

# Constitution and Rules of the Association of Quality Child Care Centres of NSW Inc

## VERSION CONTROL

Version: 2.0

Adoption Status: Adopted at SGM 17 May 2017

# **CONSTITUTION AND RULES OF THE ASSOCIATION OF QUALITY CHILD CARE CENTRES OF NSW INC**

## **1. Name**

The name of the Association shall be the Association of Quality Child Care Centres of NSW Inc, herein referred to as “the Association”.

## **2. Interpretation and Definitions**

2.1 This Constitution and these rules shall be interpreted according to the laws of the state of New South Wales, and shall hereinafter be referred to as “this Constitution”.

2.2 In this Constitution, the following words bear the following meaning, unless the contrary intention appears:

“ACECQA” means Australian Children’s Education and Care Quality Authority;

“Approved provider” means a holder of a service approval issued by the Department of Education & Communities to the proprietor of a child care centre.

“child care centre” means any type of education and care service referred to in the National Regulations, other than a family day care service.

“Department of Education and Communities” means the regulatory authority in New South Wales with responsibility for early childhood education and care.

“entity” means a corporation, partnership or any other entity other than a person that is permitted to be an ordinary member under these rules.

“Executive Committee” means the committee of management of the Association referred to in clause 24.

“Fair Work Commission” means Australia’s national workplace relations tribunal.

“financial member” means a member of the Association who has paid all monies due to the Association.

“financial year” means the year ending 30 June.

“member” means a member of the Association referred to in clause 5 herein, being either an ordinary member, an associate member or a life member.

“National Quality Standard” is a reference to Schedule 1 of the *Education and Care Services National Regulations 2011* (“National Regulations”) made under the *Education and Care Services National Law Act 2010*.

“notice in writing” includes notice sent by email or facsimile transmission.

“ordinary member” means a member referred to in Clause 5 herein that may be a person or an entity as permitted by these rules.

“person” means a natural person.

“public officer” shall mean the person who is for the time being the public officer pursuant to the *Associations Incorporation Act 2009*.

“policies” refers to the Executive Committee’s Governance Charter.

“representative” means the person nominated by an entity that is an ordinary member of the Association to represent that member as permitted by these rules.

“register of members” means the list of members of the Association, as referred to in Clause 9.

“service approval” means an approval or similarly intended document issued by the Department of Education & Communities. These were previously referred to as ‘licences’.

“Significant Improvement Required” has the meaning given in the National Regulations for the purposes of the National Quality Standard overseen by ACECQA.

- 2.3 The provisions of the *Interpretation Act 1987* (NSW) apply to and in respect of this Constitution in the same manner as those provisions would apply if these rules were an instrument made under that Act.

### **3. Registered Office**

The Executive Committee shall establish and maintain a registered office of the Association within the Greater Sydney area.

### **4. Objects and Powers**

- 4.1 The object for which the Association is formed is to represent employers/child care centre owners and persons (other than employees) who carry on business in or in connection with the child care service and, without limiting the generality of the foregoing, for this object has powers:

- (a) to obtain registration and continue to be registered as an industrial union of employers pursuant to the Industrial Relations Act 1996

(NSW), and to obtain registration and continue to be registered as an industrial union of employers in other Australian states, territories, and jurisdictions when appropriate pursuant to Clause 4.1(b) herein;

- (b) to represent the interest of its members in matters before the Industrial Relations Commission of New South Wales, and like authorities in other Australian states, territories and jurisdictions when appropriate;
- (c) to liaise with, and if desirable to the Association, become a member of an association which is a federally registered industrial body which will represent the interests of its members before the Fair Work Commission;
- (d) to represent the interests of members in negotiating the establishment of and/or variation of industrial awards and agreements and implementing varied or newly established provisions;
- (e) to provide an industrial relations service to members including:
  - (i) providing access to information about awards and their interpretation; and
  - (ii) providing access to advice and support in establishing and maintaining appropriate personnel policies, practice and procedures;
- (f) to promote training programs;
- (g) to extend and improve the provision and standards of early childhood services for the care and development of young children.
- (h) to seek continual knowledge and information regarding the latest methods in early childhood, education and childcare.
- (i) to seek representation on any appropriate governmental committees and in particular without limitation on any committee of the Department of Education & Communities which prescribes amends or recommends regulations or standards for childcare centres.
- (j) to act as an industrial organisation of employers.
- (k) to make donations for political objects.
- (l) to negotiate on behalf of members competitive rates for ancillary services.
- (m) to seek affiliation with other early childhood educators or childcare bodies.

- (n) to register as an Australian body with the Australian Securities and Investments Commission.
- 4.2 The objects referred to in Clause 4.1 may be amended or rescinded by special resolution of the Association.
- 4.3 The Association has the rights, the powers and the privileges of a body corporate and, without limiting the generality of the foregoing, has power:
  - (a) to procure the Association to be registered or recognised as a body corporate in any place and in any manner;
  - (b) to purchase, sell, take in, hold, lease mortgage, subdivide, exchange and otherwise deal with any real or personal property, rights or privileges (including any estate or interest therein); and
  - (c) to grant charge on property of the Association.

## **5. Membership**

- 5.1 Membership of the Association shall consist of the following categories:
  - (a) ordinary member;
  - (b) associate member; and
  - (c) life member.
- 5.2 A person may apply to become and shall become an ordinary member of the Association if:
  - (a) that person is the proprietor or the nominee of the proprietor of a child care centre holding a current service approval or permit issued by the Department of Education and Communities;
  - (b) that person states in writing to the Association their name, address and place of business; and
  - (c) that person tenders the subscription payable under sub-clause 10.2.
- 5.3 If the proprietor of a child care centre holding one or more service approvals is a corporation:
  - (a) the corporation may become an ordinary member of the Association; and
  - (b) the corporation shall nominate, in the application to become a member or in such other form as the Executive Committee may direct, a person to represent the corporation.

- (c) irrespective of the number of service approvals which a corporate member may have, it will only be entitled to become one ordinary member.

The person nominated shall be a shareholder or director of the corporation or otherwise manages the corporation. Subject to Clause 37, no one apart from the person nominated shall be entitled to represent the Corporation for any purpose. The person nominated shall be responsible for ensuring that the corporation discharges its obligations to the Association. The directors of the corporation shall be responsible for its nominee's failure to ensure its fulfillment of such obligations.

5.4 If the holder of a current service approval is a partnership.

- (a) the partnership may become an ordinary member of the Association; and
- (b) the partnership shall nominate, in the application to become a member or in such other form as the Executive Committee may direct, one of the partners to represent the partnership.

Subject to Clause 37, no person apart from the partner nominated shall be entitled to represent the partnership for any purpose.

The individual partners are not entitled to become members of the Association in consequence of a service approval issued to the partnership.

5.5 Notwithstanding sub-clause 5.2, an approved provider shall not be entitled to admission as ordinary member of the Association if the licensee:

- (a) being a person, is of generally bad character; or
- (b) being a body corporate, has provision in its constituent documents inconsistent with the purposes for which the Association was formed.

5.6 The Executive Committee shall have the right on behalf of the Association to refuse admission to membership as an ordinary member to an approved provider having regard to the grounds set out in sub-clause 5.5 and shall not be required to give reasons for its decision. The Secretary shall return to the approved provider their refused admission and the amount tendered by the approved provider as a subscription.

5.7 Membership as an associate member shall be open to any person other than an approved provider who resides in New South Wales and who has an interest in child care, including, but not limited to the following categories:

- (a) persons engaged in academic studies relating to childcare;
- (b) persons interested in the teaching or promotion of child care;

- (c) persons engaged in the establishment of a child care service which has not yet been granted a service approval; or
- (d) major suppliers to the child care industry as identified in the policies.

The Executive Committee may establish such categories of associate members as it may consider appropriate and may, in its absolute discretion, determine the rights, privileges and liabilities attaching to each category.

5.8 A person may apply to become an associate member of the Association if:

- (a) that person states in writing to the Association their name, address (including their postal and email address), place of business and the nature of their interest in child care; and
- (b) that person tenders the annual subscription payable under this Constitution.

5.9 The Executive Committee may reject any application for membership as an associate member without assigning any reason for such rejection. The Secretary shall return to the person refused admission the amount tendered by them as a subscription.

5.10 Associate members are not entitled to vote on any matter or stand for any position including a position as an office bearer, member of the Executive Committee or representative of the Association.

5.11 A person may become a life member if:

- (a) that person has given outstanding service to the Association in accordance with the policies; and
- (b) on the recommendation of the Executive Committee, that person is elected to membership for life by a special resolution passed at a general meeting of the Association.

A register of life members will be maintained.

5.12 A person shall cease to be a life member if in the opinion of the Executive Committee such person has ceased to be actively engaged in the early childhood education and care sector in which event that member shall become entitled to apply to become an Associate member of the Association.

5.13 A life member shall have all the rights of an ordinary member save that, if a life member is not eligible to be an ordinary member, that person may not vote or hold office. A life member shall not be liable to pay any subscription, levy or other sum otherwise payable under this Constitution.

- 5.14 Subject to this Constitution, the rights of a member are personal to that member and cannot be exercised by any other person or entity, save as through a representative permitted by these rules.
- 5.15 Without limiting any other rules, an ordinary member entitled to appoint a representative shall be responsible for the actions of the representative and the actions of the representative shall be deemed to be actions of the ordinary member, including without limitation, in respect of clause 16.
- 5.16 The Association shall inform all applicants for membership of the Association in writing of:
- (a) the financial obligations arising from membership; and
  - (b) the circumstances, and the manner, in which a member may resign from the Association; and
  - (c) the circumstances and the manner in which a person or entity may cease to be a member of the Association.

## **6. Cessation of Membership**

A person or entity ceases to be a member of the Association if the member:

- (a) ceases to be eligible to become a member of the Association;
- (b) being a person, dies
- (c) resigns;
- (d) being an entity, has a liquidator appointed to it; or
- (e) is expelled from the Association pursuant to clause 16.

## **7. Assignment, Transfer or Succession of Business**

7.1 Within fourteen days after:

- (a) the business of a member is assigned or transferred to any other person or entity; or
- (b) a person or entity succeeds to the business of a member,

the member and such person or entity are required to notify the Association of the assignment, transfer or succession.



- 7.2 Membership of the Association is not transferable. Any approved provider to whom a business is assigned or transferred must apply for membership if that approved provider is to become an ordinary member of the Association.

## **8. Resignation of Membership**

- 8.1 A member of the Association may resign from membership by giving written notice addressed to and delivered to the Secretary of the Association. There will be no refund of membership fees.
- 8.2 A notice of resignation from membership of the Association shall take effect:
- (a) at the end of the month after the notice is received by the secretary; or
  - (b) on the day specified in the notice,
- whichever is later.
- 8.3 A notice of resignation that has been received by the Association is not valid because it was not addressed and delivered in accordance with sub-clause 8.1.
- 8.4 A resignation from membership of the Association is valid, even if it is not effected in accordance with this clause if the member is informed in writing by or on behalf of the Association that the resignation has been accepted.
- 8.5 No later than twenty-eight days after the Association receives from an approved provider a notice of the approved provider's resignation from the Association, the Association must give written notice of the resignation to each organisation of employees that is bound by an award that, when the organisation received the notice from the licensee, bound the licensee because of the membership of the Association.

## **9. Register of Members**

- 9.1 The Secretary shall cause to be established and maintain a register of members of the Association specifying the name and address including where applicable the email address of each person or entity who is a member of the Association, together with the date on which the person or entity became a member.
- 9.2 The register of members shall be kept at the registered office of the Association and shall be open for inspection, free of charge, by any member of the Association during business hours.
- 9.3 The Secretary shall cause to be made an appropriate entry in the register of members recording the date on which a member ceases to become a member.
- 9.4 A member who changes their address shall notify the Association in writing within fourteen business days of the change of address.

## **10. Subscriptions**

- 10.1 The annual membership subscription for ordinary members shall be determined by the Executive Committee.
- 10.2 Should any ordinary member be a proprietor of more than one child care centre, the total subscription for that member may be discounted by a rate or in a manner as the Executive Committee shall from time to time determine.
- 10.3 The annual membership subscription for associate members or categories or associate members shall be determined by the Executive Committee in its absolute discretion.
- 10.4 There shall be no entrance or joining fees.
- 10.5 The annual membership subscription for ordinary and associate members shall be due and payable within twenty-eight days of such member being notified thereof and notification shall be deemed to have taken place three business days after the account was posted to that member's address listed in the register of members.
- 10.6 No ordinary member shall be entitled to vote, stand for any office or requisition a special general meeting pursuant to sub-clause 30.2 unless that person or entity is a financial member.

## **11. Levies**

- 11.1 The Association may impose a special levy on members for such purposes as may be deemed necessary to carry out the objectives of the Association.
- 11.2 A levy is payable in the following circumstances:
  - (a) A levy proposed under this clause shall be apportioned pro-rata to the total subscription paid or payable by the members of the Association in the year in which the levy is struck ("the total subscription");
  - (b) A member's liability to pay such levy shall be in the same proportion to the subscription paid or payable by the member to the total subscription;
  - (c) In the event that the amount of the levy or levies during any one year payable by a member pursuant to sub-clause (b) hereof does not exceed fifty percent of the total amount of the member's subscription (either paid or payable) for the year in which the levy is struck, a majority of the Executive Committee has agreed to the levy being imposed or;

- (d) In the event that the amount of the levy or levies during any one year payable by a member pursuant to sub-clause (b) hereof exceeds fifty percent of the total amount of the member's subscription (either paid or payable) for the year in which the levy is struck, a majority of the Executive Committee and a majority of ordinary members voting in a ballot called for the purpose (which may be a ballot held at a general meeting or conducted by post as provided in clause 30.7 hereof) agree to the levy being imposed.
- 11.3 All monies raised by a levy shall be deposited into a separate fund established solely for that purpose. The monies can be applied only to the purpose for which the levy was raised, unless the members making the contributions agree to some other application.
- 11.4 A levy imposed pursuant to this clause shall be due and payable by each member of the Association within fourteen days of that member being notified thereof. Notification shall be deemed to have taken place three business days after the notice of the levy was posted to that member's address listed in the register of members.
- 11.5 No levy shall be imposed for the purpose of making donations or other payments for political objects and no donation or other payment for political objects shall be made out of amounts levied by the Association.
- 11.6 The Association may make a donation or other payment for political objects provided the Executive Committee approves the making of such donation and satisfies itself that the making of such donation is in accordance with this Constitution.

## **12. Liability for Subscriptions**

Subject to the *Industrial Relations Act 1996*, any member who shall cease to be a member of the Association, for whatever reason, shall nevertheless remain liable to pay any subscription or other sums payable by that member in relation to or incurred in the period of six months before that person or entity ceases to be a member. Such subscriptions or other sums shall be a debt due by that person or entity to the Association.

## **13. Funds – Source**

- 13.1 The funds of the Association shall be derived from membership subscriptions, members' donations, levies, endorsements, sponsorship funds, service fees, and any other sources approved by the Executive Committee and, subject to any resolution passed by the Association in general meetings, such other sources as the Executive Committee determines.

- 13.2 All monies received by the Association shall be deposited as soon as practicable and without deduction to the credit of the Association's bank account.
- 13.3 The Association shall, as soon as practicable after receiving any money, issue a receipt.

#### **14. Funds – Management**

- 14.1 Subject to any resolution passed by the Association in general meeting and the *Industrial Relations Act* 1996, the funds of the Association shall be used to implement the object of the Association in such manner as the Executive Committee determines and for no other object. No part thereof shall be paid, distributed or transferred directly or indirectly by way of dividend, bonus or otherwise howsoever by way of profit to the members of the Association.
- 14.2 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments shall be signed, inclusive of electronic authorisation, by two persons, one of whom at least must be a member of the Executive Committee, being persons lawfully authorised in writing to do so by the Executive Committee.

#### **15. Member's Liabilities**

The liability of a member of the Association to contribute towards the payment of debts and liabilities of the Association or the costs, chargers and expenses of the winding up of the Association is limited to the amount, if any, unpaid by the member and due to the Association under this Constitution.

#### **16. Expulsion, Discipline or Suspension of Members**

- 16.1 The Executive Committee shall have the power to suspend or expel a member's right to vote or hold office (themselves or through a representative) for a period not exceeding six months or expel any member, if in its opinion, the member:
- (a) being a person, is of generally bad character or becomes bankrupt; or
  - (b) being an entity:
    - (i) has provisions in its constituent documents inconsistent with the purposes for which the Association was formed;
    - (ii) has not nominated a representative or has not replaced a representative who is no longer suitable or able to fulfil that role within 14 days; or

- (iii) ceases trading, becomes insolvent or has any kind of insolvency administrator appointed in respect of it;
  - (c) has not paid their subscription within two months of it becoming due;
  - (d) has not complied with this Constitution;
  - (e) has brought the Association or the industry into disrepute;
  - (f) or their representative is, an officer or an Executive Committee member, who has consistently failed to undertake the role and responsibilities required of them under this Constitution or the policies, or has consistently been disruptive to the good governance of the Association; or
  - (g) has wilfully acted in a manner prejudicial to the interests of the Association.
- 16.2 A complaint made in respect of any matter referred to in Clause 16 shall be made by notice sent to the Secretary of the Association, provided that any complaint against the Secretary shall be made to the President. In this Constitution the officer to whom the complaint is made is referred to as “the relevant officer”.
- 16.3 Every complaint:
- (a) shall be in writing, inclusive of electronic transmission;
  - (b) shall name the member against whom it is made;
  - (c) shall set out as fully as possible the particulars of the matters in respect of which it is made; and
  - (d) shall be signed by the complainant.
- 16.4 The relevant officer shall forthwith inform the member against whom the complaint is made of the making of the complaint and shall forward to the member a copy of it.
- 16.5 The Executive Committee shall only deal with a resolution to expel or suspend a member at a meeting convened for that purpose alone and such member shall be given notice in writing, not less than fourteen clear days before that meeting:
- (a) setting out the allegations made against the member and the grounds on which they are made;
  - (b) stating that the member may address the Executive Committee;

- (c) stating the date, time and place of the meeting of the Executive Committee; and
  - (d) informing the member that they may do either or both of the following:
    - (i) attend and speak at the meeting; or
    - (ii) submit to the Executive Committee at or prior to the date of that meeting written submissions relating to the proposed resolution.
- 16.6 At the meeting of the Executive Committee called pursuant to sub-clause 16.5, the Executive Committee shall:
- (a) give to the member an opportunity to make oral submissions;
  - (b) consider any written submissions submitted to the Executive Committee by the member at or prior to the meeting; and
  - (c) by resolution determine whether or not to expel or suspend the member.
- 16.7 The resolution to suspend or expel a member requires for its passing the affirmative vote of not less than three-quarters of the members of the Executive Committee present at such meeting.
- 16.8 No member of the Executive Committee who has personal interest in the removal, suspension or expulsion of a member shall attend or participate in the deliberations of the Executive Committee relating thereto and shall not vote on the question.
- 16.9 Where the Executive Committee passes a resolution pursuant to sub-clause 16.7 the secretary shall, within five days of the making of that resolution, inform the member of the terms of that resolution and the member's right to appeal under clause 17.
- 16.10 A resolution passed by the Executive Committee under sub-clause 16.7 does not take effect:
- (a) until the expiration of fourteen days where the member does not exercise the right of appeal within that period; or
  - (b) where, within that period, the member exercises the right of appeal, unless and until the Association confirms the resolution pursuant to clause 17.
- 16.11 Should the Executive Committee believe there is wholesale conflict(s) of interest and cannot independently exercise its functions under Clause 16, it may delegate the powers and processes outlined in Clause 16 to the Independent Membership Review Committee.

- 16.12 When the Independent Membership Review Committee is used to consider the expulsion, discipline or suspension of members, a report to the Executive Committee is required at its conclusion of the matter.
- 16.13 The Independent Membership Review Committee shall be appointed by the Executive Committee every 12 months comprising of three Past Presidents and/or Past Vice-Presidents.
- 16.14 Nominations for the Independent Membership Review Committee shall be sought from full members for a minimum of 1 month.

## **17. Right of Appeal**

- 17.1 A member may appeal to the Association in a general meeting against a resolution of the Executive Committee under rule 16 hereof within fourteen days after the passing of the resolution by lodging with the Secretary a notice to that effect.
- 17.2 Upon receiving a notice from a member under sub-clause 17.1 the Secretary shall inform the Executive Committee and shall convene a general meeting of the Association to be held within thirty-five days after the date on which the Secretary received the notice.
- 17.3 At a meeting of the Association convened under sub-clause 17.2
- (a) no business other than the matter of the appeal shall be transacted;
  - (b) the Executive Committee, by the Secretary or another member of the Executive Committee appointed by it for the purpose, and the member shall be given the opportunity to state their respective cases orally or in writing, or both; and
  - (c) the resolution of the Executive Committee shall be approved if passed by a majority of the members present but no members of the Executive Committee shall be entitled to vote.

## **18. Office Bearers**

- 18.1 The office bearers shall be declared elected at the Annual General Meeting of the Association in accordance with clause 28 and shall consist of:
- (a) a president;
  - (b) a vice president;
  - (c) a secretary; and

(d) a treasurer.

18.2 In the absence of the president for whatever reason, the vice president shall act in his or her stead.

## **19. The President**

19.1 The President shall preside as the chairperson at the meetings of the Association and the Executive Committee. In the absence of the President the Vice-President shall so preside as the chairperson at such meetings; and in the absence of the President and Vice-President any member of the Executive Committee may be nominated and appointed by a show of hands of the majority of the persons present at such meeting or meetings to preside as the chairperson. The President may, with the approval of the Executive Committee, appoint an independent person to chair all or part of the Executive Committee.

19.2. The President shall have the following functions;

- (a) to convene all meetings of the Association and the Executive Committee; noting that the Executive Committee may convene a meeting of the Executive Committee in accordance with Clauses 26.1 and 26.2 herein;
- (b) to have the general custody, care, control and management of the property of the Association as directed by the Executive Committee;
- (c) to provide, between meetings of the Association and between meetings of the Executive Committee, leadership, general care, control and management of the affairs of the Association;
- (d) subject to this Constitution to execute documents not requiring the seal of the Association to be affixed and to give notifications, oral or written, on behalf of the Association including, without limiting the generality of the foregoing, notifications oral or written to the Industrial Commission and the Industrial Court of New South Wales and like authorities, relating to industrial disputes; and
- (e) to exercise any powers of functions delegated to the President by the Executive Committee.

## **20. The Secretary**

The Secretary shall have the following functions:

- (a) to oversee the recording of minutes of all appointments of members of the Executive Committee, of the names of the members of the Executive Committee present at a Committee meeting or a general



meeting, and of all proceedings at Executive Committee meetings and general meetings;

- (b) to oversee the receipt of application for resignations from membership and other notices from members;
- (c) to monitor the proper receipt, on behalf of the Executive Committee, all correspondence and other communications addressed to the Executive Committee; and
- (d) to exercise any powers or functions delegated to the Secretary by the Executive Committee.

## **21. The Treasurer**

The Treasurer shall have the following functions:

- (a) to oversee that the financial affairs of the Association are properly managed;
- (b) to present to the annual general meeting of the Association such auditor's reports, accounts and statements as may be required by law and to lodge with the proper authorities the materials so presented;
- (c) to comply with all statutory requirements in respect of such reports, accounts and statements;
- (d) to oversee that all monies due to the Association are received and all authorised are made;
- (e) to oversee the proper issue of receipts;
- (f) to monitor that books and accounts are kept correctly and accurately, showing the financial affairs of the Association, including full details of receipts and expenditure connected with the activities of the Association; and
- (g) to provide or arrange such other reports as may be requested by the Executive Committee or the Association.

## **22. The Executive Committee**

22.1 The following shall apply in respect of the Executive Committee:

- (a) the Executive Committee shall be the committee of management of the Association and shall consist of the office bearers plus not more than seven and not less than three other eligible persons, who shall be

declared elected at the annual general meeting in accordance with clause 29;

- (b) where there are:
  - (i) more than six nominees for election, the Returning Officer shall declare the first seven persons in the ballot in the order of votes cast; or
  - (ii) less than seven nominees but more than three nominees, the returning officer shall declare the number of nominees elected,

provided that if the ballot is held with less than three nominees, nominations shall be taken at the annual general meeting to fill any further position required; and

- (c) to be eligible to be an Executive Committee member, a person must:
  - (i) be an ordinary member or otherwise the representative of an ordinary member;
  - (ii) be a continuous financial ordinary member or representative of such an ordinary member for a minimum of 24 months; and
  - (iii) meet the criteria contained in Clause 29.6.

22.2 The members of the Executive Committee shall serve, subject to this Constitution, until the following annual general meetings, at which time all members of the Executive Committee shall resign from office, but shall be eligible for re-election. There is no limit on the number of times a member can be elected to the Executive Committee.

22.3 The Executive Committee may exercise all such functions as may be exercised by the Association, other than those functions that are required by this Constitution to be exercised by a general meeting or the members of that Association, and, without limiting the generality of the foregoing, shall have the following powers and duties:

- (a) the performance of all such acts and things as appear to the Executive Committee to be necessary or desirable for the proper management of the affairs of the Association;
- (b) the control and management of the affairs, funds and finances of the Association, including reporting at each general meeting of the Association on actions taken and decisions made by the Executive Committee and its future strategies;
- (c) the keeping and maintenance of all necessary records, including the register of members and the minutes of all general meetings and meetings of the Executive Committee.

- (d) the investment of any monies belonging to the Association and not immediately required, provided that if the Executive Committee proposes to invest other than with or in government licensed banks, bank guaranteed securities, government guaranteed merchant banks and institutions, government securities and investments with major building societies it shall first obtain the approval of the Association assembled in general meeting;
  - (e) the control and direction of employees, agents, independent contractors and officials of the Association, including entering into or terminating contracts of service or contracts for service subject to contemporary law and procedure, and in relation thereto fixing remuneration and fees, conditions of engagement and statements of duty;
  - (f) the power to purchase or otherwise acquire for the Association any property, rights or privileges;
  - (g) the power to institute, conduct, defend, compound, compromise or abandon any legal proceedings provided that the Executive Committee shall not exercise any powers pursuant to this sub-clause to institute, compound, compromise or abandon such proceeding in respect of any property in excess of \$10,000 without first obtaining the approval of the Association assembled in general meeting. Wherever practicable and subject to legal advice received and business efficacy, the Executive Committee shall otherwise obtain the approval of the Association members in general meeting prior to instituting, compounding, compromising or abandoning any proceeding;
  - (h) the cancellation or compounding of the whole or part of a member's arrears of subscriptions or fines; and
  - (i) the appointment of representatives or agents of the Association to any body, the activities of which are consistent with the objects of the Association.
- 22.4 The Executive Committee may delegate to a member of the Executive Committee, a subcommittee or staff, any of its powers and functions other than:
- (a) this power of delegation; or
  - (b) a duty imposed on the Executive Committee by the *Industrial Relations Act 1996*, *Associations Incorporation Act 2009* or any other laws.
- 22.4A The delegation under clause 22.4 must be in writing and may be subject to the conditions and limitations the Executive Committee considers appropriate.
- 22.4B The Executive Committee may, in writing, revoke a delegation wholly or in part at any time.

- 22.5 Subject otherwise to the provisions of the *Industrial Relations Act* 1996, the Executive Committee is responsible and accountable to the members of the Association in general meeting.

## **23. Public Officer**

- 23.1 The Executive Committee shall ensure that a person is appointed as Public Officer.
- 23.2 The Public Officer shall be the person who completed the application for incorporation of the Association pursuant to the *Associations Incorporation Act* 2009.
- 23.3 The Executive Committee may at any time remove the Public Officer and appoint a new Public Officer provided the person appointed is 18 years of age or older and a resident of New South Wales.
- 23.4 The Public Officer shall be deemed to have vacated their position in the following circumstances:
- (a) Death
  - (b) Resignation
  - (c) Removal by the Executive Committee or at a General Meeting
  - (d) Bankruptcy or financial insolvency
  - (e) Mental illness
  - (f) Residency outside New South Wales
- 23.5 When a vacancy occurs in the position of Public Officer the Executive Committee shall within 14 days notify the NSW Fair Trading by the prescribed form and appoint a new Public Officer.
- 23.6 The Public Officer is required to notify the NSW Fair Trading by the prescribed form in the following circumstances:
- (a) Appointment (within 14 days)
  - (b) A change of residential address (within 14 days)
  - (c) A change in the Association's objects or its Constitution (within one month)
  - (d) Of the Association's financial affairs (within one month after the Annual General Meeting)

- (d) A change in the Association's name (within one month)

23.7 The Public Officer may be an office bearer, committee member, or any other person regarded as suitable for the position by the Executive Committee.

## **24. Casual Vacancies**

24.1 A casual vacancy in the office of a member of the Executive Committee occurs if the Executive Committee member:

- (a) dies or becomes bankrupt;
- (b) ceases to be or represent an ordinary member;
- (c) is the representative of an ordinary member that ceases trading, becomes insolvent or has any kind of insolvency administrator appointed in respect of it;
- (d) resigns office by notice in writing given to the Secretary;
- (e) is removed from office under Clause 25;
- (f) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (g) is absent without the consent of the committee from three consecutive meetings; or
- (h) is, or is the nominee or representative of, a proprietor of an early childhood education and care service provider that has:
  - (i) received a Significant Improvement Required rating from the Department of Education & Communities; or
  - (ii) or fined for a matter related to the operation of an early childhood education and care service.

24.2 Casual vacancies on the Executive Committee may be filled by resolution of the Executive Committee so long as the unexpired term of the position to be filled does not exceed three hundred and sixty-five days. If it does exceed three hundred and sixty-five days, or if the Executive Committee otherwise so determines, the casual vacancy shall be filled by an election. Any office bearer or other member of the Executive Committee so appointed or elected shall hold office only until the next annual general meeting.

## **25. Termination of Membership of Executive Committee Other than by way of a Casual Vacancy**

25.1 In addition to Clause 16.1, members of the Association convened in general meeting may also remove a person from their position as an office bearer or member of the Executive Committee if that person is found pursuant to these rules to have:

- (a) misappropriated the Association's funds;
- (b) substantially breached this Constitution;
- (c) grossly misbehaved;
- (d) brought the Association into disrepute; or
- (e) acted in gross neglect of that person's duty.

25.2 A person in respect of whom a resolution is proposed to be moved reliant upon sub-clause 25.1 shall be given, not less than fourteen days before the meeting, a notice:

- (a) setting out the allegations made against him or her and the grounds on which they are made;
- (b) stating that the matter is to be considered by a general meeting at a time and place specified; and
- (c) informing the person that he or she may do either or both of the following:
  - (i) attend and speak at the meeting; and/or
  - (ii) submit to the members at or prior to the date of the general meeting written submissions relating to the proposed resolution.

25.3 An office bearer or member of the Executive Committee who has notice of a proposed resolution pursuant to sub-clause 25.2 may make submissions in writing to the members of the Association and may make other submissions, written or oral, to the meeting at which the resolution is considered.

25.4 The resolution to remove the office bearer or member requires for its passing an affirmative vote of not less than one-half of the members present.

## **26. Meetings and Quorum of the Executive Committee**

26.1 The Executive Committee shall meet a minimum of eight times per year at such place and time as the Executive Committee may determine.

- 26.2 Additional meetings of the Executive Committee may be convened by the President or any other member of the Executive Committee.
- 26.3 Notice in writing of a meeting of the Executive Committee shall be communicated by the Secretary to each member of the Executive Committee at least seventy-two hours before the time appointed for the holding of the meeting unless all members agree in writing to waive such notice.
- 26.4 A notice of meeting shall specify the general nature of the business to be transacted at the meeting. No other business shall be transacted at the meeting unless all members present at the meeting otherwise agree.
- 26.5 A quorum consists of five members present in person or in telecommunication or video communication contact with all other members. In this respect, a member in telecommunication contact or video communication shall be deemed to be present at the meeting.
- 26.5A An Executive Committee meeting may be held at two or more venues using any technology that gives each of the members a reasonable opportunity to participate.
- 26.5B A member may not leave a technology meeting by disconnecting his or her link to the meeting unless that member has previously notified the chairperson of the meeting.
- 26.6 No business shall be transacted by the Executive Committee unless a quorum is present. If, within half an hour of the time appointed for the meeting, a quorum is not present, the meeting shall stand adjourned to the same place and at the same hour on the same day of the following week.
- 26.7 If at the adjourned meeting a quorum is not present within half an hour of the time for the meeting to commence, the meeting shall be dissolved.
- 26.8 Notwithstanding any other clause in this Constitution, a memorandum of resolution signed by not less than one-half of the members of the Executive Committee shall be deemed to be a resolution of a meeting of the Executive Committee held on the date of the memorandum. The memorandum may comprise several counterparts.
- 26.9 All members of the Association are entitled to attend, but not participate in, meetings of the Executive Committee.

## **27. Voting and Decisions**

- 27.1 Questions arising at a meeting of the Executive Committee shall be determined by a majority of votes of members of the Executive Committee who are entitled to vote and present at the meeting.

- 27.2 Each member present at the meeting of the Executive Committee shall have one vote. In the event of an equality of votes, the president shall exercise a second or casting vote.
- 27.3 A member of the Executive Committee shall not vote in respect of any contract or proposed contract with the Association in which the member is directly or indirectly interested financially and shall declare at the meeting of the Executive Committee the nature and extend of such interest. If the member does not vote, the member's vote shall be void.

## **28. Annual and Special General Meetings**

- 28.1 The annual general meeting shall be convened within six (6) months of the close of the financial year on such date and at such place and time as the members of the Association determine at the preceding annual general meeting or as may be determined by the Executive Committee.
- 28.2 Members shall be given at least forty-two days notice in writing of the annual general meeting. Notification shall be deemed to have taken place three business days after the notice was posted or emailed to that member's address listed in the register.
- 28.3 In addition to any other business which may be transacted at the annual general meeting, the business of the annual general meeting shall be;
- (a) to confirm the minutes of the preceding annual general meeting, and of any special general meeting held since that meeting;
  - (b) to receive from the Executive Committee reports concerning the activities of the Association during the preceding financial year;
  - (c) to declare elected the office bearers and members of the Executive Committee;
  - (d) to receive and consider such auditor's reports, accounts and statements as may be required by law; and
  - (e) to appoint an auditor for the ensuing year.

## **29. Election for the Executive Committee**

- (a) Provided that the presiding Executive Committee is satisfied with the probity of the process, elections of office bearers and members of the Executive Committee shall be conducted electronically in lieu of the postal voting provisions appearing elsewhere in this Consitution, noting that:



- (i) the electronic voting method used must ensure the secrecy of individual members' votes;
  - (ii) for any election where there are more valid nominations than positions available, a ballot shall be conducted. The order of candidates' names shall be determined by draw. Voting shall be the 'first past the post' method.
  - (iii) candidates will be permitted to submit a statement, not exceeding 250 words, in support of their nomination. These statements are to be made accessible to voters.
  - (iv) voting for elections is to close at 5:00pm on the day prior to the Annual General Meeting.
  - (v) the counting of votes shall be determined in the sequence of President, Vice President, Secretary, Treasurer and Executive Committee members. If a candidate is elected to a position that candidate is no longer eligible for election to a lower ranked position.
- 29.1 All elections shall be conducted to ensure as far as practicable that no irregularities occur.
- 29.2 The election of office bearers and members of the Executive Committee shall be conducted by a returning officer.
- 29.3 The returning officer shall be the Electoral Commissioner, or an independent returning officer approved by the Industrial Registrar. The returning officer shall not be a member of the Association, or an employee or an agent or contractor of the Association or a member of the family of such employee or agent or contractor.
- 29.4 The Secretary shall, at the request of the returning officer, certify as correct and expeditiously deliver to the returning officer a list of the names and addresses of the ordinary and life members of the Association entitled to vote.
- 29.5 The returning officer or Secretary shall call for nominations of candidates for election by notice to all members of the Association sent no later than thirty-five days before the date of the annual general meeting.
- 29.6 Nominations of candidates for election:
- (a) shall be made in writing signed by two financial members of the Association and accompanied by the written consent of the candidate (which may be endorsed on the form of nomination).
  - (b) shall meet the fit and proper criteria contained in the form included in the appendix to this Constitution;

- (c) shall be in the form which is in the appendix to this Constitution; and
- (d) shall be delivered to the returning officer on a date specified in the notice referred to in sub-clause 29.5, being no later than twenty-one days before the date fixed for the annual general meeting. In this respect, the day of the general meeting and the day the nomination is received shall not be counted on the computation of days.

A member may nominate another member or be nominated by another member for more than one position.

- 29.7 If the returning officer conducting the elections finds a nomination to be defective, the returning officer shall before rejecting the nomination, notify the candidate of the defect and, where practicable, give the candidate the opportunity to remedy the defect within such a period as the returning officer may nominate, being not more than forty-eight hours after the candidate is notified provided that no rectified nomination may be received by the returning officer after the time and date fixed for the close of nominations.
- 29.8 Elections for positions shall be conducted by secret postal ballot. There shall be no means by which any person may determine the identity of the voter or the manner in which he or she has voted.
- 29.9 If there is only one valid nomination to fill a position, the returning officer shall cause the candidate to be declared elected to that position at the annual general meeting.
- 29.10 In the event of more than one valid nomination being received for a vacant position, the returning officer shall cause to be printed and delivered to all members entitled to vote a ballot paper on which the names of the candidate are listed. All ballot papers sent to members shall be initialled by the returning officer. The position of each candidate on the ballot paper shall be determined by a draw for positions conducted by the returning officer, to which each candidate, or his or her representatives shall be invited. Should the returning officer so determine, a separate paper containing details of the candidates for the advice and information of members, in a form authorised by the returning officer, may also be printed and distributed with the ballot paper. In addition, the returning officer shall prepare an "Instructions to Voters" advice stipulating the manner in which votes are to be recorded, the time for closing of the postal ballot (being the latest time by which all valid votes are to be received by the returning officer) and instructions on returning the ballot papers. The ballot paper shall not identify the member voting. For all elections, the closing date and time will be at 5.00pm on the full day prior to the day of the annual general meeting (weekends and public holidays are not be counted for this purpose) or such other date and time as the returning officer may nominate. Ballot papers not returned to the returning officer by this date and time shall not be counted by him or her for any purpose.
- 29.11 For purposes of returning ballot, at the same time as the ballot papers and other material set out in sub-clause 29.10 is delivered, members shall receive a

numbered reply paid envelope on which the name of the member is written, together with a smaller envelope which shall contain no identifying name or sign. It shall be required that the ballot paper, completed in accordance with the instructions given by the returning officer, be sealed in the smaller envelope, which in turn shall be sealed in the larger envelope for mailing to the returning officer. Ballot papers which are not completed in the manner required, or which are defaced or contain information not sought in the instructions given, shall be deemed invalid.

- 29.12 If, following the mailing out of ballot papers, a candidate for election withdraws or otherwise becomes ineligible for election, the ballot shall continue as if the candidate remained. In the event of more than one candidate contesting the position, and the candidate who has discontinued his or her candidature is elected by majority vote, the candidate securing the next highest number of votes shall be declared elected. In the event that the candidate who has discontinued being the only candidate for election, the secretary, on declaring the election result, shall declare that the position has not been filled and the returning officer shall conduct an election for the position amongst the members present at the meeting and entitled to vote. The returning officer shall call for nominations from the floor for the position(s) to be filled, which shall be required to be seconded, and either a single person so nominated and seconded shall be declared elected or a secret ballot shall be conducted in accordance with procedures for voting at meetings set down herein, following which the votes recorded shall be counted by the returning officer (in the presence of scrutineers nominated by the candidates at the meeting) and the result declared to the secretary for announcement to the meeting.
- 29.13 The manner of voting shall be “first-past-the-post”. A voter shall vote for the number of candidates, and no more, required for any office. A voter may vote for less than the required number of candidates. Any vote for more than the required number of candidates shall be void.
- 29.14 A candidate for election may, by notice in writing addressed to the returning officer and given no later than five days before the date of the annual general meeting, appoint one scrutineer to represent the candidate at the scrutiny of the ballot, to object to a ballot paper as informal and to have the returning officer determine the objection. All scrutineers shall comply with the lawful requests and directions of the returning officer.
- 29.15 After the closing of the ballot, the returning officer shall advise the candidates of a time and place for the counting of the ballot. Such place shall be, so far as is practicable, proximate to the place where the annual general meeting is to be held, in an area secure for the purpose, and such time will be sufficiently prior to the time for the annual meeting for the result of the ballot to be determined and advised to the secretary. The returning officer shall, in the presence of the scrutineer or scrutineers, firstly note on the roll of members, the members that have voted from the name on the outer envelope. At this time, the inner small envelope containing the ballot paper shall be returned to a ballot box or other secure facility. All outer envelopes shall be secured without in any way identifying the member voting on the inner smaller envelope. The returning

officer shall then proceed to remove the small envelopes from the ballot box or secure facility and undertake the count.

29.16 Following the count, the returning officer shall declare the result of the ballot and provide a written report to the Secretary. The written report shall:

- (a) record the number of formal and informal votes received by the returning officer by the close of voting; and
- (b) record in respect of each office for which ballot was held the number of votes received by each candidate.

29.17 If in the counting of votes for an office, several candidates shall gain the same number of votes:

- (a) in the event of one candidate for the office also standing for a higher position and being returned to that higher position, the remaining (if only one other) candidate shall be declared elected to that office.
- (b) otherwise, if there is more than one candidate remaining, a ballot shall be held between those remaining for election to the lower position;
- (c) otherwise, a candidate who is an officer retiring from that office may be declared elected to that office;
- (d) otherwise, as between candidates who are not retiring from that office, the returning officer shall determine the result by conducting an election for the position as provided herein.

29.18 The Secretary shall announce the result of the election as declared by the returning officer at the annual general meeting.

### **30. Special General Meetings**

- (a) Provided that the presiding Executive Committee is satisfied with the probity of the process, resolutions associated with Special General Meetings shall be conducted electronically in lieu of the postal voting provisions appearing elsewhere in this Constitution, consistent with the requirements outlined in Clause 29(a).

30.1 The Executive Committee may, however it thinks fit, convene a special general meeting of the Association.

30.2 The Executive Committee shall, on a requisition in writing signed by not less than five per cent of the total number of financial members (not including associate members) convene a special general meeting of the Association. No member shall be entitled to take action to prevent the convening of such a special general meeting.

30.3 The requisition of members for a special general meeting:

- (a) shall state the purpose or purposes of that meeting;
- (b) shall be signed by the ordinary or life members making the requisition;
- (c) shall be in the form which is in the appendix to this Constitution;
- (d) shall be lodged with the secretary; and
- (e) may consist of several documents in a similar form, each signed by one or more of the members making the requisition.

30.4 If the Executive Committee fails to hold a special general meeting within thirty-five days after the date on which the requisition of members is lodged with the secretary, any one or more of the members who made the requisition may convene a special general meeting to be held not later than ninety days after the requisition is lodged.

30.5 A special general meeting so convened by a member or members shall be convened as nearly as practicable in the same manner as general meetings are convened. Any member who incurs expense in convening such a meeting is entitled to be reimbursed by the Association for any expense so incurred within fourteen days of the date of the meeting.

30.6

(1) Notwithstanding any other clause in this Constitution, any amendment to clauses 1, 3 and sub-clause 5.11 and 12.2 may be passed by postal vote as provided for in this subclause.

- (a) The Executive Committee may direct the secretary to advise all members in writing of the resolution to be voted upon and invite members to vote by post; providing that the letters are posted to the members not less than 28 days prior to the date on which the ballot is said to close. The letter shall enclose a pre-paid return envelope and ballot paper, in such a way that the identity of the member voting is not disclosed.
- (b) The letter shall inform members of the date on which the ballot will close and the date (if it differs) on which the votes will be counted. On that latter date, the secretary shall cause all envelopes to be opened and vote either for or against a motion to be tallied. The secretary shall record in the minute book part of the resolution, the number of votes received in total, the number of votes for the resolution and the number of votes against the resolution. The resolution will be passed if not less than 75% of the votes received in favour of the proposed resolution.

In that event, the resolution will take effect from the date the vote is counted.

- (2) Members may requisition a special meeting on the issue in accordance with sub-clauses 30.2 or 30.4, in which event the vote called for by post shall not proceed any further. The matter then shall be determined in accordance with this Constitution at the special general meeting.
- 30.7 Subject to clause 11, the procedure set out in sub-clause 30.6 may be used to conduct a ballot pursuant to sub-clause 11.2(d).

## **31. Notice**

- 31.1 Except where the nature of the business proposed to be dealt with at a special general meeting requires a special resolution of the Association, the secretary shall, at least fourteen days before the date fixed for the holding of a general meeting, cause to be sent by either electronic transmission via the internet or by pre-paid post to each member at the member's address appearing in the register of members a notice specifying the place, date and time of the meeting and the nature of the business proposed to be transacted at the meeting.
- 31.2 Where the nature of the business proposed to be dealt with at a general meeting requires a special resolution of the Association the Secretary shall, at least twenty-one days before the date fixed for the holding of the general meeting, cause a notice to be sent to each member in the manner provided in sub-clause 32.1, specifying, in addition to the matters required by sub-clause 31.1, the intention to propose the resolution as a special resolution.
- 31.3 No business other than that specified in the notice convening a general meeting shall be transacted at the meeting except, in the case of an annual general meeting, business which can be transacted pursuant to sub-clause 28.3.
- 31.4 A member desiring to bring any business before a general meeting may give notice in writing of that business to the secretary, who shall include the business in the next notice calling a general meeting.

## **32 Procedure**

- 32.1 The President shall preside at all general meetings. In the president's absence, the vice president shall preside or, in the vice president's absence, the meeting may elect a presiding member.
- 32.2 No item of business shall be transacted at a general meeting unless a quorum of members entitled under this constitution to vote is present during the time the meeting is considering that item.
- 32.3 Fifteen members (in person or by their representative) either physically present or by any other means specified in the notice of meeting (for example by telephone or video conference), being members entitled under this Constitution to vote at a special and general meeting, constitute a quorum for transacting business at a general meeting.

- 32.3A All general meetings may be held at two or more venues using any technology that gives each of the members a reasonable opportunity to participate.
- 32.3B A member may not leave a technology meeting by disconnecting his or her link to the meeting unless that member has previously notified the chairperson of the meeting.
- 32.4 If, within half an hour after the appointed time for the commencement of a general meeting, a quorum is not present, the meeting shall be dissolved if convened upon a requisition of members and, in any other case, shall stand adjourned to a date and time to be advised at the same time and at the same place.
- 32.5 If at the adjourned meeting a quorum is not present within half an hour of the time for the meeting to commence the members present shall constitute a quorum unless there are less than ten. If there are less than ten members, the meeting shall be dissolved.

### **33 Decisions**

- 33.1 Other than elections and special resolutions, a question arising at a general meeting of the Association shall be determined by a simple majority on a show of hands. Unless before or on the declaration of the show of hands, a poll is demanded, a declaration by the presiding member that a resolution has, on a show of hands, been carried or carried unanimously or carried by a particular majority of lost, or on entry to that effect in the minute book of the Association, is evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- 33.2 At a general meeting of the Association, a poll may be demanded by any person present in person or by proxy at the meeting provided:
- (a) it is demanded before or on the declaration of the show of hands; and
  - (b) it is seconded by a member present in person.
- 33.3 Where a poll is demanded at a general meeting, the poll shall be taken;
- (a) immediately, if the poll relates to the election of the presiding member or to the question of an adjournment; or
  - (b) in any other case, in such manner and at such time before the close of a meeting as the presiding member directs;

and the resolution of a poll on the matter shall be deemed to be the resolution of the meeting on the matter.

### **34 Special Resolutions**

A resolution of the Association is a special resolution if it is passed by a majority which comprises not less than three quarters of ordinary and life members of the Association who, being entitled by these rules so to do, vote in person or by proxy at a general meeting called in accordance with sub-clause 31.2.

### **35 Voting**

- 35.1 For elections and in respect of any question arising at a general meeting of the Association a member has one vote only.
- 35.2 All votes shall be given personally or by proxy. No member may hold more than three proxies.
- 35.3 In the case of an equality of votes on a question at a general meeting, the presiding member of the meeting is entitled to exercise a second or casting vote.

### **36. Adjournment**

- 36.1 The presiding member of a general meeting at which a quorum is present may, by way of resolution passed by a majority of members present at the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at the adjourned meeting other than the business left unfinished at the meeting at which the adjournment took place.
- 36.2 Where a general meeting is adjourned for fourteen days or more, the secretary shall give written notice of the adjourned meeting to each member of the Association stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 36.3 Except as provided by sub-clause 36.2, notice of an adjournment of a general meeting or business to be transacted at an adjournment meeting is not required to be given.

### **37. Appointment of Proxy**

- 37.1 Each member shall be entitled to appoint for the purposes of one specified special and general meeting another member as proxy by forwarding the notice appointing the proxy to the secretary not later than 24 hours before the time of the meeting for which the proxy is appointed, provided that no member can hold more than three proxies.
- 37.2 The notice appointing the proxy shall be in the form set out in the appendix.



**38. Amendment of Constitution**

This Constitution may be amended or rescinded by special resolution of the Association.

**39. Custody of Records**

All books, documents and records in any form whatsoever recording the Association's affairs, shall be kept at the registered office of the Association and shall be available for inspection by members during business hours and free of charge, providing members give seven days notice.

**40. The Auditor**

- 40.1 The auditor shall be appointed annually at the annual general meeting. The existing auditor shall be eligible for re-appointment.
- 40.2 The auditor shall audit the financial books and records of the Association annually.
- 40.3 The auditor may be removed by the Association in general meeting if his or her work or conduct is unprofessional, his or her charges are excessive or if he or she acts contrary to his or her retainer or for the purpose of ensuring the independence of the person undertaking that role.
- 40.4 If the auditor is removed pursuant to sub-clause 41.3, the Association in general meeting shall as soon as practicable thereafter appoint a new auditor.

**41. Indemnity**

Every member of the Executive Committee shall be indemnified by the Association against any liability rising out of the execution of the duties of that member's office which is incurred by that member defending any proceedings, whether civil or criminal, in which judgment is given in that person's favour or in which that person is acquitted or in connection with any application in which relief is granted to that person by the Court in respect of any negligence, default, breach of duty or breach of trust.

**42. Service of Notice**

Subject to this Constitution, a notice may be served by or on behalf of the Association upon any member by sending it by pre-paid post to the member at the member's address shown in the register of members. The notice shall be deemed to have been received three days after the notice was sent.

**43. Winding-Up**

- 43.1 The Association may be wound up voluntarily if its ordinary members resolve to do so by special resolution at a special general meeting summonsed for that purpose alone.
- 43.2 In this clause a reference to the surplus property of the Association is a reference to that property of the Association remaining after satisfaction of its debts and liabilities, and the costs, charges and expenses of the winding up of the association, ("the surplus property").
- 43.3 The surplus property is to be distributed in accordance with a special resolution of the Association, to be resolved at the same special general meeting referred to in Clause 44.1.
- 43.4 Any such distribution of surplus property:
- (a) must be approved by the Director General of the Department of Finance and Services;
  - (b) is not to be made to any member or former member of the Association, or to any person to be held on trust for any member or former member of the Association, unless the member or former member is the Association (whether incorporated or unincorporated) that, at the time of the distribution, has rules preventing the distribution of property to its members, and
  - (c) is subject to any trust affecting that property or any part of it.
- 43.5 Surplus property or any part of it that consists of property supplied by a government department or public authority, including any unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by the department or authority.
- 43.6 A person aggrieved by the operation of this section in relation to the surplus property of the Association may apply to the Court which may make such orders as to the disposal of the surplus property as to the Court appears just.

**44. Payment of Executive Committee**

A member of the Executive Committee shall not be appointed to any salaried office of the Association or any office of the Association paid by fees, and no remuneration or other benefit in money or money's worth shall be given by the Association to any member of the Executive Committee except:

- (a) out of pocket expenses

- (b) interest at a rate not exceeding interest at the rate for the time being which is or would be charged by the Association's banker for money lent to the Association.

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APPENDIX

(Clause 29.6)

**NOMINATION OF CANDIDATE FOR ELECTION**

We, being financial members of the Association of Quality Child Care Centres of NSW Inc nominate:

**A.**

\_\_\_\_\_ of \_\_\_\_\_

(full name of nominated member)

(address of nominated member)

for the position of \_\_\_\_\_ at the  
election to be held on \_\_\_\_\_

\_\_\_\_\_  
Signature of Candidate

\_\_\_\_\_  
Candidate's Phone Number

**B.**

\_\_\_\_\_ of \_\_\_\_\_

(full name of Nominator)

(address)

Date \_\_\_\_\_ Signature \_\_\_\_\_

**C.**

\_\_\_\_\_ of \_\_\_\_\_

(full name Seconder)

(address)

Date \_\_\_\_\_ Signature \_\_\_\_\_

DIRECTOR ELIGIBILITY FORM

This form is in addition to the form required to be completed by members as stated in Clause 29.6(b) of the Association's Constitution.

**NOMINATION FOR DIRECTOR**

In order to assist you as a candidate for director, and subsequently the members voting in new directors, to assess your fitness and propriety to be and act as a director ACA NSW requests the following information.

**I, \_\_\_\_\_ hereby nominate for the position of Director of Child  
Australian Childcare Alliance New South Wales**

In accepting this nomination, I confirm that I am eligible to be a Director in accordance with the provisions of the Corporations Law and the Association's Constitution.

In general, I recognise that Directors must:

- Exercise their powers and discharge their duties with the degree of care and diligence that a reasonable person in such a position within the Association would exercise – Corporations Law s180(1);
- Exercise their powers and discharge their duties in good faith and the best interests of the Association and for a proper purpose – Corporations Law s181;
- Not improperly use their position to gain an advantage for themselves or others, or to cause detriment to the Association – Corporations Law s182: and
- Not improperly use any information obtained as Director to gain an advantage for themselves or others, or to cause detriment to the Association – Corporations Law s183.

**This nomination must be returned to:**

**The Secretary  
Australian Childcare Alliance New South Wales  
P O Box 660  
PARRAMATTA NSW 2124**

**PART A**

<b>Nominee Name</b>	
<b>Member Organisation Name</b>	
<b>Date Joined ACA NSW</b>	
<b>Role in Member Organisation</b>	
<b>Formal Qualifications</b>	
<b>Membership in professional bodies or community organisations</b>	
<b>Interest in being a director of ACA NSW</b>	
<b>Current or previous Board experience</b>	

**PART B.**

ACA NSW may also require to undertake the following checks and requires your permission to do so, recognising any personal information (including sensitive information) collected will be fully compliant as defined in *the Privacy Act 1988 (Cth)* (**Privacy Act**):

- Will need you to allow us to do a search of the Australian Securities and Investment Commission's (ASIC) disqualified and banned persons register
- Will need you to provide us with your Working With Children Check details

**PART C.****Nominees:**

Please answer the following questions:

Have you ever been convicted of any offence involving management of corporations, breaches of the Corporations Law, dishonesty or significant prison terms?

Yes ☐ No ☐

If you answered YES to Question 1, please provide details of the conviction, including a description of the conduct for which you were convicted, when you were convicted and the penalty imposed

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2. Are you an un-discharged bankrupt under Australian or foreign law? Yes ☐ No ☐
3. Have you executed a deed of arrangement under Part X of the Bankruptcy Act 1966 (Cth) (or a similar law of a foreign country) and have not yet fully complied with the terms of the deed? Yes ☐ No ☐
4. Have your creditors accepted a composition under Part X of the Bankruptcy Act 1966 (Cth) (or a similar law of a foreign country) and final payment has not yet been made under the composition? Yes ☐ No ☐
5. Has a Court disqualified you from managing corporations? Yes ☐ No ☐
6. Has ASIC disqualified you from managing corporations? Yes ☐ No ☐

If you answered YES to Questions 5 or 6, please provide details of the disqualification, including a description of the conduct for which you were disqualified, when you were disqualified and the period of your disqualification.

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7. Have you been refused insurance as a director? Yes ☐ No ☐

If you answered YES to Question 7, please provide a copy of the Court order or ASIC's written permission.

8. Has a personal representative or trustee been appointed to administer your property on grounds of mental incapacity? Yes ☐ No ☐
9. Do you have the time and capability to actively add value to the deliberations and work of the Association's Board? Yes ☐ No ☐
10. Do you have a understanding of your legal responsibilities and duties of being a director of an Association? Yes ☐ No ☐
11. Have you at least skills in at least 5 of the following competencies relevant to being a director of the Association? Yes ☐ No ☐
- (i) directorship experience (company, not-for-profit); Yes ☐ No ☐
  - (ii) private sector business experience; Yes ☐ No ☐
  - (iii) child care industry experience of more than 5 years; Yes ☐ No ☐
  - (iv) high profile and responsible appointments in community activities; Yes ☐ No ☐
  - (v) senior managerial experience; Yes ☐ No ☐
  - (vi) marketing experience, particularly in a service industry; Yes ☐ No ☐
  - (vii) formal/academic qualifications; Yes ☐ No ☐
  - (viii) government relations experience; Yes ☐ No ☐
  - (ix) risk management, audit or finance experience; Yes ☐ No ☐
  - (x) industrial relations or HR Management experience; and/or Yes ☐ No ☐
  - (xi) experience in the information technology. Yes ☐ No ☐

**Declaration**

I declare that the answers given above, and any other information that I have given the Association in connection with this eligibility questionnaire, is complete and accurate as at today's date.

I also provide ACA NSW with permission to make the enquiries as specified in Part B of this form.

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Signature

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Name

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Date



(Clause 30.2)

**NOTICE OF REQUISITION**

To the Executive Committee of the Association of Quality Child Care Centres of NSW Inc.

The undersigned, who is/are\* an\* ordinary and/or life member(s) of the Association, direct, pursuant to clause 30.2 of the Constitution of the Association, the Executive Committee to convene a general meeting of the Association for the following purpose(s):

Signed:

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Dated:

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\* delete as appropriate

**FORM OF APPOINTMENT OF PROXY**

I, \_\_\_\_\_ of \_\_\_\_\_  
 (full name) (address)

being a member of the Association of Quality Child Care Centres of NSW Inc. hereby  
 appoint

\_\_\_\_\_  
 (full name of proxy)

of

\_\_\_\_\_  
 (address)

being a member of the Association, as my proxy to vote for me on my behalf at the  
 general meeting of the Association (annual general meeting or special general  
 meeting, as the case may be) to be held on the  
 \_\_\_\_\_ day of  
 \_\_\_\_\_ 20\_\_\_\_ and at any adjournment of that  
 meeting.

- My proxy is authorised to vote in favour of/against (delete as appropriate) the  
 resolution (insert details).

\_\_\_\_\_  
 Signature of member appointing proxy

Date \_\_\_\_\_

- To be inserted if desired

NOTE: A proxy vote may not be given to a person who is not a member of the  
 Association.