



**UOW
PULSE**

UOW Pulse LTD

Constitution

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1. The company

1.1 Name of the company

The name of the *company* is UOW Pulse LTD.

1.2 Nature of the company

The *company* is a public company limited by guarantee.

2. Definitions and interpretation

2.1 Definitions

In this constitution, unless the context suggests otherwise, the following definitions apply:

<i>AGM</i>	the annual general meeting held each year as required by the <i>Corporations Act</i> and this constitution;
<i>alumni</i>	graduates of the <i>University</i> including the recipients of <i>University</i> Honorary Awards;
<i>appointed director</i>	a director of the <i>company</i> appointed by the UOW Pulse <i>board</i> or <i>Vice-Chancellor</i> under clause 7.3;
<i>approved leave</i>	a leave of absence that has been approved by the <i>board</i> ;
<i>ASIC</i>	Australian Securities and Investments Commission;
<i>ACNC Act</i>	means <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth);
<i>board</i>	the board of <i>directors</i> of the <i>company</i> elected or appointed in accordance with this constitution;
<i>Chairperson</i>	the Chairperson of the <i>company</i> elected under clause 8.2;
<i>Chief Executive Officer</i>	the person appointed by the <i>board</i> to manage the day to day affairs of the <i>company</i> and undertake such duties as prescribed by the <i>board</i> ;
<i>claim</i>	any action, claim, suit, demand, proceedings, damages or statutory procedure for the recovery of money;
<i>company</i>	UOW Pulse LTD;

<i>Corporations Act</i>	the <i>Corporations Act 2001</i> (Cth) as amended from time to time and any regulations made under that Act;
<i>day</i>	a calendar day;
<i>Deputy Chairperson</i>	a Deputy Chairperson of the <i>company</i> elected under clause 8.2;
<i>director</i>	a director of the <i>company</i> elected or appointed in accordance with this constitution;
<i>elected director</i>	a <i>director</i> of the <i>company</i> elected under clause 8.1 or appointed to fill a casual vacancy in such a position under clause 8.3;
<i>employee</i>	all persons employed: <ul style="list-style-type: none"> 1. by the <i>company</i> <p>regardless of their level of seniority and regardless of whether holding full-time, part-time or limited-term employment;</p>
<i>Executive director</i>	is a member of the board who also has management or operational responsibilities of the company; or they are employed by its parent entity.
<i>independent</i>	in relation to a <i>director</i> , means a person who is not an employee, associated with or in any way affiliated with the <i>University</i> . A person is not associated or affiliated with the <i>University</i> merely because that person is an alumni of the <i>University</i> or an officer of the <i>company</i> ;
<i>member</i>	any person registered as a member of the <i>company</i> pursuant to this constitution, in a category defined in clause 5.1;
<i>month</i>	a calendar month;
<i>Non-Executive Director</i>	is an <i>independent</i> board member without responsibilities for daily management or operations of the company or organisation.
<i>Non-Executive Director Member</i>	means an <i>independent, Non-Executive Director</i> of the <i>company</i> who becomes a <i>member</i> in accordance with clause 5.5;
<i>officer</i>	has the meaning given to it in the <i>Corporations Act</i> ;
<i>Secretary</i>	the Company Secretary appointed under the <i>Corporations Act</i> ;

<i>special resolution</i>	a resolution: <ul style="list-style-type: none"> • of which notice as set out in s 249L(c) of the <i>Corporations Act</i> has been given; and • that has been passed by at least 75% of the votes cast by <i>members</i> entitled to vote on the resolution;
<i>student</i>	students enrolled and proceeding in a postgraduate, undergraduate or non-award course offered by the <i>University</i> or a subsidiary of the <i>University</i> at a campus of the <i>University</i> located in Australia;
<i>term</i>	means the period for which <i>directors</i> may hold seats on the <i>board</i> , as specified in clause 7.4.1.
<i>University</i>	the University of Wollongong, established under the University of Wollongong Act 1989 (NSW);
<i>University community</i>	<i>students</i> , and <i>alumni</i> of the <i>University</i> and <i>employees</i> ;
<i>University Council</i>	the governing authority of the <i>University</i> ;
<i>Vice-Chancellor</i>	the Vice-Chancellor of the <i>University</i> .

2.2 Interpretation

In this constitution, unless the context requires otherwise:

- 2.2.1 the singular includes the plural and vice versa;
- 2.2.2 where an expression is defined in the constitution, any other grammatical form of the expression has a corresponding meaning;
- 2.2.3 words and expressions defined in the *Corporations Act* have the same meaning in this constitution;
- 2.2.4 headings are for purposes of convenience only and do not affect the interpretation of this constitution;
- 2.2.5 a reference to a statute or regulation includes all amendments, consolidations or replacements of the statute or regulation;
- 2.2.6 a reference to a clause is a reference to a clause of this constitution;
- 2.2.7 a reference to this constitution or another instrument includes all amendments or replacements of this constitution or the other instrument;
- 2.2.8 a reference to a statutory or other body that ceases to exist or the powers and functions of which are transferred to another body includes a reference to the body;

- (a) that replaces it; or
- (b) to which substantially all the powers and functions relevant to the constitution are transferred,

the notes to this constitution (being text boxes headed 'Corporations Act Commentary'):

2.2.9

- (a) are for purposes of convenience only and do not affect the interpretation of this constitution; and
- (b) do not form part of this constitution and may be removed or modified without the *company* complying with this constitution or the *Corporations Act's* requirements that apply to removal or modification of constitutional provisions;

2.2.10 this constitution shall be read and constructed subject to the provisions of the *Corporations Act* and to the extent that any of the provisions in this constitution are inconsistent with the compulsory provisions of the *Corporations Act* such provisions of this constitution shall be deemed inoperative and of no effect to the extent of the conflict.

2.3 Replaceable rules

The provisions of the *Corporations Act* that apply to certain companies as replaceable rules are displaced by this constitution in their entirety and do not apply to the *company*.

Corporations Act Commentary
For details of the operation of replaceable rules: see s 135(2).

3. Objects and powers

3.1 Objects of the company

3.1.1 Primary Object. To complement and support the academic activities of the *University* through the provision of products and services that meet the social, cultural, sporting, health and recreational needs of the *University community*.

3.1.2 Secondary objects;

- (a) encourage, foster, promote, develop, and control sport, fitness and recreation programs and facilities for the *University community*;
- (b) provision of entertainment, artistic, cultural and social activities for the *University community*;

- (c) provision of services including food, beverage and other retail shopping for the *University community*;
- (d) encourage and assist the establishment of amateur sporting clubs and recreational activities for the *University community*; and
- (e) encourage, assist and directly facilitate social clubs or societies for the *University community*.

3.2 Powers of the company

The *company* has the capacity and all of the powers of a natural person.

4. Property and income of the company

4.1 Application of income and property

The income and property of the *company*:

- 4.1.1 must be applied solely towards the promotion of the objects of the *company* set out in this constitution; and
- 4.1.2 shall not be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to the *members*.

4.2 Company officer remuneration

- 4.2.1 *Directors* may be paid such reasonable remuneration as the *company* determines by resolution.
- 4.2.2 The *company* may also pay for, or reimburse to, the *directors'* reasonable travel and other expenses that are properly incurred:
 - (a) in attending *directors'* meetings or any meetings of committees of *directors*; or
 - (b) in attending any general meetings of the *company*; or
 - (c) in connection with the *company's* business; and
 - (d) in connection with their office as a *director* of the *company*.

4.3 Remuneration, rent and interest to members

Nothing in this constitution shall prevent the payment:

- 4.3.1 in good faith of reasonable and proper remuneration to any *member* in return for services actually rendered to the *company*, including by way of employment contract;
- 4.3.2 for goods supplied by a *member* to the *company* in the

ordinary and usual course of operation;

4.3.3 for out of pocket expenses incurred by a *member* on behalf of the *company*;

4.3.4 of interest at a rate not exceeding the lowest rate paid for the time being by the Commonwealth Bank of Australia in respect of term deposits of an amount equivalent to the amount of the loan on money lent by a *member* to the *company*; or

4.3.5 of reasonable and proper rent for premises leased or licensed by any *member* to the *company*,

provided that any such payment may not exceed the amount ordinarily payable between ordinary commercial parties dealing at arms' length in a similar transaction.

5. Membership

5.1 Categories of members

The *members* of the Company comprise:

5.1.1 the *University*; and

5.1.2 Up to 5 *Non-Executive Director Members*, the rights and obligations of which are set out in clause 5.5

5.2 Additional categories of membership

5.2.1 The *board*, may create new categories of membership from time to time with such rights, privileges and obligations as the *board* may determine, even if the effect of creating a new class is to alter the rights, privileges or obligations of existing categories of *members*.

5.3 Nomination for new membership

5.3.1 The application and approval process for any new *member* will be determined by the *board*.

5.3.2 Unless the application for membership arises out of the operation of clause 5.5.1 the *board* may reject any application for membership without providing any reasons for that rejection.

5.4 Rights and obligations of all member

5.4.1 Every person who has been accepted under this clause 5 shall:

- (a) become a *member* and will be bound by this constitution and the by-laws of the *company* in force from time to time; and

(b) have all the rights granted to them under this constitution and the *Corporations Act*.

5.4.2 A *member's* rights and obligations are personal and are not transferable.

5.4.3 All *members* have the right to attend, debate and vote at General Meetings.

5.5 Rights and obligations of the *Non-Executive Director Members*

5.5.1 It is a condition of appointment to the position of *Non-Executive Director* of the *company* that each *Non-Executive Director* becomes a *Non-Executive Director Member* and has their name entered in the register of *members*.

5.5.2 *Non-Executive Director Members* will automatically cease to be *members* at such time as they cease to be a *Non-Executive Director* of the *company*.

6. Application of property on dissolution

6.1 Member's liability

The liability of the *members* is limited as set out in this clause 6.

6.2 Member's guarantee

Each *member* undertakes to contribute an amount not exceeding \$1 if the *company* is wound up:

6.2.1 while they are a *member*; or

6.2.2 within one year of the date that they cease to be a *member*.

6.3 Application of contribution

The contribution referred to in clause 6.2 shall be for the:

6.3.1 payment of the debts and liabilities of the *company* contracted before the *member* ceased to be a *member*; and

6.3.2 costs, charges and expenses of winding up.

6.4 Winding up

On the winding up or dissolution of the *company*, any assets remaining after the satisfaction of all debts and liabilities:

6.4.1 must not be paid to *members* unless that *member* is a charity; and

6.4.2 will be given or transferred to such other fund, or

organisation which has:

- (a) objects similar to the objects of the *company*;
- (b) a constitution which prohibits the distribution of its income and property among its members to an extent at least as great as is imposed on the *company* under clause 4.1 of this constitution; and
- (c) charitable status, if the *company* is a charity at the time of winding up or dissolution.

6.5 Decision as to relevant institutions

Choosing which institution or institutions the *company* will transfer property to under clause 6.4 must be done by:

- 6.5.1 the *members* in general meeting (by ordinary resolution) at or before the time of the *company's* dissolution;
- 6.5.2 if no such resolution is passed, then by the Supreme Court or such other court of competent jurisdiction.

7. Board of directors

7.1 Composition of the board

The *board* shall consist of:

- 7.1.1 up to 2 *elected directors*; and
- 7.1.2 up to 7 *appointed directors*.

7.2 Elected directors

- 7.2.1 One *employee* may be elected to the *board* by *employees* who shall be an *executive director*.
- 7.2.2 One *student* (over 18 years of age) may be elected to the *board* by *students*.

7.3 Appointed directors

- 7.3.1 The UOW Pulse *board* can appoint at least 4 and no more than 5 persons of which at least 4 directors are *independent*.
- 7.3.2 The *University Council* may appoint up to 1 member of the *University Council* to the board as an *appointed director*.
- 7.3.3 *The Vice-Chancellor* may appoint up to 1 *director* as an *appointed director* who shall also be an *executive director*.

7.4 Term

- 7.4.1 The *elected directors* shall hold their respective offices for 2 years, after which their term expires.
- 7.4.2 The *appointed directors* appointed by the UOW Pulse *board* may be appointed for a term, and on such conditions as the UOW Pulse *board* determines and may be removed by a determination of the UOW Pulse *board* at any time.
- 7.4.3 The *appointed directors* appointed by the *University Council* and/or the *Vice-Chancellor* shall be appointed for a *term* of 2 years after which, his or her term expires.
- 7.4.4 If the *University Council* or the *Vice-Chancellor* remove a *director* they have appointed, any new *director* appointed as their replacement must meet the same criteria which applied to the appointment of the removed *director*.
- 7.4.5 The appointment of an *appointed director* does not need to be confirmed at the next *AGM*.
- 7.4.6 The maximum aggregate term of any *appointed director* or *elected director* will not exceed 12 years.

Corporations Act Commentary
clause 7.4.3 displaces s 201H(3) - a replaceable rule that requires appointed directors to be confirmed by a resolution at the next <i>AGM</i> .

- 7.4.7 Any *director* whose term of appointment expires under this clause shall be eligible for re-election or re-appointment to the *board*.

7.5 Termination of a director

The office of a *director* becomes vacant if the *director*:

- 7.5.1 becomes insolvent;
- 7.5.2 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;
- 7.5.3 resigns office by written notice to the *company* at its registered office;

Corporations Act Commentary
s 203A is a replaceable rule allowing a director to resign by giving written notice.

- 7.5.4 becomes disqualified from holding office as a *director* by virtue of the *Corporations Act* or the *ACNC Act*;

Corporations Act Commentary
s 206B sets out the circumstances where a person will be disqualified from managing a corporation

- 7.5.5 is removed as a *director* under clause 7.4.2, 7.4.3 or 7.4.4;
- 7.5.6 is a *director* elected under clause 7.2.1 and ceases to be an *employee*;
- 7.5.7 is a *director* elected under clause 7.2.2 and ceases to be a *student*;
- 7.5.8 is absent without consent of the *board* from meetings of the *board* for a continuous period of six months;
- 7.5.9 is directly or indirectly interested in any contract or proposed contract with the *company* and fails to declare the nature of the interest in the manner required by this Constitution unless the *Board* resolves that the *director* may continue;
- 7.5.10 accepts remuneration, payment or other benefits other than in accordance with this Constitution; or
- 7.5.11 dies.

8. Election of the board

8.1 Procedure for election

The procedure for election of *elected directors* shall be as determined by the *board*.

8.2 Chairperson and Deputy Chairpersons

8.2.1 The UOW Pulse *board* shall elect by resolution:

- (a) a *Chairperson* from the *appointed directors* at 7.3.1 who are not *employees*; and
- (b) a *Deputy Chairperson* from the *appointed directors* at 7.3.1

8.2.2 If the office of *Chairperson* becomes vacant for any reason, the UOW Pulse *board* must appoint a new *Chairperson* in accordance with paragraph 8.2.1(a).

8.2.3 If the office of a *Deputy Chairperson* becomes vacant for any reason, the UOW Pulse *board* may if they resolve, elect a new *Deputy Chairperson*.

8.2.4 A casual vacancy in the office of:

- (a) *Chairperson* must be filled by a *director* from the *appointed directors* at 7.3.1 who are not *employees*, determined by resolution of the UOW Pulse *board*; and

- (b) *Deputy Chairperson* must be filled by a *director* from the *appointed directors* at 7.3.1 determined by the resolution of the UOW Pulse *board*.

8.3 Casual board members

- 8.3.1 The *board* may, from time to time, appoint any suitably qualified person as a *director* to fill a casual vacancy in the position of an *elected director* on the *board* provided such person satisfies the same criteria under 7.2 and satisfies all of the same conditions as the *director* who created the casual vacancy.
- 8.3.2 Any *director* appointed in accordance with this clause 8.3 shall hold office only until the next election of *elected directors*.
- 8.3.3 A casual vacancy in the position of appointed director shall be filled in the same manner as the initial appointment of the person who created the casual vacancy.

Corporations Act Commentary
Section 201K of the <i>Corporations Act</i> is a replaceable rule allowing and setting out the requirements under which a <i>director</i> may appoint another <i>director</i> to exercise some or all of its powers for a specified period if the appointed <i>director</i> consents.

9. Powers of the board

9.1 General powers

The *board* shall:

- 9.1.1 oversee the business and affairs of the *company* and the custody and control of its property and funds;
- 9.1.2 exercise its powers and do all such things that the *company* is by this constitution or otherwise authorised to exercise and do and which is not required to be exercised by the *company* in general meeting.

Corporations Act Commentary
A number of matters cannot be determined by the <i>board</i> and must be approved by the members in general meeting (meaning the <i>University</i> as the sole voting member), including: <ul style="list-style-type: none">• changes to the <i>company's</i> constitution – s 136• changes to the <i>company's</i> name – s 157• change of company type – s 162(1)(a)• variation or cancellation of the rights of members – s 246B• issue of shares amounting to a variation of class rights – s 246C• share issues by public companies to related parties – Chapter 2E• certain share buybacks – s 257B• reductions of share capital – s 256B• cancellation of forfeited shares – s 258D• removal of <i>directors</i> – s 203D• appointment and removal of auditors – ss 327 and 329• the giving of a financial benefit by the <i>company</i> to a related party – s208• winding up of the <i>company</i> – s 461(1)(a)

9.2 Specific powers

Without limiting the general powers in clause 9.1, the *board* will have the following powers from time to time:

- 9.2.1 subject to clause 20, to make, amend and repeal any by-laws not inconsistent with this constitution that are in the opinion of the *board*, necessary or desirable for the proper conduct and management of the *company*;
- 9.2.2 subject to clause 20, to enforce or procure the enforcement of all by-laws by suspension from enjoyment of the *company* privileges or any of them or otherwise as the *board* thinks fit;

9.3 Acts of the board

All acts done by any meeting of the *board* shall, even if it is subsequently discovered that there was some defect in the appointment of the *board* or a member of the *board*, be valid as if every such person had been duly appointed and was qualified to be a member of the *board*.

10. Chief Executive Officer

- 10.1 The *board* may appoint a *Chief Executive Officer* and determine the terms of that appointment and the duties and responsibilities of that position.
- 10.2 A selection committee will be established by the *board* to consider and advise the *board* on the proposed appointment of a *Chief Executive Officer*.
- 10.3 The *company* shall be managed by the *Chief Executive Officer* who may exercise all powers of the *company* which are not, under the *Corporations Act* or this constitution, required to be exercised by the *board* or by the *company* at a General Meeting.
- 10.4 The *Chief Executive Officer* shall administer the *company* in accordance with this constitution, the by-laws and all policy directions of the *board*.
- 10.5 The *Chief Executive Officer* may employ such personnel as are deemed necessary from time to time and such appointments shall be for such period and on such conditions as the *Chief Executive Officer* determines.
- 10.6 The *Chief Executive Officer* has the right to attend meetings of the *board* and of any committee and advisory committee as she or he thinks fit (but shall not have a vote), unless that meeting determines that the *Chief Executive Officer* should be excluded from part or all of the meeting.

11. Company Secretary

11.1 The *board* may appoint a *Secretary* and determine the terms of that appointment and the duties and responsibilities of that position, including compliance with the *Corporations Act*.

12. Committees and advisory committees

12.2 Committees

In addition to the powers in clause 9.1 and 9.2, the *board* shall have power to establish and disestablish:

12.1.1 committees; and

12.1.2 advisory committees

consisting of any combination of:

12.1.3 *directors*;

12.1.4 *employees*;

12.1.5 *students*; and

12.1.6 any other person who has a particular skill or expertise which they will contribute to a committee.

12.3 A Pulse Advisory Council shall be established under 12.1 to advise the *board* on student feedback, engagement and any other issues set out by the *board* in its terms of reference. The Pulse Advisory Council shall report to the *board* on a regular basis and at least annually.

12.4 In addition to the powers in clause 9.1 and 9.2, the *board* shall have power to delegate any of its powers (except for the power of delegation) to one or more of its committees.

12.4 Diversity

In establishing committees and advisory committees the *board* will have regard to gender and diversity considerations where possible.

12.5 Terms of reference

The *board* shall develop a written terms of reference for each committee that specifies the members (including the Chair), roles, functions and responsibilities of each committee and advisory committee. Committees and Advisory Committees must comply with such terms of reference at all times.

12.6 Advisory committees

Any advisory committee established in accordance with clause 12.1 shall act in an advisory capacity only.

12.7 Operation of committees

Any committee formed under clause 12.1 shall, in the exercise of the powers so delegated, conform to any regulation or restriction that the *board* may from time to time impose.

12.8 Chairperson a member of all committees

The *Chairperson* shall be *ex officio* a member of all such committees (unless the *board* determines otherwise) and may preside at a meeting of any such committees.

12.9 Meetings of committees

12.9.1 Any committee may meet and adjourn as it thinks proper.

12.9.2 Questions arising at any meeting of a committee shall be determined by a majority of votes of the members of the committee present and in the case of an equality of votes the chairperson of the meeting shall have a second and casting vote.

12.10 Minutes of meetings of committees

Any committee shall make minutes of its meetings and will submit those minutes to the *board* and the *board* will retain those minutes as if they were minutes of the *board*.

12.11 Acts of committees

All acts done by any meeting of a committee shall, even if it is subsequently discovered that there was some defect in the appointment of any such committee or a committee member, be valid as if every such person had been duly appointed and was qualified to be a committee member.

13. Board meetings

13.1 Calling of board meetings

13.1.1 The *board* may organise, adjourn and otherwise conduct its meetings as it sees fit for the transaction of business of the *company*, so long as the *board* meets on at least four occasions every calendar year.

13.1.2 A *director* may call a meeting by giving reasonable notice individually to every other *director*.

13.1.3 A meeting may be held at shorter notice than deemed reasonable under clause 13.1.2 if all *directors* agree to the shorter notice.

13.1.4 Notice of a meeting given under rule 13.1.2 must specify the general nature of the business to be transacted at the meeting. Only the business specified in the notice may be

transacted at the meeting.

13.2 Quorum

13.2.1 The quorum for *board* meetings shall be a majority of the total number of *directors* of the *company* at the time of the meeting or such greater number as may be fixed by the *board*.

13.2.2 In determining the quorum, any *directors* of the *company* who are on *approved leave* shall be disregarded.

13.3 Continuing directors

The *board* may act despite any vacancy in the *board*, so long as the number of *board* members is not reduced below the quorum fixed in clause 13.2, however, *directors* may act where the quorum is not met for the purposes of:

13.3.1 increasing the number of *directors* to the quorum of the *board*; or

13.3.2 convening a general meeting of the *company*,

but for no other purpose.

13.4 Chairperson at board meetings

13.4.1 The *Chairperson* shall chair every meeting of the *board*.

13.4.2 If the *Chairperson* is not present or is unwilling or unable to act, then the *Deputy Chairperson* shall chair the *board* meeting.

13.4.3 If the *Deputy Chairperson* is not present or is unwilling or unable to act, then the *directors* present shall elect a *director* to chair the *board* meeting

13.5 Voting at board meetings

13.5.1 Questions arising at any *board* meeting shall be decided by a simple majority of votes and a determination by a majority of the *board* shall for all purposes be deemed a determination of the *board*.

13.5.2 If there is an equality of votes, the *Chairperson* of the meeting shall have a second and casting vote.

13.5.3 Proxy votes are not permitted for *board* meetings.

13.6 Minutes

A record of all *directors* present at each *board* meeting and minutes of all resolutions and proceedings of the *board* shall be entered and maintained in records kept in accordance with clause 19.

13.7 Circular resolutions of the board

- 13.7.1 A resolution in writing signed by all *directors* or a resolution in writing of which notice has been given to all *directors* and which is signed by a majority of the *directors* entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of the *board*) is a valid resolution of the *board*.
- 13.7.2 The resolution may consist of several documents in the same form each signed by one or more of the *directors*.
- 13.7.3 For the purposes of rule 13.7.1 the reference to “all *directors*” does not include a reference to:
- (a) a *director* who, at a meeting of *directors*, would not be entitled to vote on the resolution;
 - (b) a *director* who disqualifies himself or herself from considering the resolution in question; and
 - (c) any *director* on *approved leave*.
- 13.7.4 For the purposes of rule 13.7.1:
- (a) a statement sent electronically by a *director* to an agreed electronic address stating that they are in favour of a specified resolution shall be taken to be a document containing that statement and duly signed by the *director*. Such a document shall be taken to have been signed by the *director* at the time of its receipt at the agreed electronic address; and
 - (b) a *director* may consent to a resolution by telephoning the *Secretary* or *Chairperson* and signifying assent to the resolution and clearly identifying its terms.
- 13.7.5 A resolution in writing under this clause 13.7 shall be deemed to have been passed at a meeting of the *directors* held on the day and at the time at which the document was last signed or consented to by a *director* and the document shall be deemed to constitute a minute of that meeting and shall be recorded by the *Secretary* in the minute book maintained under clause 19.

13.8 Attendance at meetings

- 13.8.1 Without limiting the power of the *board* to regulate their meetings as they think fit, a meeting of the *board* may be held where one or more of the *directors* is not physically present at the meeting, provided that all persons participating in the meeting are able to communicate with each other effectively, simultaneously and instantaneously, whether by means of telephone or other form of communication.

14. Director interests

14.1 Declarations of interests

Any *director* who has a material interest in a matter that relates to the affairs of the *company*, or receives any gift from an affiliated body of the *company* (*interested director*), must declare the interest at the meeting of the *board* at which the matter is first considered, or if the *director* becomes interested after the matter is first considered by the *board*, at the first meeting of the *board* after the *director* becomes interested.

14.2 General disclosure

A general notice that a *director* is a member of any specified firm or company and is to be regarded as interested in all transactions with that firm or company is sufficient declaration under 14.1 as regards such *director* and the said transactions. After such general notice it is not necessary for such *director* to give a special notice relating to any particular transaction with that firm or company.

14.3 Recording disclosures

Where a *director* has declared an interest under clause 14.1 or 14.2, the interest must be recorded in the *board* minutes.

14.4 Voting on declared interest

A *director* who has a declared interest under clause 14.1 or 14.2 cannot:

14.4.1 vote on that matter; or

14.4.2 be present while the matter is being considered by the meeting,

unless:

14.4.3 the interest does not need to be disclosed under section 191 of the *Corporations Act*;

14.4.4 the *directors* who do not have a material personal interest in the matter have passed a resolution that:

(a) identifies the *director*, the nature and extent of the *director's* interest in the matter and its relation to the affairs of the *company*; and

(b) states that those *directors* are satisfied that the interest should not disqualify the *director* from voting or being present; or

14.4.5 ASIC has declared under s 196 of the *Corporations Act* that s 195 should not apply in the particular case.

14.5 If there are not enough *directors* to form a quorum for a *board* meeting because of clause 14.1 or 14.2, 1 or more of the *directors* (including those who have a material personal interest in that matter) may call a general meeting and the general meeting may pass a

resolution to deal with the matter.

14.6 Despite the other provisions of this clause 14 or the *Corporations Act* any *director* who is a member of the *University Council* or an *employee* of the *University* (either position referred to in this clause as a *conflict role*) shall:

14.6.1 not be precluded from attending any meeting, speaking on any matter or voting on any resolution solely because of the *conflict role*; and

14.6.2 will not breach any obligations of confidentiality to the *company* if they disclose any information, matter or proceeding of the *company* to the *University* or *Vice-Chancellor*.

Corporations Act Commentary
The same prohibition and exceptions are contained in ss 191 and 195 of the <i>Corporations Act</i> . These sections also provide additional information on conflicts of interest and the circumstances in which conflicted directors may still participate.

15. General meetings

15.1 General meetings

15.1.1 A general meeting called the *AGM* shall be held at least once in every calendar year at such time and place as may be determined by the *board* but within 5 *months* of the close of the financial year.

Corporations Act Commentary
The requirement that an AGM be held within these time frames is consistent with s 250N.

15.1.2 All meetings other than *AGMs* shall be called general meetings.

15.2 Business of general meetings

All business transacted at a general meeting including *AGMs* shall be special with the exception of:

15.2.1 the consideration of accounts, balance sheets and *directors'* and auditors' reports;

15.2.2 declaration of the election of *directors*; and

15.2.3 the appointment of auditors, where necessary.

15.3 Calling of general meetings

15.3.1 The *board* may whenever it considers fit call and arrange to hold a general meeting of the *company*.

15.3.2 The *board* will on the requisition in writing by the *University* convene a general meeting. If the *board* does not call and arrange a general meeting to be held within twenty one days after the date in which the requisition is sent to the *company*, the *University* may convene a general meeting to be held no later than three months after the date on which the requisition was sent to the *company*.

16. AGM

16.1 Conducting the AGM

An *AGM* of the *company* must be held in accordance with the provisions of the *Corporations Act* and this constitution, on a date and at a venue to be determined by the *board*.

16.2 Business of the AGM

The business of the *AGM* shall be as follows:

16.2.1 to confirm the minutes of the previous *AGM*;

16.2.2 to receive and consider the reports referred to in clause 21 (Financial Reports);

16.2.3 where required, to conduct elections of the *board* or declare the result of such election;

16.2.4 to appoint an auditor or auditors in the event that there is a vacancy in the office of auditor; and

16.2.5 to deal with any other business of which due notice has been given to the *members*.

Corporations Act Commentary
s 250R allows the business of the AGM to include the matters referred to in clauses 16.2.2 to 16.2.4 even if such matters are not referred to in the notice of meeting.

17. Votes of members

17.1 Entitlement to vote at general meetings

Subject to the provisions of this constitution (in particular clause 5.4.3) every *member* is entitled to 1 vote at any general meeting of the *company*:

17.1.1 in person; or

17.1.2 by proxy.

17.2 Method of voting at general meetings

Every *member* (including their proxy or attorney) when eligible to vote shall be entitled to vote both on a show of hands and by poll and shall have one vote.

18. Procedure at general meetings

18.1 Chairperson

18.1.1 The *Chairperson* shall, if present, chair all general meetings of the *company*.

18.1.2 If the *Chairperson* is not present within 15 minutes after the time appointed for holding the meeting or is unwilling or unable to act then the *Deputy Chairperson* shall chair the general meeting.

18.1.3 If the *Deputy Chairperson* is not present within 15 minutes after the time appointed for holding the meeting or is unwilling or unable to act, then the *members* of the *company* present shall elect a member of the *board* to chair the general meeting.

18.2 Quorum

18.2.1 No business shall be transacted at any general meeting of *members* unless a quorum of *members* is present.

18.2.2 At any general meeting of the *company* (including an *AGM*), one *member* shall be a quorum unless there is more than one *member* of the *company* in which case *members* holding votes equal to more than half of all votes entitled to be cast at a general meeting shall constitute quorum

18.2.3 For the purposes of this clause 18.2, *member* includes a person attending as a proxy or representing a body corporate that is a *member*.

18.3 Quorum not present

If a quorum is not present within 30 minutes after the time appointed for the commencement of the meeting, the meeting shall be dissolved.

18.4 Voting at general meeting

Subject to clause 17.1, every question submitted to a meeting other than a *special resolution* shall be decided by a simple majority of votes from those *members* who are present and voting. A poll will be called if it:

18.4.1 is demanded by the *Chairperson* of the meeting;

18.4.2 is otherwise required by this constitution.

18.5 Conduct of polls

18.5.1 A poll duly demanded in accordance with clause 18.4 on a matter other than the election of a chairperson for a general meeting or the question of an adjournment must be taken when and in the manner the chair directs.

18.5.2 A poll demanded on the election of a chairperson for a general meeting or on a question of adjournment must be taken immediately.

18.6 Effect of polls

The result of a poll shall be a resolution of the meeting at which the poll is held.

18.7 Declaration by Chairperson

At any general meeting, a declaration by the *Chairperson* that a resolution has been carried or carried by a particular majority or lost or not carried by a particular majority and an entry to that effect in the records containing the minutes of the proceedings of the *company* shall be conclusive evidence of the fact without proof of the number of proportion of votes recorded in favour of or against such resolution.

18.8 Adjournment of general meeting

The *Chairperson* of a meeting may with the consent of the meeting at which a quorum is present (and shall if so directed by the meeting) adjourn the meeting from time to time and from place to place.

18.9 No business to be transacted at adjourned meeting

No business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

18.10 Notice of adjourned meeting

18.10.1 Where a meeting has been adjourned for thirty days or more, fresh notice of the meeting must be given to all *members*.

18.10.2 If the meeting is adjourned to a time less than 30 days after the originally scheduled meeting, notice need not be given.

18.11 Effect of resolutions

A resolution passed at a meeting resumed after an adjournment shall for all purposes be treated as having been passed on the date when it was in fact passed and shall not be deemed to have been passed on any earlier date.

19. Record of minutes

- 19.1 The *company* must maintain a record of:
- 19.1.1 proceedings and resolutions of general meetings of the *company*;
 - 19.1.2 proceedings and resolutions of meetings of the *board* (including meetings of a committee of *directors*); and
 - 19.1.3 resolutions passed by *directors* without a meeting.

19.2 Minutes to be signed

The *company* must ensure that:

- 19.2.1 minutes of a meeting of the *company* or the *board* are signed within a reasonable time after the meeting by the *Chairperson* of the meeting or the *Chairperson* of the next meeting; and
- 19.2.2 minutes of the passing of a resolution without a meeting are signed by a *director* within a reasonable time of the date on which the resolution is passed.

19.3 True record

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

Corporations Act Commentary
S 251A contains the provisions that require the keeping of minutes. S 251B minute books of <i>company</i> meetings (not <i>board</i> meetings) and resolutions of the <i>company</i> passed without a meeting must be open for inspection by <i>members</i> free of charge.

20. By-laws

20.1 Board to formulate by-laws

The *board* may formulate, approve, issue, adopt, interpret and amend such by-laws, regulations and policies for the proper advancement, management and administration of the *company* and the advancement of the objects of the *company* as it thinks necessary or desirable. Such by-laws must be consistent with this constitution.

20.2 By-laws binding

All by-laws made under this rule will be binding on the *company* and *members*.

20.3 By-laws deemed applicable

All by-laws, regulations and policies of the *company* in force at the

date of the approval of this constitution under the *Corporations Act* insofar as such by-laws, regulations and policies are not inconsistent with, or have been replaced by this constitution, are by-laws under this rule.

20.4 Notices binding on members

Amendments, alterations, interpretations or other changes to by-laws will be advised to *members* by means of notices approved by the *board*.

21. Auditor

21.1 Auditors

Auditors shall be appointed by the *University* and their duties regulated in accordance with the *Corporations Act* and their remuneration shall be fixed by the *board*.

Corporations Act Commentary
Part 2M.4 regulates the appointment and removal of auditors.

21.2 Audit of accounts

The accounts of the *company* (including profit and loss, balance sheet and cash flow statements) shall be examined by the auditors at least once in each financial year of the *company*.

22. Accounts

22.1 Accounts and records

22.1.1 The *board* must cause proper accounts and records to be kept with respect to the affairs of the *company* that:

- (a) correctly record and explain its transactions and financial position and performance;
- (b) enable true and fair financial statements to be prepared and to be audited; and
- (c) correctly record its operations.

22.1.2 The *board* must take reasonable steps to ensure that the company's records are kept safe.

22.2 Location of books of account

The books of account shall be kept at the registered office of the *company* or at such other place as the *board* thinks fit.

22.3 Inspection of the books

22.3.1 The *company* shall at all reasonable times make its accounting records available in writing for the inspection of members of the *board* and any other persons authorised or permitted by or under the *Corporations Act* to inspect such records.

22.3.2 For the avoidance of doubt, section 247D of the *Corporations Act* is displaced and does not apply.

22.3.3 Despite 22.3.2 the *University* shall be permitted full and unfettered access to the books and records of the *company*.

Corporations Act Commentary

Members do not have an automatic statutory right to inspect the books.

However, a member may apply to the Court for an order to inspect the records: s 247A.

s 247D is a replaceable rule allowing the directors of a company, or the company by a resolution passed at a general meeting, to authorise a member to inspect books of the company.

22.4 Annual financial records

The *board* must, at least 21 *days* before each *AGM* and in any event within 4 *months* of the end of the financial year make available to all *members* and the *University Council* a copy of all reports required by the *Corporations Act* using the methods permitted by the *Corporations Act*.

Corporations Act Commentary

The *board* is required to provide members with either a full or concise report of the following for the year:

- (a) the financial report;
- (b) the director's report; and
- (c) the auditor's reports.

(these terms having the meaning given to them in the Act) – ss 314 – 315

A *member* may by notice in writing to the *company* elect to receive a hard copy or an electronic copy of the above reports.

If a *member* makes an election in a *financial year*, the election is made for the *financial year* and is a standing election for each later financial year until the member changes that election.

The *company* must send a copy of each report, free of charge, to each member who has made an election for that financial year by the earlier of 21 *days* before the next *AGM* after the end of the *financial year* and 4 *months* after the end of the *financial year*.

23. Execution of documents

23.1 Execution of documents

23.1.1 The *company* may execute any document as permitted by the *Corporations Act*.

Corporations Act Commentary
<p>s 127(1) provides that a public company may execute a document without a common seal if the document is signed by:</p> <ul style="list-style-type: none">(a) 2 directors of the company; or(b) a director and a company secretary of the company <p>s 127(2) provides that a public company with a common seal may execute a document if the seal is fixed to the documents and the fixing of the seal is witnessed by:</p> <ul style="list-style-type: none">(a) 2 directors of the company; or(b) a director and a company secretary of the company <p>If a company executes a document in either of these ways, people will be able to rely on the assumptions in s 129(5) for dealings in relation to the company.</p>

24. Indemnity to directors

24.1 Indemnity

Every *officer* and former *officer* of the *company* shall be indemnified to the fullest extent permitted by the *Corporations Act* out of the property of the *company* against any liability incurred by them in their capacity as *officer* in defending any proceedings whether civil or criminal.

24.2 Officer's insurance

The *company* may pay a premium for a contract insuring a person who is an *officer* or a former *officer* of the *company* against a liability incurred by that person as an *officer* of the *company* provided that the liability is not one in respect to which a premium cannot be paid under the *Corporations Act* or a liability which contravenes s 199A or s 199B of the *Corporations Act*.

Corporations Act Commentary
<p>The <i>company</i> must not indemnify an <i>officer</i> in respect of a liability:</p> <p>(a) owed to the <i>company</i> or a related body corporate of the <i>company</i> by the <i>officer</i>;</p> <p>(b) for pecuniary penalty order under the <i>Corporations Act</i>;</p> <p>(c) owed to someone other than the <i>company</i> and did not arise out of conduct in good faith – s 199A(1) and (2)</p> <p>The <i>company</i> must not indemnify an <i>officer</i> against legal costs incurred in defending an action for a liability incurred in defending an action for a liability incurred as an <i>officer</i> if the costs are incurred:</p> <p>(a) in defending or resisting proceedings in which the person is found to have a liability for which they can't be indemnified under (a) to (c) above; in defending or resisting criminal proceedings where the person is found guilty;</p> <p>in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for the order have been established (except for costs incurred in responding to actions taken by ASIC or a liquidator before commencing proceedings for the court order); or</p> <p>in connection with proceedings for relief under the <i>Corporations Act</i> in which the Court denies the relief. – s 199A(3)</p> <p>The <i>company</i> must not pay a premium for a contract for an <i>officer</i> in respect of:</p> <p>conduct involving a wilful breach of duty in relation to the <i>company</i>; or</p> <p>contravention of ss 182 or 183 of the <i>Corporations Act</i> (improper use of position or improper use of information) – s 199B</p>

25. The Constitution

25.1 Copy of constitution to be made available on request

The *company* must provide a copy of this constitution to a *member* within 14 *days* if the *member*:

25.1.1 asks the *company*, in writing, for the copy; and

25.1.2 pays the fee required by the *company*, up to the amount prescribed by the *Corporations Act*.

Corporations Act Commentary
For the prescribed amount see Pt 1.1 and Schedule 4 of the <i>Corporations Regulations (Cth) 2001</i> (as at 22 January 2016, \$10.00)

25.2 Amendment to constitution

This constitution may only be amended by way of *special resolution* validly passed at a general meeting of the *members*.

26. Transitional arrangements

- 26.1 Despite any other provisions of this constitution the board of directors of the *company* as constituted immediately prior to the adoption of this constitution (*interim board*) shall remain the *board* until removal under 26.2.
- 26.2 The *Vice-Chancellor*, provided there are at any time at least 3 directors, may remove by notice any director of the *interim board* provided that any director so removed is not precluded from being an *elected director* or *appointed director* under this constitution if otherwise qualified to be an *elected director* or *appointed director*.
- 26.3 On removal of the last of the *interim board* this clauses 26.1 and 26.2 shall cease to be of any force or effect.
- 26.4 Certain classes of members of the *company* prior to the adoption of this constitution and certain classes of members of University of Wollongong Recreation Aquatic Centre Limited ACN 082 907 382 (*URAC*) who may be entitled to special recognition as part of their prior membership of the *company* or *URAC* will be recognised by by-laws to be established by the *board*.