CONSTITUTION OF

OPTOMETRY VICTORIA SOUTH AUSTRALIA LIMITED

ACN 634 919 994

This is the constitution for the company limited by guarantee arising from the transfer of incorporation of Optometry Victoria Incorporated from an incorporated association to a public company limited by guarantee.

First registered as *Optometry Victoria Incorporated* on 20 / 07 /1995 registration number A0031697W (first formed as an association in 1911)

Last incorporated association constitution adopted 2014

Company constitution endorsed on 29/10/2018

Transferred to *Optometry Victoria South Australia Limited* on 24/07/2019

Table of Contents

I. GENERAL 4
1. Name of the company 4
2. Type of entity 4
3. Replaceable rules and application of the Act 4
4. Definitions and interpretation 4
5. Actions authorised under the Act 7
6. Exercise of powers 7
7. Objects 8
8. Powers 9
9. Income and property 9
II. MEMBERSHIP 10
10. Members 10
11. Rights of Members 11
12. Application for membership 11
13. Membership not transferable 13
14. Ceasing to be a Member 13
15. Disciplining of Members and dispute resolution 14
16. Payments by Members 17
III. GENERAL MEETINGS 17
17. Convening of a general meeting 17
18. Notice of a general meeting 19
19. Cancellation or postponement of a general meeting 19
20. Quorum at a general meeting 20
21. Chair of a general meeting 21
22. Conduct of a general meeting 22
23. Decisions at a general meeting 23
24. Voting rights at a general meeting 24
25. Representation at a general meeting 25
IV. BOARD 28
26. Number and nature of Directors 28
27. Term of Directors 28
28. Source of Elected Directors 29

29. Eligibility of Directors 29
30. Casual vacancies on the Board 29
31. Rotation of Directors 30
32. Election of Elected Directors 30
33. Vacation of office 32
34. No alternate Directors 32
35. Interested Directors 33
36. Payments to Directors 34
37. Powers and duties of Directors 34
38. Proceedings of Directors 36
39. Convening of a meeting of Directors 36
40. Notice of a meeting of Directors 36
41. Quorum at a meeting of Directors 37
42. Office bearers 38
43. Decisions of Directors 39
44. Written resolutions 39
45. Committees of the Board 40
46. Validity of acts 41
V. ADMINISTRATION 41
47. Secretary 41
48. Minutes 41
49. Inspection of records 42
50. Accounts and audit 42
51. Notices 42
52. Time of service of notices 44
53. Other communications and documents 44
54. Execution of documents 44
55. Indemnity and insurance 45
56. Submission to jurisdiction 47
57. Prohibition and enforceability 47
58. Winding up 47
59. Changes to this Constitution 48
60. Associate Board Members 48

I. GENERAL

1. Name of the company

1 The name of the company is *Optometry Victoria South Australia Limited*.

2. Type of entity

a) OptomVicSA is a not-for-profit public company limited by guarantee.

b) Subject to this Constitution, each Member and each Person who was a Member within 1 year of them ceasing to be a Member undertakes to contribute on the winding up of OptomVicSA to the property of OptomVicSA for:

1) payment of debts and liabilities of OptomVicSA provided that for each Person who was a Member the debts and liabilities were contracted before they ceased to be a Member;

2) payment of the costs, charges and expenses of winding up; and

3) any adjustment of the rights of the contributories among themselves.

c) The amount to be contributed under **rule 2(b)** is such amount as may be required up to $2.

3. Replaceable rules and application of the Act

a) This Constitution is to be interpreted subject to the Act, however, the rules that apply as replaceable rules to companies under the Act are displaced by this Constitution and do not apply except to the extent that a rule is repeated in this Constitution.

b) An expression used in a rule that is defined for the purposes of the Act has the same meaning as in the Act unless the contrary intention appears in the expression used in a rule in this Constitution.

4. Definitions and interpretation

a) In this Constitution unless it is inconsistent with the subject or context in which it is used:

Act means the *Corporations Act 2001(*Cth*)*.

AGM means an annual general meeting of OptomVicSA.

AHPRA means the Australian Health Practitioner Regulation Agency.

Appointed Director means a Director appointed in accordance with **rule 29(3)**.

ASIC means the Australian Securities and Investments Commission.

Associate Board Member means a Member in accordance with **rule 60**.

Board means some or all of the Directors acting as the board of directors of OptomVicSA in accordance with the Act.

Business Day means a day not being Saturday, Sunday or a public holiday on which the banks (as defined in the *Banking Act 1959*) are open for business in Victoria.

Code of Ethics means the code of ethics and professional conduct referred to in **rule 37.**

Constitution means these rules as amended or supplemented in accordance with the Act from time to time.

Direct vote means votes being cast irrevocably by a Member (with respect to resolutions proposed in a notice of a Member's meeting) after receipt by that Member of the notice of Member's meeting from OptomVicSA.

Director means a person elected or appointed from time to time to the office of member of the Board of OptomVicSA in accordance with this Constitution and the Act.

Elected Director means a Director appointed in accordance with **rule 26(2)** of this Constitution.

Election Cycle means the period from the formal calling for nominations for Directors in accordance with **rule 32** to the AGM.

Electronic Contact Address means an electronic destination such as an email address to which notices and other material from OptomVicSA can be transmitted or made available with reasonable certainty that they will be delivered to or will be accessible by the intended recipient.

Ethics Committee means a committee appointed in accordance with **rule 15(5)(3)** of this Constitution.

Meeting Technology means any technology approved by the Directors that is reasonable to use for the purpose of holding and conducting a meeting at one or more physical venues or entirely virtually by electronic means (without any physical meeting) or by a combination of those methods and otherwise satisfies the requirements of this Constitution and the Act.

Member means a member of OptomVicSA in accordance with **part II** of this Constitution.

Non-Voting Member means a Member without the right to vote on matters before the membership.

Objects means the objects for which OptomVicSA is established as specified in **rule 7** of this Constitution.

Officer has the same meaning as in the Act.

OptomVicSA means the company Optometry Victoria South Australia Limited ACN 634 919 994.

Person means an individual and any partnership, association, body or entity whether incorporated or not.

Present means, in connection with a meeting, the Member being present in person or by proxy, by attorney, by representative or by direct vote, and includes being present at a different venue from the venue at which other

Members are participating in the same meeting or virtually to the extent the meeting is held using Meeting Technology (and with respect to a Director means being present in person or present by using Meeting Technology), providing the pre-requisites for a valid meeting as set out in this Constitution and the Act are observed.

President means the Director appointed by the Board in accordance with **rule 42** to perform the duties of President of OptomVicSA as specified in this Constitution.

Register means the register of Members pursuant to the Act.

Regulation means a requirement for the control, administration and management of OptomVicSA operations, finances, interests, effects or property as determined in accordance with **rule 37(6)** of this Constitution

Secretary means any individual appointed by the Board in accordance with **rule 47** of this Constitution and the Act to perform the duties of company secretary of OptomVicSA.

Special Resolution has the same meaning as in the Act.

Tax Act means the *Income Tax Assessment Act 1997*(Cth) and related legislation.

Treasurer means the Director appointed by the Board in accordance with **rule 42** of this Constitution to perform the duties of Treasurer of OptomVicSA as specified in this Constitution.

Vice President means the Director appointed by the Board in accordance with **rule 42** to perform the duties of Vice President of OptomVicSA as specified in this Constitution.

Voting Member means a Member with the right to vote on matters before the membership.

Year means the period between the close of 1 AGM and the close of the next AGM.

~~b) A Member is taken to be present at a general meeting if the Member is present in person or by proxy or by direct vote.~~

~~c)~~b) A reference in a rule in general terms to a person holding or occupying a particular position or office includes a reference to any person who occupies or performs the duties of that position or office for the time being.

~~d)~~c) In this Constitution, the following rules of interpretation apply unless the context requires otherwise:

1) a gender includes all genders;

2) singular includes plural and vice versa;

3) where a word or phrase is defined, its other grammatical forms or parts of speech have corresponding meaning;

4) a reference to a rule or sub-rule is to a rule or sub-rule of this Constitution and includes any further embedded content;

5) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislation substituted for it and any regulations and statutory instruments issued under it; and

6) the words 'writing' and 'written' include any mode of representing or reproducing words, figures, drawings or symbols in a visible or communicable form.

~~c)~~d) Cross references are for convenience only. A cross reference in a particular rule identifies another rule or part of this Constitution that impinges on the interpretation of the particular rule in a key way. Not all rules that may affect the interpretation of the particular rule are cross referenced.

~~d)~~e) Headings, bold type and italics are for convenience only and do not affect the interpretation of this Constitution.

5. Actions authorised under the Act

a) Where the Act authorises a company to do any matter or thing if so authorised by its constitution, OptomVicSA is taken by this rule to be so authorised or permitted to do that matter or thing.

6. Exercise of powers

a) Where this Constitution uses the word 'may' in providing that a person or body may do a particular act or thing, then whether the act or thing is done or not is at the discretion of the person or body.

b) Where this Constitution confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken to include a power:

1) exercisable in the like manner and subject to any like conditions to repeal, rescind, revoke, amend or vary that act or thing; and 2) to do the act or thing from time to time.

c) Where this Constitution confers a power to do a particular act or thing with respect to particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing with respect to some only of those matters or with respect to a particular class or particular classes of those matters and to make different provision with respect to different matters or different classes of matters.

d) Other than in respect of Directors, where this Constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, to be taken to include a power:

1) to appoint a person to act in the office or position until a person is appointed to the office or position;

2) subject to any contract between OptomVicSA and the relevant person and any applicable industrial law, to remove or suspend with or without cause any person appointed; and

3) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.

e) Where this Constitution confers a power or imposes a duty then, unless the contrary intention appears, the power may be exercised and the duty must be performed from time to time as the occasion requires.

f) Where this Constitution confers a power on a person or body to delegate a function or a power:

1) the delegation may be concurrent with, or to the exclusion of, the performance or exercise of that function or power by the person or body;

2) the delegation may be either general or limited in any manner provided in the terms of delegation;

3) the delegation may be to a specified person or may be to any unspecified person from time to time holding, occupying or performing the duties of a specified office or position;

4) the delegation may include the power to delegate;

5) where the performance or exercise of that function or power is dependent upon the opinion, belief or state of mind of that person or body in relation to a matter, that function or power may be performed or exercised by the delegate upon the opinion, belief or state of mind of the delegate in relation to that matter; and

6) the function or power so delegated, when performed or exercised by the delegate, is to be taken to have been performed or exercised by the person or body that delegated the function or power.

7. Objects

a) The Objects of OptomVicSA are to serve the optometry profession, as health care professionals, and the community by providing services to and procuring services for optometrists, advancing the understanding and capability of the optometry profession and promoting the role that the optometry profession plays in providing eye health care for the benefit of the community.

b) OptomVicSA pursues these Objects by various means which may include but not be limited to:

1) providing-, or procuring the provision of, professional services, advice and guidance to support the professional activities of individual optometrists or optometry students practising or studying optometry;

2) providing, or procuring the provision of, continuing professional and ethical development and resources, including disseminating professional knowledge, to optometrists;

3) promoting knowledge and understanding of the importance of eye care, vision care and optometry services, and rights to those outcomes and services as fundamental enablers of life participation, to members of the public;

4) working and collaborating with Optometry Australia and its members and with other stakeholders to provide services to optometrists, and advance the interests of optometrists and optometry through various means including policy, education and resource development;

5) advocating to government, health care professionals and the community to advance the understanding of the optometry profession and its role in providing eye health care; and

6) doing anything ancillary to the Objects referred to in **rule 7(a).**

8. Powers

a) OptomVicSA may act in ways and matters consistent with the direct and indirect pursuit of its Objects and in ways and matters incidental to its Objects and in ways that, under the Act, an incorporated association may exercise, take or engage in if authorised by its constitution. In pursuing the Objects, OptomVicSA may, in any manner permitted by the Act:

1) exercise any power;

2) take any action; or

3) engage in any conduct or procedure.

9. Income and property

1 The income and property of OptomVicSA must be applied only towards promoting the Objects.

2 Subject to **rule 93**, no income or property of OptomVicSA shall be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or other profit distribution, to any Member of OptomVicSA, any former Member of OptomVicSA, any Director or any former Director or to any Person claiming through such a person.

3 Nothing in this Constitution shall prevent payment in good faith of:

1) reasonable and proper remuneration to any employee of OptomVicSA;

2) subject to this Constitution, reasonable and proper amounts to any Member in return for any services they render to OptomVicSA;

3) interest at a rate not exceeding interest at the rate for the time being payable to OptomVicSA's bankers for money lent or that would be lent to OptomVicSA;

4) reasonable and proper rent for premises leased by any Member to OptomVicSA;

5) reimbursement in good faith of out-of-pocket expenses incurred on behalf of OptomVicSA where such expenses have been appropriately authorised in accordance with processes as determined by the Board from time to time; and

6) any other sums payable under this Constitution.

II. MEMBERSHIP

10. Members

1 The Members of OptomVicSA are:

1) the members named in the Register of Optometry Victoria Incorporated who transfer to OptomVicSA (see **rule 6~~10~~(1)**);

2) the members of Optometry South Australia Incorporated, who transfer to
OptomVicSA subject to **rule 6~~10~~(2)** ; and

3) the individuals who are interested in the Objects who agree to become Members by applying in accordance with **rule 12** and who the Board or its delegate in its absolute discretion admits to membership in accordance with this Constitution subject to **rule 12(5) to (10)**.

2 There are 2 classes of Member; Voting Member and Non-Voting Member. To be a Voting Member the individual must be actively engaged as an optometrist or eligible to become actively engaged as an optometrist,

3 Within each class of Member there may be various categories of Member. The Board may determine the names of those categories and the eligibility requirements of those categories. For consistency of description of optometrists who may be registered with AHPRA or be eligible to register with AHPRA, in determining such categories, the Board must consider any consensus agreement with other members of Optometry Australia ABN 17 004 622 431 as to the names and eligibility requirements of categories of Member provided that the rights of all Members shall be in accordance with **rule 11**.

4 For all purposes, including purposes under the Act, a category of membership under this Constitution does not necessarily constitute a distinct class of Member.

5 Unless otherwise provided by the terms of membership of a class of Member:

1) all or any of the rights or privileges attached to a class may be varied, whether or not OptomVicSA is being wound up, with the consent in writing of the members of that class where at least 75% of any responses are in favour, or with the approval of a special resolution

adopted at a meeting of the members of that class, subject to any required amendment to this Constitution;

2) the provisions of this Constitution relating to general meetings apply, so far as they can and with such changes as are necessary, to each meeting of the members of that class; and

3) the rights of members of that class are to be taken as not being varied by the admission of further members to that class or any category, the establishment of and admission of Members into any new class or category of membership irrespective of the rights attached to that new class or category of membership, or the cessation of membership irrespective of how it occurs.

6 The number of Members in any category or class of Member is unlimited.

11. Rights of Members

1 A Member has a right:

1) to attend and to speak at general meetings;

2) to nominate, to be nominated if an individual and to be appointed a Director, subject to this Constitution;

3) to vote at general meetings and on resolutions put to the membership provided they are a Voting Member and are financial (see **rule 16(6)**); and

4) to designate themself as a Member of OptomVicSA in ways as determined by the Board or its delegate from time to time provided that for consistency of description of optometrists who may be registered with AHPRA or be eligible to register with AHPRA, in determining such designations, the Board or its delegate must consider any consensus agreement with other members of Optometry Australia as to the designation of Members.

12. Application for membership

1 Any eligible individual may nominate for membership in the class and category of membership applicable to their circumstances.

2 The application for membership must be in writing in the form the Board prescribes from time to time. Such form must provide for the Electronic Contact Address of the applicant and include information that allows the Board or its delegate to determine whether the applicant meets the requirements of the relevant membership.

1) In line with expectations related to registration with AHPRA, such form must also provide for the applicant when relevant to commit to the Code of Ethics.

3 The Board considers and determines an application for membership but may delegate the consideration and determination of any membership application, except that:

1) if an application is made for recognition of a Member as a life Member in recognition of the meritorious contribution of long and distinguished service by the Member to optometry or the profession of optometry then any such application must be considered and determined by at least a 75% majority decision of the Board.

4 Subject to **rule 12(5)** in no case shall the Directors or their delegate be required to give a reason for the rejection of any application for membership.

5 If the Board or its delegate rejects an applicant for membership where that application may affect the employment or professional standing in optometry of the applicant, then the ~~Secretary~~ Board or its delegate must give the applicant written notice:

1) setting out the grounds upon which the rejection was based; and

2) stating that the applicant has 30 calendar days from the date of the notice to give written submissions to the Directors or their delegate in response to the rejection.

6 If the applicant gives written submissions in accordance with **rule 12(5)** in response to the rejection then the Board or its delegate must consider those submissions at its next meeting and the ~~Secretary~~ Board or its delegate must then give the applicant written notice as to whether the Board or its delegate:

1) admits the applicant to membership; or

2) intends to proceed with the rejection; and

i. if the Board or its delegate does so intend, that the applicant has 21 calendar days from the date of the notice to advise the Directors or their delegate in writing that the applicant requires the matter to be referred to mediation under **rule 12(8)**.

7 If the applicant does not give written submissions within the time specified in **rule 12(5)** or advice in writing within the time specified in **rule 12(6)(2)(i)** in response to the rejection then the Board or its delegate may proceed in accordance with **rule 12(9)**.

8 If the matter is referred to mediation under **rule 12(6)(2)(i)** then the mediation must be conducted:

1) subject to **rule 12 (8)(2)**, in such manner as the Board or its delegate reasonably determines; and

2) in accordance with the rules of procedural fairness.

9 Once the mediation under **rule 12(8)** is concluded or if the applicant gives no advice in writing under **rule 12(5)(2)** or if the applicant makes no written submissions in accordance with **rule 12(6)(2)(i)** then the Board or its delegate may decide whether or not to endorse the rejection of the application under **rule 12(5)** at which time the Board or its delegate may resolve to implement the resolution under **rule 12(5)** and it is only at that time that any rejection under **rule 12(5)** will be effective.

10 Subject to **rule 12(4)**, when a decision regarding an application for membership has been made the Secretary or other person delegated by the Board shall send to the applicant written notice of that decision.

11 The acceptance of an applicant to be a Member is subject to payment of any fees in accordance with **rule 16** and if any such payment is not made then the Board or its delegate may, in its absolute discretion, cancel its acceptance of the applicant for membership of OptomVicSA.

12 If the applicant has not previously been a Member and is not admitted to membership in due course then any moneys paid by them for membership must be returned to them in full.

13 Subject to **rules 10 & 12(11)**, an applicant becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the Register.

13. Membership not transferable

1 A right, privilege or obligation which a person has by reason of being a Member:

1) is personal to the Member and not capable of being transferred to another
Person by a Member's own act or by operation of law; and

2) subject to **rule 2(b)**, terminates upon the cessation of membership by whatever cause.

14. Ceasing to be a Member

1 A Member shall cease to be a Member:

1) if the Member resigns, by notice in writing, on the date the notice is received by the Secretary;

2) if the Member ceases to have an Electronic Contact Address on the date that the Board or its delegate resolves to cease the membership unless the Board or its delegate resolves otherwise;

3) if the Member dies;

4) if the Member is an unincorporated partnership if the partnership is dissolved;

5) if the Member becomes a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;

6) if the Member is expelled under **rule 15**;

7) if the Member ceases to meet the circumstances prescribed in the terms of membership applicable to the Member unless the Member meets the requirements of a different class or category of Member and the Board resolves to change the class or category of membership;

8) if the Member fails to satisfy any undertaking given by the Member upon them being admitted as a Member unless the Board or its delegate resolves otherwise;

9) if the Member is convicted of an indictable offence on the date that the Board resolves to cease the membership unless the Board or its delegate resolves otherwise;

10) if the Member has not paid moneys (including fees applicable under **rule 16** due and payable to OptomVicSA within 14 days of a final written request for payment of those moneys being sent to the Member where such final request may be made after the moneys have been unpaid for a period of at least 60 days after they became due and payable;

11) if the Member becomes bankrupt unless the Board or its delegate resolves otherwise;

12) if the Member fails to provide any information required by the Board or its delegate as part of any membership renewal process, unless the Board resolves otherwise; or

2 Any Member ceasing to be a Member:

1) shall not be entitled to any refund, in full or part, of any fee paid in accordance with **rule 16(1)~~2~~**; and

2) shall not be readmitted as a Member until any unpaid moneys outstanding at the time they ceased to be a Member are paid including any interest or other charges levied on any outstanding moneys.

15. Disciplining of Members and dispute resolution

1 **Disciplining of Members** - subject to this rule the Board may resolve by a majority of at least 75% (rounded down when it is not a whole number) of Directors present and eligible to vote to expel any Member, or to suspend any Member from membership for a specified period, if the Member:

1) fails to comply with this Constitution or a Regulation;

2) fails to comply with any other terms of membership applicable to the Member;

3) fails to satisfy any undertaking given by the Member upon their admission to membership; or

4) in the opinion of the Board, has acted in a manner that renders it undesirable that the Member continues to be a Member where such action could include that the Member has acted in a manner prejudicial to the interests of OptomVicSA which may include that the Member has failed to comply with the Code of Ethics if any; and where

5) in coming to its opinion, the Board may consider complaints lodged by other Members or other persons.

2 If the Board passes a resolution in accordance with **rule 15(1)** to expel or suspend or sanction a Member then the Secretary must give the Member written notice: 1) setting out the resolution and the grounds upon which it was based; and

2) stating that the Member has 30 calendar days from the date of the notice to give written submissions to the Directors in response to the resolution.

3 If the Member gives written submissions in response to the resolution then the Board must consider those submissions at its next meeting and the Secretary must then give the Member written notice:

1) as to whether or not the Board still intends to proceed with the resolution; and

2) if the Board does so intend, that the Member has 21 calendar days from the date of the notice to advise the Directors in writing that the Member requires the matter to be referred to mediation or review, if the matter involves a failure to comply with the Code of Ethics, under **rule 15(5)**.

4 If the Member does not give written submissions within the time specified in **rule 15(2)(2)** or advice in writing within the time specified in **rule 15(3)(2)** in response to the resolution then the Board may proceed in accordance with **rule 15(6)**.

5 If the matter is referred to mediation or review under **rule 15(3)(2)** then the mediation or review must be conducted:

1) subject to **rule 15(5)(2)**, in such manner as the Board reasonably determines; and

2) in accordance with the rules of procedural fairness; provided that

3) if a review is involved then it must be by an Ethics Committee comprising 3 impartial previous members of the governing body of any member or members of Optometry Australia, including Optometry Victoria Incorporated and Optometry South Australia Incorporated.

6 Once the mediation or review under **rule 15(-5)** is concluded or if the Member gives no advice in writing under **rule 15(3)(2)** or if the Member makes no written submissions in accordance with **rule 15(2)(2)** then the Board may decide whether or not to endorse the resolution under **rule 15(1)** at which time the Board may resolve to implement the resolution under **rule 15(1)** to expel the Member from the Register or to suspend the Member for a specified period.

7 **Dispute resolution** - the dispute resolution procedure in **rules 15(7) to (11)** to the extent that they can and with such adjustments as are necessary applies to disputes that may arise under this constitution between 1 or more Members or 1 or more Directors and:

1) 1 or more Members; 2) 1 or more

Directors; or 3) OptomVicSA.

8 A Member must not start a dispute resolution procedure in relation to a matter which is subject to a disciplinary procedure under **rule 15(1)** until the disciplinary procedure is completed in accordance with **rule 15(6)**.

9 The parties involved in a dispute must try to resolve it between themselves within 14 days of becoming aware of the dispute.

10 If the parties involved in the dispute do not resolve it in accordance with **rule 15(9)** then they must within a further 14 days:

1) advise the Secretary in writing about the dispute;

2) agree or request that ~~1)2)~~a mediator be

appointed; and

~~2)~~3) 3) attempt in good faith to resolve the

dispute by mediation.

11 The mediator must:

1) be agreed by the parties to the dispute;

or

2) if the parties to the dispute do not agree:

i. for disputes between Members, an individual chosen by the Board; or

ii. for other disputes, the matter is to be referred to an appropriate community justice centre for mediation.

3) A mediator chosen under **rule 15(11)(2)(i)**:

i. may be a Member or former Member;

ii. must not have a personal interest in the dispute; and iii.

must not be biased towards or against any party to the dispute.

4) When conducting the mediation, the mediator must:

i. allow the parties involved a reasonable chance to be heard;

ii. allow the parties involved a reasonable chance to review any written statements;

iii. ensure that the parties involved receive procedural fairness; and iv. not make a decision on the dispute which is for the parties involved to resolve if they can.

12 Nothing in this **rule 15** affects the rights of Members in accordance with the law.

16. Payments by Members

1 The Board or its delegate may determine from time to time to charge Members fees comprising joining fees, annual subscriptions and specific purpose levies and charges, except that categories of Member that have previously, as members of Optometry Victoria Incorporated, not been charged an annual subscription must not be charged an annual subscription.

2 The Board or its delegate may determine different fees for amounts charged to Members as between different classes and categories, if any, of Members. Members within the same category of membership must be charged the same fees. The Board or its delegate may determine that no fee is payable.

3 Any amounts charged to Members are payable in such manner and at such times as are determined by the Board or its delegate.

4 The renewal of membership process must allow for Members to provide information that allows the Board or its delegate to determine whether the Member retains the right to their current category of membership.

5 No part of any fee paid shall be refunded to a Member who ceases to be a Member in accordance with **rule 14**.

6 Subject to **rule 16(3)** as applicable to the Member**,** any Member who has not paid fees within 60 days of the fee being invoiced shall be deemed unfinancial and lose all rights of membership until the fees are paid.

III. GENERAL MEETINGS

17. Convening of a general meeting

1 The Board may, whenever it thinks fit, call and arrange to hold a general meeting of OptomVicSA, and must call and hold an AGM in accordance with the Act.

2 Apart from as provided by this **rule 17**, the Board must also call and arrange to hold a general meeting of OptomVicSA when requested by Members provided the Members making the request meet the requirements set out in section 249D of the Act.

3 The Board may change the venue for, postpone or cancel a general meeting of OptomVicSA subject to **rule 19**.

4 ~~A general meeting of OptomVicSA may be convened to occur at 2 or more venues using any technology that gives the Members attending a reasonable~~

~~opportunity to participate in the meeting.~~ Notwithstanding any other provision of this Constitution to the contrary, the following shall apply, and to the extent there is a conflict (if any) between this clause 17.4 and any other provision of this Constitution, the provisions of this clause 17.4 shall prevail:

1) Subject to any applicable Law, OptomVicSA may hold a meeting of Members:

i. at a physical venue;

ii. at one or more physical venues and virtually using Meeting Technology;

iii. virtually, using Meeting Technology only; or

iv. in any other way permitted by the Act.

2) OptomVicSA must give the Members entitled to attend the meeting, as a whole, a reasonable opportunity to participate in the meeting (including the right to ask questions and cast votes directly), however the meeting is held (including a meeting using Meeting Technology).

3) A Member, or a proxy, attorney or representative of a Member, who attends the meeting (whether at a physical venue or virtually by using Meeting Technology) is taken for all purposes to be Present at the meeting while so attending.

4) If, before or during a meeting of Members, any technical difficulty occurs, such that the Members as a whole do not have a reasonable opportunity to participate, the chair of the meeting may:

i. adjourn the meeting until the technical difficulty is remedied; or

ii. subject to the Act, where a quorum remains Present and able to participate, continue the meeting.

5) Each notice convening a general meeting must include the following where Meeting Technology is to be used in holding the meeting -

i. sufficient information to allow Members to participate in the meeting by means of the technology;

ii. where a general meeting is held only virtually using Meeting Technology:

(a) the place for the meeting is taken to be the address of the registered office of OptomVicSA; and

(b) the time for the meeting is taken to be the time at that place, and

iii. any other information required by Law.

18. Notice of a general meeting

1 Subject to this Constitution, notice of at least 21 days (or such other minimum period as may be prescribed by the Act from time to time) of a general meeting must be given in the manner authorised by **rule 51** to each Person who is at the date of the notice:

1) a Member;

2) a Director; or

3) an auditor of OptomVicSA.

2 A notice of a general meeting must specify:

1) the place, date and time of the meeting;

2) subject to **rule 18(4)**, the general nature of any business to be conducted at the meeting;

3) if a special resolution is to be proposed, the details of and intention to propose it; and

4) if the meeting is to be held using Meeting Technology, the information described in rule 17.4 (5)~~in 2 or more places, the technology that will be used to facilitate this~~.

3 Except as required by the Act or as provided in **rule 18(4)**, no business other than that specified in the notice convening a general meeting may be transacted at that general meeting.

4 It is not necessary for a notice of an AGM to state that the business to be transacted at the meeting includes the consideration of any annual financial report, any report from the Directors, any report from the auditor, the appointment of Directors, the appointment of the auditor or the fixing of the auditor's remuneration.

5 A Member may waive notice of a general meeting by notice in writing to OptomVicSA.

6 The accidental failure to give notice of any general meeting to, or the nonreceipt of notice of a general meeting by, any Person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the general meeting.

7 A Person being Present~~'s attendance~~ at a general meeting waives any objection that that Person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the Person at the beginning of the meeting objects to the holding of the general meeting.

19. Cancellation or postponement of a general meeting

1 Subject to the Act and this Constitution, the Board may cancel a general meeting of OptomVicSA that:

1) has been convened by the Board; or

2) has been convened at the requisition of a Member or Members pursuant to the **rule 17(2)** upon receipt by OptomVicSA of written notice withdrawing the requisition signed by that Member or those Members with the consequence that there are less than half the requisitioning Members remaining who still wish for the meeting to be convened.

2 The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original general meeting.

3 Where any general meeting is cancelled or postponed or the venue for the general meeting is changed:

1) the Board must make a reasonable attempt to notify in writing each Person entitled to receive notice of the general meeting of the cancellation, the change of venue or the postponement of the general meeting by any means permitted by this Constitution and in the case of the postponement of a general meeting, the new place, date and time for the meeting; but

2) any failure to notify in writing any Person entitled to receive notice of the general meeting or failure of a Person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the general meeting.

20. Quorum at a general meeting

1 No business may be transacted at any general meeting unless a quorum of Members entitled to vote is Ppresent ~~(see **rule 4b))**~~ at all times while the business is being transacted.

2 A quorum for a general meeting of Members shall be the number of Members entitled to vote that are Ppresent ~~(see **rule 4b))**~~ that is equivalent to 1.5 times the number of Directors in office rounded up to the nearest whole number if it is not a whole number.

3 If a quorum is not Ppresent within 30 minutes after the time appointed for a general meeting:

1) the meeting, if convened upon the requisition of Members under **rule 17(2)**, shall be dissolved; and

2) in any other case:

i. the meeting stands adjourned to such day, and at such time and place, as the President determines or, if no determination is made by the President, to the same day in the next week at the same time and place; ~~and~~

ii. if, at the adjourned meeting, a quorum is not Ppresent within 30 minutes after the time appointed for the meeting, the meeting must be dissolved, and.

~~ii.~~iii. if Meeting Technology was used in holding the original meeting and sufficient information to allow members to participate in the resumed meeting by means of the technology is not specified, participation in the adjourned meeting by means of the Meeting Technology must be provided in the same manner as set out in the notice for the original meeting.

21. Chair of a general meeting

1 The President shall preside as chair at each general meeting unless:

1) there is no President;

2) the President is not Ppresent within 15 minutes after the time appointed for the meeting or the time at which a quorum is Ppresent, whichever is the later; or

3) the President is Ppresent within that time but is not willing to act as chair of the meeting.

2 When the President does not preside in accordance with **rule 21(1)** then:

1) a Vice President presides as chair unless there is no Vice President or a Vice President is not Ppresent or is not willing to act as chair of the meeting; in which case

2) the Directors Ppresent must elect as chair of the meeting another Director who is Ppresent and willing to act; or

3) if no other Director willing to act is Ppresent at the meeting and willing to act, the Members eligible to vote who are Ppresent ~~in person at the meeting~~ must elect as chair of the meeting a Member who is Ppresent and willing to act and who is entitled to vote at the meeting.

3 Despite anything in **rules 21(1) & (2)**, if the President and/or Vice President and/or any other Director or Directors later attend a general meeting or later are willing to act, 1 of them (elected if necessary as outlined in **rule 21(2)(2)** where 2 or more Directors are later in attendance) from time to time who is willing to act must take over as chair of the general meeting.

4 Subject to **rule 22**, the chair of a general meeting:

1) shall ensure that all items on the agenda are dealt with, and in the sequence set out, unless the Members eligible to vote who are Ppresent ~~in person~~ consent to the order being changed;

2) shall conduct the meeting in a manner designed to facilitate decision making and the transaction of business; and

3) shall superintend and control the proceedings in accordance with the requirements of the relevant law and, this Constitution and the broad conventions of debate.

22. Conduct of a general meeting

1 A Member, Director and where applicable an auditor is entitled to attend and to speak at a general meeting.

2 The chair of a general meeting may at any time they consider it necessary or desirable for the proper and orderly conduct of the meeting, subject to the Act:

1) impose a limit on the time that a person may speak (including by Meeting Technology) on each motion or other item of business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members Ppresent ~~(see **rule 4b)**)~~ and entitled to vote; and

2) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or a poll, including the appointment of scrutineers. Subject to the requirements of any Law, where a meeting is conducted entirely or partially as a virtual meeting, recording of votes shall be undertaken by way of poll.

3 Any question arising at a general meeting relating to the order of business, subject to **rules 21(4)(1) & 22(6)**, procedure or conduct of the meeting must be referred to the chair of the meeting whose decision is final.

4 The chair of a general meeting may take any action they consider appropriate for the safety of persons attending the meeting and the orderly conduct of the meeting and may refuse admission to, or require to leave and to remain out of, the meeting- any person (including the termination of any Meeting Technology in connection with that person to the extent used by that person):

1) in possession of a visual and/or sound recording device which in the opinion of the chair of the meeting may or does cause inconvenience or disruption to the meeting;

2) in possession of a placard or banner;

3) in possession of an article considered by the chair of the meeting to be dangerous, offensive or liable to cause disruption;

4) who refuses to produce or permit examination of any article, or the contents of any article, in the person's possession;

5) who behaves or threatens to behave in a dangerous, offensive or disruptive way; or

6) who is not entitled to receive notice of the general meeting if they are not the proxy or representative of a Person entitled to receive notice of the general meeting.

5 The chair of the meeting may delegate powers conferred by **rule 22(4)** to any individual they think fit.

6 The chair of a general meeting may at any time during the course of a general meeting, and must if so directed by the meeting, adjourn from time to time and from place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion either to a later time at the same meeting or to an adjourned meeting as determined by the chair of the meeting.

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

8 A resolution passed at a general meeting resumed after an adjournment is passed on the day that it is passed.

9 Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of the original meeting.

10 Except as provided by **rule 22(9)**, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting, subject to **rule 19(3)**.

11 Where a meeting is adjourned, subject to rule 20.3(2)(iii) the Board may change the venue of, postpone or cancel the adjourned meeting unless the meeting was called and arranged to be held by the Members in accordance with **rule 17(2)**. If a meeting is called and arranged to be held in accordance with **rule 17(2)** then the Board may not postpone it beyond the date which meets the requirements set out in section 249D of the Act and may not cancel it without the consent of the requisitioning Members.

12 Nothing in this **rule 22** is to be taken to limit the powers conferred on the chair of a general meeting by law.

23. Decisions at a general meeting

1 Questions arising at a general meeting are to be decided by at least a majority of votes cast by the Members Ppresent ~~(see **rule 4b)**)~~ at the meeting who are eligible to vote and any such decision is for all purposes a decision of the Members, except in the case of any resolution that under this Constitution or as a matter of law requires a special majority.

2 At any time before a vote on a motion is taken at a general meeting, a summary of the proxy position and, if applicable, direct votes received in relation to the motion must be disclosed to the meeting.

3 Subject any voting requirements at Law, i~~I~~n the case of an equality of votes upon any proposed resolution the chair of the meeting, in addition to any deliberative vote, has a casting vote.

4 A resolution put to the vote of a general meeting must be decided on a show of hands of the Members Ppresent ~~in person~~ and eligible to vote or on the voices or other indication acceptable to the chair of the meeting for Members

Ppresent (including by Meeting Technology) ~~by electronic means~~ unless a poll is demanded before the vote is taken or before or immediately after the declaration of the result of the show of hands.

1) On a show of hands (including by Meeting Technology) all Members Ppresent ~~in person~~ and eligible to vote have 1 vote, subject to **rule 23(3)**. Except for any additional vote in accordance with **rule 23(3)**, any additional votes that any Member may be entitled to exercise shall not be exercisable on a show of hands but will be exercisable on a poll.

5 Under **rule 23(4)** a poll may be demanded:

1) by the chair of the meeting; or

2) by at least 2 Members Ppresent ~~(see **rule 4b)**)~~ and having the right to vote on the resolution on a poll.

6 A demand for a poll does not prevent the continuation of a general meeting for the transaction of any business other than the question on which the poll has been demanded.

7 At any general meeting, unless a poll is demanded, a declaration by the chair of the meeting that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the minutes of the proceedings of OptomVicSA which has been signed by the chair of the relevant general meeting or of the next succeeding general meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

8 If a poll is demanded at a general meeting, it will be taken in such manner and either at once or after an interval or adjournment or otherwise as the chair of the meeting directs, including in relation to how votes of Members or proxies attending via ~~electronic means~~Meeting Technology are to be collected. The result of the poll will be the resolution of the meeting at which the poll was demanded, and an entry to that effect in the minutes of the proceedings of OptomVicSA which has been signed by the chair of the relevant general meeting or of the next succeeding general meeting, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

9 A poll demanded at a general meeting on the election of a chair of the meeting pursuant to **rule 21(2)(3)** or on an adjournment pursuant to **rule 22(6)** must be taken immediately.

10 The demand for a poll may be withdrawn.

24. Voting rights at a general meeting

1 Subject to this Constitution, at a general meeting every Member who is entitled to vote and who is Ppresent in person~~(see **rule 4b)**)~~ has 1 vote.

1) Where the Board has allowed Members to cast a direct vote by electronic or postal means on a matter, the voting must be done in a way that

identifies that a particular Member has voted, but with the actual ~~way in which the~~ vote cast by that Member being~~is~~ kept~~east~~ secret from other Members. Subject to **rules 24(1) & 25(1) & 12**, the Board may put a matter that has been voted on by direct vote to a general meeting.

2 An Appointed Director who is not a Member has a right to attend and to speak at a general meeting but has no right to a vote at a general meeting in their capacity as a Director but may as a proxy.

3 A proxy is entitled to a separate vote for each Member the person represents, in addition to any vote they may have as a Member in their own right.

4 An objection to the qualification of a person to vote at a general meeting:

1) must be raised before or at the meeting at which the vote objected to is given or tendered; and

2) must be referred to the chair of the meeting whose decision on the qualification to vote is final.

5 A vote not disallowed by the chair of the meeting under **rule 24(4)(2)** is valid for all purposes.

25. Representation at a general meeting

1 Subject to this Constitution, each Member entitled to vote at a general meeting may vote:

1) in person;

2) by direct vote using electronic (including using Meeting Technology) and/or postal means where such an option is offered by the Board; or

~~2)~~3) ~~3)~~ by proxy.

2 A proxy may, but need not, be a Member or a Member who is entitled to vote.

3 A proxy may be appointed for all general meetings, or any number of general meetings, or for a particular general meeting.

4 Unless otherwise provided in the instrument, but subject to the Act, an instrument appointing a proxy, subject to **rule 23(4)**, will be taken:

1) to confer authority to agree to a meeting being convened by shorter notice than is required by the Act or by this Constitution;

2) to confer authority to speak to any proposed resolution on which the proxy may vote;

3) to confer authority to demand, or join in demanding, a poll on any resolution on which the proxy may vote;

4) to appoint the chair of the general meeting as the proxy unless the Member clearly specifies another Person as proxy and that Person is Present at ~~attends~~ the general meeting;

5) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions:

i. to vote, in a way that is consistent with any direction given by the Member on the proxy form, on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;

ii. to vote on any procedural motion, including any motion to elect the chair, (only in the case of a Member elected chair under **rule 21(2)(3)**) or to adjourn the meeting; and

iii. to act generally at the meeting; and

6) even though the instrument may refer to a specific meeting, to be held at a specific time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the rescheduled or adjourned meeting or at the new venue.

5 An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument so provides, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.

1) Where the instrument so directs the proxy how to vote and the Person appointed as proxy is not the chair of the meeting and the proxy does not exercise the vote when a poll is called then the chair of the meeting is taken, before voting on the resolution closes, to have been appointed as the proxy for the purposes of voting on the resolution at the meeting and must so vote.

6 Subject to **rule 25(9)**, an instrument appointing a proxy need not be in any particular form (unless a form is required by the Board) provided it is in writing, contains the Member's name and address, OptomVicSA's name, the proxy's name or the office held by the proxy, the meetings at which the appointment may be used and either:

1) be signed by the appointer or the appointer's attorney; or

2) be authenticated in such manner as the Board may determine.

7 A proxy may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, and the authority under which the instrument is signed or a certified copy of the authority, are received in or at the places, fax numbers or electronic addresses specified at least:

1) 48 hours (or such other minimum period as may be prescribed by the Act from time to time); or

2) such lesser period specified for this purpose in the notice calling the meeting.

8 For the purposes of **rule 25(7)**:

1) the place may be OptomVicSA's registered office or other place specified in the notice and a fax number or electronic address may be the fax number or electronic address at OptomVicSA's registered office or the fax number or electronic address specified in the notice; and

2) the lesser period may be any time set by the Board before the time for holding the meeting or adjourned meeting.

9 The Board may waive all or any of the requirements of **rules 25(6), (7) & (8)** and in particular may, upon the production of such other evidence as the Board requires to prove the validity of the appointment of a proxy, accept:

1) an oral appointment of a proxy;

2) an appointment of a proxy which is not signed and executed in the manner required by **rule 25(6)**; and

3) the deposit, tabling or production of a copy, including a copy sent by facsimile or by electronic transfer, of an instrument appointing a proxy or of the power of attorney or other authority under which the instrument is signed.

10 A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of the revocation has been received by OptomVicSA by the time and at 1 of the places at which the instrument appointing the proxy is required to be received under **rules 25(7) & (8)**.

11 The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on any resolution, the proxy is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

12 If a Member has cast a direct vote on a matter and the Board puts that matter to a general meeting for a vote then if a Member who has already cast a direct vote or their proxy attends the general meeting they are not entitled to vote and must not vote on the matter at the general meeting. Their direct vote will be counted if a poll is taken on the matter.

13 The chair of a general meeting may require any Person acting as a proxy to establish to the satisfaction of the chair of the meeting that the Person is the Person nominated as proxy in the form of proxy lodged under this Constitution. If the Person is unable to establish their identity, they may be excluded from voting in which case **rule 25(4)(4)** applies unless the form of proxy indicates otherwise.

IV. BOARD

26. Number and nature of Directors

1 There must be not less than 3 (or such other minimum number as determined by the Act) and not more than 10 Directors.

2 Of the Director positions, subject to **rule 28(3)** up to 8 positions may be elected by the Members or appointed to fill casual vacancies in accordance with **rule**

30(1) and shall be designated Elected Directors and up to 2 positions may be appointed by the Board and shall be designated Appointed Directors.

3 Of the Elected Directors, all must be Voting Members.

4 Of the Elected Directors:

1) for at least 2 but not more than 5 their address in the Register must be in Victoria; and

2) for at least 1 but not more than 3 their address in the Register must be in South Australia.~~; provided that~~

~~3) from the AGM in 2024 the address of all 8 must simply be in the Register.~~

27. Term of Directors

1 Subject to **rule 36.b)**, the term for an Elected Director shall be up to 2 Years but no Elected Director shall hold office for more than 5consecutive terms.

2 Subject to **rule 27(4)**, the term for an Appointed Director shall be such time as the Board determines at the time of appointment up to 24 months. Any such appointment is subject to endorsement at the next AGM. Prior to the conclusion of the Appointed Director's first term the Board may determine:

1) to re-appoint the Appointed Director for a second term of up to 24 months subject to endorsement at the next AGM; or

2) not to re-appoint the Appointed Director; and

3) if no determination is made then the term of the Appointed Director ceases at the conclusion of the term.

3 Terms for Elected Directors shall commence at the conclusion of the AGM at which the Director was appointed and terminate at the conclusion of the AGM no later than the second AGM after which the Director was appointed.

4 The Board may appoint Appointed Directors where the terms for Appointed Directors shall commence on the date determined by the Board and terminate on the date determined by the Board that is up to but not exceeding 24 months from the date of appointment.

28. Source of Elected Directors

1 Elected Directors are elected by ballot by Members entitled to vote in conjunction with the AGM from Members who are nominated, subject to the limitations in **rules 26(4) & 28(2) & (3)**.

2 The location of an Elected Director is determined by the address of the Member in the Register.

3 Irrespective of the number of candidates for election as Elected Directors, the number of Elected Directors who may be on the Board at anytime is limited by where the Elected Directors are located in accordance with **rule 26(4).**

29. Eligibility of Directors

1 Subject to **rule 26**, Elected Directors shall be Voting Members.

2 Appointed Directors may be Members or other individuals.

3 Appointed Directors must have skills, experience, perspectives and/or capabilities that the Directors determine from time to time are important for the Board but which are not available to the Board from the Elected Directors or the Appointed Director, if any, at that time.

4 A Member who has served as an Elected Director for the maximum period in accordance with **rule 27(1)** shall be eligible for appointment as a Director after a lapse of 1 full term from when they last held office as an Elected Director.

5 A Member who has served as an Appointed Director shall be eligible to be appointed as an Elected Director. Any period served as an Appointed Director shall not be considered in determining limits in accordance with **rule 27(1)**.

30. Casual vacancies on the Board

1 If a casual vacancy in the position of an Elected Director occurs the Board may appoint an eligible Member to fill the vacancy:

1) If the casual vacancy occurs during the Election Cycle prior to the AGM at which the Elected Director whose departure gave rise to the casual vacancy would have retired by rotation, the casual vacancy shall not be filled but the normal process (see **rule 32**) for the appointment of the Elected Director for the next term will apply, subject to **rule 41(5)**.

2) An Elected Director appointed in accordance with **rule 30(1)** holds office until the end of the next AGM at which the Elected Director they have replaced would have ceased their term but if otherwise eligible, may stand in the Election Cycle for appointment at that AGM.

2 In relation to **rule 27(1)**, the period in **rule 30(1)(2)** to the end of that next AGM does not count in determining a term.

31. Rotation of Directors

1 Half of the Elected Directors shall retire each year and, if eligible and they wish to and they are nominated, each may seek re-appointment.

2 If the number of Elected Directors to retire is not a whole number, then the number that is half then rounded down to the next whole number must retire from office.

1) When the number of Elected Directors about to reach their term in accordance with **rule 27(1)** exceeds the number determined in **rule 31(2)** then the Elected Directors to retire are all the Elected Directors who reach their term at the conclusion of the next AGM.

3 Elected Directors to retire at an AGM are those who have been longest in office since their appointment, but, subject to **rule 31(2)(1)**, as between persons who became Elected Directors on the same day, the Elected Directors to retire shall (unless they otherwise agree among themselves) be determined by lot.

32. Election of Elected Directors

1 The Members entitled to vote may, in conjunction with the AGM at which an Elected Director retires or at which a vacancy in the position of Elected Director exists, prior to the AGM, by direct ballot determine an eligible Member to fill the vacated position by electing an individual to that office in accordance with procedures determined by the Board for the conduct of the direct ballot by post and/or by electronic or other direct means of voting.

2 Any eligible Voting Member who wishes to stand for appointment as a Director must be nominated by 2 Voting Members.

3 The nomination form shall be in writing, contain the signed consent of the Member to be a Director of OptomVicSA and be signed by the nominating Members. For this purpose, signatures can be contained in more than 1 document and can include electronically transmitted signatures.

4 At least 15 weeks before the AGM, the Board must determine the number of positions available per State, as limited by **rule 26(4)**, and the Secretary must give notice of any such positions and invite nominations from eligible Voting Members for election as Elected Directors.

5 Nominations for the position of Elected Director shall be lodged with the Secretary not earlier than 14 weeks and not later than 10 weeks before the date of the AGM.

6 A Member may submit with their nomination form a resume of not more than 200 words. Such resume:

1) may only include details in relation to:

i. the candidate's qualifications and relevant experience;

ii. the candidate's contribution to OptomVicSA, the optometry profession and optometry to date; and

iii. key issues the candidate sees as facing OptomVicSA;

2) must not endorse, disparage or otherwise refer to any other candidate or any other Director;

3) must not contain anything that is defamatory; and 4) must comply with any applicable Regulations.

7 The Secretary may in good faith edit any resume in such manner as they see fit to ensure compliance with **rule 32(6)**.

8 The information provided in the resume will be included as the only information from the candidate in ballot material made available by OptomVicSA to Voting Members not later than 8 weeks before the date of the AGM.

9 The Board shall determine the voting instructions and processes and, by lot, determine the order in which names of candidates appear on the election material.

10 The ballot will close at the close of business on the Business Day nominated in the election material. Such date will be not earlier than 5 weeks and not later than 4 weeks before the AGM.

11 Only valid ballots received at the Registered Office, or any other address including a web address indicated on the election material, by the close of the ballot as determined under **rule 32(10)** shall be counted.

12 The Board shall appoint a returning officer for the ballot, who may be the Secretary if the Secretary is not a Director or a candidate, and an individual who is not a Director or a candidate but who may be OptomVicSA's auditor as scrutineer of the ballot.

13 The successful candidates shall be determined by the number of valid votes cast in favour of the candidates. The eligible candidate with the highest number of votes will fill the first available position. Subject to **rule 26(4)**, the candidate with the next highest number of votes will fill the next available position until positions are filled. Subject to **rule 28(3)**, where positions cannot be filled they become casual vacancies to which **rule 30** applies.

14 Subject to **rule 28(3)**, if at the close of nominations there are the same number or fewer candidates for election than there are vacant Elected Director positions to be filled then all nominations shall be deemed to have been elected and no ballot shall be held. Any resulting vacancies in the position of Elected Directors shall be casual vacancies to which **rule 30(1)** applies.

15 All candidates will be notified of the results of the election process by not later than 3 weeks before the AGM.

16 The result of the election process shall be declared at the AGM provided that when candidates are deemed to have filled the position in accordance with **rule 32(14)** each appointment shall be subject to separate endorsement by the meeting.

33. Vacation of office

1 Subject to **rules 33(2) & (3)**, an individual vacates their office of Elected Director at the conclusion of the AGM at which they retire or their term of office expires subject to them being re-appointed a Director in accordance with this Constitution.

2 Any Director may resign by giving written notice to OptomVicSA through the Secretary of their intention to resign and the resignation will take effect on the date expressed in the notice provided that the date is not earlier than the date of delivery of the written notice to the Secretary and not later than the date of the next meeting of the Board or if no such date is expressed on the date the notice is received by the Secretary.

3 The office of a Director shall become vacant if the Director:

1) is subject to any of the circumstances prescribed by the Act;

2) becomes a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;

3) dies;

4) becomes bankrupt;

5) is convicted on indictment of an offence and the Board does not at the next meeting after that conviction resolve to confirm the Director's appointment to the office of Director;

6) is absent from 3 consecutive meetings of the Board, with or without the consent of the Board, unless at the next meeting of the Board, the Board resolves otherwise;

7) fails to disclose a material personal interest in breach of the law unless at the next meeting of the Board the Board resolves otherwise;

8) is an Elected Director and ceases to be a Voting Member;

9) is removed as a Director by at least a majority resolution of OptomVicSA in general meeting; or

10) becomes a paid employee of OptomVicSA.

34. No alternate Directors

1 Directors are not entitled to appoint alternate Directors.

35. Interested Directors

1 Subject to **rule 33(3), (7) & (10)**, a Director may hold any other office (other than auditor) in OptomVicSA or any related incorporated body in conjunction with their directorship and may be appointed to that office upon such terms as to tenure of office and otherwise as the Directors think fit, except that the Director may not receive remuneration in that other capacity.

2 Subject to **rule 33(3), (7) & (10)**, a Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by OptomVicSA or in which OptomVicSA may be interested as a member, shareholder or otherwise and is not accountable to OptomVicSA for any other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.

3 The Board may exercise the voting rights conferred by shares in any body corporate held or owned by OptomVicSA in such manner in all respects as the Board thinks fit including voting in favour of any resolution appointing a Director as a director or other officer of that body corporate or voting for the payment of remuneration to the officers of that body corporate and a Director may, if permitted by law, vote in favour of the exercise of those voting rights notwithstanding that they are, or may be about to be appointed, a director or other officer of that other body corporate and, as such, interested in the exercise of those voting rights.

4 A Director is not disqualified merely because of being a Director from contracting with OptomVicSA in any respect including, without limitation, any of the following:

1) selling any property to, or purchasing any property from, OptomVicSA;

2) guaranteeing the repayment of any money borrowed by OptomVicSA for a commission or profit; and

3) acting in any professional capacity, other than auditor, on behalf of OptomVicSA.

5 No contract made by a Director with OptomVicSA and no contract or arrangement entered into by or on behalf of OptomVicSA in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a Director or because of the fiduciary obligations arising out of that office.

6 No Director contracting with or being interested in any arrangement involving OptomVicSA is liable to account to OptomVicSA for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a Director or because of the fiduciary obligations arising out of that office.

7 Subject to **rule 35(8)**, a Director who is in any way interested in any contract or arrangement or proposed contract or arrangement may, despite that interest:

1) be counted, if they are present at the time of commencing to deal with the matter, in determining whether or not a quorum is present at any meeting of the Board that is considering that contract or arrangement or proposed contract or arrangement;

2) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement; and

3) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement that OptomVicSA may execute.

8 **Rule 35(7)** does not apply if, and to the extent that, it would be contrary to the Act including without limitation any provisions of the Act that may regulate matters concerning material personal interests of directors.

9 The Board may make Regulations requiring the disclosure of interests that a Director, and any Person deemed by the Board to be related to or associated with the Director, may have in any matter concerning OptomVicSA or a related body corporate and any Regulations made under this Constitution shall bind all Directors.

36. Payments to Directors

1 Having regard to **rule 9.c)** payments may be made to any Director for:

1) out-of-pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously agreed by the Board;

2) any service rendered to OptomVicSA by the Director in a professional or technical capacity, other than in the capacity as a Director, where the provision of the service has the prior approval of the Board and is not more than an amount which commercially would be reasonable for the service; and

3) the payment of fees for occupying the office of Director and carrying out the duties and obligations of that office, where the amounts payable, if any, do not exceed reasonable amounts previously approved by the Board, provided;

   i. the total amount that may be paid, if any, to all Directors combined for services as Directors under **rule 36(13)** is determined by the Members in general meeting if required by the Act;

37. Powers and duties of Directors

1 The Directors are responsible for the control, ultimate management and conduct of OptomVicSA. The Board may exercise to the exclusion of OptomVicSA in general meeting all the powers of a public company that are

not required by the Act or by this Constitution to be exercised by OptomVicSA in general meeting.

2 Without limiting the generality of **rule 37(1)**, the Board may exercise all the powers of OptomVicSA to sell, trade or dispose of assets, borrow or otherwise raise money, to charge any property or business of OptomVicSA and to issue debentures or give any other surety for a debt, liability or obligation of OptomVicSA or of any other Person.

3 Subject to the Act, the Board may determine how cheques, promissory notes, bankers' drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by or on behalf of OptomVicSA.

4 Subject to the Act, the Board may from time to time confer upon any Director for the time being or any other person or office or committee as they may select such of the powers exercisable under this Constitution by the Board as it may think fit from time to time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.

1) Powers conferred under **rule 37(4)** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any such powers with or without cause subject to any applicable contract between OptomVicSA and the relevant person and subject to any applicable industrial law.

5 A power of attorney may contain such provisions for the protection and convenience of the attorney, or persons dealing with the attorney, as the Board thinks fit.

6 The Board may from time to time may make, amend or repeal such Regulations as it determines are necessary and appropriate for the control, administration and management of OptomVicSA's operations, finances, interests, effects and property. Such Regulations may include a Code of Ethics. Any such Regulation:

1) must not be inconsistent with any provision in this Constitution; and

2) when in force is binding on all Members;

i. provided that if a Regulation directly impinges on how a Member may exercise a right as a Member under this Constitution then the Regulation does not come into force until that Regulation has been approved by an ordinary resolution at a general meeting of Members.

3) For consistency of the actions of optometrists who may be registered with AHPRA or be eligible to register with AHPRA, in adopting any Code of Ethics the Board must consider any consensus agreement on any such code of ethics with other members of Optometry Australia.

4) The Board must adopt such measures as it considers appropriate to bring to the notice of Members any relevant Regulation, amendment to a Regulation or repeal of a Regulation.

7 The Board may invite any Member or other individual to be present at or participate in a meeting of the Board. Any such involvement is under the direction of the chair of the meeting provided any such Member or other individual must leave the meeting on the direction of the Board or of the chair of the meeting.

38. Proceedings of Directors

1 The Directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

2 The planned contemporaneous linking together of Directors by Meeting Ttechnologyies, ~~such as telephone or other electronic means,~~ that are consented to by all Directors and that allow reasonable interaction between all participating Directors, constitutes a Board meeting provided the number of Directors participating is sufficient to constitute a quorum.

1) All provisions of this Constitution relating to meetings of the Directors apply, so far as they can and with such changes as are necessary, to meetings of Directors by such Meeting Ttechnologyies.

3 A Director participating in a meeting by Meeting Ttechnology in accordance with **rule 38(2)** is taken to be present in person at the meeting.

4 A meeting by means of Meeting Ttechnology is to be taken to be held at the place determined by the chair of the meeting provided that at least 1 of the Directors involved was at that place for the duration of the meeting.

39. Convening of a meeting of Directors

1 The President or any 2 or more Directors may, whenever they think fit, convene a meeting of the Directors.

2 A Secretary must, when requested by the President or on the requisition of any 2 or more Directors, convene a meeting of Directors.

40. Notice of a meeting of Directors

1 Subject to this Constitution, notice of a meeting of Directors must be given to each individual who is at the time of giving the notice a Director, other than a Director on leave of absence approved by the Board, or a Director outside of Australia who has notified the Secretary that they will not be contactable.

2 A notice of a meeting of Directors:

1) must specify the time and place of the meeting;

2) should were practicable state the nature of the business to be transacted at the meeting;

3) may be given immediately before the meeting;

4) may be given in person or by post or by telephone, fax, email or other electronic means; and

5) if technological connection of Directors is to be involved, identify how that connection is to be made.

3 Unless special circumstances apply, notice of a meeting of the Directors of at least 7 days should be given.

4 A Director may waive notice of any meeting of Directors by notifying the Secretary to that effect in person or by post or by telephone, fax, email or other electronic means.

5 The non-receipt of notice of a meeting of Directors by, or failure to give notice of a meeting to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting:

1) if the non-receipt or failure occurred by accident or error;

2) if before or after the meeting, the Director;

i. has waived or waives notice of that meeting under **rule 40(4)**; or

ii. has notified or notifies OptomVicSA of their agreement to that act, matter, thing or resolution personally or by post or by telephone, fax, email or other electronic means; or 3) the Director attended the meeting.

6 Attendance by a person at a meeting of Directors waives any objection that that person may have to a failure to give notice of the meeting.

41. Quorum at a meeting of Directors

1 No business may be transacted at a meeting of Directors unless a quorum of Directors is present during the time the business is dealt with.

2 A quorum at a meeting of Directors is the lowest number that is equivalent to a majority of the Directors entitled to attend the meeting.

3 A Director who is present and is disqualified from voting on a matter pursuant to **rule 35** shall be counted in the quorum despite that disqualification, even if they do not participate in that part of the meeting from which they are disqualified from voting.

4 If there is a vacancy in the office of a Director then, subject to **rule 41(5)** the remaining Director or Directors may act.

5 If the number of Directors in office at any time is less than the minimum number required by **rule 26**, the remaining Directors must act as soon as possible:

1) to increase the number of Directors to a number sufficient to satisfy the minimum number of Directors required under **rule 26**; or

2) to convene a general meeting of OptomVicSA for that purpose.

6 Until the actions required by **rule 41(5)** have happened, the Directors must only act if and to the extent that there is an emergency requiring them to act.

42. Office bearers

1 **President** - the Directors:

1) must elect an Elected Director to the office of President at least annually and in any event at the first meeting of the Board following an AGM; and

2) may, subject to **rule 42(1)(1)** determine the period for which that Director is to be President.

If an election to the office of President is tied more than once then the successful candidate must be determined by lot unless at least 1 candidate withdraws.

3 The President has such powers and duties as specified in this Constitution, as required by law and as determined by the Board.

4 **Vice President** - the Directors:

1) must elect at least 1 Elected Director to the office of Vice President at least annually and in any event at the first meeting of the Board following an AGM; and

2) may, subject to **rule 42(4)(1),** determine the period for which that Director is to be Vice President.

5 If an election to the office of Vice President is tied more than once then the successful candidate must be determined by lot unless at least 1 candidate withdraws.

6 The Vice President has such powers and duties as specified in this Constitution and as determined by the Board.

7 The President must if present within 15 minutes after the time appointed for the holding of the meeting, and if willing to act, preside as chair of each meeting of Directors.

8 If the President is not present or is not willing to act the Vice President must if present, and if willing to act, preside as chair of each meeting of Directors.

9 The Directors present must elect a Director to chair the meeting if at a meeting of Directors:

1) there is no President or Vice President;

2) the President or Vice President is not present within 15 minutes after the time appointed for the holding of the meeting; or

3) the President or Vice President is present but is not willing to act as chair of the meeting or of part of the meeting.

10 Despite anything in **rule 42(9)**, if the President or Vice President, as the case may be, later attends a meeting of Directors or is later willing to act then they must take the role of chair of the meeting.

11 **Treasurer** - the Directors:

1) must elect a Director to the office of Treasurer at least annually and in any event at the first meeting of the Board following an AGM; and

2) may, subject to **rule 42(11)(1)** determine the period for which that Director is to be Treasurer.

12 If an election to the office of Treasurer is tied more than once then the successful candidate must be determined by lot unless at least 1 candidate withdraws.

13 Without reducing any duties each Director has, at law, regarding the finances and accounts of OptomVicSA, the Treasurer has such powers and duties as specified in this Constitution and as determined by the Board.

43. Decisions of Directors

1 A meeting of Directors at which a quorum is present is a meeting of the Board and is competent to exercise all or any of the authorities, powers and discretions vested in or exercisable by the Directors under this Constitution.

2 Subject to **rules 12(3)(1) & 15(1)**, questions arising at a meeting of the Board are to be decided by at least a majority of votes cast by the Directors present and entitled to vote and any such decision is for all purposes a determination of the Directors.

3 In the case of an equality of votes upon any proposed resolution the chair of the meeting, in addition to their deliberative vote, does not have a casting vote.

44. Written resolutions

1 The Board may pass a resolution without a Board meeting if the Directors entitled to vote on the resolution sign a document containing a statement of the resolution set out in the document. For this purpose, signatures can be contained in more than 1 document and can include electronically transmitted signatures.

2 A resolution under **rule 44(1)** shall be deemed to have been passed if at least a majority of Directors who have responded have signed a document containing a statement that they are in favour of the resolution set out in the document provided that the number of Directors in favour is sufficient for a quorum at a Board meeting in accordance with **rule 41(2)**.

3 A resolution passed in accordance with **rule 44(2)** is taken to have been passed on the date that is the latest of:

1) the date 1 week after the resolution was distributed to Directors or such other date as may be specified in the document accompanying the proposed resolution; or

2) the date the resolution was assented to by the last Director who constituted the number of Directors in favour of the resolution equalling the number that is a quorum in favour.

4 For **rule 44(1)** a Director may signify assent to a document by signing the document or by notifying the Secretary of the Director's assent in person or by post or by telephone, fax, email or other electronic means.

5 Where a Director signifies assent to a document other than by signing the document, the Director must by way of confirmation sign the document at the next meeting of Directors attended by that Director, but failure to do so does not invalidate the resolution to which the document relates.

45. Committees of the Board

1 The Board may form and delegate any of its powers to a committee of the Board consisting of such Directors and/or other individuals as the Board thinks fit and may from time to time revoke such delegation, or, with just cause, change the membership of any committee of the Board in part of in full.

1) Subject to **rule 45(5)** all such committees of the Board must be chaired by a Director.

A committee of the Board must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised will be taken to be exercised by the Board.

3 Subject to **rule 45(2)**, the meetings and proceedings of any committee of the Board consisting of more than 1 individual will be governed, so far as they can and with such changes as are necessary, by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.

4 A minute of all the proceedings and decisions of every committee of the Board shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made, entered and signed. A copy of these committee minutes shall be tabled at the next practicable Board meeting.

5 If the Board establishes an audit-type committee of the Board it will consist of at least 3 individuals including at least 1 Director including the Treasurer if there is a Treasurer. Notwithstanding **rule 45(1)**, the chair may be, but need not be, the Treasurer or another Director.

1) The President shall not be eligible to be a member of such an audit-type committee of the Board.

6 Subject to **rule 45(5)** the Board may delegate any of its powers to 1 Director or an Officer.

1) A Director or Officer to whom any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Board.

46. Validity of acts

1 All acts done at any meeting of the Board or by any individual acting as a Director or by a committee of the Board attended by an individual acting as a Director shall be valid even if it is later discovered that there was a defect in the appointment of the individual as a Director or the individual being disqualified to be a Director or having vacated office or the Director or individual not being entitled to vote, provided the circumstance was not known by the Director or individual or committee of the Board when the act was done.

V. ADMINISTRATION

47. Secretary

1 The Board must appoint at least 1 Secretary who is eligible under the Act and who may, but need not, be a Director or a Member or an employee.

2 Subject to the Act, the Secretary holds office on such terms and conditions as to remuneration and otherwise as the Board determines. The Secretary may act in an honorary capacity.

3 The Board may remove any Secretary so appointed, subject to the terms of any contract and the law.

4 The Secretary has such powers and duties as specified in this Constitution, as required by the Act and as determined by the Board.

5 The Secretary is responsible for keeping the Register in which are recorded for each Member the name and address of the Member, the date on which the entry of the Member's name in the Register was made, any other information required by this Constitution, any other information required by law and the date on which the Member ceased to be a Member. The Secretary is responsible for managing access to the Register by Members and others subject to the restrictions on the use of the information in the Register in the Act.

48. Minutes

1 The Directors through the Secretary must ensure that minutes of proceedings and resolutions of general meetings of OptomVicSA and of meetings of the Directors (including committees of the Board) are recorded in books kept for that purpose within 1 month following the relevant meeting.

2 The Directors must ensure that minutes of resolutions passed by Directors and committees of the Board without a meeting are recorded in books kept for the purpose within 1 month after the resolution is passed.

3 The minutes of a meeting must be signed within a reasonable time after the meeting by the chair of the meeting or the chair of the following meeting.

4 The minutes of a passing of a resolution without a meeting must be signed by a Director within a reasonable time after the resolution is passed.

5 A minute that is recorded and signed in accordance with **rule 48** is evidence of the proceeding or resolution to which it relates unless the contrary is proved.

49. Inspection of records

1 The Directors must ensure that the minute books for general meetings of OptomVicSA are open for inspection by Members in accordance with the Act.

2 Subject to **rule 49(1)** and the Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the minute books, financial records and other documents of OptomVicSA or any of them, will be open to inspection by Members other than Directors.

3 Subject to **rule 49(2)**, a Member other than a Director does not have the right to inspect any books, records or documents of OptomVicSA except as provided by law or authorised by the Board.

4 Notwithstanding **rule 49(2)**, previous Directors, in addition to their rights of access under the Act, have a right to inspect minute books for meetings of the Directors and Committees of the Board for the period covering when they were Directors and at the request of the previous Director, the Board must enter into a deed of access with the previous Director to give force to this right of access.

5 The Board must ensure the safe custody of the minute books, financial records, instruments of title, securities and other documents of OptomVicSA.

50. Accounts and audit

1 The Board is responsible for ensuring that OptomVicSA prepares and deals with such accounts as are required under the Act and the Treasurer is responsible for ensuring the accounts come before the Board.

If required by the Act, the Directors must cause the financial records of OptomVicSA to be audited in accordance with the Act.

3 The financial year shall be the period of 12 months ending on 30 June, unless the Board determines a different end date.

51. Notices

1 A notice may be given by OptomVicSA to a Member:

1) by serving it on the Member personally;

2) by sending it by prepaid post to the Member's address as shown in the Register;

3) by sending it to the fax number, Electronic Contact Address or such other address the Member has supplied to OptomVicSA for the giving of notices;

4) by making a copy of it accessible electronically on a website of, or related to, OptomVicSA and advising the Member of its availability via the Electronic Contact Address; or

5) by publishing it in a regular newsletter publication of OptomVicSA to Members which publication may be printed or be electronic or internet based.

2 The fact that a Member has supplied a fax number or email or other electronic address for the giving of notices:

1) does not require OptomVicSA to give any notice to that person by fax or email or other electronic means; or

2) does not prevent OptomVicSA from giving notice to that person in the manner envisaged by **rule 51(1)(4)**.

3 A signature to any notice given by OptomVicSA to a Member under **rule 51(1)** may be in writing or a facsimile printed or affixed by some mechanical, electronic or other means.

4 Any Member who has not provided to OptomVicSA a place of address or Electronic Contact Address for inclusion in the Register as the place at or via which notices may be given to the Member shall not be entitled to receive any notice.

5 Subject to this Constitution, a notice may be given by OptomVicSA to any Director either by serving it personally at, or by sending it by prepaid post to, the Director's usual residential or business address, or by sending it to the fax number, Electronic Contact Address, or such other address as the Director has supplied to OptomVicSA for the giving of notices.

6 Subject to this Constitution, a notice may be given by a Member or a Director to OptomVicSA by serving it on OptomVicSA at, or by sending it by prepaid post to, the registered office or principal place of business if any of OptomVicSA or by sending it to the principal fax number or principal electronic address of OptomVicSA at its registered office or principal place of business, if any.

7 Where a Member does not have a registered address or Electronic Contact Address or where OptomVicSA has bona fide reason to believe that a Member is not known at the Member's registered address or Electronic Contact

Address, all future notices are deemed to be given to the Member if the notice is exhibited in the registered office, if any, for a period of 48 hours (and is

deemed to be duly served at the commencement of that period) unless and until the Member informs OptomVicSA of a registered address or Electronic Contact Address at which the Member is known.

8 A reference in this Constitution to a notice or other communication in writing includes a notice given by fax or electronic means or other modes of reproducing words in a visual form.

52. Time of service of notices

1 Where a notice is sent by post, service of the notice is to be taken to be effected if a prepaid envelope containing the notice is properly addressed and placed in the post and to have been effected 2 days after the date of its posting.

2 Where a notice is sent by fax or email or other electronic means, service of the notice is to be taken to be effected on the day after the date it is sent.

3 Where OptomVicSA gives a notice under **rule 51(1)(4)**, service of the notice is to be taken to be effected when the notice was first so made accessible.

4 When OptomVicSA gives notice under **rule 51(1)(5)**, service of the notice is to be taken to be effected on the day after the day on which the notice was first published.

53. Other communications and documents

1 **Rules 51 & 52** apply, so far as they can and with such changes as are necessary as determined by the Board, to the service of any communication or document.

54. Execution of documents

1 Without limiting the manner in which OptomVicSA may execute any approved contract, including as permitted under the Act, OptomVicSA may execute any agreement, deed or other document by:

1) 2 Directors signing the same; or

2) 1 Director and 1 Secretary signing the same.

2 Nothing in this Constitution requires OptomVicSA to execute any agreement, deed or other document under common seal for the same to be executed effectively by OptomVicSA.

3 If OptomVicSA has a common seal the Board must ensure that the common seal:

1) be kept securely by the Secretary; and

2) be used only under the authority of the Board.

4 Each instrument to which the seal is attached must be signed by a Director and countersigned by:

1) the Secretary;

2) another Director; or

3) another individual authorised by the Board.

55. Indemnity and insurance

1 Subject to **rule 55(2)**, OptomVicSA must indemnify each Officer (excluding receivers, administrators and liquidators) on a full indemnity basis and to the full extent permitted by law against all liabilities, including a loss, liability, cost, charge or expense, incurred by the Officer as an Officer, including without limitation:

1) a liability for negligence; and

2) a liability for reasonable legal costs.

2 The indemnity in **rule 55(1)** does not operate in relation to any liability, subject to **rule 55(3)**, which:

1) is a liability of OptomVicSA or any of its related bodies corporate;

2) is a liability for a pecuniary penalty order under the law or a compensation order under the law; or

3) arises out of conduct of the Officer which was not in good faith, or which involved wilful misconduct, gross negligence, reckless misbehaviour or fraud.

3 **Rule 55(2)** does not apply to a liability for legal costs.

4 The indemnity in **rule 55(1)** does not operate in relation to legal costs incurred by the Officer in defending any action for a liability if the costs are incurred:

1) in defending or resisting proceedings in which the Officer is found to have a liability referred to in **rule 55(2)**;

2) in defending or resisting criminal proceedings in which the Officer is found guilty;

3) in defending or resisting proceedings brought by regulators or a liquidator for a court order if the grounds for making the order are found by the court to have been established. This does not include costs incurred in responding to actions taken by regulators or a liquidator as part of an investigation before commencing proceedings for the court order; or

4) in connection with proceedings for relief to the Officer under the law where the court denies the relief.

5 If there is any appeal in relation to any proceedings referred to in **rule 55(4)**, it is the outcome of the final appeal that is relevant for the purposes of **rule 55(4)**.

6 The indemnity in **rule 55(1)**:

1) does not extend to and is not an indemnity against any amount in respect of which the indemnity would otherwise be illegal, void, unenforceable or not permitted by law; and

2) does not operate in respect of any liability of the Officer to the extent that that liability is covered by insurance.

7 The indemnity in **rule 55(1)**:

1) is enforceable without the Officer having first to incur any expense or make any payment; and

2) is a continuing obligation and is enforceable by the Officer even though the Officer may have ceased to be an Officer of OptomVicSA or its related bodies corporate.

8 For each Officer against any liability incurred by the Officer as an Officer including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal, and whatever their outcome OptomVicSA may, to the extent permitted by law:

1) purchase and maintain insurance; or 2) pay or agree to pay a premium for insurance.

9 Nothing in **rules 55(1) & (8)**:

1) affects any other right or remedy that a person to whom those rules apply may have in respect of any liability referred to in those rules; or

2) limits the capacity of OptomVicSA to indemnify or provide or pay for insurance for any person to whom those rules do not apply.

10 OptomVicSA may enter into a deed with any Officer to give effect to the rights conferred by **rule 55(9)**, or the exercise of a discretion under **rule 55(9)** on such terms as the Board thinks fit which are not inconsistent with **rule 55(9)**.

1 If an individual seeks to rely upon the indemnity in this **rule 55** they must:

1) at the first opportunity notify OptomVicSA of any claim that gives or may give rise to a liability of OptomVicSA to that individual under the indemnity;

2) permit OptomVicSA to conduct any negotiations and proceedings in respect of the claim in the name of the individual and to have the sole arrangement and control of such negotiations or proceedings and to settle or compromise the claim or make any admission or payment in relation thereto;

3) not make any admission without the prior written consent of OptomVicSA; and

2 promptly render all reasonable assurance and cooperation to OptomVicSA as requested by OptomVicSA.

56. Submission to jurisdiction

1 Each Member submits to the non-exclusive jurisdiction of the Supreme Court of Victoria and the Courts which may hear appeals from that Court.

57. Prohibition and enforceability

1 Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.

2 Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

58. Winding up

1 If any property remains following the winding up or dissolution of OptomVicSA after satisfaction of all its debts and liabilities, this property will not be paid to or distributed amongst Members, but will be given or transferred to another institution or body corporate that has:

1) objects which are similar to the Objects;

2) a constitution which requires its income and property to be applied to promoting its objects; and

3) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on OptomVicSA by **rule 92**.

2 The identity of the institution or incorporated body is to be determined by special resolution of the Members at or before the time of dissolution and failing such determination by the Directors and failing such determination by the court.

3 If OptomVicSA is endorsed or duly authorised in any way as a deductible gift recipient in accordance with the Tax Act and OptomVicSA maintains accounts or a gift fund pursuant to such endorsement or authorisation, OptomVicSA must on the earlier of the winding up of such accounts or gift fund or of OptomVicSA having its deductible gift recipient endorsement or authorisation revoked transfer any surplus assets of those accounts or gift fund to another institution or body corporate in Australia that has:

1) objects which are similar to the Objects;

2) a constitution which requires its income and property to be applied to promoting its objects;

3) a constitution which prohibits it from paying or distributing its income and property amongst its members to an extent at least as great as imposed on OptomVicSA by **rule 92**; and

4) which satisfies specific requirements of the Tax Act related to the management of a gift fund or of accounts used for the handling of deductible gift recipient funds.

4 The identity of the institution or body corporate under **rule 58(3)** is to be determined by the Members and failing such determination being made, by the Directors.

59. Changes to this Constitution

1 This Constitution may only be amended in accordance with the Act.

60. Associate Board Members

1 For the purpose of developing future Directors and succession planning for the Board the Board may appoint up to 2 Members eligible to be Elected Directors to the position of Associate Board Member.

2 Associate Board Members, when appointed, must be announced at the AGM and serve from the conclusion of the AGM for up to 2 Years as determined by the Board.

3 Of the Associate Board Members, 1 may be appointed with an address in the Register in Victoria and 1 may be appointed with an address in the Register in South Australia.

4 Before being appointed an Associate Board Member, the eligible Member must enter into a deed of understanding with OptomVicSA whereby they commit to acting in accordance with the duties of an Officer.

5 Associate Board Members are not Directors and must not act in the role of a Director.

6 Associate Board Members have a right to attend meetings of the Board and to access Board papers but may only address the Board on the invitation of the chair of the meeting and must leave the meeting if so directed by the chair of the meeting.

7 Associate Board Members will be entitled to reimbursement for direct out of pocket expenses related to attending Board meetings.

8 As determined by the Board, Associate Board Members may participate fully in committees of the Board.

~~*61. Transitional provisions*~~

~~1 **Membership** – on the date that this Constitution takes effect, existing members of Optometry Victoria Incorporated that become Members of OptomVicSA must be admitted to a class and category or membership consistent with their class and category of membership of Optometry Victoria Incorporated.~~

~~2 Members of Optometry South Australia Incorporated at the date this Constitution takes effect who become Members of OptomVicSA before 30~~

June 2020 must be admitted to a class and category or membership consistent with their class and category of membership of Optometry South Australia Incorporated.

3 **Directors** – the following arrangements apply from the date this Constitution takes effect:

1) **Initial Directors** of OptomVicSA shall be:

i. the members of the board of directors of Optometry Victoria Incorporated in office at the time that OptomVicSA is registered and whose names were included in the Form 202 to ASIC to register OptomVicSA and who have signed a consent to act all of whom shall remain in place until at least 30 June 2019 subject to **rule 33**; and;

ii. the 3 individuals nominated by the committee of Optometry South Australia Incorporated and whose names were included in the Form 202 to ASIC to register OptomVicSA, all of whom have signed a consent to act; provided that

iii. on 1 July 2019 if there are more than 5 Directors arising from **rule 60.31)i** then the number shall be reduced to 5 with the Directors to depart being determined amongst themselves and failing such determination, determined by lot; and

iv. subject to **rule 33;** all Directors in place from 1 July 2019 shall remain in place until the AGM in 2020 at which point the rotation process under this Constitution in accordance with **rule 31** shall commence; and

v. the counting of term limits in accordance with **rule 271** on those Directors remaining in place from 1 July 2019 shall commence from the next AGM at which the Director is elected or appointed.
2) **Initial office bearers** of OptomVicSA shall be:

i. the President, Vice President and Treasurer of Optometry Victoria Incorporated provided that at the first meeting of the Board after 1 July 2019 the Board must appoint a President, Vice President and Treasurer in accordance with this Constitution.

3) **Nature of Directors** – all initial Directors appointed in accordance with **rule 6031)i & 31)ii** shall be deemed Elected Directors.

4) **Number of Directors** – despite **rule 26** the number of Directors appointed initially shall be the number resulting from the application of **rule 6031).**

5) **Appointed Directors** – on the date that this Constitution takes effect, positions on the Board shall become available for 2 Appointed Directors should the Board resolve to appoint them.

6) ~~Immediately there are no Directors whose term limits are subject to **rule 603** this **rule 603** shall then cease to have a purpose and shall be removed from the Constitution and be replaced with the word 'deleted (date)'.~~

4 ~~**Secretary** - to meet the requirements of the Act, the Secretary, if not specified on the Form 202 to ASIC to register OptomVicSA, must be appointed by the Board within 1 month of when this Constitution takes effect.~~

END OF CONSTITUTION