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|  | **Name of Item**  Incorporation briefing | **Agenda Item**  (office use only) |
| **Paper for the Executive Committee 2018/6**  **28th November - Sydney** | **From:** Harry Rolf (21/11/2018)  **Name of Sponsor:** the Board | |
| **That the Executive Committee:**  **[1] Confirms the draft constitution contingent on a final review.**  **[2] Sets the date of the Special General Meeting to consider the question of CAUL’s incorporation to be the [insert date].**  **[3] Confirms that the business of the Special General Meeting is to consider the following Special Resolution:**  **That CAUL:**   1. **Adopts the new constitution;** 2. **Confirms the name of the association to be that described in the new constitution under section 1.1;** 3. **Confirms the objects of the association to be those described in the new constitution under section 1.3;** 4. **Appoints the Executive Officer Diane Costello to be the inaugural Public Officer;** 5. **Appoints the following people to positions on the Board as described under part 3 of the new constitution:**    1. **President:**        * **Margie Jantti, term ending September 30st 2019**    2. **Deputy President:**        * **Jill Benn, term ending September 30st 2020**    3. **Elected Directors:**       * **Roxanne Missingham, term ending September 30st 2019**       * **Constance Wiebrands, term ending September 30st 2020, holding the portfolio of Treasurer.**       * **Robert Gerrity, term ending September 30st 2019**    4. **Program Directors:**       * **Catherine Clark, term ending September 30st 2020**       * **Carmel O'Sullivan, term ending September 30st 2020**   **The Board shall be the inaugural committee for the purpose of incorporation, with members’ terms beginning from the date on which this resolution is passed and ending on the dates listed by their names.**   1. **Authorises the Public Officer to apply for the incorporation of CAUL and to do all things necessary to lodge the application with Access Canberra following the meeting at which this resolution is passed.**   **The Special Resolution must give members at least 21 days’ notice, with the notice accompanied by all documentation necessary to make an informed decision.** | | |
| **OVERVIEW**  I provided [a briefing for the Executive Committee](https://www.caul.edu.au/sites/default/files/documents/caul-planning/constitution2018drafting-questions.docx)[[1]](#footnote-1) in October which outlined feedback arising from consultation in September and the specific questions that needed to be considered in drafting the constitution. No further feedback on the constitution has been received since the AGM in September.  The three areas of feedback were:   1. Minor amendments; 2. the membership of CAUL; and 3. the objects of CAUL.   To address these questions I have prepared and included on the 2018/6 Executive Committee meeting agenda the following documents:   1. a [draft constitution](https://www.caul.edu.au/sites/default/files/documents/caul-doc/constitution2018draft-121018.docx) which addresses a series of amendments; 2. [advice on the membership of CAUL](https://www.caul.edu.au/sites/default/files/documents/caul-planning/membership2018briefing.docx); and 3. [advice on the objects of CAUL](https://www.caul.edu.au/sites/default/files/documents/caul-planning/objects2018briefing.docx).   The draft constitution includes amendments as follows:   * I have listed powers of the Board. * I have included a section on the auditor. * I have included the category of Associate Member for CONZUL, they cannot vote or be elected to the Board (but can be appointed). * I have made a series of minor updates for the sake of consistency including:   + Allowing the appointed Board members to be external persons.   + Definition of the appointment process for members of the board.   + Consistent use of regulations, policy and procedures. * I have not updated the objectives yet, I will wait until the Board has discussed the paper about the objects of CAUL. * Other minor amendments to wording and phrasing for the sake of consistency.   If the Executive Committee is satisfied with the draft constitution **(a)** and supports the resolutions in **(b)** and **(c)** then I propose the following recommendations:  **That the Executive Committee:**  **[1]** Confirms the draft constitution contingent on a final review.  **[2]** Sets the date of the Special General Meeting to consider the question of CAUL’s incorporation to be the [insert date].  **[3]** Confirms that the business of the Special General Meeting is to consider the following Special Resolution:  That CAUL:   1. Adopts the new constitution; 2. Confirms the name of the association to be that described in the new constitution under section 1.1; 3. Confirms the objects of the association to be those described in the new constitution under section 1.3; 4. Appoints the Executive Officer Diane Costello to be the inaugural Public Officer; 5. Appoints the following people to positions on the Board as described under part 3 of the new constitution:    1. President:       * Margie Jantti, term ending September 30st 2019    2. Deputy President:       * Jill Benn, term ending September 30st 2020    3. Elected Directors:       * Roxanne Missingham, term ending September 30st 2019       * Constance Wiebrands, term ending September 30st 2020, holding the portfolio of Treasurer.       * Robert Gerrity, term ending September 30st 2019    4. Program Directors:       * Catherine Clark, term ending September 30st 2020       * Carmel O'Sullivan, term ending September 30st 2020   The Board shall be the inaugural committee for the purpose of incorporation, with members’ terms beginning from the date on which this resolution is passed and ending on the dates listed by their names.   1. Authorises the Public Officer to apply for the incorporation of CAUL and to do all things necessary to lodge the application with Access Canberra following the meeting at which this resolution is passed.   The Special Resolution must give members at least 21 days’ notice, with the notice accompanied by all documentation necessary to make an informed decision.  **Background**  An [information page](https://www.caul.edu.au/news/caul-incorporation) (**login first**) has been setup to provide background information and a summary of process of incorporation proposed by the CPO is as follows:   1. **[**[**Draft constitution**](https://www.caul.edu.au/sites/default/files/documents/caul-doc/constitution2018draft-121018.docx)**[[2]](#footnote-2)]** The Communication and Policy Officer has prepared a draft constitution. The draft incorporates the existing constitution and capture current practice within CAUL and comply with requirements set out in the Associations Incorporation Act 1991[[3]](#footnote-3). 2. **[**[**Consultation process underway**](https://www.caul.edu.au/news/caul-incorporation)**[[4]](#footnote-4)]** The draft constitution was circulated for feedback from members ahead of the CAUL 2018/2 meeting in September. 3. **[September 20th ]** The draft constitution along with subsequent feedback were presented at the CAUL 2018/2 meeting for discussion. 4. **[September 21st ]** [A briefing paper and motion](https://www.caul.edu.au/sites/default/files/documents/meetings/caul20182constitution-briefing.docx)[[5]](#footnote-5) was put to the AGM recommending that members endorsed the proposed process of incorporation. [A presentation was also given to members[[6]](#footnote-6).](https://www.caul.edu.au/sites/default/files/documents/caul-planning/caul20182incorporation.pdf) 5. **[October]** Further consultation on the new constitution took place, with questions about CAUL’s membership and objects investigated. A final draft was prepared for the Executive Committee’s meeting on the 28th November. 6. **[Set the date for a Special General Meeting]** the meeting must consider the question of CAUL’s incorporation as a Special Resolution. 7. **[Lodge the paperwork]** Once the Special Resolution is passed the Public Officer can lodge an application for incorporation with Access Canberra. 8. **[Hold an inaugural AGM]** CAUL’s inaugural AGM must take place within 18 months of its incorporation.   **Incorporation requirements**  A number of documents and supporting information must be prepared by CAUL in order to incorporate. Access Canberra provides i[nstructions for incorporating an association](https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/2302), which includes:   1. the name of the association; 2. the objects and purpose of the organisation; 3. the rules (a constitution in CAUL's case) which describe how the organisation will operate; 4. the people responsible for the organisation – the applicant, and the public officer; and 5. nominate an inaugural committee (in CAUL's case the Executive Committee or Board).   In CAUL’s case ‘the association’ has a name and it is currently available (we cannot register a name that is already taken). CAUL’s objectives and purpose are set out in the new Constitution as are the rules for CAUL. Some rules will be written as policy or regulations separately from the constitution. The applicant and public officer shall be CAUL’s Executive Officer (for the time being) and the inaugural committee will be the Executive Committee (which is being renamed to the Board in the new Constitution).  [Page 10] Section 16 of the Act sets out the steps required for incorporation. In CAUL’s case a resolution will need to be passed by the members of CAUL which:   1. authorises a person who is at least 18 years of age and who resides in the ACT to apply for the incorporation of the association (this person will also be the Public Officer); 2. approves a statement of the objects (or purpose) of the association; 3. adopts rules of the association (a constitution), being rules that comply with Section 32; 4. appoints at least 3 members of the association to be the inaugural members of the committee of the incorporated association (the Board) if the application is successful.   Section 32 states that the constitution must provide for the matters stated in **schedule 1, column 2 as required by schedule 1, column 3**; provide for any prescribed matters; and be arranged numerically by subject matter.  The matters stated in schedule 1 (page 99 – 101) are:   |  |  |  | | --- | --- | --- | | **Column 1** | **Column 2** | **Column 3** | | 1 | Membership qualifications | State any qualification that is a prerequisite to being admitted to membership of the association | | 2 | Fees and subscriptions | State the amount of any entrance fee, subscription or other charge payable by members of the association | | 3 | Members’ liability | State the liability (if any) of members of the association to contribute towards payment of the debts and liabilities of the association or the costs, charges and expenses of winding-up the association | | 4 | Discipline | State—   1. the procedure (if any) for disciplining members; and 2. the way (if any) in which a member may appeal in respect of any disciplinary action taken against the member; and 3. the way (if any) in which a member may make representations to, or appear before, the association or its delegate, in relation to any charge made against the member | | 5 | Committee of the association | 1. state the name, constitution and powers of the committee of the association 2. make provision for the following matters in relation to the committee:    1. the election or appointment of members of the committee;    2. the term of office of members of the committee;    3. any grounds on which the office of a member of the committee is taken to have become vacant;    4. the manner of filling a casual vacancy in the office of a committee member;    5. the number of members that constitute a quorum at a meeting of the committee;    6. the procedure to be followed at a meeting of the committee | | 6 | General meetings | Make provision for the following matters in relation to  general meetings of the association:   1. the frequency with which general meetings of the association are to be convened; 2. the way in which general meetings and special general meetings of the association are to be convened; 3. the procedure to be followed at a general meeting of the association; 4. the number of members that constitutes a quorum at a general meeting of the association; 5. whether or not members of the association are entitled to vote by proxy at general meetings; 6. the time within which and the manner in which notices of general meetings and notices of motion are to be given, published or circulated | | 7 | Financial year | State the date when the financial year of the association  ends | | 8 | Funds | 1. state the source from which the funds of the association are to be or may be derived 2. state the way in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques on behalf of the association | | 9 | Common seal | Provide for the custody and use of the common seal of  the association | | 10 | Custody of books and documents | Make provision for the custody of any books,  documents or securities of the association | | 11 | Inspection of books and documents | Provide for the inspection by members of any books or  documents of the association |   Section 18 lists the documents and information required for incorporation (page 11 – 12).  (Subsection 1) An application for the incorporation of an association state—   1. the proposed name of the association or proposed association (being a name that complies with division 3.5); and 2. the name and address of the applicant; and 3. the name and address of the person who will be the inaugural public officer of the association; and 4. the name and address of each person who will be an inaugural member of the committee of the association; and 5. the address and hours of opening of the registered office (if any) of the association or proposed association in accordance with section 121 (1); and 6. the prescribed particulars (if any); and   (Subsection 1.b) must be accompanied by—   1. a copy of a statement of the objects of the association or proposed association approved under section 16 (b); and 2. [Not applicable] a notice (if any) given under section 37 (3) stating the name reserved for incorporation of the association or proposed association; and 3. a copy of the rules of the association (a constitution) adopted under section 16 (c) (ii); and 4. [Not applicable] a notice specifying particulars of any trust relating to the association or proposed association, with a copy of the deed or other instrument creating or embodying the trust; and 5. a statement by the applicant in accordance with subsection (2); and 6. the prescribed documents (if any).   (Subsection 2) A statement by the applicant for subsection (1) (b) (v) must certify that—   1. the applicant is authorised to apply for the incorporation of the association or proposed association under section 16 (a); and 2. the particulars stated in the application are correct; and 3. the copy of each document accompanying the application is a true copy of the document.   **Following incorporation CAUL must undertake the following:**   1. Section 43 deals with the ratification of contracts. Those contracts entered into by the unincorporated association (CAUL) must be ratified by the incorporated association in accordance with this section. 2. Sections 68 - 69 require that CAUL hold its first AGM no later than 18 months after incorporation, and an AGM annually no later than 5 months following the end of CAUL’s nominated financial year (CAUL goes by the calendar year).    1. [Page 52] Section 73 sets out a list of documents which must be presented to members at each AGM (and provided in advance of the meeting):       1. the audited statement of the association’s accounts for the most recently ended financial year of the association;       2. a copy of the auditor’s report to the association in relation to the association’s accounts for that financial year;       3. a report signed by 2 members of the committee stating—          1. the name of each member of the committee of the association during the most recently ended financial year of the association and, if different, at the date of the report; and          2. the principal activities of the association during the most recently ended financial year and any significant change in the nature of those activities that occurred during that financial year; and          3. the net profit or loss of the association for the most recently ended financial year. 3. Section 71 sets out the accounting record requirements that CAUL must comply with. 4. Section 72 sets out reporting requirements in the annual statement of accounts which must be made available to members. 5. Section 74 sets out the Audit of Accounts and Section 76 sets out the requirements for that auditor. It also describes requirements for who the auditor must be:    1. [Page 55] An incorporated association must appoint an auditor who is registered as an auditor under the Corporations Act, being a person who is not—       1. an officer of the association; or       2. a partner, employer or employee of an officer of the association; or       3. a partner or employee of an employee of an officer of the association. 6. Section 79 sets out requirements of the Annual Return which must be lodged with Access Canberra. | | |

1. <https://www.caul.edu.au/sites/default/files/documents/caul-planning/constitution2018drafting-questions.docx> [↑](#footnote-ref-1)
2. <https://www.caul.edu.au/sites/default/files/documents/caul-doc/constitution2018draft-121018.docx> [↑](#footnote-ref-2)
3. <http://www.legislation.act.gov.au/a/1991-46/default.asp> [↑](#footnote-ref-3)
4. <https://www.caul.edu.au/news/caul-incorporation> [↑](#footnote-ref-4)
5. <https://www.caul.edu.au/sites/default/files/documents/meetings/caul20182constitution-briefing.docx> [↑](#footnote-ref-5)
6. <https://www.caul.edu.au/sites/default/files/documents/caul-planning/caul20182incorporation.pdf> [↑](#footnote-ref-6)