



CONSTITUTION

of the

**AUSTRALIAN COLLEGE OF
MENTAL HEALTH NURSES
INCORPORATED**

Australian College of Mental Health Nurses Incorporated

CONSTITUTION

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Australian College of Mental Health Nurses Incorporated

CONSTITUTION

(Revised October 2015)

1. NAME

The name of the association shall be “Australian College of Mental Health Nurses Incorporated” (the “College”) incorporated under the provision of the Associations Incorporation Act 1985 (S.A.).

2. OBJECTS AND POWERS

- 2.1 The **objects** for which the College is established are to:
- 2.1.1 enhance the mental health of the community through the pursuit of efforts to improve service and care delivery to those affected by mental illness and disorder and to promote the prevention of mental illness and disorder particularly through the profession of mental health nursing;
 - 2.1.2 provide professional leadership and authority as the peak body for mental health nurses in Australia;
 - 2.1.3 provide continuing professional education and practice development in mental health nursing;
 - 2.1.4 ensure mental health nursing issues and matters remain a focal point on all agendas in mental health discussions and forums at local, state and national levels;
 - 2.1.5 set national standards of practice and promote best practice in mental health nursing;
 - 2.1.6 provide strategic leadership to influence legislative, statutory and funding bodies and key stakeholders in order to promote the practice and image of mental health nursing as a profession;
 - 2.1.7 build and maintain membership, professional capacity and infrastructure;
 - 2.1.8 maintain position as a non-industrial and non-sectarian organisation that is not aligned with any political party;
 - 2.1.9 promote public confidence and professional recognition of the services provided by mental health nurses;
 - 2.1.10 encourage professional accountability, autonomy and partnership of mental health nurses;
 - 2.1.11 provide a forum for collegial support, networking and collaboration amongst mental health nurses;
 - 2.1.12 facilitate and disseminate research and continuing practice development in mental health nursing and health care delivery;

- 2.1.13 represent the profession and provide advice to consumer and carer agencies, government and non-government sectors, community groups and the general public;
- 2.1.14 participate in policy development concerning the profession of mental health nursing, mental health workforce, health care delivery, promotion of mental health, and prevention of mental illness and disability; and
- 2.1.15 The Association shall have all the powers conferred by section 25 of the Act.

BUT AT ALL TIMES recognising that the College may be constrained to pursue only some of those objects to exclusion of others from time to time or pursue some objects with differing priorities.

Powers of the Association

- 2.2 In addition to the **powers** conferred on the Association by the Act or Regulations, this Constitution and consistent with the assigned authorities in Clause 8.1, the Association has all such powers as are necessary or convenient to carry out its objects and, in particular, shall have the powers solely for and consistent with the purpose of carrying out the aforesaid objects and not otherwise to do any other lawful act as may be necessary, incidental or conducive to the achievement or attainment of the aforesaid objects of the Association.

3. NON PROFIT NATURE OF THE COLLEGE

- 3.1 Subject to Clause 3.2, the profits or other income and property of the College must be applied solely towards the promotion of the objects of the College in Clause 2.1 and no portion of it may be paid or transferred, directly or indirectly, to any member whether by way of dividend, bonus or otherwise.
- 3.2 Nothing in Clause 3.1 prevents any payment in good faith by the College of:
 - 3.2.1 reasonable and proper remuneration to any member or Director for any **services actually rendered or for real property or goods supplied** to the College in the ordinary and usual course of business;
 - 3.2.2 the payment or reimbursement of **out-of-pocket expenses** incurred by any member or member of the management committee on behalf of the College where the amount payable does not exceed an amount previously approved by the Board;
 - 3.2.3 reasonable and proper **rent** for premises leased by any or Director to the College;
 - 3.2.4 payment to any member or Director, being a person engaged in any profession or calling, for all usual **professional or other charges** for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than reasonable payment for the service.
- 3.3 The Association must not pay fees to or on behalf of Directors except that **the Association may make payments to a Director** in good faith for:
 - 3.3.1 the payment of a reasonable and proper amount in compensation for **services actually rendered** by a Director in travelling to or attending Board meetings and other events for or on behalf of the Association, where the payment has been approved by the Board;

- 3.3.2 the payment of a reasonable and proper amount in **remuneration** for attending upon the functions and duties of a Director or office bearer on reasonable commercial terms commensurate with similar not for profit entities and which remuneration has been approved by the Board and does not exceed the total amount (if any) approved by the Members in General Meeting as the remuneration payable to all Directors and office bearers for undertaking such functions and duties.
- 3.3.3 any **salary or wage** due to the Secretary as an employee of the Association where the terms of employment have been approved by the Board;
- 3.3.4 an **insurance premium** in respect of a contract insuring a Director or Officer for a liability incurred as an Officer of the Association where the Board has approved the payment of the premium; or
- 3.3.5 any payment in relation to **indemnity or insurance** under Clause 23.1, 23.3 or 23.4 or a payment under any agreement or deed referred to in Clause 23.5.

4. INTERPRETATION AND DEFINITION OF TERMS

4.1 INTERPRETATIONS

In this Constitution, the following expressions shall have the following meaning unless otherwise indicated or excluded by the context:

- (a) (amendments and statutes) all references to statutory provisions includes its delegated legislation and are construed as references to any statutory modification, consolidation, amendment, replacement or re-enactment for the time being in force;
- (b) (corresponding meaning) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) (currency) a reference to “\$” or “dollars” is a reference to Australian currency;
- (d) (example) if an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing;
- (e) (exercise of a function) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty;
- (f) (from time to time) a power, an authority or a discretion reposed in a director, the directors, the Association in general meeting or a Member of the Association may be exercised at any time and from time to time;
- (g) (function) a reference to a function includes a reference to a power, authority or duty;
- (h) (gender) a word indicating a gender includes every other gender;
- (i) (inadvertent omissions and interpretation of the Constitution) if some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Board that the omission has directly and unfairly prejudiced any Member financially. The directors shall, consistent with and in pursuance of this Constitution, have authority to interpret the meaning of this Constitution

and any matter relating to the company on which this Constitution is silent. The decision of the Board is final and binding on all Members;

- (j) (meaning not limited) a reference to the words "include", "including", "for example" or "such as", when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (k) (persons) words importing persons includes a reference to a natural person (and any executor, administrator or successor in law of that person) and also includes any type of entity or body of persons which has separate legal rights and is subject to obligations including partnerships, incorporated associations, co-operatives, companies and other body corporates and bodies politic whether by Act of Parliament or otherwise;
- (l) (power) a power to do something includes a power, exercisable in the like circumstances, to revoke it or undo it and a reference to a power is also a reference to authority or discretion.
- (m) (regulations) a reference to a statute, ordinance, legislation, code or other law includes regulations and instruments made under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (n) (sending) references to the sending of a document includes the sending of that document via electronic means, including, but not limited to, electronic mail;
- (o) (signed) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied or authenticated by any other manner permitted by the Corporations Act or any other law and in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the directors;
- (p) (singular includes plural) a word importing the singular includes the plural (and vice versa);
- (q) (word) if a word is defined, another part of speech has a corresponding meaning; and
- (r) (writing) "in writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise.

4.2 DEFINITIONS

- (a) **"Accounts"** means ~
 - (a) a combination of
 - (i) an account of receipts and payments recording the total receipts and payments based on the cash method of accounting; and
 - (ii) a statement of assets and liabilities; or
 - (b) a combination of ~
 - (i) an account of income and expenditure recording the total income and expenditure based on the accrual method of accounting; and
 - (ii) a balance sheet, together with such statements, reports and notes, other than auditors' reports, as are attached to and intended to be read with the account, statement or balance sheet, as the case may be.

- (b) “**the Act**” means the Associations Incorporation Act 1985 (S.A.) and includes any associated relevant provisions of the Associations Incorporation Regulations 2008 (S.A.).
- (c) “**Board**” means the governing body of the College however described or any number of Directors assembled at a meeting of the Board transacting business in accordance with this Constitution, being not less than a quorum, and as set out in Clause 8.5.4 of this Constitution and who may, for the internal purposes of the College, be cited (collectively) as the “Board of Directors” or “the Directors” who shall be construed as referencing the Board unless the context requires otherwise.
- (d) “**Branch**” means a part of the College representing members residing or working in a State or Territory established in accordance with the Constitution.
- (e) “**By-laws**” refer to any Board-determined governing policies, created under Clause 22 of this Constitution, in force from time to time and incorporate any rules, regulations, policies, procedures, protocols or processes prescribing matters required or permitted by this Constitution to be prescribed or necessary or convenient to be prescribed with respect to any matter relating to the general courses of action that the Board deem necessary for the effective and prudent internal control, administration and management of the Association and its affairs, interests and property and to competently regulate the business of the Association as created and amended from time to time by the Board in accordance with Clause 22. The by-laws will regulate the actions and behaviours of Association members, Directors and officers in their role within, and representation of the Association and will define how everyone in the Association (Board, Directors, committees, officers, management, staff, volunteers, etc) is expected to exercise their delegated powers, the performance of their assigned role and the discharge their obligatory duties and which may for the internal purposes of the Association be cited as the “**governing policies**” or any other title the Board may so prescribe from time to time.
- (f) “**Chair**” shall mean chair of a branch, Council of Branches, committee or special interest group of the College.
- (g) “**Chief Executive Officer**” means the Chief Executive Officer of the College so appointed by, and responsible to the Board as the principal corporate executive to act within written Board-delegated authorities for the overall day-to-day operations of the Association; and who may for the internal purposes of the Association be cited as the “CEO” or any other title the Board may so determine from time to time.
- (h) “**The College**” means the Australian College of Mental Health Nurses Incorporated which may also be cited, for the purposes of this Constitution, as the “**Association**”.
- (i) “**Committee**” means a group of members established to conduct or progress College business or professional issues at national or branch level by the Board, Councils or Special Interest Groups. Committees may co-opt non-members to provide particular expertise and/or advice to advance its progress.
- (j) “**Constitution**” means the Constitution of the Australian College of Mental Health Nurses Incorporated (and includes its schedules and annexures, if any), as amended from time to time pursuant to Clause 11, which binds the Association and its members to the same extent as if it were a contract between them under which they each agree to observe its provisions.
- (k) “**Council of Branches**” consists of an elected Chair of a Branch from each one of the States and Territories, and other representatives as determined by the Board from time to time in accordance with the Constitution and any By-laws.

- (l) “**Credentialing**” refers to the criteria and means by which a Registered Nurse is recognised as a Mental Health Nurse (the credential), as determined by College By-Laws, policies and procedures.
- (m) “**Director**” means an eligible natural person, who is duly elected, nominated or appointed to the Board pursuant to Clause 7.2.1. For the avoidance of doubt a reference to a Director includes an Office Bearer if that person holds such a position pursuant to Clause 7.3, unless otherwise expressly stated.
- (n) “**Enrolled Nurse**” means a nurse registered by the National Nursing and Midwifery Board of Australia is entitled to practice as an Enrolled Nurse within the field of nursing and scope of practice for which they are prepared.
- (o) “**Member**” means any person who has obtained membership of the College as provided in the Constitution and whose membership has not ceased in accordance with any of the provisions of this Constitution.
- (p) “**Mental Health Nurse**” is a specialist nursing classification and means a Registered Nurse who has a recognised specialist qualification and defined scope of practice in mental health nursing.
- (q) “**Mental Health Nursing**” is a specialised field of the nursing profession with a range of discrete sub-specialties, differing levels and scope of practice both within and across sub-specialty fields.
- (r) “**National Office**” means the head office of the College located in any place as the Board shall determine.
- (s) “**Office Bearer**” means a Director who holds a Board appointed or delegated position (with corresponding delegated authority), pursuant to Clause 7.3, in addition to their Director roles on the Board. “Office Bearer” means one of those persons.
- (t) “**Officer**” means
 - (a) any person who ~
 - (i) occupies or acts in a position of ~
 - (A) a member of the Board of the Association ; or
 - (B) the secretary or public officer of the Association; or
 - (ii) is concerned, or takes part, in the management of the affairs of the Association, by whatever name called and whether or not validly appointed to occupy or duly authorised to act in the position; or
 - (b) the holder of any other office established by the constitution of the association (except a patron or the holder of some other honorary office that confers no right to participate in the management of the affairs of the Association); or
 - (c) any person in accordance with whose directions or instructions the Board of the Association is accustomed to act.
- (u) “**President**” means the President of the College appointed in accordance with the Constitution pursuant to Clause 7.3.1 and who is to preside at each General Meeting and Board meeting of the Association pursuant to the authorities, powers and functions described in this Constitution and any policies, protocols, practices or processes determined by the Board from time to time that give effect to the authorities, powers and functions described in this Constitution.

- (v) "**Registered Nurse**" means a nurse registered by the National Nursing and Midwifery Board of Australia and is entitled to practice as a Registered Nurse in any field of nursing, which may or may not include mental health nursing or developmental disability nursing.
- (w) "**Secretary**" means any person appointed by the Board pursuant to Clause 9.2 to the office of Secretary to perform the specific duties set out in this Constitution and any written Board-delegated authorities of the person appointed to act as the Secretary or Assistant Secretary temporarily;
- (x) "**Special Interest Group**" means a group of members that is dedicated to facilitating, promoting, and advancing a particular area of interest of the College. Membership and By-laws governing such groups shall be determined by the Board.
- (y) "**State**" means a state of Australia.
- (z) "**Territory**" means the Australian Capital Territory or the Northern Territory.

5. MEMBERSHIP

5.1 Eligibility for Membership

- 5.1.1 The College membership shall consist of an unlimited number of persons in the categories as set out in the Constitution.
- 5.1.2 The Secretary must establish and maintain **a register of all members** of the College which accurately reflects who is a Member and which shall be kept at the National Office of the College or otherwise as permitted by the Act.
- 5.1.3 The Register must contain the following information about each Member:
 - (i) the Member's name and postal and/or electronic mail address;
 - (ii) the category of membership; and
 - (iii) the date on which the Member's details was entered in the Register;

and any additional information related to the membership as the Board shall determine from time to time.
- 5.1.4 Members will provide the Association with all required information to enable it to compile a record of the Member's qualifications for membership pursuant to Clause 5.2 and their name and address and a Member shall within a reasonable time by notice in writing lodged with the Secretary inform the Association of any change in the Member's qualifications, name or address. The Association may require reasonable verification of the change of such information

5.2 Categories of Membership

- 5.2.1 Membership categories are as follows:
 - (i) Ordinary Members;
 - (ii) Associate Members;

- (iii) Fellowship Members ("Fellows");
- (iv) Honorary Members; and
- (v) Life Members.

5.2.2 **Ordinary Membership** is restricted to Registered Nurses and Enrolled Nurses.

- (i) An Ordinary Member is entitled to receive all notices of general meeting sent by the College, attend and speak at, and vote on all motions put before, any general meeting of the College.
- (ii) An Ordinary Member is entitled to receive such benefits as are determined annually by the Board to apply to an Ordinary Members, details of which are available for inspection by a prospective or renewing Ordinary Member on the College website or as otherwise advised by the College.

5.2.3 **Associate Membership** is available to any person who is not entitled to be an Ordinary Member, Fellowship or Life Member, but who has an interest in mental health nursing.

- (i) An Associate Member is entitled to receive all notices of general meeting sent by the College, attend and speak at, but not vote on any motions put before any general meeting of the College.
- (ii) An Associate Member is entitled to receive such benefits as are determined annually by the Board to apply to an Associate Member, details of which are available for inspection by a prospective or renewing Associate Member on the College website or as otherwise advised by the College.

5.2.4 **Fellowship Membership** is an award conferred on members who have made a substantial contribution to the profession and is restricted to Ordinary Members who have met the criteria as determined by the Board at the time of application and endorsed by the Board. Members in this category shall be known as "Fellows" of the College.

- (i) A Fellow is entitled to receive all notices of general meeting sent by the College, attend and speak at, and vote on all motions put before any general meeting of the College.
- (ii) A Fellow is entitled to receive such benefits as are determined annually by the Board to apply to a Fellow, details of which are available for inspection by a Fellow on the College website or as otherwise advised by the College.
- (iii) A Fellow continues to be liable to pay relevant membership fees as an Ordinary Member of the College.

5.2.5 **Honorary Membership** is a membership conferred on a person for a specified period by the Board in its absolute discretion, having reference to the person's contribution to mental health nursing or by their indirect or continuing association with the College. Such Honorary Membership shall have Associate Membership status.

- (i) An Honorary Member is entitled to receive all notices of general meeting sent by the College, attend and speak at, but not vote on any motions put before any general meeting of the College.

- (ii) An Honorary Member is entitled to receive such benefits as are determined annually by the Board to apply to an Honorary Member, details of which are available for inspection by a prospective or renewing Honorary Member on the College website or as otherwise advised by the College.

5.2.6 **Life Membership** is a privilege of membership granted by the Board in its absolute discretion without fees to a person for the remainder of their life, for the person's outstanding commitment and sustained contribution to the College.

- (i) A Life Member is entitled to receive all notices of general meeting sent by the College, attend and speak at, and vote on all motions put before any general meeting of the College.
- (ii) A Life Member is entitled to receive such benefits as are determined annually by the Board.

5.2.7 Membership entitlements are not transferable

A right, privilege or obligation of a member, cannot be transferred or transmitted to another person by operation of law or by the act of the member or any other person, and terminates upon cessation of the Member's membership as provided for under this Constitution.

5.2.8 Members' liabilities

The liability of a member towards payment of debts and liabilities of the College or the costs, charges and expenses of winding up of the College is limited to the amount (if any) unpaid by the member in relation to membership obligations to the College as required by Clause 5.3.

5.3 Membership Application and Annual Membership Fee

Membership Application

- 5.3.1 A person may apply to be a Member by submitting the application form approved by the Board and paying the annual membership fee to the College.
- 5.3.2 If a membership application is approved by the College, the applicant will, subject to this Constitution, become a Member.

Annual Membership Fee

- 5.3.3 Each Member must pay the annual membership fee to the College in advance.
- 5.3.4 The annual membership fee, is the fee determined by the Board from time to time.
- 5.3.5 The Board may, at its sole discretion, vary the annual membership fee from time to time.
- 5.3.6 The annual membership fee must be paid:
 - (i) annually in advance; or
 - (ii) in accordance with a payment arrangement (which may include an administration fee) as determined by the Board from time to time.

- 5.3.7 The Board may, at its sole discretion, determine any payment arrangement (which may include an administration fee) for payment of the annual membership fee.
- 5.3.8 The Board may require a person to pay an administration fee if the person pays the annual membership fee in accordance with a payment arrangement determined by the Board.
- 5.3.9 The Board may, at its sole discretion, determine the administration fee payable in relation to a payment arrangement.
- 5.3.10 The College must notify a Member in writing of the due date for the payment of their next year's annual membership fee at least two (2) calendar months before their next year's annual membership fee is due for payment.

5.4 Cessation of Membership

Failure to pay annual membership fee

- 5.4.1 A Member's membership ceases if:
- (i) the Member has not paid their annual membership fee, or an instalment of their annual membership fee within two (2) calendar months of when it is due for payment;
 - (ii) the College has sent a written notice to the Member at least one (1) calendar month after their annual membership fee or an instalment of their annual membership fee was due specifying that their membership will cease if the outstanding payment of their annual membership fee or the instalment of their annual membership fee is not paid within two (2) weeks of the date of the written notice; and
 - (iii) the Member has not paid the outstanding payment of their annual membership fee or the instalment of their annual membership fee within two (2) weeks of the date of the written notice under Clause 5.4.1(ii).

Resignation

- 5.4.2 A Member may resign as a Member by giving the College a written notice that they wish to resign as a Member at least thirty (30) days prior to the due date for payment of their next year's annual membership fee.

Expulsion

- 5.4.3 The Board may require a member to resign, seek expulsion, or suspension of membership for a period of time if the Board considers that the member has persistently and willfully acted in a manner prejudicial to the interests of the College or has persistently and willfully refused or neglected to comply with the provisions of this Constitution, any By-laws and any College policies which apply to the member.
- 5.4.4 A decision concerning the conduct of a member will be made by a majority vote at a meeting of the Board especially called to deal with such matters.
- 5.4.5 Such a member shall be entitled to one (1) month written notice before a meeting especially convened to deal with his or her conduct. The member is entitled, either in person or in writing, to represent himself or herself and to have another member present

(or if required by law, legal representation) to provide support and/or provide an explanation at such meeting.

5.5 Appeal against Expulsion or Termination of Membership

5.5.1 A person whose membership has been suspended or terminated may, within one (1) month of receiving written notification thereof, lodge with the Board a written notice of the person's intention to appeal against the decision of the Board.

5.5.2 Upon receipt of notification of intention to appeal against the suspension or termination of membership, the Board must convene an appeal process prescribed by the Constitution or By-laws within three (3) months.

5.6 Dispute Resolution

5.6.1 Disputes between members will be managed according to the College's member's dispute resolution policy.

5.7 Outstanding Payment of Annual Membership Fee or Instalments

Payment of Annual Membership Fee

5.7.1 If a Member ceases to be a Member for any reason, subject to Clause 5.7.3, a Member must immediately pay to the College:

- (i) all outstanding payments of the annual membership fee; and
- (ii) all outstanding and any future instalments of the annual membership fee and administration fee, that relate to their current year's membership.

5.7.2 The amounts owing under Clause 5.7.1 are a debt immediately due and payable by the Member to the College.

5.7.3 Notwithstanding anything in this Constitution, if a Member ceases to be a Member for any reason, the Board may, at its sole discretion, waive any:

- (i) outstanding payments of the annual membership fee; or
- (ii) outstanding or future instalments of the annual membership fee and administration fee.

6. STRUCTURE OF THE COLLEGE

6.1 The College shall consist of a National Office situated in any place as the Board shall determine and have Branches in each of the States or Territories established to represent members in particular areas or sectors within each State or Territory in accordance with the Constitution and any By-laws.

6.2 Branches

6.2.1 Branches shall be known as "Australian College of Mental Health Nurses ('Branch name' Branch)".

- 6.2.2 Where a branch is established, it shall make decisions relating to the affairs of the branch, but shall be subject to the Board in matters affecting more than one Branch or the interests of the College as a whole including overall strategic direction and policy of the College which must be followed by all Branches.
 - 6.2.3 All branches of the College shall operate in accordance with this Constitution, any By-laws and any policies approved by the Board from time to time. A Branch may not become an incorporated body.
 - 6.2.4 All branch finances are to be managed in accordance with established financial By-laws.
 - 6.2.5 Where or whenever a branch is dissolved, all property and assets of the branch (including records, documents and minutes) remain the property of the College and will be returned to the National Office.
 - 6.2.6 A branch cannot be dissolved until the outgoing Branch Chair has arranged for the transfer of funds and assets to the National Office.
- 6.3 Special Interest Groups
- 6.3.1 Special Interest Groups shall be known as “Australian College of Mental Health Nurses (“Special Interest Group name’ Special Interest Group)”.
 - 6.3.2 Provisions under Clauses 6.2.2, 6.2.3, 6.2.4, 6.2.5 and 6.2.6 shall also apply to Special Interest Groups.
 - 6.3.3 The Board shall endorse the establishment of Special Interest Groups and may determine the criteria for guidelines for Special Interest Groups.

7. GOVERNING BODY

7.1 Board

The affairs of the College shall be managed by the governing body, the Board (“the Board”).

7.2 Constitution of the Board and Election, Nomination and appointment of Directors

7.2.1 The Board shall be comprised of a maximum of nine (9) persons (Directors) as follows:

- (i) the President and five (5) Directors, who shall be **elected** by the members by a vote using the procedure and in the manner and timing as determined by the Board from time to time;
- (ii) one Director who shall be a person **nominated** by the Council of Branches; and
- (iii) up to two (2) additional co-opted Directors **appointed** by the Board. Such Directors may be any persons (including members or non-members but excluding persons currently employed by the College) considered to be fit and proper persons and to have specific skills, experience and expertise deemed necessary for effective Board functioning and in meeting the College’s purpose and objectives as determined by the Board from time to time.

Note: All Directors, whether elected, nominated or appointed, must act as individuals and are NOT to act as a "representative" of any individual Member or Member constituent group and as such **must act in the best interests, and for the benefit of the Association as-a-whole**, by promoting the furtherance of its objects, and not in the interests of other bodies or persons and not allow personal interests or the interest of any associated bodies or persons to conflict with the interests of the Association.

7.2.2 Only Ordinary Members, Fellows and Life Members of the College are eligible to become Directors pursuant to Clause 7.2.1(i) and (ii).

7.2.3 The Association intends that the Board, to the extent possible, includes Directors that have a mix of **skills and attributes**, as prescribed by the Board from time to time, that are commensurate with those expected of a person to adequately govern an entity of similar size and complexity and to fulfil the duties pursuant to Clause 7.2.4.

7.2.4 In relation to their **duties**, Directors shall be and are required to:

- (i) act in good faith, in the best interest of the Association and for a proper purpose;
- (ii) not improperly use their position to gain advantage for themselves or someone else or cause detriment to the Association;
- (iii) not improperly use information obtained as a director to gain advantage for themselves or someone else or cause detriment to the Association;
- (iv) give, pursuant to Clause 7.6, other directors notice of a material personal interest in a matter that relates to the affairs of the company;
- (v) use reasonable care and diligence in the exercise of their powers;
- (vi) monitor and understand the financial position to ensure the maintenance of proper financial records and statutory financial reporting and that the Association does not trade while insolvent;

pursuant to the Act, this Constitution, the principle of common law and equity, and any relevant statute law.

7.3 Duties of Office Bearers

The President

7.3.1 The **President of the College** shall be elected by the members as President and ipso facto a Director (pursuant to Clause 7.2.1(i)) who has the same tenure as any other Director and who will hold office until the third Annual General Meeting but is eligible for re-election pursuant to Clause 7.4.1 but must retire pursuant to Clause 7.4.2.

- (a) If the President **retires** as a Director or otherwise **ceases** to be a Director (pursuant to Clause 7.5.1) or otherwise **resigns** or is removed from the position of President (pursuant Clause 7.3.4 and 7.3.5) at any time during their tenure, the person ceases to be the President, and the Vice-President shall perform the duties of the President subject to Clause 7.3.1(d) and 7.3.2(c). Note that should the President retire as, or cease to be a Director and thereby create a casual vacancy of a Director, the Board may act pursuant to Clause 7.5.11.

- (b) A person who is elected President is, for the purposes of this Constitution, first and foremost a Director who, in addition to their Director role, shall also as President, have all the corresponding authorities, powers, functions, responsibilities delegated in this Constitution and those further delegated by the Board and shall ensure the provision of the Constitution, any By-laws and any Board policies are complied with, noting that the Board may, subject to this Constitution, determine, or vary any determination of, the authorities, powers, functions, responsibilities of the President and may delegate any of its powers to the President for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the President.
- (c) The President of the College shall preside as chair at general meetings and meetings of the Board and shall conduct all meetings in accordance with any By-laws determined by the Board and shall exercise control of meetings at which he/she presides and shall use all necessary lawful powers to secure and enforce order and expedition in the conduct of the business and good order of the members and shall preserve order thereat, and upon the minutes being confirmed, sign the minutes of the relevant meeting within one month of the conclusion of the meeting and arrange for the signed minutes to be entered into the minute register.
- (d) In the temporary absence or unwillingness to act by, or otherwise in the vacancy of office of the President, the Vice-President shall perform the duties of the President for that temporary period, or in the case of a vacancy, until the next Annual General Meeting at which time the members shall elect a President pursuant to Clause 7.2.1(i).

The Vice-President

7.3.2 At the first meeting of the Board after the Annual General Meeting in each year, the Board may elect, by simple majority, one of the Directors from among their number to the office of **Vice-President**. The Vice-President will hold office until the next Annual General Meeting but is eligible for re-election.

- (a) If the Vice-President **retires** as a Director or otherwise **ceases** to be a Director (pursuant to Clause 7.5.1) or otherwise **resigns** or is **removed** from the position of Vice-President (pursuant Clause 7.3.4 and 7.3.5) at any time during their tenure, the person ceases to be the Vice-President, at which time the Board may elect by simple majority a replacement from eligible Directors pursuant to the eligibility in Clause 7.3.2, as it sees fit, to serve the remaining term of that Vice-President until the next Annual General Meeting but the replacement is eligible for re-election. Note that should the Vice-President retire as, or cease to be a Director and thereby create a casual vacancy of a Director, the Board may act pursuant to Clause 7.5.11.
- (b) The person elected Vice-President is, for the purposes of this Constitution, first and foremost a Director who, in addition to their Director role, shall also as Vice-President, have all the corresponding authorities, powers, functions, responsibilities delegated in this Constitution and those further delegated by the Board, noting that the Board may, subject to this Constitution, determine, or vary any determination of, the authorities, powers, functions, responsibilities of the Vice-President and may delegate any of its powers to the Vice-President for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to the Vice-President.
- (c) The Vice-President shall perform the duties of the President in his/her temporary absence or unwillingness to act by, or otherwise in the vacancy of office of the

President, in accordance with this Constitution and any By-laws determined by the Board and subject to Clause 7.3.1(d).

- 7.3.3 A Director is not eligible to simultaneously hold more than one position as an Office Bearer on the Board, as defined in Clause 7.3.1 or 7.3.2.
 - 7.3.4 A Director who is elected or appointed as an Office Bearer pursuant to Clauses 7.3.1 or 7.3.2 may **resign** from that position at any time by notice in writing to the Board without resigning from the position of Director.
 - 7.3.5 An Office Bearer may be **removed** from office by a two thirds majority vote of Directors at their absolute discretion at any time.
- 7.4 Terms of Office of Directors
- 7.4.1 All Directors elected, nominated or appointed pursuant to Clause 7.2.1 (but excluding those appointed as a casual vacancy pursuant to Clause 7.5.11) will hold office for a term of three (3) years at which time they must retire but are eligible for re-election, re-nomination or re-appointment for another (second) term of office of three (3) years.
 - 7.4.2 At the completion of a second term of office of three (3) years [i.e. a continuous period of six years], a Director elected, nominated or appointed pursuant to Clause 7.2.1 who has held office pursuant to Clause 7.4.1, must stand down from office for at least two (2) years, after which time they may be again eligible to be either elected, nominated or appointed pursuant to Clause 7.2.1 and serve a term of office as a Director pursuant to Clause 7.4.1.
 - 7.4.3 At each Annual General Meeting any Director appointed by the Directors to fill a **casual vacancy** during the previous year, pursuant to Clause 7.5.11, must retire but is eligible to be elected, nominated or appointed pursuant to Clause 7.2.1 and serve a term of office as a Director pursuant to Clauses 7.4.1 and 7.4.2, noting that their period filling a casual vacancy does not count towards the terms of office pursuant to Clauses 7.4.1 and 7.4.2.
- 7.5 Vacancies –Directors: A vacancy in the office of a Director happens if the Director ~
- 7.5.1 dies; or
 - 7.5.2 ceases to be a member of the College (if this is a pre-requisite for holding office in accordance with Clause 7.2.2);
 - 7.5.3 resigns the office; or
 - 7.5.4 is removed from office by resolution of the Members entitled to attend and vote in General Meeting;
 - 7.5.5 becomes a bankrupt under the Bankruptcy Act 1966 (Cwth); or
 - 7.5.6 is disqualified from office under section 30 of the Act; or
 - 7.5.7 is absent without the consent of the Board for three (3) consecutive meetings of the Board;
 - 7.5.8 retires pursuant to Clause 7.4.1, or ceases to hold office under Clause 7.4.3, and is not re-elected, re-nominated or re-appointed;

- 7.5.9 is, or becomes a paid employee (whether full-time or part-time) of, or holds paid employment in the Association or of any related body corporate of the Association (noting that acting as a volunteer worker, or engaged in a voluntary capacity or position within the Association, does not disqualify a person from being a Director of the Association);
- 7.5.10 in the opinion of the Board, is:
- (i) in breach of, infringes, or has refused or wilfully neglected to comply with a provision of this Constitution or a provision of any governing policies, guidelines, procedures, protocols, practices or processes prescribed by the Board from time to time (pursuant to their powers under Clause 22); or
 - (ii) by conduct, act or omission appears to the majority of Directors to be prejudicial to the interests or reputation of the Association or is not consistent with the aims, objectives and values of the Association;

a two thirds majority of Directors at a meeting of the Directors specifically called for that purpose may suspend that Director from office, and that Director during the period of suspension shall forego his responsibilities as a Director.

Within 14 days of the suspension, the Directors must give notice of a General Meeting, at which the Members, by a poll of Members, may either confirm the suspension and remove the Director from office or annul the suspension and reinstate the Director.

- 7.5.11 In the event of a **casual vacancy** of a Director ~
- (a) who was elected or appointed pursuant to Clauses 7.2.1(i) or 7.2.1(iii), the Board may appoint, as a casual vacancy, a replacement eligible person to serve until the next Annual General Meeting at which time they may be eligible for election or appointment pursuant to Clause 7.2.1(i) or 7.2.1(iii) and may serve a term of office as a Director pursuant to Clauses 7.4.1 and 7.4.2;
 - (b) who was nominated to the position by the Council of Branches pursuant to Clause 7.2.1(ii), the replacement shall be appointed by the Council of Branches in accordance with this Constitution and any By-laws to serve until the next Annual General Meeting at which time they may be eligible for nomination pursuant to Clause 7.2.1(ii) and may serve a term of office as a Director pursuant to Clauses 7.4.1 and 7.4.2.
- 7.5.12 Any person appointed or nominated to the Board as a casual vacancy pursuant to Clause 7.5.11 is eligible for election, nomination or appointment pursuant to Clause 7.2.1 in his or her own right at their retirement at the next Annual General Meeting following their casual appointment and may serve a term of office as a Director pursuant to Clauses 7.4.1 and 7.4.2.
- 7.5.13 In the event of an elected Director position pursuant to Clause 7.2.1(i) not being filled upon a new Board taking office, an eligible member may be appointed as a casual appointee by the Board and shall hold office as a casual vacancy pursuant to Clause 7.5.11 (a).
- 7.5.14 In the event of the number of Directors on the Board being reduced to three (3) or less Directors, then the remaining Directors shall forthwith appoint replacement Directors

pursuant to Clause 7.5.11 up to or exceeding four (4) in total, which will have and may exercise the powers of the Board until a new Board is elected, in accordance with this Constitution.

7.6 Managing Conflicts of Interests

- 7.6.1 Neither a Director nor a member of staff or management may be present during discussions nor if a Director, vote or form part of a quorum at any Board meeting if the person has a direct or indirect interest in any contract or proposed contract with, or will directly or indirectly receive a material benefit from, the College, and if the Director does vote, the Director's vote must not be counted.
- 7.6.2 Clause 7.6.1 also applies to the extent that no Director or member of staff or management may participate in any online, verbal or written discussions before any decision is made by the Board in person or by written resolution or by any technological means to pass resolutions of the College permitted under this Constitution or at law.
- 7.6.3 Upon election or appointment to the Board or appointment as an employee of the College all Directors and members of staff and management must disclose any matters in which they have or may have a direct or indirect interest and continue to do so from time to time as any such interest arises.
- 7.6.4 All such disclosures shall be forwarded to the chair of the Board and tabled at the next Board meeting after such disclosure arises in the form determined by the Board from time to time.
- 7.6.5 Any contract or benefit approved by the Board or by management in favour of the interested Director, member of staff or management shall, subject to the Act and the rights of third parties, be voidable at the option of the College should it be discovered after the approval that the above procedures in this Clause 7.6 have not been followed and in particular, there has been a failure to make full disclosure of the nature and extent of the conflict or benefit prior to any approval being given.

8. POWERS AND ROLE OF THE BOARD

8.1 The Board ~

- (a) is responsible for the direction, control and management of the business of the College in the pursuit of the furtherance of the objects of the Association, and may exercise, to the exclusion of the Association in General Meeting, all powers of the Association which are not, by the law or this Constitution, required to be exercised by the Association in General Meeting, provided that no resolution of the Association in General Meeting shall invalidate any prior act of the Board;
- (b) subject to the Act and this Constitution, has power to perform all such acts and do all such things as appear to the Board to be necessary or desirable for the proper direction, control and management of the affairs of the Association.

8.2 The Board may **delegate** any of its powers and duties to ~

- (i) a committee of the Board, made up of at least one Director along with other persons not Directors (if thought necessary and desirable), as the Board sees fit, noting that appointment

to a committee under this provision shall not mean that non-member persons so appointed become by virtue of such appointment, members of the College;

- (ii) a Director (including an Office Bearer);
- (iii) an employee of the Association; or
- (iv) any other person;

deemed by the Board to be reliable and competent to fulfil the power or duty and noting that the Directors are responsible for the exercise of the power by the delegate as if the power had been exercised by the Directors themselves.

8.3 Any committee so formed pursuant to Clause 8.2(i) or delegate pursuant to Clauses 8.2(ii), (iii) or (iv) shall, in the exercise of its/their powers so delegated, do so in accordance with any terms of reference or directions of the Board, who may also determine, or vary any determination of, the terms of reference or directions or any other powers, functions, responsibilities of the committee or delegate.

8.4 Execution of Agreement and other Documents.

8.4.1 Any agreement or other instrument may be made or entered into, executed or from time to time altered, amended, varied, modified or cancelled, by or on behalf of the College by the Board and as directed by the Board.

8.5 Board Meetings

8.5.1 The Board shall meet within one month of the completion of the Annual General Meeting and thereafter, as may be decided by the Board provided the Board meets at least three (3) times in each calendar year. Additional meetings may be called by at least fifty percent (50%) of the total number of Directors and may be held in person, or by any other form of telecommunications provided all the Directors are able to participate and be heard during all times during the meeting.

8.5.2 Oral or written notice of a Board meeting must be given by the Secretary to each Director at least forty eight (48) hours (or any other period that may be unanimously agreed on by the Directors) before the time appointed for the holding of the meeting.

8.5.3 Notice of a meeting given under Clause 8.5.2 must specify the general nature of the business to be transacted at the meeting and no business other than that business may be transacted at the meeting.

8.5.4 Any three (3) Directors and the President constitute a quorum for the transaction of the business of a meeting of the Board. If the President is absent, any five (5) Directors constitutes a quorum.

8.5.5 No business may be transacted by the Board unless a quorum is present and, if within half an hour after the time appointed for the meeting a quorum is not present, the meeting stands adjourned and a new meeting date and time will be determined ensuring the meeting proceeds within the next month.

8.5.6 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting is dissolved.

8.5.7 At meetings of the Board, the President or, in the absence of the President, the Vice President subject to Clause 7.3.2(c), presides or if the President and Vice President are absent – one of the remaining Directors may be chosen by the Directors present to preside.

8.6 Voting and Decisions

8.6.1 Questions at any meeting of the Board shall be decided by a majority of votes (i.e. greater than 50%) of the Directors present. Each Director (including Office Bearers) shall be entitled to one vote.

8.6.2 No resolution or decision passed at any meeting of the Board shall be rescinded at any subsequent meeting unless notice of the intention to propose such rescission shall have been given in the notice convening the meeting.

8.6.3 Subject to Clause 8.5.4, the Board may act despite any vacancy on the Board.

8.6.4 Any act or thing done or suffered, or purporting to have been done or suffered, by the Board, is valid and effectual despite any defect that may afterwards be discovered in the appointment or qualification of any Director.

9. DUTIES OF OFFICERS

9.1 Chief Executive Officer

9.1.1 The Chief Executive Officer shall be appointed by the Board to perform such roles, functions, duties and responsibilities and on such terms and conditions (including as to remuneration) as determined by the Board, and may be removed by the Board (subject to the terms of any contract of employment between the Association and the CEO).

9.1.2 The Chief Executive Officer of the College may be a Member of the College, but shall not be eligible to be a Director of the College.

9.2 Secretary

9.2.1 The Board shall appoint a Secretary (who may be either a Director, the Public Officer, an employee, a Member or any other eligible person), who shall hold office for any period to perform such functions as required by this Constitution or any other duties and responsibilities and on such terms and conditions (including as to remuneration- if any) as the Board determines and who may vary or revoke any determination of, the powers, functions, responsibilities of the Secretary.

9.2.2 Subject to any agreement between the Association and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

9.2.3 The person appointed Secretary has all the corresponding authorities delegated in this Constitution and those further delegated by the Board pursuant to Clause 8.2.

9.2.4 The Board may, by resolution, delegate some or all of the above duties to another person pursuant to Clause 8.2 not acting formally as the Secretary of the Association. The Secretary may also, delegate some or all of the above duties, except this power of delegation, to another person from time to time.

9.3 Public Officer

- 9.3.1 A Public Officer (who may be either a Director, the Secretary, an employee, a Member or any other eligible person, i.e. has attained 18 years of age, is a resident of South Australia and has consented to be the Public Officer of the Association) shall be appointed by the Board to discharge and perform all the roles and functions, duties and responsibilities required under the Act, the Associations Incorporation Regulations 2008 and any other relevant bodies.

10. GENERAL MEETING OF THE COLLEGE

10.1 Annual General Meetings

- 10.1.1 The College must, at least once in each calendar year and within five (5) months after the end of each financial year of the College, call an Annual General Meeting of its Members.
- 10.1.2 The Annual General Meeting of the College must be called on the date and at the place and time that the Board considers appropriate.
- 10.1.3 In addition to any other business which may be lawfully transacted at an Annual General Meeting, the business of an Annual General Meeting shall be to:
- (i) confirm the minutes of the last preceding Annual General Meeting and of any general meeting held since that meeting; and
 - (ii) receive reports from the President (on behalf of the Board) and Chief Executive Officer, and from any other officers, committees or Branch as determined appropriate by the Board, on the activities of the College during the last preceding financial year; and
 - (iii) receive and consider the statement of accounts and the reports that are required to be submitted to members under the Act and this Constitution;
 - (iv) announce the election of the President and Directors subject to Clause 7.2.1(i);
 - (v) appoint the Auditor.
- 10.1.4 An Annual General Meeting shall be specified as such in the notice convening it.
- 10.1.5 The Secretary must, at least one (1) calendar month before the date fixed for the holding of the Annual General Meeting, send notice to each member by prepaid post at the member's address appearing in the register of members, specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- 10.1.6 No item of business may be transacted at an Annual General Meeting unless a quorum of members entitled under this Constitution to vote is present during the time the meeting is considering that item.

10.2 Special General Meetings

- 10.2.1 The Board may, whenever it considers appropriate, call a special general meeting of the College.

10.2.2 The Board must, on the requisition in writing of not less than twenty-five percent (25%) of the members call a special general meeting.

10.2.3 A requisition of members for a special general meeting –

(i) must state the purpose or purposes of the meeting; and

(ii) must be signed by the members making the requisition; and

(iii) must be lodged with the Secretary;

(iv) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.

10.2.4 If the Board fails to convene a general meeting within one (1) month after the date on which a requisition of members for the meeting is lodged with the Secretary, any one (1) or more of the members who made the requisition may convene a general meeting to be held not later than three (3) months after that date.

10.2.5 A general meeting convened by a member or members referred to in Clause 10.2.4 shall be convened as nearly as is practicable in the same manner as general meetings are convened by the Board and any member who thereby incurs expense is entitled to be reimbursed by the College for any reasonable expense so incurred.

10.3 General Meetings – Procedures and Other matters

10.3.1 The provisions of this Clause 10.3 shall apply to Annual and Special General Meetings.

Presiding Member

10.3.2 At all general meetings the President, and in his or her absence the Vice President, shall preside as chair of the meeting. If the President and Vice President are absent from a general meeting, the Directors present must elect one of their numbers to preside as chair of the meeting and if no Director is present then the members present must elect one of their numbers to preside as chair of the meeting.

Quorum

10.3.3 Twenty five (25) Ordinary Members, including those present in person and proxies, constitute a quorum for the transaction of the business of a General Meeting.

10.3.4 If a quorum of members is not present within one (1) hour after the time appointed for the commencement of a general meeting, the general meeting shall stand adjourned to the same day in the following week at a time and place to be determined by the Board.

10.3.5 If at the adjourned general meeting a quorum of members is not present within one (1) hour after the time appointed for the start of the meeting, the members present (being not less than ten (10)) constitute a quorum.

Making of decisions

10.3.6 A question arising at a general meeting of the College shall be determined on a show of hands and, unless before or on the declaration of the show of hands a poll is demanded, a

declaration by the person presiding that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority or lost, or an entry to that effect in the minute book of the College, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against that resolution.

10.3.7 At a general meeting of the College, a poll may be demanded by the person presiding or by not less than three (3) members present in person or by proxy at the meeting.

10.3.8 If a poll is demanded at a general meeting, the poll shall be in such manner and at such time before the close of the meeting as the chair directs, and the resolution of the poll on the matter shall be deemed to be the resolution of the meeting on that matter.

10.3.9 The chair alone shall determine whether to adjourn the meeting or to call for a poll.

Voting Rights

10.3.10 Only Ordinary Members, Fellows or Life Members of the College shall have voting rights at General Meetings.

10.3.11 Subject to Clause 10.3.12, on any question arising at a general meeting of the College a member has one (1) vote only.

10.3.12 All votes shall be given personally or by proxy except for the election of the President and five (5) Directors.

10.3.13 Questions at any general meeting shall be decided by a majority of votes (i.e. greater than 50%) of the members present in person or by proxy. In the case of an equality of votes on a question at a general meeting, the motion is lost. The chair is not entitled to exercise a casting vote.

10.3.14 A member is not entitled to vote at any general meeting of the College in person or by proxy unless all money (membership subscription) due and payable by the member to the College has been paid.

Appointment of Proxies

10.3.15 Each member shall be entitled to appoint another member as proxy by notice given to the Secretary no later than twenty four (24) hours before the time of the meeting in respect of which the proxy is appointed.

10.3.16 The notice appointing the proxy is approved by the Board from time to time.

11. CHANGE OF THE CONSTITUTION

11.1 The Constitution of the College may be amended or repealed at any General Meeting called for that purpose, by a majority of not less than three-quarters of such members of the Association as, being entitled to do so, vote in person or by proxy, at that meeting pursuant to s.3(1) ["special resolution"] of the Act, provided that notice of any proposed alteration shall be in writing to all members by the Secretary at least one calendar month prior to that meeting.

12. DISSOLUTION

- 12.1 The College may be dissolved consequent upon the passing of a special resolution of all Ordinary Members, Fellows and Life Members (voting in person or by proxy and who are eligible to vote) at a general meeting convened for this purpose, providing one calendar months' notice in writing (stating the proposed dissolution of the College) to all such voting members.
- 12.2 If upon winding up or dissolution of the College there remains after the satisfaction of all its debts and liabilities any property whatsoever, the same shall not be paid or distributed among the ex-members of the College but shall be transferred to some other institution or institutions having objects similar or in part similar to the objects of the College and which shall also prohibit the distribution of its or their property amongst its or their members. Such institution or institutions shall be determined by the College members, fellows and life members at or before the time of dissolution by special resolution or in default thereof by the Chief Judge of such Court as may have or acquire jurisdiction in this matter.

13. AFFILIATION AND AMALGAMATION

- 13.1 The College may, by resolution of the Board, affiliate or co-operate in any lawful purpose with any other organization,
- 13.2 Any amalgamation with any other organization shall not be effected unless and until a special resolution in favour thereof has been passed by the members at a general meeting.

14. FUNDS - SOURCE

- 14.1 The funds of the College shall be derived from entrance fees, annual subscriptions of members, fees for service, revenue from College functions and programs, donations, bequests, fund raising events government grants, private sponsorships and investments and, subject to any resolution passed by the College in general meeting and subject to section 54 of the Act ("Investing or depositing money with Association"), such other sources as the Board determines.
- 14.2 All money received by the College shall be deposited as soon as practicable and without deduction to the credit of the College's bank account.
- 14.3 The College shall, as soon as practicable after receiving any money, issue an appropriate receipt.

15. MANAGEMENT OF FUNDS

- 15.1 The **funds** of the College shall be used for the furtherance of the purposes and objects of the College in such manner as the Board determines.
- 15.2 All cheques, drafts, bills of exchange, promissory notes and other **negotiable instruments** shall be signed by any two (2) Directors or any two (2) employees or Members of the College authorised to do so by the Board.
- 15.3 The **financial year** shall end on the thirtieth day of June, on which day the accounts of the College shall be balanced.

- 15.4 The Board shall cause proper and accurate written **financial and accounting records** to be kept
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- (a) of all money received and spent by the Association and the matter in respect of which such receipt and expenditure takes place, and of the assets and liabilities of the Association and of all relevant activities involving the Association;
 - (b) in such a manner as will enable true and fair financial statements to be prepared and audited;
 - (c) for at least seven (7) years after the transactions covered by the records are completed.
- 15.5 Immediately after the expiration of each financial year the accounts of the College shall be examined by the College appointed Auditor (if required by legislation or regulation) and the correctness of the balance sheet and statements of receipts and expenditure shall be ascertained by the auditor/s.
- 15.6 Auditor
- 15.6.1 The Auditor shall be nominated and accepted at an Annual General Meeting of the College. The term of the Auditor shall be for two (2) years unless terminated earlier by the Board.
 - 15.6.2 The Auditor shall have access to and examine all books, papers, documents and accounts of the College; may examine any office bearer or officer of the College in regard to the accounts and is hereby authorised to obtain from any bank in which the College has invested or deposited funds a written statement as to the balance of the accounts; they shall also satisfy themselves as to the number of accounts used by the College.
 - 15.6.3 The Auditor shall furnish a written statement that all documents certified are in accordance with the Constitution of the College or if unable to certify to the correctness of a document, report to the Board in what respect they are incorrect.
 - 15.6.4 The Auditor shall have the power to place before the Board any suggestions concerning the financial affairs of the College.
 - 15.6.5 The Auditor in addition to the annual audit shall make such audits as from time to time as may be directed by the Board.
 - 15.6.7 In the event the position of the Auditor becomes vacant for any reason whatsoever including, death, retirement, resignation or termination by the Board, that position for the remaining period of the term shall be filled by appointment by the Board. At the end of the term of the replacement Auditor, a new Auditor shall be appointed by the Members at the Annual General Meeting.

16. COMMON SEAL AND EXECUTION OF DOCUMENTS

- 16.1 If the Association has a common seal, the Association may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by either of:
- (i) two (2) Directors; or
 - (ii) one (1) Director and the Chief Executive Officer; or

(iii) two (2) persons;

as the Board may appoint for that purpose and that witnessing is sufficient for all purposes that was affixed by those signatures by authority of the Board.

16.2 The Association may execute a document without a common seal provided the dealing or deed is signed and attested by the signatures either of:

(i) two (2) Directors; or

(ii) one (1) Director and the Chief Executive Officer; or

(iii) two (2) persons;

as the Board may appoint for that purpose and that attestation is sufficient for all purposes that was affixed by those signatures by authority of the Board.

16.3 The Board may determine the manner in which, and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments [including electronic and internet payments and transfers] in the name of, or on behalf of the Association, and receipts for money paid to the Association, must be signed, drawn, accepted, endorsed or otherwise executed

16.4 The common seal of the College (if any) shall be kept in the custody of the Secretary.

17. CUSTODY OF BOOKS

17.1 Subject to the Act, the Regulations and this Constitution, the Secretary shall keep in his or her custody or under his or her control all records, books, and other documents relating to the College at the National Office, and shall give up those books and records to the Board when so requested.

18. INSPECTION OF BOOKS

18.1 The records, books and other documents of the College shall be open to inspection at a place in the National Office, free of charge, by a member of the College at any reasonable hour but only with the prior permission of the Board.

19. SERVICE OF NOTICE

19.1 A notice may be served by or on behalf of the College on any member either personally or by sending it by post to the member at the member's address shown in the register of members.

19.2 Where a document is sent to a person by properly addressing, prepaying and posting to the person a letter containing the document, the document shall, unless the contrary is proved, be deemed for this Constitution to have been served on the person at the time at which the letter would have been delivered in the ordinary course of post.

20. INCONSISTENCY WITH THE ACT AND INTERPRETATION OF CONSTITUTION

- 20.1 If any provision in this Constitution conflict with any provisions of the Act, the provisions of the Act shall prevail.
- 20.2 Any difference of opinion arising with regard to the interpretation of any part of this Constitution shall be first submitted to the Board, whose decision shall be final, unless Clause 20.3 is enacted.
- 20.3 Each Member submits to the non-exclusive jurisdiction of the courts of South Australia, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to the interpretation of any part of this Constitution.

21. LAW AND INTERPRETATION

- 21.1 The proper law of this Constitution and the interpretation thereof shall be the law of the State of South Australia.

22. BY-LAWS

- 22.1 The Board may (by itself or by delegation) formulate, approve, issue, adopt, interpret and amend such By-laws as it thinks necessary or desirable for the proper advancement, management and administration of the College, in particular:
- (a) the management and good governance of the affairs of the College;
 - (b) the establishment of a credentialing program for the credentialing of mental health nurses by the College; and
 - (c) any other matter the Board considers necessary.
- 22.2 The Board may only make By-laws under Clause 22.1 which are consistent with this Constitution and the Act.
- 22.3 All By-laws made under this Clause 22 are binding on the College and its Member, Directors and office bearers, Board committees and their members, officers, employees, contractors and agents of the Association who shall be bound by and must comply with any by-laws in force from time to time.

23. INDEMNITY AND INSURANCE

- 23.1 To the extent permitted by law, the Association may indemnify each relevant officer against a liability of that person and the legal costs of that person.
- 23.2 The indemnity under Clause 23.1:
- (a) is enforceable without the relevant officer having first to incur any expense or make any payment;
 - (b) is a continuing obligation and is enforceable by the relevant officer even though the relevant officer may have ceased to be an Officer of the Association; and

- (c) applies to liabilities and legal costs incurred both before and after this Clause became effective.
- 23.3 To the extent permitted by law, the Association may make a **payment** (whether by way of advance, loan or otherwise) to a relevant officer **in respect of legal costs** of that person.
- 23.4 To the extent permitted by law, the Association may:
- (a) enter into, or agree to enter into; or
 - (b) pay, or agree to pay, a premium for,
- a contract **insuring** a relevant officer against a Liability of that person and the legal costs of that person. Any such premium in relation to an Officer is in addition to, and not regarded as part of, any remuneration approved by Members under this Constitution.
- 23.5 To the extent permitted by law, the Association may enter into an agreement or deed with a relevant officer or a person who is, or has been, an Officer of the Association or a subsidiary of the Association, under which the Association must do all or any of the following:
- (a) keep books of the Association and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (b) indemnify that person against any liability and legal costs of that person;
 - (c) make a payment (whether by way of advance, loan or otherwise) to that person in respect of legal costs of that person; and
 - (d) keep that person insured in respect of any act or omission by that person while a relevant officer or an Officer of the Association or a subsidiary of the Association, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).