



ASIA PACIFIC INTERNATIONAL COLLEGE PTY LIMITED

A.C.N. 061 101 488

CONSTITUTION

FINAL REVISION

09 January 2017

**ASIA PACIFIC INTERNATIONAL COLLEGE PTY LIMITED A.C.N. 061 101 488
CONSTITUTION**

VERSION CONTROL

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| Approved by | Shareholders | Date Approved | General Meeting dated 9 th January 2017 |
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| Responsible Officer | | Company Secretary | |
| Supporting Documents, Procedures & Forms | | APIC Governing Board Charter APIC Academic Board Charter | |
| References & Legislation | | <ol style="list-style-type: none"> 1. The Higher Education Standards Framework, the Tertiary Education Quality and Standards (TEQSA) Act 2011 (Cth); 2. The Higher Education Standards Framework (Threshold Standards) 2015; 3. The Education Services for Overseas Students Act 2000 (Cth); 4. The Education Services for Overseas Students Regulations 2001; and 5. The National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007; and 6. The Higher Education Support Act 2003 (Cth) 7. For offshore operations, the host countries specific Higher Education regulations. | |

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1. INTERPRETATION

- 1.1. In this Constitution unless the contrary intention appears:
- 1.1.1. **“Academic Board”** means the Academic Board constituted pursuant to Rule 24, and which:
 - 1.1.1.1. sets and oversees policies and processes necessary to achieve intended academic outcomes (quality and integrity) consistent with APIC’s overall directions; and
 - 1.1.1.2. sets academic standards and monitors academic outcomes; and ultimate responsibility and accountability to the Governing Board
 - 1.1.2. **“Act”** means the *Corporations Act 2001* as amended from time to time;
 - 1.1.3. **“APIC”** means Asia Pacific International College Pty Limited, A.C.N. 061 101 488;
 - 1.1.4. **“APIC Crest”** means the Crest (logo) which is adapted and used by APIC;
 - 1.1.5. **“By-laws”** means the by-laws determined by the Governing Board pursuant to Rules 17.5.1.1, 23 and 30.3 and for the time being in force;
 - 1.1.6. **“Chair of the Academic Board”** means the person engaged by the Company to preside over the Academic Board meetings and to ensure that the Academic Board discharges its responsibilities regarding oversight of academic standards, curriculum review and approval, academic rules and regulations governing award of degrees and diplomas and other essential academic tasks in an independent and consistent manner pursuant to the requirements of the State and Commonwealth laws and regulations applicable to Higher Education Institutions and Higher Education Providers as the case may be.
 - 1.1.7. **“Chair of the Governing Board”** means the independent and non-executive Director and Chair of the Governing Board from time to time in office pursuant to Rule 18, and normally with higher education experience appointed by the Members of the Company to preside over the Governing Board meetings, promote the Company, preside over degree granting and other ceremonies of the Company.
 - 1.1.8. **“College”** means Asia Pacific International College Pty Limited, A.C.N. 061 101 488;

- 1.1.9. **“Company”** means Asia Pacific International College Pty Limited, A.C.N. 061 101 488, whose Members have adopted this Constitution;
- 1.1.10. **“Deputy Chair of the Governing Board”** means the independent, non-executive Director and Deputy Chair of the Governing Board from time to time in office pursuant to Rule 18, and normally with higher education experience appointed by the Members of the Company to preside over the Governing Board meetings, promote the Company, preside over degree granting and other ceremonies of the Company, when the Chair of the Governing Board is not present.
- 1.1.11. **“Director”** means a member for the time being of the Governing Board;
- 1.1.12. **“For cause”** means, when used in connection with removal from an elected or appointed position as a Member or Governing Board Director, incompetence and/or conduct where there is a persistent failure to uphold the objects of APIC and which in the opinion of the Members at general meeting, by a Special Resolution, brings APIC into disrepute;
- 1.1.13. **“Governing Board”** means the board of directors of the Company, and which
- 1.1.13.1. shall exercise competent governance oversight of and be accountable for all of APIC’s operations in or from Australia, including accountability for the award of higher education qualifications for continuing to meet the requirements of all legislation that applies to APIC and for the APIC’s representation of itself;
- 1.1.13.2. sets overall strategic directions and the framework of policies and procedures, and is ultimately responsible to shareholders and stakeholders for both corporate and academic outcomes;
- 1.1.13.3. means all of the directors of the Company or such number of directors acting as the Governing Board in accordance with this Constitution.
- 1.1.14. **“Incompetence”** means in connection with the performance or conduct of a Member or Governing Board Director:

- 1.1.14.1. a breach of the duties of a Governing Board Director or Member as defined in the Act or the unwritten law of the States and Territories of Australia, including but not limited to the duties of loyalty and good faith and care and diligence; and/or
- 1.1.14.2. a failure to meet the performance standards reasonably expected of a Member or Governing Board Director in the Company's circumstances;
- 1.1.15. **"Member"** means a Member/shareholder of the Company;
- 1.1.16. **"President"** means the person appointed pursuant to Rule 19, that is the Principal Executive of APIC, who is appointed by the Governing Board;
- 1.1.17. **"Acting President"** means a person who is temporarily appointed by the Governing Board to fill the role of APIC president, either when the substantive president is unavailable or when the post is vacant;
- 1.1.18. **"Registered Office"** means the registered office of the Company as required by the Act, and which will be situated in the State of New South Wales in the Commonwealth of Australia;
- 1.1.19. **"Regulations"** means the Regulations of APIC made under Rules 6.1.12 and 9.2.12;
- 1.1.20. **"Seal"** means the common seal of the Company;
- 1.1.21. **"Secretary"** means a person appointed by the Company to perform the duties of the Company Secretary;
- 1.1.22. **"Special Resolution"** means a resolution passed by at least 75% of the votes cast by Members entitled to vote on the resolution, in accordance with the Act; and
- 1.1.23. **"General Regulations"** means the General Regulations of APIC made by the Governing Board under Rule 24.
- 1.2. Words or expressions contained in this Constitution shall be interpreted in accordance with the provisions of the Act.
- 1.3. Words importing one gender include all other genders.
- 1.4. Words importing the singular include the plural and vice versa.

- 1.5. Clause or rule headings are used for convenience and do not affect the construction of the Constitution.

2. NAME

- 2.1. The name of the Company is "**Asia Pacific International College Pty Limited**".

3. PROPRIETARY LIMITED COMPANY

- 3.1. The Company is registered as a proprietary Company and accordingly must be limited by shares.

4. MEMBERS

- 4.1. The sole Member of the Company is Education Centre of Australia Pty Limited, ACN 111 918 775, which beneficially holds all the (fully paid) ordinary shares in the Company.

5. OBJECTS OF THE COMPANY

- 5.1. The principal object of the Company is to provide, promote and undertake higher education, scholarship and research, with governance and management of its higher education operations located in Australia.

- 5.2. Without limiting the generality of rule 5.1, the Company may pursue the principal object through supplementary objects that may include the following:

- 5.2.1. To foster, promote and undertake higher education, scholarship and research and through the higher education programs of APIC provide and promote the preparation and continuing development of persons inspired APIC's's by values who will be capable of assuming positions of responsibility in business and society and in particular:

5.2.1.1. to provide academic programs of appropriate higher education standard;

5.2.1.2. to create an environment for the achievement of excellence in scholarship and research; and

5.2.1.3. to bring students to a high standard of professional development; and

- 5.2.2. to establish, operate, maintain and promote APIC, in accordance with its values, vision and mission;

- 5.2.3. to develop governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals of APIC, and that are sufficient to ensure the integrity of APIC's academic programs in line with the quality standards and requirements set out by the relevant national regulatory bodies;
- 5.2.4. to furnish and allocate funds and resources in accordance with the educational objectives of APIC;
- 5.2.5. to establish facilities to enable APIC to implement its objectives;
- 5.2.6. to award and confer academic qualifications as authorised by the relevant accrediting authority according to relevant law;
- 5.2.7. to participate in commercial ventures and activities to expand College revenue and to support the objectives of the; and
- 5.2.8. do all such things as are, in the opinion of the Governing Board, ancillary or conducive to the attainment of all or any of the above objects.

6. POWERS OF THE COMPANY

- 6.1. In pursuance of the foregoing, the Company has, subject to the objects set out in this Constitution and the provisions of Rule 6.1, the powers set out in section 124 of the Act. The powers include, but without limiting the generality of those powers or of the foregoing, power to:
 - 6.1.1. carry on educational work;
 - 6.1.2. carry on the operation of APIC;
 - 6.1.3. acquire take and hold real and personal property [including shares and including intellectual property] upon trusts either general or specific and either alone or in conjunction with any other person or company;
 - 6.1.4. acquire any rights or privileges that the Company may regard as necessary, desirable or expedient for the primary purposes hereof or for promoting its interests;
 - 6.1.5. purchase take on lease or exchange hire or otherwise acquire any real or personal property and maintain erect or alter any buildings or

- works necessary or convenient for the carrying out of any or all of the objects of the Company;
- 6.1.6. subject to sub-rule 6.1.5, sell improve lease or otherwise deal with all or any part of the property of the Company;
- 6.1.7. invest any moneys of the Company not immediately required by the Company upon such securities as may from time to time be determined;
- 6.1.8. borrow money with the approval of and in the manner approved by the Members or receive money on deposit;
- 6.1.9. lend money for such purposes as may be germane to the objects of the Company and on such terms as may seem expedient and as approved by the Members;
- 6.1.10. draw, make, accept, endorse, discount, execute, or issue promissory notes, bills of exchange, bills of lading, warrants, debentures, deposit receipts, and other transferable instruments with the approval of and in the manner approved by the Members;
- 6.1.11. obtain any order or Act of Parliament for enabling the Company to carry any of its objects into effect or for effecting any alteration of the Company's Constitution or for any other purpose which may seem expedient and oppose any proceedings or applications which may seem calculated directly or indirectly to prejudice the interests or objects of the Company or any of them;
- 6.1.12. make Regulations for the management of the business of the Company, its officers, employees, and agents, and do all such other things as may be incidental or conducive to the attainment of the objects of, or to the government and maintenance of the Company;
- 6.1.13. sell or dispose of the assets of the Company or any part thereof in accordance with the Regulations for such consideration as the Company may think fit and in particular for debentures or securities of any other company or association having similar objects and activities, provided that the Company may not sell or dispose of any intellectual property of the Company without the prior approval of the Members of the Company by resolution in general meeting;
- 6.1.14. establish, maintain and operate a separate bank account or separate bank accounts for gifted funds, and operate within the Commonwealth guidelines for deductible gift recipient status;

- 6.1.15. do all such other things as are or may be incidental or conducive to the attainment of any of the above objects; and
- 6.1.16. without prejudice to the provisions of Rule 6.1 of this Constitution, the Company has power if in the opinion of the Governing Board, the management, conduct or affairs of APIC require the Company so to do:
 - 6.1.16.1. to be a member of a limited company, association, partnership or joint venture formed or entered into anywhere in the world; or
 - 6.1.16.2. to form or participate in the formation of a limited company, association, partnership or joint venture formed or entered into anywhere in the world the objects or purposes of which include one or more of the following objects or purposes:
 - 6.1.16.2.1. providing facilities or services for study, research or education;
 - 6.1.16.2.2. undertaking research, development, consultancy or other services for commercial organisations, public bodies or individuals;
 - 6.1.16.2.3. aiding or engaging in the development or promotion of research or the application or use of the results of such research;
 - 6.1.16.2.4. any other object or purpose which, in the opinion of the Governing Board, is conducive to the attainment of the Company's objects;
 - 6.1.16.3. to exercise its powers outside the State if that is necessary or convenient for the purposes of its objects.

7. REGISTRATION AS A HIGHER EDUCATION PROVIDER

- 7.1. The Company is registered as a Higher Education Provider in the Commonwealth of Australia.
- 7.2. The Company shall at all times comply with the requirements of:
 - 7.2.1. the *Tertiary Education Quality and Standards (TEQSA) Act 2011* (Cth);

- 7.2.2. the *Higher Education Standards Framework (Threshold Standards) 2015*;
- 7.2.3. the *Education Services for Overseas Students Act 2000 (Cth)*;
- 7.2.4. the *Education Services for Overseas Students Regulations 2001*; and
- 7.2.5. the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*; and
- 7.2.6. the *Higher Education Support Act 2003 (Cth)*; and
- 7.2.7. all amendments made to the above Laws and Regulations.

8. GENERAL MEETING OF MEMBERS

- 8.1. General meetings shall be held once in every year at such time and place or places in the Commonwealth of Australia as may be prescribed by the Company and if no time or place is so prescribed such time and place may be determined upon by the Governing Board. The abovementioned general meetings shall be called "ordinary meetings" and all other meetings shall be called "extraordinary meetings."
- 8.2. Rule 8.3 replaces replaceable rule §249C of the Act.
- 8.3. In addition to the ordinary meetings referred to in Rule 8.1, the Governing Board may call a meeting of the Company's Members at any time and for any purpose connected with Company business.
- 8.4. The Company may hold a meeting of its Members, in accordance with §249S of the Act, at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 8.5. Meetings shall be held on requisition of Members in accordance with the provisions of §249D of the Act.
- 8.6. Not less than twenty-one days' notice of any general meeting (exclusive both of the day on which the notice is served or deemed to be served and of the day of the meeting) specifying those matters required to be specified by §249L of the Act, including the day, hour, and place or places of the meeting, and in case of special business the general nature of the business to be transacted, shall be given in manner hereinafter mentioned or in such other manner as may from time to time be prescribed by the Company in general meeting; but the accidental omission to give notice of any meeting to or the non-receipt of such notice by any of the Members shall not invalidate any resolution passed at any general meeting.

A general meeting may be convened at shorter notice in accordance with §249H of the Act.

9. PROCEEDINGS AT A MEETING OF MEMBERS

- 9.1. The business of an ordinary meeting shall be to receive and consider the balance sheet, income and expenditure account, and the reports of the Governing Board and the auditors; to elect auditors; and to transact any other business which under this Constitution ought to be transacted at a general meeting.
- 9.2. Pursuant to the powers conferred by the Act or by this Constitution, the Members of the Company in general meeting have the power to:
 - 9.2.1. change the Company's name by special resolution, pursuant to §157 (1) of the Act;
 - 9.2.2. change the Company's type to certain types of company by special resolution, pursuant to §162 (1) of the Act;
 - 9.2.3. approve certain related party transactions that confer a financial benefit on a related party of the public Company by resolution, pursuant to §208 of the Act;
 - 9.2.4. remove an auditor by resolution, pursuant to Sec 329 (1) of the Act;
 - 9.2.5. apply to the Court for a compulsory winding-up by special resolution, pursuant to §461 (1) (a) of the Act;
 - 9.2.6. apply to the Court for a voluntary winding-up, upon a special resolution, pursuant to §491 (1) of the Act;
 - 9.2.7. deal with matters referred by the Directors where the Directors are precluded from dealing with the matters themselves on the grounds that there are insufficient Directors to form a quorum as a result of Directors being precluded from voting due to a material personal interest in a matter, pursuant to §195 (4) and §195 (1) of the Act;
 - 9.2.8. appoint persons as Directors pursuant to Rule 15;
 - 9.2.9. remove a Director before the end of the Director's period of office by ordinary resolution, in accordance with the Act and this Constitution;
 - 9.2.10. determine the remuneration of Directors pursuant to Rule 17.4;

- 9.2.11. alter this Constitution pursuant to Rule 36.1; and
- 9.2.12. make Regulations, being not inconsistent with this Constitution and the Act, pursuant to Rule 6.1.12.
- 9.3. All other business transacted at any ordinary meeting and all business transacted at an extraordinary meeting shall be deemed special.
- 9.4. This Rule 9.4 replaces replaceable rule §249T of the Act:
 - 9.4.1. no business shall be transacted at a general meeting unless the required Members quorum is/are present at the time for the meeting to proceed to the business; and
 - 9.4.2. the members attending the meeting must remain present at all times during the meeting.
- 9.5. Rules 9.6 and 9.7 replaces replaceable rule §249U of the Act:
- 9.6. The Chief Executive Officer of Education Centre of Australia shall be entitled to preside as Chair of every general meeting of the Company.
- 9.7. The Chair may with the consent of the Members adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 9.8. This Rule 9.8 replaces replaceable rule §250J of the Act:
 - 9.8.1. a resolution is carried by a majority of votes of those entitled to vote, save where otherwise stipulated by this Constitution or the Act; and
 - 9.8.2. at any general meeting, a declaration by the chair that a resolution has been carried on a show of hands and an entry to that effect in the book of proceedings of the Company, shall be sufficient evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.
- 9.9. Voting of Members shall take place on the following basis:
 - 9.9.1. subject to sub-rule 9.8.2, every Member shall have one vote, and no more, on a show of hands; and
 - 9.9.2. the chair has a casting vote.

- 9.10. The Secretary of the Company or such other person as the Members may determine, shall cause minutes to be kept of all proceedings of meetings of Members, and such other matters required by the Act.

10. INCOME AND PROPERTY OF THE COMPANY

- 10.1. The income and property which the Company receives or holds shall be held and applied largely for the purposes and for the benefit of the APIC, assuring that the APIC is able to meet its statutory obligations.

11. LIMITED LIABILITY

- 11.1. The liability of the Members of the Company is limited to the unpaid share capital of the Company;
- 11.2. The Company's right of indemnity:
- 11.2.1. is limited to income and property received and held for application pursuant to rule 10.1; and
 - 11.2.2. does not permit personal recovery from any recipient of income and/or property pursuant to rule 10.1.

12. COMPANY ACCOUNTS

- 12.1. True accounts shall be kept of the sums of money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place, and of the property, credits and liabilities of the Company and subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed in accordance with the Constitution for the time being in force the same shall be open to the inspection of the Members of the Company. Once at least in every year the accounts of the Company shall be examined by one or more registered company auditors who shall report to the Members of the Company in accordance with the provisions of the Act.

13. GOVERNING AUTHORITY

- 13.1. The governing authority of the Company shall be the Governing Board.
- 13.2. The Governing Board:

- 13.2.1. shall exercise competent governance oversight of and be accountable for all of APIC's operations, including accountability for the award of higher education qualifications, for continuing to meet the requirements of all legislation that applies to APIC and for the APIC's representation of itself.
- 13.2.2. sets overall strategic directions and the framework of policies and procedures, and is ultimately responsible to shareholders and stakeholders for both corporate and academic outcomes;
- 13.2.3. means all of the directors of the Company or such number of directors acting as the Governing Board in accordance with this Constitution.

14. COMPOSITION OF THE GOVERNING BOARD

- 14.1. The Governing Board shall have no less than five (5) voting members and no more than nine (9) voting members.
- 14.2. At least two of the members shall ordinarily be resident in Australia.
- 14.3. The Governing Body shall consist of the following persons:
 - 14.3.1. an independent, non-executive Director and Chair of the Governing Body appointed by the Company;
 - 14.3.2. an independent, non-executive Director Deputy Chair of the Governing Body appointed by the Company;
 - 14.3.3. further independent, non-executive Directors appointed by the Company with the recommendation of the Governing Board;
 - 14.3.4. the Chair of the Academic Board of APIC – an *ex officio* independent non-executive Director appointed by the Governing Board in consultation with the Company;
 - 14.3.5. an Executive Director who is a nominee of Education Centre of Australia Pty Limited (the sole shareholder);
 - 14.3.6. the President of the APIC – an *ex officio* Executive Director
 - 14.3.7. a non-voting Company Secretary appointed by the Company.
- 14.4. The Chair or Deputy Chair of the Governing Body will normally have high-level experience of higher education.

- 14.5. Of all independent, non-executive Directors, including the Chair and Deputy Chair, at least one will have high-level experience of each of:
- 14.5.1. higher education;
 - 14.5.2. economics, finance or accounting; and
 - 14.5.3. corporate governance, risk management, law or human resource management.
- 14.6. Persons appointed to Governing Board:
- 14.6.1. shall be fit and proper persons;
 - 14.6.2. pursuant to sub-rules 14.3 and 14.4, must have high-level experience in the areas specified, which requirement shall be satisfied by relevant experience at a senior managerial or professional level in the public or private sector; and
 - 14.6.3. in all cases, must have expertise and experience relevant to the functions exercisable by the Governing Board and an appreciation of the object, values, functions and activities of APIC.
- 14.7. The majority of members of Governing Board must be independent, non-executive, external persons.
- 14.8. In appointing Directors, the Company and the Governing Board must have regard to and consider the gender balance of the Governing Board, with the goal of the Governing Board to achieve gender balance over time.
- 14.9. Subject to these Rules and to the Statutes, the term of office of Directors shall be as follows:
- 14.9.1. The Chair shall be appointed for an initial term of three years, and may be further appointed by the Company, subject to satisfactory performance against agreed performance indicators, for a further two successive three year terms (a maximum of nine years);
 - 14.9.2. The Deputy Chair shall be appointed for an initial term of three years, and may be further appointed by the Company, subject to satisfactory performance against agreed performance indicators, for a further two successive three year terms (a maximum of nine years);
 - 14.9.3. Independent, non-executive Directors not holding the Chair or Deputy Chair shall be appointed for an initial term of three years, and may be

further appointed by the Governing Board, subject to satisfactory performance against agreed performance indicators, for a further one three-year term (a maximum of six years);

- 14.9.4. The term of appointment of the Executive Director who is a nominee of Education Centre of Australia Pty Limited shall be determined by the Education Centre of Australia Pty Limited;
- 14.9.5. The President of APIC shall sit as an Executive Director of APIC whilst holding the office of President; and
- 14.9.6. The Chair of APIC's Academic Board shall sit as an *ex officio* non-executive Director of APIC whilst holding the office.

15. DIRECTORS

15.1. This sub-rule replaces replaceable rule §201G of the Act

Where permitted by this Constitution, the Company may appoint persons as Directors by resolution in general meeting.

15.2. The Company may, by ordinary resolution, remove a Governing Board Director before the end of the Governing Board Director's period of office, in accordance with the Act.

15.3. Directors shall vacate their office:

- 15.3.1. if they become an insolvent under administration;
- 15.3.2. if they cannot manage the Company because of mental incapacity;
- 15.3.3. if they are, or become, disqualified from acting as a Director of a company or managing corporations under Part 2D.6 of the Act as in force from time to time; or
- 15.3.4. should they or the Governing Board consider that other professional activities that they undertake present a significant material conflict of interest with the interests of the Company;
- 15.3.5. should they choose to retire.

15.4. This sub-rule replaces replaceable rule §201C of the Act

The Company may, by ordinary resolution remove a Governing Board Director before the end of the Governing Board Director's period of office, in order to

ensure that the Governing Board's skills base is current and matches APIC's operating context and strategic direction. Such removal shall follow consultation between the Director, the Governing Board Chair and the Company.

- 15.5. A Director of the Company may resign as a Director by giving a written notice of resignation to the Company at its Registered Office.
- 15.6. The replaceable rule contained in §201K of the Act shall not apply to the Company.
- 15.7. No vacancy or vacancies in the office of a member of the Governing Board shall affect the authority or powers of the Governing Board and subject to the provisions as to a quorum such authority and the members may exercise powers for the time being holding office.
- 15.8. The replaceable rules contained in §198C, §201J and §203F of the Act shall not apply to the Company.
- 15.9. The Governing Board shall be deemed to be duly constituted and shall discharge its duties and functions and may exercise its powers and authorities notwithstanding that a member of the Governing Board shall not have been elected as contemplated by the foregoing Rules and notwithstanding any vacancy on the Governing Board provided that the number of members of Governing Board for the time being is not less than five (5).
- 15.10. In exercising their powers and discharging their duties as Directors, Directors must:
 - 15.10.1. be responsible and accountable to the Governing Board;
 - 15.10.2. act always in the best interests of the Company as a whole, with this obligation to be observed in priority to any duty a Director may owe to those electing or appointing him or her;
 - 15.10.3. act in good faith, honestly and for a proper purpose;
 - 15.10.4. exercise appropriate care and diligence as defined in §180 of the Act;
 - 15.10.5. not improperly use their position to gain an advantage for themselves or someone else; and
 - 15.10.6. disclose and avoid conflicts of interest.
- 15.11. Disclosure of conflict of interest

- 15.11.1. A Director who has a material personal interest in a matter that relates to the affairs of the Company must give the other Directors notice of the interest in accordance with §191 and §192 of the Act, and the details must be recorded in the Governing Board minutes.
- 15.11.2. All Governing Board Directors must sign annually a Disclosure of Interest statement.

16. POWERS AND DUTIES OF THE GOVERNING BOARD

- 16.1. The governance and control of the Company shall be vested in the Governing Board, who in addition to the powers and authorities by this Constitution expressly conferred upon them, may exercise all such powers and do all such acts and things as may be exercised or done by the Company and are not hereby or by statute expressly directed or required to be exercised or done by the Company in general meeting, but subject nevertheless to any Regulations from time to time made by the Company in general meeting provided that no Regulation shall invalidate any prior act of the Governing Board that would have been valid if such Regulation had not been made. The Governing Board may without any further authority carry out all or any of the objects of the Company contained in this Constitution and do all other acts and things in relation thereto as they shall deem expedient.
- 16.2. Hence, the Governing Board solely determines and monitors the framework of roles, relationships systems and processes within and by which authority is exercised and controlled in the company in order to achieve its objectives and meet the *Higher Education Standards Framework (Threshold Standards) 2015* and its other statutory obligations.
- 16.3. Without prejudice to the general powers conferred by Rule 16.1 and the other powers conferred by this Constitution, the Governing Board shall be responsible for:
 - 16.3.1. monitoring the performance of the President and Principal Executive Officer (whose appointment is regulated by Rule 19.1);
 - 16.3.2. ensuring that the processes of the Governing Board are carried out in accordance with the constitution of the governing body;
 - 16.3.3. approving the values, vision, mission and strategic direction of the Company, as well as the annual budget and business plan;
 - 16.3.4. appointing an Audit and Risk Committee that consists of at least three members and minimum of two members must be an independent, non-executive Directors excluding the Chair of the Governing Body;

- 16.3.5. establishing policy and procedural principles consistent with legal requirements and community expectations;
- 16.3.6. approving and monitoring systems of control and accountability, including general overview of any controlled entities within the meaning of the Act as in force from time to time;
- 16.3.7. overseeing and reviewing the management of APIC and its performance as a higher education provider;
- 16.3.8. overseeing and monitoring the assessment and management of risk across the Company, including commercial undertakings;
- 16.3.9. monitoring academic operations and standards of APIC;
- 16.3.10. ensuring academic autonomy and freedom of inquiry;
- 16.3.11. monitoring quality assurance;
- 16.3.12. approving significant commercial activities;
- 16.3.13. appointing a Governance Committee consists of at least three members and minimum of two members must be an independent, non-executive Directors excluding the Chair of the Governing Body; and which
 - 16.3.13.1. conducts an annual appraisal of Governing Board performance;
 - 16.3.13.2. frequently monitors the Governing Board's its compliance with its obligations under all statutes and regulations applying to the Company;
 - 16.3.13.3. makes available a program of induction and professional development for Directors to build the expertise of the Governing Board and to ensure that all members are aware of the nature of their duties and responsibilities; and
 - 16.3.13.4. identifies at regular intervals needed skills and expertise for the future.
- 16.4. Without prejudice to the general powers conferred by the preceding rule and of the other powers conferred by this Constitution, the Governing Board may:
 - 16.4.1. from time to time make, vary, and repeal its own Statutes and By- laws for the management of the business of the Company, its officers,

- servants, and agents, provided that it may not vary or repeal Regulations made by the Company in general meeting;
- 16.4.2. determine who shall be entitled to sign on the Company's behalf, bills, notes, receipts, acceptances, endorsements, cheques, releases, contracts, and all other documents and deeds;
- 16.4.3. make and give receipts, releases, and other discharges for money payable to the Company and for the claims and demands of the Company;
- 16.4.4. enter into all such negotiations and contracts, and rescind and vary all such contracts, and execute and do all such acts, deeds, and things in the name and on behalf of the Company as they may consider expedient for or in relation to the purposes of the Company;
- 16.4.5. take steps to protect intellectual property rights including the registration of trademarks;
- 16.4.6. adopt all such other measures and do all such acts as they may consider advisable for the purposes of the Company.
- 16.5. The Governing Board may by resolution
- 16.5.1. delegate any of its functions under this Constitution to any committee, officer or officers of Asia Pacific International College, provided such delegation does not contravene the provisions of the Act or the *Higher Education Standards Framework (Threshold Standards) 2015*;
- 16.5.2. revoke or vary a delegation provided under Rule 16.5.1.
- 16.6. The Governing Board establishes and monitors the performance of an overall Company-wide decision-making *Governance Framework* that has three principle components relating to corporate governance, academic governance and executive management:
- 16.6.1. *The Governing Board* itself, led by an independent, non-executive Governing Board Chair (normally with high-level higher education experience and appointed by APIC), which
- 16.6.1.1. shall exercise competent governance oversight of and be accountable for all of APIC's operations, including accountability for the award of higher education qualifications, for continuing to meet the requirements of

- all legislation that applies to APIC and for the APIC's representation of itself
- 16.6.1.2. sets overall strategic directions and the framework of policies and procedures necessary to achieve APIC's objectives
- 16.6.1.3. is ultimately responsible to shareholders and/or stakeholders for both corporate and academic outcomes
- 16.6.2. *The Academic Board*, led by an external Academic Board Chair (a retired or current senior level academic or academic executive, appointed by the Company), which
- 16.6.2.1. sets and oversees the policies and processes necessary to achieve intended academic outcomes (quality and integrity) consistent with the APIC's overall strategic directions;
- 16.6.2.2. sets academic standards and monitors academic outcomes; and
- 16.6.2.3. is ultimately responsible and accountable is to the Governing Board.
- 16.6.3. *The Executive Management Team*, led by the President and Principal Executive Officer, which:
- 16.6.3.1. implements policies, programs and processes, including making decisions about staffing, budgets and infrastructure, guided by APIC's values, vision, mission and following APIC's Strategic Plan, Business Plan, Engagement Plan, Academic Management Plan, Risk Management Plan and functional plans; and
- 16.6.3.2. is ultimately responsible and accountable to the Governing Board for effective implementation of both corporate and academic objectives.
- 16.7. The Governing Board may from time to time entrust to and confer upon the Governing Board Chair or Governing Board Deputy Chair, being members of the Governing Board, such of the powers exercisable by the Governing Board as they may think fit, and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such

restrictions (if any) as they think expedient, and may from time to time revoke, withdraw, alter, or vary all or any of such powers.

- 16.8. The Governing Board may establish branch offices and agencies at places in Australia and appoint any person or persons to be representatives or agents, in any country or place out of the said state with such powers and authorities upon such terms and with such remuneration as the Governing Board shall think fit.

17. PROCEEDINGS OF THE GOVERNING BOARD

- 17.1. This Rule replaces replaceable rules §248F and §248G of the Act
The members of the Governing Board may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit. The quorum of members of the Governing Board necessary for the transaction of business shall be half of the number of Directors, plus one, provided that independent, non-executive directors are in the majority. Questions arising at any meeting of the Governing Board shall be decided by a majority of votes of those entitled to vote on the resolution, and each member of the Governing Board shall have one vote only; in case of an equality of votes the Chair shall have a second or casting vote.
- 17.2. This Rule replaces replaceable rule §248E of the Act
- 17.2.1. The Chair shall chair the Governing Board meetings. In the absence of the Chair, the Deputy Chair shall chair the meeting.
- 17.2.2. If both the Chair and Deputy Chair are not available to chair a meeting of the Governing Board, the Chair must delegate an independent, non-executive Director present to chair the meeting.
- 17.2.3. Where the meeting is held by means of a technology consented to by all of the Directors of the Company as allowed by §248D of the Act, and neither the Chair nor Deputy Chair is available to chair the meeting, the Chair must delegate an independent, non-executive Director taking part to chair the meeting.
- 17.3. This Rule replaces replaceable rule §248C of the Act
- 17.3.1. The Chair or any three members of the Governing Body may at any time (and the Company Secretary shall upon the request in writing of the said three members of the Governing Board) convene a meeting of the Governing Body. The meetings of the Governing Board shall ordinarily be held in places in the Commonwealth of Australia or elsewhere.

- 17.4. This Rule replaces replaceable rule §202A of the Act
Subject to rule 9.2.10 above, the Directors of the Company are to be paid the remuneration that the Company in general meeting determines by resolution. The Company may also pay the Director's travelling and other expenses that they properly incur in any of:
- 17.4.1. attending Directors' meetings or any meetings of committees of Directors;
 - 17.4.2. attending any general meetings of the Company; and
 - 17.4.3. in connection with the Company's business.
- 17.5. The provisions contained in §198D of the Act shall not apply to the Company
- 17.5.1. The Governing Board may delegate any of their powers to committees consisting of such persons as they think fit, other than the power to make Statutes, (and such delegation must be recorded in the Company's minute book), and any committee so formed:
 - 17.5.1.1. shall in exercise of the powers so delegated conform to any terms or by-laws that may be imposed on them by the Governing Board (and the effect of the committee exercising a power in this way is the same as if the Governing Board Directors had exercised the power);
 - 17.5.1.2. may obtain and consider the advice of a person or persons with relevant expertise (as determined by the Governing Board on reasonable grounds), whether or not such persons are members of the Governing Board, at any meeting(s) of the said committee;
 - 17.5.1.3. shall make, in considering the advice by the individuals constituting the committee, an independent assessment of the information or advice.
- 17.6. A committee shall have as chair of its meetings such person as is designated by the Governing Board as chair of the committee, and if no such chair is designated or if such designated person is not present at the time appointed for the holding of a committee meeting, the members present shall choose one of their number to be Chair of such meeting.
- 17.7. A committee may meet and adjourn as they think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chair shall have a second or casting vote.
- 17.8. All acts done by any meeting of the Governing Board or of a committee or a member or members of the Governing Board or by any person acting as a Director of the Governing Board, shall notwithstanding that it be afterwards discovered

that there was some defect in the appointment of any member or members of the Governing Board or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a member of the Governing Board.

17.9. This Rule replaces replaceable §248A of the Act

17.9.1. This rule replaces the replaceable rule of the Act entitled “Circulating resolutions of companies with more than 1 director”.

17.9.2. A resolution in writing (other than a resolution modifying or repealing any rule or sub-rule of this Constitution and other than a resolution reserved for the determination of members at a general meeting of members) signed by two-thirds of the members of the Governing Board and containing a statement that they are in favour of the resolution set out in the document shall be as valid as if it had been passed at a meeting of the Governing Board duly-called and constituted.

17.9.3. For the purpose of sub-rule 17.9.1, 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.

17.9.4. For the purpose of sub-rule 17.9.1, a Director may signify assent to a resolution in writing by:

17.9.4.1. signing the document in which the resolution is set out and providing it to the Company by: personal delivery; or post or facsimile; or

17.9.4.2. notifying the Director’s assent by sending:

17.9.4.2.1. an electronic message from the electronic address notified to the Company by the Director; or

17.9.4.2.2. such other form of electronic communication consented to by the Governing Board and which contains a statement that the Director is in favour of the resolution set out in the document and which complies with any other verification of the transmission that the Governing Board may require from time to time.

- 17.9.5. For the purpose of sub-rule 17.9.2, if a Director signifies a desire for the resolution to be discussed at a meeting of the Governing Board or a response not indicating assent the resolution shall be held over to the next meeting of the Governing Board.
- 17.10. The minutes of resolutions recorded applying rule 18.9 shall outline the Directors who have indicated assent and shall be confirmed at the next meeting of the Governing Board.
- 17.11. The Secretary shall cause minutes to be entered:
- 17.11.1. of all appointments of officers;
 - 17.11.2. of the delegation of any of the Governing Board's powers to a committee of the Governing Board;
 - 17.11.3. of the names of the members of the Governing Board present at each meeting of the Governing Board and any committee created by Governing Board;
 - 17.11.4. of all orders made by the Governing Board and committees created by the Governing Board;
 - 17.11.5. of all resolutions and proceedings of meetings of the Governing Board and committees and any such minutes of any such meetings of the Governing Board or of any committee or of the Company, if purporting to be signed by the Chair of such meeting or by the Chair of the next succeeding meeting, shall be received as prima facie evidence of the matters stated in such minutes.
- 17.12. A member of the Governing Board shall not be disqualified from holding any office or place of profit with the Company (other than that of auditor) but at any meeting of the Governing Board that person shall not vote on any question relating to that appointment or tenure of such office or place of profit.

18. GOVERNING BOARD CHAIR AND GOVERNING BOARD DEPUTY CHAIR

- 18.1. The Chair and Deputy Chair of the Governing Board shall be appointed by the Members of the Company.
- 18.2. Upon the expiration of the term of office ceases of any Chair and Deputy Chair, or whenever a vacancy occurs in the office of Chair or Deputy Chair, the Members shall elect another person, to the office of Chair or Deputy Chair for such period and on such conditions as the Members determine.

- 18.3. The Chair and Deputy Chair may without specific appointment exercise the right of membership of any board or standing committee within APIC.

19. APPOINTMENT OF A PRESIDENT

- 19.1. In consultation with the Company, the Governing Board shall from time to time appoint a person (whether or not then a Member or a Governing Board Director) as President for such period and on such conditions as the Governing Board determines.
- 19.2. The President shall be the Principal Executive Officer of the Company and, subject to the Company's Constitution, shall possess such powers and perform such duties as the Constitution, Regulations and Statutes prescribe or, subject to the Constitution, Regulations and Statutes, as the Governing Board determines.
- 19.3. A person from time to time appointed as President, shall contemporaneously with such appointment become an *ex officio* member of the Governing Board.
- 19.4. A person from time to time appointed as President, shall contemporaneously with such appointment become a non-voting member *ex officio* of the Academic Board.
- 19.5. Where a person appointed as President, is already a member of the Governing Board, the office that they held as such member shall be declared vacant and thereupon the appropriate steps shall be taken pursuant to these Rules to fill the vacancy.
- 19.6. The Governing Board may remove the President from office for incompetence and/or conduct where there is a persistent failure to uphold the objects of APIC or where in the opinion of the Governing Board such conduct brings APIC into disrepute.
- 19.6.1. Notice of intention to move a resolution to dismiss the President must be given to the directors, including the President, at least two weeks before the meeting is to be held.
- 19.6.2. The President is entitled to put their case to the Governing Board either
- 19.6.3. by giving the Chair a written statement of less than 1,000 words which is to be distributed to the directors before the meeting or, if there is not time to distribute the statement before the meeting, to be read out at the meeting before the resolution is voted on;
- 19.6.4. or by speaking to the motion at the meeting.

20. APPOINTMENT OF ACTING PRESIDENT

- 20.1. Where the President is absent or suffers ill-health, the Governing Board, in consultation the President and the Company may appoint an Acting President, which will normally be the Dean, but may be another person suitably qualified to the role of President.
- 20.2. If a person is appointed pursuant to the Statutes of APIC as an Acting President during the absence or ill-health of the President or otherwise, the person so appointed shall, during the period of his appointment have all the powers and duties of the President and shall be a member of the Governing Board as an *ex officio* in place of the President.
- 20.3. If a person appointed as Acting President is already a member of the Governing Board then their place thereon shall not be vacated except a replacement non-executive director should be appointed to the governing board unless the governing board has majority of independent non-executive directors.
- 20.4. The Governing Board may remove an Acting President from office for incompetence and/or conduct where there is a persistent failure to uphold the objects of APIC or where in the opinion of the Governing Board such conduct brings APIC into disrepute.
- 20.4.1. Notice of intention to move a resolution to dismiss an Acting President must be given to the directors and to the office-holder in question at least two weeks before the meeting is to be held. The office-holder in question is entitled to put their case to the Governing Board either
- 20.4.1.1. by giving the Chair a written statement of less than 1,000 words which is to be distributed to the directors before the meeting or, if there is not time to distribute the statement before the meeting, to be read out at the meeting before the resolution is voted on;
- 20.4.1.2. or by speaking to the motion at the meeting.

21. RE-ELECTION OR RE-APPOINTMENT

- 21.1. Subject to the Act and to this Constitution, nothing contained in these Rules shall prevent any person from being immediately, or at any time, re-elected to any office or place under the Company if they are otherwise qualified for the time being of holding that office or place.

22. APPOINTMENT OF SECRETARY, DEAN AND REGISTRAR

- 22.1. The Secretary shall in accordance with the Act be appointed as Company Secretary by the Company for such term and upon such terms and conditions as to remuneration or otherwise as it thinks fit, and any person so appointed may be removed by it.
- 22.2. In consultation with the Company and the Academic Board, the Governing Board may appoint a person as Dean of APIC for such term and upon such terms and conditions as to remuneration or otherwise as it thinks fit, and any person so appointed may be removed by it.
- 22.3. In consultation with the Company and the Academic Board, the Governing Board may appoint a person as Registrar of APIC for such term and upon such terms and conditions as to remuneration or otherwise as it thinks fit, and any person so appointed may be removed by it.

23. STATUTES AND BY-LAWS

- 23.1. The Governing Board may from time to time make Statutes not inconsistent with the Company's Constitution or Regulations with respect to any matter whatsoever pertaining to APIC and, in particular and without prejudice to the generality of the foregoing, with respect to the following matters:
 - 23.1.1. the method of recommending appointment or election of members of the Governing Board;
 - 23.1.2. the manner and time of convening, holding and adjourning the meetings of the Governing Board, and the conduct and record of the business of the Governing Board;
 - 23.1.3. the establishment and appointment of committees of the Governing Board and the Academic Board;
 - 23.1.4. the employment of teaching and research staff and other officers and employees of APIC;
 - 23.1.5. the admission of students;
 - 23.1.6. the granting of such degrees, diplomas and other academic awards as are accredited by the relevant accrediting authority according to New South Wales and Commonwealth law;
 - 23.1.7. the granting of fellowships, scholarships, bursaries and prizes;

- 23.1.8. credit in courses of APIC for academic achievements obtained elsewhere;
- 23.1.9. fees charged by APIC;
- 23.1.10. the affiliation, association or connection with APIC of any educational institution wheresoever situated;
- 23.1.11. research, development, consultancy and other services undertaken by APIC for commercial organisations, public bodies or individuals;
- 23.1.12. recognition of institutions or bodies at which:
 - 23.1.12.1. work is undertaken by students of APIC for the purpose of satisfying degree requirements of APIC; or
 - 23.1.12.2. research is or may be undertaken by teaching or research staff of APIC.
- 23.1.13. property, buildings and traffic;
- 23.1.14. discipline;
- 23.1.15. copyright and patents;
- 23.1.16. any other matter in relation to which:
 - 23.1.16.1. the Governing Board by virtue of another provision of these Rules may make Statutes; or
 - 23.1.16.2. it is necessary to make Statutes for the good governance of APIC or for the management of its affairs.
- 23.2. The Governing Board, or a duly authorised sub-committee of Governing Board, may make by-laws not inconsistent with the Company's Constitution, Regulations or the Statutes for the carrying into effect of all or any of the provisions of the Company's Constitution and of the Statutes.
- 23.3. The Governing Board may by resolution repeal, rescind, revoke, alter, vary, amend or otherwise modify any Statute, by-law or part thereof.

24. ACADEMIC BOARD

- 24.1. The Governing Board shall ensure that there is an Academic Board with delegated authority for academic governance.

- 24.2. The Academic Board is the academic governing body within APIC's institutional governance framework. It shall oversee and hold responsibility for all academic decision-making processes to assure the quality of each course of study leading to a higher education award, in accordance with, all the relevant legislation in force.

25. COMPOSITION OF THE ACADEMIC BOARD

- 25.1. The Academic Board shall consist of the following persons:
- 25.1.1. An external member and Chair of the Academic Board appointed by the Governing Board, in consultation with the Company;
 - 25.1.2. An external member and Deputy Chair of the Academic Board appointed by the Governing Board, in consultation with the Company;
 - 25.1.3. Up to three (3) further external members appointed by the Governing Board, in consultation with the Company;
 - 25.1.4. One member of continuing academic staff;
 - 25.1.5. One enrolled student of APIC;
 - 25.1.6. The Dean of APIC – an *ex officio* member with voting rights;
 - 25.1.7. Two Deputy Deans of APIC – non-voting *ex officio* members;
 - 25.1.8. The President of APIC – a non-voting *ex officio* member;
 - 25.1.9. APIC Registrar – a non-voting *ex officio* member;
 - 25.1.10. A non-voting Secretary appointed by the Governing Board.
- 25.2. All the independent, non-executive members, including the Chair and Deputy Chair will be retired or current senior academics or academic managers.
26. Persons appointed to Academic Board in all cases, must have expertise and experience relevant to the functions exercisable by the Academic Board and the disciplinary base of APIC, and an appreciation of the object, values, functions and activities of APIC. APIC
- 26.1. The majority of voting members of Academic Board must be external persons, assuring independent oversight of Academic Board's activities.

- 26.2. In appointing Academic Board members, the Governing Board must have regard to and consider the gender balance of the Academic Board, with the goal of the Academic Board to achieve gender balance over time.
- 26.3. Subject to these Rules and to the Statutes, the term of office of members shall be as follows:
- 26.3.1. The Chair of the Academic Board shall be appointed for an initial term of three years, and may be further appointed by the Governing Board, in consultation with the Company, subject to satisfactory performance against agreed performance indicators, for a further two successive three year terms (a maximum of nine years);
- 26.3.2. The Deputy Chair shall be appointed for an initial term of three years, and may be further appointed by the Governing Board, in consultation with the Company subject to satisfactory performance against agreed performance indicators, for a further two successive three year terms (a maximum of nine years);
- 26.3.3. External members not holding the Chair or Deputy Chair shall be appointed for an initial term of three years, and may be further appointed by the Governing Board, in consultation with the Company, subject to satisfactory performance against agreed performance indicators, for a further one three-year term (a maximum of six years);
- 26.3.4. *Ex officio* members will sit whilst holding their office.

27. ACADEMIC BOARD PROCESSES

- 27.1. Academic Board processes are defined in the Academic Board Charter.

28. SEAL

- 28.1. The Governing Board shall provide a common seal of the Company and such seal shall be kept by such person and in such place and in such manner as the Governing Board may think fit, and the Governing Board shall have power to use such seal in the execution of all or any of the powers hereby vested in them; but it shall not be affixed to any document except pursuant to a resolution of the Governing Board. The affixing of the seal shall be attested by the Chair or Secretary and at least one other member of the Governing Board, or in such other way as the Governing Board may from time to time determine, and such attestation shall be sufficient evidence of the authority to affix the seal. Documents not requiring the seal to be affixed may be signed by the Chair or the Secretary or if approved by a resolution of the Governing Board by at least two members of the Governing Board.

29. APIC CREST (LOGO)

- 29.1. The Governing Board shall provide for the safe custody of APIC Crest (logo) which shall only be used by the authority of the Governing Board, of a committee of the Governing Board authorised by the Governing Board in that regard or by the President.

30. ACCOUNTS

- 30.1. The Governing Board shall cause true accounts to be kept of the sums of money received and expended by the Company and the matters in respect of which such receipts and expenditure take place, and of all the property, assets, credits, and liabilities of the Company.
- 30.2. The books of accounts shall be kept at the registered office of the Company, or at such other office or offices as the Governing Board may from time to time think fit.
- 30.3. The Governing Board shall from time to time determine at what times and places and under what terms or by-laws the accounts and books of the Company or any of them shall be open to the inspection of the Members.
- 30.4. The Governing Board shall lay before the Company at each annual general meeting a Profit and Loss Account for the period since the preceding account made up for a period ending on a date not earlier than five months before the date of the meeting, and shall cause to be made up and to be laid before the Company at each annual general meeting with the Profit and Loss Account a balance sheet as at the date to which the Profit and Loss Account is made up.
- 30.5. There shall be attached to the accounts of the Company statements made and signed in accordance with the provisions of Section 295 of the Act.
- 30.6. The accounts and report shall be available for inspection of the Members of the Company at the office of the Company for a period of seven days previously to the meeting to which they are to be submitted and all accounts of the Company required by the Act or by this Constitution to be laid before the Company at each annual general meeting accompanied by copies of the statements and of the reports referred to in Section 314 of the Act shall not less than twenty-one days before each annual general meeting after the end of the financial year or four months after the end of the financial year (whichever is the earlier) be sent to all persons entitled to receive notice of general meetings of the Company.

31. AUDIT

- 31.1. The Company shall make an annual return in accordance with the requirements of the Act.
- 31.2. The Members in General Meeting shall appoint an external auditor or auditors to the Company and its associated entities. The Act shall regulate their qualification, appointment, remuneration, removal rights and duties. The auditor's management report shall be provided to the Audit Committee and to the Governing Board.

32. ANNUAL REPORT

- 32.1. The annual report of the Company may be used for reporting the business outcomes, and must include a report on risk management within the organisation.

33. NOTICES

- 33.1. Any notice required by law or under the Act to be given to any Member, shall be given by serving it on him or her personally or sending it by post, facsimile or email to him or her at his registered address, or (if a Member has no registered address within Australia) to the address, if any, supplied by such Member to the Company for the giving of notices. Where a notice is delivered personally, it shall be deemed to have been given when delivered. Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting on the day after the date of its posting, and in any other case at the time at which the letter would be delivered in the ordinary course of post. Where a notice is sent by facsimile it shall be deemed to have been given at the end of transmission provided that if the time of dispatch is not before 4pm (local time) on a day on which business is generally carried on in the place to which such communication is sent, it shall be deemed to have been given at the commencement of business on the next such day at that place.
- 33.2. Any notice if served by post shall be deemed to have been served at ten a.m. of the morning of the third day after the day when the letter containing the notice was posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and stamped and put into a post office in the Commonwealth of Australia. Any notice if served by fax or by other electronic means is taken to be given on the business day after it is sent and in proving such service it is sufficient to prove the transmission of the notice and produce the transmission record.

- 33.3. Notice of every general meeting shall be given in any manner hereinbefore authorised to:
- 33.3.1. every Member who is entitled to receive notices in accordance with the Act; and
 - 33.3.2. the auditor or auditors for the time being of the Company.
- 33.4. No other person shall be entitled to receive notices of general meetings.

34. INDEMNITY

- 34.1. In Rule 34:
- 34.1.1. “legal action” means any legal proceeding or action whatsoever, and, without limiting the generality of the above, includes a threatened or prospective legal action, a quasi-judicial proceeding and investigative or disciplinary proceeding conducted by a Government authority or pursuant to statute against an officer of the Company, but does not include a legal proceeding to which the Company itself or a related body corporate is or is proposed to be a party, having an interest adverse to that of the officer
 - 34.1.2. “liabilities” include, but are not limited to, expenses, awards of damages and compensation, amounts paid in settlement, fines, penalties, interest, legal costs (on a solicitor and client basis) and disbursements, but “liabilities” do not include a liability to the Company itself or to a related body corporate, other than a liability for costs and expenses incurred by the officer
 - 34.1.2.1. in defending proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted; or
 - 34.1.2.2. in connection with an application, in relation to such proceedings, in which the Court grants relief to the officer under the Act;
 - 34.1.3. and “liabilities” do not include liability for a pecuniary penalty order under the Act or liability for a compensation order in relation to an application for a pecuniary penalty order under the Act.
 - 34.1.4. “officer” when used in Rule 34 of this Constitution is as defined in APIC’s Directors and Officers insurance policy.

- 34.1.5. “performance of duties” includes an attempt to perform duties and a failure to perform duties.
- 34.2. Subject to sub-rule 34.3 and to §199A of the Act, the Company shall indemnify an officer against all liabilities incurred in consequence of any legal action to which that officer is a party or to which it is proposed that the officer be a party arising out of or in connection with the officer’s performance of duties as an officer.
- 34.3. The indemnity granted by rule 34.2 does not extend to liabilities incurred as a result of:
- 34.3.1. legal action initiated or threatened by the officer without the prior written consent of the Governing Board, unless the Governing Board in its absolute discretion, otherwise determines;
 - 34.3.2. the deliberate commission of a tort or other civil wrong, or dishonest or malicious conduct by the officer;
 - 34.3.3. the commission of a criminal offence by the officer
 - 34.3.3.1 unless the officer did not intentionally commit the acts or omissions constituting the offence; or,
 - 34.3.3.2 where the liability is to the Company itself or to a related body corporate, unless the liability is for costs and expenses incurred by the officer
 - 34.3.3.2.1 in defending proceedings, whether civil or criminal, in which judgment is given in favour of the officer or in which the officer is acquitted; or
 - 34.3.3.2.2 in connection with an application, in relation to such proceedings, in which the Court grants relief to the officer under the Act;
 - 34.3.4. conduct (including omissions) of an officer, where that officer fails to satisfy the Governing Board that he or she held an honest and reasonable belief that the conduct would further the legitimate interests of the Company;
 - 34.3.5. liabilities (other than those imposed by a court or other public authority without the consent of the officer) incurred by the officer without the prior written consent of the Governing Board, such consent not to be unreasonably withheld, unless the Governing Board, in its absolute discretion, otherwise determines.

- 34.4. No indemnity shall be granted under sub-rule 34.2 unless the officer gives notice in writing to the Governing Board as soon as is reasonably practicable after becoming aware of any occurrence which may result in an indemnity being sought under Rule 34.2, unless the Governing Board, in its absolute discretion, otherwise determines.
- 34.5. It is a condition of the grant of an indemnity under Rule 34.2 that the Company or its nominee shall be entitled to take over and conduct in the name of the officer the conduct and settlement of the legal proceeding (other than the defence to a criminal prosecution), and that the officer shall not admit any civil liability or settle any claim against that officer without the consent of the Governing Board.
- 34.6. Where the officer is not eligible for an indemnity under Rule 34.2:
- 34.6.1. The Governing Board may, in its absolute discretion but subject to §199A of the Act, pay all or part of the legal costs (on a solicitor and client basis) of an officer who is in name or substance a defendant to any legal action, whether civil or criminal, where the Governing Board considers, in its absolute discretion, that the reasons the officer has been made a defendant include the fact that he or she is an officer, and that it would be just and proper for this Company to make the payment;
- 34.6.2. The Governing Board shall be under no legal obligation to make a payment authorised under Rule 34.6.1 or to consider whether a payment should be made in any individual case;
- 34.6.3. The Governing Board may impose such conditions as in its absolute discretion it sees fit on the making of a payment under Rule 34.6.1.
- 34.6.4. Nothing in rule 35 is intended to prevent ratification by the Members in a general meeting of an officer's abuse of power or an officer's exceeding power, where such ratification does not offend §199A of the Act.

35. CONDUCT OF MEETINGS USING COMMUNICATIONS MEDIA

- 35.1. Meetings of Members and meetings of Governing Board Directors may be duly convened and held by way of telephone, video conferencing link-up or other medium for electronic communication available for such purpose from time to time as long as:
- 35.1.1. the number and category of persons participating and physically present would represent a quorum for the purposes of the Rules;

- 35.1.2. due notice of the meeting and of intention to use a medium of electronic communication has been given to all persons entitled to notice of the meeting;
- 35.1.3. each of the participants acknowledges:
 - 35.1.3.1. such participant's presence to the chairman;
 - 35.1.3.2. that the meeting is being convened as a duly constituted meeting;
 - 35.1.3.3. that the participant can hear the other participants;
 - 35.1.3.4. the chair is satisfied with the identification of each of the participants at the commencement of the meeting and the presence of a quorum; and
 - 35.1.3.5. voting of the participants on all issues can be clearly ascertained by the chair.
- 35.1.4. No person participating in any meeting conducted pursuant to this Rule shall disconnect communication during the course of any meeting without the consent of the chairman and in default of such consent or proven failure of the connection all participants at the commencement of the meeting shall be deemed to have been present and to have formed part of the quorum during the whole of that meeting.
- 35.1.5. The chair shall sign minutes of the proceedings conducted as aforesaid and such minutes shall be prima facie evidence of the matters discussed and resolutions passed thereat.

36. ALTERATION OF THIS CONSTITUTION

- 36.1. A resolution altering or repealing any rule or sub-rule of this Constitution (including this rule) and constitution version must be passed by Special Resolution of the Company.

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