
Corporations Act
A Company limited by guarantee

**Constitution of Australian
Dental Association (New
South Wales Branch)
Limited (ACN 000 021 232)**

Date of Approval 29 September 2017

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Constitution of Australian Dental Association (New South Wales Branch) Limited (ACN 000 021 232)

1. Preliminary

1.1. Replaceable rules

All of the replaceable rules set out in the Act which the Association is entitled to displace, are displaced by the rules set out in this Constitution.

1.2. Definitions

The following expressions in this Constitution have the meaning below:

- (a) *Act* means the Corporations Act 2001 (Commonwealth) or any statutory modification, amendment or re-enactment in force and any reference to any section, part or division is to that provision as so modified, amended or enacted;
- (b) *Association* means Australian Dental Association (New South Wales Branch) Limited;
- (c) *Auditor* means the auditor for the time being of the Association;
- (d) *Board* means the board of Directors of the Association;
- (e) *Business Days* means days on which trading banks are open for ordinary business in Sydney;
- (f) *By-Laws* means the By-Laws of the Association as created or amended from time to time;
- (g) *Chief Executive Officer* means the Chief Executive Officer of the Association, from time to time, appointed by the Board under **rule 9.1**;
- (h) *Constitution* means this constitution of the Association and the By-Laws, and any supplementary, substituted or amended constitution for the time being in force;
- (i) *Council* means the Council of the Association;
- (j) *Council Chair* means the person elected pursuant to **rule 15.6(a)**;
- (k) *Council Member* means any person formally and lawfully appointed as a Council Member of the Association;

- (l) *Director* means any person appointed as a director of the Association;
- (m) *Effective Time* means completion of the meeting of Members at which they resolved to adopt this document as the Constitution of the Association;
- (n) *Material Personal Interest* has the same meaning as given in the Act;
- (o) *Members* means the persons who for the time being are members of the Association and whose names are entered in the Register as members, *Member* means any one of them and *Membership* has a corresponding meaning;
- (p) *Office* means the registered office from time to time of the Association;
- (q) *Prior Constitution* means the Constitution governing the Association immediately prior to the adoption of this document;
- (r) *Register* means the register of Members of the Association to be kept in accordance with the Act; and
- (s) *Secretary* means any person appointed to perform the duties of a secretary of the Association.

1.3. Interpretation

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include any gender.
- (c) Words or expressions defined in the Act have those meanings.
- (d) Except so far as the contrary intention appears in this Constitution, an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Act, the same meaning as in that provision of the Act.
- (e) Headings are for convenience only, and do not affect interpretation.
- (f) A reference to:
 - (i) a party includes its administrators, successors, substitutes by novation and assigns;

- (ii) any legislation includes legislation varying, consolidating or replacing that legislation and includes all regulations or other instruments issued under that legislation;
- (iii) a person includes a body incorporated or unincorporated, partnership or any legal entity; and
- (iv) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated.

1.4. Transitional issues

- (a) This document has effect from the Effective Time, at which time it replaces the Prior Constitution and the Prior Constitution ceases to have effect.
- (b) Irrespective of the cessation of the Prior Constitution, all By-Laws in force at the Effective Time continue until repealed or varied.
- (c) Notwithstanding any provision to the contrary in this Constitution, following the adoption of this Constitution:
 - (i) The current Council Members shall remain in office until the end of the 2016 annual general meeting;
 - (ii) any term of office served by a Council Member up to the 2016 annual general meeting shall not be counted towards the maximum consecutive terms specified in **rule 13.6**;
 - (iii) Council Members from the 2016 annual general meeting onwards will be appointed in accordance with the provisions of **rule 13** up to a maximum of 17 Council Members;
 - (iv) at the second 2015 Council meeting after the 2015 annual general meeting the Council will appoint the Board in accordance with the provisions of **rule 14**.

2. Association

2.1. Association limited by guarantee

The Association is a company limited by guarantee pursuant to the Act.

2.2. Restriction on shares

The Association does not have the power to issue or allot shares or securities of any kind.

2.3. Non-profit

- (a) The income, property, profits and financial surplus of the Association, whenever derived, must be applied solely towards the promotion of the objects of the Association as set out in this Constitution.
- (b) The Association is a non-profit organisation and must not carry on business for the purpose of profit or gain to its Members. Further, no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, the Council Members, the Directors, or their relatives, except as provided by this Constitution.
- (c) Nothing in this Constitution prevents:
 - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or employee of the Association, or to any Member, Council Member or Directors of the Association, in return for any services actually rendered to the Association or for goods supplied in the ordinary and usual course of business;
 - (ii) the payment of interest at the rate not exceeding interest at the minimum rate for the time being charged by the Association's bankers for overdrawn accounts of a similar amount on money borrowed from a Director, Council Member or a Member; or
 - (iii) payment of reasonable and proper rent for premises let by any Director, Council Member or Member to the Association.

2.4. No distribution of profits to Members on winding up

- (a) If the Association is wound up or dissolved, the assets and property available for distribution after satisfaction of all debts and liabilities are to be given or transferred to some other institution or institutions:
 - (i) having objects similar to the objects of the Association; and
 - (ii) whose constitution prohibits the distribution of its income and property to an extent at least as great as that imposed by this Constitution.

- (b) The Directors may determine the identity of the institution or institutions for the purpose of **rule 2.4(a)** at the time of dissolution. If the Directors fail to determine the identity of the institution or institutions under this **rule 2.3(b)**, the Supreme Court of New South Wales may make that determination.

3. Guarantee of Members

In the event that the Association is wound up, each Member undertakes to contribute a maximum of \$10 to the Association for payment of:

- (a) the debts and liabilities of the Association;
- (b) the costs, charges and expenses of any winding up; and
- (c) the adjustment of the rights of Members among themselves,

while the Member is a Member or within 1 year after the Member ceases to be a Member.

4. Objects of the Association

The objects of the Association are:

- (a) the promotion of the dental and allied sciences;
- (b) the maintenance and enhancement of the honour of the dental profession;
- (c) the promotion of dental health in the community; and
- (d) the improvement of the knowledge and capabilities of all dental health providers.

5. Legal scope of the Association's powers

Subject to **rules 2, 3, 4** and **6**, in pursuing the objects of the Association, the Association has, both within Australia and outside Australia, the legal capacity of a natural person and all the powers provided by the Act.

6. Income and property

6.1. Application of income and property

The income and property under the control of the Association must be applied in and towards the promotion and achievement of the objects of the Association as set out in

this Constitution, and no portion will be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise to the Members, Directors or Council Members.

6.2. Travel expenses for Directors and Council Members

Notwithstanding **rule 6.1**, the Association may pay in good faith reasonable travelling and other expenses properly incurred by any Director or Council Member of the Association:

- (a) in attending and returning from:
 - (i) meetings of the Directors or Council Members;
 - (ii) meetings of any committee of the Directors or Council Members; or
 - (iii) general meetings of the Association,in accordance with any travel guidelines the Board may establish; or
- (b) otherwise in connection with the business of the Association.

7. Membership

7.1. Number of Members

- (a) There must be at least 1 Member.

7.2. Admission to Membership

- (a) The persons who are admitted to Membership of the Association by the Board will be Members of the Association and will be deemed to be bound by this Constitution.
- (b) Any person becoming a Member of the Association must pay to the Association the then current subscription fee (if any).

7.3. Board may establish categories of Members and other Membership matters

Subject to the Corporations Act and **rule 8.2**, the Board may by By-Law:

- (a) establish different categories of Membership;
- (b) prescribe the admission process, qualifications, rights and privileges and subscription fees (if any) of persons to become a Member of a class of Membership;

- (c) prescribe the fees, subscription amounts and levies, or the power to create or vary such fees, amounts and levies, payable by Members;
- (d) exercise the power of, and procedures governing, the expulsion or disciplining of a Member, and the rights of all relevant persons in such cases; and
- (e) determine such other matters to do with membership as the Board sees fit.

7.4. Address of Member

- (a) Each Member is required to provide to the Association details of an address in Australia where the Association can send notices.
- (b) If a Member fails to provide an address in accordance with rule 7.4(a), the address of the Member is deemed to be the Office.

7.5. Membership entitlements not transferable

A right, privilege or obligation which a person has by reason of being a Member of the Association:

- (a) is not capable of being transferred or transmitted to another person; and
- (b) subject to the Act and this Constitution, terminates on cessation of the person's Membership.

7.6. Cessation of Membership

A Member ceases to be a Member if they:

- (a) die;
- (b) resign in writing;
- (c) are expelled from the membership of the Association;
- (d) have their registration with the Dental Board of Australia terminated or suspended;
- (e) any of the following occur and the Board determines that it is in the best interests of the Association that the relevant Member should cease to be a Member:

- (i) they become of unsound mind or become liable to be dealt with in any way under the law relating to mental health or incapacity;
 - (ii) they are convicted of a felony;
 - (iii) they are declared bankrupt; or
- (f) if they are a corporate entity, have a receiver or a receiver and manager, administrator, liquidator or equivalent person appointed in relation to its assets or part of its assets or a resolution is passed or it takes or has taken against it any action having the effect of its winding up.

7.7. Non-payment of subscription

If any subscription or other membership fee of a Member remains unpaid, the Member will be debarred from all privileges of membership. The Directors may, if they think fit, reinstate the Member and may require payment of all arrears.

7.8. Effect of cessation

A Member who ceases to be a Member continues to be liable for:

- (a) any subscription and all arrears due and unpaid at the date of cessation;
- (b) all other moneys due by them to the Association; and
- (c) the guarantee set out in **rule 3**.

8. Rights and obligations of Members

8.1. Amount of fees and subscriptions payable

Annual subscription fees for the various categories of Membership (if any) and other periodical payments due from Members will be in such amounts and due at such times as the Board determines.

8.2. Variation of rights of Members

The rights attached to any specific category of Membership (if any) may, whether or not the Association is being wound up, be varied only by resolution of the relevant Membership category.

9. Chief Executive Officer

9.1. Appointment of Chief Executive Officer

The Board will appoint a Chief Executive Officer either for a specified term or without specifying a term. The Board may at any time resolve to change the official title for the position of the Chief Executive Officer.

9.2. Powers of Chief Executive Officer

The Board may delegate any of the powers of the Board to the Chief Executive Officer:

- (a) on the terms and subject to any restrictions the Board decides; and
- (b) so as to be concurrent with, or to the exclusion of, the powers of the Board, and may revoke the delegation at any time. This **rule** does not limit **rule 15**.

9.3. Termination of appointment of Chief Executive Officer

The appointment of a Chief Executive Officer terminates if the Board by resolution removes the Chief Executive Officer from the office of Chief Executive Officer (which, subject to any contract between the Association and the Chief Executive Officer, the Board has power to do), whether or not the appointment was expressed to be for a specified term.

10. Financial reports and audit

10.1. Association must keep financial records

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

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

10.2. Financial reporting

The Board must cause the Association to prepare a financial report and a Directors' report that comply with the Act and must report to Members in accordance with the Act no later than the deadline set by the Act.

10.3. Audit

The Board must cause the Association's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights and duties of the Auditor are regulated by the Act.

10.4. Conclusive reports

Audited financial reports laid before the Association in general meetings are conclusive except as regards errors notified to the Association within 3 months after the relevant general meeting. If the Association receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

10.5. Inspection of financial records and books

A Member who is not a Director or Council Member does not have any right to inspect any document of the Association except as authorised by the Board or as specified in the Act.

11. General meetings

11.1. Annual General Meetings

An annual general meeting of the Association must be held in accordance with the provisions of the Act.

11.2. Convening of meetings by Directors

A Director may convene a general meeting at any time.

11.3. Convening of meetings by Members

The Directors must call and arrange to hold a general meeting upon the requisition of the Members, if required to do so under the Act.

11.4. Notice of general meeting

- (a) The Secretary must give notice of a general meeting, at least 21 days before the date fixed for the holding of a general meeting.
- (b) A notice of a general meeting may be given by any form of communication permitted by the Act. The notice must specify the place, the day and the hour of meeting and if the meeting is to be held in 2 or more places, the technology that

will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Act.

- (c) The accidental omission to give notice of any general meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

11.5. Quorum at general meetings

- (a) Business may not be transacted at a general meeting unless a quorum of Members is present at the time when the meeting proceeds to business. Except as otherwise set out in this Constitution, 15 Members of the Association present in person or by proxy or representative is a quorum.
- (b) If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the chairperson, one of the following procedures must be followed:
 - (i) if the meeting was convened on the requisition of Members – it must be dissolved;
 - (ii) if the meeting is convened otherwise – it must stand adjourned to the same day in the next week at the same time and place or to another day and at another time and place determined by the Directors.
- (c) If a meeting has been adjourned to another time and place determined by the Directors, not less than 7 days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.
- (d) If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

11.6. Appointment of chairperson

- (a) If a chairperson of the Directors' meetings is appointed in accordance with this Constitution to chair their meetings, that person is entitled to preside as the chairperson at every general meeting.
- (b) If a deputy chairperson of Directors' meetings is appointed in accordance with this Constitution, that person is entitled to preside as the chairperson at any general meeting if any of the following events occur:
 - (i) a Director has not been appointed as the chairperson of Directors' meetings;

- (ii) the chairperson is not present within 10 minutes after the time appointed for the holding of the meeting; or
 - (iii) the chairperson is unwilling or unable to act.
- (c) The Directors present at a general meeting must elect one of their number to chair the meeting in any of the following circumstances:
 - (i) if a Director has not been appointed as the chairperson or deputy chairperson of Directors' meetings;
 - (ii) if the chairperson or the deputy chairperson is not present within 15 minutes after the time appointed for the holding of the meeting; or
 - (iii) if the chairperson or deputy chairperson is unwilling or unable to act.
- (d) The Members present at a general meeting must elect one of their number to chair the meeting in either of the following circumstances:
 - (i) if there are no Directors present within 15 minutes after the time appointed for the holding of the meeting; or
 - (ii) if all Directors present decline to take the chair.

11.7. Chairperson's powers

Subject to the terms of this Constitution dealing with adjournment of meetings, rulings of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting are final and no motion of dissent from a ruling of the chairperson may be accepted.

11.8. Adjournment of meetings

- (a) The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and place.
- (b) The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

- (d) Except when a meeting is adjourned for 30 days or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

11.9. Voting on show of hands

- (a) At a general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is demanded before that vote is taken or before the result is declared or immediately after the result is declared.
- (b) If a poll is not duly demanded, a declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Association, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

11.10. Demand for a poll

- (a) A poll may be demanded by any of the following:
 - (i) the chairperson;
 - (ii) at least 5 Members entitled to vote on the resolution; or
 - (iii) any Members with at least 5% of the votes that may be cast on the resolution on a poll.
- (b) The demand for a poll may be withdrawn.
- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- (d) If a poll is duly demanded, it must be taken in the manner and, except as to the election of a chairperson or on a question of adjournment, either at once or after an interval or adjournment or otherwise as the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- (e) A poll demanded on the election of the chairperson or on a question of adjournment must be taken immediately.

11.11. Voting rights of Members

- (a) Subject to any rights or restrictions for the time being attached to a category or categories of Membership (if any), on a show of hands every Member present or who represents a Member has one vote.
- (b) Subject to any rights or restrictions for the time being attached to a category or categories of Membership (if any), on a poll every Member present in person or by proxy, attorney or representative has one vote.

11.12. Chairperson's vote at general meetings

The chairperson of a general meeting is entitled to a second or casting vote.

11.13. Objections to voter qualification

No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered. An objection to the qualification of a voter must be referred to the chairperson, whose decision is final. A vote not disallowed according to an objection as provided in this Constitution is valid for all purposes.

12. Proxies and representatives

12.1. Proxies and representatives of Members

At meetings of Members or categories of Members (if any), each Member entitled to vote may vote by a proxy, or by an attorney, and may appoint an individual as its representative. Except as expressly provided by the terms of their appointment, a person attending as a proxy, or as the attorney or representative of a Member, has all the powers of a Member, except where expressly stated to the contrary in this Constitution.

12.2. Appointment of proxies

A Member may appoint either 1 or 2 persons as their proxy to attend and vote instead of the Member. A proxy need not be a Member. A document appointing a proxy must be in writing in any form permitted by the Act and signed by the Member making the appointment.

12.3. Authority of proxies

A document appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where the document so provides, the proxy is not entitled to vote on the resolution except as specified in the document. Except as

expressly provided by the document appointing a proxy, an appointment of a proxy confers authority to do all things that the Member can do in respect of a general meeting.

12.4. Verification of proxies

- (a) Before the time for holding the meeting or adjourned meeting at which a proxy proposes to vote, all of the following documents must be deposited with the Association:
 - (i) the document appointing the proxy; and
 - (ii) if the appointment is signed by the appointor's attorney, the authority under which the appointment was signed or a certified copy of that authority.
- (b) Those documents must be received at the Office, at a fax number at the Office or at another place, fax number or electronic address specified for that purpose in the notice convening the meeting not less than 48 hours before the time for holding the meeting.
- (c) If a general meeting has been adjourned, an appointment and any authority received by the Association at least 48 hours before the resumption of the meeting are effective for the resumed part of the meeting.

12.5. Validity of proxies

A proxy document is invalid if it is not deposited or produced prior to a meeting or a vote being taken as required by this Constitution.

12.6. Revocation of appointment of proxy

A vote given in accordance with the terms of a proxy document, power of attorney or otherwise is valid, if no intimation in writing of the revocation of the instrument or of the authority under which the instrument was executed has been received by the Association at the Office before the commencement of the meeting or adjourned meeting at which the document is used.

13. Council Members

13.1. Number of Council Members

The Council will comprise not more than 17 Council Members.

13.2. Qualification

A Council Member must be a Member.

13.3. Appointment by the Council

- (a) Notwithstanding **rule 13.4** but subject to the Constitution and the Act, the Council may appoint a person to be a Council Member at any time except during a general meeting.
- (b) Any Council Member so appointed, or appointed to replace a Council Member removed from office under **rule 13.8**, retires at the conclusion of the annual general meeting at which the other Council Members retire pursuant to **rule 13.6**, and unless disqualified are eligible for re-election.

13.4. Election of Council Members

Subject to **rule 13.3**, Council Members must be elected by Members in accordance with the By-Laws.

13.5. Eligible candidates

The Members cannot validly elect a person as a Council Member unless:

- (a) the person retires in accordance with this Constitution and seeks re-election; or
- (b) at least 30 Business Days before the meeting at which the relevant ballot is declared, the Association receives both:
 - (i) a nomination of the person signed by at least 2 Members (other than the person nominated); and
 - (ii) a consent to act as a Council Member signed by the person.

13.6. Term of Council Members

- (a) Subject to **rule 13.3**, the term of each Council Member commences at the conclusion of the annual general meeting at which their election is declared and continues until the conclusion of the second annual general meeting following the Council elections at which they were elected. Subject to **rule 13.6(b)**, all retiring Council Members who are not disqualified are eligible for re-election.

- (b) Subject to **rules 1.4(c)(ii) and 13.6(c)**, a Council Member who has held office for 4 consecutive terms is ineligible to stand for re-election as a Council Member until 2 years have elapsed since the expiration of their last term of office.
- (c) Notwithstanding any other provision of this Constitution, a Council Member who has held office for 4 consecutive terms is eligible to stand for re-election as a Council Member only if deemed appropriate by, and so determined by a majority of, the Council.

13.7. Cessation of Council Member's appointment

A person automatically ceases to be a Council Member if the person:

- (a) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (b) fails to attend three consecutive Council meetings without leave of absence from the Council;
- (c) resigns by notice in writing to the Association;
- (d) is removed from office under **rule 13.8**; or
- (e) ceases to be a Member of the Association.

13.8. Removal from office by Members

Whether or not a Council Member's appointment was expressed to be for a specified period the Members may by special resolution at a general meeting remove a Council Member from office and by separate special resolution at a general meeting appoint another person instead. The person appointed by the Members retires at the conclusion of the next annual general meeting, and unless disqualified is eligible for re-election. The powers to remove a Council Member under this **rule 13.8** are in addition to the Act.

13.9. Too few Council Members

If the number of Council Members is reduced below 11 Council Members, the continuing Council Members may act as the Council only:

- (a) to appoint Council Members up to that minimum number;
- (b) in emergencies.

14. Directors

14.1. Number of Directors

There must be at least 5 Directors and not more than 9 Directors at any time.

14.2. Qualification

- (a) Subject to **rule 14.4(b)**, a Director must be a Council Member.
- (b) Neither the Chief Executive Officer, the Auditor of the Association for the time being nor any partner or employee of the Auditor is eligible to act as a Director.

14.3. Term

- (a) The term of office of a Director is one year, and expires:
 - (i) in respect of the President and Vice-President, at the conclusion of the next annual general meeting;
 - (ii) in respect of any other Director, at the conclusion of the second Council meeting following the next annual general meeting.
- (b) Subject to **rule 14.4(d)**, a Director who has held office for 8 consecutive terms is ineligible for re-appointment as a Director until 2 years have elapsed since the expiration of their last term of office.

14.4. Appointment by the Council

- (a) Subject to the Constitution and the Act, the Council Members must appoint from their number:
 - (i) at the Council's first meeting after each annual general meeting:
 - (A) a President;
 - (B) a Vice-President; and
 - (ii) at the Council's second meeting after each annual general meeting, up to 6 other Directors.
- (b) The Council Members may also appoint 1 external Director who need not be a Member on such terms and, subject to **rule 14.3(b)**, for such term as determined by Council.

- (c) If a casual vacancy occurs on the Board (including in the positions of President and Vice-President), that position may be filled by the Council by appointment from amongst their number of another Council Member to fill that office. The term of office of a person appointed to the Board pursuant to this **rule** expires:
 - (i) in respect of the President and Vice-President, at the conclusion of the next annual general meeting;
 - (ii) in respect of any other Director, at the conclusion of the second Council meeting following the next annual general meeting.
- (d) Notwithstanding **rule 14.3(b)**, the Council may appoint a Director who has held office for 8 consecutive terms:
 - (i) to fill a casual vacancy pursuant to **rule 14.4(c)**; or
 - (ii) to continue as a Director only if deemed appropriate by, and so determined by a majority of, the Council.
- (e) If the number of Directors is reduced below the minimum required by **rule 14.1**, the Council must appoint Directors up to the minimum number as soon as reasonably practicable and the continuing Directors may act as the Board only:
 - (i) to convene a meeting of Members; and
 - (ii) in emergencies.
- (f) Directors may not be appointed except as set out in this **rule 14.4**.

14.5. President to report to Council

The President will report to the Council as reasonably required by the Council and in any event no less than 3 times in their 12 month term as President.

14.6. Cessation of Director's appointment

A person automatically ceases to be a Director if the person:

- (a) is not permitted by the Act (or an order made under the Act) to be a director;
- (b) becomes disqualified from managing corporations under the Act and is not given permission or leave to manage the Association under the Act;

- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) fails to attend Board meetings for a continuous period of 6 months without leave of absence from the Board;
- (e) resigns by notice in writing to the Association; or
- (f) is removed from office under **rule 14.7**.

14.7. Removal from office

Whether or not a Director's appointment was expressed to be for a specified period:

- (a) the Council by ordinary resolution; or
- (b) the Members by ordinary resolution,

may remove a Director from office. The powers to remove a Director under this **rule 14.7** are in addition to the Act.

15. Powers and proceedings of Council Members

15.1. Role of Council

Subject to this Constitution, the Council:

- (a) shall review the mission and vision of the Association on a continual basis;
- (b) shall review and determine profession-specific priorities and make recommendations to the Board on an ongoing basis;
- (c) appoints the NSW representatives to the Australian Dental Association Inc.;
- (d) shall be responsible for matters relating to the profession of dentistry and oral health policy;
- (e) shall review and consider policies, recommendations and reports of its committees; and
- (f) shall act as a forum to identify, discuss and debate emerging issues of relevance to Members, the profession of dentistry and oral health policy.

15.2. Convening of Council Members' meetings

- (a) The Council Chair may at any time, and a Secretary must on the requisition of at least three Council Members, convene a meeting of the Council Members. Reasonable notice of the proposed meeting must be given.
- (b) The Council shall meet no less than 3 times per year.

15.3. Mode of meeting for Council Members

A Council Members' meeting may be called or held using any technology consented to by all the Council Members. The consent may be a standing one. A Council Member may only withdraw their consent within a reasonable period before the meeting. The Council Members may otherwise regulate their meetings as they think fit.

15.4. Quorum at Council Members' meetings

- (a) At a meeting of Council Members, the number of Council Members whose presence is necessary to constitute a quorum is a majority of Council Members.
- (b) A Council Member may not cease to take part in a meeting where some or all participants are using electronic means by disconnecting those electronic means before the conclusion of the conference without the consent of the Chair of the meeting. A Council Member present at the commencement of such a meeting will be conclusively presumed to have been present and, subject to other provisions of this Constitution, to have formed part of the quorum throughout the relevant meeting, unless that Council Member has obtained the consent of the Chair of the meeting to cease to take part in the meeting or the Chair of the meeting has actual knowledge that the Council Member has ceased to take part in the meeting.

15.5. Voting at Council Members' meetings

Questions arising at a meeting of Council Members must be decided by a majority of votes of Council Members present and voting. A decision of the majority is for all purposes a decision of the Council Members.

15.6. Chairperson of Council meetings

- (a) The Council will elect from amongst their number a Council Member to be the chairperson of Council Meetings and determine the period for which the person is to hold that office.

- (b) If a Council Chair has not been elected or at any meeting the Council Chair is not present within 10 minutes after the time appointed for holding the meeting or is unwilling or unable to act, the Council Members will elect one of their number to chair the meeting.

15.7. Chairperson's vote at Council Members meetings

Subject to the Act, in case of an equality of votes on a resolution at a meeting of Council Members, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his capacity as a Council Member in respect of that resolution.

15.8. Delegation of powers to committee

The Council may delegate any of their powers to committees consisting of Council Members or other persons as they think fit. The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Council. In the exercise of any powers delegated to it, a committee formed by the Council must conform to the directions of the Council or any relevant By-Law.

15.9. Proceedings of committees

Except as provided in a direction of the Council or any By-Law relating to the constitution, governance and management of any such committee, the meetings and proceedings of a committee formed by or at the request of the Council must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Council Members.

15.10. Validity of acts of Council Members

All acts done by a meeting of the Council Members or of a committee of, or at the request of, the Council or by a person acting as a Council Member are valid even if it is later discovered that there is a defect in the appointment of a person to be a Council Member or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

15.11. Minutes

The Council Members must cause minutes of meetings of the Council Members and of committees formed by the Council Members to be entered in books kept for the purpose, including the names of all Council Members present at each meeting of the Council. The Council Members must cause all minutes to be signed by the chairperson of the meeting

at which the proceedings took place or by the chairperson of the next succeeding meeting.

16. Power and proceedings of Directors

16.1. Powers of Directors

Subject to this Constitution:

- (a) the Board manages the Association; and
- (b) the Directors may exercise all those powers of the Association as are not, by the Act or by this Constitution, required to be exercised by the Members in general meeting or otherwise.

16.2. By-Laws

The Board may create, vary or repeal By-Laws provided that:

- (a) to the extent of any inconsistency, the Constitution and the Act prevail;
- (b) any By-Law may be disallowed by the Association in general meeting; and
- (c) no By-Law disallowed by the Association in general meeting invalidates any prior act of the Board or Council which would have been valid if such By-Law had not been disallowed.

16.3. Convening of Directors' meetings

A Director may at any time, and a Secretary must on the requisition of a Director, convene a meeting of the Directors. Reasonable notice of the proposed meeting must be given.

16.4. Mode of meeting for Directors

A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

16.5. Quorum at Directors' meetings

At a meeting of Directors, the number of Directors whose presence is necessary to constitute a quorum is a majority of the Directors.

16.6. Voting at Directors' meetings

Questions arising at a meeting of Directors must be decided by a majority of votes of Directors present and voting. A decision of the majority is for all purposes a decision of the Directors.

16.7. Appointment of chairperson

The current President will be the chairperson of Directors' meetings. If at any meeting the President is not present within 10 minutes after the time appointed for holding the meeting or is unwilling or unable to act, the Vice-President will chair the meeting. If the Vice-President is absent or unwilling or unable to act, the Directors present will elect one of their number to chair the meeting.

16.8. Appointment of deputy chairperson

The Vice-President will be the deputy chairperson of Directors' meetings.

16.9. Chairperson's vote at Directors meetings

Subject to the Act, in case of an equality of votes on a resolution at a meeting of Directors, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his capacity as a Director in respect of that resolution.

16.10. Director not in breach if acts in matters relating to Director's interests

- (a) This **rule 16.10** applies if:
 - (i) a Director has an interest or duty in relation to a matter that is not a material personal interest; or
 - (ii) a Director with a material personal interest in relation to the Association's affairs:
 - (A) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Association's affairs before acting in a matter that relates to the interest; and

- (B) may be present and vote on the matter under the Act.
- (b) The Director is not in breach of his or her duties to the Association merely because he or she acts in matters that relate to the Director's interest.
- (c) The Director may vote on matters that relate to the Director's interest.
- (d) In relation to any transactions that relate to the Director's interest:
 - (i) the transactions may proceed;
 - (ii) the Association cannot avoid the transactions merely because of the Director's interest; and
 - (iii) the Director may retain benefits under the transactions despite the Director's interest.

16.11. Director not in breach if does not act in matters relating to Director's interests

- (a) This **rule 16.11** applies if a Director with a material personal interest in relation to a matter:
 - (i) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Association's affairs; but
 - (ii) must not be present and vote on the matter under the Act.
- (b) The Director is not in breach of duty to the Association merely because he or she does not act in relation to the matter.
- (c) The Directors may vote on matters that relate to the Director's interest in the Director's absence.
- (d) In relation to any transactions that relate to the Director's interest:
 - (i) the transactions may proceed;
 - (ii) the Association cannot avoid the transactions merely because of the Director's interest; and
 - (iii) the Director may retain benefits under the transactions despite the Director's interest.

16.12. Execution of instruments

A Director may participate in the execution of an instrument for the Association, regardless of any interest or duty that the Director may have:

- (a) whether or not the Director has complied with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the Association's affairs; and
- (b) whether or not the Director may be present and vote in relation to the execution of the instrument under the Act.

16.13. Delegation of powers to committee

The Directors may delegate any of their powers to committees consisting of Directors or other persons as they think fit. The exercise of a power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Directors. In the exercise of any powers delegated to it, a committee formed by the Directors must conform to the directions of the Directors. The Directors may at any time revoke any delegation of powers made by them.

16.14. Proceedings of committees

Except as provided in a direction of the Directors, the meetings and proceedings of a committee formed by the Directors must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Directors.

16.15. Validity of acts of Directors

All acts done by a meeting of the Directors or of a committee of Directors or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a member of the committee or that they or any of them were disqualified or were not entitled to vote.

16.16. Minutes

The Directors must cause minutes of all proceedings of general meetings, of meetings of the Directors and of committees formed by the Directors to be entered in books kept for the purpose. The Directors must cause all minutes to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

16.17. Resolutions in writing

- (a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) For this purpose, signatures can be contained in more than 1 document, as long as the wording of the resolution is the same in each copy.
- (c) The company may send a circular resolution to the Directors by electronic transmission (including without limitation emails and facsimile) and the Directors may agree to the resolution by sending a reply by electronic transmission (including without limitation emails and facsimile) to that effect, including the text of the resolution in their reply.
- (d) A circular resolution is passed when the last Director signs or otherwise agrees to the resolution in the manner set out in this **rule 16.17**.

17. Remuneration of the President, Directors and Council Members

17.1. Directors and Council Members fees

Directors and Council Members are not entitled to receive any remuneration for acting as such. However, the President shall be paid such annual allowance as the Association at its annual general meeting determines.

17.2. Payment for extra services and repayment of expenses

A Director or Council Member is entitled to the repayment of out of pocket expenses incurred in performing that role, and to receive reasonable and proper payment for any services that are not part of the Director's or Council Member's duties.

18. Indemnity

18.1. Definitions

For the purposes of this Constitution:

- (a) *Officer* means a Director, Council Member, a member of a committee to whom the Council or Board has delegated authority, a Secretary, an officer as defined by the Act, or the Chief Executive Officer; and
- (b) *Legal Proceedings* means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigation, whether civil or criminal, which

relates to or arises in connection with the Officer being an officer of the Association or the employment of the Officer with the Association.

18.2. Indemnity

Every Officer and past Officer (with the exception of any auditor) of the Association is hereby indemnified by the Association to the fullest extent permitted by law against a liability incurred by that person as an Officer of the Association or a subsidiary of the Association, including without limitation legal costs and expenses incurred in participating or being involved in or in defending Legal Proceedings. This indemnity does not extend to any liability incurred by the Officer arising from any claim made by that Officer against the Association (whether that claim is made solely by the Officer or otherwise).

18.3. Insurance premiums

The Association may pay the premium on a contract insuring a person who is or has been an Officer of the Association to the fullest extent permitted by law against a liability incurred by the person as such an Officer of the Association or a subsidiary, including for costs and expenses incurred by that person in defending Proceedings.

18.4. Indemnity to employees

Every employee who is not an Officer may be indemnified out of the property of the Association against a liability:

- (a) incurred by the employee acting in that capacity; and
- (b) for the costs and expenses incurred by an employee:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the employee or in which the person is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the employee under the Act.

19. Notices

19.1. Notices by the Association

A notice is properly given by the Association to a person if it is:

- (a) in writing signed on behalf of the Association (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and

- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

19.2. Overseas Members

A Member whose registered address is not in Australia may notify the Association in writing of an address in Australia to which notices may be sent.

19.3. When notice is given

A notice to a person by the Association is regarded as given and received:

- (a) if it is delivered personally or sent by fax or electronic message:
 - (i) by 5pm (local time in the place of receipt) on a business day – on that day; or
 - (ii) after 5pm (local time in the place of receipt) on a business day, or on a day that is not a business day – on the next business day; and
- (b) if it is sent by mail:
 - (i) within Australia – 3 Business Days after posting; or
 - (ii) to a place outside Australia – 7 Business Days after posting.

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

19.4. Notices to lost members

If:

- (a) on 2 or more consecutive occasions a notice served on a Member in accordance with this **rule** is returned unclaimed or with an indication that the Member is not known at the address to which it was sent; or
- (b) the Council believes on other reasonable grounds that a Member is not at the address shown in the Register or notified to the Association under **rule 19.2**,

the Association may give effective notice to that Member by exhibiting the notice at the Association's Office for at least 48 hours. This **rule** ceases to apply if the Member gives the Association notice of a new address.

20. Amendment to Constitution

This Constitution cannot be amended, varied or replaced without a special resolution of the Members.