

Constitution

OPTOMETRY COUNCIL OF AUSTRALIA AND NEW ZEALAND LIMITED

ACN 074 875 111

Company Limited by Guarantee

As amended on 4 October 2016

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CONSTITUTION

OF

OPTOMETRY COUNCIL OF AUSTRALIA AND NEW ZEALAND LIMITED

ACN 074 875 111

Corporations Act 2001

A Company Limited By Guarantee

PRELIMINARY

1. Definitions & Interpretation

1.1 In this Constitution, unless the context requires another meaning:

'Accredited School' means a school, department or academic unit offering a degree in optometry in Australia or New Zealand having accreditation granted by the Company.

'Accredited Schools Sponsor' means the heads of all Accredited Schools acting collectively.

'Alternate Director' means a person appointed as an alternate director in accordance with the Corporations Act.

'Annual General Meeting' means the annual general meeting of Members.

'Auditor' means the auditor for the time being of the Company.

'Board' means the board of Directors for the time being of the Company comprised as required by Rule 21.2.

'Chair' means the chairperson of the Board.

'Company' means Optometry Council of Australia and New Zealand Limited ACN 074 875 111, whatever its name may be at the relevant time.

'Company Secretary' means the secretary of the Company appointed in accordance with the Corporations Act (or any of them if more than one).

'Constitution' means this constitution as amended from time to time and a reference to a particular Rule of this Constitution has a corresponding meaning.

'Corporations Act' means the *Corporations Act 2001* (Cth) or any statutory amendment modification or re-enactment for the time being in force.

'Deputy Chair' means the Director (if any) elected as deputy chairperson of the Board.

'Director' means a person holding office as a director of the Company in accordance with the Corporations Act, and where appropriate includes an Alternate Director.

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

'Eligible Director' means a person who is not a current Member and is eligible for appointment as a Director and who must have expertise and experience in one or more of the following areas:

- Accreditation of educational courses, programs, methods of teaching or training that is relevant to the Objects.
- Regulation and governance (or either of them) relevant to the Objects.

- Assessment of skills and knowledge of health professionals relevant to the Objects.
- Such other qualifications, skills and experience as considered suitable or necessary by the Board from time to time.

'Executive Officer' means the executive officer appointed by the Board whose title shall be determined by the Board from time to time.

'Financial Year' means the year commencing on 1 July in a given year or commencing on such other date determined by resolution of the Members in General Meeting.

'General Meeting' means a meeting of Members to consider any motion brought before, or any business of, the Company.

'Governmental Agency' means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

'Meeting of Members' means an Annual General Meeting or any other general meeting of Members held in accordance with the Corporations Act or this Constitution.

'Meeting of Directors' means a meeting of the Board held in accordance with the Corporations Act or this Constitution.

'Member' means a person whose name is entered in the Register as a member of the Company (and not subsequently removed from the Register).

'Nominations Committee' means the committee described in Rule 21.6.

'NZAO' means the New Zealand Association of Optometrists (or its successor body).

'OAA' means the Optometrists Association Australia (or its successor body).

'OBA' means the Optometry Board of Australia (or its successor body)

'Objects' means the objects of the Company which are set out in Rule 3 of this Constitution.

'ODOB' means the Optometrists and Dispensing Opticians Board in New Zealand (or its successor body).

'Register' means the register of members of the Company as required under the Corporations Act.

'Seal' means the common seal of the Company (if any).

'Special Resolution' means a resolution passed in General Meeting by 75% of the Members who, being entitled to vote, vote in person or by proxy or in any other manner authorised by the Constitution or the Corporations Act.

'Sponsor' means any one or more of the Accredited Schools Sponsor, OAA, OBA, ODOB and NZAO.

1.2 Corporations Act definitions and sections

1.2.1 Words and expressions not defined in Rule 1.1 mean what they mean in a similar context in the Corporations Act.

1.2.2 A reference to a particular Chapter, Part, Division or section, without more, is a reference to that Chapter, Part, Division or section of the Corporations Act.

1.3 General Interpretation

1.3.1 A reference at a particular time to a particular statute or subordinate legislation, or to particular provisions of a statute or subordinate legislation (a written law):

1.3.1.1 Is to the written law as in force at the time.

1.3.1.2 If the written law has been replaced by another written law - is to the written law which replaces it.

- 1.3.1.3 Is also a reference to subordinate legislation, and the provisions of subordinate legislation, made or issued under or for the purposes of the written law.
- 1.3.2 A reference at a particular time to a particular deed, document or arrangement, or to any of its provisions:
 - 1.3.2.1 Is a reference to it as in operation at that time.
 - 1.3.2.2 If the contract, document or arrangement has been re-made or novated - is also a reference to it as re-made or novated.
- 1.3.3 The singular includes the plural and vice versa.
- 1.3.4 A reference to a person is also a reference to any kind of legally recognised body or entity whether incorporated or not, and vice versa.
- 1.3.5 A reference to a person also includes a reference to the person's legal personal representative.
- 1.3.6 A reference to one gender is also a reference to the other genders.
- 1.3.7 A reference to a particular Rule or Appendix (if any) is to that Rule of, or Appendix to, this Constitution.
- 1.3.8 Other parts of speech or grammatical forms of an expression defined in or for the purposes of this Constitution have corresponding meanings.
- 1.3.9 A power to do something includes a power, exercisable in the like circumstances, to revoke or undo it.
- 1.3.10 A reference to power is also a reference to authority and discretion.
- 1.3.11 A reference to currency (including words such as 'dollars' or '\$') is to Australian currency.
- 1.3.12 The general meaning of words is not limited by specific examples following expressions like "including" or "for example" or other similar expressions.
- 1.3.13 A reference to bankruptcy or winding up is also to:
 - 1.3.13.1 Bankruptcy, winding up, liquidation, dissolution, becoming an insolvent under administration, the appointment of an administrator and anything else that has a substantially similar effect to any of these under the law of a relevant jurisdiction.
 - 1.3.13.2 The procedures, circumstances and events that constitute elate to bankruptcy or winding up as so defined.
- 1.4 Appendices

The contents of any Appendices to this Constitution are included as provisions of this Constitution.
- 1.5 Headings

Headings and notes in this Constitution are not part of this Constitution. They are for convenience only and do not affect interpretation.

2. Exclusion of Replaceable Rules

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

3. Objects

The objects of the Company are all and any one or more of the following:

- 3.1 To grant accreditation to Australian and New Zealand optometry schools, departments and academic units and the courses/programs conducted by them leading to eligibility for registration as an optometrist in Australia and New Zealand.
- 3.2 At the Company's discretion, to vary, withdraw or suspend any accreditation previously granted by the Company in the event that the Company resolves that such accreditation should be varied, withdrawn or suspended.
- 3.3 To assess for admission to practice in Australia and New Zealand overseas trained optometrists.
- 3.4 To advise and make recommendations to OBA and ODOB and to assist on matters concerning the registration of optometrists.
- 3.5 To provide information to any Governmental Agency relating to law and policy concerning the registration of optometrists in Australia and New Zealand.
- 3.6 To provide information and advice to any Governmental Agency relating to law and policy concerning the adequacy or otherwise of a person's skills in the field of optometry for the purposes of migration to Australia or New Zealand.
- 3.7 To assess Australian and New Zealand postgraduate courses of study in the field of optometry (including but not limited to ocular therapeutic drugs) for the purpose of granting, varying, withdrawing or suspending accreditation.
- 3.8 To assess the therapeutic competence of optometrists registered in Australia or New Zealand who have completed a non-accredited course of study in ocular therapeutic drugs.
- 3.9 To perform activities ancillary to the education and registration of optometrists and accreditation of optometry courses or any other incidental activity related to the Objects described in Rule 3.1 to Rule 3.8.

4. Application of Income and Property

- 4.1 Subject to 4.2, the profit, income and property of the Company shall be applied solely towards the promotion of the Objects and no portion of that profit, income and property shall be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the Members (past or present) or to any person claiming through any of them.
- 4.2 Nothing contained in Rule 4.1 shall prevent:
 - 4.2.1 The payment in good faith of remuneration to any Directors, officers, servants or employees of the Company or to any Member, Board member, or other person in return for any services actually rendered to the Company that are approved by the Board or reimbursement of out-of-pocket expenses.
 - 4.2.2 The repayment of money advanced by any Member to or for the purposes of the Company.
 - 4.2.3 The payment of interest at a rate not exceeding the rate for the time being charged on overdraft accounts exceeding \$100,000.00 by bankers in Melbourne on money lent to the Company by any Member for the purposes of the Company.
 - 4.2.4 The payment of reasonable and proper rent for premises leased or otherwise made available to the Company by any Member.
- 4.3 No Member will be appointed to any salaried office of the Company or any office of the Company paid by salary.

5. Liability of Members

The liability of the members is limited.

6. Contribution of Members on Winding Up

Every person who is or has been a Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a Member, or within one year of ceasing to be a Member, such amount as may be required not exceeding ten dollars (\$10.00), for the payment of the debts and liabilities of the Company contracted whilst the Member or past Member as the case may be was a Member, and the costs charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

7. Distribution of Property on Winding Up

Where on the winding up of the Company or dissolution of the Company there is a surplus of assets after satisfying all the Company's liabilities and expenses, the surplus will not be paid or distributed to the Members but will be given or transferred to another institution or company having similar objects to those described in Rule 3, and which is an institution or body that prohibits the distribution of income, profit or assets to its members. Such institution or company will be determined by the Members on or before the time of such winding up or dissolution, or failing such determination by application to the Supreme Court in the State of incorporation of the Company.

MEMBERSHIP

8. Eligibility, Application and Admission

- 8.1 Any natural person committed to the objects of the Company and who has been nominated by a Sponsor may be a Member provided that all of the following apply:
- 8.1.1 Any application for membership is made in the manner prescribed by the Board from time to time and accompanied by the consent of the applicant and a nomination in writing signed by (or on behalf of) a Sponsor.
 - 8.1.2 The person agrees in writing to provide a guarantee to defray such liabilities and expenses of the Company upon its winding up or dissolution to comply with Rule 6.
 - 8.1.3 The Member agrees to be bound by this Constitution and remain a Member unless removed by notice from the nominating Sponsor or otherwise in accordance with the Constitution.
 - 8.1.4 The nominating Sponsor has not already nominated one Member (or such other number as the nominating Sponsor is entitled to nominate as a result of any determination under Rule 8.4) who is not intended to be replaced by the applicant.
- 8.2 The Board may not decline any application for membership that meets the requirements of Rule 8.1 but must decline any application for membership if the nominating Sponsor has already nominated the full number of Members they are entitled to nominate and it is not intended that the nominee will take the place of an existing Member nominated by that Sponsor.
- 8.3 If the application for membership is accepted by the Board, the name of the Member must be entered in the Register.
- 8.4 The number of Members will be five (5) or such other number as the Company determines in General Meeting.

- 8.5 No admission fee or annual subscription fee will be charged or levied upon Members or nominees for Membership.

9. Register of Members

- 9.1 The Company Secretary must maintain a Register at the registered office.
- 9.2 When an applicant has been accepted for membership the Company Secretary must cause the Member's name to be entered in the Register and must send to the Member written notice of the acceptance.
- 9.3 The address of a Member in the Register will be the address of the Member for the purpose of service of any notices to Members.
- 9.4 The Register shall set out the status of each Member and shall contain such further particulars as the Board may at any time prescribe.
- 9.5 The rights of any Member will not be transferable.

10. Cessation of Membership

- 10.1 A person's membership of the Company will cease upon:
- 10.1.1 The Company Secretary receiving from a Member a letter of resignation together with the application of a new Member that complies with the requirements of Rule 8.1.
- 10.1.2 The Company Secretary receiving from the nominating Sponsor of a Member, a letter giving notice of the removal of the relevant Member and an application for a new Member that complies with the requirements of Rule 8.1 to become a Member in place of the removed Member.
- 10.1.3 The death of the Member.
- 10.1.4 The Member becoming of unsound mind or is liable to be dealt with in any way under the law relating to mental health and the Board considers, in its discretion, that the Member should forfeit their membership of the Company.
- 10.1.5 The Member being absent without the consent of the Chair from three successive General Meetings or meetings of any committee of the Board of which that Member is a member and the Board considers, in its discretion, that the Member should forfeit their membership of the Company.
- 10.1.6 The unanimous consent of all Sponsors to the removal of the Member's name from the Register.
- 10.2 Any Member who wishes to resign shall give the Board and the relevant Sponsor one month's notice in writing of the Member's intention to resign and the resignation will take effect at the end of such period.
- 10.3 The Company Secretary must only remove the name of the Member whose membership ceases pursuant to Rule 10.1 from the Register after the relevant Sponsor has nominated a new Member whose application for membership has been accepted. The name of the new Member must be entered in the Register at the same time as the other Member's name is removed.
- 10.4 A Member whose membership of the Company ceases pursuant to Rule 10.1 will be liable for all moneys due by that Member to the Company in addition to any sum not exceeding ten dollars (\$10.00) for which the Member is liable under this Constitution.

- 10.5 A Member whose membership ceases pursuant to Rule 10.1 must not make any claim, monetary or otherwise, on the Company, its funds or property, except if they are a genuine creditor of the Company.
- 10.6 Any person who for any reason ceases to be a Member must no longer represent themselves in any manner as being a Member (except to the extent that they may remain on the Register of Members of the Company until replaced by a new Member).
- 10.7 Any person who for any reason ceases to be a Member immediately loses all voting and other rights and entitlements enjoyed by Members generally even though they may remain on the Register of Members of the Company until replaced by a new Member.

MEETINGS OF MEMBERS

11. Annual General Meeting

- 11.1 Subject to the Corporations Act, a General Meeting must be held at least once in every calendar year and within the period of five (5) months after the end of the financial year at such time and place as may be determined by the Directors. This General Meeting will be called the 'Annual General Meeting' and all other meetings of the Company will be called General Meetings.
- 11.2 The business of the Annual General Meeting may include any of the following, even if not referred to on the notice of meeting:
- 11.2.1 The consideration of the Annual Financial Report, Directors' Report and Auditors' Report or any other statement of income and expenditure and the balance sheet of the Company and report of the Board for the past year.
 - 11.2.2 The election of Directors.
 - 11.2.3 The appointment of the auditor.
 - 11.2.4 The fixing of the auditor's remuneration.
- 11.3 The business of the Annual General Meeting may also include the consideration of any other business the Board or any Member using the procedure set out in Rule 11.4 brings before the Annual General Meeting and any other business which may be lawfully transacted at the Annual General Meeting.
- 11.4 Any Member intending to bring any motion or business before an Annual General Meeting which does not relate to the ordinary business of the Company must give written notice of that Member's intention to the Board not less than 28 days before the day of the meeting.
- 11.5 No motion or business other than the motion or business brought before the Annual General Meeting by the Board will come before the Annual General Meeting unless the proper notice of the motion or business by the Member pursuant to Rule 11.4 has been given.

12. Convening General Meetings

- 12.1 A quorum of Directors whenever they think fit may convene a General Meeting.
- 12.2 The Directors must convene a General Meeting on the request of Members with at least 5% of the votes that may be cast at a General Meeting, in accordance with section 249D of the Corporations Act and if such General Meeting is not convened within 21 days, then the Members with at least half of the votes of those making the request can convene such General Meeting in accordance with section 249E of the Corporations Act.
- 12.3 Any General Meeting convened by Members, must be held in the capital city of the State or Territory in which the Company's registered office is then located.

13. Notice of General Meetings

- 13.1 A notice of meeting of the Company's Members must specify all of the following:
 - 13.1.1 The place, the day and the time of the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this).
 - 13.1.2 The general nature of the business to be transacted at the meeting.
 - 13.1.3 Such other information as is required by section 249L of the Corporations Act.
- 13.2 The Company may hold a meeting of its Members at two or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- 13.3 Subject to the provisions of the Corporations Act relating to agreements for shorter notice, at least 21 days notice must be given of a meeting of the Company's Members.
- 13.4 Subject to Rule 10.7, notice of every meeting of the Company's Members must be given in the manner authorised by Rule 43 to all of the following:
 - 13.4.1 Every Member and every Director.
 - 13.4.2 The auditor for the time being of the Company.
- 13.5 No person other than those specified in Rule 13.4 is entitled to receive notices of meetings of the Company's members.

14. Chairperson of General Meetings

- 14.1 Subject to Rules 14.2 and 14.3 the Chair must preside as chairperson at every General Meeting.
- 14.2 If there is no Chair or the Chair is not present within fifteen (15) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting, the Deputy Chair must be the chairperson of the General Meeting.
- 14.3 If the Deputy Chair is not present or is present but is unwilling to act for all or part of the meeting, the Members present must elect one of their number to be chairperson of the meeting (or part of it).

15. Quorum for General Meetings

- 15.1 No business must be transacted at any meeting of the Company's Members unless a quorum of Members is present at the time when the meeting proceeds to business.
- 15.2 A quorum of Members for a General Meeting is four (4) Members.
- 15.3 For the purpose of determining whether a quorum is present, a person attending as a proxy, or representing a body corporate that is a Member, will be deemed to be a Member.

16. Adjournment of General Meetings

- 16.1 If a quorum is not present within one hour from the time appointed for the General Meeting:
 - 16.1.1 Where the General Meeting was convened upon the request of Members - the General Meeting will be dissolved.
 - 16.1.2 In any other case:
 - 16.1.2.1 The General Meeting will stand adjourned to such day, and at such time and place, as the Directors determine or, if no determination is made by

the Directors, to the same day in the next week at the same time and place.

- 16.1.2.2 If at the adjourned General Meeting a quorum is not present within one hour from the time appointed for the adjourned General Meeting, then the General Meeting will be dissolved.
- 16.2 If at a General Meeting the whole of the business before the General Meeting is not completed the chairperson of the General Meeting may with the consent of the General Meeting adjourn it to any other time and place.
- 16.3 The chairperson must adjourn a General Meeting from time to time and from place to place if the Members present with a majority of votes that may be cast at that meeting agree or direct the chairperson to do so. No business must be transacted at any adjourned meeting other than the business left unfinished at the General Meeting from which the adjournment took place.
- 16.4 When a General Meeting is adjourned for thirty (30) days or more, notice of the adjourned General Meeting must be given as in the case of an original General Meeting.
- 16.5 Except as provided by Rule 16.4, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

17. Disclosure of Member's Interests

A Member who has a material personal interest in a matter that relates to the affairs of the Company being considered at a General Meeting, must give the other Members notice of the interest unless one or more of the following apply:

- 17.1 The interest arises because the Member is a member of the Company and the interest is held in common with the other Members.
- 17.2 The interest arises merely because the Member is a guarantor or has given an indemnity or security for all or part of a loan (or proposed loan) to the Company or has a right of subrogation under such guarantee or indemnity.
- 17.3 The Members are aware of the nature and extent of the interest and its relationship to the affairs of the Company.
- 17.4 The Member has already given notice of the nature and extent of the interest and its relationship to the affairs of the Company and the composition of the Members and the nature or extent of the interest have not changed since such notice was given.

18. Voting at General Meetings

- 18.1 At any General Meeting, a resolution put to the vote of the meeting will be decided on a show of hands unless, before a vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by the chairperson of the General Meeting or at least two of the Members present in person or by proxy.
- 18.2 Unless a poll is so demanded, a declaration by the chairperson that a resolution has on a show of hands been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the fact without further proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 18.3 The demand for a poll may be withdrawn.

- 18.4 If a poll is duly demanded, it must be taken in such a manner (including by way of postal vote) as the chairperson directs and, unless the meeting is adjourned, the result of the poll will be deemed to be the resolution of the meeting at which the poll was demanded.
- 18.5 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.
- 18.6 The demand for a poll shall not prevent the continuance of a General Meeting for the transaction of any business other than the question on which a poll has been demanded.
- 18.7 In the case of an equality of votes, whether on a show of hands or on a poll, the chairperson of General Meeting at which the show of hands takes place or at which the poll is demanded will have a casting vote in addition to any vote the chairperson may have in his or her capacity as a Member.
- 18.8 Subject to any rights or restrictions for the time being attached to any Member:
- 18.8.1 At meetings of the Company's Members or classes of Members, each Member who is entitled to vote may vote in person or by proxy or attorney or representative.
- 18.8.2 On a show of hands every person present who is a Member or a proxy or representative of a Member has one vote, and on a poll every person who is a Member present in person or by proxy or attorney or representative has one vote.
- 18.9 If a membership is held jointly and more than one such joint Member votes, only the vote of the Member whose name appears first in the Register counts.
- 18.10 If a Member is of unsound mind, or his or her person or estate is liable to be dealt with in any way under the law relating to mental health, his or her guardian or administrator or trustee or such other person as properly has the management of his or her estate may not exercise any rights of the Member in relation to a meetings of the Company's Members or classes of Members, as if that other person were the Member.
- 18.11 A Member is not entitled to vote at a General Meeting unless all sums payable at that time by him or her in respect of the Company have been paid.
- 18.12 Objections
- 18.12.1 An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected is given or tendered.
- 18.12.2 Any such objection must be referred to the chairperson, whose decision is final.
- 18.12.3 A vote not disallowed pursuant to such an objection is valid for all purposes.

19. Proxies

- 19.1 A Member who is entitled to attend and cast a vote at a meeting of the Company's Members may appoint a person (whether or not a Member) as the Member's proxy to attend and vote for the Member at the meeting.
- 19.2 Instruments appointing proxies
- 19.2.1 An instrument appointing a proxy must be in writing under the hand of the appointer or of his attorney duly authorised in writing or, if the appointer is a corporation, either under seal or executed in accordance with the Corporations Act or under the hand of an officer or attorney duly authorised.
- 19.2.2 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote in the resolution except as specified in the instrument.

19.2.3 An instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll.

19.3 An instrument appointment a proxy must be in the following form or in a form that is as similar to the following form as the circumstances allow:

Optometry Council of Australia and New Zealand Limited ACN 074 875 111

I/We being a Member/Members of the abovenamed Company appoint of or, in his/her absence, of as my/our proxy to vote for me/us on my/our behalf at the meeting of the Company's members of the Company to be held on the day of, 20.. and at any adjournment of that meeting.

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

SIGNED this day of, 20..

* Strike out whichever is not desired # To be inserted if desired

19.4 An instrument appointing a proxy must not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a certified copy of that power or authority, is or are deposited not less than forty-eight (48) hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than twenty-four (24) hours before the time appointed for the taking of the poll, at the registered office of the Company or at such other place in Australia as is specified for that purpose in the notice convening the meeting.

19.5 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal, or the revocation of the instrument (or of the authority under which the instrument was executed) or of the power, if no intimation in writing of the death, unsoundness or mind or revocation has been received by the Company at its registered office before the commencement of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

20. Resolution in Writing for General Meetings

20.1 A resolution in writing signed by all Members shall be as valid and effectual as if it had been passed at a General Meeting of the Company duly convened and held. Any such resolution may consist of several documents (including facsimile or electronic copies) in like form, each signed by one or more Members.

20.2 Rule 20.1 does not apply to a resolution to remove from office a Director or an Auditor.

DIRECTORS

21. Appointment and Removal of Directors

21.1 The number of the Directors must be no fewer than eight (8) or more than ten (10).

21.2 The members of the Board of Directors will include:

21.2.1 One Eligible Director nominated by OBA who must be a registered optometrist in either Australia or New Zealand.

21.2.2 One Eligible Director nominated by ODOB who must be a registered optometrist in either Australia or New Zealand.

- 21.2.3 One Eligible Director who is a community member nominated by the Board who is not currently a registered optometrist in either Australia or New Zealand.
- 21.2.4 One Eligible Director nominated by the Board who has a high level of knowledge, skill and experience appropriate to the skills required by the Board of Directors, such as education, finance or governance.
- 21.3 The members of the Board of Directors must also include at least four additional Eligible Directors but not more than six additional Eligible Directors (of whom at least two must be registered optometrists in either Australia or New Zealand), each nominated by the Nominations Committee and appointed by the Members in one of the following ways:
- 21.3.1 By separate resolution for each proposed Director passed at a General Meeting.
- 21.3.2 After a resolution passed by the Members present at the relevant General Meeting that the appointments of Directors may be voted on together (and no votes were cast against that resolution), by a resolution to appoint two or more Directors in the same resolution at a General Meeting.
- 21.3.3 By ballot (held in a manner agreed to by the majority of Members) held to elect two or more Directors where the ballot does not require Members voting for one candidate to vote for another candidate. To avoid doubt, a ballot does not require a Member to vote for a candidate merely because the Member is required to express a preference among individual candidates in order to cast a valid vote.
- 21.4 The Company may from time to time by resolution passed at a General Meeting fix the number of Directors in accordance with Rule 21.1 and may also determine in what rotation (if any) the number of Directors is to go out of office.
- 21.5 A person must not be appointed as a Director of the Company:
- 21.5.1 Unless the person has signed a consent to act as a Director of the Company and has lodged it with the Company before his or her appointment.
- 21.5.2 If the person is disqualified from being a Director under the Corporations Act or the *Australian Charities and Not for profits Commission Act 2012* (Cth).
- 21.5.3 Unless, in the case of a person to be appointed in accordance with Rule 21.3, the person has been nominated by the Nominations Committee, and the nomination has been lodged with the Company before his or her appointment.
- 21.6 A Nominations Committee is now established to assist the Members in determining whether to appoint a person as a Director.
- 21.6.1 The function of the Nominations Committee is to consider from time to time what combination of skills, qualifications, experience and other relevant characteristics is desirable for Board composition and make recommendations to the Members regarding the appointment or non-appointment of any person as a Director having regard to that desirable combination, for the purposes of informing any decision of the Members to appoint a person as a Director.
- 21.6.2 The Nominations Committee shall comprise two of the Members agreed to by the majority of the Members, and any other person appointed to the Nominations Committed by the Members.
- 21.7 The Board may, subject to Rules 21.1 and 21.4, appoint an additional person to be Director, by unanimous resolution of the Board for the purpose of ensuring that the Board has suitable qualifications, skills and experience to discharge its functions from time to time. Each person appointed pursuant to this Rule must retire at the next Annual General Meeting of the Company and is eligible for election by the Members.

- 21.8 If the office of a Director becomes vacant, the continuing Directors may continue to act unless the number falls below the minimum number. In that case, the continuing Directors may act only in one or more of the following circumstances:
- 21.8.1 To appoint Directors up to the minimum number.
 - 21.8.2 To call a General Meeting.
 - 21.8.3 In emergencies.
- 21.9 The Company may from time to time by resolution passed at a General Meeting remove any Director.
- 21.10 In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Corporations Act, the office of a Director becomes vacant in any one or more of the following circumstances where the Director:
- 21.10.1 Becomes of unsound mind or becomes a person whose person or estate is liable to be dealt with in any way under the law relating to mental health.
 - 21.10.2 Resigns his or her office by notice in writing to the Company.
 - 21.10.3 Is absent without the consent of the Chair from three (3) consecutive meetings of the Board.
 - 21.10.4 Without the consent of the Company in General Meeting holds any other office of profit under the Company
 - 21.10.5 Is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his interest as required by Rule 34.
 - 21.10.6 And the Company Secretary are both given notice in writing by the Director's nominator that the nomination is withdrawn and a new nomination has been made.
 - 21.10.7 Ceases to be an Eligible Director.

22. Defects in Appointment of Directors

All acts done by any meeting of the Directors or of a committee of Directors or by any person acting as a Director, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a person to be a Director or to be a member of the committee, or to act as a Director, or that a person so appointed was disqualified, are as valid as if the person had been duly appointed and was qualified to be a Director or to be a member of the committee.

23. Rotation of Directors

The following provisions will apply to all the Directors:

- 23.1 At every Annual General Meeting those Directors who have been in office for three years or until the third Annual General Meeting following such Directors' appointment (whichever is the longer) without re-election must retire.
- 23.2 At every Annual General Meeting at least three Directors must retire and if otherwise qualified are eligible for re-appointment.
- 23.3 The Directors or Director to retire pursuant to Rule 23.2 will be the Directors or Director longest in office since last being elected, but as between Directors who were elected on the same day the Director or Directors to retire will (in default of agreement between them) be determined by lot. Any Director who ceases to hold office by virtue of Rule 21.7 will not be taken into account in determining the number of Directors to retire by rotation or in determining which Directors will retire by rotation.

- 23.4 Subject to the provisions of the Corporations Act the Company in General Meeting may at any time by ordinary resolution remove any Director before the expiration of such Director's period of office and, if so desired, appoint another qualified person in such Director's stead. The person so appointed must hold office during such time only as the Director in whose place such Director is appointed would have held office if such Director had not been removed.
- 23.5 A Director retiring pursuant to this Rule 23 will retain office until the dissolution or adjournment of the meeting at which such Director's successor is appointed and will be eligible for re-appointment on two occasions only (*i.e.* a Director can hold office for no more than three (3) consecutive terms).

24. Remuneration of Directors

- 24.1 The Directors may be paid by way of remuneration for their services to the Company provided such remuneration is no more than is commercially reasonable for the services provided and provided that such remuneration is approved by the Members annually at the Annual General Meeting of the Company.
- 24.2 A Director performing the role of Chair may be paid an additional amount in relation to such services provided that such additional amount is approved annually by the Members at the Annual General Meeting and is no more than is commercially reasonable for the services provided..
- 24.3 Any reimbursement of out-of-pocket expenses incurred in carrying out the duties of a Director will be paid where the payment does not exceed the amount approved by the Board.
- 24.4 Payment for any service rendered to the Company by a Director in a professional or technical capacity will be made where the provision of that service has the approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.
- 24.5 Payment to a Director as an employee of the Company will be made where the terms of employment have been approved by resolution of the Board.

25. Powers and Duties of Directors

- 25.1 Subject to the Corporations Act and to any other provision of this Constitution, the business of the Company will be managed by the Directors, who may pay all expenses incurred.
- 25.2 Without limiting the generality of Rule 25.1, the Board may exercise all such powers and do all such acts and things as the Board is by this Constitution, the Act or otherwise authorised to exercise and do and are not by this Constitution or by the Act directed or required to be exercised or done by the Company in General Meeting.
- 25.3 In addition, the Board shall have all the powers and authorities expressly conferred on the Board by this Constitution and by any resolution of the Company in General Meeting.
- 25.4 The Directors may, by power of attorney, appoint any person or persons (either by name or by reference to position or office held) to be the attorney or attorneys of the Company for such purposes, with such powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the Directors), for such period and subject to such conditions as they think fit.
- 25.5 Any such power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the Directors think fit, and may also authorise the

attorney to delegate all or any of the powers, authorities and discretions vested in him or her.

- 25.6 All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or executed, as the case may be, in such manner as the Directors determine.
- 25.7 Subject to the Corporations Act and to any other provision of this Constitution, the Board shall have the power to do all things that are ancillary to, convenient for or which foster or promote the advancement of the objects of the Company set out in Rule 3.

DIRECTORS' MEETINGS

26. Purpose and Place of Directors' Meetings

The Board of Directors may meet together for the dispatch of business and adjourn and otherwise regulate its meetings as it thinks fit. The Board may meet for the transaction of business at such times or places as it from time to time determines.

27. Convening Directors' Meetings

The Board may at any time, and a Company Secretary must on the requisition of a Director, convene a meeting of the Directors.

28. Quorum for Directors' Meetings

At a meeting of the Directors, the number of Directors whose presence is necessary to constitute a quorum is one half of the number of Directors holding office (rounded up to the next whole number) plus one, provided that, subject to Rule 34.4, each such person is a Director entitled under the law to vote on a motion that may be moved at that meeting.

29. Chair and the Deputy Chair

The Directors shall elect by (secret) ballot a Chair and a Deputy Chair, each of whom shall be a registered optometrist in Australia or New Zealand. The Chair and Deputy Chair shall hold office for a three year term. Any Chair or Deputy Chair may be reappointed to that office for a second consecutive term (but not a third consecutive term).

30. Voting at Directors' Meetings

- 30.1 Subject to this Constitution, questions arising at a meeting of Directors will be decided by a majority of votes of Directors present and voting and any such decision will for all purposes be deemed a decision of the Directors.
- 30.2 In a case of an equality of votes, the Chair will have a casting vote in addition to any deliberative vote the Chair may have in the capacity as a Director.

31. Committees and Delegation of Powers

- 31.1 The Board may delegate any of their powers (except this power of delegation) to a committee or committees consisting of such number of Directors and non-Directors as they think fit provided that at least one Director is a member of any committee formed.

- 31.2 The committees may include an Accreditation Committee, an Examination Committee, an Examination Eligibility Committee and any other committee considered appropriate for the good governance of the Company. The terms of reference of each committee will be determined by the Board.
- 31.3 A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of and within any limits set by the Board, and a power so exercised will be deemed to have been exercised by the Directors.
- 31.4 The members of such a committee may elect one of their number as chairperson of their meetings.
- 31.5 Where such a meeting is held and a chairperson has not been elected or the person so elected is not present within ten (10) minutes after the time appointed for the holding of the meeting or is unwilling to act for all or part of the meeting, the members present must elect one of their number to be Chairperson of the meeting or part of it.
- 31.6 A committee may meet and adjourn as it thinks proper.
- 31.7 Questions arising at a meeting of a committee must be determined by a majority of votes of the members present and voting.
- 31.8 In the case of an equality of votes, the chairperson will not have a casting vote in addition to any deliberative vote the chairperson may have in his or her capacity as a committee member.

32. Electronic Meetings of Directors

- 32.1 Without limiting the generality of Rule 26, a meeting of Directors may be called or held using any technology consented to by all the Directors. A consent of a Director for the purposes of this Rule may be a standing one. A Director may only withdraw his consent within a reasonable time before the meeting of Directors.
- 32.2 For the purposes of this Constitution, the contemporaneous linking together by an instantaneous communication device of a number of Directors not less than the quorum will be deemed to constitute a meeting of the Directors, and all the provisions of this Constitution as to meetings of the Directors will apply to any such meeting held by an instantaneous communication device so long as the following conditions are met:
- 32.2.1 All the Directors for the time being entitled to receive notice of the meeting of Directors (including any alternate for any Director) will be entitled to notice of a meeting held by an instantaneous communication device and to be linked by an instantaneous communication device for the purpose of such meeting. Notice of any such meeting must be given on the instantaneous communication device or in any other manner permitted by this Constitution, and
- 32.2.2 Each of the Directors taking part in the meeting by an instantaneous communication device must be able to hear each of the other Directors taking part at the commencement of the meeting.
- 32.3 A Director may not leave a meeting held by an instantaneous communication device by disconnecting his instantaneous communication device unless he or she has previously expressly notified the chairperson of the meeting of his or her intention to leave the meeting, and a Director will be conclusively presumed to have been present and to have formed part of the quorum at all times during such a meeting until such notified time of his or her leaving the meeting.
- 32.4 A minute of the proceedings at meetings held by an instantaneous communication device will be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the chairperson of the meeting.

- 32.5 For the purpose of this Rule 'instantaneous communication device' includes telephone, television or any other audio or visual device that permits instantaneous communication.

33. Circulating Resolutions

- 33.1 If all the Directors entitled to vote on a resolution have signed a document containing a statement that they favour of a resolution of the Directors in terms set out in the document, a resolution in those terms will be deemed to have been passed at a meeting of the Directors held on the day on which the document was signed and at the time at which the document was last signed by a Director or, if the Directors have signed the document on different days, on the day on which, and at the time at which, the document was last signed by a Director.
- 33.2 For the purposes of Rule 33.1, two or more separate documents (including facsimile or electronic copies) containing statements in identical terms, each of which is signed by one or more Directors, will together be deemed to constitute one document containing a statement in those terms signed by those Directors on the respective days on which they signed the separate documents.

34. Directors' Conflict of Interest

Subject to this Constitution (including in particular Rule 24) and the Corporations Act:

- 34.1 A Director will not be disqualified by that person's office from contracting with the Company or from being employed or acting in any capacity professionally or otherwise by or on behalf of the Company.
- 34.2 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company with any company or partnership of or in which any Director is any way interested and no contract or arrangement entered into by or on behalf of the Company in which any Director is in any way interested will be liable to be impeached affected or avoided solely by reason of the Director holding office as such or solely by reason of the fiduciary relationship with the Company or by reason of the Director being a party to such contract or arrangement or otherwise interested in it.
- 34.3 No Director so contracting or being so interested will be liable to account to the Company for any profit realized by any such contract or arrangement by reason only of such person holding his office or of the fiduciary relationship created or by reason of his interest but such Director is bound to declare the nature of this interest in any such contract or arrangement at any meeting at which the contract or arrangement is decided on if the interest then exists or, in any such case, at the first such meeting after the acquisition of the interest. The Executive Officer must record such declaration in the minutes of the meeting at which the declaration is made but failure to record the declaration will not in any way affect the validity of such contract or arrangement.
- 34.4 A Director may be counted in the quorum at any meeting at which any matter in which such Director is so interested but may not vote in respect of any contract or arrangement in which such interest exists.
- 34.5 A Director who is interested in any contract or arrangement as stated in this Rule notwithstanding such interest may attest the affixing of the Seal of the Company to any document evidencing or otherwise connected with such contract or arrangement.

35. Executive Officer

- 35.1 The Board may appoint a person to act as the Executive Officer as required by the Act and shall be an employee of the Company subject to the terms and conditions of employment determined by the Board for such period as the Board thinks fit.

- 35.2 Subject to the terms of any agreement entered with the Executive Officer, the Board may revoke such appointment.
- 35.3 The Executive Officer will perform the duties designated from time to time by the Board upon such terms as the Board thinks fit.
- 35.4 The Executive Officer shall arrange an audit at least annually, at any additional times directed by the Board, of all books, documents and financial statements of the Company and shall ensure that all books and financial records show a true and correct record of financial transactions of the Company.
- 35.5 Powers of the Executive Officer
- 35.5.1 The Board shall confer upon the Executive Officer the powers required for the Executive Officer to manage the affairs of the Company (including signing cheques and transacting internet banking) with such restrictions as the Board shall think fit.
- 35.5.2 Any powers conferred upon the Executive Officer may be concurrent with or be to the exclusion of the powers of the Board.
- 35.5.3 The Board may at any time withdraw or vary any of the powers so conferred on the Executive Officer.
- 35.5.4 The powers and duties from time to time conferred upon the Executive Officer must be recorded in writing and a copy of the written record of the powers of the Executive Officer from time to time in force must be provided to each Member.

36. Company Secretary

- 36.1 The Board may appoint a person (including any person who is a Director) as Company Secretary on such terms and conditions as determined by it in accordance with the Corporations Act.
- 36.2 The Board may remove the Company Secretary from office.

ADMINISTRATION

37. Minutes

- 37.1 The Directors will cause minutes of all of the following:
- 37.1.1 All proceedings and resolutions of meetings of the Members.
- 37.1.2 All proceedings and resolutions of meetings of the Directors, including meetings of a committee of Directors.
- 37.1.3 Resolutions passed by Members without a meeting.
- 37.1.4 Resolutions passed by Directors without a meeting.
- 37.2 The Directors will cause all such minutes to be duly entered into the books kept for that purpose in accordance with the Corporations Act.
- 37.3 A minute recorded and signed in accordance with the Corporations Act is evidence of the proceeding, resolution or declaration to which it relates, unless the contrary is proved.
- 37.4 Books containing the minutes of the Members and resolutions passed by Members without a meeting will be open for inspection by any Member free of charge.

38. Accounts

- 38.1 The Directors must cause to be kept proper books of accounts in which will be kept true and complete accounts of the affairs and transactions of the Company. Proper books will not be deemed to be kept unless the books give a true and fair view of the state of the Company's affairs and explain its transactions.
- 38.2 The accounts must be held at the registered office or any other place as the Directors think fit.
- 38.3 The accounts must always be open to inspection by the Directors.
- 38.4 The Directors must arrange for the Income/Expenditure Statement and Balance Sheet (including every attachment) accompanied by a copy of the Auditor's Report, as required by the Corporations Act to be made out and laid before the Annual General Meeting.

39. Audit

- 39.1 A registered company auditor must be appointed.
- 39.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Corporations Act.

40. Inspection of Records

Subject to the Corporations Act, the Directors must determine whether and to what extent, and at what time and places and under what conditions, the accounting records and other documents of the Company or any of them will be open to the inspection of members other than Directors, and a member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Directors or by the Company in meeting of the Company's members.

41. Funds

- 41.1 All monies received on account of the Company shall be promptly paid into the bank account or accounts of the Company opened by the Board.
- 41.2 Subject to any resolution to the contrary of a General Meeting that does not contravene any other limitations contained in this Constitution, the funds of the Company will be utilised in pursuance and furtherance of the Objects set out in this Constitution in such manner as the Board determines.
- 41.3 All electronic banking, cheques, bills of exchange, promissory notes and other negotiable instruments may be transacted, signed, accepted, drawn, made or indorsed on behalf of the Company in such manner and by such persons (whether Directors or officers of the Company or not) as the Directors determine but not otherwise.

42. Execution of Documents

- 42.1 The Company may have a Seal, known as the common seal, on which its name, its Australian Company Number and the words 'Common Seal' are engraved.
- 42.2 If the Company has a seal the Directors must provide for the safe custody of the Seal.
- 42.3 The Seal must be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.

- 42.4 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is witnessed by any of the following:
- 42.4.1 Two Directors.
 - 42.4.2 One Director and one Company Secretary.
 - 42.4.3 One Director and another person appointed by the Directors for that purpose.
- 42.5 The Company may execute a document without using the Seal if the document is signed by any of the following:
- 42.5.1 An individual, including the Executive Officer or any other officer, acting with the Company's express or implied authority and on behalf of the Company under the power given by Section 126 of the Corporations Act.
 - 42.5.2 Two Directors.
 - 42.5.3 One Director and one Company Secretary.
 - 42.5.4 One Director and another person appointed by the Directors for that purpose.
- 42.6 A facsimile signature may not be affixed to a document unless the auditors, internal auditors or bankers of the Company have reported to the Board in writing that the document may be sealed in that manner.

43. By Laws

The Board has power to make by-laws concerning matters which the Board believes suitable for including in such by-laws.

44. Alteration of Constitution

The Company may only alter this Constitution by special resolution passed at a general meeting of the members.

45. Notices

- 45.1 A notice may be given by the Company to any Member in any of the following ways:
- 45.1.1 By serving it on the Member personally.
 - 45.1.2 By sending it by post to the Member at the Member's address, including an email address, as shown in the register of Members or the address supplied by the Member to the Company for the giving of notices to the Member.
 - 45.1.3 By sending it by facsimile transmission to a facsimile number supplied by the Member to the Company for the giving of notices to the Member.
- 45.2 Where a notice is sent by post, service of the notice will be deemed to be effective by properly addressing, prepaying and posting a letter containing the notice, and to have been effected, in the case of a notice of a Member, on the day after the date of its posting, and, in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- 45.3 Where a notice is sent by facsimile, service of the notice will be deemed to be effected on receipt by the Company of a transmission report confirming successful transmission.
- 45.4 Where a notice is sent by email, service of the notice will be deemed to be effected twenty-four (24) hours after the transmission of the email unless the person transmitting the email is notified at any time that the email was undelivered or undeliverable.

- 45.5 A notice may be given by the Company to joint Members by giving notice to the joint Member first named in the register of Members.

46. Officers' Indemnities and Insurance

- 46.1 To the extent permitted by the Corporations Act:
- 46.1.1 The Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability for costs and expenses incurred by that person as an Officer of the Company or a wholly-owned subsidiary of the Company in defending any proceedings in which judgment is given in that person's favour, or in which the person is acquitted, or in connection with an application in relation to any proceedings in which the Court grants relief to the person under the law.
- 46.1.2 The Company indemnifies every person who is or has been an Officer of the Company or of a wholly-owned subsidiary of the Company against any liability incurred by that person as an Officer of the Company or of a wholly-owned subsidiary of the Company, to another person (other than the Company or a related body corporate of the Company) unless the liability arises out of conduct involving a lack of good faith.
- 46.2 The Company may pay, or agree to pay, a premium in respect of a contract insuring a person who is or has been an Officer of the Company or of a subsidiary of the Company against a liability:
- 46.2.1 Incurred by the person in his or her capacity as an Officer of the Company or a subsidiary of the Company or in the course of acting in connection with the affairs of the Company or a subsidiary of the Company or otherwise arising out of the Officer's holding such office provided that the liability does not arise out of conduct involving a wilful breach of duty in relation to the Company or a subsidiary of the Company or a contravention of Sections 182 and 183 of the Corporations Act.
- 46.2.2 For costs and expenses incurred by that person in defending proceedings, whatever their outcome.
- 46.3 In this Rules 46:
- 46.3.1 The term 'proceedings' means any proceedings, whether civil or criminal, being proceedings in which it is alleged that the person has done or omitted to do some act, matter or thing in his or her capacity as Officer, or in the course of acting in connection with the affairs of the Company or a wholly-owned subsidiary for the purposes of Rule 46.1 or subsidiary of the Company for the purposes of Rule 46.2, or otherwise arising out of the Officer's holding such officer
- 46.3.2 (including proceedings alleging that he or she was guilty of negligence, default, breach of trust or breach of duty in relation to the Company or a wholly-owned subsidiary (in Rule 46.1) or subsidiary (in Rule 46.2) of the Company, and
- 46.3.3 The term 'Officer' has the meaning given to that term in Section 9 of the Corporations Act.

47. Winding Up

- 47.1 Subject to Rule 7, the Company may be dissolved by a special resolution of Members at a meeting of the Company Members.
- 47.2 Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she is a member, or within one year of ceasing to be a member, such amount as may be required not exceeding ten dollars (\$10.00), for the payment of the debts and liabilities of the Company contracted whilst the member or past

member (as the case may be) was a Member, and for the costs, charges and expenses of winding up, and for the adjustment of the rights of the contributors amongst themselves.