

# UNSA

University of Newcastle Students' Association Ltd

## Constitution of the University of Newcastle Students' Association Ltd

ACN: 641 135 195

ABN: 40 641 135 195

*A company limited by guarantee*

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# Constitution of the University of Newcastle Students' Association Ltd

Date of incorporation: 27 May 2020

## **Preliminary**

### 1 Name of the Company

The name of the company is the University of Newcastle Students' Association Ltd.

### 2 Type of Company

The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a charity.

### 3 Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

### 4 The guarantee

Each member must contribute an amount not more than \$1 to the property of the Company if the Company is wound up while the member is a member, or within 12 months after they stop being a member, and this contribution is required to pay for any:

- (a) debts and liabilities of the Company incurred before the member stopped being a member; or
- (b) costs of winding up.

### 5 Definitions

In this constitution, words and phrases have the meaning set out in clauses 71 and 73.

## **Charitable purposes and powers**

### 6 Object

6.1 The Company's object is to:

- (a) be the peak representative body for students studying at all onshore locations and across all modes of study at the University;
- (b) positively impact the University student experience through identification of issues affecting the education and educational experiences, and the welfare and wellbeing, of University students and to support, lobby for, and represent University students in these matters;
- (c) contribute to a positive University student experience and the development of University students through the provision of a range of activities, extra-curricular events, and out-of-class engagement opportunities; and

- (d) support University students by establishing and maintaining constructive and mutually respectful relationships with the University, and relevant local and national bodies.

6.2 The Company can do anything necessary or incidental to carry out the Company's object in clause 6.1.

## 7 Powers

Subject to clause 8, the Company has the following powers, which may only be used to carry out its purposes set out in clause 6:

- (a) the powers of an individual; and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

## 8 Not-for-profit

8.1 The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 69.

8.2 Clause 8.1 does not stop the Company from doing the following things, provided they are done in good faith:

- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company; or
- (b) making a payment to a member in carrying out the Company's charitable purposes.

## 9 Amending the constitution

9.1 Recommendations for the alteration of this constitution must be submitted by the directors to a General Meeting of members, and subject to clauses 9.2, the Voting Members may amend this constitution by passing a Special Resolution.

9.2 The Voting Members must not pass a Special Resolution that amends this constitution if passing it causes the Company to no longer be a charity.

9.3 Any amendments to this constitution made in accordance with clause 9.1 must be referred by the directors to the University Council, which may approve or disapprove such recommendations. Any amendments to this constitution come into effect only once they have been approved by the University Council.

## Members

### 10 Membership and register of members

10.1 The members of the Company are:

- (a) the Initial Member(s);
- (b) any person that is a current student of the University from time to time who agrees to be a member; and

- (c) any other person that the directors decide to appoint as an Honorary Member, who agrees to be an Honorary Member.

10.2 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:

- (a) for each current member:
  - (i) name;
  - (ii) if they are a Voting Member or an Honorary Member;
  - (iii) address;
  - (iv) any alternative address (including an electronic address) nominated by the member for the service of notices; and
  - (v) the date the member was entered on to the register.
- (b) for each person who stopped being a member in the last seven years:
  - (i) name;
  - (ii) if they were a Voting Member or an Honorary Member;
  - (iii) address;
  - (iv) any alternative address (including an electronic address) nominated by the member for the service of notices; and
  - (v) the dates the membership started and ended.

10.3 The Company must give current members access to the register of members.

10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

## 11 Rules applying to Honorary Members

11.1 Persons that become Honorary Members in accordance with clause 10.1(c) are not entitled to vote on any matter put to the members of the Company.

## 12 When a person becomes a member

Other than Initial Members, a person will become a member when they are entered on the register of members.

## 13 Membership fees

The directors have the power to determine the amount and timing for payment by members of an Annual Membership Fee (if any) for some or all classes of members.

## 14 When a person stops being a member

A person immediately stops being a member if they:

- (a) are not an Honorary Member and cease to be a current student of the University;
- (b) die;
- (c) resign, by writing to the secretary;

- (d) are expelled under clause 16; or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

## **Dispute resolution and disciplinary procedures**

### **15 Dispute resolution**

- 15.1 The dispute resolution procedure in this clause applies to disputes under this constitution between a member or director and:
- (a) one or more members;
  - (b) one or more directors; or
  - (c) the Company.
- 15.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 16 until the disciplinary procedure is completed.
- 15.3 Those involved in the dispute must try to resolve it between themselves within 14 days of knowing about it.
- 15.4 If those involved in the dispute do not resolve it under clause 15.3, they must within 10 days:
- (a) tell the directors about the dispute in writing;
  - (b) agree or request that a mediator be appointed; and
  - (c) attempt in good faith to settle the dispute by mediation.
- 15.5 The mediator must be chosen:
- (a) by agreement of those involved; or
  - (b) by the following, where those involved do not agree:
    - (i) for disputes between members, the directors; or
    - (ii) for all other disputes, either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the Company has its registered office.
- 15.6 A mediator chosen by the directors under clause 15.5(b)(i):
- (a) may be a member or former member of the Company;
  - (b) must not have a personal interest in the dispute; and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 15.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard;
  - (b) allow those involved a reasonable chance to review any written statements;
  - (c) ensure that those involved are given natural justice; and

- (d) not make a decision on the dispute.

## 16 Disciplining members

16.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:

- (a) the member has breached this constitution; or
- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Company.

16.2 At least 14 days before the directors' meeting at which a resolution under clause 16.1 will be considered, the secretary must notify the member in writing:

- (a) that the directors are considering a resolution to warn, suspend or expel the member;
- (b) that this resolution will be considered at a directors' meeting and the date of that meeting;
- (c) what the member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and
- (e) that the member may provide an explanation to the directors, and details of how to do so.

16.3 Before the directors pass any resolution under clause 16.1, the member must be given a chance to explain or defend themselves by:

- (a) sending the directors a written explanation before that directors' meeting; and/or
- (b) speaking at the meeting.

16.4 After considering any explanation under clause 16.3, the directors may:

- (a) take no further action;
- (b) warn the member;
- (c) suspend the member's rights as a member for a period of no more than 12 months;
- (d) expel the member;
- (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause);  
or
- (f) require the matter to be determined at a General Meeting.

16.5 The directors cannot fine a member.

16.6 The secretary must give written notice to the member of the decision under clause 16.4 as soon as possible.

16.7 Disciplinary procedures must be completed as soon as reasonably practical.

- 16.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **General Meetings of members**

### **17 General meetings called by directors**

- 17.1 The directors may call a General Meeting.
- 17.2 If Voting Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the directors must:
- (a) within 21 days of the Voting Members' request, give all members notice of a General Meeting; and
  - (b) hold the General Meeting within two months of the Voting Members' request.
- 17.3 The percentage of votes that Voting Members have (in clause 17.2) is to be calculated as at midnight before the Voting Members request the meeting.
- 17.4 The Voting Members who make the request for a General Meeting must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the Company.
- 17.5 Separate copies of a document setting out the request may be signed by Voting Members if the wording of the request is the same in each copy.

### **18 General meetings called by Voting Members**

- 18.1 If the directors do not call the meeting within 21 days of being requested under clause 17.2, 50% or more of the Voting Members who made the request may call and arrange to hold a General Meeting.
- 18.2 To call and hold a meeting under clause 18.1 the Voting Members must:
- (a) as far as possible, follow the procedures for General Meetings set out in this constitution;
  - (b) call the meeting using the list of members on the Company's member register, which the Company must provide to the Voting Members making the request at no cost; and
  - (c) hold the General Meeting within three months after the request was given to the Company.
- 18.3 The Company must pay the Voting Members who request the General Meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

### **19 Annual General Meeting**

- 19.1 The Annual General Meeting must be held:
- (a) within 18 months after registration of the Company;

- (b) after the first Annual General Meeting, at least once in every calendar year; and
  - (c) in accordance with clause 20.3, on an Academic Day.
- 19.2 Even if these items are not set out in the notice of meeting, the business of an Annual General Meeting may include:
- (a) a review of the Company's activities;
  - (b) a review of the Company's finances;
  - (c) any auditor's report;
  - (d) the election of directors; and
  - (e) the appointment and payment of auditors, if any.
- 19.3 Before or at the Annual General Meeting, the directors must give information to the members on the Company's activities and finances during the period since the last Annual General Meeting.
- 19.4 The chairperson of the Annual General Meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

## 20 Notice of General Meetings

- 20.1 Notice of a General Meeting must be given to:
- (a) each member;
  - (b) each director; and
  - (c) the auditor (if any).
- 20.2 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 20.3 Other than for an emergency meeting, a General Meeting must be called and held on an Academic Day.
- 20.4 Subject to clause 20.5, notice of a meeting may be provided less than 21 days before the meeting if:
- (a) for an Annual General Meeting, all the Voting Members agree beforehand; or
  - (b) for any other General Meeting, Voting Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 20.5 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director;
  - (b) appoint a director in order to replace a director who was removed; or
  - (c) remove an auditor.
- 20.6 Notice of a General Meeting must include:
- (a) 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);

- (b) the general nature of the meeting's business;
- (c) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and
- (d) a form that Voting Members can complete if they wish to vote in writing in advance of the General Meeting.

20.7 If a General Meeting is adjourned for one month or more, the Voting Members must be given new notice of the resumed meeting.

## 21 Quorum at General Meetings

- 21.1 For a General Meeting to be held, 25 Voting Members (a **quorum**) must be present (in person or via technology) for the whole meeting. When determining whether a quorum is present, a person may only be counted once.
- 21.2 No business may be conducted at a General Meeting if a quorum is not present.
- 21.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of General Meeting, the General Meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week;
  - (b) if the time is not specified – the same time; and
  - (c) if the place is not specified – the same place.
- 21.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

## 22 Auditor's right to attend meetings

- 22.1 The auditor (if any) is entitled to attend any General Meeting and to be heard by the Voting Members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 22.2 The Company must give the auditor (if any) any communications relating to the General Meeting that a Voting Member of the Company is entitled to receive.

## 23 Using technology to hold meetings

- 23.1 The Company may hold a General Meeting at two or more venues using any technology that gives the Voting Members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 23.2 Anyone using this technology is taken to be present in person at the meeting.

## 24 Chairperson for General Meetings

- 24.1 The Elected Chairperson will chair General Meetings, subject to clause 24.2.
- 24.2 The Members Present and entitled to vote at a General Meeting may choose another director or Voting Member to be the chairperson for that meeting if:

- (a) the Elected Chairperson is not present within 30 minutes after the starting time set for the meeting; or
- (b) the Elected Chairperson is present but says they do not wish to act as chairperson of the meeting.

## 25 Role of the chairperson

- 25.1 The chairperson is responsible for the conduct of the General Meeting, and for this purpose must give Voting Members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 25.2 The chairperson does not have a casting vote.

## 26 Adjournment of meetings

- 26.1 If a quorum is present, a General Meeting must be adjourned if a majority of Members Present direct the chairperson to adjourn it.
- 26.2 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

## Members' resolutions and statements

### 27 Members' resolutions and statements

- 27.1 Voting Members with at least 5% of the votes that may be cast on a resolution may give:
  - (a) written notice to the Company of a resolution they propose to move at a General Meeting (**Members' Resolution**); and/or
  - (b) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a General Meeting (**Members' Statement**).
- 27.2 A notice of a Members' Resolution must set out the wording of the proposed resolution and be signed by the Voting Members proposing the resolution.
- 27.3 A request to distribute a Members' Statement must set out the statement to be distributed and be signed by the Voting Members making the request.
- 27.4 Separate copies of a document setting out a notice or a request may be signed by Voting Members if the wording is the same in each copy.
- 27.5 The percentage of votes that Voting Members have (as described in clause 27.1) is to be calculated as at midnight before the request or notice is given to the Company.
- 27.6 If the Company has been given notice of a Members' Resolution under clause 27.1(a), the resolution must be considered at the next General Meeting held no more than two months after the notice is given.
- 27.7 This clause does not limit any other right that a Voting Member has to propose a resolution at a General Meeting.

## 28 Company to distribute Members' Resolution or Members' Statement

- 28.1 If the Company has been given a notice or request under clause 27:
- (a) in time to send the notice of Members' Resolution or a copy of the Members' Statement to members with a notice of General Meeting, it must do so at the Company's cost; or
  - (b) too late to send the notice of Members' Resolution or a copy of the Members' Statement to members with a notice of General Meeting, then the Voting Members that proposed the Members' Resolution or made the Members' Statement must pay the expenses reasonably incurred by the Company in giving members notice of the Members' Resolution or a copy of the Members' Statement. However, the Voting Members may subsequently pass a resolution at a General Meeting for the Company to pay these expenses.
- 28.2 The Company does not need to send the notice of Members' Resolution or a copy of the Members' Statement to members if:
- (a) it is more than 1,000 words long;
  - (b) the directors consider it may be defamatory;
  - (c) clause 28.1(b) applies, and the Voting Members that proposed the Members' Resolution or made the Members' Statement have not paid the Company enough money to cover the expenses reasonably incurred by the Company in giving members notice of the Members' Resolution or a copy of the Members' Statement; or
  - (d) in the case of a Members' Resolution, the resolution does not relate to a matter that may be properly considered at a General Meeting or is otherwise not a valid resolution able to be put to the Voting Members.

## 29 Circular Resolutions of Voting Members

- 29.1 Subject to clause 29.3, the directors may put a resolution to the Voting Members to pass a Circular Resolution.
- 29.2 The directors must notify the auditor (if any) as soon as possible that a Circular Resolution has or will be put to Voting Members, and set out the wording of the resolution.
- 29.3 Circular Resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director;
  - (b) for passing a Special Resolution; or
  - (c) where the Corporations Act or this constitution requires a meeting to be held.
- 29.4 A Circular Resolution is passed if all the Voting Members sign or agree to the Circular Resolution, in the manner set out in clause 29.5 or clause 29.6.
- 29.5 Voting Members may sign:

- (a) a single document setting out the Circular Resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 29.6 The Company may send a Circular Resolution by email to Voting Members and Voting Members may agree by sending a reply email to that effect.

## **Voting at General Meetings**

### **30 How many votes a Voting Member has**

Each Voting Member has one vote.

### **31 Challenge to Voting Member's right to vote**

- 31.1 A Voting Member or the chairperson may only challenge a person's right to vote at a General Meeting at that meeting.
- 31.2 If a challenge is made under clause 31.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### **32 How voting is carried out**

- 32.1 At a General Meeting voting must be conducted and decided by:
- (a) a show of hands;
  - (b) a vote in writing; or
  - (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.
- 32.2 Before a vote is taken at a General Meeting, the chairperson must state whether any Early Voting Forms have been received and, if so, how the votes have been cast in these forms.
- 32.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.
- 32.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **33 When and how a vote in writing must be held**

- 33.1 At a General meeting, a vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five Members Present;
  - (b) Members Present with at least 5% of the votes that may be passed on the resolution on the vote in writing (calculated as at the midnight before the vote in writing is demanded); or
  - (c) the chairperson.
- 33.2 A vote in writing must be taken when and how the chairperson directs, unless clause 33.3 applies.
- 33.3 A vote in writing must be held immediately if it is:

- (a) for the election of a chairperson under clause 24.2; or
- (b) to decide whether to adjourn the meeting.

33.4 A demand for a vote in writing may be withdrawn.

## 34 Voting prior to a General Meeting

34.1 A Voting Member may vote on each proposed resolution in advance of a General Meeting by completing an Early Voting Form.

34.2 The Early Voting Form must be signed by the Voting Member and must contain:

- (a) the Voting Member's name and contact details;
- (b) the Company's name;
- (c) the meeting to which their vote relates; and
- (d) their vote with respect to each proposed resolution.

34.3 A completed Early Voting Form must be received by the Company at the Company's registered address or an alternative address (as stated in the notice of General Meeting) at least 48 hours before a meeting.

34.4 A vote by way of a completed Early Voting Form will not be valid if the Voting Member who has submitted the Early Voting Form is present at the General Meeting to which the vote relates.

34.5 Unless the Company receives written notice before the start or resumption of a General Meeting for which an Early Voting Form is received, a vote cast by the Voting Member by way of a completed Early Voting Form is valid even if, before the General Meeting, the relevant Voting Member:

- (a) dies;
- (b) is mentally incapacitated; or
- (c) revokes their Early Voting Form.

## Directors

### 35 Number of directors

35.1 The Company must have at least six and no more than nine directors comprised of:

- (a) the six Student Representatives;
- (b) up to one Community Director appointed by the directors of the Company in accordance with clauses 37.4 and 37.5;
- (c) up to two Independent Directors appointed by the directors of the Company in accordance with clauses 37.4 and 37.5.

### 36 Eligibility for appointment as director

36.1 A person is eligible for election as a director of the Company if they:

- (a) give the Company their signed consent to act as a director of the Company; and

- (b) are not ineligible to be a director under the Corporations Act or the ACNC Act.
- 36.2 A student is not eligible to stand for election as a director of the Company or to hold a position as a director of the Company if they have either:
- (a) a finding of non-academic misconduct upheld against them; or
  - (b) a finding of academic misconduct upheld against them.
- 36.3 The Community Director appointed in accordance with clause 35.1(b) must:
- (a) be a member of the community who is not a student and who is not an employee of the Company; and
  - (b) in the reasonable opinion of the directors making the appointment, have appropriate knowledge and experience of the higher education sector that aligns with the Company's purposes set out in clause 6.
- 36.4 The Independent Directors appointed in accordance with clause 35.1(c) must:
- (a) be members of the community who are not students or employees of the University and who are not employees of the Company; and
  - (b) in the reasonable opinion of the directors making the appointment, have the appropriate skills, knowledge and experience that align with the Company's purposes set out in clause 6.

## 37 Election and appointment of directors

- 37.1 The Initial Directors are the six Initial Student Representatives.
- 37.2 The Initial Student Representatives will be the first Student Representatives.
- 37.3 An Annual Election (or by-election as the case may be) must be held no later than 31 October each year for those positions among the Student Representatives which have become vacant in accordance with the Election Regulations.
- 37.4 The directors at the first directors' meeting which follows the election of the Student Representatives, will consider suitable candidates to become the Independent Directors and Community Director.
- 37.5 The directors may make rules concerning the procedures to be followed for the appointment of Independent Directors and the Community Directors. In the absence of any rules, the appointment of Independent Directors and Community Directors shall be as the directors agree.
- 37.6 If a Student Representative position becomes vacant, a person that meets the eligibility criteria set out in this constitution and any relevant by-laws of the Company can be elected as a Student Representative to fill the casual vacancy by a by-election if it is more than 60 days from the end of the director's term. If it is less than 60 days from the end of the director's term, then no by-election is required.
- 37.7 In the event of a casual vacancy for an Independent Director or Community Director:
- (a) the directors can appoint another person to hold office for the unexpired portion of the predecessor's term of office if it is greater than 60 days; or

- (b) if the vacancy is less than 60 days, then the directors of the Company may lapse the appointment until the end of the term of office.

37.8 If the number of directors is reduced to fewer than three or is less than the number required for a quorum, the continuing directors may act for the purpose of increasing the number of directors to three (or higher if required for a quorum) or calling a General Meeting, but for no other purpose.

37.9 All acts done at any meeting of directors or by any person acting as a director will be valid as if every such person has been duly appointed and every director was qualified and entitled to vote, notwithstanding that it is afterwards discovered that there was some defect in the appointment of a director or that any director was disqualified or not entitled to vote.

## 38 Appointment and role of the Returning Officer

38.1 A Returning Officer will be appointed by the directors of the Company on terms and conditions considered appropriate by the directors, including with respect to any remuneration.

38.2 The Returning Officer will conduct all elections for directors of the Company, other than casual vacancies where there is only one applicant.

## 39 Election of chairperson

The President of the Student Representative Council will be the Company's Elected Chairperson.

## 40 Term of office

40.1 The Student Representatives will hold office for the period of time they are eligible to hold their elected position on the Student Representative Council.

40.2 A person can be appointed as an Independent Director or Community Director for a term of up to two years, as the directors decide, with a maximum of three consecutive terms.

## 41 When a director stops being a director

A director stops being a director if their term ends or if they:

- (a) give written notice of resignation as a director to the Company;
- (b) die;
- (c) are removed as a director by a resolution of the Voting Members;
- (d) are absent for three consecutive directors' meetings without approval from the directors;
- (e) become ineligible to be a director of the Company under the Corporations Act or the ACNC Act; or
- (f) in the case of a Student Representative, are no longer eligible to hold their elected position on the Student Representative Council.

## **Powers of directors**

### **42 Powers of directors**

- 42.1 The directors are responsible for managing and directing the activities of the Company to achieve the purposes set out in clause 6.
- 42.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this constitution, may only be used by members.
- 42.3 The directors must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power under clause 43; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 42.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a Voting Members' resolution at a General Meeting.

### **43 Delegation of directors' powers**

- 43.1 The directors may delegate any of their powers and functions to a committee, working party, project group, director, employee of the Company any other person, including the Professional Manager, as the directors consider appropriate.
- 43.2 The delegation must be recorded in the Company's minute book.

### **44 Student Representative Council**

- 44.1 The directors will establish a Student Representative Council.
- 44.2 The directors will approve terms of reference to govern the Student Representative Council.
- 44.3 The Student Representative Council will comprise the six Student Representatives and any other persons prescribed by the terms of reference.
- 44.4 Subject to the direction and control of the directors, the Student Representative Council has the responsibility to review and make recommendations to the directors on the programs and initiatives that would enhance the University's student experience.
- 44.5 The directors may approve a financial delegation or annual budget to the Student Representative Council in order to fund programs and initiatives for implementation by the Company that would enhance the student experience.

### **45 Payments to directors**

- 45.1 The Company may pay fees to an Independent Director or Community Director for acting as a director as determined by the directors and approved by the Voting Members but must not otherwise pay fees to a director for acting as a director.
- 45.2 The Company may:

- (a) pay any director for work they do for the Company other than as a director, if the amount is no more than a reasonable fee for the work done; or
- (b) reimburse any director for expenses properly incurred by the director in connection with the affairs of the Company.

45.3 Any payment made under clause 45.2 must be approved by the directors.

45.4 The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this constitution.

## 46 Execution of documents

The Company may execute a document without using a common seal if the document is signed by:

- (a) two directors of the Company; or
- (b) a director and the secretary.

## Duties of directors

### 47 Duties of directors

The directors must comply with their duties as directors under legislation and common law, and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:

- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
- (b) to act in good faith in the best interests of the Company and to further the charitable purposes of the Company set out in clause 6;
- (c) not to misuse their position as a director;
- (d) not to misuse information they gain in their role as a director;
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 48;
- (f) to ensure that the financial affairs of the Company are managed responsibly; and
- (g) not to allow the Company to operate while it is insolvent.

47.2 The directors must also:

- (a) conduct themselves in a manner that aligns with the Company's Code of Conduct as issued from time to time by the Company; and
- (b) ensure they and the Company adhere to the requirements for associated entities of the University outlined in the University's Governance Framework for Associated Entities and Third Parties (as amended from time to time by the University).

## 48 Conflicts of interest

- 48.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a Circular Resolution):
- (a) to the other directors; or
  - (b) if all of the directors have the same conflict of interest, to the Voting Members at the next General Meeting, or at an earlier time if reasonable to do so.
- 48.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 48.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a Circular Resolution) must not, except as provided under clause 48.4:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 48.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the Company, and the other members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 66);
  - (c) their interest relates to a payment by the Company under clause 65, or any contract relating to an indemnity that is allowed under the Corporations Act;
  - (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
  - (e) the directors who do not have a material personal interest in the matter pass a resolution that:
    - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company; and
    - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.
  - (f) Notwithstanding any of the requirements outlined above, any conflicts of interest (including any potential or perceived conflict of interest) arising involving any director of the Company, are to be managed in accordance with any requirements in the University's Governance Framework for Associated Entities and Third Parties (as amended from time to time by the University).

## Directors' meetings

### 49 When the directors meet

- 49.1 The directors may decide how often, where and when they meet subject to clause 49.2.
- 49.2 The directors must meet at least six times each calendar year.

### 50 Calling directors' meetings

- 50.1 A director may call a directors' meeting by giving reasonable notice to all of the other directors.
- 50.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

### 51 Chairperson for directors' meetings

- 51.1 The Elected Chairperson will chair directors' meetings, subject to clause 51.2.
- 51.2 The directors at a directors' meeting may choose another one of the Student Representatives to be the chairperson for that meeting if the Elected Chairperson is:
- (a) not present within 30 minutes after the starting time set for the meeting; or
  - (b) present but does not want to act as chairperson of the meeting.

### 52 Quorum at directors' meetings

- 52.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a majority (more than 50%) of directors, at least three of whom must be Student Representatives.
- 52.2 A quorum must be present for the whole directors' meeting.

### 53 Using technology to hold directors' meetings

- 53.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 53.2 The directors' agreement may be a standing one.
- 53.3 A director may only withdraw their consent within a reasonable period before a meeting.

### 54 Passing directors' resolutions

- 54.1 A directors' resolution must be passed by a majority of the votes cast by directors present and entitled to vote on the resolution.
- 54.2 In the case of an equality of votes on a resolution, the Elected Chairperson has a casting vote on the resolution in addition to any vote the Elected Chairperson has as a director.

### 55 Circular Resolutions of directors

- 55.1 The directors may pass a Circular Resolution.

- 55.2 A Circular Resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 55.3 or clause 55.4.
- 55.3 Each director may sign:
- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 55.4 The Company may send a Circular Resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect.
- 55.5 A Circular Resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 55.3 or clause 55.4.

## **Secretary**

### 56 Appointment and role of secretary

- 56.1 The Company must have at least one secretary, who may also be a director.
- 56.2 A secretary must be appointed by the directors (after giving the Company their signed consent to act as secretary of the Company) and may be removed by the directors.
- 56.3 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 56.4 The role of the secretary includes (but is not limited to):
- (a) maintaining a register of the Company's members; and
  - (b) maintaining the minutes and other records of General Meetings (including notices of meetings), directors' meetings and Circular Resolutions.

## **Minutes and records**

### 57 Minutes and records

- 57.1 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of General Meetings;
  - (b) minutes of Circular Resolutions of Voting Members;
  - (c) a copy of a notice of each General Meeting; and
  - (d) a copy of a Members' Statement distributed to Voting Members under clause 28.
- 57.2 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees); and
  - (b) Circular Resolutions of directors.

- 57.3 To allow members to inspect the Company's records:
- (a) the Company must give a member access to the records set out in clause 57.1; and
  - (b) the directors may authorise a member to inspect other records of the Company, including records referred to in clause 57.2 and clause 58.1.
- 57.4 Members of the Student Representative Council that are not directors of the Company may inspect the records set out in clause 57.2 except for any records that contain confidential matters (such as matters related to staff members of the Company including disciplinary and remuneration issues).
- 57.5 The directors must ensure that minutes of a General Meeting or a directors' meeting are signed within a reasonable time after the meeting by:
- (a) the chairperson of the meeting; or
  - (b) the chairperson of the next meeting.
- 57.6 The directors must ensure that a record of a Circular Resolution is signed by a director within a reasonable time after the resolution is passed.

## 58 Financial and related records

- 58.1 The Company must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 58.2 The Company must retain its financial records for at least seven years after completion of the transaction to which the record relates.
- 58.3 The Company must also keep written records that correctly record its operations.

## Rules and regulations

### 59 Rules and regulations

- 59.1 The directors may enact, amend or repeal of rules or regulations to give effect to this constitution, including the Election Regulations.
- 59.2 Members and directors must comply with the rules and regulations as if they were part of this constitution.

## Notice

### 60 What is notice

- 60.1 Anything written to or from the Company under any clause in this constitution is written notice and is subject to clauses 61 to 63, unless specified otherwise.
- 60.2 Clauses 61 to 63 do not apply to an Early Voting Form under clause 34.3.

## 61 Notice to the Company

Written notice or any communication under this constitution may be given to the Company, the directors or the secretary by:

- (a) delivering it to the Company's registered office;
- (b) posting it to the Company's registered office or to an alternative address notified by the Company to the members as the Company's alternative address; or
- (c) sending it to an electronic address notified by the Company to the members as the Company's electronic address.

## 62 Notice to members

62.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person;
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
- (c) sending it to an electronic address nominated by the member as an alternative address for service of notices (if any); or
- (d) if agreed to by the member, by notifying the member at an electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

62.2 If the Company does not have an address for the member, the Company is not required to give notice in person.

## 63 When notice is taken to be given

A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 62.1(d) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

### 64 Company's financial year

The Company's financial year is from 1 January to 31 December, unless the directors pass a resolution to change the financial year.

## **Indemnity, insurance and access**

### **65 Indemnity**

- 65.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.
- 65.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.
- 65.3 In this clause, 'to the relevant extent' means:
- (a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so; and
  - (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).
- 65.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company.

### **66 Insurance**

To the extent permitted by law (including the Corporations Act), and if the directors consider it appropriate, the Company may pay or agree to pay a premium for a contract insuring 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.

### **67 Directors' access to documents**

- 67.1 A director has a right of access to the financial records of the Company at all reasonable times.
- 67.2 If the directors agree, the Company must give a director or former director access to:
- (a) certain documents, including documents provided for or available to the directors; and
  - (b) any other documents referred to in those documents.

## **Winding up**

### **68 Surplus Assets not to be distributed to members**

If the Company is wound up, any Surplus Assets must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in clause 69.1.

### **69 Distribution of Surplus Assets**

- 69.1 Subject to the Corporations Act, any other applicable legislation and any court order, any Surplus Assets that remain after the Company is wound up must be distributed to one or more charities:

- (a) with charitable purposes similar to, or inclusive of, the purposes in clause 6;
  - (b) which also prohibit the distribution of any Surplus Assets to its members to at least the same extent as the Company; and
  - (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth) or other applicable law.
- 69.2 If the Company is not a deductible gift recipient when it is wound up, the Company does not need to comply with clause 69.1(c).
- 69.3 The decision as to the charity or charities to be given the Surplus Assets must be made by a Special Resolution of Voting Members at or before the time of winding up. If the Voting Members do not make this decision, the Company may apply to the Supreme Court to make this decision.

## Revocation of deductible gift recipient endorsement

### 70 Revocation of the Company's deductible gift recipient endorsement

- 70.1 If the Company is endorsed as a deductible gift recipient and that is revoked (whether or not the Company is to be wound up or dissolved) any surplus of the following assets must be transferred to one or more charities that meet the requirements of clauses 69.1(a), to 69.1(c) as decided by the directors:
- (a) gifts of money or property for the principal purposes of the Company;
  - (b) contributions made in relation to an eligible fundraising event held for the principal purpose of the Company; and
  - (c) money received by the Company because of such gifts and contributions which are unspent.

## Definitions and interpretation

### 71 Definitions

In this constitution:

**Academic Day** means a day during the week, Monday to Friday, which is not within a Voting Members' University examination period, recess period or vacation period.

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

**Annual Election** means the annual election of the Student Representatives held in accordance with the Election Regulations.

**Annual General Meeting** means the General Meeting held annually pursuant to clause 19.1.

**Annual Membership Fee** means the annual fee (if any) determined by the directors in accordance with clause 13.

**Circular Resolution** means a resolution of Voting Members or directors passed without a meeting being held in the manner outlined in clause 29 (for Voting Members' resolutions) or clause 55 (for directors' resolutions).

**Company** means the company referred to in clause 1.

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

**Early Voting Form** means the form referred to in clause 20.6(d).

**Elected Chairperson** means a person elected by the directors to be the Company's chairperson under clause 38.

**Election Regulations** means the regulations for the conduct of the election of the Student Representatives, adopted from time to time by the directors in accordance with clause 59.

**General Meeting** means a meeting of members.

**Honorary Member** means a person that is not a current student of the University to whom the directors have conferred membership of the Company;

**Initial Director** means a person who is named in the application for registration of the Company, with their consent, as a proposed director of the Company in accordance with clause 35.1.

**Initial Member** means a person who is named in the application for registration of the Company, with their consent, as a proposed member of the Company.

**Initial Student Representatives** means the six students who hold the following positions on the Student Advisory Council at the time of incorporation of the Company:

- (a) President;
- (b) Vice-President Education;
- (c) Vice-President Engagement & Experience;
- (d) Vice-President Welfare & Wellbeing;
- (e) International Students' Senate Convenor; and
- (f) Postgraduate Students' Senate Convenor.

**Members Present** means, in connection with a General Meeting, each Voting Member present in person at the venue or venues for the meeting, or via technology as allowed under this constitution.

**Members' Resolution** has the meaning given to that term in clause 27.1(a).

**Members' Statement** has the meaning given to that term in clause 27.1(b).

**Professional Manager** means the person employed to fulfil the duties including day-to-day responsibility for operations and staff management.

**Student Advisory Council** means the committee established by the Vice-Chancellor of the University on 14 March 2017, which will be dissolved once the Student Representative Council has been established by the directors pursuant to clause 44.

**Student Representatives** means the six students elected to the following roles on the Student Representative Council from time to time:

- (a) President;
- (b) Vice-President Education;
- (c) Vice-President Engagement & Experience;
- (d) Vice-President Welfare & Wellbeing;
- (e) International Students' Senate Convenor; and
- (f) Postgraduate Students' Senate Convenor.

**Student Representative Council** means the committee established by the directors pursuant to clause 44.

**Special Resolution** means a resolution:

- (a) of which notice has been given under clause 20.6(c); and
- (b) that has been passed by at least 75% of the total votes cast early pursuant to clause 34 and Members Present and entitled to vote on the resolution.

**Surplus Assets** means any assets of the Company that remain after paying all debts and other liabilities of the Company, including the costs of winding up.

**University** means the University of Newcastle.

**University Council** means the governing council of the University.

**Voting Members** means any member that is not an Honorary Member.

## 72 Reading this constitution with the Corporations Act

- 72.1 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 72.2 While the Company is registered as a charity, the ACNC Act and the Corporations Act override any clauses in this constitution which are inconsistent with those Acts.
- 72.3 If the Company is not registered as a charity, the Corporations Act overrides any clause in this constitution which is inconsistent with the Corporations Act.
- 72.4 A word or expression that is defined in the Corporations Act, or used in that Act and covering the same subject, has the same meaning as in this constitution.

## 73 Interpretation

In this constitution:

- (a) the words "including", "for example", or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression; and

- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).