121.1 Despite rules 6 and 120 the Company may permit payments to Directors in the following circumstances:
- (1) for the payment of out-of-pocket expenses incurred in carrying out the duties of a Director where the payments do not exceed an amount previously approved by the Directors;
 - (2) for any service rendered to the Company in a professional or technical capacity where the provision of that service has the prior approval of the Directors and the amount payable is approved by a resolution of the Directors and is on reasonable commercial terms; or
 - (3) as an employee of the Company where the terms of employment have been approved by a resolution of the Directors.
- 121.2 The Directors must approve all payments the Company makes to its Directors.

122 Financial benefit

[compare Chapter 2E - sections 207 and following]

- 122.1 The Company must not provide any financial benefit to a Director or any related party of a Director, other than in accordance with rule 121.1.
- 122.2 The Company must not make loans to Directors, or provide guarantees or security for obligations undertaken by Directors other than obligations which were undertaken by the Director solely in promotion of the objects of the Company.

Secretary

123 Appointment of secretary

[compare section 204A]

- 123.1 The Directors must, in accordance with the Act, appoint 1 or more secretaries.
- 123.2 The Directors must appoint the person elected or appointed (as the case may be) as the Secretary/ Treasurer in accordance with this constitution to be a secretary of the Company.
- 123.3 The Directors may appoint a person as an acting secretary or as a temporary substitute for a secretary.

124 Terms of office of secretary

[compare replaceable rule 204F]

- 124.1 A secretary of the Company holds office on the terms and conditions (including as to remuneration) that the Directors determine.

Indemnity and insurance

125 Indemnity

[compare section 199A]

- 125.1 To the extent permitted by the Act, the Company indemnifies:

- (1) every person who is or has been an officer of the Company; and
- (2) where the Directors consider it appropriate to do so, any person who is or has been an officer of a related body corporate of the Company;

against all losses, liabilities, costs, charges and expenses incurred by that person in his or her capacity as an officer of the Company or of the related body corporate (as the case may be). This indemnity includes, without limitation:

- (3) a liability for negligence; and
- (4) a liability for reasonable legal costs on a solicitor client basis including in respect of civil or criminal proceedings except to the extent prohibited by section 199A(3) of the Act.

- 125.2 The indemnity does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void or unenforceable or not permitted by law and does not operate in respect of any liability of the officer to the extent that liability is covered by insurance.

125.3 In accordance with section 199A of the Act, the Company must not indemnify a person against:

- (1) any of the following liabilities incurred as an officer of the Company:
 - (a) a liability owed to the Company or a related body corporate;
 - (b) a liability for a pecuniary penalty order under section 1317G of the Act or a compensation order under section 1317H of the Act; or
 - (c) a liability that is owed to someone other than the Company or a related body corporate and did not arise out of conduct in good faith; or
- (2) legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:
 - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under rule 125.3(1);
 - (b) in defending or resisting criminal proceedings in which the person is found guilty;
 - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
 - (d) in connection with proceedings for relief to the person under the Act in which the Court denies the relief.

Rule 125.3(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investments Commission or a liquidator as part of an investigation before commencing proceedings for a court order.

- (3) For the purposes of rule 125.3(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

125.4 An officer must:

- (1) give notice to the Company promptly on becoming aware of any Claim against the officer that may give rise to a right to be indemnified by the Company;
- (2) take such action as the Company reasonably requests to avoid, dispute, resist, appeal against, compromise or defend any Claim or any adjudication of a Claim;
- (3) not make any admission of liability in respect of or settle any Claim without the prior written consent of the Company;
- (4) allow the Company or its insurers to assume the conduct, negotiation or defence of any Claim and, on request by the Company, render all reasonable assistance and co-operation to the Company or its insurers in the conduct of any Claim, including giving the Company or its insurers any document, authority or direction that the Company or its insurers may reasonably require for the prosecution or advancement of any counterclaim or cross-claim;
- (5) on request by the Company or its insurers, do everything necessary or desirable which the Company reasonably requests to enable the Company or its insurers (so far as it is possible) to be subrogated to and enjoy the benefits of the officer's rights in relation to any counterclaim or cross-claim or any claims against any third party

and render such assistance as may be reasonably requested by the Company or its insurers for that purpose; and

- (6) notify any Claim to an insurer or any other person who may be liable to indemnify the officer in respect of that Claim and promptly take all reasonable steps to enforce all the officer's rights against the insurer or other person.

125.5 In rule 125.4 **Claim** means:

- (1) any writ, summons, cross-claim, counterclaim, application or other originating legal or arbitral process against an officer as an officer of the Company;
- (2) any hearing, complaint, inquiry, investigation, proceeding or application commenced or originating against an officer as an officer of the Company; or
- (3) any written or oral demand or threat that might result in the officer reasonably believing that any such process, hearing, complaint, inquiry, investigation, proceeding or application referred to in rule 125.5(1) or 125.5(2) may be initiated.

125.6 If an officer of the Company becomes personally liable for the payment of any sum primarily due from the Company, and the officer may be indemnified under rule 125.1, the Directors may, despite the interest (if any) of the Directors or any of them, execute or cause to be executed a mortgage, charge or security over or affecting the whole or any part of the assets or undertaking of the Company by way of indemnity to secure the officer so becoming liable from any loss in respect of that liability.

126 Insurance

[compare section 212]

126.1 The Company may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an officer of the Company or a related body corporate of the Company against any liability incurred by the person as an officer of the Company or a related body corporate except a liability (other than one for legal costs) arising out of:

- (1) conduct involving a wilful breach of duty in relation to the Company; or
- (2) a contravention of section 182 or 183 of the Act.

127 Director voting on contract of indemnity or insurance

[compare section 191(2)(vi)]

127.1 Despite anything in this constitution, a Director is not precluded from voting in respect of any contract or proposed contract of indemnity or insurance, merely because the contract indemnifies or insures or would indemnify or insure the Director against a liability incurred by the Director as an officer of the Company or of a related body corporate.

128 Liability

128.1 An officer of the Company is not liable for the act, neglect or default of any other officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

129 Meaning of “officer”

129.1 For the purposes of rules 125, 126, 127 and 128, **officer** means a Director or secretary or a member of a local committee, board or branch appointed under rule 89.1.

Winding up

130 Winding up

130.1 If the Company is wound up or dissolved, the amount that remains after such winding up or dissolution and the satisfaction of all debts and liabilities will be transferred to another organisation with similar objects and purposes which is not carried on for the profit or gain of its Fellows as determined by the Fellows of the Company.

130.2 If the Company is endorsed as a deductible gift recipient by the Commissioner of Taxation under Division 30 of the *Income Tax Assessment Act 1997* and such endorsement is revoked, the Company must transfer to another organisation which is endorsed as a deductible gift recipient as determined by the Fellows of the Company any surplus representing:

- (1) gifts of money or property made for the principal purpose of the Company;
- (2) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
- (3) money received by the Company because of such gifts and contributions.

130.3 If the Fellows do not make the necessary determination under rules 130.1 and 130.2, the Company may apply to the Supreme Court to determine the organisation or organisations to whom the transfers are to be made.

Minutes

131 Minutes to be kept

[compare section 251A]

131.1 The Directors must keep minute books in which they record within 1 month:

- (1) proceedings and resolutions of meetings of the Company’s Fellows;
- (2) proceedings and resolutions of Directors’ meetings (including meetings of a committee of Directors);
- (3) resolutions passed by Fellows without a meeting; and
- (4) resolutions passed by Directors without a meeting.

131.2 The Directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:

- (1) the chair of the meeting; or
- (2) the chair of the next meeting.

131.3 The Directors must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

131.4 Without limiting rule 131.1 the Directors must record in the minute books:

- (1) all appointments of officers;
- (2) the names of the Directors and alternate Directors present at all meetings of Directors and the Company;
- (3) in the case of a meeting using technology, the method by which the meeting was held;
- (4) all orders resolutions and proceedings of general meetings and of meetings of the Directors and of committees formed by the Directors;
- (5) proxy votes exercisable and exercised in respect of each resolution at a meeting; and
- (6) all other matters required by the Act to be recorded in the minute books, including each notice and standing notice given by a Director of a material personal interest in a matter that relates to the affairs of the Company.

Inspection of records

132 Rights of inspection

[compare replaceable rule 247D and sections 173, 198F, 247A and 251B]

132.1 The Directors of the Company, or the Company by a resolution passed at a general meeting, may authorise a Fellow to inspect books of the Company.

132.2 A Fellow other than a Director does not have the right to inspect any document of the Company, other than the minute books for the meetings of its Fellows and for resolution of Fellows passed without meetings, except as provided by law or authorised by the Directors or by the Company in general meeting.

132.3 Directors have the rights of inspection and access provided by section 198F of the Act.

133 Confidential information

133.1 Except as provided by the Act, no Fellow (not being a Director) is entitled to require or receive any information concerning the business, trading or customers of the Company or any trade secret, secret process or other confidential information of or used by the Company.

Accounts, audit and records

134 Accounts

[compare sections 286-291, 296 and 297]

134.1 The Directors must cause proper accounting and other records to be kept in accordance with the Act.

134.2 The Directors must distribute copies of every financial statement (including every document required by law to be attached to it) as required by the Act.

135 Audit

[compare sections 301, 327D and 328A-331]

- 135.1 Subject to the Act, a registered company auditor must be appointed.
- 135.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

Execution of documents

136 Common seal

- 136.1 The Company may, but need not, have a common seal.

137 Use of common seal

[compare sections 127(2) and 129(6)]

- 137.1 If the Company has a common seal the Directors must provide for its safe custody.
- 137.2 The common seal may not be fixed to any document except by the authority of a resolution of the Directors or of a committee of the Directors duly authorised by the Directors.
- 137.3 The Company executes a document with its common seal if the fixing of the seal is witnessed by:
- (1) 2 Directors of the Company;
 - (2) a Director and a secretary of the Company; or
 - (3) a Director and any other person authorised by the Directors for that purpose.

138 Execution of documents without common seal

[compare sections 127(1) and 129(5)]

- 138.1 The Company may execute a document without using a common seal if the document is signed by:
- (1) 2 Directors of the Company; or
 - (2) a Director and a secretary of the Company.

139 Execution of document as a deed

[compare section 127(3)]

- 139.1 The Company may execute a document as a deed if the document is expressed to be executed as a deed and is executed in accordance with rule 139 or rule 140.

140 Execution – general

[compare sections 129(5), 129(6) and 127(4)]

- 140.1 The same person may not sign in the dual capacities of Director and secretary.
- 140.2 A Director may sign any document as Director, with or without the common seal, although the document relates to a contract, arrangement, dealing or other transaction in which he

or she is interested and his or her signature complies with the requirements of this constitution as to execution despite his or her interest.

- 140.3 Rules 139 and 140 do not limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Company.

Notices

141 Notices other than notices of meeting

- 141.1 Any notice by the Company to a Fellow may be given in the same way as a notice of meeting may be given under rule 34, and the time the notice is taken to be given is the same as provided in the case of a notice of meeting by rule 35.

Inadvertent omissions

142 Formalities omitted

[compare section 1322]

- 142.1 If some formality required by this constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Fellow financially or causes a substantial injustice to a Director of the Company or a Fellow of the Company. The decision of the Directors is final and binding on all Fellows.

Alterations

143 Alterations

- 143.1 If the Company is endorsed as an income tax exempt fund, a tax concession charity or a deductible gift recipient by the Australian Taxation Office, before making any alterations to this constitution (in particular rules 3, 5, 6, 67.1, 88, 89, 98, 120, 121, 122 or 130) the Directors must consider:

- (1) whether those alterations may effect the entitlement of the Company to that endorsement; and
- (2) whether, as a term of the endorsement, the Company is required to notify the Australian Taxation Office or any other government authority of the alterations to this constitution.