

# AUSTRALIAN BOARDING SCHOOLS ASSOCIATION LIMITED

## CONSTITUTION

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# AUSTRALIAN BOARDING SCHOOLS ASSOCIATION LIMITED

## CONSTITUTION

### 1. Name of the Company

- 1.1. The name of the Company is Australian Boarding Schools Association Limited.

### 2. Type of Company

- 2.1. The Company is a public company limited by guarantee incorporated under the *Corporations Act 2001* (Cth), hereinafter referred to as 'the Act'.
- 2.2. The assets and income of the Company must be applied solely in furtherance of the Purpose and no portion of the income or assets of the Company may be paid or transferred, directly or indirectly, to any Member.
- 2.3. Clause 2.2 does not prevent the Company from doing the following things, provided they are done in good faith:
  - a) paying a Member for goods or services they have provided to the Company at fair and reasonable rates or rates more favourable to the Company,
  - b) reimbursing a Member for reasonable expenses they have properly incurred on behalf of the Company,
  - c) making a payment to a Member in carrying out the Purpose, or
  - d) making a payment for any other bona fide reason related to the attainment of the Purpose.
- 2.4. This Constitution comprises a contract between:
  - a) the Company and each Member,
  - b) the Company and each Director,
  - c) the Company and the Secretary or Secretaries, and
  - d) a Member and each other Member.
- 2.5. The replaceable rules set out in the Act do not apply to the Company.
- 2.6. Each Member must guarantee to pay an amount not more than \$100 to the Company if the Company is wound up while the Member is a Member, or within 12 months after they cease being a Member, and this guarantee is required to pay for the:
  - a) debts and liabilities of the Company that exceed the Company's assets incurred before the Member stopped being a Member, and
  - b) costs of winding up the Company.

### 3. Purpose

- 3.1. The purpose of the Company is to promote the interests of Boarding Schools in Australia and other countries in the region including but not limited to New Zealand, China, Singapore, Japan and Malaysia (**Purpose**).
- 3.2. The Company pursues its Purpose through a range of activities and services that may include, but are not limited to:
  - a) promoting the interests of Boarding Schools,
  - b) enhancing the well-being of Boarders,
  - c) facilitating the professional development of staff of Boarding Schools,
  - d) advancing excellent practice among Boarding Schools, and
  - e) doing anything ancillary or incidental to the Purpose.

### 4. Powers of the Company

- 4.1. The Company has the following powers which may be used only to carry out its Purpose:
  - a) all the powers of a company limited by guarantee under the Act, and
  - b) the power to do all things necessary or convenient to be done for, or in connection with, the attainment of its Purpose.

### 5. Definitions

- 5.1. In this Constitution, except as so far as the context or subject matter otherwise indicates or requires:
  - a) **AHISA** means AHISA Limited (ACN 006 107 124) - the Association of Heads of Independent Schools of Australia,
  - b) **Board** means some or all the Directors acting as the Board of Directors,
  - c) **Boarder** means a school student who utilises a Boarding Service,
  - d) **Boarding Service** means an accommodation service for Australian and international students attending school,
  - e) **Boarding Service Member** means an Eligible Person which provides a Boarding Service and meets the criteria in clause 7.2,
  - f) **By-laws** means the rules and regulations made by the Board in accordance with clause 34,
  - g) **Code of Conduct** means any code of conduct or ethics applicable to Members made by the Board,
  - h) **Constitution** means this constitution as amended from time to time,
  - i) **Director** means an individual elected or appointed as a Director on the Board,
  - j) **Division** means a State, Territory or overseas area division of the Company,

- k) **Eligible Person** means a person who can demonstrate, to the satisfaction of the Board, that they have the ability and capacity to make a meaningful and constructive contribution to the Company that is consistent with the Purpose,
- l) **First Nations Advisory Committee** means the so named committee established and appointed by the Board in accordance with the By-laws,
- m) **General Meeting** means a formal meeting of the Members and includes an Annual General Meeting,
- n) **Member** means a person whose name is entered in the register of Members as a Member of the Company,
- o) **Non-Voting Member** means a Member who does not have voting rights as described in clause 7.3,
- p) **Principal** means the head of a Boarding Service Member, being the person leading a school that provides a Boarding Service,
- q) **Regional Division Advisory Committee** means the so named committee established and appointed by the Board in accordance with the By-laws,
- r) **Representative** means an individual appointed as a Member's representative by a Member that is body corporate,
- s) **Secretary** means an individual or individuals appointed to undertake the role of Secretary as defined in the Act and this Constitution,
- t) **Special Resolution** means a resolution at a General Meeting that is passed by at least 75% of the votes cast by Members entitled to vote on the resolution, and
- u) **Surplus Assets** means any assets of the Company that remains after paying all debts and other liabilities of the Company, including the costs of winding up.

## 6. Interpretation

- 6.1. Headings are for convenience only and do not affect the interpretation of this Constitution.
- 6.2. The following rules of interpretation apply unless any contrary intention appears in this Constitution or the context requires otherwise:
  - a) mandatory provisions of the Act override any clause in this Constitution, which is inconsistent with that Act,
  - b) reference to an act includes every amendment, re-enactment, or replacement of that act and any subordinate legislation made under that act such as regulations,
  - c) a reference to a clause or sub-clause is to a clause or sub-clause of this Constitution,

- d) where a word or phrase is defined, its other grammatical forms or parts of speech have corresponding meaning,
- e) reference to a person is a reference to an individual, company, any other body corporate, partnership, joint venture, association, or other body whether or not incorporated,
- f) the words 'writing' and 'written' include any mode of representing or reproducing, including electronically, words, figures, drawings, or symbols in a visible or communicable form,
- g) the words 'including', 'for example', or similar expressions do not limit the inclusions or examples,
- h) a gender includes all genders,
- i) singular includes plural and vice versa, and
- j) a notice or document required by this Constitution to be signed includes signing by electronic means or may be authenticated by any other manner permitted by law.

## **PART B — MEMBERSHIP**

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### **7. Classes of Membership**

- 7.1. There are two classes of membership:
  - a) Boarding Service Members, and
  - b) Non-Voting Members.
- 7.2. Boarding Service Members are entities who:
  - a) have been admitted as Boarding Service Members in accordance with this Constitution, and
  - b) satisfy any additional requirements for Boarding Service Membership as prescribed by the Board and set out in the By-laws.
- 7.3. Non-Voting Members are persons interested in the Purpose but who:
  - a) are not eligible to be Boarding Service Members,
  - b) have been admitted as Non-Voting Members in accordance with this Constitution, and
  - c) satisfy any additional requirements for being Non-Voting Members as prescribed by the Board and set out in the By-laws.
- 7.4. The Board may provide for categories of Members within each class on such terms and conditions as the Board determines.
- 7.5. The Board may determine additional requirements for admission as a Member or as a Member in a particular class or category of membership.

### **8. Rights and Obligations of Members**

- 8.1. A Boarding Service Member has the right to:
  - a) receive notices of and to attend General Meetings, and

- b) vote at General Meetings on resolutions put to the Members.
- 8.2. A Non-Voting Member is entitled to receive notices of and to attend General Meetings but does not have voting rights.
- 8.3. A Member who has not paid any fees payable by the due date is not entitled to exercise their rights while the fee remains unpaid.
- 8.4. A Member is entitled to exercise their rights if their membership rights are not suspended for any other reason.
- 8.5. The Board may extend benefits and services to Members that may differ between classes and categories of membership and within classes and categories of membership.
- 8.6. Members must comply with:
  - a) this Constitution,
  - b) any By-laws, and
  - c) any Code of Conduct.
- 8.7. To maintain membership, Members are required to comply with any continuing membership obligations or conditions as determined by the Board and specified in the By-Laws.
- 8.8. A Member must, within a reasonable time, notify the Secretary of any change to their details as recorded in the register of Members.
- 8.9. A right, privilege or obligation held by reason of being a Member:
  - a) is not capable of being transferred or transmitted to another person, and
  - b) terminates upon cessation of the Member's membership.
- 8.10. The rights of Members are not to be taken as being varied by the admission of more Members or the addition or deletion of classes or categories of membership.
- 8.11. The rights of Members in any class may be varied or cancelled by the Boarding Service Members approving amendments to the Constitution by Special Resolution. For clarity, this shall be taken to be the procedure for varying or cancelling rights of Members in any class.

## **9. Member Representatives**

- 9.1. If a Member is not an individual, the Member will nominate to the Secretary at the time of application for membership the name of one individual, called the Representative, who will represent that Member at General Meetings and in the case of a Boarding Service Member, may vote on behalf of that Boarding Service Member.
- 9.2. A Member may by notice to the Secretary change its Representative.
- 9.3. The Secretary will keep a register of Representatives.

## **10. Application for Membership**

- 10.1. An application for membership must be in a form prescribed by the Board.
- 10.2. The Board may prior to considering any application for membership require that the applicant furnish such additional information relevant to the application as may in the opinion of the Board be necessary and reasonable.
- 10.3. The Board may approve or reject an application for membership.
- 10.4. The Board may refuse any application for membership without being compelled to give the reasons for such refusal.
- 10.5. The Board may delegate the consideration and determination of any membership application.
- 10.6. Once the outcome of a membership application is determined, written notice of the decision of the Board or their delegate is to be sent to the applicant within a reasonable time.
- 10.7. The acceptance of an applicant as a Member is subject to the payment of any fees and if such payment is not made, the Board may cancel its acceptance of the applicant for membership of the Company.
- 10.8. An applicant who is admitted to membership becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the register of Members.

## **11. Membership Fees**

- 11.1. The Board may set any joining fees and/or membership fees and may determine different fees:
  - a) for different classes or categories of membership,
  - b) within classes or categories of membership, or
  - c) for different Members.
- 11.2. The Board may in its discretion waive or vary the amount of any fee set.
- 11.3. Any fee charged to Members is payable in such manner and at such times as are determined by the Board.
- 11.4. If any fee remains unpaid for a period of three months after it becomes due, written notice will be given to the Member of that fact. Unless the Board resolves otherwise, if the fee remains unpaid more than one month after the date of the notice, the Member's membership is terminated.
- 11.5. Membership that has been terminated under clause 11.4 may be reinstated at the discretion of the Board upon payment of the outstanding fee(s).

## **12. Register of Members**

- 12.1. The Secretary or another person delegated by the Board must establish and maintain a register of Members, which may be in electronic form, containing:

- a) the name of each Member and the date on which they became a Member,
- b) the Member's address, which may be an email address, to which notices from the Company may be sent, and
- c) any other information as determined by the Board or required by the Act.

### **13. Ceasing to be a Member**

13.1. A Member ceases to be a Member if they:

- a) resign by written notice to the Secretary,
- b) are an individual and die,
- c) are not an individual and are wound up or are dissolved,
- d) have their membership terminated or are expelled under this Constitution,
- e) no longer satisfy the criteria for their respective class of membership (unless transferred to another class of membership pursuant to clause 13.2),
- f) are convicted of an indictable offence,
- g) fail to provide any information required by the Board as part of the renewal process, unless the Board resolves otherwise, or
- h) fail to satisfy any undertaking given by the Member upon them being admitted as a Member, unless the Board resolves otherwise, or
- i) have their membership terminated in any other circumstances prescribed in the terms of membership that are applicable to the Member, unless the Board resolves otherwise.

13.2. A Boarding Service Member who ceases to satisfy the criteria for a Boarding Service Member will become a Non-Voting Member.

13.3. Any Member ceasing to be a Member:

- a) is not entitled to any refund, in full or part, of any membership fees paid, and
- b) will not be readmitted as a Member until all unpaid fees outstanding at the time they ceased to be a Member are paid, including any interest or other charges levied on any outstanding fees.

13.4. Upon ceasing to be a Member, the date on which the Member ceased to be a Member will be recorded in the register of Members.

13.5. Any Member ceasing to be a Member remains liable for any fees owing by that Member to the Company and, if the Company is wound up within one year of the date the Member ceases to be a Member, the guarantee under this Constitution.

### **14. Suspending or Expelling a Member**

- 14.1. Subject to this clause 14, the Board may suspend or expel a Member from the Company if the Board considers that the Member:
  - a) has failed to comply with this Constitution or any By-laws,
  - b) has failed to comply with any Code of Conduct,
  - c) refuses to support the Purpose,
  - d) acts in a manner prejudicial to the interests of the Company, or
  - e) acts in a manner that the Board considers it as undesirable for the Member to continue to be a Member.
- 14.2. Written notice must be provided to the Member of the proposed suspension or expulsion at least 14 days before the Board meeting at which the proposal is to be considered by the Board.
- 14.3. At the Board Meeting at which the proposed suspension or expulsion resolution is to be considered, the Board must:
  - a) give the Member an opportunity to make oral representations; and
  - b) give due consideration to any oral and/or written representations submitted to the Board by the Member at or prior to the Board Meeting.
- 14.4. At the Board meeting at which the proposed suspension or expulsion resolution is to be considered, the Board must:
  - a) give the Member an opportunity to make oral representations, and
  - b) give due consideration to any oral representations and to any written representations submitted to the Board by the Member at or prior to the Board Meeting.
- 14.5. After considering any explanation provided by the Member, the Board may decide to:
  - a) take no further action,
  - b) warn the Member,
  - c) suspend the Member's rights as a Member for a period of not more than 12 months,
  - d) expel the Member,
  - e) impose such undertakings upon the Member as it deems appropriate, including but not limited to commitments to cease specified conduct, undertake remedial actions or training, or comply with ongoing conditions,
  - f) refer the matter to mediation, or
  - g) require the matter to be determined at a General Meeting.
- 14.6. The Board may in its absolute discretion and on such terms and conditions as it sees fit:

- a) defer for a period not exceeding one year the operation of any resolution to suspend or expel a member under clauses 14.5.c) and 14.5.d), and
  - b) rescind any such resolution prior to the expiry of any deferral period.
- 14.7. The Board must give the Member written notice of the Board's decision, and the reasons for the decision, within 14 days after the Board meeting at which the decision is made.
- 14.8. There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause 14.

## **PART C — GENERAL MEETINGS**

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### **15. Calling a General Meeting**

- 15.1. The Board may, whenever it thinks fit, call a General Meeting (including an Annual General Meeting or Special General Meeting).
- 15.2. The time, place of, and the virtual meeting technology to be used, if any, at, the General Meeting is to be determined by the Board.
- 15.3. An Annual General Meeting will be held within five months after the end of each financial year.
- 15.4. A General Meeting may be held at one or more venues, or wholly or partly online or virtually, using any virtual meeting technology that provides the Members or their Representatives as a whole with a reasonable opportunity to participate, including the ability to hear and be heard.
- 15.5. A Member or their Representative who participates in a General Meeting using the virtual meeting technology prescribed by the Board is taken to be present in person at the General Meeting and, if the Member or their Representative votes at the meeting using the virtual meeting technology prescribed, is taken to have voted in person.
- 15.6. A virtual General Meeting and a General Meeting that is partly held using technology, and partly held at a physical venue or venues, is deemed to have been held at the main physical venue of the meeting as set out in the notice of the meeting.
- 15.7. If a General Meeting is held:
- a) at only one physical venue (whether or not it is also held using virtual meeting technology), it must be reasonable to hold the meeting at that physical venue,
  - b) at more than one physical venue (whether or not it is also held using virtual meeting technology), it must be reasonable to hold the meeting at its main physical venue as set out in the notice of the meeting,
  - c) solely using virtual meeting technology, it must be held in such a way as to give the persons entitled to attend the General Meeting, as a whole, a reasonable opportunity to participate in the meeting without being physically present in the same place.

- 15.8. A General Meeting must be held at a reasonable time. A General Meeting is taken to be held at a reasonable time if any of the following applies:
- a) if there is only one physical venue (whether or not it is also held using virtual meeting technology), the meeting is held at a time that is reasonable at the venue,
  - b) if there are two or more physical venues (whether or not it is also held using virtual meeting technology), the meeting is held at a time that is reasonable at the main venue for the General Meeting as set out in the notice of the meeting,
  - c) if the General Meeting is held solely using virtual meeting technology, the meeting is held at a time that is reasonable in the timezone of the Company's registered office.
- 15.9. A General Meeting must also be convened by the Board upon the requisition of not less than 5% of Boarding Service Members.
- 15.10. A requisition for a General Meeting called by Members:
- a) must state the purpose or purposes of the General Meeting,
  - b) must be signed by the Members or their Representatives making the request, which may include electronic signatures,
  - c) must be lodged with the Secretary, and
  - d) may be in electronic form or may consist of several documents in a similar form, each signed by one or more of the Members or their Representatives making the request.
- 15.11. If the Board fails to give notice of a General Meeting called by Members within 21 days after the date on which the request for the General Meeting is lodged, any one or more of the Members making the request may convene a General Meeting which must be held not later than three months after that date.
- 15.12. A General Meeting called by Members must be convened as nearly as is practicable in the same manner as a General Meeting convened by the Board.

## **16. Notice of a General Meeting**

- 16.1. Notice of a General Meeting must be given to:
- a) each Member,
  - b) each Director, and
  - c) the auditor, if any.
- 16.2. Notice of a General Meeting must include:
- a) the time, date, place of, and, if any, the virtual meeting technology to be used to facilitate the General Meeting,
  - b) if virtual meeting technology is to be used to hold the General Meeting, sufficient information to allow the Members or their

Representatives to participate in the General Meeting by means of the virtual meeting technology,

- c) a statement that Members may appoint a proxy, and
  - d) if applicable, that a Special Resolution is to be proposed at the General Meeting and the words of the proposed Special Resolution.
- 16.3. Notice of a General Meeting shall be given at least 21 days before the date fixed for the holding of the General Meeting.
- 16.4. Notice of a General Meeting may be given less than 21 days before the meeting if:
- a) for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand, or
  - b) for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 16.5. Notice of a General Meeting must not be provided less than 21 days before the General Meeting if it is proposed that a resolution is to be moved to:
- a) remove a Director or appoint a Director to replace a Director who has been removed, or
  - b) remove an auditor.
- 16.6. The accidental failure to give notice of any General Meeting to, or the non-receipt of notice of a General Meeting by, any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the General Meeting.
- 16.7. A Member's attendance at a General Meeting waives any objection that the Member may have regarding a failure to give notice, or the giving of defective notice, of the General Meeting.

## **17. Business at a General Meeting**

- 17.1. Subject to clause 17.2, no business other than that specified in the Notice convening a General Meeting is to be transacted at the General Meeting.
- 17.2. The business of an Annual General Meeting may include any of the following, even if not referred to in the notice of the Meeting:
- a) the consideration of the annual financial report, the Board report and the auditor's report, if any,
  - b) the election or announcement of Directors, if any, and
  - c) the appointment of the auditor, if any.

## **18. Proxies at a General Meeting**

- 18.1. A Member is entitled to appoint a proxy by notice given to the Company at the address stated in the notice of General Meeting, which may be an electronic address, at least 48 hours before the time of the General Meeting in respect of which the proxy is appointed.

- 18.2. The Board may prescribe a form of proxy however a proxy will be valid provided the instrument purporting to appoint a proxy:
- a) is in writing,
  - b) contains the Member's name and address, the Company's name and the proxy holder's name or the office held by the proxy holder,
  - c) contains the details of the meeting at which the appointment may be used, and
  - d) contains the details as to how the proxy holder is to vote on the matters before the General Meeting.
- 18.3. In the event of a Member not nominating a particular person as proxy holder on the proxy form, the proxy is to be exercised by the chairperson of the General Meeting.
- 18.4. Unless the Company receives written notice before the start or resumption of a General Meeting at which a proxy holder votes, a vote cast by the proxy holder is valid even if, before the proxy holder votes, the appointing Member:
- a) revokes the proxy holder's appointment, or
  - b) revokes the authority of a representative or agent who appointed the proxy holder.
- 18.5. A proxy holder need not be a Member or a Representative.
- 18.6. A proxy holder does not have the authority to speak and vote for a Member who appointed that proxy at a General Meeting while that Member is at the General Meeting.

## **19. Quorum at a General Meeting**

- 19.1. A quorum for a General Meeting is 11 Boarding Service Members present and entitled to vote by proxy or by Member's Representative.
- 19.2. No business may be conducted at a General Meeting if a quorum is not present.
- 19.3. If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
- a) if convened by or on the requisition of Members, the General Meeting is dissolved, and
  - b) in any other case, the General Meeting stands adjourned to such other day, time and place as the Board appoints by notice to the Members and others entitled to notice of the General Meeting.
- 19.4. If at the adjourned General Meeting a quorum is not present within 30 minutes from the time appointed for the General Meeting, the General Meeting will lapse.

## **20. Chairperson of a General Meeting**

- 20.1. The Chair will preside as chairperson of each General Meeting.

- 20.2. If there is no Chair, or the Chair is not present within 15 minutes after the time appointed for the commencement of the General Meeting, or the Chair is unable or unwilling to act as chairperson of the General Meeting or of part of the General Meeting, then the following persons will preside as chairperson of the General Meeting in the order of precedence:
- a) any other Director present who has been appointed as chairperson by the other Directors present, or
  - b) a Member's Representative present chosen by a majority of the Boarding Service Members present.
- 20.3. The chairperson of a General Meeting is responsible for the conduct of the General Meeting and any question arising at a General Meeting relating to the order of business, procedure or conduct of the General Meeting must be referred to the chairperson whose decision is final.
- 20.4. The chairperson of a General Meeting may at any time they consider it necessary or desirable for the proper and orderly conduct of the General Meeting:
- a) impose a limit on the time that a person may speak on a motion or other item of business, question or resolution being considered by the General Meeting,
  - b) terminate debate or discussion at the General Meeting, and
  - c) adopt any procedures for casting or recording votes at the General Meeting whether on a show of hands or a poll.
- 20.5. The chairperson of a General Meeting may at any time during a General Meeting, adjourn the General Meeting from time to time and from place to place, but no business may be transacted at any adjourned General Meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 20.6. When a General Meeting is adjourned for 30 days or more, notice of the adjourned General Meeting must be given as in the case of an original General Meeting.
- 20.7. The chairperson of an Annual General Meeting must allow a reasonable opportunity for the Members or their Representatives as a whole at the meeting to ask questions about or make comments on the management of the Company.

## **21. Methods of Voting at a General Meeting**

- 21.1. A Member's Representative is not entitled to vote at a General Meeting unless all fees due and payable by the Member to the Company have been paid.
- 21.2. Non-Voting Members are not entitled to vote at a General Meeting.
- 21.3. Upon any motion arising at a General Meeting, a Member's Representative entitled to vote has one vote.

- 21.4. Votes must be given in person or by proxy, by the Member's Representative or when applicable by direct vote.
- 21.5. Proxies must not be counted on a vote by a show of hands.
- 21.6. A Member's Representative entitled to vote at a General Meeting may vote by direct vote where such an option is offered by the Board. A direct vote includes a vote delivered to the Company by any means approved by the Board, which may include postal or electronic means.
- 21.7. The Board may prescribe By-laws in relation to direct voting, including specifying the form, method, and timing of giving a direct vote at a General Meeting in order for the vote to be valid.
- 21.8. An objection to the qualification of a Member or their Representative to vote at a General Meeting:
  - a) must be raised before or at the General Meeting at which the vote objected to is given or tendered, and
  - b) must be referred to the chairperson of the General Meeting whose decision on the qualification to vote is final.
- 21.9. If virtual meeting technology is used to hold a General Meeting and a document is required or permitted to be tabled at the General Meeting, the document is taken to have been tabled at the General Meeting if the document is:
  - a) given to the persons entitled to attend the General Meeting, whether physically or by using virtual meeting technology, before the General Meeting, or
  - b) made accessible to the persons attending the General Meeting, whether physically or by using virtual meeting technology, during the General Meeting.

## **22. Decisions at a General Meeting**

- 22.1. Motions arising at a General Meeting are to be decided by ordinary resolution unless otherwise required by this Constitution or the Act.
- 22.2. An ordinary resolution is a resolution passed by a simple majority of the votes cast.
- 22.3. In the case of an equality of votes upon any proposed resolution, the chairperson of the General Meeting, in addition to any deliberative vote, does not have a casting vote and the proposed resolution is not passed.
- 22.4. A resolution put to the vote of a General Meeting must be decided on a show of hands unless a poll is demanded in accordance with this Constitution. On a show of hands, the declaration by the chairperson of the General Meeting is conclusive evidence of the result.
- 22.5. A poll may be demanded before the vote is taken or before or immediately after the declaration of the result of the show of hands by:
  - a) the chairperson of the General Meeting,

- b) at least five Members' Representatives entitled to vote on the resolution present in person or by proxy at the General Meeting, or
  - c) Members' Representatives with at least 5% of the votes that may be cast on the resolution present in person or by proxy at the General Meeting.
- 22.6. Neither the chairperson of the General Meeting nor the minutes of the General Meeting need to state the number or proportion of the votes recorded in favour or against.
- 22.7. The demand for a poll at a General Meeting may be withdrawn.
- 22.8. A demand for a poll at a General Meeting does not prevent the continuation of a General Meeting for the transaction of any business other than the question on which the poll has been demanded.
- 22.9. A poll demanded at a General Meeting must be taken when and in the manner the chairperson of the General Meeting directs including in relation to how votes of Members' Representatives attending by technology are to be collected.
- 22.10. A poll on the election of a chairperson of a General Meeting or on the question of an adjournment of a General Meeting must be taken immediately.

### **23. Cancellation or Postponement of a General Meeting**

- 23.1. The Board may cancel, postpone, or change the venue of a General Meeting at any time prior to the meeting except in the case of a General Meeting called upon by the requisition of Members.
- 23.2. The Board must give notice of the postponement, cancellation or change of venue of a General Meeting to all persons entitled to receive notices of a General Meeting.

## **PART D — BOARD OF DIRECTORS**

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### **24. Board Composition**

- 24.1. The Board will comprise the following Directors:
- a) two Directors who are appointed by the Regional Division Advisory Committee,
  - b) one Director appointed by the First Nations Advisory Committee,
  - c) two Directors who are Principals of Boarding Service Members, one nominated by AHISA and one appointed by the Board, and
  - d) up to four other Directors appointed by the Board who will be Appointed Directors.
- 24.2. The Company must have at least three Directors.
- 24.3. At least two Directors must ordinarily reside in Australia.
- 24.4. Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors is reduced to

fewer than three Directors, in which case the continuing Directors may act only:

- a) to appoint Directors for the purpose of increasing the number of Directors to three or higher,
- b) to convene a General Meeting, or
- c) in an emergency.

## **25. Terms of Office for Directors**

- 25.1. The term of a Director is approximately three years from the close of the Annual General Meeting at which their appointment is announced until the end of the third following Annual General Meeting.
- 25.2. If a casual vacancy in the position of a Director occurs, the Board may appoint an eligible individual to fill the vacancy until the next following Annual General Meeting.

## **26. Term Limits of Directors**

- 26.1. The maximum continuous period that a Director may serve as a Director (**Maximum Continuous Period**) is as follows:
  - a) a Director may serve up to two consecutive terms, and
  - b) no Director may serve more than six consecutive years.
- 26.2. A person who has held office as a Director for the Maximum Continuous Period is eligible for reappointment after a period of three years from the date that the person last held office as a Director.
- 26.3. The Maximum Continuous Period does not include any period of a Director's appointment to fill a casual vacancy of a Director under clause 25.2.

## **27. Eligibility of Directors**

- 27.1. A person is eligible for appointment as a Director if they:
  - a) are over the age of 18 years,
  - b) provide their signed consent to act as a Director,
  - c) are not ineligible to be a Director under law, including under the Act,
  - d) have a Director Identification Number, and
  - e) are not an employee of the Company.

## **28. Appointment of Appointed Directors**

- 28.1. The Board may appoint up to four Appointed Directors.
- 28.2. An Appointed Director may be required to have the experience, perspectives, capabilities, or skills as the Board considers desirable.

## **29. Ceasing to be a Director**

- 29.1. In addition to any other way a Director vacates office under the Act or this Constitution, a Director ceases to be a Director if they:
- a) resign by giving the Chair or the Secretary 14 day's written notice of their intention to do so,
  - b) are subject to any of the circumstances prescribed by the Act resulting in the ending or vacating of the position of Director,
  - c) are a Members' Representatives and the Member of the Representative has their membership suspended or they are expelled pursuant to clause 14,
  - d) become a person whose estate or person is liable to be dealt with under the law relating to mental health,
  - e) die,
  - f) become bankrupt or make any arrangement or composition with their creditors generally, unless, subject to the Act, the Board resolves otherwise,
  - g) are convicted on indictment of an offence and the Board does not at the next meeting of the Board after that conviction resolve to confirm the Director's appointment to the position of Director,
  - h) are absent from three consecutive Board meetings without leave of absence approved by the Board,
  - i) fail to disclose a material personal interest in breach of the law unless at its next meeting the Board resolves otherwise,
  - j) are removed from the position of Director by the Members,
  - k) become a paid employee of the Company,
  - l) are found guilty by a tribunal, industrial commission, court of competent jurisdiction or other similar authority of engaging in discriminatory conduct or harassment towards employees of the Company or other Members or their employees,
  - m) are prohibited from being a director under the Act, or
  - n) are convicted of an offence involving fraud or dishonesty for which the maximum penalty is imprisonment for at least three months.

### **30. Removing a Director**

- 30.1. The Boarding Service Members may by ordinary resolution at a General Meeting remove a Director from their position as Director before the expiration of the Director's term of office.

### **31. No Alternate Directors**

- 31.1. Directors are not entitled to appoint alternate directors.

### **32. Chair**

- 32.1. The Board will elect a Chair from amongst the Directors.

- 32.2. The Board may determine the period for which a Director holds office as Chair. For clarity, the Board may remove a Director from the position of Chair.
- 32.3. The Chair is not to hold office beyond their retirement or removal from the Board as a Director.
- 32.4. The Chair will have such powers and duties as specified in this Constitution, as required by law, and as determined by the Board.

### **33. Powers of the Board**

- 33.1. The powers of the Board are, subject to the Act and this Constitution, to:
  - a) control and manage the affairs of the Company,
  - b) exercise all the functions as may be exercised by the Company other than those functions that are required by this Constitution or the Act to be exercised by a General Meeting, and
  - c) perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Company.
- 33.2. The Board may delegate any of its powers to:
  - a) a committee,
  - b) a Director,
  - c) an employee of the Company, or
  - d) any other person,and may revoke that delegation.
- 33.3. The delegate must exercise the powers delegated in accordance with any directions, terms, and conditions as set by the Board.

### **34. By-Laws**

- 34.1. The Board may make, amend, or repeal such By-laws as it determines are appropriate for the purposes of giving effect to any provision of this Constitution or to govern the procedures and activities of the Company.
- 34.2. Any By-laws:
  - a) must be consistent with the provisions in this Constitution, and
  - b) when in force, are binding on all Members.

### **35. Divisions**

- 35.1. The Board may establish Divisions and set out the membership of those Divisions in the By-laws.
- 35.2. Divisions will be managed, controlled and regulated in accordance with this Constitution and the By-laws.
- 35.3. The Board may by resolution dissolve a Division.

## **36. Duties of Directors**

- 36.1. The Directors must comply with their duties as Directors under legislation and common law which includes the duty:
- a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company,
  - b) to act in good faith in the best interests of the Company and to further the Purpose of the Company,
  - c) not to misuse their position as a Director,
  - d) not to misuse information they gain in their role as a Director,
  - e) to maintain the confidentiality of information received in their role as a Director,
  - f) to act in the best interests of the Company,
  - g) to disclose any material personal interest in a matter that relates to the affairs of the Company,
  - h) to disclose any conflict of interest which may prevent them from properly fulfilling their duties as a Director,
  - i) to ensure that the financial affairs of the Company are managed responsibly, and
  - j) not to allow the Company to trade while it is insolvent.
- 36.2. The Board may make By-laws or adopt a policy consistent with the Act dealing with the disclosure and management of Directors' conflicts of interest.

## **37. Payments to Directors**

- 37.1. Directors are entitled to:
- a) be reimbursed for reasonable expenses properly incurred by the Director in connection with the affairs of the Company, and
  - b) be paid for any work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done.
- 37.2. Directors are not entitled to be paid fees for being a Director.
- 37.3. Any payment made to Directors must be approved by the Board.

## **38. Board Meetings**

- 38.1. The Board may meet, including by technological means, for the dispatch of business, and adjourn and otherwise regulate its meetings as it thinks fit.
- 38.2. The Chair alone, or any two Directors, may convene a Board meeting.
- 38.3. At a Board meeting:
- a) the Chair is to preside as chairperson, or

- b) if the Chair is absent or unwilling to act, one of the remaining Directors may be chosen by the Directors present at the Board meeting to preside as chairperson.
- 38.4. Questions arising at any Board meeting are to be decided by a simple majority of votes of those Directors present and entitled to vote.
- 38.5. Directors are to have one vote on any question at a Board meeting.
- 38.6. Directors may not assign proxies at a Board meeting.
- 38.7. In the event of an equality of votes on any question at a Board Meeting, the chairperson of the Board meeting does not have a casting vote and the motion is not passed.
- 38.8. A Board meeting may be held using technology that allows the Directors in attendance to communicate with each other clearly and simultaneously.
- 38.9. A Director who participates in a Board meeting using technology is taken to be present at the Board meeting and, if the Director votes at the Board meeting, is taken to have voted in person.
- 38.10. The Board may invite third parties to attend a Board meeting as observers.

### **39. Notice of a Board Meeting**

- 39.1. Subject to clause 39.3, notice of a Board meeting must be given to each Director at least seven days, or such other period as may be unanimously agreed upon by the Directors, before the time appointed for the holding of the Board meeting.
- 39.2. Notice of a Board meeting must be given by such means as agreed by the Directors.
- 39.3. In cases of urgency, a Board meeting can be held without the usual notice provided that as much notice as practicable is given to each Director by the quickest means practicable.
- 39.4. Non receipt of any notice of a Board meeting by a Director does not affect the validity of the convening of the Board meeting.

### **40. Quorum at a Board Meeting**

- 40.1. To transact business at a Board meeting, a quorum of Directors is required during the time in which the business is dealt with at the Board meeting.
- 40.2. The quorum for a Board meeting is a majority of the Directors currently in office.

### **41. Decisions of the Board without a Board Meeting**

- 41.1. The Board may pass a Board resolution without a Board meeting being held. The passing of such resolutions:
- a) requires a majority of Directors assenting to the resolution within the time specified,
  - b) may be through the use of technology, and

- c) must comply with any policies and procedures regarding the passing of Board resolutions as determined by the Board.

## **42. Validity of Acts of Directors**

- 42.1. All acts done at any Board meeting or by any individual acting as a Director are valid even if it is later discovered that there was a defect in the appointment of a person as a Director or the person not being entitled to vote.

## **PART E — ADMINISTRATIVE MATTERS**

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### **43. Secretary**

- 43.1. The Board must appoint at least one Secretary.
- 43.2. The Secretary must provide written consent to act as the Secretary prior to appointment.
- 43.3. The Secretary holds office on such terms and conditions as the Board determines.
- 43.4. The Board may remove any Secretary, subject to the terms of any contract and the law.
- 43.5. The Secretary has such powers and duties as specified in this Constitution, the Act, and as determined by the Board.

### **44. Minutes**

- 44.1. The Company must keep minutes of:
  - a) proceedings and resolutions of General Meetings,
  - b) proceedings and resolutions of Board meetings,
  - c) proceedings of committee meetings, and
  - d) resolutions passed by the Board without a meeting.
- 44.2. The Company must ensure that the minutes of a meeting are signed within a reasonable time after the meeting, which is usually within one month, by the chair of the meeting at which the proceedings were held, or by the chair of the next meeting.

### **45. Service of Notices to Members**

- 45.1. A notice may be given by the Company to a Member by:
  - a) serving it on the Member or their Representative personally,
  - b) sending it by post to the Member's address as shown in the register of Members,
  - c) sending it to an electronic contact address such as an e-mail address, that the Member or their Representative has supplied to the Company or to an address from which the Member has contacted the Company in the past, or

- d) making a copy of it accessible electronically and advising the Member or their Representative of its availability via the electronic contact address.
- 45.2. Where a notice is sent by post, service of the notice is taken to be effected three days after it is posted.
- 45.3. Where a notice is sent by email or by other electronic means, service of the notice is taken to be effected on the day it is sent or on the day the Member or their Representative is advised via the electronic contact address that the notice is accessible electronically.

#### **46. Accounts and Audit**

- 46.1. The Company must make and keep written financial records that:
- a) correctly record and explain its transactions and financial position and performance, and
  - b) enable true and fair financial statements to be prepared and to be audited if required.

#### **47. Inspection of Records**

- 47.1. A Member other than a Director does not have the right to inspect any books, records, or documents of the Company except as provided by law or authorised by the Board.

#### **48. Indemnity of Directors**

- 48.1. The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 48.2. In this clause 48, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.
- 48.3. In this clause 48, 'to the relevant extent' means:
- a) to the extent that the Company is not precluded by law including the Act from doing so,
  - b) to the extent that the conduct of the officer did not constitute serious and wilful misconduct, and
  - c) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person including an insurer under an insurance policy.
- 48.4. The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.
- 48.5. To the extent permitted by law, the Company may:
- a) purchase and maintain insurance, and
  - b) pay or agree to pay a premium for an insurance,

against any liability incurred by the officer as an officer including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal.

#### **49. Changes to the Constitution**

- 49.1. The Company may modify or repeal this Constitution, or a provision of this Constitution, by the Boarding Service Members passing a Special Resolution and following the requirements of the Act.

#### **50. Winding Up the Company**

- 50.1. Voluntary dissolution of the Company may only be achieved by a Special Resolution of Boarding Service Members and following all the requirements of the Act.
- 50.2. If the Company is wound up, any Surplus Assets must not be distributed to a Member or a former Member in their capacity as a Member.
- 50.3. Subject to the Act, any other applicable laws, and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more entities:
- a) with purposes similar to, or inclusive of, the Purpose, and
  - b) which prohibits the distribution of any income and/or assets to its members to at least the same extent as the Company.
- 50.4. The decision as to the organisation or organisations to be given the Surplus Assets must be made by a Special Resolution of Boarding Service Members at or before the time of winding up.
- 50.5. If the Boarding Service Members do not make this decision, the Company may apply to the Supreme Court of Queensland to make this decision.

#### **51. Transitional Arrangements**

##### **Members**

- 51.1. Upon adoption of this Constitution:
- a) Any Members listed on the register of members at the time of adoption of this Constitution as School Members and International Members will become Boarding Service Members and are deemed to have met the criteria for membership in clause 7.2 until they otherwise cease to be a Member pursuant to clause 13,
  - b) Any Members listed on the register of members at the time of adoption of this Constitution as Associate Members and Life Members will become Non-Voting Members and are deemed to have met the criteria for membership in clause 7.3 until they otherwise cease to be a Member pursuant to clause 13.
- 51.2. For the avoidance of doubt, Affiliate Members (as defined in the constitution that this Constitution is replacing) never had membership rights and will not be Members.

## **Board**

- 51.3. The Directors in office at the time of adoption of this Constitution will remain in office and their terms will reset to start from the close of the 2025 Annual General Meeting in accordance with clause 25.1.
- 51.4. Any time served as a Director immediately prior to the adoption of this Constitution will be taken into account in determining the Maximum Continuous Period under clause 26.1.

END OF CONSTITUTION