



2017

Constitution

The Property Education Foundation Incorporated

Signed Chairperson: _____ Date: _____

Table of Contents

| | | |
|-----|--|----|
| 1. | NAME | 5 |
| 2. | DEFINITIONS AND INTERPRETATION..... | 5 |
| | 2.1 Definitions..... | 5 |
| | 2.2 Interpretation | 6 |
| 3. | OBJECTS | 7 |
| 4. | POWERS OF THE FOUNDATION..... | 7 |
| 5. | PROPERTY AND INCOME..... | 8 |
| | 5.1 Members not to profit..... | 8 |
| | 5.2 Remuneration..... | 8 |
| 6. | MEMBERSHIP..... | 9 |
| | 6.1 Membership..... | 9 |
| | 6.2 Voting rights of Board Members, Full Members and Associate Members | 9 |
| | 6.3 Voting by proxy..... | 9 |
| | 6.4 Eligibility for Board Membership, Full Membership and Associate Membership...9 | |
| | 6.5 Procedure for application..... | 10 |
| | 6.6 Subscriptions of Members | 10 |
| 7. | RESIGNATION, SUSPENSION AND EXPULSION OF MEMBERS..... | 10 |
| | 7.1 Cessation of Membership..... | 10 |
| | 7.2 Resigning as a Member..... | 11 |
| | 7.3 Suspension and expulsion of Members | 11 |
| | 7.4 Decision of the Board | 11 |
| 8. | REGISTER OF MEMBERS..... | 11 |
| | 8.1 Maintaining a Register of Members | 11 |
| | 8.2 Inspection of the Register of Members..... | 12 |
| | 8.3 Copy of the Register of Members | 12 |
| | 8.4 When using the information in the Register of Members is prohibited..... | 12 |
| 9. | GENERAL MEETINGS | 12 |
| | 9.1 Annual General Meetings and Special General Meetings..... | 12 |
| | 9.2 Rights of Members convening Special General Meeting..... | 13 |
| | 9.3 Notice of General Meeting..... | 13 |
| | 9.4 Quorum | 13 |
| | 9.5 Chairperson..... | 14 |
| | 9.6 Voting at General Meetings | 14 |
| | 9.7 Annual General Meeting..... | 14 |
| | 9.8 Minutes of General Meetings..... | 15 |
| 10. | BOARD..... | 15 |
| | 10.1 Management of the Foundation..... | 15 |

| | | |
|------|---|----|
| 10.2 | Composition..... | 15 |
| 10.3 | Eligibility | 16 |
| 10.4 | Procedure for application..... | 16 |
| 10.5 | Term of appointment..... | 16 |
| 10.6 | Appointment of Officeholders..... | 17 |
| 10.7 | Term of appointment of Officeholders..... | 17 |
| 10.8 | Record of officeholders..... | 18 |
| 10.9 | Delegation of power..... | 18 |
| 11. | BOARD MEETINGS..... | 18 |
| 11.1 | Meetings..... | 18 |
| 11.2 | Notice of Board Meetings..... | 18 |
| 11.3 | Quorum | 18 |
| 11.4 | Chairperson..... | 19 |
| 11.5 | Voting at Board Meetings..... | 19 |
| 11.6 | Conflict of interest..... | 19 |
| 11.7 | Validity of acts of the Board..... | 19 |
| 11.8 | Minutes of Board Meetings..... | 19 |
| 11.9 | Resolutions..... | 20 |
| 12. | BOARD VACANCIES..... | 21 |
| 12.1 | Vacation of position | 21 |
| 12.2 | Board may act notwithstanding vacancy..... | 21 |
| 12.3 | Filling of vacant positions..... | 21 |
| 12.4 | Term of office..... | 21 |
| 12.5 | Returning the books of the Foundation..... | 21 |
| 13. | SUB-COMMITTEES..... | 22 |
| | 1 | |
| 13.1 | Appointment of Sub-Committees..... | 22 |
| 13.2 | Acts of Sub-Committee..... | 22 |
| 14. | DISPUTE RESOLUTION | 22 |
| 15. | INDEMNITY..... | 23 |
| 15.1 | Members bound by Constitution and decisions of Board..... | 23 |
| 15.2 | Board Members not liable..... | 23 |
| 15.3 | Indemnification of the Board Members..... | 23 |
| 16. | ACCOUNTS OF THE FOUNDATION..... | 23 |
| 17 | INSPECTION OF RECORDS AND DOCUMENTS OF THE FOUNDATION | 24 |
| 18 | NOTICES..... | 24 |
| 19.1 | Service of notices..... | 24 |
| 19. | WINDING UP OF THE FOUNDATION OR CANCELLATION OF INCORPORATION.... | 25 |
| 19.1 | Resolution | 25 |

| | | |
|------|---|----|
| 19.2 | Distribution of surplus property | 25 |
| 20. | CONSTITUTION OF THE FOUNDATION..... | 25 |
| 20.1 | Constitution of the Foundation..... | 25 |
| 20.2 | Alteration, repeal or replacement..... | 25 |
| 20.3 | Previous acts and appointments..... | 25 |
| 20.4 | Date of effect of alteration, repeal or amendment | 25 |

The Property Education Foundation Incorporated Constitution

1. NAME

The name of the Association is The Property Education Foundation Incorporated (**Foundation**).

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Constitution, unless the context otherwise requires:

ACNC Commissioner means the Commissioner of the Australian Charities and Not-for-Profits Commission. **Act** means the *Associations Incorporation Act 2015 (WA)*.

Application means a written application submitted to the Board, in such form as the Board from time to time directs, for:

- (a) Board Membership;
- (b) Full Membership;
- (c) Associate Membership; or
- (d) re-appointment to the Board.

Annual General Meeting means a meeting convened under rule 9.1(a).

Associate Member means a person who has submitted an Application for Associate Membership, and whose Application has been accepted by the Board, under rule 6.

Board means the Board of the Foundation established under rule 10.

Board Meeting means a meeting of the Board.

Board Member means a person who has submitted an Application for Board Membership and who has been appointed to the Board under rule 10.

Business Day means a day that is not a Saturday, Sunday or public holiday in Western Australia.

Chairperson means the Chairperson of the Foundation appointed under rule 10.6(a)(i).

Constitution means this constitution and any by-laws or regulations made under it.

Consumer Commissioner means the Commissioner for Consumer Protection.

Financial Year means each consecutive 12 month period commencing on 1 July and expiring on 30 June in the following calendar year.

Full Member means a person who has submitted an Application for Full Membership, and whose Application has been accepted by the Board, under rule 6.

General Meeting means a meeting of the Members for the purpose of conducting the business of the Foundation and includes an Annual General Meeting and a Special General Meeting.

ITAA97 means the *Income Tax Assessment Act 1997* (Cth).

Member means a Board Member, Full Member or Associate Member.

Objects means the objects of the Foundation as set out in rule 3.

Officeholder means the officeholders appointed in accordance with rule 10.6.

Proxy means a person appointed by a Member to exercise any rights held by that Member on his or her behalf at a General Meeting in accordance with rule 6.3.

Register of Members means the Register of Members referred to in rule 8.

Sub-Committee has the meaning given to that term in rule 13.1(a).

Special General Meeting means a General Meeting other than an Annual General Meeting.

Special Resolution means a resolution of the Foundation passed at a General Meeting by not less than 75% of the Board Members present and voting at the General Meeting, of which written notice has been provided in accordance with rule 9.3.

Vice-Chairperson means the Vice-Chairperson of the Foundation appointed under rule 10.6(a)(ii).

2.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the Foundation to its Members;
- (b) a reference to any legislation or provision, division or subdivision of any legislation includes any amendment to that legislation, provision, division or subdivision, any consolidation or replacement of that legislation, provision, division or subdivision and any subordinate legislation made under that legislation, provision, division or subdivision;
- (c) a reference to a person includes a reference to a company, trust, partnership, incorporated association, organisation and entity;
- (d) a reference to a Member present at a General Meeting or Board Meeting is a reference to a Member present in person, or through the use of technology (including by Skype or by telephone) at the General Meeting or Board Meeting;
- (e) a reference to writing and written includes printing, lithography, electronic documents and other ways of representing or reproducing words in a visible form;

- (f) the singular (including defined terms) includes the plural and the plural includes the singular;
- (g) the words “includes”, “including” and similar words, are not words of limitation and do not restrict the interpretation of a word or phrase in this Constitution;
- (h) a word importing any gender includes every other gender;
- (i) headings are used for convenience only and do not affect the interpretation of the Constitution;
- (j) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning; and
- (k) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period must end on the last day of the next succeeding calendar month.

3. OBJECTS

- (a) The Foundation is a charitable organisation established for the purpose of advancing education and to:
 - (i) promote and encourage the advancement of education through the provision of scholarships to tertiary students undertaking approved property courses;
 - (ii) support and collaborate with educational institutions to deliver and promote property education to students;
 - (iii) promote interaction between property students and the property industry;
 - (iv) develop and sponsor internship programs to induct students into the property industry and provide them with a practical skills and development;
 - (v) provide grants to, and promote and support young property professionals to attend further education;
 - (vi) attending school career days to promote a career in property, and to encourage property education among students; and
 - (vii) do all such things that may be conducive or ancillary to the attainment of the Objects.
- (b) The Foundation must operate solely for the purpose of promoting and advancing the Objects. However, the Foundation is not required to promote each of the Objects at the same time or in any particular order and, may, in the Board’s absolute discretion, determine the level and amount of promotion, funding or any other support that should be applied to any one or more specific Objects at any given time.

4. POWERS OF THE FOUNDATION

The Foundation has the powers conferred on it by the Act, including the power to:

- (a) gather, develop, disseminate and publish information related to the Objects;
- (b) acquire, hold, deal with, and dispose of any real or personal property;
- (c) open and operate bank accounts;
- (d) invest any money of the Foundation not immediately required in any security authorised by law for the investment of trust money;
- (e) borrow money upon such terms and conditions as the Board thinks fit;
- (f) act as trustees of trusts or funds which may be established for the benefit of the Foundation or the furtherance of the Objects;
- (g) give such security for the discharge of liabilities incurred by the Foundation as the Board thinks fit;
- (h) appoint agents to transact any business of the Foundation on its behalf;
- (i) enter into any other contract it considers necessary or desirable;
- (j) appoint, employ and dismiss any staff of the Foundation as required and on such terms and conditions as the Board sees fit; and
- (k) do all such other things as the Board deems to be necessary, incidental or conducive to the attainment of the Objects and the exercise of the above powers.

5. PROPERTY AND INCOME

5.1 Members not to profit

Subject to rule 5.2, the property and income of the Foundation must be applied solely towards the promotion of the Objects and no part of that property or income may be paid or otherwise distributed, directly or indirectly to Members except in good faith in the promotion of those Objects.

5.2 Remuneration

- (a) Rule 5.1 does not prevent the payment:
 - (i) in good faith of remuneration to any Member, officer, employee or agent of the Foundation or other person in return for services authorised by the Board and rendered to the Foundation;
 - (ii) of interest at a rate not exceeding the amount charged by the bank for the time being of the Foundation on overdraft accommodation of the same amount on any money lent by a Member to the Foundation;
 - (iii) of reasonable and proper rent for premises leased or let by a Member to the Foundation;
 - (iv) of out of pocket expenses incurred by an authorised Member or other authorised person on behalf of the Foundation; or

- (v) for indemnification of or payment of premiums on contracts of insurance for any Board Member to the extent permitted by law and this Constitution.
- (b) Any payment to be made to a Board Member under rule 5.2(a), other than for out-of-pocket expenses for travel and accommodation in connection with the performance of the Board Member's functions, must be authorised by resolution of the Board.

6. MEMBERSHIP

6.1 Membership

- (a) Membership of the Foundation shall consist of the Board Members, the Full Members and the Associate Members.
- (b) Any person appointed to the Board is deemed to be a Board Member for the duration of their term.

6.2 Voting rights of Board Members, Full Members and Associate Members

- (a) A Board Member has the right to attend and vote at a General Meeting.
- (b) A Full Member and an Associate Member has the right to attend and participate, but not vote at, a General Meeting.
- (c) A Full Member or an Associate Member, other than an individual, must nominate to the Board in writing, a person as their representative for the purpose of attending and participating at General Meetings.
- (d) A Full Member or an Associate Member who has nominated a representative under rule 6.2(c) may at any time revoke that appointment and appoint a new representative by providing notice in writing to the Board.

6.3 Voting by proxy

- (a) Any Member (Appointing Member) may appoint in writing another Member to be their proxy at any General Meeting in such form as determined by the Board from time to time.
- (b) An Appointing Member's proxy may attend and vote on behalf of the Appointing member at the General Meeting where voting rights apply (ref. 6.2[a]).
- (c) The Appointing Member's proxy may be undirected, or may direct that the proxy must vote in favour of, against, or abstain from voting in relation to, any resolution, if any voting rights apply (ref. 6.2[a]).
- (d) An appointment under this rule 6.3 can be repealed by the Appointing Member at any time.

6.4 Eligibility for Full Membership and Associate Membership

- (a) Any person interested in promoting the Objects and otherwise meeting the criteria set by the Board from time to time may apply to become a Full Member or an Associate Member.

- (b) Employees of the Foundation are eligible to become Full Members or Associate Members but are not eligible to become Board Members.
- (c) A person who satisfies the criteria under rule 6.5(a) will be admitted by the Board as a Member of the Foundation and must be entered as a Member into the Register of Members.

6.5 Procedure for application

- (a) A person who wishes to become a Full Member or an Associate Member must:
 - (i) submit an Application to become a Full Member or an Associate Member as applicable; and
 - (ii) pay the appropriate annual subscription, determined by the Board under rule 6.6(a).
- (b) The Chairperson must consider each Application and must decide whether to accept or reject the Application.
- (c) The Chairperson is not required to provide reasons as to why an Application was not accepted.

6.6 Subscriptions of Members

- (a) The Board may from time to time determine the amount of annual subscription (if any) to be paid by Members.
- (b) Each Member must pay to the nominee, annually on or before 1 July or such other date as determined by the Board from time to time, the amount of the subscription determined under rule 6.6(a).
- (c) A Member whose subscription is not paid within three months after the date fixed for its payment, ceases to be a Member on the expiry of that period, unless the Board decides otherwise.

7. RESIGNATION, SUSPENSION AND EXPULSION OF MEMBERS

7.1 Cessation of Membership

- (a) A Member shall cease to be a Member, if the Member:
 - (i) dies;
 - (ii) is permanently incapacitated by mental or physical disability;
 - (iii) resigns as a Member under rule 7.2;
 - (iv) ceases to be a Member under rule 6.6(c); or

- (v) is expelled from Membership of the Foundation under rule 7.4(a).
- (b) Cessation of Membership shall not prejudice the right of the Foundation to recover any annual subscription fee or other monies owing to the Foundation or any other rights which the Foundation may have against the Member, or their personal representative (in the case of the death of the Member).

7.2 Resigning as a Member

- (a) A Member may resign from Membership by giving written notice of their resignation to the Chairperson or Vice-Chairperson.
- (b) The Member's resignation will be effective at the time the Chairperson or Vice-Chairperson receives the notice of resignation.

7.3 Suspension and expulsion of Members

If the Board considers that a Member should be suspended or expelled from Membership because of:

- (a) the Member's failure to comply with this Constitution;
- (b) the Member's breach of any order or direction of the Board or any General Meeting;
or
- (c) the Member's conduct which is prejudicial or detrimental to the interests of the Foundation,

the Board shall give written notice to the Member concerned, specifying:

- (d) notice of the proposed suspension or expulsion;
- (e) the time, date and place of the Board Meeting at which the question of the suspension or expulsion will be considered; and
- (f) particulars of the Member's conduct which is the subject of the notice,

not less than 30 days prior to the date of such Board Meeting.

7.4 Decision of the Board

- (a) At the Board Meeting referred to in rule 7.3, the Board may, after having afforded the Member concerned a reasonable opportunity to be heard by, or to make written representations to the Board, suspend, expel or decline to suspend or expel that Member from Membership of the Foundation and shall forthwith communicate the decision in writing to the Member concerned.
- (b) The Member who is suspended or expelled from Membership under rule 7.4(a) ceases to be a Member 14 days after the date on which the decision to suspend or expel the Member is communicated to the Member under rule 7.4(a).
- (c) A Member who is suspended or expelled from Membership under rule 7.4(a) does not have a right of appeal, other than the Member's right under the Act to apply to the State Administrative Tribunal to have the dispute determined by that Tribunal.

8. REGISTER OF MEMBERS

8.1 Maintaining a Register of Members

- (a) The Foundation must maintain a Register of Members in accordance with the Act.
- (b) The Register of Members must include each Member's name and:
 - (i) residential address; or
 - (ii) postal address; or
 - (iii) email address; or
 - (iv) information, by means of which contact can be made with the Member.
- (c) The Register of Members must be kept on the premises of the Foundation at all times.

8.2 Inspection of the Register of Members

- (a) A Member may request to inspect the Register of Members.
- (b) The Foundation must make the Register of Members available for inspection upon such a request by a Member.
- (c) Subject to rules 8.3 and 8.4, a Member inspecting the Register of Members may make a copy of, or take an extract from the Register of Members but is not entitled to remove the Register of Members for that purpose.

8.3 Copy of the Register of Members

- (a) A Member may make a request in writing to the Board for a copy of the Register of Members.
- (b) The Board may require a Member who requests a copy of the Register of Members to provide a statutory declaration setting out the purpose of the request and declaring that the purpose is connected with the affairs of the Foundation.

8.4 When using the information in the Register of Members is prohibited

A Member must not use or disclose the information in the Register of Members:

- (a) to gain access to information that a Member has deliberately denied them;
- (b) to contact or send material to the Foundation or a Member for the purpose of advertising for political, religious, charitable or commercial purposes unless the use of the information is approved by the Board; or
- (c) for any other purpose, unless the purpose:
 - (i) is directly connected with the affairs of the Foundation; or
 - (ii) is related to the administration of the Act.

9. GENERAL MEETINGS

9.1 Annual General Meetings and Special General Meetings The

Board:

- (a) must, convene an Annual General Meeting of the Foundation within the period required by the Act, that is, in every calendar year within six months after the end of the Foundation's Financial Year or such longer period as may in a particular case be allowed by the Consumer Commissioner;
- (b) may, at any time convene a Special General Meeting of the Foundation; and
- (c) must, convene a Special General Meeting of the Foundation, for the purpose which shall be specified in the request, within 30 days of receiving a written request to do so signed by not less than 20% of the Members (Percentage), unless this Percentage is greater than the prescribed percentage under the Act, in which case the prescribed percentage under the Act will apply.

9.2 Rights of Members convening Special General Meeting

When a Special General Meeting is convened under rule 9.1(c):

- (a) the Board must:
 - (i) provide notice to all Members of the Special General Meeting in accordance with rule 9.3; or
 - (ii) ensure that the Members convening the Special General Meeting are supplied with the Register of Members in accordance with rule 8 for the purpose of convening the Special General Meeting; and
- (b) The Foundation shall pay the reasonable expenses of convening and holding the Special General Meeting.

9.3 Notice of General Meeting

A notice of every General Meeting shall:

- (a) be given to all Members at least 14 days prior to the date of the General Meeting, except in the case of a General Meeting at which a Special Resolution is to be considered, in which case at least 21 days' notice shall be given;
- (b) specify:
 - (i) in the case of a Full Member or Associate member, the Member's right to attend but not vote at the General Meeting; or
 - (ii) in the case of a Board Member, the Board Member's right to attend and vote at the General Meeting;
- (c) be delivered by hand, sent by prepaid post or sent by facsimile or electronic transmission to every Member in accordance with each Member's contact details appearing in the Register of Members in accordance with rule 8; and

- (d) state the time, date and place of the General Meeting and the particulars of the business to be transacted at the General Meeting, including (where applicable), the wording of any proposed Special Resolutions, and the order in which the business is to be transacted.

9.4 Quorum

- (a) A quorum of a General Meeting shall be a majority of the Board Members.
- (b) If a quorum is not obtained within 30 minutes of the time appointed for the General Meeting, the General Meeting shall be adjourned to a date and time as determined by the Board.
- (c) There shall not be transacted at any adjourned General Meeting any business other than the business left unfinished at or on the agenda of the General Meeting which was adjourned.
- (d) When a General Meeting is adjourned for a period of 30 days or more, the Board Member shall give notice under rule 9.3 of the adjourned General Meeting as if that General Meeting was a new General Meeting.

9.5 Chairperson

- (a) Subject to rule 9.5(b), at every General Meeting the Chairperson, or in the Chairperson's absence the Vice-Chairperson shall preside as chairperson of the General Meeting.
- (b) In the absence of both the Chairperson and Vice-Chairperson, such other Board Member as shall be elected by the remaining Board Members shall preside.
- (c) The relevant chairperson of the General Meeting may:
 - (i) with the consent of the General Meeting, adjourn any General Meeting from time to time and from place to place; and
 - (ii) impose reasonable time limits on the speakers on any motion.

9.6 Voting at General Meetings

- (a) Every Board Member present at a General Meeting shall have a deliberative vote.
- (b) For the avoidance of doubt, every Full Member and Associate Member present at a General Meeting may participate in all discussions at a General Meeting but has no right to vote.
- (c) Unless otherwise provided in this Constitution or the Act, any resolution at a General Meeting shall be carried by a simple majority of the Board Members present, and if there is an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.
- (d) At any General Meeting, a declaration by the Chairperson that a resolution has been carried and an entry to that effect in the minute book of the proceedings of the Foundation under rule 9.8, shall be conclusive evidence of the fact unless, during the General Meeting at which the resolution is considered, a poll is demanded in accordance with rule 9.6(e).

- (e) At a General Meeting, a poll may be demanded by the Chairperson or by three or more Board Members present and, if so demanded, shall be taken in such manner as the Chairperson directs.
- (f) If a poll is demanded and taken under rule 9.6(e), a declaration by the Chairperson of the result of the poll is evidence of the matter so declared

9.7 Annual General Meeting

Every Annual General Meeting shall consider the following business in the following order:

- (a) the confirmation and amendment (if necessary) of the minutes of the previous Annual General Meeting;
- (b) the disclosure of the nature and extent of all material personal interests required to be disclosed under rule 11.6(a) (if any);
- (c) the consideration of the financial accounts and reports of the Board;
- (d) any other business specified in the notice convening the Annual General Meeting; and
- (e) the appointment or removal of a reviewer or auditor of the Foundation in accordance with the Act (if applicable).

9.8 Minutes of General Meetings

- (a) The person nominated and authorised by the Board, shall cause proper minutes of all proceedings of every General Meeting to be entered into a minute book within 30 days after the holding of each such General Meeting.
- (b) The minutes referred to under rule 9.8(a) must contain:
 - (i) the names of all Members present;
 - (ii) details of any material personal interest disclosed by a Board Member at the General Meeting; and
 - (iii) all resolutions passed by the General Meeting.
- (c) The minutes created under rule 9.8(a) when signed by the Chairperson shall be, until the contrary is proved, evidence that:
 - (i) the General Meeting was duly convened and held;
 - (ii) all proceedings recorded as having taken place at the General Meeting did in fact take place; and
 - (ii) all appointments reported to have been made at the General Meeting have been validly made

10. BOARD

10.1 Management of the Foundation

- (a) The Board is vested with the management of the Foundation's affairs and the control of the funds and other property of the Foundation.
- (b) The Board may exercise all the powers of the Foundation except those which must, under this Constitution or the Act, be exercised by the Foundation at a General Meeting.
- (c) The Board must comply with any Board policies, governance rules and codes of conduct as developed by the Board from time to time.

10.2 Composition

- (a) The Board must consist of a minimum of six and a maximum of eleven people, having such appropriate experience and skills to assist the Foundation, as selected and appointed by the Board, from time to time in accordance with Board policy.
- (b) If at any time the Membership of the Foundation is less than six Board Members, the Board may act only for the purpose of increasing the number of Board Members to a number sufficient to meet the minimum requirements of the Act.

10.3 Eligibility

- (a) All persons constituting the Board must:
 - (i) be eligible to serve as a Board Member under the requirements of the Act;
 - (ii) not be an employee of the Foundation; and
 - (iii) not be disqualified from being a Board Member by the ACNC Commissioner.
- (b) Before being appointed to the Board, the Board may require that a person sign a statutory declaration stating that they meet all eligibility requirements set out in rule 10.3(a).
- (c) All Board Members should have, wherever possible, expertise or experience in relation to the governance of not-for-profit organisations.

10.4 Procedure for application

- (a) A person who wishes to become a Board Member, or seeks to be reappointed to the Board must:
 - (i) be proposed for Membership by a Board Member and seconded by another Board Member; and
 - (ii) submit an Application that contains such information as the Board may from time to time require, signed by:
 - (A) the Applicant; and
 - (B) the Members referred to in rule 10.4(a)(i).

- (b) The Board may accept or reject an Application submitted under rule 10.4(a)(ii) and is not required to give reasons for doing so.
- (c) A person who satisfies the criteria under rule 10.4(a)(i), and who submits an Application under rule 10.4(a)(ii), is appointed to the Board on the date their Application is accepted by the Board or such other date as determined by the Board.

10.5 Term of appointment

- (a) The term of appointment for all Board Members is two years from the date of appointment of each Board Member, or as otherwise determined by the Board.
- (b) Subject to rule 10.4(a) and this rule 10.5, a retiring Board Member is eligible to be re-appointed to the Board.
- (c) A Board Member seeking to be re-appointed to the Board must submit an Application under rule 10.4(a)(ii).
- (d) Subject to rule 10.5(e), a Board Member may not be appointed for more than nine consecutive years, but may be re-appointed three years after the date on which the Board Member's ninth consecutive year of appointment ends.
- (e) The Board may, by Special Resolution, permit a Board Member to be appointed for more than nine consecutive years.

10.6 Appointment of Officeholders

- (a) At the Board Meeting first occurring after each Annual General Meeting, the Board Members shall elect from among their number:
 - (i) a Chairperson;
 - (ii) a Vice-Chairperson; and
 - (iii) such other office bearers as they see fit.
- (b) No Board Member may hold more than one of the positions described in rule 10.6(a) at any one time.

10.7 Term of appointment of Officeholders

- (a) Subject to rule 12.4 and this rule 10.7, the term of appointment of each Officeholder is two years, commencing on the date of his or her appointment under rule 10.6(a) and expiring at the conclusion of the Board Meeting first occurring after the second Annual General Meeting after his or her appointment.
- (b) An Officeholder may resign from his or her position as Officeholder by giving written notice of his or her resignation to the Chairperson or Vice-Chairperson, such resignation to take effect at the time the Chairperson or Vice-Chairperson receives the notice of resignation.
- (c) Subject to rule 10.4, all Officeholders are eligible for re-election.
- (d) If an Officeholder resigns as an Officeholder under rule 10.7(b), or ceases to be a Board Member under rule 12.1, the relevant Officeholder position will be deemed vacant and rule 12.3(b) applies.

10.8 Record of officeholders

- (a) The Foundation must, in accordance with the Act, maintain a record of the persons who:
 - (i) are Board Members of the Foundation; and
 - (ii) are Officeholders of the Foundation.
- (b) The Foundation must, upon the request of a Member, make available the record kept under rule 10.8(a) for the inspection and copying by the Member in accordance with the Act

10.9 Delegation of power

- (a) Subject to rule 10.9(b), the Board may delegate such powers as it thinks fit in order to facilitate the day to day running of the Foundation to the officers or employees of the Foundation, or to any Sub-Committee appointed under rule 13.
- (b) The Board may not delegate this power of delegation, or any duties imposed on the Board under the Act.

11. BOARD MEETINGS

11.1 Meetings

- (a) The Board shall meet together to conduct the Foundation's business so often as the Chairperson, or in the Chairperson's absence, the Vice-Chairperson shall determine, provided that the Board shall meet at least four times each calendar year.
- (b) Subject to this Constitution, the Board Members present at a Board Meeting shall determine the procedure and order of business to be followed at a Board Meeting.

11.2 Notice of Board Meetings

- (a) The Chairperson or such other person nominated and authorised by the Board shall be responsible for providing notice of Board Meetings.
- (b) The nominated person referred to in rule 11.2(a) shall give all Board Members not less than seven days written notice of every Board Meeting, except where all of the Board Members unanimously consent to shorter notice being given.

11.3 Quorum

- (a) A quorum of a Board Meeting shall be a majority of the Board Members.
- (b) If a quorum is not obtained within 30 minutes of the time appointed for the Board Meeting, the Board Meeting shall lapse.
- (c) If the number of Board Members at any time is not sufficient to constitute a quorum at a Board Meeting, the remaining Board Members may act only for the purpose of increasing the number of Board Members to a number sufficient to constitute a quorum or to convene a General Meeting.

11.4 Chairperson

- (a) At every Board Meeting, the Chairperson, or in the Chairperson's absence, the Vice-Chairperson shall preside as chairperson of the Board Meeting.
- (b) In the absence of both the Chairperson and Vice-Chairperson, a Board Member elected by the Board Members present at the Board Meeting shall preside.

11.5 Voting at Board Meetings

- (a) Every Board Member present at a Board Meeting shall have a deliberative vote.
- (b) A question arising at a Board Meeting is to be decided by a majority of votes, but if there is an equality of votes, the Chairperson shall have a casting vote in addition to his or her deliberative vote.
- (c) Any resolution put forward at a Board Meeting shall be passed by a majority of the Board Members present at the Board Meeting, but if there is an equality of votes, the Chairperson shall have a casting vote in addition to the Chairperson's deliberative vote.

11.6 Conflict of interest

- (a) A Board Member who has any material personal interest in a matter being considered at a Board Meeting must:
 - (i) as soon as he or she becomes aware of that interest, disclose the nature and extent of his or her interest to the Board;
 - (ii) disclose the nature and extent of the interest at the next General Meeting of the Foundation; and
 - (iii) not be present while the matter is being considered at the Board Meeting or vote on the matter.
- (b) Rule 11.6(a) does not apply in respect of a material personal interest that:
 - (i) exists only because the Board Member is a member of a class of persons for whose benefit the Foundation is established; or
 - (ii) the Board Member has in common with all, or a substantial proportion of, the Members of the Foundation.

11.7 Validity of acts of the Board

All acts done at any Board Meeting, or by the Board, shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any Board Member or that any Board Member was disqualified, be valid as if such defect did not in fact exist or such Board Member was not disqualified, as the case may be.

11.8 Minutes of Board Meetings

- (a) Subject to rule 11.8(c), the nominated Officer shall cause proper minutes of all proceedings of every Board Meeting to be entered into a minute book within 30 days after the holding of each such Board Meeting.

- (b) The minutes referred to under rule 11.8(a) must contain:
 - (i) the names of all Board Members present and those whose apologies for non-attendance were accepted by the Board Meeting;
 - (ii) details of any material personal interest disclosed by a Board Member under rule 11.6(a)(i); and
 - (iii) all orders and resolutions made or passed by the Board at the Board Meeting.
- (c) If the nominated Officer is not present at the Board Meeting, the Board must nominate and authorise a person to be responsible for complying with the requirements set out in rule 11.8(a) in relation to that particular Board Meeting.
- (d) The minutes created under rule 11.8(a) when signed by the chairperson of the Board Meeting shall be, until the contrary is proved, evidence that:
 - (i) the Board Meeting was duly convened and held;
 - (ii) all proceedings recorded as having taken place at the Board Meeting did in fact take place; and
 - (iii) all appointments reported to have been made at the Board Meeting have been validly made.

11.9 Resolutions

- (a) Subject to rules 11.9(b) and 11.9(c), the Board may pass a circular resolution without a Board Meeting being held.
- (b) The Board may only pass circular resolutions in relation to procedural, administrative and non-controversial matters, including:
 - (i) administrative matters where a decision is required on a monthly basis and the Board does not meet monthly;
 - (ii) matters that have had prior Board discussions in Board Meetings and do not require further discussion; and
 - (iii) matters that cannot be deferred to the next Board Meeting.
- (c) The Board must not pass a circular resolution in relation to any of the following matters:
 - (i) the removal of an auditor;
 - (ii) the appointment or removal a Board Member; and
 - (iii) a matter that must be dealt with by Special Resolution.
- (d) A circular resolution is passed if at least two thirds of the Board Members entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in rule 11.9(e).
- (e) Each Board Member may sign:
 - (i) a single document setting out the resolution and containing a statement that they agree to the resolution; or
 - (ii) separate copies of that document, provided that the wording of the resolution is the same in each copy.

- (f) The Foundation may send a circular resolution by electronic means to the Board Members and the Board Members may agree to the resolution by sending an electronic reply to that effect, including the text of the resolution in their reply.

12. BOARD VACANCIES

12.1 Vacation of position

The position of any Board Member shall be vacated if the holder of that position:

- (a) ceases to be a Member under rule 7.1(a);
- (b) is not eligible to be a Board Member under the Act or becomes disqualified from being a Board Member by the ACNC Commissioner;
- (c) resigns by notice in writing to the Chairperson or Vice-Chairperson;
- (d) is convicted of an offence under the Act; or
- (e) is absent for more than:
 - (i) three consecutive Board Meetings (unless such absence is approved by the Board); or
 - (ii) three Board Meetings in the same Financial Year, of which he or she has received notice, without tendering an apology to the person presiding at each of those Board Meetings.

12.2 Board may act notwithstanding vacancy

The Board may act notwithstanding a vacancy occurring in any position on the Board.

12.3 Filling of vacant positions

- (a) The Board may appoint any person who is eligible under rule 10.3(a) to fill a position on the Board that has become vacant under rule 12.1.
- (b) The Board may appoint a Board Member to fill an Officeholder position that has become vacant under rule 10.7(d).

12.4 Terms of office

A person appointed to fill a vacancy under this rule 12 shall be deemed to be appointed as a Board Member or Officeholder (as applicable) on the date of his or her appointment, and shall hold office for two years for the remainder of the term of the vacancy that they are filling.

12.5 Returning the books of the Foundation

Within 14 days of ceasing to be a Board Member, the outgoing Board Member must transfer all relevant documents, records and assets of the Foundation in their possession, custody or control (if any) to the Chairperson, or other Board Member nominated and authorised by the Board from time to time.

13. SUB-COMMITTEES

13.1 Appointment of Sub-Committees

- (a) To assist the Board to manage and transact the affairs of the Foundation, the Board may from time to time appoint such sub-committees as it sees fit (Sub-Committee).
- (b) A Sub-Committee may consist of the number of people, whether or not Members, that the Board considers appropriate.
- (c) All Sub-Committees shall be under the exclusive control and direction of the Board.
- (d) The Chairperson, or his or her appointed representative, shall sit ex-officio on all Sub-Committees.
- (e) All meetings and proceedings of Sub-Committees must be conducted in accordance with the rules of this Constitution, unless the Board determines otherwise.

13.2 Acts of Sub-Committee

Each Sub-Committee:

- (a) shall act only for the particular purpose or purposes for which it is appointed;
- (b) shall only be a recommendatory and reporting body to the Board; and
- (c) shall not make or be empowered to make any decisions that are binding on the Board unless specifically authorised to do so by the Board.

14. DISPUTE RESOLUTION

- (a) The dispute resolution procedure set out in this rule 14 applies to disputes between:
 - (i) a Member and another Member; or
 - (ii) a Member and the Foundation.
- (b) The parties to the dispute must meet and discuss the matter in dispute, and, if possible, resolve the dispute within 14 days after the dispute comes to the attention of all of the parties.
- (c) If the parties are unable to resolve the dispute at the meeting, or if a party fails to attend that meeting, then the parties must, within ten days, hold a meeting in the presence of a registered mediator.
- (d) The parties to the dispute must, in good faith, attempt to settle the dispute by mediation.
- (e) The mediator, in conducting the mediation, must:
 - (i) give the parties to the mediation process every opportunity to be heard;
 - (ii) allow due consideration by all parties of any written statement submitted by any party; and
 - (iii) ensure that natural justice is accorded to the parties to the dispute throughout the mediation process.

- (f) The mediator must not determine the dispute.
- (g) The mediation must be confidential and without prejudice.
- (h) If the mediation process does not result in the dispute being resolved, the parties may seek to resolve the dispute in accordance with the Act or otherwise at law.

15. INDEMNITY

15.1 Members bound by Constitution and decisions of Board

- (a) Every Member agrees to comply with this Constitution.
- (b) Every Member shall be bound by the decisions of the Board.

15.2 Board Members not liable

No Board Member shall be liable for the acts of any other Board Member, or for any loss or damage or expense suffered or incurred by the Foundation, unless the same is caused by the Board Member's own wilful act, wilful neglect or wilful default.

15.3 Indemnification of the Board Members

Each Board Member shall be indemnified out of the funds of the Foundation against any losses, costs or expenses incurred by the Board Member in the discharge of the Board Member's duties, except where such losses, costs and expenses are incurred by the Board Member's own wilful act, wilful neglect or wilful default.

16. ACCOUNTS OF THE FOUNDATION

The Board shall be responsible for engaging or otherwise authorising one or more appropriately qualified persons to:

- (a) issue receipts in relation to all moneys paid to or received by or on behalf of the Foundation, and must issue such receipts in the name of the Foundation;
- (b) arrange for the payment of all moneys referred to in rule 16(a) into such account or accounts of the Foundation as the Board may from time to time direct;
- (c) make payments, from the funds of the Foundation with the authority of a General Meeting or the Board whenever necessary, as determined by the Board from time to time;
- (d) comply on behalf of the Foundation with the financial reporting requirements of the Act, including by:
 - (i) ensuring that the requirements imposed on the Foundation under Part 5 of the Act relating to financial statements and financial reporting are met; and
 - (ii) presenting to Members at each Annual General Meeting accounts of the Foundation showing the financial position of the Foundation at the end of the immediately preceding Financial Year;

- (e) submit a balance sheet, financial statement, or other report to the Board whenever directed to do so by the Chairperson;
- (f) have custody of all securities, books and documents of a financial nature, and accounting records of the Foundation (unless the Members resolve otherwise at a General Meeting); and
- (g) perform all other duties as are reasonably imposed on those persons by the Board.

17. INSPECTION OF RECORDS AND DOCUMENTS OF THE FOUNDATION

- (a) All records, documents, books of accounts and securities of the Foundation shall be kept on the premises of the Foundation at all times.
- (b) In accordance with the requirements of the Act, a Member may inspect the:
 - (i) Constitution;
 - (ii) Register of Members in accordance with rule 8.2;
 - (iii) record of officeholders in accordance with rule 10.8(b); and
 - (iv) any other records of the Foundation (subject to any laws relating to legal professional privilege, privacy and confidentiality).
- (c) For the avoidance of doubt staff personal files will not be available for inspection by any Member without the written permission of the staff member to whom the files relate, or unless required by law.

18. NOTICES

18.1 Service of notices

- (a) A notice under this Constitution shall be deemed to be properly served if the notice is addressed and delivered to the Member or person in person, by pre-paid post or by electronic means as per the details contained in the Register of Members.
- (b) The non-receipt of, or the omission to send to any Member, any notice or other document required to be sent to a Member under this Constitution shall not invalidate any General Meeting or Board Meeting.

18.2 Time for service of notice

A notice is deemed to have been received by a Member or person if:

- (a) personally delivered, on the day of delivery;
- (b) served by pre-paid post, on the day following that upon which it is posted; or
- (c) sent electronically, on the date that the electronic communication was sent,

but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm, it is taken to be received at 9.00am on the next Business Day.

19. WINDING UP OF THE FOUNDATION OR CANCELLATION OF INCORPORATION

19.1 Resolution

The Foundation may, by Special Resolution, resolve that its incorporation under the Act be cancelled, or that it be voluntarily wound up.

19.2 Distribution of surplus property

- (a) If, on the cancellation of the incorporation or the winding up of the Foundation, there remains any property of the Foundation after satisfaction of all debts and liabilities of the Foundation, that property shall be distributed to an association of the type set out in section 24 of the Act, that has similar Objects to the Objects in rule 3 of this Constitution.
- (b) The identity of the association referred to in rule 20.2(a) shall be determined by Special Resolution of the Foundation.

20. CONSTITUTION OF THE FOUNDATION

20.1 Constitution of the Foundation

- (a) The Foundation must provide, free of charge, access to an electronic copy of the Constitution in force, at the time Membership commences, to each person who becomes a Member, on the day that their Membership commences.
- (b) The Foundation must keep a current copy of the Constitution.

20.2 Alteration, repeal or replacement

- (a) This Constitution may be altered or repealed or a new constitution may be made by a Special Resolution passed at any General Meeting, and otherwise in accordance with the Act.
- (b) Within 28 days of the passing of the Special Resolution under rule 21.2(a), the Foundation must notify:
 - (i) the ACNC Commissioner in accordance with the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)*; and
 - (ii) the Consumer Commissioner in accordance with the Act.

20.3 Previous acts and appointments

All previous acts and appointments that were legally and validly made under this Constitution prior to its amendment or repeal or under the former Constitution, shall remain valid.

20.4 Date of effect of alteration, repeal or amendment

Any amendment or repeal of this Constitution or any new constitution shall only have force or effect as set out under the Act.