

Constitution

Open Access Publishing Association

Version endorsed by OAPA Board, 5 October 2026

Draft for member consideration alongside the approved 2024 constitution. The revised Board structure, Director roles, and meeting arrangements are proposed for adoption by the current Association at the 2025–2026 AGM through amendments to its existing constitution, taking effect once applicable registration requirements are met. This Constitution will otherwise commence when the Association transfers to registration as a company limited by guarantee.

1 General

1.1 Name and legal form

1.1.1 The name of the company is Open Access Publishing Association Limited, referred to as OAPA or the Association. It is a public company limited by guarantee under the Corporations Act 2001 (Cth).

1.2 Interpretation

1.2.1 The “Corporations Act” means the Corporations Act 2001 (Cth).

1.2.2 The “ACNC Act” means the Australian Charities and Not-for-profits Commission Act 2012 (Cth).

1.2.3 A “member” means a person entered in the register of members.

1.2.4 The “Board” means the Directors collectively.

1.2.5 A “Director” includes the President, either Vice-President and the Treasurer.

1.2.6 The “Executive” comprises those four officeholders.

1.2.7 The “Secretary” is a company secretary appointed by the Board.

1.2.8 A “special resolution” requires at least 75% of the votes cast by members entitled to vote, following notice identifying it as a special resolution.

1.2.9 Written notices, consents, and signatures may be electronic where permitted by law.

1.2.10 Applicable legislation prevails over any inconsistent provision. Replaceable rules under the Corporations Act do not apply. References to legislation include amendments and replacements.

1.3 Registered office

1.3.1 The Board determines the Association’s registered office in Australia and must meet the applicable requirements for that office.

1.4 Charitable purpose and powers

1.4.1 The Association is established as a charity to advance education for the public benefit by establishing, maintaining and operating a public library of scholarly knowledge, known as OAPA Collections.

1.4.2 The library collects, organises, preserves, and makes available scholarly works, including journals, books, and other scholarly resources. It is established in Australia and its collection made available open access to the public in Australia. Access may also be provided internationally. Membership is not a condition of access to the open access collection.

1.4.3 Open access publishing, education and professional development, partnerships, technology, membership activities, and advisory services may only be undertaken to support the library and its collection. Any other purposes and activities must be minor and consistent with the Association's character as a public library.

1.4.4 The Association may exercise its legal powers only to advance its charitable purpose. These include employing people, making agreements, managing property, accepting gifts and grants, charging for appropriate services, borrowing and investing.

1.4.5 The Association must respect the editorial independence of its journals and other scholarly publications, subject to applicable law, publication ethics and its charitable purpose.

1.5 Income and property

1.5.1 Income and property must be applied solely to the Association's charitable purpose and must not be distributed to members because of their membership.

1.5.2 Reasonable payments made in good faith for goods or services, employment, properly incurred expenses, rent or interest are permitted where they advance the charitable purpose and comply with law.

1.5.3 Directors may receive reasonable remuneration for their duties as Directors and for separately agreed employment, operational or professional services. Arrangements must be approved before commitment by the Board or under a written Board delegation, subject to clause 3.11 and any member approval required by law.

1.5.4 The financial reports presented at each AGM must disclose, for each Director, their name, and remuneration paid or payable as part of their role for the preceding financial year. Members must have an opportunity to ask questions and raise concerns about these payments.

1.6 Limited liability and guarantee

1.6.1 Members' liability is limited. Each member undertakes to contribute up to \$10 to the Association's property if it is wound up while they are a member or within 12 months after they cease membership. The contribution may meet debts and liabilities incurred before membership ceased, winding-up costs and the adjustment of rights among contributories.

1.7 Deductible gifts and contributions

1.7.1 Gifts and deductible contributions must be used for the Association's charitable purpose and in accordance with binding donor restrictions. The Association must maintain records identifying their receipt, use and any remaining assets.

1.8 Winding up

1.8.1 If the Association is wound up, or if its endorsement as a deductible gift recipient is revoked, any surplus of the assets identified in clause 1.8.2 remaining after satisfaction of all liabilities must be transferred to one or more charities that are:

- (a) registered with the Australian Charities and Not-for-profits Commission;
- (b) endorsed as deductible gift recipients under Division 30 of the Income Tax Assessment Act 1997 (Cth); and
- (c) established for charitable purposes similar to those of the Association.

1.8.2 For the purposes of clause 1.8.1, the relevant assets are:

- (a) gifts of money or property received for the principal purpose of the Association;
- (b) deductible contributions received in relation to eligible fundraising events conducted for that purpose; and
- (c) money received because of those gifts or contributions.

1.8.3 The Board must determine the recipient or recipients of the assets referred to in clause 1.8.2.

1.8.4 If the Board does not determine a recipient or recipients under clause 1.8.3, the recipient or recipients shall be determined by a court or other authority having jurisdiction under applicable law.

1.8.5 Upon winding up of the Association, after payment of all debts, liabilities and winding-up costs, any remaining assets not dealt with under clauses 1.8.1 to 1.8.4 must be transferred to one or more charities that:

- (a) are registered with the Australian Charities and Not-for-profits Commission;
- (b) have charitable purposes similar to those of the Association; and
- (c) prohibit the distribution of income and assets to members.

1.8.6 No part of the surplus assets of the Association may be paid or distributed, directly or indirectly, to members or former members of the Association.

2 Members

2.1 Admission and rights

2.1.1 An individual may apply in writing to the Secretary or through an official application channel. The applicant must agree to membership, this Constitution, and the guarantee in clause 1.6.1.

2.1.2 Admission requires approval by the Board or its authorised delegate and payment or waiver of the subscription. The Secretary must notify the applicant and maintain the register required by law.

2.1.3 Each member has one vote at general meetings. Membership is personal and cannot be transferred. The Board may determine categories, subscriptions, and non-voting benefits, but cannot change constitutional voting rights by policy.

2.2 Sponsored memberships

2.2.1 Subscriptions may be paid by an individual, sponsored by another person or organisation, or included in a partnership or subscription agreement. The agreement may specify the number and duration of memberships and allow the partner to nominate individuals.

2.2.2 Each nominee must be admitted under clause 2.1 and holds membership and voting rights personally. Sponsorship gives the sponsor no authority to exercise the member's vote. Ending

sponsorship does not itself terminate existing membership; subsequent fees and termination are governed by this Constitution.

2.2.3 A subscription, donation, or partnership does not otherwise confer membership automatically.

2.3 Subscriptions and cessation

2.3.1 The Board sets subscription amounts and due dates and may waive fees. Membership ends on death, written resignation, expulsion under clause 2.4, or subscription arrears exceeding three months after at least 14 days' written notice to pay. Resignation takes effect on receipt or a later date specified by the member.

2.4 Discipline and appeal

2.4.1 The Board may suspend or expel a member for a serious breach of this Constitution or conduct materially detrimental to the Association's charitable purpose. It must give written grounds, at least 14 days to respond, and a fair opportunity to be heard by unconflicted decision-makers.

2.4.2 The decision and reasons must be given in writing. The member may appeal within 14 days to a general meeting, which must be held within 60 days after the appeal is received. The meeting must hear the member and determine the appeal by ordinary resolution. The member retains membership pending the appeal period and, if appealed, its determination.

2.4.3 Membership discipline must not be used to circumvent statutory protections concerning removal of a Director.

3 Governance

3.1 Board composition and eligibility

3.1.1 The Board consists of eleven Directors: one President, two Vice-Presidents, one Treasurer, and seven other Directors. The seven other Directors hold the title "Director", with portfolios allocated under clause 3.7.

3.1.2 Each Director must be an individual aged at least 18 years, be a member, consent in writing to act, hold a director identification number when required, and be eligible under applicable law. At least two Directors must ordinarily reside in Australia.

3.1.3 A majority of Directors must be Responsible Persons. For the purposes of this Constitution, a Responsible Person is an individual who, because of their public office, professional standing, qualifications, experience, or recognised position in the community, has a responsibility to the community as a whole and contributes to the public accountability and governance of the Association. The Board must take reasonable steps to maintain compliance with this requirement when recommending candidates for election and appointing Acting Directors.

3.1.4 A temporary failure to comply with clause 3.1.3 does not invalidate the acts, decisions or proceedings of the Board. The Board must take reasonable steps to restore compliance as soon as practicable.

3.2 Skills-based board

3.2.1 The Board must maintain a skills matrix reflecting the Association's current strategy, portfolio responsibilities and Board capability needs. The matrix and any candidate assessment process must be published with the call for nominations.

3.2.2 The Board may assess, or arrange assessment of, nominees and recommend eligible candidates for some or all vacant Director positions other than President and Treasurer. Recommendations and brief reasons must be provided to members before voting. Assessments and recommendations must comply with clause 3.11.

3.2.3 An otherwise eligible nominee remains entitled to stand whether or not recommended by the Board. Members determine appointments under clauses 3.3-3.5.

3.3 Board roles and nominations

3.3.1 The Board comprises the President, two Vice-Presidents, Treasurer, and seven other Directors. Members fill vacancies under clauses 3.3–3.5.

3.3.2 Nominations must be in writing, signed by the candidate, a proposing member and a seconding member, and received by the advertised deadline. All three must be members. Members must have at least seven days to nominate. Candidates must consent to serve and accept the portfolio obligation.

3.3.3 Nomination for President, Vice-President(s), or Treasurer also constitutes nomination for another Director position unless the candidate opts out in writing. A person may hold only one Board seat and cannot hold more than one Executive position.

3.3.4 The call for nominations must state the vacancies, available terms and election procedures.

3.4 Appointments and voting

3.4.1 Elections for vacant President, Vice-President(s), and Treasurer positions are determined separately, in that order, before appointments to other Director positions. If two Vice-Presidents roles are in the same election, the ballot shall be combined.

3.4.2 Before conducting a ballot for other Director vacancies, members at the AGM may appoint candidates recommended by the Board under clause 3.2 by ordinary resolution. The Board may recommend candidates for some or all vacancies, whether or not other nominations have been received. Each recommended candidate and their proposed term must be identified in the AGM papers.

3.4.3 Where two or more candidates are recommended for appointment together, members must first pass a resolution permitting the combined vote, with no votes cast against that procedural resolution.

3.4.4 If permission is refused or a recommended appointment is not approved, the affected vacancies must be filled by election at the same AGM. Any other remaining vacancies must also be put to election. All eligible, validly nominated candidates who have not already been elected or appointed may contest the relevant election, including unsuccessful President, Vice-President(s), or Treasurer candidates and Board-recommended candidates.

3.4.5 Contested elections use preferential ballots under fair procedures published by the Board with the call for nominations. Those procedures must specify the counting method and how

successful candidates are ranked for term allocation. Uncontested nominees may be appointed by ordinary resolution, subject to the combined-vote requirement above.

3.4.6 Candidates already elected or appointed are excluded from subsequent contests. If their names appear on ballots issued in advance, preferences for them are skipped and the next available preference for an eligible candidate is used. Votes do not transfer between separate contests.

3.5 Terms and vacancies

3.5.1 Directors serve three-year terms and are eligible for re-election without a limit on consecutive terms. A full term ends at the conclusion of the third AGM following election.

3.5.2 A vacancy arising during a term retains its original expiry. At the next AGM, members elect a person for the remaining balance of that term.

3.5.3 Where other Director vacancies carry different terms, the highest-ranked successful candidates receive the longest available terms, followed by shorter terms in descending order of election result: three years, then two years, then one year, as applicable.

3.5.4 For uncontested or group appointments, the Board may recommend a term allocation for members to approve as part of the appointment. Otherwise, allocation is determined by a random draw conducted by the meeting chair at the meeting.

3.5.5 Ties affecting an election or term allocation are resolved by the Chair's casting vote. The Chair may first require one further ballot among the tied candidates. If the tie remains, the Chair must exercise a casting vote or have the tie resolved immediately by a random draw. A Chair who is a candidate in the affected election must hand the chairing of that election to an eligible member who is not a candidate. All term allocations must be recorded in the minutes.

3.5.6 Unfilled positions remain vacancies. The Board should seek suitable acting appointments under the casual vacancy provisions of this Constitution until the next AGM.

3.6 Board responsibilities

3.6.1 The Board manages the Association and exercises all powers not reserved to members or another body by this Constitution or law. It approves strategy, budgets, policies, employment arrangements and delegations, oversees risks and performance, and ensures accountability to members and the public.

3.6.2 Directors must act with care and diligence, in good faith for the Association's charitable purpose, manage conflicts, safeguard its resources and meet their legal duties. The Board may delegate functions in writing but retains responsibility for oversight.

3.7 Portfolio leadership

3.7.1 Every Director must lead at least one portfolio and provide a brief report on their portfolio responsibilities for each scheduled Board meeting at which portfolio reports are required. Reports may be provided in writing or orally and recorded in the minutes.

3.7.2 The President determines portfolios, their scope and responsibilities, and their allocation among Directors, having regard to Directors' skills and the Board-approved strategy. The President may establish, combine, divide or reallocate portfolios without Board approval and must review allocations annually. The President's strategy responsibilities and the Treasurer's finance responsibilities satisfy the portfolio requirement for those offices.

3.7.3 The President must announce allocations to members following each AGM and communicate subsequent changes. Portfolio scopes, responsibilities, and allocations must be documented and recorded in the minutes of the next Board meeting. Portfolio allocations do not diminish Directors' collective governance duties or confer spending or contracting authority. Reallocating a portfolio does not itself remove a Director or change their term.

3.8 Executive

3.8.1 The President, two Vice-Presidents, and Treasurer constitute the Executive. It supports the Board, prepares recommendations and oversees implementation within written delegations. It may address urgent matters within those delegations and must report its decisions and actions to the next Board meeting.

3.8.2 The Executive cannot override Board resolutions or exercise powers reserved to members. It cannot amend this Constitution or appoint or remove Directors except as expressly permitted by this Constitution and law.

3.9 Company Secretary

3.9.1 The Board must appoint at least one Secretary aged at least 18 years who consents in writing. At least one Secretary must ordinarily reside in Australia. The Secretary supports statutory administration, notices, registers, minutes, and regulatory lodgements under Board oversight.

3.9.2 A Secretary may be one of the eleven Directors. Appointment as Secretary creates no additional Board or Executive position. A Secretary, who is not a Director, has no Board vote.

3.10 Committees and councils

3.10.1 The Board may establish committees and advisory boards, including members and non-members, under written terms of reference setting out their purpose, composition, appointments, powers and reporting. Advisory boards provide advice and cannot govern the Association, bind it, or incur expenditure. The Board may amend or dissolve these bodies, except the Editor-in-Chief Council.

3.10.2 The Association must maintain an Editor-in-Chief Council comprising the serving Editors-in-Chief of journals published by the Association. Each Council member has one vote on that Council.

3.10.3 The Council operates under terms of reference approved by the Board and may provide positions, advice and recommendations to the Board. The Board cannot dissolve it or approve terms inconsistent with this Constitution. The Council cannot bind the Association, incur expenditure, or commit it to any agreement or obligation.

3.11 Conflicts of interest

3.11.1 Directors must promptly disclose actual, potential, or perceived material conflicts of interest. Disclosures and their management must be recorded in the interests register and relevant minutes. A conflicted Director must not participate in deliberations or decisions, vote, or count towards the quorum on the affected matter, except as permitted by law.

3.11.2 The Association may engage Directors and other related parties to provide goods or services where this advances its charitable purpose and represents reasonable value. Related parties include Directors, senior management, their close family members, entities they control

or significantly influence, and other related parties recognised by applicable law or reporting requirements.

3.11.3 The engagement must be approved before commitment by the Board or an unconflicted person acting under a written Board delegation. Conflicted persons must not participate in selection or approval, vote, or count towards the quorum. Any member approval required by law must also be obtained.

3.11.4 The scope, price or payment basis, and reasons for selecting the provider must be recorded in writing. Terms must be reasonable and no more favourable to the related party than reasonable arm's-length terms. Direct engagement without competitive quotations is permitted where reasonable value can be demonstrated, having regard to expertise, availability, cost and urgency, subject to applicable law and funding requirements.

3.11.5 Related party transactions must be recorded and disclosed as required by law. Engagements approved under delegation must be reported to the next Board meeting.

3.12 Vacancies and removal

3.12.1 A Director's office becomes vacant on death, written resignation, expiry of their term without re-election, lawful removal, cessation of membership subject to statutory protections, or disqualification under applicable law.

3.12.2 Members may remove a Director in accordance with the Corporations Act, including its notice and hearing requirements. The Board cannot remove a Director by Board resolution where removal is reserved to members.

3.12.3 After three consecutive absences without approved leave, or three consecutive failures to submit a written report to the board on their portfolio, the Board must give the Director an opportunity to respond. It may agree corrective action, reallocate responsibilities, request resignation or propose removal to members.

3.12.4 The Board may appoint an eligible member as an Acting Director to fill a vacant Board seat until the conclusion of the next AGM. Acting Directors have the same powers, duties and portfolio obligations as other Directors. Acting service does not restart or extend the vacant seat's term.

3.12.5 An Acting President or Acting Treasurer must be selected from Directors already serving when the vacancy arose. Acting in either office does not alter that Director's underlying term or itself create an additional Board vacancy. The Board may separately fill any vacant Board seat.

3.12.6 Acting appointments end at the conclusion of the next AGM. A continuing Director whose acting Executive appointment ends retains their underlying Director position for its remaining term. Members fill vacancies at the AGM under clauses 3.3–3.5. Appointments must not increase the Board beyond eleven Directors.

4 Meetings

4.1 Board and Executive meetings

4.1.1 The Board must meet at least six times each financial year and approve a meeting schedule annually. The President or any three Directors may convene a Board meeting. The President or any two Executive members may convene an Executive meeting.

4.1.2 Reasonable notice of fourteen days and the proposed business must be given to everyone entitled to attend. Urgent or Executive meetings may be held on shorter notice with the agreement of everyone entitled to vote.

4.1.3 The Board quorum is six Directors and the Executive quorum is three Executive members, in each case entitled to vote on the matter. No decision may be made without a quorum. If vacancies reduce the Board below six, the remaining Directors may act only to fill vacancies or convene a general meeting.

4.1.4 Decisions require a majority of votes cast. Each member of the relevant body entitled to vote has one vote. A tied resolution fails.

4.2 Written resolutions

4.2.1 The Board or Executive may pass a resolution in writing, including electronically, if it is circulated to all members of that body. The resolution passes as soon as more than half of all members entitled to vote have given written agreement, provided the number agreeing also meets the usual quorum.

4.2.2 Every member must record their vote for, or against, an abstention, or a conflict preventing them from voting. The chair must ask any member who has not responded to declare their position at the next meeting of that body. Outstanding responses do not delay the resolution taking effect.

4.2.3 The resolution, the date and time it passed, and responses received must be recorded in the minute book within one month. Subsequent responses must be added promptly, and the resolution noted at the next meeting of that body.

4.3 Annual general meeting

4.3.1 An AGM must be held each calendar year within five months after the financial year ends, subject to applicable law. It receives reports on activities and finances, annual financial statements and any required review or audit, elects Directors when required, makes any auditor appointment reserved to members and considers notified business.

4.3.2 Members must have a reasonable opportunity to ask questions, raise concerns and discuss the Association's governance and finances.

4.4 Other general meetings

4.4.1 The Board may convene a general meeting and must do so if requested by the Executive or by members holding at least 10% of the votes. A member request must be signed, state the proposed business, and be given to the Secretary.

4.4.2 Within 21 days after receiving a valid member request, the Board must call a meeting to be held within two months after receipt. If it does not, requesting members holding more than half the requesting votes may convene the meeting within three months after the request. The

Association must meet their reasonable meeting expenses. Applicable statutory meeting rights are preserved.

4.5 Notice and participation

4.5.1 At least 21 days' notice of a general meeting, or any longer period required by law, must be given to all members, Directors and any auditor entitled to notice. The notice must state the date, time, participation arrangements and business, set out proposed special resolutions and identify them as such, and explain proxy rights and lodgement.

4.5.2 Any meeting may be held in person, entirely using technology, or by a combination, with a reasonable opportunity to participate, ask questions and vote. Electronic notices may be sent to the address supplied by the recipient, subject to legal requirements.

4.6 Chair

4.6.1 The President chairs meetings. If absent or unable to chair a matter, the Directors present select a Vice-President. If neither is available, those entitled to vote elect a chair from among themselves.

4.7 General meeting quorum and adjournment

4.7.1 The quorum is 15 members, or 10 if the Association has fewer than 50 members. If it has fewer than 15 members, all members constitute the quorum. Members attending personally or through meeting technology count towards the quorum; a proxy appointment alone does not.

4.7.2 If no quorum is present within one hour, the meeting must be adjourned to a date within 30 days. The same quorum applies. A quorate meeting may adjourn with members' consent. At least 21 days' notice is required for an adjournment of 14 days or more; for shorter adjournments the Secretary must promptly notify members of the arrangements. Only unfinished business may be considered.

4.8 Voting and proxies

4.8.1 Each member entitled to vote has one vote, subject to the Chair's casting vote below. Ordinary resolutions require more than half of the votes cast in favour; special resolutions require at least 75% and must satisfy applicable notice requirements. Abstentions are not votes cast.

4.8.2 A member may appoint a person, who need not be a member, as their proxy by signed or electronically authenticated notice received by the Secretary at least 48 hours before the meeting. The appointment must identify the member, proxy, and meeting. The proxy must follow any voting instructions. The proxy's authority is suspended while the appointing member participates personally in the meeting.

4.8.3 If votes on an ordinary resolution are equal, the Chair, if entitled to vote, may exercise a casting vote in addition to their ordinary vote, or call for one further vote. If that further vote is tied, the Chair may exercise a casting vote. An unresolved tie means the resolution is not carried. These tie-breaking provisions do not apply to special resolutions.

4.8.4 Voting may be by show of hands, electronic vote, or ballot as the chair determines, subject to any right to demand a poll. A poll must be held if demanded by the chair, at least five voting members or members holding at least 5% of the votes. On a poll, votes cast personally or by proxy are counted for each member represented.

4.9 Minutes and records

4.9.1 Minutes must record meetings, resolutions, material conflicts and their management. They must be entered within two months and signed by the chair of that meeting or the next meeting within a reasonable time. Records may be electronic and must be kept for at least seven years or longer where required by law.

4.9.2 Members may access the Constitution, general meeting minutes and other records to which they are entitled by law. Board access to records must be sufficient to discharge Directors' duties.

5 Financial management

5.1 Accounts and oversight

5.1.1 The Association must keep accurate records of its transactions, assets and liabilities, prepare required financial statements and review its financial position at every Board meeting. Its financial year is the accounting period recognised under applicable law; any change must comply with legal and regulatory requirements.

5.2 Banking and delegations

5.2.1 Money must be receipted and promptly deposited into an Association account with an authorised deposit-taking institution.

5.2.2 The President and Treasurer are authorised bank signatories by virtue of their offices, provided they ordinarily reside in Australia, hold a director identification number, and satisfy the bank's requirements. If either office is vacant or either officeholder does not meet these conditions, both Vice-Presidents are also authorised, subject to the same conditions.

5.2.3 The Board may appoint additional Directors as bank signatories and vary, suspend, or revoke any banking authority. An authority attached to an office ends when that person leaves the office, unless continued by the Board. The Secretary must promptly arrange the necessary bank documentation and updates.

5.2.4 The Board must approve written financial delegations, including spending limits, payment approvals, and card use. No person may approve their own payment or reimbursement. All banking authorities are subject to those delegations.

5.2.5 Expenditure outside a delegation requires approval by the body authorised to give it. Unauthorised expenditure must be reported promptly and recovery considered where appropriate.

5.3 Review and audit

5.3.1 An independent review or audit is required only where required by law, a binding funding agreement, or a resolution of members. This Constitution does not otherwise require an annual audit.

6 Amendments and commencement

6.1 Constitutional change

6.1.1 Members may amend or replace this Constitution only by special resolution, subject to law. Proposed changes must accompany the meeting notice. No amendment may authorise distributions inconsistent with the Association's charitable and not-for-profit character. The Secretary must make required notifications and lodgements.

6.2 Commencement and transition

6.2.1 This Constitution takes effect upon the registration of the Association as a public company limited by guarantee under the Corporations Act.

6.2.2 The persons identified in the transition arrangements approved by members and appointed in accordance with applicable law become the initial Directors and officeholders of the Association upon commencement of this Constitution.

6.2.3 Members of the Association immediately before commencement may be admitted as members of the Association in accordance with transition arrangements approved by members and any requirements applicable to registration as a public company limited by guarantee.

6.2.4 The transition arrangements may provide for the allocation of initial Director terms, staggered terms, officeholder appointments, and any other matters reasonably necessary to facilitate the commencement of this Constitution and the continuation of the Association's activities.

6.2.5 The Secretary must ensure that all registrations, consents, guarantees, records, notifications and lodgements required by law in connection with the commencement of this Constitution are completed.

6.2.6 Nothing in this clause affects the validity or enforceability of any lawful obligation, agreement, asset, liability or commitment of the Association existing immediately before commencement.