

DRAFT VERSION 20 February 2019



**AUSTRALIAN COUNCIL FOR HEALTH,
PHYSICAL EDUCATION AND
RECREATION NSW BRANCH INC.**

CONSTITUTION



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1. NAME

The name of the association shall be *The Australian Council for Health, Physical Education and Recreation (ACHPER) NSW Branch Incorporated* hereafter known as State Branch. The State Branch is a member of Australian Council for Health, Physical Education and Recreation Incorporated hereafter known as ACHPER National.

2. DEFINITIONS AND INTERPRETATIONS

2.1 Definitions

In this constitution unless the contrary intention appears:

‘Act’ means the *Associations Incorporations Act 2009 (NSW)*.

‘AGM’ means the Annual General Meeting of the State Branch and conducted once in every financial year in accordance with the Act.

‘Areas of Focus’ means the areas of core business of the State Branch – primary, secondary and tertiary physical and health education pre-service and beginning teachers, partnerships and special projects, K-12 PDHPE, ICT and professional standards.

‘Board’ means the elected Directors and from time to time appointed Directors of the committee established in accordance with section 28 of the Act under which it is charged with the responsibility of managing the business and operations of the State Branch.

‘Constitution’ means this constitution as amended or supplemented from time to time.

‘Director’ means any individual holding a position of director on the Board, including the Office Bearers, as appointed or elected pursuant to this Constitution

‘Executive Officer’ means the person appointed as executive officer by the Board, or if there is no such person or position, then the Public Officer for the State Branch

‘General Meeting’ means the Annual General Meeting or any Special General Meeting of the State Branch.

‘Kindred Organisation’ means an organisation or association with aims consistent with the purposes and objectives of State Branch.

Member’ means a member of State Branch in accordance with Clause 5.

‘Objects’ means the purposes for which State Branch is established as set out in Clause 3.

‘Officer-bearer’ means a member of the Board elected to the position of president, vice president or treasurer.

‘Official Signatories’ means the Public Officer and at least one Officer Bearer of the Board approved to sign official documents as required by the Act.

‘President, Vice President and Treasurer’ mean the individual members of the Board elected from time to time to 1 of these Office-bearer positions.

‘Public Officer’ means the individual appointed to be the official point of contact for the State Branch and one of the official signatories in accordance with the Act.

‘Register’ means the register of Members kept and maintained in accordance with Clause 6.

‘Regulation’ means the *Associations Incorporation Regulation 2016*.

‘Special General Meeting’ means all General Meetings other than the AGM.

‘Special Resolution’ means a resolution adopted in accordance with section 39 of the Act.

2.2 Interpretations

In this Constitution:

- (a) a reference to a function includes a reference to a power, authority and duty;
- (b) a reference to the exercise of a function includes, where the function is a power, authority or duty, a reference to the exercise of the power or authority of the performance of the duty;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing any gender include the other genders;
- (e) references to persons also include corporations and bodies politic;
- (f) references to a person include the legal personal representatives, successors and permitted assigns of that person;
- (g) a reference to a statute, ordinance, code or other law includes Regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any legislative authority having jurisdiction);
- (h) a reference to “writing” shall unless the contrary intention appears, be construed as including references to printing, lithography, photography and other modes of representing or reproducing words in a visible form, including messages sent by electronic mail; and
- (i) The provisions of the *Interpretation Act 1987* apply to and in respect of this constitution in the same manner as those provisions would so apply if this constitution were and instrument made under the Act.

2.3 Severance

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

2.4 The Act

Except where the contrary intention appears, in this Constitution, an expression that deals with a matter under the Act has the same meaning as that provision of the Act. Model rules under the Act are expressly displaced by this Constitution to the extent permitted by section 25 of the Act.

3. OBJECTS OF THE STATE BRANCH

The objects and purposes of the State Branch are:

- (a) to promote active and healthy living for all Australians through education and professional practice;
- (b) to provide programs and services to Members that support continuing development of knowledge, skills and professional practice, focussing primarily on health education, physical education and recreation;
- (c) further research and disseminate knowledge about the Areas of Focus;
- (d) co-operate with Kindred Organisations;
- (e) undertake other such courses of action as may foster the achievement of the purposes of the State Branch.

4. POWERS OF STATE BRANCH

Solely for furthering the Objects, State Branch has, in addition to the rights, powers and privileges conferred on it under Section 19 of the Act.

5. MEMBERSHIP

5.1 General

- (a) For the purposes of determining fees categories of membership at the time of adoption of this Constitution shall be:
 - (i) Full member
 - (ii) Graduate member
 - (iii) Student member
 - (v) Non-working/Retired member
 - (vi) Corporate member.
- (b) The Board may add, modify or remove categories of membership to coordinate with changes to the membership categories developed by ACHPER National.
- (c) Each membership fee and State Branch affiliation fee shall be divided equally between ACHPER National and the State Branch. .

5.2 Membership Fees

- (a) The National Office will:
 - (i) invoice members for their yearly fees which will be determined as the date of commencement of their membership;
 - (ii) collect all membership fees and make appropriate disbursements to the State Branch on a monthly basis; and
 - (iii) Provide information about NSW-based members so that the State Branch can maintain an accurate register of members as required by the Department of Fair Trading and outlined in Clause 6.
- (b) Members are not required to pay a joining fee upon admission to membership.

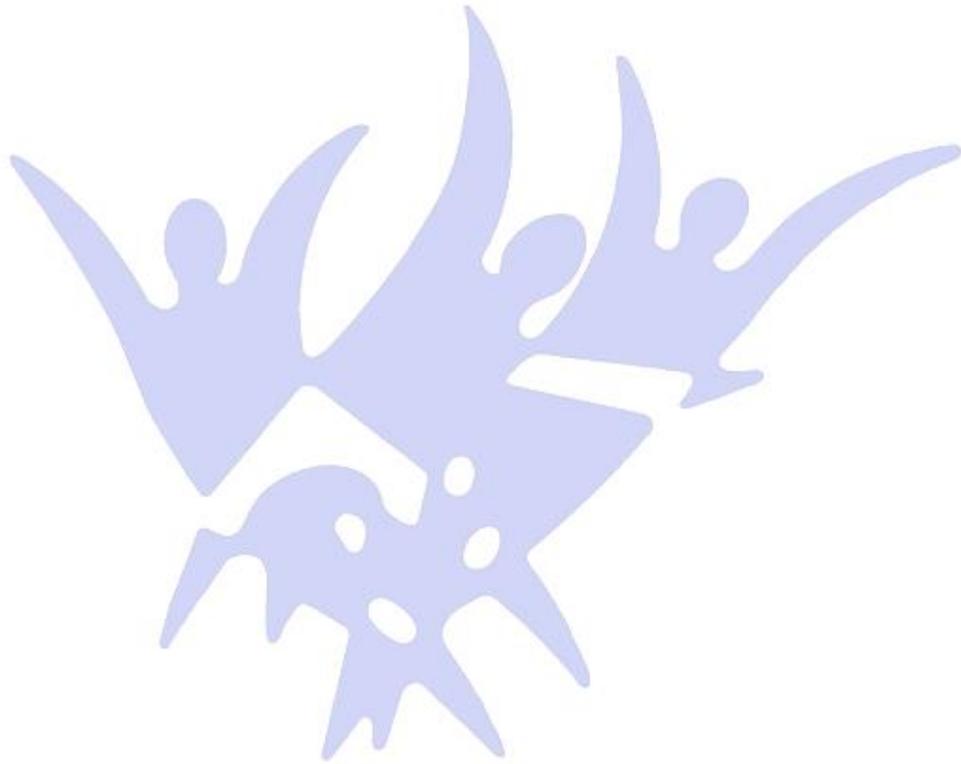
5.3 Period of Membership

- (a) The period of membership will be twelve (12) months and subject to renewal annually provided that:
 - (i) if a Member has not paid moneys due and payable to the State Branch within 3 months of a final request for payment of those moneys being sent to the Member then during that 3 months' period the Member is deemed to be un-financial until the moneys are paid.
 - (ii) an un-financial Member will have their rights and benefits suspended.
If all outstanding fees are paid prior to 12 months of becoming un-financial, the Member's rights and benefits may be reinstated.
If outstanding fees remain unpaid after 12 months of being un-financial, the Member's membership ceases and if such person seeks re-admission to membership, they will be subject to the membership application process (see Clause 5.5)

5.4 Eligibility for Membership

- (a) The following individuals will be eligible to be **Full Members**:
 - i. Graduates from tertiary institutions;
 - ii. Holders of relevant qualifications that are acceptable to the Board;
 - iii. People who are acceptable to the Board on a case-by-case basis;
 - iv. People holding Full membership at the date of approval of this constitution.

(b) The following individuals are eligible to be **Student Members**:



- (c) Currently enrolled students in post-secondary institutions in any area that is acceptable to the Board.
Student members are not eligible to vote or hold office.
- (d) Individuals in their first two years after graduation will be eligible to be **Graduate Members**.
- (e) Corporations, organisations and associations which support the purpose of the State Branch and whose employees are generally not eligible for individual membership of the State Branch may apply to be **Corporate Members**. Schools and other educational institutions are not eligible for membership.
- (f) Individuals who are remunerated for less than 2.5 days per week will be eligible to be **Non-working/Retired Members**.

5.5 Application for Membership

To apply to become a Member of the association a person must:

- (a) submit a written application (which may include in electronic form) for membership to the Board;
- (b) in a form approved by the Board; and
- (c) signed by the person (or an authorised person in the case of an application for corporate membership).

5.6 Consideration of Application

- (a) As soon as practicable after receiving an application for membership, the Board is to determine whether to approve or to reject the application.
- (b) As soon as practicable after an application for membership is received, the Board must decide by resolution whether to accept or reject the application, and to determine the class of membership for the Applicant.

Applications will be considered and decided in the order they are received by the association. When considering a membership application, the Board may seek clarification of any matter or further information in support of the application, and may delay its decision to allow for that material to be provided and proceed to consider and decide other applications.

The Board may delegate the consideration and determination of any membership application.

The Board must not approve a membership application unless the Applicant:

- (a) meets all the eligibility requirements under Clause 5.4; and
- (b) applies under Clause 5.5.

The Board may refuse to accept a membership application even if the Applicant has applied in writing and complies with all the eligibility requirements under Clause 5.4.

The Board must notify the applicant in writing of its decision as soon as practicable after the decision is made.

If the Board rejects the application, it must return any money accompanying the application to the applicant.

No reason need be given for the rejection of an application.

If the Board approves the Applicant's application for membership. The Applicant immediately becomes a Member and is entitled to exercise all the rights and privileges of membership, including the right to vote (if applicable), and must comply with all of the obligations of membership under this Constitution.

5.7. Rights and Obligations of Members

The rights of a Member are not transferable and end when membership ceases.

A Member of the State Branch who is entitled to vote has the right—

- (a) to receive notice of general meetings and of proposed special resolutions in the manner and time prescribed by these Rules; and
- (b) to submit items of business for consideration at a general meeting; and
- (c) to attend and be heard at general meetings; and
- (d) to vote at a general meeting; and
- (e) to have access to the minutes of general meetings and other documents of the association as provided under Clause 18; and
- (f) to inspect the register of members.

A Member is entitled to vote if—

- (a) the Member is a Member other than a Student Member and a Corporate Member; and
- (b) the Member's membership rights are not suspended for any reason.
- (c) A Member which is a body corporate may appoint in writing a natural person, whether or not he or she is a Member, to represent it at a particular General Meeting or at all General Meetings.
- (d) A copy of the written appointment must be lodged with the Executive Officer.
- (e) A person appointed under sub-clause (c) has authority to represent the body corporate as a Member:
- (f) in the case of an appointment in respect of a particular General Meeting, until the conclusion of that General Meeting; or
- (g) otherwise, until the appointment is revoked by the body corporate and notice of the revocation is given to the Executive Officer.
- (h) The liability of a Member of the association to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding up of the association is limited to the amount, if any, unpaid by the Member in respect of membership of the association as required by Clause 7.
- (i) A Member is only liable for their outstanding membership fees payable under Clause 5.2, if any.

5.8 Cessation of Membership

A person ceases to be a Member if the person:

- (a) dies or their whereabouts is unknown,
- (b) resigns membership, or
- (c) is expelled from the association.

A Member may resign from membership by first giving to the State Branch written notice of at least one month (or such other period as the Board may determine) of the Member's intention to resign and, on the expiration of the period of notice, the Member ceases to be a Member.

Any Member who resigns from the association remains liable to pay to the association any outstanding fees which may be recovered as a debt due to the association by the Member.

If a Member of the association ceases to be a Member under Clause 5.8, and in every other case where a Member ceases to hold membership, the Executive Officer must make an appropriate entry in the register of members recording the date on which the Member ceased to be a Member and the reason why the person ceases to be a Member.

5.9 Miscellaneous

- (a) A financial Member may include the letters MACHPER after his name. A person who has been awarded a Fellowship of ACHPER may include the letters FACHPER after her name.

6. REGISTER OF MEMBERS

- (a) The **Executive Officer** shall be responsible for establishing and for monitoring progress returns from the National Office.
- (b) The name and postal or residential address of each person who is a Member together with the date in which the person became a Member and where applicable, the date of termination of membership shall be recorded in the Register.
- (c) The Register must be kept in New South Wales at the main premises of State Branch.
- (d) The National Office will provide the information on each Member that is to be included in the register. In terms of governance and diligence, members of the Board and relevant staff have full access to the extent permitted by law. A Member has a right to access to their own data and can require it be updated or corrected.
- (e) Having regard to the Act, confidentiality considerations and privacy laws, the register may be used to further the object of the state branch, in such a manner as the Board considers appropriate.
- (f) Having regard to the Act, confidentiality considerations and privacy laws, a Member with a justifiable reason may obtain a copy of all or part of the Register on payment of a reasonable fee as set by the Board of not more than \$1 for each page copied.
- (g) If a Member requests that any information contained on the Register about the Member (other than their name) not be available for inspection, that information must not be made available for inspection.
- (h) A Member must not use information about a person obtained from the Register to contact or send material to the person, other than for:
 - (i) the purposes of sending the person a newsletter, a notice in respect of a meeting or other event relating to State Branch or other material relating to State Branch; or
 - (ii) any other purpose necessary to comply with a requirement of the Act or the Regulation.

7. MEMBER LIABILITY

- (a) Subject to this Constitution, the State Branch may be wound up in accordance with the Act.
- (b) The liability of Members is limited.
- (c) Every Member undertakes to contribute to the assets of State Branch in the event of it being wound up while a Member, or within one (1) year after ceasing to be a Member, for payment of the debts and liabilities of State Branch contracted before the time at which they ceased to be a Member and towards the costs, charges and expenses of winding up State Branch, such an amount not exceeding the amount, if any, unpaid by the Member in respect of membership fees of State Branch.

8. RESOLUTION OF DISPUTES

- (a) A dispute between a Member and another Member (in their capacity as Members), or a dispute between a Member or Members and State Branch, that cannot be resolved by the parties within 14 days of the parties becoming aware of it is to be referred to a Community Justice Centre for mediation under the *Community Justice Centres Act 1983*.

9. DISCIPLINING OF MEMBERS

- 9.1 The State Branch may take disciplinary action against a Member in accordance with this clause if it is determined that the Member—
- (a) is convicted of an indictable offence; or
 - (b) has failed to comply with this Constitution; or
 - (c) refuses to support the purposes of the State Branch; or
 - (d) has engaged in conduct prejudicial to the State Branch.
- 9.2 If the Board is satisfied that there are sufficient grounds for taking disciplinary action against a Member, the Board must appoint a disciplinary subcommittee to hear the matter and determine what action, if any, to take against the Member.
- 9.3 The members of the disciplinary subcommittee—
- (i) may be Directors, members of the association or anyone else; but
 - (ii) must not be biased against, or in favour of, the Member concerned.
- 9.4 Before disciplinary action is taken against a Member, written notice must be given to the Member—
- (a) stating that the association proposes to take disciplinary action against the Member; and
 - (b) stating the grounds for the proposed disciplinary action; and
 - (c) specifying the date, place and time of the meeting at which the disciplinary subcommittee intends to consider the disciplinary action (the disciplinary meeting); and
 - (d) advising the Member that he or she may do one or both of the following—
 - (i) attend the disciplinary meeting and address the disciplinary subcommittee at that meeting;
 - (ii) give a written statement to the disciplinary subcommittee at any time before the disciplinary meeting; and
 - (iii) setting out the Member's appeal rights under Clause 10.
- 9.5 The notice must be given no earlier than 28 days, and no later than 14 days, before the disciplinary meeting is held.
- 9.6 At the disciplinary meeting, the disciplinary subcommittee must—
- (a) give the Member an opportunity to be heard; and
 - (b) consider any written statement submitted by the Member.
- 9.7 After complying with Clause 9.6, the disciplinary subcommittee may—
- (a) take no further action against the Member; or
 - (b) subject to Clause 9.9 -
 - (i) reprimand the Member; or
 - (ii) suspend the membership rights of the Member for a specified period; or
 - (iii) expel the Member from the association.

- 9.8. The disciplinary subcommittee may not fine the Member.
- 9.9 The suspension of membership rights or the expulsion of a Member by the disciplinary subcommittee under this rule takes effect immediately after the vote is passed.
- 9.10 The Member must be informed in writing of the decision of the Board and the reasons for the decision, within 7 days of the disciplinary meeting referred to in Clause 9.6.
- 9.11 .If a Member's membership is suspended under Clause 9.7, the Executive Officer must record in the Register:
- (a) the name of the Member that has been suspended from membership;
 - (b) the date on which the suspension takes effect; and
 - (c) the length of the suspension as determined by the Board under Clause 9.7.
- 9.12. A Member that has been suspended under Clause 9.7 cannot exercise any rights or privileges of membership, including voting rights, during the period they are suspended from membership. Upon the expiry of the period of a Member's suspension, the Executive Officer or Public Officer must record in the Register that the Member is no longer suspended.

10. APPEALS AGAINST SUSPENSION OR EXPULSION

- 10.1. A person whose membership rights have been suspended or who has been expelled from the association under Clause 9.7 may give notice to the effect that he or she wishes to appeal against the suspension or expulsion.
- 10.2. The notice must be in writing and given—
- (a) to the disciplinary subcommittee immediately after the vote to suspend or expel the person is taken; or
 - (b). to the Executive Officer not later than 48 hours after the vote.
- 10.3. If a person has given notice under Clause 10.1, a disciplinary appeal meeting must be convened by the Board as soon as practicable, but in any event not later than 21 days, after the notice is received.
- 10.4. Notice of the disciplinary appeal meeting must be given to each Member of the association who is entitled to vote as soon as practicable and must—
- (a) specify the date, time and place of the meeting; and state—
 - (b) the name of the person against whom the disciplinary action has been taken; and
 - (c) the grounds for taking that action; and
 - (d) that at the disciplinary appeal meeting the members present must vote on whether the decision to suspend or expel the person should be upheld or revoked.
- 10.5. At a disciplinary appeal meeting—
- (a) no business other than the question of the appeal may be conducted; and
 - (b) the Board must state the grounds for suspending or expelling the Member and the reasons for taking that action; and
 - (c) the person whose membership has been suspended or who has been expelled must be given an opportunity to be heard.
- 10.6 After complying with Clause 10.5, the members present and entitled to vote at the meeting must vote by secret ballot on the question of whether the decision to suspend or expel the person should be upheld or revoked.

- 10.7 A Member may not vote by proxy at the meeting.
- 10.8 The decision is upheld if not less than three quarters of the members voting at the meeting vote in favour of the decision.
- 10.9. If the Board's decision to suspend or expel a Member is revoked under these Rules, any act performed by the Board or members in General Meeting during the period that the Member was suspended or expelled from membership is deemed to be valid, notwithstanding the Member's inability to exercise their rights or privileges of membership, including voting rights, during that period.

11. POWERS OF THE BOARD

Subject to the Act and this Constitution, the business of the State Branch shall be managed and the powers of the State Branch shall be exercised by the Board. In particular, the Board shall act in accordance with the Objects.

12. FINANCIAL YEAR

The financial year shall run from January 1 to December 31 or such other period as may be determined by the Board from time to time.

13. THE BOARD

13.1 Composition of the Board

There must be not less than 3 and not more than 12 Directors.

13.2 Elected Positions

13.2.1 Nomination for Board

- (a) Any financial Full member may be nominated for and elected as a Director on the Board.
- (b) Nominations for the Board shall be called no less than twenty-eight (28) days prior to the AGM. When nominations are called details of the desired capabilities and perspectives desirable to improve the effectiveness of the Board may be determined by the Board and issued as well as an indication of the roles of particular positions may be determined by the Board from time to time and issued as a guide to Members.
- (c) A Member who is a member of the governing body of or Office Bearer of ACHPER National is not eligible to nominate for or be appointed to any position on the Board.
- (d) Nominees for election to the Board must declare any position they hold with a similar organisation or ACHPER National.

13.2.2 Form of Nomination

Nominations must be:

- (a) in writing on the form provided by the Board for that purpose;
- (b) signed by a nominator and seconder both of whom are financial Members;
- (c) signed by the nominee (who must be a financial Member) expressing their consent to serve in the position; and
- (d) delivered to the Executive Officer.

13.2.3 Elections

- (a) Elections will be held prior to the AGM in accordance with the procedures determined by the Board and set out in the by-laws. A Returning Officer will be appointed to conduct the election of Directors.
- (b) There will be staggered rotational elections so that each year 6 Director positions will be up for election along with any additional positions to be filled in accordance with Clause 13.5(b). The Directors to retire at each AGM are those who were elected 2 years earlier and those appointed to fill a casual vacancy under Clause 13.5(b).
- (c) If the number of nominations exceeds the number of vacancies to be filled, a ballot must be held prior to the AGM, which may include an electronic ballot as determined by the Board.
- (d) If the number of nominations received is equal to or less than the number of vacant positions to be filled then the candidates nominated shall be declared elected at the AGM following the close of nominations, subject to endorsement of each candidate by the eligible voting Members by separate ordinary resolutions at that AGM. If any of the candidates are not endorsed by the eligible voting Members at the AGM, then they will not become Directors.
- (e) Any unfilled positions as a result of insufficient nominations or a candidate not being endorsed by the Members as per Clause 13.2.3(d) shall be deemed casual vacancies.
- (f) Results of an election will be announced at the AGM. Elected Directors will hold office for a term of approximately 2 years commencing from the end of that AGM until the end of the second following AGM.
- (g) Retiring Directors are eligible for re-election.
- (h) There is no limit to the number of terms a financial Member may serve on the Board.

13.3 Office Bearers

- (a) The Office Bearers of the Company are:
 - (i) President;
 - (ii) Vice President; and
 - (iii) Treasurer.
- (b) The Board will appoint the Office Bearers from amongst their number at the first Board meeting after each AGM or at any time after a vacancy in the position of an Office Bearer arises.
- (c) Each Office Bearer while they remain a Director will hold their position:
 - (i) for the period from when they are elected or appointed to the relevant position until the commencement of the first Board meeting after the next AGM;
 - (ii) until they resign from their position as Office Bearer by written notice to the State Branch in which case they would remain a Director unless they also resign as a Director; or
 - (iii) until they are removed from their position as Office Bearer by resolution of the Board, in which case they would remain a Director.
- (d) There is no limit to the number of terms a Director may serve in an Office Bearer role.

13.4 Meetings of the Board

13.4.1 Board to Meet

- (a) The Board shall meet as often as necessary to conduct the business of the State Branch and not less than once in each quarter.
- (b) The Board may use communication technology to conduct meetings so that not all members need to be physically present at the place specified in the notice for the

meeting. There must be at least one Board member present at this place specified for the meeting to be deemed to be held there. If no person can be present at the specified place the meeting may still be held as the meeting shall be deemed to be held at the place where the Chairperson of the meeting is located.

13.4.2 Notice of Board Meetings

Notice of Board meetings shall be given at the previous Board meeting or by such other means as the Board may decide upon.

13.4.3 Quorum

A quorum at a meeting of the Board is 50%+1 of Directors in office at the time, rounded down if not a whole number.

No business may be transacted at a meeting of the Board unless a quorum of Directors is present.

13.4.4 Decisions of the Board

Questions arising at any meeting of the Board shall be decided by a simple majority of votes of those present and entitled to vote. Directors shall have one (1) vote on any question. If the vote is tied, the chairperson will have a vote in the first round and not have a casting vote to determine the outcome.

13.4.5 Resolution not in Meeting

A resolution in writing that has been signed or assented to by electronic means by all the Directors shall be as valid and effectual as if it had been passed at a meeting of the Board duly convened and held.

13.4.6 Chairperson

The chairperson shall be:

- (i) the President; or
- (ii) if the President is absent, unwilling or unable to preside then the Vice President shall chair; or
- (iii) if neither the President nor Vice President is present, unwilling or unable to preside then a chairperson shall be appointed from among the Board members present. That person shall preside as chairperson for that meeting only.

13.5 Vacancies on the Board

- (a) The Board may validly provided its number is not reduced below the minimum number of 3. Should Board numbers fall below the minimum number the remaining Directors shall act only to appoint new Directors.
- (b) In the event of a casual vacancy occurring on the Board, the Board may appoint an eligible financial Full member to fill the vacancy and the Member so appointed is to hold office, until the end of the first AGM following the appointment, at which, if the predecessor's term would not then have expired, an election will be held to fill the position for the remainder of the predecessor's term, or if the term would have expired a normal vacancy election would proceed. The Member appointed to fill the casual vacancy, if otherwise eligible, shall be entitled to nominate to be elected to fill the position.

13.5.1 Grounds for Termination of a Director

A Director shall cease to hold office if the Director:

- (i) dies;
- (ii) ceases to be a Member;
- (iii) resigns from office by notice in writing given to the President or **Executive Officer**;
- (iv) is removed from office by resolution at a General Meeting;

- (v) is liable to be dealt with in any way under the law relating to mental health; or
- (vi) is absent from five (5) successive Board meetings without approval by the Board.

13.6. Conflict Of Interest

Each Board member shall declare their interest in any contractual, selection, disciplinary, or financial matter in which a material conflict of interest arises or may arise. The Director shall, unless otherwise determined by the other members of the Board, absent themselves from discussions of such matters and shall not be entitled to vote in respect of such matters. Unless otherwise determined by the other members of the Board, if the Director casts a vote, the vote shall not be counted.

13.6.1 Disclosure of Interests

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

13.6.2 General Disclosure

A General Notice stating that a Director is a member of a specified firm or company and that they are 'interested' in all transactions with that firm or company is sufficient declaration under Clause 13.6. After the distribution of the General Notice, it is not necessary for the Board Member to give a Special Notice regarding any particular transaction with that firm or Board.

13.6.3 Recording Disclosures

- (a) Any declaration made, any disclosure or any General Notice given by a Director in accordance with Clauses 13.6.1, and/or 13.6.2 must be recorded in the Minutes of the relevant meeting.
- (b) State Branch will also maintain a register of conflicts of interest as required by the Act.

14. DELEGATIONS

14.1 Board May Delegate Functions

- (a) The Board may delegate functions by instrument in writing, to create, establish or appoint committees, (or individual officers or consultants) to carry out specific duties and functions as the need arises.
- (b) The Board shall determine what powers these committees are given. In exercising its power under Clause 14, the Board must take into account broad stakeholder involvement.

14.2 Delegation by Instrument

- (a) In the establishing or appointing committees, (or individual officers or consultants), the Board may delegate such functions as are specified in the relevant terms of the delegation.
- (b) The Board **cannot** delegate:
 - (i) this power of delegation; and
 - (ii) a function imposed on them by the Act, any law, this Constitution, or by resolution in a General Meeting.

14.3 Delegated Functions Exercised in Accordance with Terms

A function, the exercise of which has been delegated under Clause 14, may, while the delegation remains unrevoked, be exercised from time to time in accordance with the terms of the delegation.

14.4 Procedure of Delegated Authority

The procedures for any committee (or individual officer or consultant) exercising delegated power shall, subject to this Constitution and with any necessary or incidental amendment, be the same as that applicable to meetings of the Board under Clause 13.4. The delegate exercising delegated powers shall make decisions in accordance with the Objects and shall promptly provide the Board with details of all material decisions. The delegate shall also provide any other reports, minutes and information required by the Board.

14.5 Delegation May Be Conditional

A delegation under Clause 14 may be made subject to certain conditions or limitations regarding the exercise of any function. These may be specified in the delegation.

14.6 Revocation of Delegation

At any time the Board may, by instrument in writing, revoke wholly or in part any delegation made under Clause 14. The Board may amend or repeal any decision made by a delegate under this Clause.

15. GENERAL MEETINGS

15.1 Annual General Meeting

- (a) The AGM shall be held in accordance with the Act and this Constitution.

15.1.1 Business to be Transacted

In the case of the AGM the following business shall be transacted:

- (a) confirmation of the minutes of the last AGM and any Special General Meeting held since that meeting;
- (b) receipt of the Board's reports upon the activities of the State Branch in the last financial year;
- (c) election of Office Bearers and Councillors of the Board;
- (d) receipt and consideration of a statement from the Board which is not misleading and gives a true and fair view for the last financial year of the State Branch's:
 - (i) income and expenditure
 - (ii) assets and liabilities
 - (iii) mortgages, charges and other securities
 - (iv) trust properties.
- (e) appoint an auditor when needed.

15.2 Special General Meetings

- (a) All other General Meetings shall be Special General Meetings and shall be held in accordance with the Constitution.
- (b) A Special General Meeting may be called by the Board at any time **or** in the event that the AGM is overdue **or** if twelve (12) of the members make a written request for such a meeting.

15.2.1 Requisition of Special General Meeting

- (a) The Board shall convene a Special General Meeting when twelve (12) members (no less) submit a requisition in writing.

- (b) The requisition for a Special General Meeting shall state the purpose of the meeting, which must be for a valid purpose, be signed by the members making the requisition and be sent to the Public Officer. The requisition may consist of several documents in like form, each signed by one (1) or more of the members making the requisition.
- (c) If the Board does not cause a Special General Meeting to be called one (1) month after the date in which the valid requisition is sent to the State Branch, the members making the requisition, or any of them, may convene a Special General Meeting to be held no later than three (3) months after that date.
- (d) A Special General Meeting convened by members under the Constitution shall be convened in the same manner, or as close as possible, as those convened by the Board.

15.3 Notice of General Meetings (AGM & SGM)

- (a) At least 21 days notice of an AGM and the agenda including notices of motion shall be given to members in their preferred format (post, email, or facsimile).
- (c) At least fourteen (14) days before date of a General Meeting and the agenda including notices of motion shall be given to members in their preferred format (post, email, or facsimile). In the case of a General Meetings where a special resolution is to be proposed, notice of the resolution shall be given to members at least twenty-one (21) days before the meeting.

15.4 Business at a General Meeting

- (a) No business other than that set out in the notice convening the meeting shall be transacted at the meeting.
- (b) A Member who is entitled to vote and desiring to bring any valid business before the AGM or a Special General Meeting may give notice in writing of that business to the President or **Executive Officer** who shall include that business in the next notice calling a General Meeting given after receipt of the notice from the Member.

15.5 Quorum

The quorum for an AGM and a Special General Meeting shall be eight (8) Members entitled to vote present in person.

15.6 Chairperson to Preside

- (a) The President shall preside as chairperson of all General Meetings except:
 - (i) in relation to any election for which the President is a nominee.

If the President is absent, unwilling or unable to preside then the Vice President shall chair; or if neither the President nor Vice President is present, unwilling or unable to preside then a chairperson shall be appointed from among the Directors present.

If no other Director willing to act is present, the Members present must elect one of their number to preside as chairperson at the meeting.

15.7 Adjournment of Meeting

- (a) if within thirty (30) minutes from the time appointed for the meeting a quorum is **not** present, the meeting shall be adjourned. If at the adjourned meeting a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting shall **lapse**.
- (b) When a meeting is adjourned for thirty (30) days or more, notice of the adjourned meeting shall be given as in the case of an original meeting.
- (c) Except as provided in Clause 15.7(b) it shall not be necessary to give any notice of an adjournment or the business to be transacted at any adjourned meeting.

15.8 Voting Procedure

- (a) At any General Meeting a resolution put to vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded by:
 - (i) the chairperson; or
 - (ii) 5 or more Members present and with a right to voteIn the case of an equality of votes a secret ballot shall be held.
- (b) All votes held in General Meetings shall be given personally or by proxy.

A Member that is entitled to vote at a General Meeting may appoint a proxy to attend and vote at a general meeting on their behalf. A proxy may be but need not be a Member.

A proxy appointed to attend and vote for a Member has the same rights as the Member to:

- (a) speak and vote at the meeting; and
- (b) demand or join in to demand a poll.

An appointment of proxy must be signed by the Member appointing the proxy and must contain:

- (a) the Member's name and address;
- (b) the proxy's name; and
- (c) the meeting(s) at which the appointment may be used.

15.8.1 A proxy appointment may be a standing one.

15.8.2 In the event of a Member not nominating a particular person as proxy, the proxy may be exercised by the Chair unless the Member indicates otherwise.

15.8.3 The appointment of the proxy must be received by the State Branch at the address or email stated in the notice of meeting at least 48 hours before a general meeting or such shorter period as the Board may permit. If a Member submits a valid replacement proxy within the time limit, it replaces the earlier appointment.

15.8.4. Unless the State Branch receives written notice at least 48 hours (or any shorter period the Board may permit) before the start or resumption of a general meeting at which a proxy or attorney votes, a vote cast by the proxy or attorney is valid even if, before the proxy or attorney votes, the appointing Member:

- (a) dies;
- (b) is mentally incapacitated;
- (c) revokes the proxy's appointment; or
- (d) revokes the authority of a representative or agent who appointed the proxy.

15.8.5 Despite Clause 15.8.4c if a Member attends a general meeting and they have appointed a proxy, the proxy's appointment is deemed revoked. This means the proxy does not have the authority to speak and vote for the Member at a meeting while the Member is at the meeting.

15.9 Recording of Determination

- (a) Unless a poll is demanded under Clause 15.8 the Chairperson's declaration shall be conclusive evidence of the result of a resolution decided by a show of hands. The declaration does not need to record the number of votes in favour of or against the resolution.
- (b) The result of the resolution must be recorded in the minute book kept for that purpose.

15.10 Where Poll Demanded

If a poll is duly demanded under Clause 15.8 it shall be taken in such a manner and either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll shall be a resolution of the meeting.

15.11 Use of Technology at General Meetings

- (a) A general meeting may be held at 2 or more venues using any technology approved by the Board that gives each of the Members a reasonable opportunity to participate.
- (b) A Member who participates in a general meeting using that technology is taken to be present at the meeting and, if the Member votes at the meeting, is taken to have voted in person.

15.12 Postal or Electronic Ballots

The association may hold a postal or electronic ballot (as the committee determines) to determine any issue or proposal (other than an appeal under Clause 10).

A postal or electronic ballot is to be conducted in accordance with Schedule 3 to the Regulation.

16 OFFICE BEARERS

16.1 Treasurer

- (a) The Treasurer shall ensure that all money received by the State Branch is paid without deduction into an account in the State Branch's name. Payments shall be made through internet banking or by cheque signed by two (2) signatories authorised by the Board. Major or unusual expenditures shall be authorised in advance by the Board or a General Meeting.
- (b) The Treasurer shall ensure that correct books and accounts are kept showing the financial affairs of the State Branch as required by the Act.
- (c) The Treasurer shall ensure for the Board that the State Branch's books and accounts are audited and made available for the Members in accordance with the Act.

17. SPECIAL RESOLUTIONS

- (a) A special resolution must be passed at an AGM or a Special General Meeting to effect various changes required by law including:
 - (i) a change to the Constitution;
 - (ii) a change of the State Branch's objects;
 - (iii) an amalgamation with another incorporated association;
 - (iv) voluntarily winding up the State Branch and distributing its property;
 - (v) transferring registration to a company or a cooperative.
- (b) A special resolution shall be passed in the following manner:
 - (i) a notice must be sent to all members advising that a General Meeting is to be held to consider a special resolution;
 - (ii) the notice must give details of the proposed special resolution and give twenty-one (21) days notice of the meeting;
 - (iii) a quorum (eight (8) members) must be present at the meeting;
 - (iv) it is supported by at least three-quarters of the votes cast by Members who, under the Constitution, are entitled to vote on the proposed resolution.
- (c) in situations where it is not possible or practicable for a special resolution to be passed as described above, a request may be made to the Department of Fair Trading for permission to pass the special resolution in some other way.

18. PUBLIC OFFICER

18.1 Responsibilities

The Public Officer shall ensure that records of the business of the State Branch including the Constitution, Register, register of Board members, register of official signatories and register of conflicts of interest, minutes of all General Meetings and of meetings of the Board and relevant committees and a file of correspondence are kept. These records shall be available for inspection by any Member as determined by law or by the Board. The Board shall ensure the safe custody of all records.

- (a) The Board shall ensure that a person in accordance with the Act is appointed as Public Officer.
- (b) The public officer is the official point of contact for an incorporated association with the regulator and would normally be one of the official signatories.
- (c) The Public Officer may be a Director, or any other eligible person regarded as suitable for the position by the Board.

18.1 Removal of Public Officer

The Board may at any time remove the Public Officer and appoint a new Public Officer provided the person appointed is eighteen (18) years of age or older and a resident of New South Wales.

18.2 Public Officer Position Vacant

- (a) The Public Officer shall be deemed to have vacated their position in the following circumstances:
 - (i) death;
 - (ii) resignation;
 - (iii) removal by the Board;
 - (iv) bankruptcy or financial insolvency;
 - (v) mental illness;
 - (vi) residency outside New South Wales.
- (b) When a vacancy occurs in the position of Public Officer the Board shall within 28 (14) days notify the Department of Fair Trading by the prescribed form and appoint a new Public Officer.

19. AUDITOR

- (a) As required by the Act, an auditor or auditors shall be appointed in accordance with the Act. The auditor's duties shall be regulated in accordance with the Act. The auditor may be removed in accordance with the law.
- (b) The accounts of the State Branch shall be audited as required by the Act at the conclusion of each financial year.

20. INCOME

20.1 Sources of Income

- (a) The income and property of the State Branch shall be derived from fees, course/workshop fees, government grants, interest on money and such other sources as the Board determines from time to time.
- (b) All money received by the State Branch shall be deposited as soon as practical and without deduction to the credit of the State Branch's bank account.
- (c) The State Branch shall, as soon as is practicable after receiving any money, issue an appropriate receipt.
- (d) There shall be four (4) authorised signatories to operate the accounts, two of whom shall be Directors. Any two (2) authorised signatories are required before any financial transaction shall be authorised

20.2 Income to Promote Objects

The income and property of the State Branch shall be applied solely towards the promotion of the Objects.

20.3 Uses of Income

State Branch is non-profit

Subject to the Act and the Regulation, the association must apply its funds and assets solely in pursuance of the Objects and must not conduct its affairs so as to provide a pecuniary gain for any of its Members.

Note. Section 5 of the Act defines pecuniary gain for the purpose of this clause.

20.4 Payment in Good Faith

Payment in Good Faith of or to any Member can be made for:

- (i) any services actually rendered to the State Branch whether as an employee, Board member or otherwise;
- (ii) goods supplied to the State Branch in the ordinary and usual course of operation;
- (iii) interest on money borrowed from any Member;
- (iv) rent for premises demised or let by any Member; or
- (v) any out-of-pocket expenses incurred by a Member on behalf of the State Branch.

Nothing in Clauses 20.2, 20.3 and 20.4 precludes such payments provided they do not exceed the amount ordinarily payable between ordinary commercial parties dealing at arm's length in a similar transaction.

21. ALTERATIONS TO CONSTITUTION

- (a) This Constitution shall **not** be altered except by Special Resolution which requires a three-quarters majority of those present and voting at the General Meeting called to make a determination on this.
- (b) Notices of such alterations shall be notified to Members not less than twenty-one (21) days prior to the meeting.
- (c) Any changes to the Constitution must be registered with the NSW Department of Fair Trading before they come into effect.

22. REGULATIONS

22.1 Board to Formulate Regulations

The Board shall formulate, issue, adopt, interpret and amend Regulations for the proper advancement, management and administration of the State Branch, and the advancement of

the purposes of the State Branch. Such Regulations shall be consistent with the Constitution and any policy directives of the Board.

22.2 Regulations Binding

All Regulations are binding on State Branch and all Members.

22.3 Regulations Deemed Applicable

All clauses, rules, by-laws, and regulations of State Branch in force at the date of the approval of this Constitution (as long as such clauses, rules, by-laws, and regulations are not inconsistent with or have been replaced by, this Constitution) shall be deemed to be Regulations and shall continue to apply.

22.4 Bulletins Binding on Members.

Amendments, alterations, interpretations or other changes to Regulations shall be advised to Members by means of Bulletins approved by the Board and prepared and issued by State Branch. The Board shall take reasonable steps to distribute information in the Bulletins to Members. The matters in the Bulletins are binding on all Members.

22.5 Changes to Regulations

The Regulations of State Branch may be amended by the Board provided that:

- (i) the Members are advised fully as to the amendments; and
- (ii) such amendments are ratified at the next AGM by ordinary resolution of those present and voting.

23. INSURANCE

The Board shall effect and maintain insurance as required under the Act together with any other insurance which may be required by law or regarded as necessary by the Board.

24. WINDING UP

- (a) Subject to this Constitution State Branch may be wound up in accordance with the Act.
- (b) The liability of the Members is no more than that outlined in Clause 7(c).
- (c) Subject to the Act, if upon winding up of State Branch there remains, after satisfaction of all its debts and liabilities, any assets or property they shall not be paid to or distributed to Members. Instead, the assets or property shall be given or transferred to another organisation(s) that has objects similar to the Objects. The organisation(s) is to be determined by the Members at a General Meeting at or before the time of dissolution. If this does not occur, the decision is to be made by application to the court.

25. NOTICE

- (a) Service of documents on the State Branch is effected by serving them on the Public Officer or by serving them personally on two (2) members of the Board.
- (b) Notice may be given by the State Branch to any person entitled under this Constitution to receive any Notice. The Notice can be sent by pre-paid post or facsimile transmission or, where available, by electronic mail to the person's registered address or facsimile number or electronic mail address.
- (c) Where a Notice is sent by post, service of the Notice shall be deemed to be effected by properly addressing, pre-paying and posting the Notice. Service of the Notice is deemed to have been effected three (3) days after posting.
- (d) Where a Notice is sent by facsimile transmission, service of the Notice shall be deemed to be effected upon receipt of a confirmation report confirming the facsimile was sent and/or received at the facsimile number to which it was sent. (iii) Where a Notice is sent by electronic mail, service of the Notice shall be deemed to be effected the next business day after it was sent.

26. INDEMNITY

- (a) Every Director shall be indemnified out of the property and assets of the State Branch against any liability incurred by them in their capacity as Directors in defending any proceedings, civil or criminal, in which a judgment is given in their favour or in which they are acquitted or connected with any application in relation to any such proceedings in which relief is granted by the Court.
- (b) The State Branch shall indemnify its Directors against all damages and losses (including legal costs) for which any such Director may be or become liable to any third party in consequence of any act or omission, except wilful misconduct by a Director performed or made while acting on behalf of and with the authority, express or implied of the State Branch.

27. TRANSITIONAL CLAUSES

- (a) Upon this Constitution becoming effective, affiliate members under the constitution that this Constitution replaces will become Corporate members.
- (b) Upon this Constitution becoming effective, the members of the Board in office at the time shall continue as Directors until their term ends in accordance with these transitional clauses and this Constitution. If eligible, the individuals serving as Directors may stand for re-election as a Director at the election immediately prior to their term expiring.
- (c) Prior to the 2020 AGM, elections will be held in accordance with Clause 13.2.3. In order to implement the rotational elections under Clause 13.2.3(b), the Directors to retire at the 2020 AGM will be decided by lot unless they can agree among themselves.
- (d) Upon this Constitution becoming effective the individuals serving in the office-bearer roles of President, Vice President and Treasurer will remain in these roles until the first Board meeting after the 2020 AGM unless their term as an office-bearer ceases earlier in accordance with this Constitution.