

# Constitution of Australian Dental Council Limited

ACN 072 269 900

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# Constitution of Australian Dental Council Limited

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## 1. PRELIMINARY

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### 1.1 Company limited by guarantee

The Company is limited by guarantee and the liability of Members is limited as provided in this constitution.

### 1.2 Objects of the Company

The Principal Purpose for which the Company is established is:

- (a) to act as an external accreditation entity for the purposes of the Health Practitioner Regulation National Law Act 2009;
- (b) to develop accreditation standards, policies and procedures for dental education courses and programs of study;
- (c) to develop standards, policies and procedures for the assessment of competence of overseas qualified dental practitioners;
- (d) to assess dental program providers and programs of study to determine whether the programs meet approved accreditation and quality assurance standards;
- (e) to assess authorities in other countries that conduct examinations for registration to practise as dental practitioners, or accredit programs of study relevant to regulation as a dental practitioner;
- (f) to oversee the assessment of the professional knowledge, skills and attributes of overseas qualified dental practitioners; and
- (g) to do all such other lawful things as are incidental or conducive to the advancement of the above objects or any of them including, but not limited to, performing any or all of the above functions in relation to dental practitioners and other professions nationally and internationally.

Solely for the purpose of furthering the Principal Purpose, and without limiting the powers of the Company under the Corporations Act, the Company may do all things incidental or conducive to furthering the Principal Purpose.

### 1.3 Application of income and property

Subject to rules 1.4 and 7, the Company must apply its income and property solely towards promoting the objects of the Company as stated in rule 1.2. No part of the Company's income may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to Members in their capacity as Members.

#### 1.4 Certain payments allowed

Rule 1.3 does not prevent the payment of reasonable remuneration to any Officer or employee of the Company or to any Member of the Company or other individual or organisation in return for services rendered to the Company. Rule 1.3 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any Director to the extent permitted by law and this constitution. In addition, rule 1.3 does not prevent the Company paying to a Member:

- (a) interest on money lent by the Member to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (b) reasonable remuneration for goods and services supplied by the Member to the Company in the ordinary course of business; and
- (c) reasonable rent for premises let by the Member to the Company.

#### 1.5 Replaceable rules

The replaceable rules referred to in section 141 of the Corporations Act do not apply to the Company and are replaced by the rules set out in this constitution. Sections referred to throughout the constitution are from the Corporations Act.

#### 1.6 Definitions

The following definitions apply in this constitution.

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

**AGM** has the meaning given by Part 1.2, Division 1, section 9 of the Corporations Act.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Board** means the Directors acting collectively under this constitution and as a Board for the purposes of the Corporations Act.

**Chair** means a Director appointed as Chair of the Company under rule 4.4(a).

**Company** means the Company named at the beginning of this constitution whatever its name is for the time being.

**Director** means an individual who is, for the time being, a Director of the Company.

**Existing Individual Member** means an individual admitted as a Member under rule 2.4 of the previous constitution dated 22 November 2013.

**Existing Organisational Member** means an organisation admitted as a Member under rule 2.5 of the constitution dated 22 November 2013.

**Guaranteed Amount** means \$10.

**Individual Member** means:

- (a) any individual admitted as a Member under rule 2.4(b) of this constitution; and
- (b) any Existing Individual Member,

whose membership has not ceased or been terminated pursuant to the terms of this constitution.

**Intellectual Property** means any industrial or intellectual property, whether registrable or not, including copyright, patents, inventions, trade secrets, confidential information, know-how, product formulations, designs, formats, circuit layouts, databases, plant varieties, trademarks, brand names, business names, domain names, applications for any of the foregoing and any improvements, enhancements or modifications to any of the foregoing.

**Liability** has the meaning given under rule 8.1.

**Member** means an Individual Member, Director or Organisational Member whose name is entered in the Register as a Member of the Company.

**Nominations Committee** means the Committee established by the Board under rule 3.4.

**Officer** means a Director or Secretary of the Company.

**Organisational Member** means:

- (a) any organisation admitted as a Member under rule 2.4(c) of this constitution; and
- (b) any Existing Organisational Member,

whose membership has not ceased or been terminated pursuant to the terms of this constitution.

**Ordinary Resolution** means a resolution passed at a meeting of Members by a majority of the votes cast by Members entitled to vote on the resolution.

**Principal Purpose** means the purpose set out in rule 1.2.

**Register** means the register of Members kept as required by sections 168 and 169 of the Corporations Act.

**Secretary** means, during the term of that appointment, an individual appointed as a Secretary of the Company in accordance with this constitution.

**Special Resolution** has the meaning given by Part 1.2, Division 1, section 9 of the Corporations Act.

## 1.7 Interpretation of this constitution

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this constitution, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
  - (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to the Company, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (iii) a person includes a natural person and a registered company, corporation or incorporated association; and
  - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.

- (c) A word which suggests one gender includes the other gender.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) A word (other than a word defined in rule 1.6) which is defined by the Corporations Act has the same meaning in this constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act.

## 2. MEMBERSHIP

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### 2.1 Number of Members

The Company must have at least three Members and no more than 30 Members comprising of:

- (a) no more than 10 Individual Members;
- (b) no more than 10 Directors; and
- (c) no more than 10 Organisational Members.

### 2.2 Limited liability of Members

- (a) The liability of each Member is limited to the Guaranteed Amount, being \$10.
- (b) Every Member undertakes to contribute to the assets of the Company in the event of the Company being wound up while he or she or it is a Member, or within one year of ceasing to be a Member, such amount as may be required not exceeding the Guaranteed Amount for the debts and liabilities of the Company including the costs of winding up.

### 2.3 Membership fees, etc.

Members are not required to pay any fee, subscription or other charge for Membership to the Company.

### 2.4 Admission of Members

- (a) Subject to rules 2.5, 2.6 and 2.7, the Members are:
  - (i) the Directors of the Company in office from time to time;
  - (ii) any other individual person the Board admits to Membership under rule 2.4(b);  
and
  - (iii) any organisation the Board admits to Membership under rule 2.4(c).
- (b) The Board may from time to time in its absolute discretion admit any individual to Membership of the Company on receipt of a written application from the person in a form determined by the Board.
- (c) The Board may from time to time in its absolute discretion admit any organisation that is a relevant stakeholder to Membership of the Company on receipt of a written application from the organisation in a form determined by the Board.
- (d) Any appointment under rule 2.4(b) or 2.4(c) is subject to rule 2.1.
- (e) The Board may in its absolute discretion reject any applicant for Membership and is not bound to give reasons why the application was not accepted.

- (f) A register of Members must be kept by the Company and contain the name and address of each Member, the date on which each Member was admitted to Membership of the Company, and if applicable, the date and reason(s) for termination of the Member's Membership.

## 2.5 Membership term

- (a) Subject to any cessation or termination of an Individual Member's Membership pursuant to this constitution, an individual admitted as an Individual Member under rule 2.4(b) is admitted for an initial term of three years (**Initial Individual Membership Term**) and may be granted the right to extend their Membership for two further periods of three years each (each a **Further Individual Membership Term**) by the Company as follows:
- (i) at least 30 days before the expiration of the Individual Member's Initial Individual Membership Term or Further Individual Membership Term (as relevant), the Board may give notice to the Individual Member inviting them to extend their Membership for a further period of three years; and
  - (ii) an Individual Member receiving notice from the Board under rule 2.5(a)(i) may exercise the right to extend their Membership by notifying the Board in writing at least 14 days before the expiration of their Initial Individual Membership Term or Further Individual Membership Term (as relevant).
- (b) If the Individual Member is not offered the option to extend their Membership by the Company under rule 2.5(a)(i), or does not notify the Board in the manner and timeframe described in rule 2.5(a)(ii), the Individual Member will cease as a Member at the end of the Initial Individual Membership Term or Further Individual Membership Term (as relevant).
- (c) Subject to any cessation or termination of an Organisational Member's Membership pursuant to this constitution, an organisation admitted under rule 2.4(c) is admitted for an initial term of three years (**Initial Organisation Membership Term**) and may be granted the right to extend their Membership for further periods of three years each (each a **Further Organisation Membership Term**) by the Company as follows:
- (i) at least 30 days before the expiration of the Initial Organisation Membership Term or then current Further Organisation Membership Term (as relevant), the Board may give notice to the Organisational Member inviting them to extend their Membership for a further period of three years; and
  - (ii) an Organisational Member receiving notice from the Board under rule 2.5(c)(i) may exercise the right to extend their Membership by notifying the Board in writing at least 14 days before the expiration of their Initial Organisation Membership Term or then current Further Organisation Membership Term (as relevant).
- (d) If the Organisational Member is not offered the option to extend their Membership under rule 2.5(c)(i), or does not notify the Board in the manner and timeframe described in rule 2.5(c)(ii), the Organisational Member will cease to be a Member at the end of the Initial Organisation Membership Term or Further Organisation Membership Term (as relevant).
- (e) For the avoidance of doubt, nothing in this constitution obliges the Company to offer any Member the right to extend their Membership (even if an existing Member has had their tenure extended on another occasion including prior to the adoption of this constitution).

## 2.6 Ceasing to be a Member

A Member ceases to be a Member if:

- (a) they die;
- (b) they resign in writing;
- (c) they become of unsound mind or become liable to be dealt with in any way under the law relating to mental health and the Board resolves that the person should cease to be a Member;
- (d) they are convicted of an indictable offence;
- (e) they are expelled in accordance with rule 2.7;
- (f) their Membership term expires in accordance with rule 2.5; or
- (g) they cease to be a Director, unless such cessation would result in there being fewer than three Members.

## 2.7 Termination of Membership

- (a) Subject to rule 2.7(c), the Board may, by resolution, expel from the Company any Member:

- (i) who does not comply with this constitution or any by-laws, rules or regulations of the Company; or
- (ii) whose conduct in the opinion of the Board is prejudicial to the interests of the Company,

and remove that Member's name from the Register.

- (b) At least 21 days before the meeting of the Board at which a resolution under rule 2.7(a) is considered, the Board must give a notice to the Member which states:
  - (i) the allegations against the Member or grounds on which the Board proposes to rely;
  - (ii) the proposed resolution for the Member's expulsion;
  - (iii) that the Member has an opportunity at the meeting to address the allegations or basis for the proposed resolution either orally or in writing; and
  - (iv) that if the Member notifies the Secretary in writing at least 48 hours before the meeting, the Member may elect to have the question of that Member's expulsion dealt with by the Company in a general meeting.
- (c) If a Member makes the election referred to in rule 2.7(b)(iv), the Board cannot expel the Member but must refer the matter to the Company in general meeting for a decision.
- (d) Subject to rule 2.7(c), the Company must expel a Member and the Board must cause a Member's name to be removed from the Register where:
  - (i) a general meeting is held to expel a Member; and
  - (ii) a resolution is passed at the meeting by a majority of two-thirds of those present and voting for the Member to be expelled.



## 2.8 Terminated Members' liability

A Member who ceases to be a Member under rules 2.5 or 2.6, or whose Membership is terminated under rule 2.7:

- (a) is liable for any outstanding payments owing to the Company from the Member under any written agreement to provide funds to the Company, which shall be recoverable by the Company as a debt due to it; and
- (b) does not have any claim on the Company, its funds or property.

## 3. DIRECTORS

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### 3.1 Number of Directors

- (a) The Company must have at least three Directors and, until otherwise decided by Ordinary Resolution, not more than 10 Directors.
- (b) The Members may, by Ordinary Resolution at a general meeting, impose or alter a higher minimum or maximum number of Directors, but may not reduce the minimum number of Directors.
- (c) For the avoidance of doubt, nothing in this rule 3.1 prevents the Board from appointing a Director under rule 3.3 (to ensure the minimum number of Directors is maintained).

### 3.2 Eligibility

- (a) Neither the auditor of the Company nor any partner, Director or employee of the auditor is eligible to act as a Director.
- (b) A Director who has served three terms of office (as referred to in rule 3.5) is not eligible to act as a Director again (even if the individual did not stay as a Director for the full tenure of any such terms of office).

### 3.3 Appointment of Directors

- (a) The Board must appoint the Directors referred to in rule 3.1(a) in accordance with the process set out in this rule 3.3.
- (b) The Board may develop criteria that individuals must meet in order to be appointed as a Director under this rule 3.3.
- (c) The Board may:
  - (i) call for nominations from the Members; and
  - (ii) advertise publicly for nominations,for individuals to be considered for appointment by the Board as Directors.
- (d) A Nominations Committee may be established under rule 3.4(a). If established it:
  - (i) must consider the nominations resulting from the Board's calling and advertising for nominations under rule 3.3(c) (if any); and
  - (ii) must have regard to any criteria developed by the Board under rule 3.3(b), and subject to rule 3.3(g), may recommend to the Board, from those individuals nominated under rule 3.3(c)(i) and, if relevant, under rule 3.3(c)(ii), individuals for appointment by the Board as Directors.

- (e) A decision of the Nominations Committee (if established under rule 3.4(a)) to recommend an individual for appointment under rule 3.3(d) must be agreed to by a majority of Members of the Nominations Committee.
- (f) The Chair of the Nominations Committee established under rule 3.4(a) does not have a casting vote. If an equal number of votes are cast for and against a proposed decision to recommend a nominee for appointment as a Director under rule 3.3(d) by the Nominations Committee, the nominee must not be recommended by the Nominations Committee.
- (g) The Nominations Committee (if established under rule 3.4(a)) may decide that none of the individuals nominated for appointment as a Director are suitable, having regard to the criteria developed by the Board under rule 3.3(b) (if any). If the Nominations Committee does so, it must notify the Board that it will not be making any recommendations of individuals for appointment as a Director.
- (h) The number of individuals that the Nominations Committee (if established under rule 3.4(a)) recommends for appointment as Directors must not exceed the number of Directors permitted under rule 3.1(b).
- (i) The Board may or may not appoint, at its discretion, an individual recommended for appointment by a Nominations Committee.
- (j) Subject to the Corporations Act, if the Board appoints an individual as a Director under rule 3.3(i), it must give that individual a notice that:
  - (i) notifies them they have been appointed as a Director of the Company; and
  - (ii) specifies the date on which their appointment as a Director commences.
- (k) Subject to the Corporations Act, an individual is taken to have been appointed as a Director on the date specified in the notice referred to in rule 3.3(j).
- (l) A person appointed by the other Directors of the Company must have the appointment confirmed by a resolution of the Members at the Company's next AGM. If the appointment is not confirmed, the person ceases to be a Director of the Company at the end of the AGM.

### **3.4 Nominations Committee**

- (a) If the Board receives nominations of individuals for appointment as a Director following a call or advertisement for nominations under rule 3.3(c), the Board may establish a committee for the purpose of carrying out the functions described in rule 3.3(d) with respect to the individuals so nominated.
- (b) Members of the Nominations Committee will be individuals chosen by the Board having regard to any criteria developed by the Board to assist it to identify appropriate individuals for membership of a Nominations Committee. Such committee members may be Directors but need not be.
- (c) The Board will appoint an individual to be the Chair of a Nominations Committee.
- (d) The Board will determine the maximum number of members of a Nominations Committee from time to time.
- (e) The Board may dissolve the Nominations Committee after each selection if it so determines.

### 3.5 Duration of appointment

- (a) A Director's term of office must end no later than three years after the day on which the Director was initially appointed.
- (b) Subject to rule 3.2, upon the expiry of his or her initial term of office, a Director is eligible to be reappointed for a further two terms of no more than three years each.
- (c) A Director may elect to retire before the expiry of a term of office provided the Director gives to the Board at least 30 business days (or any other period as the Board may determine) notice of his or her intention to do so. If the Director gives such a notice, the Director shall then be deemed to have retired from office on the date specified in the notice and also be deemed to have completed the balance of that term of office.
- (d) A Director who ceases to hold office under rule 3.5(c) is eligible for re-appointment for a further term or terms of office, provided that the maximum three terms permitted under 3.2(b) is not exceeded.

### 3.6 Cessation of directorship

An individual automatically ceases to be a Director if the individual:

- (a) dies;
- (b) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Director;
- (c) becomes disqualified from managing corporations under the Corporations Act and is not given permission or leave to manage a Company by the Australian Securities and Investments Commission or a Court;
- (d) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (e) fails to attend (either personally or by an Alternate) two consecutive Board meetings (not including meetings of a committee of the Board) without leave of absence from the Board;
- (f) resigns by notice in writing to the Company;
- (g) ceases to be eligible to act as a Director under rule 3.2;
- (h) becomes bankrupt or makes any general arrangement or compromise with his or her creditors; or
- (i) is otherwise removed in accordance with the provisions of the Corporations Act.

### 3.7 Too few Directors

If the number of Directors is reduced below the minimum required by rule 3.1, the continuing Directors may act as the Board only:

- (a) to appoint Directors up to that minimum number;
- (b) to convene a meeting of Members; and
- (c) in emergencies.

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## 4. POWERS OF THE BOARD

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### 4.1 Powers generally

Except as otherwise required by the Corporations Act, any other applicable law or this constitution, the Board:

- (a) has power to manage the business of the Company; and
- (b) may exercise every right, power or capacity of the Company without the involvement in any way of (including, without limitation, any consultation with) the Company in general meeting and the Members.

### 4.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 9;  
or
- (b) in accordance with a delegation of the power under rule 5.

### 4.3 Appointment of Chief Executive Officer

The Board may appoint a Chief Executive Officer.

### 4.4 Appointment of Director as Chair

- (a) Subject to this rule 4.4, the Board may appoint or remove a Director as Chair of the Company.
- (b) The Board can only appoint a Director to be Chair:
  - (i) if that individual's principal place of residence is in Australia; and
  - (ii) for a term of one year.
- (c) A Director may be appointed as Chair for more than one term subject to no Chair serving more than three consecutive years.

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## 5. DELEGATION OF BOARD POWERS AND ESTABLISHMENT OF COMMITTEES

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### 5.1 Power to delegate

- (a) The Board may delegate any of its powers:
  - (i) to a Director or employee; and
  - (ii) to a committee consisting of Directors, other persons, or any combination of the two.
- (b) To avoid any ambiguity, rule 5.1(a)(ii) shall not be read as limiting rule 5.1(a)(i).

### 5.2 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

### 5.3 Terms of delegation

A delegation of powers under rule 5.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

### 5.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this constitution which regulate the meetings and proceedings of the Board.

### 5.5 Intellectual Property

If any person is requested and agrees to participate in any generation of Intellectual Property for the Company, then all Intellectual Property rights and interests, in whatsoever form and howsoever expressed, will reside solely and entirely as a matter of ownership with the Company unless otherwise agreed.

## 6. DIRECTORS' DUTIES AND INTERESTS

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### 6.1 Compliance with duties under the Corporations Act and general law

Each Director must comply with his or her duties under the Corporations Act, the ACNC Act and under the general law.

### 6.2 Director can hold other offices etc

Subject to the Corporations Act, a Director may:

- (a) hold any office or place of profit or employment other than that of the Company's auditor or any Director or employee of the auditor;
- (b) be a member of any corporation (including the Company) or partnership other than the Company's auditor; or
- (c) be a creditor of any corporation (including the Company) or partnership; or
- (d) enter into any agreement with the Company.

### 6.3 Disclosure of interests

Each Director must comply with the general law in respect of disclosure of conflicts of interest and with the Corporations Act in respect of disclosure of material personal interests:

- (a) any Director who has a material personal interest in a matter that relates to the affairs of the Company, including a contract or proposed contract, any office or any property such that the Director might have duties or interests which conflict or may conflict either directly or indirectly with the Director's duties or interests as Director, must give the Board notice of the interest at a Board meeting;
- (b) a notice of a material personal interest must set out:
  - (i) the nature and extent of the interest; and

- (ii) the relation of the interest to the affairs of the Company; and
- (c) the notice must be provided to the Board at a Board meeting as soon as practicable.

#### 6.4 Director interested in a matter

- (a) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not:
  - (i) be present while that matter is being considered at the meeting; or
  - (ii) vote on the matter.
- (b) Rule 6.4(a) does not apply where:
  - (i) the Corporations Act allows the Director to be present; or
  - (ii) the interest does not need to be disclosed under the Corporations Act.
- (c) Subject to the Corporations Act:
  - (i) if the other Directors pass a resolution stating that the material personal interest should not disqualify the Director from voting or being present, a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
  - (ii) the Company may proceed with any transaction that relates to the material personal interest and, if the other Directors pass a resolution permitting it, a Director with the interest may participate in the execution of any relevant document by or on behalf of the Company;
  - (iii) subject to this rule 6.4(c), the Director may retain benefits under the transaction even though the Director has the interest; and
  - (iv) the Company cannot avoid the transaction merely because of the existence of the interest.
- (d) If the interest is required to be disclosed, rule 6.4(c) applies only if the interest is disclosed before the transaction is entered into and only if the other Directors pass a resolution permitting the Director to retain benefits.

#### 6.5 Agreements with third parties

The Company cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

#### 6.6 Obligation of secrecy

Every Director and Secretary must keep the transactions and affairs of the Company and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an Officer of the Company;
- (b) by the Board or the Company in general meeting; or
- (c) by law.

The Company may require a Director, Secretary, auditor, trustee, committee member or other individual or organisation engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by the Company.

## 7. PAYMENTS TO DIRECTORS

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With the approval of the Board the Company may pay to a Director:

- (a) reasonable remuneration in the amount and in the form determined by the Board for services rendered to the Company by the Director as a Director;
- (b) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (c) reasonable remuneration for any service rendered by the Director to the Company;
- (d) reasonable remuneration where the Director is an employee of the Company and the terms of employment have been approved by the Board;
- (e) interest on money lent by the Director to the Company at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (f) reasonable remuneration for goods supplied by the Director to the Company in the ordinary course of business; and
- (g) reasonable rent for premises leased by the Director to the Company.

## 8. OFFICERS' INDEMNITY AND INSURANCE

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### 8.1 Indemnity

Subject to and so far as permitted by the Corporations Act, the *Competition and Consumer Act 2010* (Cth) and any other applicable law:

- (a) the Company must, to the extent the individual or organisation is not otherwise indemnified, indemnify every Officer of the Company and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an Officer or auditor to an individual or organisation (other than the Company or a related body corporate) including a Liability incurred as a result of appointment or nomination by the Company or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) the Company may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an Officer or employee or auditor in defending an action for a Liability incurred as such an Officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

### 8.2 Insurance

Subject to the Corporations Act and any other applicable law, the Company may enter into, and pay a premium on, a contract of insurance in respect of a person who is or has been an Officer of the Company against any Liability incurred by the person as an Officer of the Company.

### 8.3 Former officers

The indemnity in favour of Officers under rule 8.1 is a continuing indemnity. It applies in respect of all acts done by an individual while an Officer of the Company or one of its wholly owned subsidiaries even though the individual is not an Officer at the time the claim is made.

### 8.4 Deeds

Subject to the Corporations Act, the Competition and Consumer Act 2010 and any other applicable law, the Company may, without limiting an individual's rights under this rule 8, enter into an agreement with an individual who is or has been an Officer of the Company to give effect to the rights of the individual under this rule 8 on any terms and conditions that the Board thinks fit.

## 9. BOARD MEETINGS

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### 9.1 Convening Board meetings

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

### 9.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director; and
- (b) must give notice in any way permitted by rule 20,

but the non-receipt by a Director of a notice properly given under rule 20 does not result in a Board meeting being invalid.

### 9.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D of the Corporations Act. A Board meeting held solely or partly by technology is treated as held at the place at which the greatest number of the Directors present at the meeting is located or, if an equal number of Directors are located in each of two or more places, at the place where the Chair of the meeting is located.

### 9.4 Chairing Board meetings

- (a) If the Board has appointed a Director as Chair, the Chair will chair its meetings.
- (b) If there is no Chair or the Chair is not present within one hour after the time for which a Board meeting is called or is unwilling to act, the Directors present must appoint a Director present to chair the meeting.

### 9.5 Quorum

Unless the Board decides otherwise, the quorum for a Board meeting is 50% of the Directors at the relevant time plus one Director and a quorum must be present for the whole meeting. A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending. If a meeting is held in another way permitted by section 248D of the Corporations Act, the Board must resolve the basis on which Directors are treated as present.



## 9.6 Majority decisions

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The Chair of a Board meeting does not have a casting vote. If an equal number of votes are cast for and against a resolution, the matter is decided in the negative.

## 9.7 Procedural rules

The Board may adjourn and, subject to this constitution, otherwise regulate its meetings as it decides.

## 9.8 Circulating resolution

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document (including by scanned or email signature), send an email containing a statement that they are in favour of the resolution set out in the document, or otherwise electronically affirm their assent by use of a secure system that is acceptable to all Directors, a Board resolution in those terms is passed at the time when the last Director signs the document, sends the email or gives the requisite form of assent.

## 9.9 Additional provisions concerning circulating resolutions

For the purpose of rule 9.8:

- (a) two or more separate documents in identical terms, each of which is signed by one or more Directors, are treated as one document; and
- (b) an electronic message containing the text of the document expressed to have been signed by a Director that is sent to the Company is a document signed by that Director at the time of its receipt by the Company.

## 9.10 Valid proceedings

Each resolution passed or thing done by, or with the participation of, an individual acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the individual; or
- (b) the individual was disqualified from continuing in office, voting on the resolution or doing the thing.

# 10. MEETINGS OF MEMBERS

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## 10.1 Annual general meeting

The Company must hold an annual general meeting as required by section 250N of the Corporations Act.

## 10.2 Calling meetings of Members

A meeting of Members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by law.

### 10.3 Notice of meeting

- (a) Subject to rule 10.4, at least 21 days' notice of a meeting of Members must be given individually to:
- (i) each Member (whether or not the Member is entitled to vote at the meeting); and
  - (ii) to the auditor of the Company.
- (b) Notice of a general meeting must include:
- (i) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
  - (ii) the general nature of the meeting's business;
  - (iii) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
  - (iv) a statement that Members have the right to appoint proxies and that if a Member appoints a proxy:
    - (A) the proxy must be a Member;
    - (B) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
    - (C) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- (c) The non-receipt of a notice properly given under rule 20 of any general meeting, or the postponement of any general meeting by any person entitled to receive such notice, will not invalidate the proceedings or any resolution passed at any such general meeting.

### 10.4 Short notice

If:

- (a) the Company has elected to convene a meeting of Members as the Annual General Meeting, if all the Members entitled to attend and vote agree beforehand; or
- (b) Members who together have power to cast at least 95% of the votes that may be cast at the meeting agree beforehand,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

### 10.5 Postponement or cancellation

The Board may:

- (a) postpone a meeting of Members;
- (b) cancel a meeting of Members; or
- (c) change the place for a general meeting,

by notice given individually to each individual or organisation entitled to be given notice of the meeting.

### 10.6 Fresh notice

If a meeting of Members is postponed or adjourned for one month or more, the Company must give new notice of the resumed meeting.

### 10.7 Technology

- (a) The Company may hold a meeting of Members at one or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.
- (b) For the purposes of meetings of the Company, a "reasonable opportunity to participate" means that each Member attending the meeting can hear and be heard by each other Member attending the meeting.
- (c) A meeting of Members held solely or partly by technology is treated as held at the place at which the greatest number of the Members present at the meeting is located or, if an equal number of Members is located in each of two or more places, at the place where the Chair of the meeting is located.

## 11. PROCEEDINGS AT MEETINGS OF MEMBERS

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### 11.1 Member present at meeting

If a Member has appointed a proxy or attorney or (in the case of a Member which is an organisation) a representative to act at a meeting of Members, that Member is taken to be present at a meeting at which the proxy or attorney is present.

### 11.2 Quorum

- (a) The quorum for a meeting of Members is one half of the Members, and the quorum must be present at all times during the meeting.
- (b) Each individual present may only be counted once toward a quorum. If a Member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

### 11.3 Quorum not present

If a quorum is not present within one hour after the time for which a meeting of Members is called:

- (a) if called as a result of a request of Members under section 249D of the Corporations Act, the meeting is dissolved; and
- (b) in any other case:
  - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies to Members, or if no decision is notified before then, to the same time on the same day in the next week at the same place; and
  - (ii) if a quorum is not present at the adjourned meeting, the meeting is dissolved.

### 11.4 Chairing meetings of Members

- (a) If the Board has appointed a Director as Chair, the Chair will chair meetings of Members.
- (b) If there is no Chair appointed, or the Chair is not present at the time for which a meeting of Members is called or is not willing to chair the meeting, the Members present must elect a Member or Director present to chair the meeting.

### 11.5 Attendance at general meetings

To the extent recognised at law:

- (a) every Member has the right to attend and speak at all meetings of Members;
- (b) every Director has the right to attend and speak at all meetings of Members; and
- (c) the auditor has the right to attend any meeting of Members and to speak on any part of the business of the meeting which concerns the auditor in the capacity of auditor.

### 11.6 Adjournment

Subject to rule 10.6, the Chair of a meeting of Members at which a quorum is present:

- (a) may; and
- (b) must, if directed by Ordinary Resolution of the meeting, adjourn it to another time and place.

### 11.7 Business at adjourned meetings

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

## 12. PROXIES

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### 12.1 Appointment of proxies

A Member may appoint another Member as his or her proxy to attend and act for the Member at a meeting of Members. An appointment of a proxy must be made by notice to the Board:

- (a) that complies with the Corporations Act; or
- (b) in any other form and mode, and signed or otherwise authenticated by the Member in a manner, that is satisfactory to the Board. The appointment of the proxy will be valid if it is made in a form that is satisfactory to the Board, even if that form does not contain all the information as required by the Corporations Act.

### 12.2 Deposit of proxy appointment forms and proxy appointment authorities

An appointment of a proxy is not effective for a particular meeting of Members unless:

- (a) the proxy appointment form; and
- (b) if it is executed or otherwise authenticated by an attorney, the relevant power of attorney or other authority under which the appointment was authenticated or a certified copy of it,

are received by the Company in accordance with the Corporations Act at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the resumption of the meeting.

### 12.3 Appointment for particular meeting, standing appointment and revocation

A Member may appoint a proxy to act at a particular meeting of Members or make a standing appointment and may revoke any appointment. A proxy must be a Member.

#### 12.4 Position of proxy if Member present

The appointment of a proxy is not revoked by the Member attending and taking part in the general meeting, but if the Member votes on a resolution, the proxy is not entitled to vote, and must not vote, as the Member's proxy on the resolution.

#### 12.5 More than one current proxy appointments

An appointment of proxy by a Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if the Company receives a further appointment of proxy from that Member which would result in there being more than one proxy of that Member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

#### 12.6 Continuing authority

An act done at a meeting of Members by a proxy is valid even if, before the act is done, the appointing Member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or revokes the authority under which the appointment was made by a third party,

unless the Company has received notice of the matter before the start or resumption of the meeting at which the vote is cast.

### 13. ENTITLEMENT TO VOTE AT MEMBERS' MEETINGS

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#### 13.1 Number of votes at Members' meetings

Subject to the Corporations Act:

- (a) each Member has one vote on a show of hands or a verbal vote or a poll; and
- (b) a Member who is present and entitled to vote and is also a proxy, or attorney, or representative of another Member, has one vote plus votes equal to the number of proxies held on a show of hands or a verbal vote or a poll.

#### 13.2 Casting vote of Chair at Members' meetings

The Chair of a meeting of Members does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

#### 13.3 Decision on right to vote at Members' meetings

A Member or Director may challenge the right of an individual to vote at a meeting of Members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the Chair, whose decision is final.

### 14. HOW VOTING IS CARRIED OUT

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#### 14.1 Method of voting

- (a) A resolution put to the vote at a meeting of Members must be decided by a voting method determined by the Chair of the meeting, unless a poll is demanded under rule 14.2, either before or on declaration of the result of the vote on the resolution. Unless a

poll is demanded, the Chair's declaration of a decision based on the voting method determined by the Chair is final.

- (b) For the avoidance of doubt, the voting method determined by the Chair under rule 14.1(a) may include an electronic method of voting.

#### **14.2 Demand for a poll**

A poll may be demanded on any resolution (except a resolution concerning the election of the Chair of a meeting) by:

- (a) one or more Members entitled to vote on the resolution; or
- (b) the Chair.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

#### **14.3 When and how polls must be taken**

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 14.3(c), in the manner that the Chair of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 14.3(c), in the manner that the Chair of the meeting directs. For the avoidance of doubt, the Chair can direct that the manner in which the poll will be taken will involve the use of electronic technology;
- (c) votes which the Corporations Act requires to be cast in a given way must be treated as cast in that way;
- (d) an individual or organisation voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of the poll is the resolution of the meeting at which the poll was demanded.

### **15. SECRETARY**

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#### **15.1 Appointment of Secretary**

The Board must appoint an individual to be Secretary either for a specified term or without specifying a term.

#### **15.2 Terms and conditions of office**

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of a Secretary.

#### **15.3 Cessation of Secretary's appointment**

The individual automatically ceases to be a Secretary if the individual:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a Secretary of a Company;

- (b) becomes disqualified from managing corporations under the Corporations Act and is not given permission or leave to manage the Company by the Australian Securities and Investments Commission or a Court;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to the Company; or
- (e) is removed from office under rule 15.4.

#### 15.4 Removal from office

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

### 16. MINUTES

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#### 16.1 Minutes must be kept

The Board must, in accordance with the Corporations Act, cause proper minutes to be made of:

- (a) all proceedings and resolutions of meetings of the Company's Members;
- (b) names of Directors present at each Board meeting or committee meeting;
- (c) all proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 5);
- (d) all resolutions passed by Directors without a meeting; and
- (e) disclosures and notices of Directors' interests.

#### 16.2 Minutes as evidence

A minute recorded and signed is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

#### 16.3 Inspection of minute books

The Company must allow Members to inspect, and provide copies of, the minute books for the meetings of Members.

### 17. FINANCIAL REPORTS AND AUDIT

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#### 17.1 Company must keep financial records

The Board must cause the Company to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
  - (b) would enable true and fair financial statements to be prepared and audited,
- and must allow a Director and the auditor to inspect those records at all reasonable times.

## 17.2 Financial reporting

The Board must cause the Company to prepare a financial report and a Directors' report that comply with the Corporations Act and must report to Members in accordance with the Corporations Act.

## 17.3 Audit

The Board must cause the Company's financial report for each financial year to be audited and obtain an auditor's report.

## 17.4 Inspection of financial records and books

Subject to rule 16.3 and the Corporations Act, a Member who is not a Director does not have any right to inspect any document of the Company except as authorised by the Board or by Ordinary Resolution.

## 17.5 Financial Year

The financial year of the Company will begin on 1 July and end on 30 June.

## 18. REGISTER OF MEMBERS

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- (a) The Company must set up and maintain a register of Members.
- (b) The Register must contain the following information:
  - (i) the name and address of each Member;
  - (ii) the date on which the entry of the Member's name in the Register is made;
  - (iii) the name and details of each individual or organisation who stopped being a Member within the last seven years;
  - (iv) the date on which the individual or organisation stopped being a Member; and
  - (v) an index of Members' names if the Company has more than 50 Members and the Register itself is not kept in a form that operates effectively as an index.

## 19. WINDING UP

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- (a) If the Company is wound up or dissolved any surplus property must not be paid or distributed to Members but must be paid, distributed or transferred to another corporation that:
  - (i) has objects or purposes similar to the purposes of the Company; and
  - (ii) prohibits the distribution of income or property to its members.
- (b) The identity of the corporation will be decided by the Board by Ordinary Resolution on or before the time of such winding up or dissolution. If the Board fails to decide, the corporation shall be determined by application to the Supreme Court of Victoria.

## 20. NOTICES

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### 20.1 Notices by Company

A notice is properly given by the Company to an individual or organisation if it is:

- (a) in writing and signed on behalf of the Company (by original or printed signature);



- (b) addressed to the individual or organisation to whom it is to be given; and
- (c) either:
  - (i) delivered personally; or
  - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that individual's or organisation's address;
  - (iii) sent by fax to the fax number (if any) nominated by that individual or organisation; or
  - (iv) sent by electronic message to the electronic address (if any) nominated by that individual or organisation.

## 20.2 When notice is given

A notice to an individual or organisation by the Company is regarded as given and received:

- (a) if it is delivered personally:
  - (i) by 5.00 pm (local time in the place of receipt) on a business day - on that day; or
  - (ii) after 5.00 pm (local time in the place of receipt) on a business day, or at any time on a day that is not a business day - on the next business day;
- (b) if it is sent by fax, electronic message or other electronic means:
  - (i) by 5.00 pm (local time in the place from which it is sent or given) on a business day – on that day; or
  - (ii) after 5.00 pm (local time in the place from which it is sent or given) on a business day, or at any time on a day that is not a business day – on the next business day; and
- (c) if it is sent by mail:
  - (i) within Australia - three business days after posting; or
  - (ii) to a place outside Australia - six business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

## 20.3 Notice of Board meeting or meeting of Members by email

- (a) A notice given under rules 9.2 and 10.3 does not need to comply with the requirements set out in rules 20.1 and 20.2 (including the requirement for the notice to be signed) and will be validly sent if sent by email to the email address of the recipient individual or organisation.
- (b) A notice given under clause 20.3(a) will be deemed to be received by the addressee at the time that is 24 hours after the email was sent, but if the time the communication is taken to be received is not on a Business Day or is after 5.00 pm, the communication is taken to be received at 9.00 am on the next Business Day.

## 20.4 Business days

For the purposes of rule 20.2, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

## 20.5 Counting days

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

## 21. TRANSITIONAL PROVISIONS

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Subject to the Corporations Act, at the conclusion of the meeting at which this constitution is adopted:

- (a) the existing Directors:
  - (i) shall continue as Directors as per the period allocated upon their appointment (see Schedule 1 for a list of existing Directors as at the date this constitution is adopted); and
  - (ii) who were also Members under the previous constitution will cease being Members in this capacity and will be treated as Members as a consequence of rule 2.4(a)(i), subject to rule 2.6(g);
- (b) the Existing Individual Members shall continue as per their term as Members prior to the adoption of this constitution such that their previous tenure as Members will be recognised for the purposes of this constitution and in particular rule 2.5 (see Part A of Schedule 2); and
- (c) the Existing Organisational Members (see Part B of Schedule 2) shall be treated as new Members under this constitution such that their previous tenure as Members will not be recognised for the purposes of this constitution and they will be granted a three year Membership commencing on the date of adoption of this constitution in accordance with rule 2.5(c) (and will thereafter be subject to this constitution with regards to their Membership including in respect to any right to extend their Membership).

**SCHEDULE 1: CURRENT DIRECTORS**

<b>Names</b>	<b>Current Term</b>	<b>Current Term Period</b>
Associate Professor John Boucher AM	2nd Term	25/11/2016 – 25/11/2019
Conjoint Associate Professor Deborah Cockrell	2nd Term	15/11/2018 – 15/11/2021
Mr Anthony Evans	2nd Term	25/11/2016 – 25/11/2019
Professor Christopher Peck	2nd Term	25/11/2016 – 25/11/2019
Dr Janet Preuss	2nd Term	14/09/2018 – 14/09/2021
Professor Lindsay Richards	3rd Term	15/11/2018 – 15/11/2021
Associate Professor Catherine Snelling	3rd Term	15/11/2018 – 15/11/2021
Dr David Sykes OAM	2nd Term	25/11/2016 – 25/11/2019
Ms Lucy Vincent	1st Term	15/02/2018 – 15/02/2021

All serving Directors above are also Individual Members. For the avoidance of doubt, the current Directors will be treated as Members in their capacity as Directors and not as Individual Members pursuant to this constitution.

## SCHEDULE 2: CURRENT MEMBERS AS AT THE DATE OF ADOPTION OF THIS CONSTITUTION

### Part A - Existing Individual Members

<b>Names</b>	<b>Current Term</b>	<b>Current Term Period</b>
Associate Professor John Boucher AM	3rd Term	20/11/2018 – 20/11/2021
Conjoint Associate Professor Deborah Cockrell	2nd Term	25/11/2016 – 25/11/2019
Ms Janice Connolly	3rd Term	19/02/2019 – 19/02/2022
Mr Anthony Evans	2nd Term	19/02/2019 – 19/02/2022
Dr Melanie Hayes	2nd Term	20/11/2018 – 20/11/2021
Associate Professor Neil Hewson	3rd Term	19/02/2019 – 19/02/2022
Dr Michael McGuinness AM	3rd Term	20/11/2018 – 20/11/2021
Professor Michael Morgan	3rd Term	20/11/2018 – 20/11/2021
Professor Christopher Peck	1st Term	23/05/2019 – 23/05/2022
Dr Janet Preuss	1st Term	13/09/2019 – 13/09/2022
Professor Lindsay Richards	3rd Term	19/02/2019 – 19/02/2022
Dr Bruce Simmons	3rd Term	19/02/2019 – 19/02/2022
Associate Professor Catherine Snelling	3rd Term	19/02/2019 – 19/02/2022
Dr David Sykes OAM	1st Term	23/05/2019 – 23/05/2022
Dr Tom Tseng	3rd Term	20/11/2018 – 20/11/2021
Ms Lucy Vincent	1st Term	23/05/2019 – 23/05/2022
Dr Keith Watkins	2nd Term	13/01/2017 – 13/01/2020
Dr Stanley (Tim) Wigmore	3rd Term	20/11/2018 – 20/11/2021

## Part B - Existing Organisational Members

<b>Names</b>
Australasian Council of Dental Schools
Australian Dental Association
Australian Dental and Oral Health Therapists Association
Australian Dental Prosthetists Association
Dental Council of New Zealand
Dental Hygienists Association of Australia
Royal Australasian College of Dental Surgeons