

National Judicial College of Australia

Corporations Act 2001

The persons whose signatures are set out below consent to be members of the *National Judicial College of Australia* ('the Company') and agree that:

1. COMPANY LIMITED BY GUARANTEE

1.1 Constitution

This document, as amended from time to time in accordance with the *Act*, will be the Constitution of the Company.

1.2 Company limited by guarantee

The Company is a company limited by guarantee.

1.3 Member's liability limited

The liability of *Members* is limited and each *Member* undertakes to contribute to the Company's property if the Company is wound up while he or she is a *Member* or within one year after he or she ceases to be a *Member*, for payment of the Company's debts and liabilities contracted before he or she ceases to be a *Member* and of the costs, charges and expenses of winding up and for adjustment of the rights of the contributories among themselves, such amounts as may be required, not exceeding \$1.

1.4 Restriction on application of profits

All profits (if any) and other income and property of the Company shall be applied in promoting the objects set out in **rule 3.1** and no part of them may be paid, directly or indirectly, by way of dividend, bonus, fee or otherwise, to *Members* or *Council Members*.

1.5 Certain payments allowed

Rule 1.4 does not prevent the payment in good faith of:

- (a) reasonable out of pocket expenses incurred by a *Council Member* in performing a duty as a *Council Member* of the Company as provided for in **rule 14**;
- (b) reasonable and proper remuneration to a *Council Member* or a *Member* in return for goods and services supplied to the Company by that *Council Member* or *Member* in the ordinary and usual course of business;

- (c) principal and interest at a rate not exceeding the rate for the time being charged by Australian banks for overdrawn accounts, upon money lent by any *Member* to the Company;
- (d) reasonable and proper rent for premises let by any *Member* to the Company;
or
- (e) reimbursement of reasonable travelling and subsistence expenses incurred by a *Member* when engaged in the affairs or business of the Company.

2. REPLACEABLE RULES

- 2.1 Subject to **rule 2.2**, the *Replaceable Rules* set out in the *Act* apply to the Company to the extent that they apply to companies limited by guarantee and are not inconsistent with this *Constitution*.
- 2.2 The *Replaceable Rules* set out in sections 201G (Company may appoint a Director), 201H (Directors may appoint other Directors), 201K (Alternate directors), 248E (Chairing Directors' Meetings), Section 202A (Remuneration of Directors), Section 248F (Quorum at Directors' Meeting), Section 249T (Quorum at Meetings of Members), 249U (Chairing Meetings of Members) and 198C, 201J, and 203F (Managing Director) of the *Act* do not apply to the Company.

3. OBJECTS AND POWERS

- 3.1 The only objects for which the Company is established are the following charitable objects:

establish a judicial college (the '*College*') so as to assist judicial officers to administer the law in a just, competent and speedy way by offering them opportunities to:

- (i) share lessons learned from experience, leading to identification and adoption of best professional practices;
- (ii) broaden and enhance their general and legal educational standards;
- (iii) participate in educational programs intended to broaden their understanding of the processes and consequences of change in our society;
- (iv) participate in educational programs intended to broaden their understanding of the extent and consequences of diversity in various aspects of society and to help them acquire skills to deal with that diversity;
- (v) undertake individual learning programs;
- (vi) develop their skills in management (including case management), conduct of trials and appeals, and judgment writing;

- (vii) develop other skills relevant to judicial office ;
- (viii) participate in educational programs which will help judicial officers develop substantive and procedural law, thus shaping for the future the law and its administration;
- (ix) participate in educational programs which will help judicial officers maintain physical and mental health while exercising judicial office;
- (x) Participate in international conferences and programs regarding judicial education, to promote the objects set out above; and
- (xi) Manage and co-ordinate requests for assistance regarding judicial education from courts and agencies in Australia and in other countries.

3.2 The Company has the powers set out in the *Act* but only to do all things that are necessary, convenient or incidental to carry out the objects set out in **rule 3.1**.

3.3 Notwithstanding **rule 3.2**, a special resolution:

(a) modifying any of the provisions of this *Constitution* (except an alteration correcting a manifest error); or

(b) repealing this *Constitution*;

does not have any effect unless and until that special resolution is:

(c) approved in writing by the Council of Chief Justices of Australia and New Zealand; and

(d) notified in writing to the Commissioner of Taxation.

3A. ESTABLISHMENT AND OPERATION OF A PUBLIC FUND

3A.1 Establishment and Maintenance of Public Fund

(a) There is established a public fund to be known as the National Judicial College of Australia Public Fund for the purpose of receiving gifts from the public to the Company for the furtherance of the Company's objects.

(b) The Company shall establish a bank account in the name of the Public Fund into which all money in the Public Fund shall be deposited. Subject to **rule 3A.2(a)(iv)** no other money is to be deposited into this account.

3A.2 **Limits on Use of Public Fund**

- (a) The Company shall ensure that:
 - (i) the *Public Fund* does not contain any property other than property described in **rule 3A.1**;
 - (ii) the *Public Fund* is used only in furtherance of the Company's objects;
 - (iii) no part of the income or property of the *Public Fund* is paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise to any of the *Members* or *Council Members*, other than for out-of-pocket expenses incurred on behalf of the *Public Fund*;
 - (iv) all money (including interest) derived from property in the *Public Fund* is credited to the *Public Fund Bank Account*;
 - (v) receipts for donations of property to the *Public Fund* are issued in the name of the *Public Fund* and show its Australian Business Number; and
 - (vi) the *Public Fund* is invested on an arm's length basis only in investments that can be managed in a way to ensure that the use of the funds reflect the objects of the fund, and not as a means of excessive accumulation of investment assets.

3A.3 **Records and Financial Statements**

- (a) The Company shall keep and maintain proper books of account and records (which are written up in accordance with generally accepted accounting standards and principles consistently applied) relating to all receipts and outgoings of the *Public Fund*.
- (b) For each financial year, the Company shall have financial statements (including a profit and loss account and balance sheet) prepared by a suitably qualified person (in accordance with generally accepted accounting standards and principles consistently applied) which detail the affairs of the *Public Fund* for that financial year including, without limitation, the following matters with respect to the *Public Fund*:
 - (i) income;
 - (ii) capital;
 - (iii) costs and disbursements and other outgoings paid or payable and chargeable against income;
 - (iv) capital expenditure and liabilities chargeable to capital;

- (v) investments and property.
- (c) The financial statements referred to in **rule 3A.3(b)** shall be certified by a suitably qualified auditor to be true and proper statements of the affairs of the *Public Fund*.

3A.4 **Winding Up**

- (a) At the first occurrence of:
 - (i) the winding up of the *Public Fund*; or
 - (ii) the Company ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the *Income Tax Assessment Act 1997*;any surplus assets of the *Public Fund* shall be transferred to a fund, authority or institution gifts to which can be deducted under Division 30 of the *Income Tax Assessment Act 1997*.
- (b) The identity of the fund, authority or institution shall be decided by the *Council*.
- (c) Where in respect of a fund, authority or institution section 30-15 of the *Income Tax Assessment Act 1997* provides that gifts to it are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B are satisfied, a transfer under this rule to that fund, authority or institution shall be made in accordance with or subject to those conditions.

4. IDENTIFICATION AND TERM OF MEMBERS

4.1 Subject to **rule 6**, the *Members* of the Company are:

- (a) each subscriber to this *Constitution*; and
- (b) such persons as are appointed in accordance with **rule 5**.

4.2 A subscriber to this *Constitution* may continue to be a *Member* of the Company if re-appointed in accordance with this *Constitution*.

4.3 There shall be a maximum of 6 *Members*, comprising one person appointed by the relevant *Appointing Authority* from each of the classes of *Members* in accordance with **rule 5.1**.

4.4 For the purposes of determining the term of office of *Members*, the following shall apply:

- (a) the term for:
 - (i) each subscriber, and
 - (ii) if there was no subscriber representing a particular class of *Member* as set out in the following table - the first person to represent that class, provided he or she was appointed on or before the date in the table that applies to that class of *Member*,

shall expire on the date in the table that applies to the relevant class of *Member*.

- (b) Subject to **rule 5.4**, the term for all other appointments shall expire on each alternate anniversary of the date in the table that applies to the relevant class of *Member*.

Class	Expiry of 1st Term
Nominee of the Federal or Family Court	30 June 2004
Nominee of the State or Territory Supreme Courts	30 June 2005
Nominee of the District or County Courts	30 June 2004
Nominee of the Federal Magistrates' Service and Magistrates' or Local Courts	30 June 2005
Nominee of the Attorney-General of the Commonwealth	30 June 2005
Nominee of the Attorneys-General of the <i>Participating States and Territories</i>	30 June 2004

5. BECOMING A MEMBER

5.1 Where there is a vacancy in any class of *Members* referred to in **rule 4**, the *Council Members* shall invite the person nominated by the *Appointing Authority* stated in the following table for that class to fill the vacancy. The *Appointing Authority* may nominate other nominees from time to time, in which case the *Council Members* must appoint the nominee whose nomination is current at the particular time. The nominee for a particular class shall be a judicial officer (‘a *Judicial Member*’) or not a judicial officer as described in the table.

Class	Nominee and Appointing Authority
Nominee of the Federal or Family Courts	a judicial officer to be appointed by the Chief Justices of the Federal and Family Courts
Nominee of the State or Territory Supreme Courts	a judicial officer to be appointed by the Chief Justices of the State and Territory Supreme Courts
Nominee of the District or County Courts	a judicial officer to be appointed by the Chief Judges of the District or County Courts of the States
Nominee of the Federal Magistrates’ Service and Magistrates’ or Local Courts	a magistrate to be appointed by the appropriate judicial heads of the Federal Magistrates' Service and the Magistrates’ and Local Courts of the States and Territories
Nominee of the Attorney-General of the Commonwealth	a person, not being a judicial officer, to be appointed by the Attorney-General of the Commonwealth
Nominee of the Attorneys-General of the <i>Participating States and Territories</i>	a person, not being a judicial officer, to be appointed by the Attorneys-General of the <i>Participating States and Territories</i>

5.2 Before an appointment is made the *Council Members* shall consult with the various *Appointing Authorities* referred to in **rule 5.1** with a view to achieving an appropriate geographical balance of *Members* and to ensure that all *Judicial Members* appointed under this **rule 5**:

- (a) have a substantial history of involvement in judicial education;
- (b) have demonstrated interest in professional development; and
- (c) have a willingness and capacity to devote time to the affairs of the Company, including attendance at meetings of the *Council* and at a reasonable number of the *College’s* programmes.

5.3 A person becomes a *Member* under this **rule 5** upon receipt by the Company of that person’s written acceptance of his or her invitation issued under **rule 5.1**.

5.4 Where there is a casual vacancy in a class of *Members*, the person invited to fill that vacancy pursuant to this **rule 5** shall be appointed only for the period left to run of the term of appointment of the person leaving the casual vacancy.

5.5 A person shall not be invited to be a *Member* for more than 2 consecutive terms.

6. CEASING TO BE A MEMBER

6.1 A *Member* may retire as a *Member* of the Company at any time by giving written notice to the *Secretary* of the retirement which is effective immediately.

6.2 A *Member* automatically ceases to be a *Member*:

- (a) on the death of that *Member*;
- (b) on the date of receipt by that *Member* of a written notice from the *Appointing Authority* referred to in the table in **rule 5.1** for the class to which that *Member* belongs that it has decided to cancel that *Member's* membership in the Company; or
- (c) when that *Member* ceases for any reason to be a *Council Member* of the Company.

7. MEETINGS OF MEMBERS - QUORUM

7.1 A quorum for a meeting of the *Members* of the Company requires at least 4 *Members*. The quorum shall be present at all times during the meeting.

8. CHAIRING MEETINGS OF MEMBERS

8.1 The Chair appointed in accordance with **rule 15** shall chair general meetings of the Company.

8.2 If:

- (a) there is no Chair;
- (b) the Chair is not present at the meeting within 10 minutes of the time appointed for the commencement of the meeting; or
- (c) the Chair is unwilling to act as Chair of the meeting;

the *Members* present at the meeting shall elect one of the *Judicial Members* to be the Chair of the meeting.

9. APPOINTMENT AND REMOVAL OF COUNCIL MEMBERS

- 9.1 There shall be a minimum of 4 and a maximum of 6 *Council Members*.
- 9.2 Subject to **rule 9.1**, the *Council Members* shall be the persons who are the *Members* of the Company from time to time.

10 ALTERNATE COUNCIL MEMBERS

- 10.1 The *Appointing Authority* that appoints a *Council Member* may nominate an alternate to act instead of that *Council Member*, and the *Council Member* may appoint the alternate so nominated to exercise some or all of the powers of that *Council Member* for a specified period, as required from time to time. The *Appointing Authority* may nominate other alternates from time to time, in which case the *Council Member* must appoint the alternate whose nomination is current at the particular time.
- 10.2 If the *Council Member* requests the Company to give the alternate notice of *Council Members'* meetings, the Company must do so.
- 10.3 When an alternate exercises the *Council Member's* powers, the exercise of its powers is just as effective as if the powers were exercised by the *Council Member*.
- 10.4 The *Council Member* may terminate the alternate's appointment at any time.
- 10.5 An appointment or its termination must be in writing and a copy must be given to the Company.
- 10.6 An alternate is not required to be a *Member*.
- 10.7 A person nominated to act as the alternate of a *Council Member* may, with the consent of the *Council*, attend and address *Council* meetings, during periods when he or she has not been appointed to act as an alternate. He or she is not entitled to vote at such meetings.

11. TERM

- 11.1 Subject to the provisions of this *Constitution*, a *Council Member* holds office, and shall be a *Member*, for the relevant period determined in accordance with **rules 4 and 5**.

12. VACATION OF OFFICE

12.1 In addition to the situations set out in the *Act* and this *Constitution*, the office of a *Council Member* shall become vacant if the *Council Member*:

- (a) is absent without the consent of the *Council Members* from three consecutive meetings of the *Council*;
- (b) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of that interest at a meeting of the *Council* as soon as practicable after the relevant facts have come to the *Council Member's* notice; or
- (c) ceases to be a *Member* of the Company.

12.2 In **rule 12.1(b)**, a reference to a contract or proposed contract with the Company includes but is not limited to a grant of financial assistance or proposed grant of financial assistance by the Company.

13. QUORUM OF COUNCIL MEMBERS

13.1 The quorum for a *Council* meeting shall be 4 *Council Members*. The quorum shall be present at all times during the meeting.

14. COUNCIL MEMBER'S REMUNERATION

14.1 Remuneration of Council Members

The Company may not pay any *Council Member* any amount except as expressly provided for in this document.

14.2 Expenses of Council Members

Subject to the approval of the *Council* to all payments to any *Council Member*, the Company shall pay a *Council Member* all reasonable out-of-pocket expenses incurred by the *Council Member* in carrying out that *Council Member's* duties as a *Council Member*.

15. CHAIRING COUNCIL MEMBERS' MEETINGS

15.1 The Chair shall be appointed by the Chief Justice of the High Court from amongst the *Council Members* who are *Judicial Members* to chair *Council Members'* meetings.

15.2 Subject to **rule 15.3**, a Chair holds office for so long as he or she remains a *Council Member*.

15.3 A Chair can resign as a Chair by written notice of one month to the Company.

15.4 If:

- (a) there is no Chair;
- (b) the Chair is not present at the meeting within 10 minutes of the time appointed for the commencement of the meeting; or
- (c) the Chair is not willing to act as Chair of the meeting

the *Council Members* present at the meeting can elect one of the *Judicial Members* to be the Chair of the *Council Members'* meeting.

16. INDEMNITY AND INSURANCE

16.1 To the extent permitted by the *Act*, the Company indemnifies every person who is or has been a *Council Member*, *Secretary*, or executive officer of the Company, and may indemnify every person who is or has been an auditor of the Company, against:

- (a) any liability incurred by that person in his or her capacity as a *Council Member*, *Secretary*, auditor or executive officer of the Company other than:
 - (i) a liability owed to the Company or a related body corporate, or
 - (ii) a liability for a pecuniary penalty order under section 1317G or a compensation order under section 1317H, or
 - (iii) a liability that is owed to someone other than the Company or a related body corporate which did not arise out of conduct in good faith; and
- (b) any liability for legal costs incurred by that person in his or her capacity as a *Council Member*, *Secretary*, auditor or executive officer of the Company other than:

- (i) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under **rule 16.1(a)**; or
- (ii) in defending or resisting criminal proceedings in which the person is found guilty; or
- (iii) in defending or resisting proceedings brought by the Australian Securities and Investments Commission (ASIC) or a liquidator for a court order if the grounds for making the order are found by the court to have been established (except in relation to costs incurred in responding to actions taken by ASIC or a liquidator as part of an ASIC investigation before commencing proceedings for a court order); or
- (iv) in connection with proceedings for relief to the person under the *Act* in which the Court denies the relief.

16.2 The Company may, where the *Council* consider it appropriate to do so, pay or agree to pay a premium in respect of a contract insuring a person who is or has been a *Council Member*, *Secretary*, auditor or executive officer of the Company, against:

- (a) any liability incurred by that person in his or her capacity as a *Council Member*, *Secretary*, auditor or executive officer of the Company other than a liability which arises out of:
 - (i) conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of section 182 (Use of Position) or section 183 (Use of Information) of the *Act*; and
- (b) any liability for legal costs incurred by that person in his or her capacity as a *Council Member*, *Secretary*, auditor or executive officer of the Company in defending proceedings, whether civil or criminal, whatever their outcome, and without the qualifications set out in **rule 16.1 (b)** above.

17. REPORTING

17.1 In addition to other statutory auditing and reporting requirements, the *Council* shall report, once in each financial year within 1 month after the statutory report is due, to the Council of Chief Justices of Australia and New Zealand and to the Standing Committee of Attorneys-General in relation to the operations of the Company.

18. CONSULTATION

- 18 For the purpose of assisting the *Council* in deciding how the College should meet the professional development needs of judicial officers, the *Council* shall consult widely with relevant persons and bodies including judicial officers, State Territory and Federal governments, representatives of the legal profession, universities and other bodies responsible for legal education, and groups representing persons with particular interests in the administration of law by judicial officers

19. REGIONAL CONVENORS

- 19.1 The *Council* shall appoint, after consultation with the relevant Chief Justice or Chief Justices, a *Regional Convenor* for each State and Territory:
- (a) to provide liaison between the Company and his/her region;
 - (b) to advise as to appropriate subject matter for the *College's* programmes and methods of delivery;
 - (c) to provide feedback concerning the *College's* programmes previously conducted;
 - (d) to assist in the organisation of the *College's* programmes to be conducted within his/her region, including arrangement of appropriate facilities;
 - (e) to stimulate interest amongst judicial officers in his/her region concerning the *College's* programmes and attendance thereat;
 - (f) to recruit judicial officers to assist in the preparation and conduct of the *College's* programmes;
 - (g) if practicable, in consultation with the *Council*, to organise a local chapter of the *College* in his/her region.
- 19.2 In appointing *Regional Convenors* under **rule 19.1**, the *Council* shall seek, as far as is practicable, to ensure that the *Regional Convenors*, as a group, represent the various levels of courts.

20. CHIEF EXECUTIVE OFFICER

- 20.1 The *Council* may appoint a Chief Executive Officer (CEO) for such period and on such terms and conditions as it think fit.
- 20.2 The CEO is not a *Council Member* of the Company but may, with the consent of the *Council*, attend and speak at meetings of the *Council*.
- 20.3 The *Council* may delegate any of the powers of the *Council* to the CEO:
- (a) on the terms and subject to any restrictions the *Council* decides; and

(b) so as to be concurrent with the powers of the *Council*, and may revoke the delegation at any time.

20.4 Without affecting the generality of **rule 20.3**, the CEO will:

- (a) be the chief executive officer of the Company;
- (b) act consistently with the objects of the Company;
- (c) use his or her best endeavours at all times to enhance the good name of the Company;
- (d) insofar as the resources available permit, implement the policies of the *Council*;
- (e) prepare an annual report for the *Council* on the work and activities of the Company during the preceding 12 months ending on 30 June in each year; and
- (f) exercise such other functions duties and responsibilities as may be determined from time to time by the *Council*.

20.5 The appointment of a CEO terminates:

- (a) at the expiration of a fixed term if so defined in a written contract; or
- (b) if the *Council* removes the CEO from that Office (which, subject to any contract between the Company and the CEO, the *Council* has power to do).

21. COLLEGE FEES

21.1 In setting fees for the services and courses of the *College*, the Company shall have regard to whether or not the person receiving a service or attending a course is from an institution of a *Participating State or Territory* or the Commonwealth, and, if not, the Company may set higher fees for that person.

22. SURPLUS ASSETS ON WINDING UP

22.1 Subject to **rule 3A** which deals with moneys in the *Public Fund*, if upon the winding up or dissolution of the Company there remains, after satisfaction of all its debts and liabilities, any property, this property shall be given or transferred only to a body with similar objects to those set out in this *Constitution* and which is not carried on for the purposes of profit or gain to its individual members.

22.2 The identity of the transferee referred to in **rule 22.1** will be determined by the *Members* by ordinary resolution at or before the time of the winding up or dissolution of the Company, and if the *Members* cannot decide, by the Supreme Court of the Australian Capital Territory.

23. DEFINITIONS

23.1 In this *Constitution*, unless the contrary intention appears:

‘*Act*’ means the *Corporations Act 2001*;

‘*Appointing Authority*’ means in relation to a class of *Member* the *Appointing Authority* described in the table in **rule 5.1** adjacent to that class;

‘*College*’ means the college established for the purposes of **rule 3.1**;

‘*Constitution*’ means this document as amended from time to time;

‘*Council Member*’ means any person occupying the position of director of the Company for the purposes of the *Act* and includes an alternate *Council Member*;

‘*Council Members*’ or ‘*Council*’ mean all or some of the *Council Members* acting as a board of directors for the purposes of the *Act*;

‘*Judicial Member*’ means a *Member* identified in **rule 5** as a ‘Judicial Member’;

‘*Member*’ means a person described as a *Member* of the Company in **rule 4** and includes a *Member* present by proxy;

‘*Participating States and Territories*’ means those States and Territories which are currently meeting their respective funding obligations to the *College*;

‘*Public Fund*’ has the meaning given by **rule 3A.1(a)**;

‘*Public Fund Bank Account*’ has the meaning given by **rule 3A.1(b)**;

‘*Regional Convenor*’ means a person appointed under **rule 19.1**;

‘*Replaceable Rules*’ means the provisions referred to in section 141 of the *Act*;

‘*Secretary*’ means a person appointed by the *Council Members* to perform any of the duties of secretary of the Company.

23.2 In this *Constitution* unless the contrary intention appears:

- words importing the singular include the plural and vice versa;
- words importing any gender include the other genders;
- words or expressions defined in the *Act* have the same meaning;
- words or expressions in italics have the respective meanings given by **rule 23.1**;
- headings do not affect construction or interpretation;
- a reference to a person includes a body corporate and a body politic; and
- an expression in a rule that deals with a matter dealt with by a particular provision of the *Act* has the same meaning as in that provision of the *Act*.

24. SIGNING

Name	Signature	Witness
Chief Justice John Doyle, Supreme Court of South Australia name: address: Date:
Justice John Dowsett, Federal Court, Brisbane name: address: Date:
Judge Jack Goldring, District Court of New South Wales name: address: Date:
Chief Magistrate Hugh Bradley, Northern Territory name: address: Date:
Robert Cornall, Secretary, Commonwealth Attorney-General's Department name: address: Date:
Laurie Glanfield, Director-General, New South Wales Attorney-General's Department name: address: Date: