

# CONSTITUTION

## AUSTRALASIAN COLLEGE OF SPORT AND EXERCISE PHYSICIANS

ACN 003 200 584

### 1 OBJECTS

- 1.1 The objects for which the College is established are to:
- 1.1.1 promote recognition of the College as the pre-eminent body in Australasia and internationally for the establishment of training and education programs and the development of professional standards in sport and exercise medicine; and advocate on any issue which affects the ability of College members to meet their responsibilities to patients and to the community;
  - 1.1.2 promote excellence in sport and exercise medicine healthcare services and cultivate and encourage evidence based practice, high principles of practice, ethics and professional integrity and standards in relation to sport and exercise medicine practice, education, assessment, training and research;
  - 1.1.3 commit to high quality research into sport and exercise medicine and the transfer of research into evidence based clinical practice;
  - 1.1.4 increase understanding of indigenous Australian and New Zealand cultures and other culturally and linguistically diverse (CALD) communities where appropriate; increase understanding of how cultural diversity impacts on patients access to and experience of sport and exercise medicine services; enhance the ability of sport and exercise medicine physicians to provide appropriate care to indigenous Australians and New Zealanders and other CALD patients; cultivate a recognition that cultural competency is an ongoing professional development process and is important in improving patient outcomes;
  - 1.1.5 uphold the status of Fellowship of the College and admit appropriately qualified members of the College to that status;
  - 1.1.6 conduct and coordinate examinations and other assessment processes and to grant registered medical practitioners specialist recognition in sport and exercise medicine either alone or in cooperation with other relevant bodies or institutions;
  - 1.1.7 ensure College members undertake continuing professional development and participate in effective, ongoing professional activities and learning;
  - 1.1.8 provide advice and support to College members to assist them in establishing and maintaining an appropriate work/life balance and to meet effectively the challenges of their professional life;
  - 1.1.9 disseminate information and to advise on any course of study and training designed to promote and ensure the fitness of persons who wish to qualify for College membership;

- 1.1.10 hold or sponsor meetings, lectures, seminars, symposia or conferences, within or outside of Australasia, to promote and further understanding in sport and exercise medicine and related subjects and professional relations among members of the College, members of other health professions, scientists and the community in general;
  - 1.1.11 foster and promote cooperation and association with organisations which have objectives similar to the College in Australasia, as well as in the wider international arena, including particularly Asia and the Pacific region; advance public education and awareness of the science and practice of sport and exercise medicine;
  - 1.1.12 provide authoritative advice, information and opinion to other professional organisations, to governments and to the general public;
  - 1.1.13 work with governments and other relevant organisations to achieve the provision of adequate, well-qualified, experienced and capable workforces in Australasia, and to improve public health services relating to sport and exercise medicine;
  - 1.1.14 facilitate medical education and medical aid support to developing nations; and
  - 1.1.15 monitor issues affecting the interests of the College or the professional interests of its members and to take such actions as may be deemed necessary for the protection of those interests.
- 1.2 In pursuit of the achievement of those objects, 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;
- 2.1.3 Associates; and
- 2.1.4 Registrars,

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 Fellows**

- 2.2.1 The College shall consist of such persons as are admitted as Fellows under this Constitution.
- 2.2.2 Fellows shall be entitled to attend, speak and vote at any meeting of members of the College.

## 2.3 **Associates**

- 2.3.1 The Board may admit as an Associate of the College any medical practitioner who has completed such training and examinations as may be prescribed from time to time by the Board in regulations for that purpose.
- 2.3.2 Associates shall be entitled to attend and speak at any meeting of members of the College, but not vote.

## 2.4 **Registrars**

2.4.1 A Registrar:

- (a) who is a medical practitioner;
- (b) who is participating in a training program approved by the Board in preparation for admission as a Fellow; and
- (c) who has been admitted by the Board to the Registrar class of Membership,

will only continue to be a Registrar while he or she maintains participation in that training program and does not cease to be a member pursuant to clause 4.

2.4.2 Registrars shall be entitled to attend and speak at any meeting of members of the College, but not vote.

## 2.5 **Eligibility**

Except in the case of Honorary Fellows, no person shall be eligible to be a Fellow or Associate or Registrar of the College unless at the time of admission to the relevant class of membership:

- 2.5.1 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 Board for the purpose of this clause; or
- 2.5.2 he or she holds some other medical qualification regarded as satisfactory by the Board.

## 2.6 **Rights not transferable**

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

## 2.7 **Honorary Fellows**

- 2.7.1 The Board may from time to time elect as Honorary Fellows people of renown, distinguished members of the medical profession and other eminent persons, whether or not those eminent persons are members of the medical profession.
- 2.7.2 An Honorary Fellow shall be 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.

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

## 2.8 Admission to membership

- 2.8.1 The Board may admit an eligible and qualified person to membership in the relevant class of the College.
- 2.8.2 The admission to membership of any person is subject to payment of any fee or subscription applicable.

## 2.9 Names to be entered in the Register

The name of any person admitted to membership of the College, shall be entered in the Register. Upon entry in the Register, members shall be entitled to use post-nominals as determined under Regulations, subject to this Constitution and the provisions, conditions and restrictions contained in Regulations.

## 3 SUBSCRIPTIONS

- 3.1 The subscriptions payable by members of the College shall be of such amount and at such time as the Board from time to time prescribes (and pro rata for any part of a year or different rates for and within each class).
- 3.2 If the subscription of a member is unpaid for a period of three (3) calendar months after it becomes due, the member shall cease to be a member of the College and shall lose all rights and privileges of membership. The Board may, if it thinks fit, reinstate the member upon payment of all arrears (on such conditions as the Board determines, including payment of interest of arrears of unpaid subscriptions).

## 4 CESSATION OF MEMBERSHIP

### 4.1 Automatic termination of membership

- 4.1.1 Subject to this Constitution, the membership of any person terminates if:
- (a) the person resigns in writing;
  - (b) the person dies;
  - (c) the person's name is removed from the register of any medical or professional authority recognised by the Board ("an Authority") except where such removal is due to retirement from practice and as a consequence is not participating in relevant professional development activities;
  - (d) the person is suspended from practice by an Authority;
  - (e) the person 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; or
  - (f) the person is a Registrar and he or she ceases to participate in the training program referred to in clause 2.4.1(b).

- 4.1.2 If the membership of a person terminates because the person is suspended from practice, the person may be readmitted to membership by resolution of the Board with or without the payment of a further membership fee if the suspension is lifted and subject to any conditions imposed by the Board.

#### 4.2 **Termination of membership by resolution of the Board**

- 4.2.1 Subject to this Constitution, the Board may at any time terminate the membership of a member if the member:
- (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 made by the Board;
  - (c) engages in conduct which in the opinion of the Board is unbecoming of members or is prejudicial to the interests of the College;
  - (d) has any condition or restriction imposed on his or her right to practise by an Authority;
  - (e) is found guilty by a Court of an indictable offence; or
  - (f) subject to clause 3.2, fails to pay any debt due to the College for a period of three (3) months after the due date for payment.
- 4.2.2 For the purposes of this clause 4, a member shall not be deemed to have ceased to be eligible for membership by reason of the fact that the member has ceased to practise.
- 4.2.3 Subject to clause 3.2, a decision of the Board (or a committee of the Board appointed for that purpose) under this clause 4 is not effective unless:
- (a) the member concerned has been given a notice of the resolution to be considered by the Board (or a committee of the Board 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 member has been permitted to make submissions to the meeting in writing and orally;
  - (c) the member is given an opportunity to respond to any matters raised in the meeting. The Board (or committee) may ask the member to leave the meeting during its deliberations once submissions from all interested parties are complete; and
  - (d) notice of the decision of the Board (or committee) is given promptly to the member.
- 4.2.4 A decision under clause 4.2.3 may be subject to appeal under Regulations relating to appeals made for that purpose.

### 4.3 **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.

### 4.4 **Consequence of termination of membership**

4.4.1 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 a member;
- (b) may be required to return his or her membership Certificate(s) to the College within 14 days of receiving notice of the termination of the member's membership of the College; and
- (c) must not represent that he or she is a member or Fellow of the College or use the College post-nominal "FACSEP" or other post-nominals or nomenclature of the College, which may be applicable.

4.4.2 The Board shall inform the relevant registration board or authority of any member who shall cease to be a member of the College and the reasons for the cessation of membership.

4.4.3 The Board 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 member of the College.

### 4.5 **Continuing obligations**

4.5.1 Any person who ceases to be a member of the College shall forfeit all the rights and privileges of membership and shall have no rights in or claim upon the College for the property or funds of the College except as a creditor.

4.5.2 Without limiting clause 4.5.1, 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.

4.5.3 No former member of the College 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 membership ceased are paid.

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

### 5.1 **Annual General Meeting**

5.1.1 An Annual General Meeting of the members must be held in each year, unless otherwise permitted by law.

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

## 5.2 **Calling meetings of members**

- 5.2.1 The Board may call a meeting of members.

- 5.2.2 The Board must call a general meeting of the College as required under the Act or if the College receives a written request from:

- (a) at least 5% of members who are entitled to vote at the general meeting; or
- (b) at least 30 members 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 members making the request.

- 5.2.3 If members requisition a general meeting in accordance with clause 5.2.2,

- (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.

- 5.2.4 If the Board does not call a general meeting that was requisitioned by members in accordance with clause 5.2.3 within 21 days after the request is given to the College, then members with more than 50% of the votes of all the members who made the request under clause 5.2.2 may call and arrange to hold a general meeting.

## 5.3 **Notice requirements**

- 5.3.1 At least 21 days notice must be given of a meeting of members unless the Act permits shorter notice.

- 5.3.2 Subject to clause 5.3.1, 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) if a special resolution is to be proposed at the meeting-set out an intention to propose the special resolution and state the resolution; and
- (d) if a Fellow is entitled to appoint a proxy-contain a statement setting out:
  - (1) that the Fellow has a right to appoint a proxy; and

(2) that the proxy must be a Fellow of the College.

## **6 PROCEDURE AT A GENERAL MEETING**

### **6.1 Annual General Meeting business**

The business of the Annual General Meeting shall be:

- 6.1.1 to receive and consider the report of the Board;
- 6.1.2 to consider the annual financial reports, report of the Chief Executive Officer and the auditor's report;
- 6.1.3 to declare the result of the election of the President and Elected Board Members;
- 6.1.4 to appoint an auditor, if necessary; and
- 6.1.5 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.

### **6.2 Quorum at a general meeting**

- 6.2.1 Business may not be transacted at a general meeting unless a quorum of members is present at the time when the meeting proceeds to business and while business is being conducted.
- 6.2.2 Except as otherwise set out in this Constitution, 50 Fellows present in person and entitled to vote at a general meeting is a quorum.
- 6.2.3 If a quorum is not present within 15 minutes of the time appointed for a general meeting, or a longer period allowed by the Chairperson, 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 Chairperson.
- 6.2.4 At an adjourned meeting, if a quorum is not present within 15 minutes of the time appointed for the meeting, the meeting is dissolved.
- 6.2.5 Members may participate in any meeting remotely by electronic means permitted under the Act.

### **6.3 Chairperson**

- 6.3.1 A general meeting shall be chaired by:
  - (a) the Chairperson; or
  - (b) if the Chairperson is absent or unable or unwilling to act, a member of the Board elected by the Board members present.
- 6.3.2 Subject to this Constitution, the Chairperson'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 Chairperson may be moved.

#### 6.4 **Adjournment of meetings**

- 6.4.1 The Chairperson 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.
- 6.4.2 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.
- 6.4.3 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

#### 6.5 **Voting**

- 6.5.1 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 in accordance with clause 6.6.2.
- 6.5.2 Subject to this Constitution (in particular clause 6.8), every financial Fellow present in person has one vote on a show of hands and every financial Fellow present in person or by proxy has one vote on a ballot.
- 6.5.3 If there is an equality of votes, whether on a show of hands or on a ballot, the Chairperson has a casting vote in addition to the Chairperson's deliberative vote.
- 6.5.4 An objection to the qualification of a voter must be referred to the Chairperson who must rule on the objection before a vote is taken.
- 6.5.5 If a ballot is not duly demanded, a declaration by the Chairperson 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 book containing 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.

#### 6.6 **Conduct of a ballot**

- 6.6.1 A ballot may not be taken on the election of a Chairperson or on a question of adjournment.
- 6.6.2 A ballot may be demanded by:
- (a) the Chairperson; or
  - (b) any 5 Fellows present in person or by proxy entitled to vote.
- The demand for a ballot may be withdrawn.
- 6.6.3 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.
- 6.6.4 If a ballot is duly demanded, it must be taken in the manner and at such time as the Chairperson directs. The result of the ballot is the resolution of the meeting on the question concerned.

## 6.7 Proxies

- 6.7.1 A document appointing a proxy by a Fellow (which for the purposes of this Constitution includes a power of attorney of a Fellow appointing another Fellow to vote on the first mentioned Fellow'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.
- 6.7.2 Only a Fellow may be appointed as a proxy.
- 6.7.3 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).
- 6.7.4 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) 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.
- 6.7.5 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.

## 6.8 Only financial Fellows to vote

No Fellow is entitled to:

- 6.8.1 be present;
- 6.8.2 vote on any question either personally or by proxy;
- 6.8.3 vote as a proxy for another member; or
- 6.8.4 be reckoned in a quorum,

at any general meeting of the College if his or her annual membership subscription remains unpaid beyond the due date by more than three (3) months.

## 6.9 Only financial Members entitled to attend

No member, who is not a Fellow, is entitled to be present or vote at any general meeting of the College if his or her annual membership subscription remains unpaid beyond the due date by more than three (3) months.

## 6.10 **Postal ballot**

- 6.10.1 Subject to the requirements of the Act, the Board may if it thinks fit submit any question or resolution to the vote of all Members entitled to a vote at a general meeting by postal ballot (including an electronic postal ballot).
- 6.10.2 The Board may determine in the Regulations:
- (a) the form of the ballot paper or electronic ballot paper;
  - (b) the polling date; and
  - (c) whether the postal ballot is to be a secret postal ballot.

## 7 **BOARD OF COLLEGE**

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

- 7.1.1 The business of the College 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 or prescribed by the College in general meeting. No proper resolution made by the College in general meeting shall invalidate any prior act of the Board which would have been valid if that resolution had not been passed or made.
- 7.1.2 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 from time to time authorised by law for the investment of trust funds.
- 7.1.3 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 from time to time determines.

### 7.2 **Power to delegate**

- 7.2.1 The Board may delegate any of its powers (other than that of delegation) to committees comprising persons appointed by the Board.
- 7.2.2 The Board may revoke any delegation of its powers by ordinary resolution.
- 7.2.3 Any committee exercising the delegated power of the Board shall comply with any conditions or limitations imposed by the Board.

### 7.3 **Regulations**

- 7.3.1 The Board shall have power from time to time 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.
- 7.3.2 Without in any way limiting the power of the Board under clause 7.3.1, the Board may make, amend and repeal regulations in relation to:

- (a) procedural matters in relation to application for all classes of membership of the College (whether by way of examination, election or otherwise);
- (b) entrance fees, annual subscriptions and other fees payable by all classes of membership of the College;
- (c) rights and privileges to be accorded to all classes of membership of the College;
- (d) the processes of nomination and election of Board members;
- (e) the conduct of postal ballots of members of the College;
- (f) the membership, purpose and proceedings of committees of the Board and the College; and
- (g) the discipline of, and sanctions applicable to, Fellows, trainees and others, including suspension, counselling, reprimand, termination or expulsion.

7.3.3 Subject to clause 23, no regulation shall be inconsistent with, nor shall it affect the repeal or modification of, anything contained in this Constitution.

7.3.4 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 BOARD MEMBERS

### 8.1 Composition of the Board

8.1.1 The Board shall consist of:

- (a) the President of the College pursuant to clause 10.4.3 or clause 8.6;;
- (b) the President-Elect elected pursuant to clause 10.4.2, and when there is no President-Elect, the Immediate Past President pursuant to clause 10.4.4, provided that there can never simultaneously be both a President-Elect and Immediate Past President;
- (c) up to four (4) Fellows elected in accordance with this Constitution and any applicable regulations ("**Elected Board Members**");
- (d) up to three (3) directors appointed by the Board, who must not be members of the College, on the basis that they have the required skills specified in the Regulations to complement the current composition of the Board ("**Independent Directors**"). The appointment of the Independent Directors will take place in accordance with Regulations made for that purpose and the CEO shall convene a nominations committee established for that purpose; and
- (e) up to one (1) Registrar elected to represent the Registrars ("**Registrar Representative**"). This election and appointment will take place in accordance with regulations made for that purpose.

- 8.1.2 At least one Board Member must be resident in Australia.
- 8.1.3 At least one (1) of the Elected Board Members will be resident in New Zealand.
- 8.1.4 The Board will not be irregularly constituted by reason that there is not an Elected Board Member resident in New Zealand.
- 8.1.5 In the event that a Fellow resident in New Zealand is not elected, the Board will co-opt to the Board a Fellow resident in New Zealand who will have full voting rights.

## 8.2 **Term of office of Board Members**

- 8.2.1 The term of office of Elected Board Member shall be two (2) years commencing at the Annual General Meeting in the year of their election.
- 8.2.2 An Elected Board Member shall not serve:
  - (a) more than three (3) consecutive terms; or
  - (b) more than ten (10) years in aggregate, provided that the Elected Board Member has served at least a two (2) year absence from the Board.
- 8.2.3 An Elected Board Member who has served his or her third term of office as prescribed in clause 8.2.1 shall retire from office at the seventh Annual General Meeting held after that Elected Board Member is declared elected, provided that any retiring Elected Board Member shall be eligible for re-election subject to clause 8.2.2.
- 8.2.4 A retiring Elected Board Member shall be entitled to act as a member of the Board at the meeting at which he/she retires.
- 8.2.5 A Board Member who serves as President-Elect, then President, then Immediate Past President pursuant to clauses 10.4.2 to 10.4.4 (but not clause 8.6) will serve a term of four (4) years (deemed to be two consecutive terms of two (2) years) commencing at the Annual General Meeting in the year of their election as President-Elect. Upon ending their term, the Immediate Past President is not eligible for re-election to the Board for 10 years.
- 8.2.6 The term of office for an Independent Director shall be two (2) years commencing on the date of their appointment.
- 8.2.7 The Board may extend an Independent Director's term by two (2) years.
- 8.2.8 An Independent Director must not serve for more than six (6) years as a Board Member.
- 8.2.9 The term of office of the Registrar Representative is one (1) year.

## 8.3 **Removal of Board member**

- 8.3.1 A Board member may be removed from office by ordinary resolution of a general meeting of the College.

8.3.2 If the Board member removed from office by ordinary resolution of a general meeting of the College:

- (a) is an Elected Board Member, then that meeting may appoint another Fellow to fill the vacancy created for the remaining term of the Board member who was removed from office; or
- (b) is an Independent Director, then the Board may appoint another Independent Director to fill the vacancy in accordance with clause 8.1.1(d).

#### 8.4 **Termination of office of Board member**

8.4.1 The office of a Board member becomes vacant if the Board member:

- (a) resigns that office by notice in writing to the College;
- (b) where the director is a Member, when they cease to be a Member of the College;
- (c) is absent from three consecutive meetings of the Board (other than meetings of the Board called on less than 48 hours notice) without leave of absence given by the Board;
- (d) becomes an employee of the College;
- (e) 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 Board after the relevant facts have come to the Board member's knowledge) and the Board determines that the Board member should no longer be a Board member;
- (f) is removed from office pursuant to clause 8.3.1;
- (g) becomes bankrupt;
- (h) 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; or
- (i) is removed from office by operation of the Act.

#### 8.5 **Casual vacancies**

Subject to clause 8.6:

- 8.5.1 a casual vacancy shall mean any vacancy in the membership of the Board caused otherwise than by the retirement of a Board member at the end of his or her term;
- 8.5.2 a casual vacancy shall not be deemed to have arisen upon a Board member ceasing to reside in the State or Territory or in New Zealand in which that Board member was resident at the time of his or her election;
- 8.5.3 if the office of a Board member becomes vacant during the Board member's term of office that position may be filled by the Board in accordance with the procedure set out in clause 8.3.2;

8.5.4 any Elected Board Member appointed pursuant to this clause shall hold office only until the next election of Board members and shall be eligible for re-election in accordance with this Constitution; and

8.5.5 for the purposes of this clause the period of time served pursuant to clause 8.5.4 shall not be counted as a period of office.

## 8.6 **Casual vacancy in the office of President or President-Elect**

8.6.1 If a casual vacancy occurs in the office of President:

(a) the President-Elect (if there is one at the time the casual vacancy in the office of President first arises) becomes President for the duration of the casual vacancy and then continues as President pursuant to clause 10.4.3; or

(b) if there is no President-Elect but there is an Immediate Past President, the Immediate Past President resumes the role of President for the duration he or she would have been Immediate Past President and then retires, and at the next Annual General Meeting:

(1) a President-Elect will be elected who becomes President pursuant to clause 8.6.1(a); and

(2) there will be a casual vacancy in the office of Immediate Past President, which may be filled by the Board, but no vacancy in the office of President-Elect may be filled, despite clause **Error! Reference source not found.**

8.6.2 If a casual vacancy occurs in the office of President-Elect:

(a) as a result of clause 8.6.1(a) – the Board may appoint from the Elected Board Members a President-Elect who shall hold office for the remainder of the term of office of the former President-Elect but does not become President at the end of that term of office pursuant to clause 10.4.3; or

(b) otherwise, the Board may appoint from the Elected Board Members a President-Elect who shall hold office for the remainder of the term of office of the former President-Elect but does not become President at the end of that term of office pursuant to clause 10.4.3, then retires, at which Annual General Meeting the Elected Board Members will nominate and elect a replacement President-Elect who immediately becomes President pursuant to clause 10.4.3.

## 9 **ELECTION OF BOARD**

9.1 Nominations of candidates for election as Elected Board Members of the Board shall be:

9.1.1 signed by two Fellows;

9.1.2 contain a consent to act if elected signed by the person nominated; and

- 9.1.3 left with or forwarded by post to the Chief Executive Officer so as to reach the Chief Executive Officer at least thirty (30) days before the Annual General Meeting.
- 9.2 Wherever used in this clause the term “candidates” shall be deemed to mean persons eligible for election as Elected Board Members under the provisions of this Constitution.
- 9.3 If a number of nominations of candidates for election as Elected Board Members of the Board does not exceed the number of vacancies the candidates so nominated shall be declared duly elected at the Annual General Meeting.
- 9.4 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 at least twenty-one (21) days before the Annual General Meeting be sent to each Fellow at his or her address for the time being appearing in the College register.
- 9.5 Fellows, if they elect to vote, shall be obliged to vote for as many candidates as there are vacancies to be filled and no more, provided that all votes must be received at the Chief Executive Officer’s Office not later than 1700 hours on the closing date of the poll and any votes received thereafter shall be deemed to be invalid and shall not be counted.
- 9.6 At the Annual General Meeting there shall be first declared elected (assuming there is a candidate for the purpose and in order to ensure compliance as far as possible with clause 8.1.1(c) hereof) a candidate resident in New Zealand and receiving more votes than other candidates (if any) so resident to bring the number of Elected Board Members of the Board resident in New Zealand up to one.
- 9.7 Then the vacancies shall be filled by declaring elected the necessary number of the remaining candidates who received the most votes.
- 9.8 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 (and in the absence of regulations, the Chairperson has a casting vote).

## **10 MEETINGS OF THE BOARD**

### **10.1 Meetings**

- 10.1.1 The Board may meet for the transaction of business and adjourn and otherwise regulate its meetings as it thinks fit.
- 10.1.2 A meeting of the Board shall be convened on the requisition of the Chairperson or any two Board members.

### **10.2 Notice of Board meetings**

- 10.2.1 At least 24 hours notice of a meeting of the Board must be given to each Board member specifying the place, time and date of the meeting and the general nature of items to be discussed.
- 10.2.2 Shorter notice may be given if at least 75% of the Board members agree or if the Chairperson considers that the business of the meeting is urgent.

### 10.3 **Quorum**

- 10.3.1 The quorum necessary for the transaction of the business of the Board is at least six voting Board members unless the Board resolves that a greater number shall constitute a quorum.
- 10.3.2 If at any time the number of Board members is less than a quorum the Board may meet only for the purpose of filling any casual vacancies or for calling a general meeting of members.
- 10.3.3 The Board may act notwithstanding any vacancy on the Board.

### 10.4 **Office holders**

#### 10.4.1 **Chairperson**

- (a) The Board must elect an Independent Director to be the Chairperson.
- (b) The Chairperson shall take the Chair at all meetings of the Board, and have the role and responsibilities described in the Regulations.
- (c) If the Chairperson is not present at any meeting of the Board within fifteen minutes after the time appointed for holding the meeting the Board members present shall elect an another Independent Director to be the Chairperson of the meeting.

#### 10.4.2 **President-Elect**

- (a) This clause 10.4.2 will apply to the election of the President Elect:
- (1) at the Annual General Meeting to be held in 2022; and
- (2) whenever a vacancy will arise at the conclusion of the Immediate Past President's term of office pursuant to clause 10.4.4 at every second Annual General Meeting.
- (b) The nomination and election of the President-Elect will be conducted in accordance with the nomination and election procedure set out in clause 9 and in the same manner as elections for the Elected Board Members.
- (c) The President-Elect shall have the role and responsibilities described in the Regulations.

#### 10.4.3 **President**

- (a) The President-Elect becomes the President at the end of the Annual General Meeting after commencing as President Elect.
- (b) The President may not hold office for a term of longer than two (2) years (between Annual General Meetings), except where the person became President on a casual vacancy in accordance with clause 8.6.
- (c) The President shall have the role and responsibilities described in the Regulations.

- (d) In the President's absence, the President-Elect or Immediate Past President (if any) has all the powers and authorities of the President.

#### 10.4.4 **Immediate Past President**

- (a) The President becomes the Immediate Past President at the end of the second Annual General Meeting after commencing as President.
- (b) The Immediate Past President retires at the end of the Annual General Meeting after commencing as Immediate Past President.
- (c) In the President and President-Elect's absence, the Immediate Past President has all the powers and authorities of the President.

### 10.5 **Voting**

10.5.1 Questions arising at a meeting of the Board shall be decided by a majority of votes of Board members present and voting. A decision by a majority of the Board members present and voting is for all purposes a decision of the Board.

10.5.2 The Chairperson of the meeting has a casting vote in addition to a deliberative vote where there is an equality of votes.

### 10.6 **Written resolution**

10.6.1 A written resolution signed or approved by electronic mail by 75% of all Board members entitled to vote (other than any Board member on leave of absence) is taken to be a decision of the Board members passed at a meeting of the Board duly convened and held.

10.6.2 The written resolution may consist of:

- (a) several documents in like form, each signed by one or more Board member and, if so signed, takes effect on the last date on which a Board member 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 Board member sends such a message.

### 10.7 **Telephone or video conference meetings**

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

## 10.8 Defects in appointment or qualification of a Board member

All acts done in good faith by a meeting of the Board or of a committee of the Board or by any person acting as an Office Bearer, Board member 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.

## 10.9 Board member's interest

10.9.1 This clause 10.9 applies if:

- (a) a Board member has an interest or duty in relation to a matter that is not a material personal interest; or
- (b) a Board member 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 Board members under the Act.

10.9.2 Subject to clause 10.10, the Board member is not in breach of his or her duties to the College merely because he or she acts in matters that relate to the Board member's interest.

10.9.3 In relation to any transactions that relate to the Board member's interest:

- (a) the transactions may proceed;
- (b) the College cannot avoid the transactions merely because of the Board member's interest; and
- (c) the Board member may retain benefits under the transactions despite the Board member's interest.

## 10.10 Participation by interested Board Members

10.10.1 This clause applies to a Board member who has a material personal interest in a matter that is being considered at a Board meeting.

10.10.2 Subject to clause 10.10.5, the Board member must not:

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

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

10.10.4 The Board may vote on matters that relate to the Board member's interest in the Board member's absence.

- 10.10.5 The prohibition in clause 10.10.2 does not apply if:
- (a) the Board member does not have to disclose his or her material personal interest to the other Board member under the Act; or
  - (b) Board members who do not have a material personal interest in the matter have passed a resolution that:
    - (1) identifies the Board member, the nature and extent of the Board member's interest in the matter and its relation to the affairs of the College; and
    - (2) states that those Board members are satisfied that the interest should not disqualify the Board member from voting or being present.

## **11 COMMITTEES**

- 11.1 The Board may otherwise delegate all or any of its functions, powers or discretions to committees comprising such persons as the Board determines.
- 11.2 The Board shall determine the powers and duties of each Board committee and each committee shall in the exercise of its powers conform to any regulations (incorporating the Board committee's terms of reference) imposed on it by the Board.
- 11.3 Subject to any Regulation made pursuant to clause 11.2, each committee may meet, convene its meetings, adjourn and otherwise regulate its proceedings as it thinks fit.
- 11.4 The Board shall review the continuing need for each committee of the Board, the membership and the terms of reference in the regulations of each such committee annually.

## **12 CHIEF EXECUTIVE OFFICER**

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

## **13 SECRETARY**

The person holding office as Secretary will be the company secretary for the purposes of the Act. If that office is vacant, the Board may appoint another Fellow or employee to be the Secretary.

## **14 ACCOUNTS**

### **14.1 The College to keep accounts**

The Board must cause proper books of account to be kept in accordance with the Act.

### **14.2 Where accounts to be kept**

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

### 14.3 **Accounts open for inspection**

14.3.1 The books of account must always be open for the inspection of Board members.

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

### 14.4 **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 from time to time required by the Act.

### 14.5 **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.

## 15 **AUDIT**

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

## 16 **NOTICES**

### 16.1 **Means of giving notices**

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

- (a) mail (postal service);
- (b) facsimile; or
- (c) electronic mail,

to the appropriate address or number of the addressee.

16.1.2 A Board member, 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.

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

### 16.2 **Address for service**

The address for service is:

16.2.1 in the case of a Member or Board member, the home address (or postal address, electronic mail address or facsimile number in the case of postal, electronic mail or facsimile dispatch) of the Member or Board member specified in the Register; and

16.2.2 in the case of the College, the address (or any postal address, electronic mail address or facsimile number in the case of postal or electronic or facsimile dispatch) of the Office for the time being specified on the official stationery of the College.

### 16.3 **Notification of change of address**

16.3.1 If the home address, postal address, electronic mail address or facsimile number of a member changes, the member must promptly give notice of the change to the College.

16.3.2 The College must promptly notify members of any change in its address.

### 16.4 **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:

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

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

(a) if the notice is notice of a meeting – on the first 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

16.4.3 if sent by electronic mail or facsimile to the electronic mail address or facsimile number of the addressee, at the time transmission is completed.

### 16.5 **Proof of giving notices**

16.5.1 Proof of the sending of a notice by facsimile and the time of completion of transmission may be established by production of a transmission report by the machine from which the facsimile or electronic transmission was sent which indicated that the facsimile or electronic mail was sent in its entirety to the facsimile number or electronic mail address of the addressee.

16.5.2 A certificate signed by a Board member 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.

16.5.3 A certificate signed by a Board member 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.

## 17 NOT-FOR-PROFIT

### 17.1 Distributions to Members

- 17.1.1 The income and property of the College, however derived, must be applied solely towards the promotion of the objects of the College in clause 1.
- 17.1.2 The income or property of the College must not be paid or transferred, directly or indirectly, by way of dividend, bonus or otherwise by way of profit, to any Member.

### 17.2 Payment for Services Rendered

Nothing in clause 17.1 prevents the payment in good faith:

- 17.2.1 of remuneration to any officer or employee of the College;
- 17.2.2 to any Member in return for any services actually rendered to the College;
- 17.2.3 for goods supplied in the ordinary and usual course of business; or
- 17.2.4 of interest at a commercial rate on money borrowed from any Member.

### 17.3 Payments to Directors

The Directors must not be paid by way of remuneration for their services except that:

- 17.3.1 reimbursement for out-of-pocket expenses incurred in carrying out the duties of a Director shall be paid where payment does not exceed any amount previously approved by the Board; and
- 17.3.2 payment for any service rendered to the College in a professional or technical capacity shall be made where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.

### 17.4 Payments to Members

Payment for any service rendered to the College by a Member in a professional or technical capacity, or reimbursement for out-of-pocket expenses incurred by a Member in carrying out the services rendered, shall be made where the provision of that service has the prior approval of the Board and the amount payable is approved by a resolution of the Board and is on reasonable commercial terms.

### 17.5 Payments to other entities

Nothing in clause 17.3 or 17.4 prevents the College making a payment to another company, body corporate or incorporated entity of which a Director is a member ("**Entity**"), but the College must not make a payment to an Entity if a Director holds more than one-hundredth part of the capital of the Entity.

## 18 DEDUCTIBLE GIFT RECIPIENT STATUS AND GIFT FUND

- 18.1 If the College has been notified by the Australian Taxation Office that gifts and contributions to the College will be an allowable deduction:

- 18.1.1 the College must promptly notify the Australian Taxation Office of all amendments to the Constitution (if required by law); and
- 18.1.2 the Board must maintain a gift fund for the Objects of the College:
- (a) to which gifts of money or property for that purpose are to be made;
  - (b) to which any money received by the College because of such gifts is to be credited; and
  - (c) that does not receive any other money or property.
- 18.2 Any Gift Fund:
- 18.2.1 must be kept in a bank account separate from the other accounts of the College; and
- 18.2.2 will, unless the Board determines otherwise, be governed by the Constitution.
- 18.3 Upon any Gift Fund being wound up or if the endorsement (if any) as a deductible gift recipient is revoked, any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to it, will be transferred to an entity:
- 18.3.1 that has similar Objects to the College;
  - 18.3.2 that also prohibits the distribution of profit, income and assets to its members to at least as great an extent as provided in the Constitution; and
  - 18.3.3 to which income tax deductible gifts can be made.
- 18.4 Without limiting clause 18.1, any funds given to the College which are expressed by the donor to be for a specific purpose must only be used for that specific purpose in such manner as the Board determines.

## **19 WINDING UP**

- 19.1 Every member of the College undertakes to contribute to the assets of the College in the event of it 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 one hundred dollars (\$100) 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.
- 19.2 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 institution having similar objects to those described in this Constitution situate within the Commonwealth of Australia and which:
- 19.2.1 is required by its Constitution to apply its profits or income in promoting its objects;
  - 19.2.2 is prohibited from paying any profits or dividends to its members to the same extent as set out in this Constitution; and

- 19.2.3 itself, is exempt from income tax.
- 19.3 That institution shall be determined by the Board prior to the dissolution of the College or failing such determination, by application to an appropriate Court.
- 19.4 The Board shall:
- 19.4.1 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 charitable objects in New Zealand.
- 19.4.2 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.

## 20 INDEMNITY

- 20.1 Every officer and past officer of the College 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).
- 20.2 For the purposes of clause 20.1, “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.

## 21 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.

## 22 DEFINITIONS AND INTERPRETATION

- 22.1 In this Constitution:
- 22.1.1 “**Act**” means the *Corporations Act 2001* (Cth);
- 22.1.2 “**Board**” means the Board of the College elected or appointed under this Constitution, each member of which shall be a Director of the Company;
- 22.1.3 “**Board Member**” means a member of the Board;
- 22.1.4 “**Chairperson**” means the person for the time being holding that office under this Constitution;
- 22.1.5 “**Constitution**” means this constitution of the College as amended from time to time;

- 22.1.6 “**College**” means the **Australasian College of Sport and Exercise Medicine** constituted as a company limited by guarantee under this Constitution;
- 22.1.7 “**Elected Board Members**” has the meaning given to that term in clause 8.1.1(c);
- 22.1.8 “**Fellow**” means a member who holds Fellowship of the College in accordance with this Constitution and whose membership of the College has not ceased or been terminated for any reason;
- 22.1.9 “**Honorary Fellow**” means a person specified in the Register as an Honorary Fellow;
- 22.1.10 “**Immediate Past President**” means the person for the time being holding that office under this Constitution;
- 22.1.11 “**Independent Directors**” has the meaning given to that term in clause 8.1.1(d);
- 22.1.12 “**Member**” means any person for the time being admitted to membership of the College and unless a contrary intention appears includes Fellows, Honorary Fellows, Associates and Registrars;
- 22.1.13 “**Membership Financial Year**” means the membership financial year of the College, from 1<sup>st</sup> January to 31<sup>st</sup> December;
- 22.1.14 “**Objects**” means the objects listed in clause 1;
- 22.1.15 “**Office**” means the registered office for the time being of the College;
- 22.1.16 “**President**” means the person for the time being holding that office under this Constitution;
- 22.1.17 “**President-Elect**” means the person for the time being holding that office under this Constitution;
- 22.1.18 “**Registrar Representative**” has the meaning given to that term in clause 8.1.1(e).
- 22.1.19 “**Register**” means the Register of members required to be kept under this Constitution and the Act (whether kept electronically or otherwise);
- 22.1.20 “**Regulation**” means any regulation made under this Constitution; and
- 22.1.21 “**Secretary**” means the company secretary pursuant to clause 13.

## 22.2 References to the Act

Unless the context otherwise requires, a reference to:

- 22.2.1 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
- 22.2.2 a section of the Act includes any corresponding section for the time being in force.

### 22.3 **Presumptions of Interpretation**

Unless the context otherwise requires, a word which denotes:

- 22.3.1 the singular includes the plural and vice versa;
- 22.3.2 a person includes an individual, a body corporate, a partnership, a firm, unincorporated association or institution and a government body; and
- 22.3.3 a notice includes any consent, publication or other written communication.

### 22.4 **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.

### 22.5 **Headings**

Headings do not affect the interpretation of this Constitution.

### 22.6 **Replaceable Rules**

The replaceable rules in the Act do not apply.

## 23 **TRANSITIONAL**

The provisions of this Constitution in relation to the commencement of the Elected Directors and Independent Directors term of office will become effective on the earlier of a date to be determined by the Board or 1 January 2016, and in accordance with transitional regulations made by the Board for that purpose. Unless and until that time, the previous memorandum and articles of association of the College will continue with full force and effect in relation to the directors' permitted term of office. The transitional regulations that the Board may make pursuant to this clause, may disregard any previous time served by a current Board member of the College.