



# Constitution

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Australian Academy of Law

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## Preliminary

### 1. Defined terms

1.1 In this Constitution unless the contrary intention appears:

**Academy** means the Australian Academy of Law.

**Advisory Committee** has the meaning given in clause 43.1(b).

**Alternate Director** means a person appointed as an alternate director under clause 41.

**Auditor** means the Academy's auditor.

**Board Committee** has the meaning given in clause 43.1(a).

**By-laws** means by-laws of the Academy made in accordance with clause 36.

**Constitution** means the constitution of the Academy as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified or amended from time to time and includes any regulations made under that Act and any exemption or modification to that Act applying to the Academy.

**Deputy President** means the person appointed as deputy president of the Academy pursuant to clause 28.

**Director** includes any person occupying the position of director and, where appropriate, includes an Alternate Director.

**Directors** means all or some of the directors acting as a board.

**Fellow** means those persons who are admitted to such category of membership under this Constitution and includes a Foundation Fellow.

**Foundation Fellows** means those persons listed in Schedule 1 as Foundation Fellows.

**Foundation Patron** means the person listed in Schedule 1 as the Foundation Patron.

**Overseas Fellows** means those persons not ordinarily resident in Australia who are taken to meet the criteria for Fellow and who are invited by Directors and consent to become a Fellow of the Academy.

**Life Fellows** means the persons admitted to such category of membership under this Constitution.

**Member and Members** means members of the Academy and includes Fellows, Life Fellows and Overseas Fellows of the Academy.

**Office** means the Academy's registered office.

**Patron** means the person appointed as Patron of the Academy pursuant to clause 11.

**President** means the person appointed as president of the Academy pursuant to clause 28.

**Register** means the register of Members of the Academy. **Seal** means the Academy's common seal (if any).

**Secretary** means any person appointed by the Directors to perform any of the duties of a secretary of the Academy and if there are joint secretaries, any one or more of those joint secretaries.

1.2 In this Constitution, except where the context otherwise requires, an expression in a clause of this Constitution has the same meaning as in the Corporations Act. Where the expression has

more than one meaning in the Corporations Act and a provision of the Corporations Act deals with the same matter as a clause of this Constitution, that expression has the same meaning as in that provision.

## 2. Interpretation

In this Constitution, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Constitution, and a reference to this Constitution includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **A\$, \$A, dollar or \$** is to Australian currency; and
- (f) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions.

## 3. Replaceable rules

To the extent permitted by law, the replaceable rules in the Corporations Act do not apply to the Academy.

## Objects

### 4. Objects

4.1 The objects for which the Academy is established are:

**(a) Advancement of the discipline of law**

To establish a broadly-based and permanent body, comprising individuals of exceptional distinction from all parts of the legal community, including academia, the practising profession (including private and public sector lawyers), and the judiciary, to work together for the advancement of the discipline of law, in the ways set out in the succeeding objects.

**(b) Scholarships and research grants**

To establish and advance funds to provide scholarships and research grants which advance legal education and the discipline of law and promote ethical conduct and professional responsibility.

**(c) Promotion of excellence**

To promote the highest standards of legal scholarship, legal research, legal education, legal practice, and the administration of justice.

**(d) Law reform**

To promote the continuous improvement of the law and of the operation of the legal system.

**(e) Ethical conduct and professional responsibility**

To promote the highest standards of ethical conduct and professional responsibility amongst all members of the legal community, including the use of legal skills not merely for material personal reward but also in the service of society.

**(f) Rule of law**

To enhance understanding and observance of the rule of law, and community understanding of the role and function of law, lawyers, the legal profession, and the judiciary.

**(g) Forum**

To provide a forum for cooperation, collaboration, constructive debate and the effective interchange of views amongst all branches of the legal community on all matters relating to the achievement of these objects.

- 4.2 The Academy may only exercise the powers in subsection 124(1) of the Corporations Act to:
- (a) carry out the objects in this clause; and
  - (b) do all things incidental or convenient in relation to the exercise of power under clause 4.1.

## **Income and property of Academy**

### **5. Income and property of Academy**

- 5.1 The income and property of the Academy will only be applied towards the promotion of the objects of the Academy set out in clause 4.
- 5.2 No income or property will be paid or transferred directly or indirectly to any Member of the Academy except for payments to a Member:
- (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Academy; or
  - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

## **Membership**

### **6. Admission**

- 6.1 The number of Members with which the Academy proposes to be registered is unlimited. However, it is anticipated that the number of Members will not normally exceed 400.
- 6.2 The Members of the Academy will be:
- (a) the persons who consented to become Members in the application for registration of the Academy including the Foundation Fellows; and
  - (b) any other person who:
    - (i) is nominated for membership by a Member;
    - (ii) is invited by the Directors to become a Member;
    - (iii) accepts that invitation; and
    - (iv) pays his or her first annual subscription (if payable).
- 6.3 The Academy will have the following categories of membership with criteria as specified:
- (a) Fellows—persons of exceptional distinction in the discipline of law who are demonstrably committed to the objects of the Academy;
  - (b) Life Fellows—persons who have given distinguished service to the Academy or to the law nationally and/or internationally; and
  - (c) Overseas Fellows—those persons not ordinarily resident in Australia who are taken to meet the criteria for Fellow.

- 6.4 A person may not be a Member in more than one category of membership at any one time. Any Member who is issued an invitation for membership in a different category of membership must not accept such invitation unless resigning membership in the person's existing category of membership.
- 6.5 Nominations for membership of the Academy must be:
- (a) in writing by the nominator; and
  - (b) accompanied by a supporting statement by the nominator or other person (but not the nominee)
- 6.6 When considering a nomination for membership, the Directors may:
- (a) accept the nomination;
  - (b) reject the nomination; or
  - (c) ask the nominator for more evidence of the nominee's eligibility for membership.
- 6.7 If the Directors ask for more evidence under clause 6.6(c), their determination of the nomination for membership is deferred until the evidence is given.
- 6.8 The Directors do not have to give any reason for rejecting a nomination for membership.
- 6.9 As soon as practicable after acceptance of a nomination for membership, the Board will cause the Secretary or other person to send to the nominee a written invitation to become a Member and request the invitee, if the invitation is accepted, to pay his or her first annual subscription (if payable).
- 6.10 Subject to clauses 6.2 and 6.11, a nominee becomes a Member when he or she accepts the invitation and (if payable ) pays the first annual subscription.
- 6.11 If the first annual subscription (if payable) is not paid within 30 days after the date on which the nominee is invited to become a Member, the Directors may cancel their acceptance of the nomination and withdraw the invitation.
- 6.12 The rights and privileges of every Member are personal and are not transferable by the Member's own act or by operation of law.

## **7. Designation of Academy membership**

- 7.1 Unless otherwise provided for in the By-laws, after their respective names a Member may use the abbreviated designation "FAAL" as an indication of their membership of the Academy.

## **8. Subscriptions**

- 8.1 Subject to clause 8.2, the Directors may, from time to time, determine the annual subscription payable by each Member or each category of Member. Until otherwise determined by the Directors the annual subscription will be \$400.
- 8.2 Life Fellows and Overseas Fellows are not subject to and have no obligation to pay annual subscriptions but may, in their discretion, make a donation to the Academy of an equivalent or other amount.
- 8.3 The annual subscription period will commence on 1 July of each year, and the annual subscription will be due in advance within 30 days of this date.
- 8.4 The first subscription payable by persons who consented to become Members in the application for the Academy's registration will be payable within 30 days of the date from which subscriptions are determined by the Directors.
- 8.5 The Directors may determine that from the date of admission to membership to the next 30 June, only a fraction of the annual subscription instead of the full annual subscription shall be payable, having regard to the length of that period.

- 8.6 With the exception of those Members described in clause 8.2, if a Member does not pay a subscription within 30 days after it becomes due the Directors:
- (a) will give the Member notice of that fact; and
  - (b) if the subscription remains unpaid 21 days from the date of that notice, may declare that Member's membership forfeited.

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

9.1 A Member's membership of the Academy will cease:

- (a) if the Member gives the Secretary written notice of resignation, from the date of receipt of that notice by the Secretary;
- (b) if a majority of three-quarters of the Directors present and voting at a meeting of Directors by resolution terminate the membership of a Member:
  - (i) who in the majority's opinion no longer demonstrate a commitment to the objects of the Academy specified in clause 4.1; or
  - (ii) whose conduct in their opinion renders it undesirable that that Member continue to be a Member,provided that the Member has been given at least 21 days' notice of the resolution and has had the opportunity to be heard at the meeting at which the resolution is proposed;
- (c) if membership is forfeited under clause 8.6(b);
- (d) if the Member:
  - (i) dies;
  - (ii) becomes mentally incapacitated or whose person or estate is liable to be dealt with in any way under the laws relating to mental health; or
  - (iii) is convicted of an indictable offence, and a majority of Directors resolve that there were no redeeming circumstances.

9.2 Any Member ceasing to be a Member:

- (a) will not be entitled to any refund (or part refund) of a subscription; and
- (b) will remain liable for and will pay to the Academy all subscriptions and moneys which were due at the date of ceasing to be a Member.

## **10. Powers of attorney**

- 10.1 If a Member executes or proposes to execute any document or do any act by or through an attorney which affects the Academy or the Member's membership in the Academy, that Member must deliver the instrument appointing the attorney to the Academy for notation.
- 10.2 If the Academy asks the Member to file with it a certified copy of the instrument for the Academy to retain, the Member will promptly comply with that request.
- 10.3 The Academy may ask for whatever evidence it thinks appropriate that the power of attorney is effective and continues to be in force.

## **Patron**

### **11. Patron**

- 11.1 The Directors may from time to time appoint by invitation the Chief Justice of the High Court of Australia to be the Patron of the Academy.
- 11.2 For the avoidance of doubt:

- (a) no appointment is valid unless the person invited has consented to act as the Patron; and
  - (b) the Patron is not a Member or Director of the Academy by virtue of appointment as the Patron but may otherwise be admitted or appointed as such.
- 11.3 If the Chief Justice of the High Court of Australia declines to be Patron, the Directors may invite another eminent person to be the Patron of the Academy for a defined period of time.

## **General meetings**

### **12. Calling general meeting**

- 12.1 Any Director may, at any time, call a general meeting.
- 12.2 A Member may:
- (a) only request the Directors to call a general meeting in accordance with section 249D of the Corporations Act; and
  - (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

### **13. Notice of general meeting**

- 13.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given to Members of any general meeting.
- 13.2 A notice calling a general meeting:
- (a) must specify the place, date and time of the meeting and if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this;
  - (b) must state the general nature of the business to be transacted at the meeting; and
  - (c) may specify a place, facsimile number and electronic address for the purposes of proxy appointment.
- 13.3 The business to be transacted at an annual general meeting may, regardless of whether stated in the notice, include:
- (a) the consideration of the annual financial report, Directors' report and the Auditor's report;
  - (b) the election of directors; or
  - (c) the appointment and fixing of the remuneration of the Auditor.
- 13.4 The Directors may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 12.2).
- 13.5 The Directors must give notice of the postponement or cancellation of a general meeting to all persons referred to in clause 57.1 entitled to receive notices from the Academy.
- 13.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or other person referred to in clause 57.1 or the non-receipt of a notice (or form) by any Member or other person referred to in clause 57.1 does not invalidate the proceedings at or any resolution passed at the general meeting.

## **Proceedings at general meetings**

### **14. Membership for voting purposes**

In clauses 15 (quorum), 16 (Chairperson of general meetings), 18 (decision on questions) and 20 (entitlement to vote), Member includes a Member present in person or by proxy or attorney.

## **15. Quorum**

- 15.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business.
- 15.2 A quorum of Members is 10 Members.
- 15.3 If a quorum is not present within 30 minutes after the time appointed for a general meeting:
- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
  - (b) in any other case:
    - (i) it will stand adjourned to the same time and place seven days after the meeting, or to another day, time and place determined by the Directors; and
    - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

## **16. Chairperson of general meetings**

- 16.1 The President will be the chairperson of general meetings.
- 16.2 The Deputy President will act as chairperson of general meetings in the President's absence.
- 16.3 The Directors present may elect a chairperson of a general meeting if:
- (a) there is no President or Deputy President;
  - (b) none of the President or Deputy President are present within 15 minutes after the time appointed for the general meeting to begin; or
  - (c) the President or Deputy President are unwilling to act as chairperson of the general meeting.
- 16.4 If no election is made under clause 16.3, then:
- (a) the Members may elect one of the Directors present as chairperson of the general meeting; or
  - (b) if no Director is present or is willing to take the chair, the Members may elect one of the Members present as chairperson of the general meeting.

## **17. Adjournment**

- 17.1 The chairperson of a general meeting at which a quorum is present:
- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 17.2 An adjourned general meeting may take place at a different venue to the initial general meeting.
- 17.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 17.4 Notice of an adjourned general meeting must only be given in accordance with clause 13.1 if a general meeting has been adjourned for more than 21 days.

## **18. Decision on questions**

- 18.1 Subject to the Corporations Act in relation to special resolutions, a resolution is carried if a majority of the votes cast on the resolution (in accordance with clause 20) are in favour of the resolution.
- 18.2 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded in accordance with the Corporations Act.
- 18.3 A poll may be demanded before a vote is taken or before or after the voting results on a show of hands are declared.
- 18.4 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 18.5 The demand for a poll may be withdrawn.
- 18.6 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.
- 18.7 If there is a dispute at a general meeting about a question of procedure, the chairperson of the general meeting may determine the question.
- 18.8 The chairperson of the general meeting does not have a casting vote in addition to the chairperson's votes (if any) as a Member, proxy or attorney.

## **19. Taking a poll**

- 19.1 A poll will be taken when and in the manner that the chairperson of the general meeting directs.
- 19.2 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 19.3 The chairperson of a general meeting may determine any dispute about the admission or rejection of a vote.
- 19.4 The chairperson's determination, if made in good faith, will be final and conclusive.
- 19.5 A poll demanded on the election of the chairperson or the adjournment of a general meeting must be taken immediately.
- 19.6 After a poll has been demanded at a general meeting, the general meeting may continue for the transaction of business other than the question on which the poll was demanded.

## Votes of Members

### 20. Entitlement to vote

- 20.1 All Members, except Overseas Fellows, are entitled to vote.
- 20.2 A Member is not entitled to vote at a general meeting if the member's annual subscription is more than one month in arrears at the date of the meeting.
- 20.3 A Member entitled to vote has one vote.

### 21. Objections

- 21.1 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote.
- 21.2 An objection must be referred to the chairperson of the general meeting, whose decision is final.
- 21.3 A vote which the chairperson does not disallow because of an objection is valid for all purposes.

### 22. Votes by proxy

- 22.1 If a Member appoints a proxy, proxies or an attorney, the proxy, proxies or attorney may not vote on a show of hands.
- 22.2 A proxy need not be a Member.
- 22.3 A proxy may demand or join in demanding a poll.
- 22.4 A proxy or attorney may vote on a poll.
- 22.5 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

### 23. Document appointing proxy

- 23.1 An appointment of a proxy is valid if it is signed by the Member making the appointment and contains the information required by section 250A(1) of the Corporations Act. The Directors may determine that an appointment of proxy is valid even if it only contains some of the information required by section 250A(1) of the Corporations Act.
- 23.2 For the purposes of clause 23.1, an appointment received at an electronic address will be taken to be signed by the Member if:
  - (a) a personal identification code allocated by the Academy to the Member has been input into the appointment; or
  - (b) the appointment has been verified in another manner approved by the Directors.
- 23.3 A proxy's appointment is valid at an adjourned general meeting.
- 23.4 A proxy or attorney may be appointed for all general meetings or for any number of general meetings or for a particular purpose.
- 23.5 Unless otherwise provided for in the proxy's appointment or in any instrument appointing an attorney, the appointment of the proxy or the attorney will be taken to confer authority:
  - (a) to vote on:
    - (i) any amendment moved to the proposed resolutions and on any motion that the proposed resolution not be put or any similar motion; and
    - (ii) any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the general meeting,

even though the appointment may specify the way the proxy or attorney is to vote on a particular resolution; and

(b) to vote on any motion before the general meeting whether or not the motion is referred to in the appointment.

23.6 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more directors or the Secretary.

## **24. Lodgement of proxy**

24.1 The written appointment of a proxy or attorney must be received by the Academy, at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before:

(a) the time for holding the general meeting or adjourned general meeting at which the appointee proposes to vote; or

(b) the taking of a poll on which the appointee proposes to vote.

24.2 The Academy receives an appointment of a proxy and any power of attorney or other authority under which it was executed when they are received at:

(a) the Office;

(b) a facsimile number at the Office; or

(c) a place, facsimile number or electronic address specified for that purpose in the notice of meeting.

## **25. Validity**

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

(a) died;

(b) became mentally incapacitated; or

(c) revoked the proxy or power,

unless any written notification of the death, unsoundness of mind or revocation was received by the Academy before the relevant general meeting or adjourned general meeting.

## **Appointment and removal of Directors**

### **26. Number of Directors**

26.1 Having regard to the broad representation of the legal community in the Academy, there will be between 7 and 15 Directors, unless the Academy in general meeting resolves otherwise.

26.2 The initial Directors of the Academy are the persons who have consented to act as directors and are set out in the Academy's application for registration as a company. Those persons hold office subject to the Constitution.

### **27. [Intentionally left blank]**

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

- 28.1 Each Director will be elected annually to their respective office by vote of the Members at the annual general meeting of the Academy.
- 28.2 All Directors will hold office until the end of the next annual general meeting following the annual general meeting at which they were last elected.
- 28.3 [Intentionally left blank]
- 28.4 If there is no eligible candidate at the annual general meeting for election to a particular office including the office of President, nominations may be accepted at the annual general meeting in accordance with clause 32.5. Either before or after any such nominations are received, Members may resolve to postpone the election to that office until a later general meeting and the Academy may call for additional nominations prior to that later meeting.
- 28.5 If there is a single eligible candidate at the annual general meeting for election to a particular office, including the office of President, that candidate is appointed to that office without any vote being required.
- 28.6 Subject to clause 28.5, the election result must be declared by the Academy at the annual general meeting and the appointment will take effect at the end of the meeting.
- 28.7 Each election will be decided in favour of the candidate with the most votes, regardless of whether the number of votes cast for them constitutes a majority of all votes cast.
- 28.8 Voting rights for Members for election of Directors are the same as for any other resolutions at general meetings.

## **29. Additional and casual Directors**

- 29.1 Subject to clause 26.1, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors.
- 29.2 A Director appointed under clause 29.1 will hold office until the next general meeting of the Academy when the Director may be re-elected.

## **30. Retirement**

- 30.1 A Director must retire from office at the conclusion of the first annual general meeting after the Director was last elected.
- 30.2 Subject to clause 30.3, a retiring Director will be eligible for re-election.
- 30.3 [Intentionally left blank]

## **31. Filling vacated office**

- 31.1 When a Director retires at a general meeting, the Academy may by ordinary resolution elect a person to fill the vacated office.
- 31.2 If the vacated office is not filled and the retiring Director has offered himself or herself for re-election, the retiring Director will be deemed to have been re-elected unless, at the meeting at which he or she retires:
- (a) it is resolved not to fill the vacated office; or
  - (b) the resolution for the re-election of the Director is put and lost.

## **32. Nomination of Director**

- 32.1 The Secretary must by written notice to Members call for nominations from Members for candidates for election as Directors at least 21 days before each annual general meeting.

- 32.2 Subject to clause 32.5, a person, including a retiring Director, is not eligible for election as a Director at an annual general meeting unless a written notice has been left at the Office at least 14 days before the relevant annual general meeting:
- (a) stating that a Member nominates the person for election as a Director;
  - (b) stating that the person consents to the nomination;
  - (c) signed by the nominating Member and the nominated person; and
  - (d) if the person is a candidate for President, stating that to be the case.
- 32.3 A written notice referring to all candidates for election, including specifying candidates for President, must be sent by the Secretary to all Members at least 7 days before the annual general meeting.
- 32.4 Candidates for offices other than President may specify the office they seek at the time of the election at the annual general meeting. Unsuccessful candidates for an office may nominate for subsequent elections at the annual general meeting for other offices.
- 32.5 Nominations may be accepted from Members at the annual general meeting for candidates for a particular office (including President) if there is no eligible candidate for election to the office nominated and notified in accordance with clauses 32.2 and 32.3.

### **33. Vacation of office**

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) is liable to have a person appointed, under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it;
- (c) resigns by notice in writing to the Academy;
- (d) is removed by a resolution of the Academy;
- (e) is absent from Directors' meetings for 3 consecutive meetings without leave of absence from the Directors;
- (f) is directly or indirectly interested in any contract or proposed contract with the Academy and fails to declare the nature of the interest as required by the Corporations Act;
- (g) is an employee or officer of a Member that ceases to be a Member; or
- (h) was nominated to be elected as a Director by a Member that ceases to be a Member.

### **34. Chairperson of Directors' meetings**

- 34.1 The President will be the chairperson of Directors' meetings.
- 34.2 The Deputy President will act as chairperson of Directors' meetings in the President's absence.
- 34.3 The Directors present must elect one of their number as chairperson of a Directors' meeting if:
- (a) there is no President or Deputy President;
  - (b) none of the President or Deputy President are present within 15 minutes after the time appointed for the Directors' meeting to begin; or
  - (c) the President or Deputy President are unwilling to act as chairperson of the Directors' meeting.

## **Powers and duties of Directors**

### **35. Powers and duties of Directors**

- 35.1 The business of the Academy is managed by the Directors who may exercise all powers of the Academy that this Constitution and the Corporations Act do not require to be exercised by the Academy in general meeting.
- 35.2 Without limiting the generality of clause 35.1, the Directors may exercise all the powers of the Academy to:
- (a) borrow money;
  - (b) charge any property or business of the Academy;
  - (c) issue debentures or give any other security for a debt, liability or obligation of the Academy or of any other person; and
  - (d) guarantee or to become liable for the payment of money or the performance of any obligation by or of any other person.

### **36. By-laws**

- 36.1 The Directors may by resolution make, amend and repeal By-laws to regulate the affairs of the Academy provided that they are not inconsistent with this Constitution.
- 36.2 The Directors must give notice to the Members of all such By-laws and any amendments and repeals.
- 36.3 The By-laws are binding upon all Members following notification.
- 36.4 Any By-law may be repealed by the Members at a general meeting of the Academy.

## **Proceedings of Directors**

### **37. Directors' meetings**

- 37.1 A Director may at any time, and the Secretary must on the request of a Director, call a Directors' meeting.
- 37.2 A Directors' meeting must be called on at least 48 hours written notice of a meeting to each Director and each Alternate Director.
- 37.3 Subject to the Corporations Act, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion.
- 37.4 The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 37.5 Subject to clause 40, a Director who participates in a meeting held in accordance with this Constitution is taken to be present and entitled to vote at the meeting.
- 37.6 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 37.7 A quorum is a majority of Directors for the time being.
- 37.8 Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson may call a general meeting to deal with the matter.
- 37.9 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology consented to by all the Directors.

### **38. Decision on questions**

- 38.1 Subject to this Constitution (including clause 45), questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 40, each Director has one vote.
- 38.2 The chairperson of a meeting does not have a casting vote in addition to his or her deliberative vote.
- 38.3 An Alternate Director has one vote for each Director for whom he or she is an alternate.
- 38.4 If the Alternate Director is a Director, he or she also has a vote as a Director.

## **Payments to Directors**

### **39. Payments to Directors**

No payment will be made to any Director of the Academy other than payment:

- (a) of out of pocket expenses incurred by the Director in the performance of any duty as Director of the Academy where the amount payable does not exceed an amount previously approved by the Directors of the Academy;
- (b) for any service rendered to the Academy by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors of the Academy and where the amount payable is approved by the Directors of the Academy and is not more than an amount which commercially would be reasonable payment for the service;
- (c) of any salary or wage due to the Director as an employee of the Academy where the terms of employment have been approved by the Directors of the Academy; and
- (d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B.

### **40. Directors' interests**

- 40.1 No contract made by a Director with the Academy and no contract or arrangement entered into by or on behalf of the Academy in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 40.2 No Director contracting with or being interested in any arrangement involving the Academy is liable to account to the Academy for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 40.3 A Director is not disqualified merely because of being a Director from contracting with the Academy in any respect.
- 40.4 Subject to clause 39, a Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Academy;
  - (b) hold any office or place of profit other than as auditor in the Academy; and
  - (c) act in a professional capacity other than as auditor for the Academy,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Academy or from holding an office or place of profit in or acting in a professional capacity with the Academy.
- 40.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or

(b) vote on the matter,

unless permitted by the Corporations Act to do so, in which case the Director may:

(c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;

(d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and

(e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

40.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Academy or in which the Academy may be interested as a vendor, shareholder or otherwise and is not accountable to the Academy for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

#### **41. Alternate Directors**

41.1 A Director may, with the approval of the Directors, appoint any person as his or her alternate for a period determined by that Director.

41.2 An Alternate Director is entitled to notice of Directors' meetings and, if the appointor is not present at a meeting, is entitled to attend, be counted in a quorum and vote as a Director.

41.3 An Alternate Director is an officer of the Academy and is not an agent of the appointor.

41.4 The provisions of this Constitution which apply to Directors also apply to Alternate Directors.

41.5 The appointment of an Alternate Director:

(a) may be revoked at any time by the appointor; and

(b) end automatically when the appointor ceases to be a Director.

41.6 Any appointment or revocation under this clause must be effected by written notice delivered to the Secretary.

#### **42. Remaining Directors**

42.1 The Directors may act even if there are casual vacancies among the Directors.

42.2 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Directors may act only to:

(a) if other than because of the lack of quorum the Directors would have the power under this Constitution to appoint a Director, appoint a Director; or

(b) call a general meeting.

#### **43. Committees**

43.1 The Directors may establish either or both of the following:

(a) committees with specific powers delegated by the Directors (**Board Committees**); and

(b) advisory committees, with no delegated powers, to advise the Directors on specified matters (**Advisory Committees**).

43.2 Board Committee members and Advisory Committee members will be appointed by the Directors.

43.3 At least one member of each Board Committee must be a Director.

- 43.4 Meetings of any Board Committee or Advisory Committee will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Directors. The provisions apply as if each Board Committee or Advisory Committee member was a Director.
- 43.5 Clause 45 regarding written resolutions applies to resolutions of Board Committees and Advisory Committees as if each Board Committee or Advisory Committee member was a Director.

#### **44. Delegation**

- 44.1 The Directors may, upon any terms and conditions or restrictions as they see fit, delegate any of their powers, other than those which by law must be dealt with by the Directors, to:
- (a) a Board Committee;
  - (b) a Director;
  - (c) an employee of the Academy; or
  - (d) any other person.
- 44.2 A Board Committee to which, or person to whom, any powers have been delegated must exercise their powers in accordance with any directions of the Directors and a power exercised in that way is taken to have been exercised by the Directors.
- 44.3 A Board Committee to which, or person to whom, any powers have been delegated may be authorised by the Directors to sub-delegate all or any of the powers for the time being vested in it.
- 44.4 The Directors may at any time revoke any delegation of power.

#### **45. Written resolutions**

- 45.1 The Directors may pass a resolution without a Directors' meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when the last Director signs.
- 45.2 For the purposes of clause 45.1, 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.
- 45.3 Any document referred to in this clause may be in the form of a facsimile or electronic transmission.
- 45.4 The minutes of Directors' meetings must record that a meeting was held in accordance with this clause.

#### **46. Validity of acts of Directors**

If it is discovered that:

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

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

#### **47. Minutes and Registers**

- 47.1 The Directors must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Board Committees;

- (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Board Committees;
  - (c) all resolutions passed by Directors in accordance with clause 45;
  - (d) all appointments of officers;
  - (e) all orders made by the Directors and Board Committees; and
  - (f) all disclosures of interests made under clause 40.
- 47.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 47.3 The Academy must keep all registers required by this Constitution and the Corporations Act.

## Local management

### 48. Local management

- 48.1 The Directors may provide for the management and transaction of the affairs of the Academy in any places and in such manner as they think fit.
- 48.2 Without limiting clause 48.1 the Directors may:
- (a) establish local boards or agencies for managing any of the affairs of the Academy in a specified place and appoint any persons to be members of those local boards or agencies; and
  - (b) delegate to any person appointed under clause 48.2(a) any of the powers, authorities and discretions which may be exercised by the Directors under this Constitution,
- on any terms and subject to any conditions determined by the Directors.
- 48.3 The Directors may at any time revoke or vary any delegation under this clause 48.

### 49. Appointment of attorneys and agents

- 49.1 The Directors may from time to time by resolution or power of attorney executed in accordance with section 127 of the Corporations Act appoint any person to be the attorney or agent of the Academy:
- (a) for the purposes;
  - (b) with the powers, authorities and discretions (not exceeding those exercisable by the Directors under this Constitution);
  - (c) for the period; and
  - (d) subject to the conditions,
- determined by the Directors.
- 49.2 An appointment by the Directors of an attorney or agent of the Academy may be made in favour of:
- (a) any member of any local board established under this Constitution;
  - (b) any Academy;
  - (c) the members, directors, nominees or managers of any Academy or firm; or
  - (d) any fluctuating body of persons whether nominated directly or indirectly by the Directors.
- 49.3 A power of attorney may contain such provisions for the protection and convenience of persons dealing with an attorney as the Directors think fit.

49.4 The Directors may appoint attorneys or agents by facsimile transmission, telegraph or cable to act for and on behalf of the Academy.

49.5 An attorney or agent appointed under this clause may be authorised by the Directors to subdelegate all or any of the powers authorities and discretions for the time being vested in it.

## **50. Executive Officer**

50.1 The Directors may appoint any person, including a Director, to the position of the Executive Officer of the Academy for the period and on the terms (including as to remuneration) that the Directors sees fit.

50.2 The Executive Officer of the Academy will not be a Director, unless appointed pursuant to clause 28.

## **Secretary**

### **51. Secretary**

51.1 There must be at least one secretary of the Academy appointed by the Directors for a term and at remuneration and on conditions determined by them.

51.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.

51.3 The Directors may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary.

## **Seals**

### **52. Common Seal**

If the Academy has a Seal:

- (a) the Directors must provide for the safe custody of the Seal;
- (b) the Seal must not be used without the authority of the Directors;
- (c) every document to which the Seal is affixed must be signed by a Director and be countersigned by another Director, the Secretary or another person appointed by the Directors to countersign the document.

### **53. Duplicate Seal**

If the Academy has a Seal, the Academy may have one or more duplicate seals of the Seal each of which:

- (a) must be a facsimile of the Seal with 'Duplicate Seal' on its face;
- (b) must not be used except with the authority of the Directors.

## **Audit and accounts**

### **54. Audit and accounts**

54.1 The Directors must cause the Academy to keep written financial records in relation to the business of the Academy in accordance with the requirements of the Corporations Act.

54.2 The Directors must cause the financial records of the Academy to be audited in accordance with the requirements of the Corporations Act.

## **Inspection of records**

### **55. Inspection of records**

- 55.1 Except as otherwise required by the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Academy or any of them will be open for inspection by Members other than Directors.
- 55.2 Except as otherwise required by the Corporations Act, a Member other than a Director does not have the right to inspect any financial records or other documents of the Academy unless the Member is authorised to do so by a court order or a resolution of the Directors.

## Notices

### 56. Service of notices

- 56.1 Notice may be given by the Academy to any person who is entitled to notice under this Constitution:
- (a) by serving it on the person; or
  - (b) by sending it by post, facsimile transmission or electronic notification to the person at the person's address shown in the Register or the address supplied by the person to the Academy for sending notices to the person.
- 56.2 A notice sent by post is taken to be served:
- (a) by properly addressing, prepaying and posting a letter containing the notice; and
  - (b) on the day after the day on which it was posted.
- 56.3 A notice sent by facsimile transmission or electronic notification is taken to be served:
- (a) by properly addressing the facsimile transmission or electronic notification and transmitting it; and
  - (b) on the day after its despatch.
- 56.4 If a Member does not have an address recorded in the Register a notice will be taken to be served on that Member 24 hours after it was posted on a notice board at the Office.
- 56.5 A Member whose address recorded in the Register is not in Australia may specify in writing an address in Australia to be taken to be the Member's for the purposes of clause 56.
- 56.6 A certificate in writing signed by a Director, Secretary or other officer of the Academy that a document or its envelope or wrapper was addressed and stamped and was posted is conclusive evidence of posting.
- 56.7 Subject to the Corporations Act the signature to a written notice given by the Academy may be written or printed.
- 56.8 All notices sent by post outside Australia must be sent by prepaid airmail post.

### 57. Persons entitled to notice

- 57.1 Notice of every general meeting must be given to:
- (a) every Member;
  - (b) every Director and Alternate Director; and
  - (c) any Auditor.
- 57.2 No other person is entitled to receive notice of a general meeting.

## Winding up

### 58. Winding up

- 58.1 If the Academy is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year, undertakes to contribute to the property of the Academy for the:
- (c) payment of debts and liabilities of the Academy (in relation to clause 58.1(b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding \$10.

58.2 If any surplus remains following the winding up of the Academy, the surplus will not be paid to or distributed amongst Members, but, subject to clause 60, will be given or transferred to another body corporate which, by its constitution, is:

- (a) required to pursue only objects similar to the Academy;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) prohibited from making any distribution to its members or paying fees to its directors,

such body corporate to be determined by the Members at or before the winding up and in default, by application to the Supreme Court of the Australian Capital Territory for determination.

## Indemnity

### 59. Indemnity

59.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Academy indemnifies every person who is or has been an officer of the Academy against:

- (a) any liability (other than for legal costs) incurred by that person as an officer of the Academy (including liabilities incurred by the officer as an officer of a subsidiary of the Academy where the Academy requested the officer to accept that appointment); or
- (b) reasonable legal costs incurred in defending an action for a liability incurred by that person as an officer of the Academy (including legal costs incurred by the officer as an officer of a subsidiary of the Academy where the Academy requested the officer to accept that appointment).

59.2 The amount of any indemnity payable under clauses 59.1(a) or 59.1(b) will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Academy with a GST tax invoice for the GST Amount.

59.3 For the purposes of this clause, **officer** means:

- (a) a Director; or
- (b) a Secretary.

## Public Fund

### 60. Public Fund

60.1 The Board must:

- (a) establish a Public Fund to be called the Australian Academy of Law Public Fund (“the Fund”), for the purpose of accepting all money and property consisting of donations and gifts to the Academy (and any income produced from such donations and gifts, including, without limitation, interest received on any monies in the Fund). For the avoidance of doubt, the Fund is a gift fund for the purposes of section 30.130 of the Income Tax Assessment Act (1997) (Cth) (“Tax Act”); and
- (b) manage the income and property of the Fund in accordance with the objects of the Academy as stated in clause 4.1;
- (c) invite the public to make donations and gifts to the Fund for the objects of the Academy as stated in clause 4.1;
- (d) open a separate bank account in the name of the Fund and cause financial records in relation to the Fund to be kept. This account must include all money which is a donation or gift to the Fund, or which is received because of such donations or gifts, to be used solely for promoting the objects of the Academy as stated in clause 4.1 and must not include any other money.

60.2 The objects which the Fund will support are all of the objects listed in clause 4.1.

60.3 The Academy must issue receipts for donations and gifts to the Fund in the name of the Australian Academy of Law as soon as practicable. The receipts must comply with the Tax Act and, without limitation, must include:

- (a) the name of the Australian Academy of Law;
- (b) the fact that the receipt is a donation or gift; and
- (c) the Australian Business Number of the Academy.

60.4 Subject to clause 39, the Directors must apply the income of the Fund solely towards the objects of the Academy as stated in clause 4.1. No part of the income of the Fund may be paid or transferred directly or indirectly by way of dividend or otherwise to any officers or employees of the Academy or to any Fellow of the Academy.

60.5 A separate committee will administer the Fund, all or a majority of whom have a degree of responsibility to the general community.

60.6 If the Academy is wound up or its status as a deductible gift recipient is revoked (whichever occurs first), any surplus of the following assets shall be transferred to another organization with similar objects, which is charitable at law, to which income tax deductible gifts can be made:

- (a) gifts of money or property for the principal purpose of the Academy;
- (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Academy;
- (c) money received by the Academy because of such gifts and contributions.

60.7 The Academy must notify the Australian Tax Office of any future change to its Constitution.

## **Schedule 1: Foundation Patron and Foundation Fellows**

### **Foundation Patron:**

The Hon Chief Justice Murray Gleeson AC (Chief Justice of Australia)

### **Foundation Fellows:**

Professor David Barker (University of Technology Sydney)

Professor Larissa Behrendt (University of Technology Sydney)

Her Excellency Ms Quentin Bryce AC (Governor of Queensland)

Henry Burmester AO QC (Chief General Counsel, Australian Government Solicitor)

Professor Donald RC Chalmers (Dean, University of Tasmania)

Professor Hilary Charlesworth (Australian National University)

Justice Terry Connolly (Supreme Court, Australian Capital Territory)

Professor Michael Coper (Dean, Australian National University)

Professor Rosalind Croucher (Dean, Macquarie University)

Associate Professor Andrea Durbach (University of New South Wales)

Professor Paul Fairall (Dean, University of Adelaide)

Glenn Ferguson (Solicitor, Queensland)

Justice Robert French (Federal Court, Western Australia)

Judge John Goldring (District Court, New South Wales)

Justice Susan Kenny (Federal Court, Victoria)

Justice Susan Kiefel (Federal Court, Queensland)

Justice Kevin Lindgren (Federal Court, New South Wales)

Justice Margaret McMurdo (President, Queensland Court of Appeal)

Professor Marcia Neave AO (Chair, Victorian Law Reform Commission)

Justice Robert Nicholson AO (Federal Court, Western Australia)

Dr Melissa Perry QC (Barrister, South Australia and New South Wales)

Justice Ronald Sackville (Federal Court, New South Wales)

Professor Cheryl Saunders AO (University of Melbourne)

Justice Ralph Simmonds (Supreme Court, Western Australia)

Justice Stephen Southwood (Supreme Court, Northern Territory)

Justice Margaret Stone (Federal Court, New South Wales)

Pamela M Tate SC (Solicitor-General of Victoria)

Professor Margaret Thornton (La Trobe University)

Anne Trimmer (Solicitor, Australian Capital Territory and New South Wales)

The Hon John von Doussa (President, Human Rights and Equal Opportunity Commission)

Bret Walker SC (Barrister, New South Wales)

Emeritus Professor Louis Waller AO (Monash University)

Professor Kate Warner (Director, Tasmania Law Reform Institute)

Justice Mark Weinberg (Federal Court, Victoria)

Emeritus Professor David Weisbrot (President, Australian Law Reform Commission)

Bret Walker SC

Justice Margaret White (Supreme Court, Queensland)