

**CONSTITUTION**  
**OF**  
**ROYAL AUSTRALASIAN COLLEGE OF SURGEONS**

ABN 29 004 167 766

ACN 004 167 766

**PROPOSED AMENDMENTS AS AT 16 SEPTEMBER 2024**

**1 PURPOSE**

- 1.1 The purpose of the College, being a bi-national college, is to:
- 1.1.1 advance education, training and research in the practice of surgery;
  - 1.1.2 determine and maintain professional standards for the practice of surgery in Australia and New Zealand;
  - 1.1.3 provide an environment promoting fellowship development and support; and
  - 1.1.4 provide authoritative advice, information and opinion to other professional organisations, to governments and to the public.
- 1.2 To effect this Purpose, the College will:
- 1.2.1 promote high standards of practice, ethics and professional integrity in relation to training, specialist education, assessment, scientific research and surgical practice to improve the health of the community;
  - 1.2.2 establish education and training programs for medical practitioners to become competent specialist surgeons;
  - 1.2.3 establish the status of Fellowship of the College and to assess and to admit appropriately qualified medical practitioners to that status;
  - 1.2.4 encourage and support Fellows to undertake continuous professional development;
  - 1.2.5 work with governments and other relevant organisations to achieve the provision of a well-qualified, experienced workforce in Australia and New Zealand;
  - 1.2.6 provide advice and support to Fellows to assist them in establishing an appropriate work / life balance and to meet the challenges of their professional lives;
  - 1.2.7 advocate on any issue which affects the ability of College members to meet their responsibilities to patients and to the community;

- 1.2.8 promote cooperation with organisations which have objectives similar to the College in Australia and New Zealand as well as internationally; and
- 1.2.9 facilitate medical education and medical aid support to developing nations.
- 1.3 In pursuit of the achievement of this purpose, the College shall have all powers and functions necessary or desirable to the maximum extent permitted by law.

## **2 MEMBERSHIP OF THE COLLEGE**

### **2.1 Classes of membership**

Membership of the College shall consist of:

2.1.1 Fellows;

2.1.2 Honorary Fellows

and such other classes or subclasses as specified in any Regulations for that purpose with such rights and privileges as set out in those Regulations.

### **2.2 Eligibility**

Except in the case of Honorary Fellows, no person shall be eligible to be a Fellow of the College unless at the time of admission as a Fellow:

2.2.1 he or she is a registered Medical Practitioner of a State or Territory of Australia or of New Zealand or of some other country or State approved by the Council for the purpose of this clause; or

2.2.2 he or she holds some other medical qualification regarded as satisfactory by the Council.

### **2.3 Rights not transferable**

The rights and privileges of every Fellow shall be personal and shall not be transferred or transmitted.

### **2.4 Honorary Fellows**

2.4.1 The Council may appoint as Honorary Fellows distinguished members of the medical profession and other eminent persons, whether or not those eminent persons are members of the medical profession.

2.4.2 An Honorary Fellow, on appointment, shall become a member of the College and shall have the same powers, privileges and liabilities as a Fellow, except that an Honorary Fellow shall not be required to pay any entrance fee or annual subscription or to satisfy the College's professional development requirements.

2.4.3 An Honorary Fellow shall be entitled to attend and speak but shall not be entitled to vote at general meetings.

## 2.5 **Admission to Fellowship**

2.5.1 The Council may admit an eligible and qualified person to Fellowship of the College.

2.5.2 The admission to Fellowship of a person is subject to payment of any fee or subscription applicable.

## 2.6 **Names to be entered in the Register**

The name of any person admitted to membership of the College, shall be entered in the Register.

# 3 **CESSATION OF MEMBERSHIP**

## 3.1 **Automatic termination of Fellowship**

3.1.1 Subject to this Constitution, the membership of any Fellow terminates if:

- (a) the Fellow resigns in writing;
- (b) the Fellow dies; or
- (c) the Fellow's name is removed from the register of any medical or professional authority recognised by the Council ("an Authority") for disciplinary reasons.

3.1.2 If the membership of a Fellow is terminated because the Fellow is suspended from practice, the Fellow may be readmitted to membership by resolution of the Council with or without the payment of a further Fellowship fee if the suspension is lifted and subject to any conditions imposed by Council.

## 3.2 **Termination of Fellowship by resolution of the Council**

3.2.1 Subject to this Constitution, the Council may at any time terminate the membership if the Fellow:

- (a) ceases to be eligible for admission to membership of the College;
- (b) refuses or neglects to comply with the provisions of this Constitution or any applicable Regulation;
- (c) refuses or neglects to comply with the provisions of the College's Code of Conduct;
- (d) engages in conduct which in the opinion of the Council is unbecoming of Fellows or is prejudicial to the interests of the College;
- (e) has his or her name removed from the register of an Authority for any reason or is suspended from practice by an Authority;
- (f) becomes a person whose estate or person is liable to be dealt with in any way under the law relating to mental health or disability;

- (g) has any condition or restriction imposed on his or her right to practise by an Authority;
- (h) is found guilty by a Court of an indictable offence; or
- (i) subject to clause 4.1, fails to pay any debt due to the College for a period of 6 months after the due date for payment.

3.2.2 A Fellow shall not be deemed to have ceased to be eligible for membership merely by reason of the fact that the Fellow has ceased to practise.

3.2.3 Subject to clause 3.1, a decision of the Council (or a committee of Council appointed for that purpose) under clause 3 is not effective unless:

- (a) the Fellow concerned has been given a notice of the resolution to be considered by the Council (or a committee of Council appointed for that purpose) and a copy of any business papers circulated regarding the resolution not less than 14 days prior to the date of the meeting. If the business papers do not contain particulars of any allegations supporting the resolution that is to be considered, a statement setting out those allegations must be given;
- (b) the Fellow has been permitted to make submissions to the meeting in writing and orally;
- (c) the Fellow is given an opportunity to respond to any matters raised in the meeting. The Council (or committee) may ask the Fellow to leave the meeting during its deliberations once submissions from all interested parties are complete; and
- (d) notice of the decision of the Council (or committee) is given promptly to the Fellow.

3.2.4 A decision under clause 3.2.1 or 3.2.3 may be subject to appeal under Regulations relating to appeals made for that purpose.

### 3.3 **Name to be removed from Register**

The name of any person ceasing to be a member of the College shall be removed from the Register.

### 3.4 **Consequence of termination of membership**

3.4.1 Any member whose membership of the College terminates for any reason in accordance with this Constitution:

- (a) shall cease to be entitled to any of the rights and privileges of membership; and
- (b) with respect to a member whose membership of the College terminates other than for their death:
  - (1) may be required to return his or her Fellowship Certificate(s) to the College within 14 days of receiving notice of the termination of the Fellow's membership of the College; and

- (2) must not represent that he or she is a Fellow of the College or use the post-nominal "FRACS" or other post-nominal or nomenclature of the College which may be applicable.

3.4.2 The Council shall inform the relevant registration board or authority of any Fellow who shall cease to be a Fellow of the College and the reasons for the cessation of Fellowship.

3.4.3 The Council may in its absolute discretion give notice or publish to the public generally or to any professional body or organisation the fact that any such person has ceased to be a Fellow of the College.

### **3.5 Continuing obligations**

3.5.1 Any person who ceases to be a member of the College shall have no rights in or claim upon the College for the property or funds of the College except as a creditor.

3.5.2 Without limiting clause 3.5.1, termination of membership for any reason does not affect the liabilities and obligations of a member (whether they arise under this Constitution or otherwise), including any obligation to pay any membership subscriptions payable on or before termination, existing at the date of termination or which arise or become known after that date out of or by reason of facts or circumstances occurring or in existence at or before that date.

3.5.3 No former Fellow is eligible for readmission until all arrears of subscriptions and any interest imposed by the Board, if any, due to the College at the date when his or her former Fellowship ceased are paid.

## **4 FELLOWSHIP SUBSCRIPTIONS**

### **4.1 Rates of subscription**

The Board, if it believes there is a good and compelling reason for doing so, may determine different rates of annual subscription for Fellows within the same class of Fellowship. The subscriptions payable by Fellows of the College shall be of such amount and at such time as the Board prescribes (and pro rata for any part of a year).

### **4.2 Non-payment of subscription**

If the subscription of a Fellow is unpaid for a period of 6 calendar months after it becomes due, the Fellow shall cease to be a member of the College and shall lose all rights and privileges of Fellowship. The Board may, if it thinks fit, reinstate the Fellow upon payment of all arrears (on such conditions as the Board determines, including payment of interest on arrears of unpaid subscriptions) and such other amounts as the Board may determine.

## **5 GENERAL MEETINGS OF THE COLLEGE**

### **5.1 Calling meetings of members**

5.1.1 The Board may call a meeting of Fellows.

- 5.1.2 The Board must call a general meeting of the College as required under the Act or if the College receives a written request from the lesser of:
- (a) at least 5% of Fellows who are entitled to vote at the general meeting; or
  - (b) at least 100 Fellows who are entitled to vote at the general meeting,
- and the written request:
- (c) states the resolutions to be proposed at the general meeting; and
  - (d) is signed by all the Fellows making the request.
- 5.1.3 If Fellows requisition a general meeting in accordance with clause 5.1.2;
- (a) the Board must call the general meeting within 21 days after the request is given to the College; and
  - (b) the meeting must be held within 2 months after the request is given to the Board.
- 5.1.4 If the Board does not call a general meeting that was requisitioned by Fellows in accordance with clause 5.1.3 within 21 days after the request is given to the College, then Fellows with more than 50% of the votes of all the Fellows who made the request under clause 5.1.2 may call and arrange to hold a general meeting.

## 5.2 **Notice requirements**

- 5.2.1 At least 21 days notice must be given of a meeting of members unless the Act permits shorter notice.
- 5.2.2 Subject to clause 5.2.1, a notice of a meeting of members must:
- (a) set out the place, date and time for the meeting (and, if the meeting is to be held in two or more places, the technology that will be used to facilitate this); and
  - (b) state the general nature of the meeting's business; and
  - (c) set out an intention to propose the special resolution and state the resolution if a special resolution is to be proposed at the meeting; and
  - (d) contain a statement setting out that the Fellow has a right to appoint a proxy and that the proxy must be a Fellow of the College if a Fellow is entitled to appoint a proxy.

## 5.3 **Annual General Meeting**

- 5.3.1 An Annual General Meeting of the members must be held before the end of May in each year, unless otherwise permitted by law.

5.3.2 The Board shall determine the time and the place of the Annual General Meeting.

#### 5.4 **Annual General Meeting business**

The business of the Annual General Meeting shall be:

- 5.4.1 to receive and consider reports;
- 5.4.2 to consider the annual financial reports and the auditor's report;
- 5.4.3 in accordance with the Constitution, to declare the result of the election or appointment, as the case may be, of new members of the Board and the Council;
- 5.4.4 to appoint an auditor, if necessary; and
- 5.4.5 to transact any other business which ought to be transacted at an Annual General Meeting of which notice has been given in the notice of meeting.

#### 5.5 **Quorum at a general meeting**

- 5.5.1 Business may not be transacted at a general meeting unless a quorum of Fellows is present at the time when the meeting proceeds to business and while business is being conducted.
- 5.5.2 Except as otherwise set out in this Constitution, 25 Fellows present in person and entitled to vote at a general meeting is a quorum.
- 5.5.3 If a quorum is not present within 15 minutes of the time appointed for a general meeting, or a longer period allowed by the Chair, the meeting shall 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 Chair.
- 5.5.4 At an adjourned meeting, if a quorum is not present within 15 minutes of the time appointed for the meeting, the Fellows present and entitled to vote shall be a quorum and may transact the business for which the meeting was called.

#### 5.6 **Chair**

- 5.6.1 A general meeting (including the Annual General Meeting) shall be chaired by:
  - (a) the President; or
  - (b) if the President is absent or unable or unwilling to act, the Vice President; or
  - (c) if the Vice President is absent or unable or unwilling to act, another Board Director elected by the Fellows present on a show of hands; or
  - (d) a Fellow elected by the Fellows present on a show of hands.

5.6.2 Subject to this Constitution, the meeting chair's ruling on all matters relating to the order of business and the procedure and conduct of a general meeting (including any poll or ballot) is final and no motion of dissent from a ruling of the meeting chair may be moved.

## 5.7 **Adjournment of meetings**

5.7.1 The meeting chair may, with the consent of any meeting at which a quorum is present, and must if directed by the meeting, adjourn the meeting to another time and to another place.

5.7.2 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.

5.7.3 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for one month or more.

## 5.8 **Entitlement to vote**

5.8.1 At a general meeting a resolution put to the vote of the meeting is decided on a show of hands unless a ballot is (before or on the declaration of the result of the show of hands) demanded.

5.8.2 Subject to this Constitution, every Fellow present in person has one vote on a show of hands and every Fellow present in person or by proxy has one vote in a ballot.

5.8.3 If there is an equality of votes, whether on a show of hands or on a ballot, the meeting chair has a casting vote in addition to the meeting chair's deliberative vote. A resolution is carried by a simple majority.

5.8.4 An objection to the qualification of a voter must be referred to the meeting chair who must rule on the objection before a vote is taken.

5.8.5 If a ballot is not duly demanded, a declaration by the meeting chair that on a show of hands a resolution has been carried or carried unanimously or by a particular majority or lost and an entry to that effect is made in the record of the minutes of the general meeting of members is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## 5.9 **Conduct of a ballot**

5.9.1 A ballot may not be taken on the election of a meeting chair or on a question of adjournment.

5.9.2 A ballot may be demanded by:

(a) the meeting chair; or

(b) any five members present in person or by proxy entitled to vote.

5.9.3 The demand for a ballot may be withdrawn.

5.9.4 The demand for a ballot does not prevent the continuance of a meeting for the transaction of business other than the question on which the ballot is demanded.

5.9.5 If a ballot is duly demanded, it must be taken in the manner and at such time as the meeting chair directs. The result of the ballot is the resolution of the meeting on the question concerned.

## 5.10 **Proxies**

5.10.1 A document appointing a proxy (which for the purposes of this Constitution includes a power of attorney of a member appointing another member to vote on the first mentioned member's behalf) may be in the form issued with the notice of the meeting or in a common or usual form approved by the Board.

5.10.2 Only a Fellow or the Chair may be appointed as a proxy.

5.10.3 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 other than as specified in the document (if any).

5.10.4 The document appointing a proxy and any power of attorney or other authority (if any) under which the proxy is signed (or a copy of that power or authority certified to be a true copy by a legal practitioner or justice of the peace) must be given (and may be given by facsimile or other forms of electronic transfer) to the Office, or at another place specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting.

5.10.5 A vote given in accordance with the terms of a document appointing a proxy is valid despite the occurrence of any one or more of the following events if no notice in writing of any of those events has been received at the Office before the commencement of the meeting or adjourned meeting at which the document is used:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed; or
- (c) the termination of membership of the member.

## 5.11 **Only financial members to vote**

Only financial members are entitled to:

5.11.1 vote on any question either personally or by proxy;

5.11.2 vote as a proxy for another member; or

5.11.3 be reckoned in a quorum.

## 5.12 **Postal ballot**

- 5.12.1 In respect of any business which may be validly considered at a general meeting (including an Annual General Meeting) pursuant to this Constitution, the Board may (in lieu of a Meeting) conduct a Postal Ballot of members (in this Constitution referred to as a "Postal Ballot").
- 5.12.2 At least thirty days prior to the closing date of a Postal Ballot, the College shall send to all members entitled to vote ballot papers, giving particulars of the business in relation to which the Postal Ballot is conducted, an explanation of the method of voting and a voting form (all in a form and with such content as the Board may approve) and shall give all members notice of the closing date of the Postal Ballot.
- 5.12.3 The College shall receive all voting forms received from members in respect of a Postal Ballot and shall promptly advise the Board of the result of the Postal Ballot. Any voting form received at the office after 1700 hours on the closing date of a Postal Ballot shall be deemed to be invalid and not be counted.
- 5.12.4 In the event of an equal number of votes in respect of any business for which a Postal Ballot is conducted, the President (or in the absence of the President, the meeting chair) shall have a second or casting vote.
- 5.12.5 In all other respects, subject to this Constitution, the Board shall determine any other procedures or matters in relation to the conduct of any Postal Ballot and shall have power to make Regulations for that purpose.
- 5.12.6 In the event of any dispute by any member in relation to the validity or conduct of any Postal Ballot, such member shall within 30 days of the closing date of such Postal Ballot, give notice in writing to the Board stating the grounds of his or her complaint. The Board may thereupon either itself investigate the complaint or may appoint a committee for that purpose. After hearing the complaint, the Board shall determine the matter and its decision thereon shall be final.
- 5.12.7 In lieu of these arrangements, a Postal Ballot may be conducted electronically or by any web-based system, or other lawful method, as approved by the Board.

## **6 BOARD**

### **6.1 Structure of Board**

The Board will comprise between seven and ten Directors as follows:

- 6.1.1 The President determined in accordance with clauses 11 and 14;
- 6.1.2 The Vice President (or President Elect) determined in accordance with clauses 11 and 14;
- 6.1.3 up to five (5) Directors who must be Fellows recommended by Council based on skills, experience and abilities aligned to the College's strategy subject to the following:

- (a) one of the persons appointed pursuant to clause 6.1.3 must be an Australian resident; and
    - (b) one of the persons appointed pursuant to clause 6.1.3 must be a New Zealand resident.
  - 6.1.4 subject always to there being a majority of Fellows on the Board, up to four skills-based Directors who are not Fellows, appointed by other members of the Board based on skills, experience and abilities aligned to the College's strategy subject to the following (Independent Directors);
    - (a) where there is more than one Independent Director, at least one Independent Director must be an Australian resident; and
    - (b) where there is more than one Independent Director, at least one Independent Director must be a New Zealand resident.
  - 6.1.5 if the Board does not comprise at least three Directors being New Zealand residents or Australian residents, as the case may be, the Board shall appoint an additional director being a New Zealand resident or Australian resident, as the case may be for a period not exceeding 12 months (and may be re-appointed for such period, if the circumstances set out in this clause 6.1.5 continue to apply).
- 6.2 Term of office of Directors**
- 6.2.1 A Director holds office for a term of three years:
    - (a) commencing from the date Council or the Board (as the case may be) resolves to appoint the person (for example, the appointment may take effect immediately after the next annual general meeting); and
    - (b) concluding at the end of the third annual general meeting after commencing as a Director and may be eligible for re-election subject to clause 6.4.
  - 6.2.2 Council or the Board (as the case may be) may appoint a Director for a shorter term than under clause 6.2.1 if Council or the Board (as the case may be) so determines at the time of their appointment.
- 6.3 Staggering of terms of office**
- 6.3.1 Each Director will be appointed for terms of three years with the exception of persons appointed pursuant to clauses 6.1.1, 6.1.2 whose tenure is tied to their position on Council
  - 6.3.2 Council and the Board (as the case may be) may appoint an Additional Fellow Director for a shorter term than under clause 6.2.1 for the purposes of staggering the terms of office so that:
    - (a) at least one or two Directors under clause 6.1.3 will need to be elected and declared appointed at each annual general meeting;
    - (b) at least one Independent Director will need to be declared appointed at each annual general meeting.

#### 6.4 **Limit on period of office as a Director**

- 6.4.1 Directors shall be entitled to serve three consecutive three-year terms.
- 6.4.2 The term of a Director may be extended for no more than two years, over and above the term outlined in clause 6.4.1 at the discretion of the Board.
- 6.4.3 Service on the Board (or the Council under the previous Constitution) before 1 January 2024 will be disregarded for the purposes of clause 6.4.1.

#### 6.5 **Appointment of Additional Fellow Directors to the Board**

- 6.5.1 Subject to this Constitution, and clause 6.1 specifically, Council must determine any procedures or matters in relation to the selection process to appoint or remove Additional Fellow Directors and may make Regulations for that purpose.
- 6.5.2 The Regulations pursuant to clause 6.5.1 must be consistent with the following:
- (a) before each annual general meeting, the Board will:
    - (1) identify the requisite skills and experiences required on the Board; and
    - (2) advise Council of the identified skills and experiences.
  - (b) Council will convene a committee for the purpose of:
    - (1) identifying suitable candidates for the position of Additional Fellow Director(s);
    - (2) conducting a selection process; and
    - (3) recommending preferred candidates to the Board
  - (c) the committee must recommend candidates to be appointed as Additional Fellow Directors on the basis of their skills, experience and abilities aligned to the College's strategy deemed necessary or desirable by the Board (including, without limitation, to complement the Independent Directors) for the effective operation of the Board;
  - (d) prior to each annual general meeting, and after considering the recommendations from the committee conducting the selection process, Council may:
    - (1) appoint membership elected Councillors as Additional Fellow Directors; and/or
    - (2) nominate a Fellow who is not a member of Council to stand for election as an Additional Fellow Director.

#### 6.6 **Appointment of Independent Directors**

- 6.6.1 Independent Directors are to be appointed by the Board in consultation with Council and their appointment ratified at a general meeting.

6.6.2 Subject to this Constitution, the Board must determine any procedures or matters in relation to the selection process to appoint Independent Directors and may make Regulations for that purpose.

#### 6.7 **Casual vacancies**

6.7.1 If a casual vacancy arises in the office of a Director or Councillor, as the case may be, the Board or the Council respectively may appoint another eligible person in his or her place until the end of the next annual general meeting.

6.7.2 The Board may continue to act despite vacancies on the Board, however, if there are less than three Directors, the Board may only:

- (a) act in the case of emergencies; or
- (b) convene a general meeting.

#### 6.8 **Resignation of Directors**

6.8.1 A Director may resign as Director by written notice to the College via the Chair or Company Secretary.

6.8.2 The resignation takes effect when the College receives the Director's notice or on a later date specified in the notice.

6.8.3 members can remove a Director at a General Meeting of Fellows by simple majority.

### 7 **REMUNERATION OF DIRECTORS**

#### 7.1 **Income applied to College Purpose**

The income and property of the College must be applied solely towards the promotion of the purpose of the College as set out in this Constitution. Subject to this clause, no income or property of the College may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to any members or Directors.

#### 7.2 **Allowable payments**

Nothing in this clause prevents:

- 7.2.1 the payment in good faith of:
- (a) out-of-pocket expenses incurred by the Director in the performance of any duty as a Director, where the amount payable does not exceed any amount previously approved by the Board;
  - (b) an amount to any Director in return for any services actually rendered to the College or for goods supplied in the ordinary course of business, where the amount payable does not exceed any amount previously approved by the Board;
  - (c) any service rendered to the College by the Director in a professional or technical capacity, other than in the capacity of Director, where the provision of the service has the prior approval of the Board

and where the amount payable is approved by the Board and commercially would be reasonable payment for the service;

- (d) interest (at a rate not exceeding any rate which may at any time be fixed for the purpose of this clause by Regulation but not exceeding the highest rate charged by trading banks carrying on business in Australia on overdraft accounts of less than \$100,000) on money borrowed from any Director where the amount payable has been previously approved by the Board;
- (e) reasonable rent for premises let by any Director where the amount payable does not exceed any amount previously approved by the Board; or

7.2.2 the College from providing services or information to members on terms which are different from the terms under which services or information are provided to persons who are not members.

### 7.3 **Remuneration**

Directors may not be remunerated for any service rendered or work undertaken solely in their role as a Director.

## 8 **BOARD POWERS**

### 8.1 **Function and powers of Board**

Without limiting Council's role as set out in clause 10.1.2, the governing body of the College is the Board.

### 8.2 **Manage the general business of the College**

8.2.1 The business of the College, which shall include finance, audit, risk and operations, shall be managed by the Board which may exercise all powers of the College as are not, by the Act or by this Constitution, required to be exercised by the College in general meeting. No proper resolution made by the College in general meeting shall invalidate any prior act or resolution of the Board.

8.2.2 The Board shall invest the funds of the College not immediately required for the purposes of the College in any one or more of the modes of investment authorised by law for the investment of trust funds.

8.2.3 All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the College shall be signed, drawn, accepted, endorsed or otherwise executed as the Board determines.

### 8.3 **Regulations**

8.3.1 Following consultation with Council, the Board shall have power to make, amend and repeal all such Regulations as it deems necessary or desirable for the proper conduct and management of the College, the regulation of its affairs and the furtherance of its objectives.

- 8.3.2 Without in any way limiting the power of the Board under clause 8.3.1, the Board may make, amend and repeal Regulations in relation to:
- (a) on the advice of Council, entrance fees, annual subscriptions and other fees payable by all classes of membership of the College;
  - (b) on the advice of Council, the membership, purpose and proceedings of committees of the Board;
  - (c) on the advice of Council, complaints made by any person against a Fellow of the College and the establishment of committees and the processes for the resolution of such complaints; and
  - (d) any other matter relating to the affairs and good governance of the College.
- 8.3.3 No Regulation shall be inconsistent with, nor shall it affect the repeal or modification of, anything contained in this Constitution.
- 8.3.4 All Regulations shall be binding upon all members. A record of all Regulations shall be kept in such place as the Board shall appoint for that purpose.

#### 8.4 **Power to delegate**

- 8.4.1 The Board may delegate any of their respective powers (other than that of delegation) to committees comprising persons appointed by them.
- 8.4.2 The Board may revoke any delegation of their respective powers by ordinary resolution.
- 8.4.3 Any committee exercising the delegated power shall comply with any conditions or limitations imposed by the Board.

### 9 **BOARD MEETINGS**

#### 9.1 **Chair**

The Directors shall elect from those among their number who are Fellows a Chair.

#### 9.2 **Meetings of Directors**

The Board may meet, convene and adjourn its meetings and otherwise regulate its proceedings in such manner as it thinks fit.

#### 9.3 **Notice of Board meetings**

- 9.3.1 At least five days' notice of a meeting of the Board must be given to each Director specifying the place, time and date of the meeting and the general nature of items to be discussed.
- 9.3.2 Shorter notice may be given if at least 75% of the Directors agree.

#### 9.4 **Quorum**

The quorum necessary for the transaction of the business of the Board is more than half of the Directors. A meeting at which a quorum is present may exercise all powers and discretions of the Board.

#### 9.5 **Voting**

9.5.1 Each Director present and entitled to vote at a Board meeting has one vote. Proxy voting and alternate Directors are not permitted.

9.5.2 Questions arising at a Board meeting must be decided by a majority of votes. Such a decision is for all purposes a decision of the Board.

9.5.3 In the event of an equality of votes the meeting chair has a second or casting vote.

#### 9.6 **Written resolutions**

9.6.1 A written resolution signed or approved by electronic mail by more than 50% of all Directors (other than any Director on leave of absence or otherwise unable to vote) is taken to be a decision of the Directors passed at a meeting of the Directors duly convened and held.

9.6.2 The written resolution may consist of:

- (a) several documents in like form, each signed by one or more Directors and, if so signed, takes effect on the last date on which a Director signs one of the documents; or
- (b) the printed record of several electronic mail messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last Director sends such a message.

#### 9.7 **Technology enabled meeting**

9.7.1 The Board may hold a technology enabled meeting if:

- (a) all Directors (other than any Director on leave of absence) have access to the technology to be used for the meeting; and
- (b) those Directors participating by technological means can communicate effectively and understand the communications of all other participating Directors.

#### 9.8 **Participation by interested Director**

9.8.1 A Director who has a material personal interest in a matter that relates to the Company's affairs must give the other Directors notice of the interest unless the Corporations Act or Relevant Laws require otherwise.

To the maximum extent required by law, a Director who has a material personal interest in a matter that is being considered by the Board must not be present while the matter is being considered, or vote on the matter.

## 10 COUNCIL OF COLLEGE

### 10.1 Functions of Council

10.1.1 The Council is a body which represents Fellows and other key stakeholders and shall be the peak body of the College with respect to surgical standards, education and training.

10.1.2 The Council will:

- (a) provide leadership with respect to the surgical affairs of the College;
- (b) elect a Chair of Council (President) and deputy chair (Vice President or President Elect);
- (c) determine the standards of surgery, education and training, research and fellowship engagement and advise the Board accordingly; and
- (d) award and rescind Fellowships in accordance with the provisions of this Constitution.

10.1.3 Without in any way limiting the power of the Council under clause 10.1, the Council may make, amend and repeal Regulations in relation to the nomination and election of Councillors, Office Bearers and other officers of the Council.

### 10.2 Power to delegate

10.2.1 The Council may delegate any of its functions to committees comprising persons appointed by them.

10.2.2 The Council may revoke any delegation of its functions by ordinary resolution.

10.2.3 Any committee exercising the delegated function shall comply with any conditions or limitations imposed by the Council.

## 11 COUNCILLORS

### 11.1 Composition of Council

11.1.1 The Council shall consist of:

- (a) Sixteen Fellows elected from the Fellows in accordance with clause 12 of this Constitution ("**Fellowship Elected Councillors**") but subject to clause 11.2 shall be eligible for re-election;
- (b) specialty representation on the Council, provided always that such representation shall be determined by Council in accordance with Regulations made by Council for that purpose and in consultation with the specialty societies; and;
- (c) any Co-opted Councillor pursuant to clause 13.1.

- 11.1.2 Subject to clause 11.1.3, at least two of the 16 Fellowship Elected Councillors shall be resident in New Zealand and at least two shall be resident in Australia.
- 11.1.3 The Council shall not be, or be deemed to be irregularly constituted by reason only of the fact that as a result of any election conducted in accordance with this Constitution fewer than two Fellowship Elected Councillors are resident in New Zealand or fewer than two Fellowship Elected Councillors are resident in Australia (whether by reason of an insufficiency of candidates for election or casual vacancy or any other reason).
- 11.1.4 At each Annual General Meeting all Elected Councillors who have held office as an Elected Councillor for a continuous period of 3 years shall retire from office but (subject to clause 11.1.5) shall be eligible for re-election.
- 11.1.5 At each Annual General Meeting all Elected Councillors who were elected for a continuous or aggregate period of 9 years and all Co-opted Councillors who have been appointed for a continuous or aggregate period of 9 years shall retire from office and shall not be eligible for re-election or reappointment at that or any subsequent Annual General Meeting.
- 11.1.6 Periods spent as a Council Observer or as the Trainee Co-opted Councillor shall not be counted toward the aggregate period of nine years referred to in clause 11.1.5.
- 11.1.7 Council may grant a Councillor a leave of absence for a period specified by Council. The period of leave of absence shall count toward the period of nine years referred to in clause 11.1.5.

## 11.2 **Term of office of Councillors**

- 11.2.1 The elected term of office of an Elected Councillor or a Co-opted Councillor (see clause 13.1) shall be three years commencing at the Annual General Meeting in the year of their election.
- 11.2.2 Subject to clause 11.1.6 an Elected Councillor or Co-opted Councillor shall not serve more than nine years in aggregate.
- 11.2.3 A retiring Elected Councillor shall be entitled to act as a member of the Council at the meeting at which he/she retires.

## 11.3 **Removal of Councillors**

- 11.3.1 A Councillor may be removed from office by ordinary resolution of a general meeting of the College.
- 11.3.2 If a Councillor is removed from office by ordinary resolution of a general meeting of the College, that meeting may appoint another Fellow to fill the vacancy created for the remaining term of the Councillor who was removed from office.

## 11.4 Termination of office of Councillors

- 11.4.1 The office of a Councillor becomes vacant if the Councillor:
- (a) resigns that office by notice in writing to the College;
  - (b) ceases to be a member of the College;
  - (c) is absent from three consecutive meetings of the Council (other than meetings of Council called on less than 48 hours notice) without leave of absence;
  - (d) is directly or indirectly interested in any contract or proposed contract with the College and fails to declare that interest in the manner required by the Act (or at the first meeting of the Council after the relevant facts have come to the Councillor's knowledge) and the Council determines that the Councillor should no longer be a Councillor;
  - (e) is removed from office pursuant to clause 11.3.1;
  - (f) becomes bankrupt;
  - (g) becomes a person whose estate or person is liable to be dealt with in any way under the law relating to mental health or disability.

## 11.5 Casual vacancies

- 11.5.1 A casual vacancy shall mean any vacancy in the membership of the Council caused otherwise than by the retirement of a Councillor at the end of his or her term.
- 11.5.2 A casual vacancy shall not be deemed to have arisen upon a Councillor ceasing to reside in the Australian State or Territory or in New Zealand in which that Councillor was resident at the time of his or her election.
- 11.5.3 If the office of a Councillor becomes vacant during the Councillor's term of office that position may be filled by the Council, subject to clause 11.3.2.
- 11.5.4 Any Councillor appointed pursuant to this clause shall hold office only until the next election of Councillors and shall be eligible for re-election in accordance with this Constitution.
- 11.5.5 For the purposes of this clause the period of time served pursuant to clause 11.5.4 shall not be counted as a period of office.

## 12 ELECTION OF COUNCIL

### 12.1 Nominations

- 12.1.1 Nominations of candidates for election as Fellowship Elected Councillors of the Council shall be:
- (a) signed by two Fellows; and

- (b) contain a consent to act if elected signed by the person nominated; and left with or forwarded by post or electronically or by any web- based system, or other lawful method, as approved by the Council to the Chief Executive Officer so as to reach the Chief Executive Officer at least eighty five (85) days before the Annual General Meeting.

## 12.2 **Ballot**

- 12.2.1 If a number of nominations of candidates for election as Fellowship Elected Councillors does not exceed the number of vacancies the candidates so nominated shall be declared duly elected at the Annual General Meeting.
- 12.2.2 If the number of nominations of candidates exceeds the vacancies, balloting lists shall be printed containing in alphabetical order the names of the candidates nominated and one such list shall be delivered at least sixty (60) days before the Annual General Meeting to each Fellow at his or her address for the time being appearing in the College register. Such ballots may be conducted by post or other method referred to in clause 5.12.7. Balloting shall be conducted in accordance with the provisions of any regulation made by Council for this purpose.

## 12.3 **Declaration**

The result of the election shall be declared at the Annual General Meeting.

- 12.3.1 In order to ensure compliance as far as possible with clause 11.1.2, should there already be sufficient New Zealand resident or Australian resident Councillors, clause 12.3.2 to 12.3.5 shall not apply and the count shall proceed in accordance with clause 12.3.6.
- 12.3.2 If there are insufficient New Zealand resident Councillors under clause 11.1.2, the first elected candidate shall be resident in New Zealand (assuming there is such a candidate). Should there be more than one New Zealand resident candidate; the candidate to be elected first shall be the one who has received the highest number of votes from among the New Zealand resident candidates.
- 12.3.3 If there are insufficient Australian resident Councillors under clause 11.1.2, the first elected candidate shall be resident in Australia (assuming there is such a candidate). Should there be more than one Australian resident candidate; the candidate to be elected first shall be the one who has received the highest number of votes from among the Australian resident candidates;
- 12.3.4 If there are still insufficient New Zealand resident or Australian resident Councillors to comply with clause 11.1.2, the steps in either of clauses 12.3.2 and 12.3.3 are repeated as required.
- 12.3.5 Any further candidates are then elected in accordance with clause 12.3.6.
- 12.3.6 The vacancies shall be filled by declaring elected the necessary number of candidates who received the most votes. In the event of two or more candidates receiving an equal number of votes then priority in election as between such candidates receiving an equal number of votes shall be determined in accordance with the Regulations made for that purpose.

## **13 CO-OPTION TO THE COUNCIL**

### **13.1 Co-opted Councillors**

- 13.1.1 If at any time or times New Zealand or any State of Australia is not represented on the Council by an Elected Councillor resident in such region, the Council shall have the power to co-opt as a Councillor, on advice of the relevant Regional or National Committee, a Fellow resident and carrying on his or her professional practice in the region not represented (in this Constitution referred to as "Co-opted Councillors").
- 13.1.2 To further the interests of surgery and related disciplines Council shall have the further right to appoint such Co-opted Councillors as it sees fit to supplement the expertise of Council. These Co-opted Councillors may come from a non-medical background.
- 13.1.3 All Co-opted Councillors, with the exception of the Trainee Co-opted Councillor, shall be appointed by the Council for a three year term, with a maximum aggregate period of nine years including any period they may have served as an elected Councillor.
- 13.1.4 The Trainee Co-opted Councillor shall be appointed annually by the Council, but any time served as the Trainee Co-opted Councillor shall not be counted toward the aggregate period a Fellow may serve as an Elected Councillor or as a Co-opted Councillor.
- 13.1.5 The Co-opted Councillors have and are entitled to exercise all the same rights and privileges at meetings of the Council as the Elected Councillors, including the right to vote, except for voting for Office Bearers or for the Officers of the Council. They shall not be eligible for election as Office Bearers.

### **13.2 Invited Observers**

To further the interests of surgery and related disciplines in Australia and New Zealand, the Council shall have the power to invite as an Observer to Council (in this Constitution referred to as "Observer"):

- 13.2.1 a Fellow or trainee who is a member of a specialist society, association or group, or who represents a special interest or grouping within the College;
- 13.2.2 one Member of the Council of the Australia and New Zealand College of Anaesthetists appointed by that Council;
- 13.2.3 other persons the President and Council may invite to be an Observer.

At the invitation of the President, an Observer may contribute to and participate in the proceedings of the Council but shall not have a vote.

## **14 OFFICE BEARERS**

### **14.1 Titles of Office Bearers**

The Office Bearers of the College shall be the:

- 14.1.1 President;

- 14.1.2 Vice President (or President Elect); and
- 14.1.3 Such other Office Bearer positions as determined by Council,  
to be elected in accordance with clause 14.2.

#### 14.2 **Election of Office Bearers**

At the first Council Meeting in each year, the Elected Councillors shall elect by confidential ballot from among themselves the Office Bearers listed in clause 14.1 hereof who will take office.

#### 14.3 **Term of Office**

14.3.1 Subject to clauses 11 and 12, the Office Bearers listed in clause 14.1 shall:

- (a) hold office for one year;
- (b) be eligible for re-appointment each year for a further period of one year; and
- (c) continue to exercise their functions until their successors have been appointed.

14.3.2 The President shall hold office for one year from the Annual General Meeting at which they are declared appointed. The President shall be eligible for re-appointment after one term. No person shall serve more than two consecutive terms as President.

#### 14.4 **Replacement of Office Bearers**

14.4.1 Where an Office Bearer dies while in office or resigns or is disqualified in any way from holding office the Council shall elect a replacement for the balance of that term of office.

14.4.2 Where the President dies in office or resigns or is disqualified in any way from holding office, the Vice President or President Elect shall exercise the powers of President until the Council elects a replacement in accordance with clause 14.5.1.

#### 14.5 **Cessation of office**

The term of office of an Office Bearer shall end on:

- 14.5.1 the end of the term provided for in clause 14.3;
- 14.5.2 notice of retirement from the Office Bearer being given to the College;
- 14.5.3 the Office Bearer ceasing to be a Councillor for any reason; or
- 14.5.4 removal from the office by a resolution of Council.

## **15 OPERATIONS OF COUNCIL**

15.1 Council shall have the power to make regulations with respect to the composition and operations of Council, subject to the following:

15.1.1 A committee of Council may only be convened with the approval of Council.

## **16 EXECUTIVE OF COUNCIL**

### **16.1 Executive of Council**

The Executive of Council of the College (in this Constitution referred to as "Executive") shall comprise the Office Bearers and three other Councillors as Council may elect at its first meeting held after the Annual General Meeting.

16.1.1 The Members of the Executive shall hold office until the Annual General Meeting but they shall be eligible for re-election.

16.1.2 Council may at any time remove any Member of the Executive and may fill any vacancy which occurs among the Members of the Executive.

16.1.3 Four Members present personally or participating by means of telephonic or electronic media (in the manner set out in clause 17.7) shall constitute a quorum of the Executive.

### **16.2 Powers**

The Executive shall, during intervals between meetings of the Council, have power to exercise all of the powers of the Council, subject to any restrictions or limitations imposed by the Council. In addition, in cases of emergency, the Executive shall have the absolute discretion to exercise such powers and functions as it deems necessary.

### **16.3 Council provisions apply to Executive**

The provisions of clauses 16 and 17 shall apply to the Executive as if a reference to the Council in those clauses were a reference to the Executive, and a reference to a member of the Council (or Councillor) were a reference to a member of the Executive.

## **17 MEETINGS OF THE COUNCIL**

### **17.1 Meetings**

17.1.1 The Council may meet for the transaction of business and adjourn and otherwise regulate its meetings as it thinks fit.

17.1.2 A meeting of the Council shall be convened on the requisition of the President or any two Councillors.

### **17.2 Notice of Council meetings**

17.2.1 At least 24 hours notice of a meeting of the Council must be given to each Councillor specifying the place, time and date of the meeting and the general nature of items to be discussed.

- 17.2.2 Shorter notice may be given if at least 75% of the Councillors agree or if the President considers that the business of the meeting is urgent.
- 17.3 **Quorum**
- 17.3.1 The quorum necessary for the transaction of the business of the Council is more than one half of the total membership of the Council unless the Council resolves that a greater number shall constitute a quorum.
- 17.3.2 If at any time the number of Councillors is less than a quorum the Council may meet only for the purpose of filling any casual vacancies or for calling a general meeting of members.
- 17.3.3 The Council may act notwithstanding any vacancy on the Council.
- 17.4 **Chair**
- 17.4.1 The President shall take the Chair at all meetings of the Council (or in the absence of the President, the Vice President shall Chair).
- 17.4.2 If the President or Vice President are not present at any meeting of Council within fifteen minutes after the time appointed for holding the meeting the Councillors present shall elect a member of the Council present to be Chair of the meeting.
- 17.5 **Voting**
- 17.5.1 Questions arising at a meeting of the Council shall be decided by a majority of votes of Councillors present and voting. A decision by a majority of the Councillors present and voting is for all purposes a decision of the Council.
- 17.5.2 The Chair of the meeting has a casting vote in addition to a deliberative vote where there is an equality of votes.
- 17.6 **Written resolution**
- 17.6.1 A written resolution signed or approved by electronic mail by 75% of all Councillors (other than any Councillor on leave of absence) is taken to be a decision of the Councillors passed at a meeting of the Councillors duly convened and held.
- 17.6.2 The written resolution may consist of:
- (a) several documents in like form, each signed by one or more Councillors and, if so signed, takes effect on the last date on which a Councillor signs one of the documents; or
  - (b) the printed record of several electronic mail messages each indicating the identity of the sender, the text of the resolution and the sender's agreement or disagreement to the resolution, as the case may be, and such a resolution takes effect on the date on which the last Councillor sends such a message.

## 17.7 **Telephone or video conference meetings**

A meeting of Council may be held with one or more of the Councillors taking part by telephone or other means of audio or audio-visual communication and when each of the Councillors participating in the communication is able to read the written contributions or hear each of the other participating Councillors. A meeting of the Council may only be held in this manner where all of the Councillors (other than any Councillor on leave of absence) have access to the communication facilities to be used for the meeting.

## 17.8 **Defects in appointment or qualification of a Councillor**

All acts done in good faith by a meeting of the Council or of a committee of Council or by any person acting as an Office Bearer, Councillor or committee member of the College will be valid and effective notwithstanding that it is afterwards discovered that there was some defect in the appointment of that person or that the person was disqualified from acting for any reason.

## 17.9 **Participation by interested Councillor**

17.9.1 This clause applies to a Councillor who has a material personal interest in a matter that is being considered at a Council meeting.

17.9.2 Subject to clause 17.9.5 the Councillor must not:

- (a) be present while the matter is being considered at the meeting; or
- (b) vote on the matter.

17.9.3 The Councillor is not in breach of duty to the College merely because he or she does not act in relation to the matter.

17.9.4 The Council may vote on matters that relate to the Councillor's interest in the Councillor's absence.

17.9.5 The prohibition in clause 17.9.2 does not apply if:

- (a) the Councillor does not have to disclose his or her material personal interest to the other Councillors under the Act; or
- (b) Councillors who do not have a material personal interest in the matter have passed a resolution that:
  - (1) identifies the Councillor, the nature and extent of the Councillor's interest in the matter and its relation to the affairs of the College; and
  - (2) states that those Councillors are satisfied that the interest should not disqualify the Councillor from voting or being present.

## 17.10 **Councillor's interest**

17.10.1 Clause 17.10 applies if:

- (a) a Councillor has an interest or duty in relation to a matter that is not a material personal interest; or
  - (b) a Councillor with a material personal interest in relation to the College's affairs:
    - (1) complies with the requirements of the Act in relation to disclosure of the nature and extent of the interest and its relation to the College's affairs before acting in a matter that relates to the interest; or
    - (2) does not have to disclose his or her material personal interest to the other Councillors under the Act.
- 17.10.2 Subject to clause 17.9, the Councillor is not in breach of his or her duties to the College merely because he or she acts in matters that relate to the Councillor's interest.
- 17.10.3 In relation to any transactions that relate to the Councillor's interest:
- (a) the transactions may proceed;
  - (b) the College cannot avoid the transactions merely because of the Councillor's interest; and
  - (c) the Councillor may retain benefits under the transactions despite the Councillor's interest.

## **18 REMUNERATION OF COUNCILLORS**

### **18.1 Income applied to College Purpose**

The income and property of the College must be applied solely towards the promotion of the purpose of the College as set out in this Constitution. Subject to this clause, no income or property of the College may be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise, to any Councillor.

### **18.2 Allowable payments**

Nothing in this clause prevents:

- 18.2.1 the payment in good faith of:
- (a) out-of-pocket expenses incurred by the Councillor in the performance of any duty as Councillor, where the amount payable does not exceed any amount previously approved by the Council;
  - (b) an amount to any Councillor in return for any services actually rendered to the College or for goods supplied in the ordinary course of business;
  - (c) any service rendered to the College by the Councillor in a professional or technical capacity, other than in the capacity of Councillor, where the provision of the service has the prior approval of the Council and where the amount payable is approved by the Council and commercially would be reasonable payment for the service;

(d) interest (at a rate not exceeding any rate which may at any time be fixed for the purpose of this clause by Regulation but not exceeding the highest rate charged by trading banks carrying on business in Australia on overdraft accounts of less than \$100,000) on money borrowed from any Councillor; or

(e) reasonable rent for premises let by any Councillor; or

18.2.2 the College from providing services or information to members on terms which are different from the terms under which services or information are provided to persons who are not members.

### 18.3 **Remuneration not allowed**

Councillors may not be remunerated for any service rendered or work undertaken solely in their role as Councillor.

## 19 **OPERATION OF COMMITTEES**

19.1 Subject to clause 15.1.1, the Council shall determine the powers and duties of each sub-committee and each sub-committee shall in the exercise of its powers conform to any applicable Regulations.

19.2 Subject to any Regulation, each sub-committee may meet, convene its meetings, adjourn and otherwise regulate its proceedings as it thinks fit.

19.3 The Council shall review the continuing need for each sub-committee and the membership of each such sub-committee at least every two years.

## 20 **COLLEGE OFFICERS**

### 20.1 **Chief Executive Officer**

The Board shall appoint a Chief Executive Officer ("CEO") (or acting Chief Executive Officer) taking into account the Board's recommendation, for such term and at such remuneration and upon such conditions as it may think fit. The CEO may be removed by the Board.

### 20.2 **Secretary**

The Board shall appoint a Secretary for the purposes of the Act.

## 21 **THE SEAL**

### 21.1 **Custody of seal**

If the College maintains a seal, the College must provide for the safe custody of the seal.

### 21.2 **Affixing the seal**

21.2.1 The seal may be used only by the authority of the Board or duly authorised persons.

21.2.2 Every document to which the seal is affixed must be signed by a Director and witnessed by the CEO or some other person appointed by the Board.

### 21.3 **Seal register**

If the College maintains a seal, the College must maintain a seal register. The seal register may be maintained in electronic form.

## 22 **ALTERATION**

This Constitution shall not be altered or repealed except by the vote of a two thirds majority of the Fellows voting by a Postal Ballot conducted for that purpose. A Postal Ballot may be conducted electronically or by any web-based system, or other lawful method, as approved by the Board. Sixty (60) days notice of the intention to propose any alteration or repeal of this Constitution shall be delivered to the Chief Executive Officer who shall send a notice of the resolution to every Fellow, to his or her address appearing in the Register of Fellows at least thirty (30) days before the closing date of the Postal Ballot.

## 23 **ACCOUNTS**

### 23.1 **The College to keep accounts**

The Board must cause proper accounts to be kept in accordance with the Act.

### 23.2 **Where accounts to be kept**

The accounts must be kept at the Office or, subject to the Act, at such other place or places as the Board thinks fit.

### 23.3 **Accounts open for inspection**

The accounts must always be open for the inspection of members of the Council and Councillors.

Subject to the Act, the Board may determine at what times and places and under what conditions the accounts of the College or any of them may be open for inspection by Members.

### 23.4 **Annual accounts**

The Board must cause to be prepared, circulated to and laid before the Members in general meeting such income and expenditure accounts, balance sheets, group accounts (if any) and reports as are required by the Act.

### 23.5 **New Zealand Account**

Where required by law, donations or gifts received in New Zealand will be retained in a separate bank account in New Zealand and applied solely for the purposes for which they were intended and as permitted by law.

## 24 **AUDIT**

Auditors of the College must be appointed and removed and their duties regulated in accordance with the Act.

## **25 NOTICES**

### **25.1 Means of giving notices**

25.1.1 A notice pursuant to this Constitution must be given in writing and may be sent by:

- (a) mail (postal service); or
- (b) electronic mail or other electronic means,

to the appropriate address or number of the addressee.

25.1.2 A Director, Secretary or other person authorised by the Board may give notices on behalf of the College. The signature on a notice given by the College may be written, photocopied, printed or stamped.

25.1.3 Notices given to the College must be marked for the attention of the Secretary.

### **25.2 Address for service**

The address for service is:

25.2.1 in the case of a Member or Councillor, the home address (or postal address or electronic mail address) of the Member or Councillor specified in the Register; and

25.2.2 in the case of the College, the address (or any postal address, electronic mail address or other electronic means) of the Office for the time being specified on the official stationery of the College.

### **25.3 Notification of change of address**

25.3.1 If the home address, postal address or electronic mail address of a Member changes, the Member must promptly give notice of the change to the College.

25.3.2 The College must promptly notify Members of any change in its address.

### **25.4 Time notices are effective**

Except if a later time is specified in a clause dealing with a notice or other communication, a notice is to be regarded as given, served, received and as having come to the attention of the address:

25.4.1 if delivered to the home address of the addressee, at the time of delivery;

25.4.2 if it is sent by post to the home address or postal address:

- (a) if the notice is notice of a meeting - on the third (or seventh if outside Australia) business day after sending;
- (b) otherwise - on the third (or seventh if outside Australia) business day after sending,

unless it is actually delivered earlier; or

25.4.3 if sent by electronic mail or means, to the electronic mail address of the addressee, at the time transmission is completed.

## 25.5 **Proof of giving notices**

25.5.1 Proof of the sending of a notice by electronic transmission the time of completion of transmission may be established by production of a transmission report of when the electronic transmission was sent which indicated that the electronic mail was sent in its entirety to the electronic mail address of the addressee.

25.5.2 A certificate signed by a Director or CEO that a notice was delivered or posted at a particular time is conclusive evidence that the notice was delivered or posted at the time.

25.5.3 A certificate signed by a Director or CEO that a notice was sent by electronic mail at a particular time and that an "undeliverable mail" message has not been received in relation to it is conclusive evidence that the notice was sent and received at that time.

## 26 **WINDING UP**

### 26.1 **Members to contribute**

Every member of the College undertakes to contribute to the assets of the College in the event of its being wound up while that member is a member, or within one year of that member ceasing to be a member, such amount as may be required not exceeding 50 dollars for the payment of the debts and liabilities of the College contracted before ceasing to be a member and to the costs, charges and expenses of winding up and for the adjustment of the rights of the contributors amongst themselves.

### 26.2 **Assets not distributed to members**

26.2.1 Where, on the winding-up or dissolution of the College, there is a surplus of assets after satisfying all the College's liabilities and expenses, the surplus shall not be paid to or distributed amongst the members but shall be given or transferred to some other charitable institution having similar objects to those described in this Constitution situated within the Commonwealth of Australia (to the extent assets are distributed within Australia) or the Realm of New Zealand (to the extent assets are distributed within New Zealand) and which:

- (a) is required by its Constitution or rules to apply its profits or income in promoting its objects;
- (b) is prohibited from paying any profits or dividends to its members to the same extent as set out in this Constitution; and
- (c) itself, is exempt from income tax.

26.2.2 That institution shall be determined by the Council prior to the dissolution of the College or failing such determination, by application to an appropriate Court.

26.2.3 The Council shall:

- (a) Upon ceasing to conduct any business, operations and undertaking in or from New Zealand (whether upon the winding up or dissolution of the College or for any other reason whatsoever), ensure that any surplus property of the College used in the conduct of such business, operations or undertaking in or from New Zealand is, notwithstanding any provision in this Constitution to the contrary, given or transferred to one or more organisations that are charitable under New Zealand law, with similar objects.
- (b) Notify the New Zealand Inland Revenue Department of any proposed addition, alteration or amendment to this Constitution which may be inconsistent with the charitable nature of the business, operations or undertaking of the college conducted in or from New Zealand.

## **27 INDEMNITY**

- 27.1 Every Director, officer and past officer of the College (including members of the Executive and the Council) must be indemnified by the College to the fullest extent permitted by law against a liability incurred by that person as an officer of the College or a subsidiary of the College including legal costs and expenses incurred in participating in, being involved in or defending any legal proceedings. This indemnity does not extend to any liability incurred by the officer arising from any claim made by that officer against the College (whether that claim is made solely by the officer or otherwise).
- 27.2 For the purposes of clause 27.1, "legal proceedings" means any claim, action, suit or demand, enquiry, Royal Commission or other regulatory investigations, whether civil or criminal, which relates to or arises in connection with the officer or agent being an officer or agent of the College.

## **28 LIABILITY INSURANCE**

To the extent permitted by the Act, the College may enter into (and pay premiums on) a contract of insurance in relation to a person who is or has been an officer or agent of the College or any other person.

## **29 TRANSITIONAL PROVISIONS**

- 29.1 The transitional provisions as outlined in this clause 29 will be applicable for a period not longer than 12 months.
- 29.2 Notwithstanding any provision in this Constitution to the contrary, on and from the adoption of this Constitution the College shall, by Regulations made pursuant to clause 8.3.1, give effect to the transition from the prior Constitution to this Constitution.:
- 29.3 The Board shall come into effect as follows:
- 29.3.1 The initial Directors will be:
    - (a) The President whose term as a Director will be tied to their position on Council; and

- (b) The Vice President whose term as a Director will be tied to their position on Council;
- 29.3.2 As soon as reasonably practicable following the adoption of this Constitution:
- (a) Council will nominate up to five (5) Directors pursuant to clause 6.1.3;
  - (b) following appointments under clause 29.3.2(a), and subject to there always being a majority of Fellows on the Board, the existing Directors at the relevant time will appoint up to four (4) Directors pursuant to clause 6.1.4; and
  - (c) if necessary, the existing Directors at the relevant time will appoint an additional Director pursuant to clause 6.1.5.
- 29.3.3 The Directors appointed pursuant to clause 29.3.2 shall be appointed for terms consistent with clause 6.2, and with a staggering of those terms consistent with clause 6.3.
- 29.3.4 A Nominations Committee will be established and will comprise the President, Vice President and an Office Bearer and up to two members from outside the Council.
- 29.3.5 The Nominations Committee will determine the skills matrix for the appointment of the Board during the transitional phase and will advise the Council in writing of its recommendation as to suitable candidates for nomination.

## 30 DEFINITIONS AND INTERPRETATION

30.1 In this Constitution:

**"Act"** means the *Corporations Act, 2001* (C'th);

**"Additional Fellow Director"** means a Director appointed pursuant to clause 6.1.3

**"Authority"** means a medical board or council or other professional regulatory body approved by Council for this purpose;

**"Board"** means the Board of the College appointed under this Constitution;

**"Constitution"** means this constitution of the College as amended;

**"Council"** means the Council of the College appointed under this Constitution;

**"Councillor"** means a member of the Council;

**"College"** means Royal Australasian College of Surgeons constituted as a company limited by guarantee under this Constitution;

**"Director"** means a Director elected or appointed to the Board (as the case may be) pursuant to this Constitution;

**"Executive"** means the Executive of the Council established pursuant to this Constitution;

**"Fellow"** means a member who holds Fellowship of the College (FRACS) in accordance with this Constitution and whose membership of the College has not ceased or been terminated for any reason;

**"Honorary Fellow"** means a person specified in the Register as an Honorary Fellow;

**"Member"** means any person for the time being admitted to Fellowship of the College and unless a contrary intention appears includes Fellows and Honorary Fellows.

**"Membership Financial Year"** means the membership financial year of the College, from 1 January to 31 December;

**"Office"** means the registered office for the time being of the College;

**"Office Bearer"** means a person holding office pursuant to clause 14;

**"President"** means the person for the time being holding that office under this Constitution;

**"Purpose"** means the objects of the organisation for the purposes of the Tax Act.

**"Register"** means the Register of members required to be kept under this Constitution and the Act (whether kept electronically or otherwise);

**"Regulation"** means any regulation made in accordance with clause 10.1;

**"Seal"** means the common seal of the College;

**"Vice President"** or **"President Elect"** means a person for the time being holding that office under this Constitution.

## 30.2 **References to the Act**

Unless the context otherwise requires, a reference to:

30.2.1 the Act includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; and

30.2.2 a section of the Act includes any corresponding section for the time being in force.

## 30.3 **Presumptions of Interpretation**

Unless the context otherwise requires, a word which denotes:

30.3.1 the singular includes the plural and vice versa;

30.3.2 a person includes an individual, a body corporate, a partnership, a firm, unincorporated association or institution and a government body; and

30.3.3 a notice includes any consent, publication or other written communication.

30.4 **Application of the Act**

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.

30.5 **Headings**

Headings do not affect the interpretation of this Constitution.

30.6 **Replaceable Rules**

The replaceable rules in the Act do not apply.