

Constitution of the Council of Private Higher Education Incorporated

Preliminary

1. DEFINED TERMS

In this Constitution:

Association: means the Association named the Council of Private Higher Education Incorporated.

Board: means the Board of the Association.

Constitution: means the Constitution of the Council of Private Higher Education Incorporated.

Act: means the Associations Incorporation Act (1991) (ACT) as modified or amended from time to time.

Chief Executive Officer: means the Chief Executive Officer of the Association.

Member: means each institution, group or organisation which is a member of the Association in one of the membership categories defined by the Association in Section 4 of the Constitution.

2. INTERPRETATION

2.1 In this Constitution, except where the context otherwise requires:

- 2.1.1 The singular includes the plural and vice versa, and gender includes other genders;
- 2.1.2 Another grammatical form of a defined word or expression has a corresponding meaning;
- 2.1.3 A reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of or schedule or annexure to this Constitution and a reference to this Constitution includes any such schedule or annexure;
- 2.1.4 A reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 2.1.5 The meaning of general words is not limited by specific examples introduced by including 'for example' or similar expressions.

2.2 Headings are for ease of reference only and do not affect interpretation.

3. OBJECTS

The objects of the Association shall be:

- 3.1 To promote private higher education and seek recognition by government and the community of the contribution of the Australian private higher education sector to tertiary education and scholarship.
- 3.2 To undertake policy development and to pursue public policy that provides for the equitable treatment of students enrolled in private higher education.
- 3.3 To make representation to government and provide a public voice for private higher education.
- 3.4 To undertake and facilitate research into matters relevant to the membership.
- 3.5 To provide a forum for the ongoing dissemination and sharing of information of common concern and facilitate opportunities for cooperation and collaboration.
- 3.6 To act as an advocate and facilitator for the private higher education sector in matters of quality assurance, accreditation and academic standards.
- 3.7 To establish relationships with other organisations.
- 3.8 To provide services and partner with other organisations to provide services for Members as required. Such services may include a Tuition Assurance Scheme, provision of software, data management services or any other service provision approved by Members and consistent with the objects of the Association.
- 3.9 To undertake any other activities consistent with the objects of the Association.

4. MEMBERSHIP

- 4.1 Membership of the Association is only open to Members who approve and support the objects of the Association.
- 4.2 Membership of the Association is to be according to one of four eligibility categories as follows:
 - 4.2.1 An Individual Institution Member is an institution engaged in the delivery of accredited higher education in Australia at higher education diploma, bachelor or higher degree level, other than a public institution, whether self-accrediting or non-self-accrediting.
 - 4.2.2 A Group Member is an appropriately constituted organisation operating under a single registration representing a group of institutions that would otherwise, if they were separately registered, meet the criteria for an Individual Institution Member.
 - 4.2.3 A Corporate Member is a corporation that controls more than one registered entity that is engaged in the delivery of accredited higher education in Australia at higher education diploma, bachelor or higher degree level, other than a public institution, whether self-accrediting or non-self-accrediting.
 - 4.2.4 An Associate Member is an organisation whose interests are accepted by the Board as consistent with the objects of the Association but does not meet the criteria for

membership in the above-mentioned categories. The Board may grant Associate Membership on a provisional basis.

- 4.3 Application for Membership shall be made in writing to the Chief Executive Officer in the form set out in **Appendix 1** of this Constitution.
- 4.4 A copy of the Constitution of the Association shall be supplied to any Member or applicant for membership on request being made to the Association.
- 4.5 Membership requires the agreement of the Member to be bound by the Constitution of the Association and by the COPHE Code of Good Practice.
- 4.6 Admission to membership, or the rejection of an application, shall be decided by the Board of the Association at its sole discretion at the first Board meeting following receipt of the application. Following approval, the Chief Executive Officer will notify the applicant of approval of their application and invoice fees. The Board is not required to supply reasons for acceptance or rejection of an application for membership.
- 4.7 Each organisation admitted to membership shall advise the Association in writing of their nomination of a representative who shall be authorised to vote at meetings on behalf of the Member. Members may also nominate an alternative representative to attend meetings and vote in the absence of the nominated representative.
- 4.8 The joining fee, annual membership fees and due dates for payment shall be reviewed by Members at the Annual General Meeting. The Board shall determine membership fees in the last quarter of the calendar year, following consideration of the budget for the following year, and advise members accordingly.
- 4.9 The liability of a Member to contribute towards the payment of the debts and liabilities of the Association or the costs, charges and expenses of the winding-up of the Association is limited to the amount, if any, unpaid by the Member in respect of membership of the Association as required by clause 4.8.
- 4.10 The Association shall establish and maintain a register of Members of the Association, their contact details, nominated representative and any alternate representative, and Members shall advise of any changes.
- 4.11 A Member may at any time, by giving notice in writing to the Association, resign its membership of the Association and such resignation shall take effect from the date it is received by the Association.
- 4.12 Membership of the Association may be terminated by the Board in any of the following circumstances:
 - 4.12.1 Where, in the opinion of the Board a Member no longer fulfils the eligibility criteria for membership;
 - 4.12.2 Where, in the opinion of the Board, a Member refuses to comply with the provisions of the Constitution of the Association or has engaged in any conduct prejudicial to the interests of the Association;
 - 4.12.3 Where, in the opinion of the Board, a Member has failed to observe the COPHE Code of Good Practice or brought higher education into disrepute;
 - 4.12.4 Where, a Member does not pay its subscription which is due in accordance with a resolution at a General Meeting.
- 4.13 Where a membership is terminated in accordance with clause 4.12 the Member may require the Board to convene a General Meeting within three months and at such a meeting to make

verbal or written representations to the effect that the decision of the Board might be overturned and the Members shall vote on the matter.

- 4.14 A Member, on ceasing to be a Member of the Association, whether by resignation or otherwise shall, ipso facto, forfeit all rights of membership provided that such a Member shall remain liable for outstanding fees and subscriptions due and unpaid at the date of cessation of its membership of the Association.

5. MANAGEMENT

- 5.1 The business, activities and affairs of the Association shall be the responsibility of the Board.
- 5.2 Membership of the Board shall comprise not less than seven persons including the Officers of the Association appointed or elected in accordance with Sections 10 and 11.
- 5.3 The term of appointment for Officers and Board Members shall be from one Annual General Meeting to the next.
- 5.4 The Officers of the Association shall be the Chair, Deputy Chair, Chief Executive Officer and Treasurer (if appointed).
- 5.5 The Board may appoint an Executive Committee comprised of the Officers of the Association for the purpose of administering the affairs of the Association in between meetings of the Board.
- 5.5.1 The membership of the Executive Committee shall be comprised of the Officers of the Association and one other member of the Board whom the Board may elect. The appointment of the Executive Committee and the election of any member not holding an office shall be considered by the Board annually as soon as practicable following the Annual General Meeting of the Association.
- 5.6 The Board may appoint a Chief Executive Officer of the Association for such term and upon such conditions and for such remuneration as it thinks fit and any Chief Executive Officer so appointed may be removed by it.
- 5.7 The Chief Executive Officer of the Association shall perform the duties prescribed for him/her by the Board together with those prescribed by this Constitution and shall be a member of both the Board and the Executive Board. The Executive Board shall consider the appropriate implementation procedures for policy decisions made by the Board and oversee the ongoing administration and management of the affairs of the Association.
- 5.8 The Board may appoint sub-committees, nominating a Board Member or the Chief Executive Officer as chair of such sub-committees, and may delegate to it functions other than functions which are imposed on the Board under the Act.
- 5.9 The Board shall appoint a Public Officer of the Association who shall be resident in the Australian Capital Territory (ACT). The Public Officer may also be the representative of a Member or an Officer. Any change in the address of the Public Officer must be notified in accordance with the Act.
- 5.10 The registered office of the Association shall be located in the ACT, at such place as the Board shall from time to time determine.

6. POWERS AND DUTIES OF THE BOARD

- 6.1 The Board may exercise all such powers and do all such things as the Association, by its Constitution or otherwise, is legally authorised to exercise.

The Board shall have the power from time to time:

- 6.1.1 To make any rules or regulations in pursuance of the powers conferred by the Constitution;
- 6.1.2 To delegate any of its powers to any sub-committees or such other persons as it may think fit and may revoke such delegation;
- 6.1.3 To determine who shall be entitled to sign or endorse on the Association's behalf contracts, receipts, cheques and other documents, and to open and operate an account or accounts whether current or otherwise in the Association's name, with such bank or banks as the Board from time to time determines;
- 6.1.4 To invest and deal with any of the monies of the Association not immediately required for purposes of the Association upon such securities and in such a manner as the Board may think fit;
- 6.1.5 To purchase or otherwise acquire for the Association any property, rights or privileges which the Association is authorised to acquire at such a price and generally on such terms and conditions as it shall think fit;
- 6.1.6 To sell, exchange or otherwise deal with or dispose of any real or personal property of the Association including furniture, fittings, equipment, plant or other goods;
- 6.1.7 To engage, appoint, control, remove, discharge, suspend and dismiss officers, representatives, agents and servants or other employees with respect to permanent, temporary or special services as it may from time to time think fit and to determine duties, terms, conditions, pay, salary, emoluments or other remuneration and to determine, with or without compensation, any contract for service or otherwise; and,
- 6.1.8 To institute, conduct, defend, compound, or abandon any legal proceedings by or against the Association or its Officers or otherwise concerning the affairs of the Association and also to determine an allowed time for payment of any debts due or demands by or against the Association.

6.2 Chair of the Board

- 6.2.1 There shall be a Chair of the Board. The Chair shall be nominated and elected by members at an Annual General Meeting;
- 6.2.2 Meetings of the Board shall be chaired by the Chair. Where the Chair is unable to attend a meeting of the Board, he or she may nominate another member of the Board to chair such a meeting in his or her absence.

6.3 Membership of the Board

- 6.3.1 Members of the Board are elected by the Membership at an AGM;
- 6.3.2 The Board shall have a minimum seven (7) Members, including the Officers of the Association;
- 6.3.3 The CEO shall be a member of the Board;
- 6.3.4 For the purposes of elections to the Board, the Chief Executive shall be the Returning Officer.

6.4 Meetings of the Board

- 6.4.1 The Board shall meet quarterly, in ordinary sessions and at such other times as may be necessary;
- 6.4.2 Meetings of the Board will be conducted as required by Sections 25–28 of the Act;
- 6.4.3 Meetings out of the ordinary sessions shall be extraordinary meetings;

- 6.4.4 The Chair, upon request by the Chief Executive Officer, shall convene extraordinary sessions of the Board;
- 6.4.5 The Association shall provide e-communication/teleconference facilities to Board members who may be outside Sydney or overseas to enable participation in Board meetings;
- 6.4.6 The Association shall cover any out-of-pocket costs for the Chair;
- 6.4.7 Decisions and resolutions of the Board shall be made by majority vote;
- 6.4.8 The making of decisions will be conducted in accordance with the method described in Section 28 of the Act and Section 10 of the Constitution;
- 6.4.9 The Board may resolve matters without formally holding a meeting. This shall be referred to as a 'flying minute'. Decisions may be made in this manner if all members are given written notice of the motion and a majority of members give written agreement to the motion via email.
- 6.4.10 Any motion voted under section 6.4.9 must be confirmed at the next Board meeting.

6.5 Quorum

- 6.5.1 No business may be transacted at a meeting of the Board unless a quorum of members is present when the meeting proceeds to business. Members may join by electronic communication if they are not present. A quorum of members is Five (5) Members;
- 6.5.2 If a quorum is not present within 30 minutes after the time appointed for a general meeting, and the meeting has been called at the request of the members, it shall be automatically dissolved; or,
 - in any other case it will stand adjourned to the same time and place seven days after the general meeting, or to another day, time and place determined by the Chair; and
 - if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, it shall be automatically dissolved.

6.6 Minutes

- 6.2.1 The Board shall cause Minutes to be made of:
 - 6.2.2 All appointments of Officers of the Association and Board Members;
 - 6.2.3 The names of Board Members and Officers of the Association present at each meeting, including those deemed present via video or teleconferencing facility, of the Association; and,
 - 6.2.4 All proceedings of all general meetings of the Association and its Board.
- 6.7 Minutes shall be signed by the Chair of the meeting at which the proceedings were held or by the Chair of the next meeting and if so signed shall be prima facie evidence of the matters stated in the Minutes.
- 6.8 A decision of the Board on the construction or interpretation of the Constitution of the Association or any rules and regulations adopted pursuant thereto, or any matter arising therefrom, shall be conclusive and binding on all Members.
- 6.9 The office of Chair, Deputy Chair, other Officer and Board Member of the Association shall, ipso facto, be vacated if the incumbent:
- 6.9.1 Is no longer nominated as representing a Member of the Association;
 - 6.9.2 Is convicted of a felony, misdemeanour or indictment;
 - 6.9.3 Becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
 - 6.9.4 Dies;

- 6.9.5 Is absent from meetings of the Board for a continuous period of two (2) meetings, without leave of absence from the Board, and the Board resolves that his office be vacated;
 - 6.9.6 Resigns his office by giving notice in writing to the Executive Secretary; or,
 - 6.9.7 Becomes prohibited from being an Officer of the Association or Board Member by reason of any order made under the Act.
- 6.10 An office, vacated pursuant to clause 6.9, may be filled by the Board with the nominated representative of a Member provided that any such office filled is vacated at the next AGM.
- 6.11 The Board shall cause proper accounting records to be kept with respect to the financial affairs of the Association with the financial year of the Association ending on the 31st December each year.
- 6.12 Records, documents and any securities shall be kept at the registered office of the Association or at such other place as the Board thinks fit and shall at reasonable times be open to inspection by Board Members.
- 6.13 The Board shall from time to time determine in accordance with the Constitution at what times and places and under what conditions the accounting and other records of the Association shall be open to inspection by Members, not being Board Members, and no Member shall have any right of inspection of any account, book or paper of the Association except as conferred by the Act or authorised by the Board.

7. CHIEF EXECUTIVE OFFICER

- 7.1. There shall be a Chief Executive Officer of the Association (the CEO). The CEO shall also be the legal representative and authorised signatory for the Association.
- 7.2 The CEO shall be responsible for the overall management and performance of the Association. The CEO shall manage the Association in accordance with the strategy, plans, and policies approved by the Board.
- 7.3 The CEO shall report to the Board.
- 7.4 The CEO shall act as the delegate of the Board. He or she shall perform such relevant functions as may be authorised or directed by the Board.
- 7.5 Under the governance of the Board, the CEO shall establish and lead the Association staff and any contractors in furtherance of the Association's activities.
- 7.6 The CEO shall consider, approve and review the administrative policies and relevant procedures/rules and their amendments in consultation with the related staff or external experts and independent auditors.

8. INCOME AND PROPERTY

- 8.1 The income of the Association shall be derived from joining fees, annual subscriptions, donations and, subject to any resolution passed by the Association at a general meeting and subject to the Act, Section 114, any other sources as the Board determines.
- 8.2 All monies received by the Association must be deposited as soon as practicable and without deduction to the credit of the Association's bank account.
- 8.3 All assets, funds and income of the Association will be used solely to further the Objects of the Association in the way that the Board decides and no portion thereof is to be paid or

transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to Members provided that nothing herein shall prevent the payment in good faith of reasonable and proper remuneration or reimbursement of expenses incurred to any officer, Member, Member's representative, servant or employee of the Association.

- 8.4 All cheques, drafts and other negotiable instruments must be signed or authorised by the CEO and/or nominated signatories as authorised by the Board with two to sign or approve.

9. AUDIT

- 9.1 The Board shall appoint an Auditor for the purpose of auditing the accounts of the Association in accordance with the Act. The Auditor shall not be the nominated representative of a Member, Officer, Board Member, Public Officer of the Association or be employed by any of them or by a Member.
- 9.2 At least once in every year the accounts of the Association shall be examined and the correctness of the balance sheet ascertained by the Auditor.
- 9.3 The Auditor shall be supplied with a copy of the balance sheet and have a list delivered to him or her of all books and records kept by the Association, and shall at all reasonable times have access thereto.
- 9.4 The Auditor shall make a report to the Board of the Association on the balance sheet and accounts and in the report shall state whether in his or her opinion they are true, contain the usual particulars required by the Act and are properly drawn up so as to show the true and correct state of affairs of the Association.

10. GENERAL MEETINGS

- 10.1 Other than at the first Annual General Meeting, which shall be convened within fifteen months of incorporation, an Annual General Meeting of the Association shall be held once in every calendar year, within a period of not more than five (5) months from the end of the preceding financial year, at such a time and place as shall be determined by the Board.
- 10.2 The business of the Annual General Meeting of the Association shall be the passing of the annual accounts, the reports of the Board and of the Auditors, the election of Officers and Board Members of the Association, and any other business of which notice in writing shall have been given to the Executive Secretary at least fourteen (14) days prior to the meeting.
- 10.3 The Board may, whenever it thinks fit, convene a General Meeting.
- 10.4 The Board may invite such other persons as it may determine to attend General Meetings.
- 10.5 Subject to the provisions of the Act, twenty-one (21) clear days' notice in writing shall be given to Members of General Meetings of the Association, stating the place, day and hour of the meeting and the general nature of the business.
- 10.6 The Chair of the Board, or the Deputy Chair in the absence of the Chair, shall preside over all General Meetings of the Association at which he or she shall be present, and shall be responsible for the proper conduct of the business of the meeting and shall have a casting vote as well as a deliberate vote.
- 10.7 A resolution of the Board will be taken to be a special resolution if it is passed at a General Meeting of the Association provided a notice of intention to propose a special resolution has been included in the notice of meeting and it is passed by three quarters of the Members entitled to vote at the meeting in person or by proxy.

- 10.8 The quorum for a General Meeting of the Association shall be six (6) Members or two thirds of the membership, whichever is the lesser. No business shall be transacted at any General Meeting unless a quorum be present.
- 10.9 All questions arising at General Meetings shall be decided by a majority of votes. Each Member will be entitled to one (1) vote.
- 10.10 The persons eligible to vote at General Meetings of the Association shall be those nominated by Members as their representative or alternative representative in the absence of their nominated representatives.
- 10.11 Where the representative of a Member is unable to attend a General Meeting a proxy may be appointed to exercise voting rights using the form attached in **Appendix 2**. The proxy so appointed must be the nominated representative of a Member or an alternative representative.
- 10.12 No changes shall be made to this Constitution unless they are approved as a special resolution at a General Meeting.
- 10.13 The Board shall, on the requisition in writing of no less than twenty (20) per cent of the total number of Members, convene a General Meeting of the Association.
- 10.14 A requisition of Members for a general meeting:
- 10.14.1 Shall state the purpose or purposes of the meeting;
 - 10.14.2 Shall be signed by the Members making the requisition;
 - 10.14.3 Shall be lodged with the Chief Executive Officer; and
 - 10.14.4 May consist of several documents in a similar form, each signed by one or more of the Members making the requisition.
- 10.15 If the Board fails to convene a General Meeting within three (3) months after the date on which a requisition of Members for the meeting is lodged, any one or more of the Members who made the requisition may convene a General Meeting to be held not later than three (3) months after that date.
- 10.16 A General Meeting convened by a Member or Members under clause 10.14 shall be convened as nearly as is practicable in the same manner as General Meetings are convened by the Board.

11. ELECTION AND REMOVAL OF OFFICERS AND BOARD

- 11.1 Nominations by Members for Officers and Board Members shall be received at the Annual General Meeting and if the number of Nominations is equal to the number of positions to be filled then the persons nominated shall be taken to be elected.
- 11.2 If the number of nominations received exceeds the number of positions to be filled a ballot shall be held in such manner as the Board may direct.
- 11.3 If the number of nominations be fewer than the number of positions to be filled the Board may fill the vacancy with the nominated representative of a Member.
- 11.4 The Association may by resolution at a general meeting, subject to Section 50 of the Act, remove any Officer or Board Member before the expiration of the term of office of the Member.

12. WINDING UP

- 12.1 The Association may be wound up if a special resolution is passed at a General Meeting.
- 12.2 If upon the winding-up of the Association there remains, after satisfaction of all its debts and liabilities and discharge of all obligations, any property whatsoever, the same shall be given or transferred to some other institution or institutions having objects similar to the Objects of the Association and which shall prohibit the distribution of its or their income and property among its or their Members to an extent at least as great as that imposed on the Association under or by virtue of clause 8 hereof and which is recognised by the Commissioner for Taxation as being exempt from Income Tax, such institution or institutions are to be determined by the Board Members of the Association at or before the time of dissolution, and in default thereof by the Chief Judge in Equity of the Supreme Court of the ACT, or such other Judge of that Court as may have or acquire jurisdiction in the matter.

APPLICATION FOR MEMBERSHIP

The Council of Private Higher Education Incorporated
(incorporated in the ACT under the Associations Incorporation Act 1991)

_____ *(name of applicant)*

of _____ *(address of applicant)*

hereby applies to become a Member of the Council of Private Higher Education Incorporated. If admitted as a Member, we agree to be bound by the Constitution of the Association and the COPHE Code of Good Practice.

_____ *(signed on behalf of the applicant)*

Name: _____

Title: _____

Dated: _____

Applicant Contact Details - **Phone:** _____

Email: _____

Nominated Representative: _____

Alternative Representative: _____

APPOINTMENT OF PROXY
ANNUAL GENERAL MEETING

The Council of Private Higher Education Incorporated (*incorporated in the ACT under the Associations Incorporation Act 1991*)

I, _____
(full name)

representing _____
(Member name)

(Member address)

being a Member of the Council of Private Higher Education Incorporated

Hereby appoint the Chair of the Meeting or
(full name of proxy)

the representative of _____
(Member name)

as my proxy to vote on my behalf at the Annual General Meeting of the Council of Private Higher Education Incorporated to be held on the.....and at any adjournment of that meeting.

(Signature of Representative of COPHE Member)

Date: _____

Note: A proxy vote may not be given to a person who is not a representative or alternative representative of a Member of the Association.