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# ENDEAVOUR FOUNDATION

## CONSTITUTION

Date of Inception: 30 November 2001



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**TABLE OF CONTENTS**

<b>INTRODUCTION</b> .....	<b>5</b>
1. Replaceable Rules Excluded.....	5
2. Definitions and Interpretation .....	5
3. Objects.....	7
4. Powers .....	7
5. Application of Income and Property .....	7
6. Limited Liability.....	8
7. Guarantee .....	8
8. Structure.....	8
<b>MEMBERSHIP</b> .....	<b>9</b>
9. Organisation of Membership.....	9
10. Application for Ordinary Membership and Life Membership.....	9
11. Form of Application .....	10
12. Admission to Membership .....	10
13. Notification by Members.....	10
14. Not Used .....	11
15. Honorary Life Membership.....	11
16. Register of Members.....	11
<b>APPLICATION FEE AND MEMBERSHIP FEE</b> .....	<b>11</b>
17. Application Fee .....	11
18. Membership Fee.....	12
19. Unpaid Membership Fees.....	12
<b>CESSATION OF MEMBERSHIP</b> .....	<b>12</b>
20. Resignation .....	12
21. Cessation of Membership.....	12
22. Expulsion of Members .....	13
23. Effect of Cessation of Membership.....	13
<b>ORGANISATION</b> .....	<b>13</b>
24. Endeavour Council .....	13
25. Area Committees.....	14
26. Election of Area Committees.....	15
26A Casual Vacancies, Additional Area Committee Members and Insufficient Area Committee Members .....	16

---

<b>DIRECTORS .....</b>	<b>16</b>
27. <b>Composition of the Board .....</b>	<b>16</b>
28. <b>Tenure of the Directors.....</b>	<b>16</b>
29. <b>Election of Elected Directors.....</b>	<b>17</b>
30. <b>Office Bearers .....</b>	<b>18</b>
<b>APPOINTMENT OF DIRECTORS BETWEEN ANNUAL GENERAL MEETINGS.....</b>	<b>18</b>
31. <b>Casual Vacancies, Additional Directors and Insufficient Directors.....</b>	<b>18</b>
<b>ALTERNATE DIRECTORS.....</b>	<b>19</b>
32. <b>Appointment.....</b>	<b>19</b>
33. <b>Suspension or Revocation of Appointment .....</b>	<b>19</b>
34. <b>Form of Appointment, Suspension or Revocation .....</b>	<b>19</b>
35. <b>Termination of Appointment .....</b>	<b>19</b>
36. <b>Power to Act as Alternate for More than 1 Director .....</b>	<b>19</b>
<b>POWERS OF DIRECTORS.....</b>	<b>20</b>
37. <b>Validation of Acts of Directors and Secretaries.....</b>	<b>20</b>
38. <b>General Business Management .....</b>	<b>20</b>
39. <b>Appointment of Attorney .....</b>	<b>20</b>
40. <b>Negotiable Instruments .....</b>	<b>20</b>
<b>CHIEF EXECUTIVE OFFICER.....</b>	<b>21</b>
41. <b>Appointment and Powers .....</b>	<b>21</b>
<b>DIRECTORS' MEETINGS.....</b>	<b>21</b>
42. <b>Circulating Resolutions .....</b>	<b>21</b>
43. <b>Meetings of Board.....</b>	<b>21</b>
44. <b>Technology Meeting of Directors.....</b>	<b>22</b>
45. <b>Chairing Directors' Meetings.....</b>	<b>22</b>
46. <b>Quorum.....</b>	<b>23</b>
47. <b>Passing of Directors' Resolutions .....</b>	<b>23</b>
<b>COMMITTEES OF DIRECTORS.....</b>	<b>23</b>
48. <b>Committees of Directors.....</b>	<b>23</b>
<b>REMOVAL AND RESIGNATION OF DIRECTORS.....</b>	<b>23</b>
49. <b>Removal and Resignation of Directors.....</b>	<b>23</b>
50. <b>Vacation of Office of Director .....</b>	<b>24</b>

---

---

<b>DIRECTORS' INTERESTS .....</b>	<b>24</b>
51. Prohibition on Being Present or Voting.....	24
52. Director to Disclose Interests.....	24
53. Effect of Interest in Contract .....	25
54. Other Interests .....	25
<b>REMUNERATION OF DIRECTORS .....</b>	<b>25</b>
55. No Directors' Remuneration.....	25
56. Directors' Expenses.....	26
57. Financial Benefit .....	26
<b>SECRETARY .....</b>	<b>26</b>
58. Terms of Office of Secretary .....	26
<b>INDEMNITY AND INSURANCE .....</b>	<b>26</b>
59. Indemnity.....	26
60. Insurance.....	27
61. Director Voting on Contract of Insurance .....	27
62. Liability .....	27
63. Meaning of "Officer" .....	28
<b>INSPECTION OF RECORDS.....</b>	<b>28</b>
64. Rights of Inspection.....	28
65. Confidential Information.....	28
<b>MEETINGS OF MEMBERS.....</b>	<b>28</b>
66. General Meetings .....	28
67. Business of an Annual General Meeting .....	28
68. Notice of General Meetings .....	29
69. When Notice is Given.....	29
70. Contents of Notice .....	30
71. Notice of Adjourned Meeting.....	30
72. Accidental Omission to Give Notice .....	30
73. Postponement of General Meeting .....	30
74. Technology.....	30
75. Quorum.....	30
76. Chair at General Meetings .....	31
77. Business at Adjourned Meetings.....	31

---

---

<b>PROXIES AND BODY CORPORATE REPRESENTATIVES.....</b>	<b>32</b>
78. Who Can Appoint a Proxy .....	32
79. Rights of Proxies.....	32
80. When Proxy Form Must Be Sent to All Members.....	32
81. Appointing a Proxy .....	32
82. Form of Proxy Sent Out by Foundation.....	33
83. Receipt of Proxy Documents.....	34
84. Validity of Proxy Vote .....	34
85. Body Corporate Representative.....	35
86. Attorney of Member .....	35
<b>VOTING AT MEETINGS OF MEMBERS .....</b>	<b>35</b>
87. How Vote May Be Exercised.....	35
88. Voting Disqualification .....	35
89. Objections to Right to Vote .....	36
90. How Voting is Carried Out.....	36
91. Matters on Which a Poll May Be Demanded .....	36
92. When a Poll is Effectively Demanded .....	36
93. When and How Polls Must Be Taken .....	36
94. Chair’s Casting Vote .....	37
<b>MINUTES .....</b>	<b>37</b>
95. Minutes to be Kept .....	37
<b>ACCOUNTS, AUDIT AND RECORDS .....</b>	<b>37</b>
96. Accounts .....	37
97. Audit.....	38
<b>EXECUTION OF DOCUMENTS.....</b>	<b>38</b>
98. Common Seal .....	38
99. Use of Common Seal .....	38
100. Execution - General .....	38
<b>INADVERTENT OMISSIONS.....</b>	<b>39</b>
101. Formalities Omitted .....	39
<b>WINDING UP .....</b>	<b>39</b>
102. Alterations .....	39
103. Winding Up.....	39

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*Corporations Law*  
Foundation Limited by Guarantee

**CONSTITUTION**  
**OF**  
ENDEAVOUR FOUNDATION

**INTRODUCTION**

**1. Replaceable Rules Excluded**

1.1 The replaceable rules contained in the Law do not apply to the Foundation.

**2. Definitions and Interpretation**

**2.1 Definitions**

In this Constitution:

- (1) “**Annual General Meeting**” has the meaning in accordance with Rule 66.2;
- (2) “**Application Fee**” has the meaning given by Rule 17;
- (3) “**Area Committee**” means the Committee elected in accordance with Rule 26;
- (4) “**Area Committee Members**” means the persons appointed and elected to sit on the Area Committee in accordance with Rule 26;
- (5) “**Areas**” has the meaning given by Rule 8.3;
- (6) “**Board**” means the Board of Directors of the Foundation;
- (7) “**business day**” means a day that is not a Saturday, a Sunday or a public holiday or bank holiday in the place where the Foundation has its registered office;
- (8) “**By-Laws**” means the By-Laws of the Foundation approved in accordance with Rule 38.6;
- (9) “**Chairperson**” means the Office Bearer referred to in Rule 30;
- (10) “**Chief Executive Officer**” means the person appointed in accordance with Rule 41;
- (11) “**Corporate Member**” means a Member which is a body corporate;
- (12) “**Delegates**” means Members appointed in accordance with Rule 24.2;
- (13) “**Directors**” means the Directors for the time being of the Foundation or the Directors assembled as a Board;
- (14) “**Elected Directors**” means Directors elected and appointed to the Board from the Area Committees collectively, in accordance with Rule 29;
- (15) “**Endeavour Council**” means the Council appointed in accordance with Rule 24;

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- (16) **“Existing Members”** has the meaning set out in Rule 9.3;
  - (17) **“Foundation”** means Endeavour Foundation ACN 009 670 704;
  - (18) **“Honorary Life Member”** has the meaning given by Rule 15;
  - (19) **“Independent Director”** a person who is determined by the Directors to have relevant specialist skills and knowledge and not being a person who is an Area Committee Member;
  - (20) **“Initial Area Committee Members”** has the meaning set out in Rule 26.3;
  - (21) Not Used;
  - (22) Not Used;
  - (23) Not Used;
  - (24) **“Law”** means the *Corporations Act 2001* and includes any amendment or re-enactment of it or any legislation passed in substitution for it;
  - (25) **“Life Member”** has the meaning given by Rule 10;
  - (26) **“Member”** means a Member for the time being of the Foundation.
  - (27) **“Membership Fee”** has the meaning given by Rule 18;
  - (28) **“Nominated Representative”** has the meaning given by Rule 11.2;
  - (29) **“Ordinary Member”** has the meaning given by Rule 10;
  - (30) **“Patrons”** and/or **“Vice-Patrons”** means the persons appointed in accordance with Rule 8.2;
  - (31) **“Proxy”** has the meaning given by Rule 78.1 and is a person appointed in accordance with Rule 81;
  - (32) **“Register”** means the register of Members of the Foundation;
  - (33) **“Secretary”** means the Company Secretary for the purposes of compliance with the Law, referred to in Rule 58 and any other person appointed to perform the duties of a Secretary of the Foundation;
  - (34) **“Stakeholders”** means stakeholders of the Foundation including but not limited to Directors, Members, Area Committee Members, Area Managers, staff, parents, clients, Government and the community; and
  - (35) **“Deputy Chairperson”** means the Office Bearer referred to in Rule 30.

## 2.2 Interpretation

- (1) Reference to:
    - (a) one gender includes the others;
    - (b) the singular includes the plural and the plural includes the singular; and
    - (c) a person includes a body corporate.
  - (2) Except so far as the contrary intention appears in this Constitution:
    - (a) an expression has in this Constitution the same meaning as in the Law; and
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- (b) if an expression is given different meanings for the purposes of different provisions of the Law, the expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Law, the same meaning as in that provision of the Law.
  - (3) "Including" and similar expressions are not words of limitation.
  - (4) Headings are for convenience only and do not form part of this Constitution or affect its interpretation.

### **3. Objects**

3.1 The objects for which the Foundation is established are:

- (1) to further the interests of people with intellectual disability;
- (2) to harness the resources of the community to make a positive difference in the lives of people with intellectual disability;
- (3) to promote the dignity and general citizenship of people with disability;
- (4) to enable people with intellectual disability to achieve their full potential;
- (5) to assist people with intellectual disability and their families voice their interest and concerns; and
- (6) through effective community partnership to be the first choice for people with intellectual disability.

3.2 The Foundation must pursue charitable purposes only and must apply its income in promoting those purposes.

### **4. Powers**

*[compare section 124]*

4.1 The Foundation has all the powers of an individual and a body corporate but does not have the power to issue shares.

### **5. Application of Income and Property**

*[compare sections 125 and 150]*

5.1 The income and property of the Foundation, from wherever it is derived, must be applied solely towards the promotion of the objects of the Foundation set out in Rule 3.

5.2 No portion of the income or property of the Foundation may be paid directly or indirectly, by way of dividend, bonus or otherwise to the Members of the Foundation.

5.3 Rule 5.2 does not prevent:

- (1) the payment in good faith of remuneration to any Officer, servant or Member of the Foundation in return for any services actually rendered to the Foundation or for goods supplied in the ordinary and usual way of business;
- (2) the reimbursement of expenses incurred by any Member on behalf, and at the request of, the Foundation.

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## **6. Limited Liability**

6.1 The liability of the Members is limited.

## **7. Guarantee**

*[compare section 117]*

7.1 Every Member of the Foundation undertakes to contribute an amount not exceeding \$2 to the property of the Foundation in the event of its being wound up while the Member is a Member or within 1 year after the Member ceases to be a Member, if required for payment:

- (1) of the debts and liabilities of the Foundation (contracted before the Member ceases to be a Member); and
- (2) of the costs, charges and expenses of winding up.

## **8. Structure**

8.1 The Foundation shall be organised as follows:

- (1) the Membership shall be divided into Areas (see Rules 8.3 and 9);
- (2) each Area shall be represented by an Area Committee (see Rule 25);
- (3) the Area Committees shall, amongst other things, elect certain of their number to the Board (see Rule 29);
- (4) the Board shall be ultimately responsible for the governance and operation of the Foundation; and
- (5) there shall be a separate Endeavour Council for the purposes set out in Rule 24.

8.2 The Members in General Meeting may, upon the recommendation of the Board appoint one or more Patrons and/or Vice-Patrons who need not be Members.

8.3 For the purposes of this Constitution the Areas shall be:

- (1) Brisbane Metropolitan;
- (2) South East;
- (3) South West;
- (4) Sunshine Coast;
- (5) North Queensland;
- (6) Central Queensland;
- (7) Wide Bay;
- (8) Far North Queensland;
- (9) Sydney.

8.4 The Areas may be varied by the Board from time to time provided that the number of Areas is not less than 5.

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## **MEMBERSHIP**

### **9. Organisation of Membership**

9.1 All applicants for Membership admitted as Members shall be allocated and entered, in the Register of the Foundation, to the Area they nominate on their application for membership.

9.2 The number of Members of the Foundation is unlimited.

9.3 The Members of the Foundation are:

- (1) the persons who are admitted to any of the categories of Membership of the Foundation on the date on which the Constitution is adopted ("**Existing Members**"); and
- (2) any other persons the Directors admit to any of the categories of Membership in accordance with this Constitution.

For the avoidance of doubt, a person who is an Existing Member shall belong to the same category of Membership (see Rule 9.4) as they were prior to the date of adoption of this Constitution.

### **9.4 Categories of Membership**

The categories of Membership are:

- (1) Ordinary Members;
- (2) Life Members;
- (3) Honorary Life Members; and
- (4) such other categories of Members, if recommended by the Directors, as may be created from time to time by the Members in General Meeting.

## **10. Application for Ordinary Membership and Life Membership**

10.1 Any individual who:

- (1) is not less than 18 years of age at the date of application; and
- (2) is supportive of the objects of the Foundation;

may apply for Ordinary Membership or Life Membership of the Foundation.

10.2 Any body corporate which is supportive of the objects of the Foundation may apply for Ordinary Membership of the Foundation.

10.3 An Ordinary Member once admitted and so long as they pay the annual Membership Fee as and when it falls due shall be entitled to the use of Member services at the cost specified from time to time by the Foundation, shall be entitled to attend any General Meeting of the Foundation and shall be entitled to vote at any General Meeting of the Foundation.

10.4 A Life Member once admitted has all the rights and privileges of an Ordinary Member and is otherwise subject to this Constitution.

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## **11. Form of Application**

11.1 An application for Ordinary Membership or Life Membership must:

- (1) be in writing in a form approved by the Directors;
- (2) be signed by the applicant;
- (3) be accompanied by any other documents or evidence as to qualification for the type of Membership applied for which the Directors require;
- (4) be accompanied by the Application Fee (if any) and the Membership Fee; and.
- (5) state the Area in which the Member nominates to be registered.

11.2 If the applicant is a body corporate it must nominate 1 person ("**Nominated Representative**") to represent it in the Foundation. The application form must:

- (1) state the name and principal ordinary residential address of the Nominated Representative; and
- (2) be signed by the Nominated Representative.

11.3 An application form must be accompanied by:

- (1) an Application Fee, if any, determined in accordance with Rule 17.1; and
- (2) the Membership Fee, determined in accordance with Rule 18.

## **12. Admission to Membership**

12.1 The Directors may in their absolute discretion accept or reject any application for Membership.

12.2 The Directors need give no reason for the rejection of an application.

12.3 If an application for Membership is rejected the Secretary must notify the applicant in writing and the Application Fee, if any, and the Membership Fee must be refunded to the applicant.

12.4 If an applicant is accepted for Membership, the name and details of the Member must be entered in the Register of Members and the Secretary must notify the applicant in writing of such acceptance.

## **13. Notification by Members**

13.1 Each Member must promptly notify the Secretary in writing of any change in:

- (1) their qualification to be a Member of the Foundation; or
- (2) the Area in which the Member nominates to be registered.

13.2 Each Corporate Member must promptly notify the Secretary in writing of any change of its Nominated Representative.

13.3 A Nominated Representative must consent to the nomination in writing.

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**14. Not Used**

**15. Honorary Life Membership**

15.1 If, in the opinion of the Directors, a person has made over a period of years an exceptional contribution to the Foundation, the Directors may grant that person the highest acknowledgement of contribution to the Foundation in the form of an Honorary Life Membership of the Foundation.

15.2 A person granted Membership under Rule 15.1 becomes an Honorary Life Member of the Foundation on the later to occur of:

- (1) the person consenting in writing to be an Honorary Life Member; and
- (2) the nomination being approved by an ordinary resolution of the Board.

15.3 An Honorary Life Member has all the rights and privileges of Membership and is otherwise subject to this Constitution.

**16. Register of Members**

*[compare sections 168 and 169]*

16.1 The Secretary must ensure that a Register of Members is kept by the Foundation in accordance with the Law.

16.2 The following must be entered in the Register of Members in respect of each Member:

- (1) the full name of the Member;
- (2) the residential address, facsimile number and electronic mail address, if any, of the Member;
- (3) the category of Membership;
- (4) the date of admission to and cessation of Membership;
- (5) the date of last payment of the Member's Membership Fee;
- (6) in the case of a Corporate Member, the full name, address, facsimile number and electronic mail address, if any, of its Nominated Representative;
- (7) the Area in which the Member nominates to be registered; and
- (8) such other information as the Directors require.

16.3 Each Member and Nominated Representative must notify the Secretary in writing of any change in that person's name, address, facsimile number or electronic mail address within 1 month after the change.

**APPLICATION FEE AND MEMBERSHIP FEE**

**17. Application Fee**

17.1 The Application Fee payable by each applicant for Membership is the sum the Directors determine for each category of Membership provided that no Application Fee is payable by any Honorary Life Member.

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## **18. Membership Fee**

- 18.1 The Membership Fee payable by a Member of the Foundation is the sum the Directors determine and the Foundation approves in General Meeting.
- 18.2 Until the Foundation otherwise resolves the Membership Fees:
- (1) for an Ordinary Member, being an individual, is \$20 payable annually;
  - (2) for an Ordinary Member, being a body corporate, is \$100.00 payable annually;
  - (3) for a Life Member, is twenty-times the annual Membership Fee for individual Ordinary Members payable once only upon being admitted to Life Membership.
  - (4) for Honorary Life Members, is nil.
- 18.3 All Membership Fees for Ordinary Members are due and payable in advance on 1 July in each year.
- 18.4 If a person is admitted to Ordinary Membership of the Foundation during the months of January to June inclusive the Directors may reduce the Membership Fees payable by the applicant in respect of the remainder of the period until the next 1 July in any manner they see fit.

## **19. Unpaid Membership Fees**

- 19.1 If the Membership Fees of a Member remains unpaid for 2 months after it becomes payable, the Member ceases to be entitled to any of the rights or privileges of Membership but these may be reinstated, at the absolute discretion of the Board, upon payment of all arrears.

## **CESSATION OF MEMBERSHIP**

## **20. Resignation**

- 20.1 A Member may resign from Membership of the Foundation by giving written notice to the Secretary.
- 20.2 The resignation of a Member takes effect on the date of receipt of the notice of resignation or any later date provided in the notice.

## **21. Cessation of Membership**

- 21.1 A Member who is an individual ceases to be a Member:
- (1) on the death of the Member; or
  - (2) if the Member is expelled under Rule 22.
- 21.2 A Corporate Member ceases to be a Member:
- (1) if it is wound up or is otherwise dissolved or deregistered; or
  - (2) if it is expelled under Rule 22.

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## **22. Expulsion of Members**

22.1 If any Member:

- (1) wilfully refuses or neglects to comply with the provisions of this Constitution; or
- (2) is guilty of any conduct which, in the absolute opinion of the Directors, is unbecoming of a Member or prejudicial to the interest of the Foundation;

the Directors may resolve to expel the Member from the Foundation and to remove the Member's name from the Register of Members.

22.2 At least 1 week before the meeting of the Directors at which a resolution of the nature referred to in Rule 22.1 is passed the Directors must give to the Member notice of:

- (1) the meeting;
- (2) what is alleged against the Member; and
- (3) the intended resolution.

22.3 At the meeting and before the passing of the resolution, the Member must have an opportunity of giving orally or in writing any explanation or defence the Member sees fit.

22.4 A Member may, by notice in writing lodged with the Secretary at least 24 hours before the time for holding the meeting at which the resolution is to be considered by the Directors, elect to have the question dealt with by the Foundation in General Meeting and in that event, a General Meeting of the Foundation must be called for that purpose.

22.5 If at the General Meeting of the Foundation a resolution to the same effect as the resolution which was to be considered by the Directors is passed by a majority of 2/3 of those present and voting (and the vote must be taken by secret ballot), the Member concerned must be expelled and the Member's name must be removed from the Register of Members.

## **23. Effect of Cessation of Membership**

23.1 If any Member ceases to be a Member, for any reason, under this Constitution, the Member remains liable to pay to the Foundation for any money which, at the time of the Member ceasing to be a Member, the Member owes to the Foundation on any account and for any sum for which the Member is subsequently liable under Rule 7 of this Constitution.

## **ORGANISATION**

### **24. Endeavour Council**

24.1 The Endeavour Council shall be established and convened in accordance with this Rule 24.

24.2 The Endeavour Council shall consist of such persons (the "**Delegates**") as the Board shall from time to time determine provided that, notwithstanding any other provision, the following persons shall automatically be Delegates to the Endeavour Council at all relevant times:

- (1) the Chairperson of each Area Committee (or their nominee);
- (2) the Directors; and
- (3) the Chief Executive Officer.

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24.3 The Board shall ensure that the Chief Executive Officer convenes meetings of the Endeavour Council ("**Endeavour Council Meetings**") on an as needs basis, but at least once in each year, by giving sufficient written notice of all such meetings to all Delegates.

24.4 The purpose of the meetings of the Endeavour Council shall be to:

- (1) provide an arena for ongoing review and involvement of the Stakeholders in the development of guidelines, processes, procedures and policies of the Foundation;
- (2) discuss and make recommendations to the Board on issues relating to such matters;
- (3) provide a forum for discussion of issues relating to services and support for individuals with an intellectual disability in each of the Areas;
- (4) assist the Board in monitoring the services and supports provided by the Foundation;
- (5) educate, inform and provide feedback to the Stakeholders;
- (6) advance the Foundation's public image; and
- (7) consider such other issues as the Members in General Meeting may from time to time require to be considered by the Endeavour Council.

#### 24.5 **Stakeholders' Entitlement to Attend**

All Stakeholders shall be entitled to attend at least one Endeavour Council Meeting in each year, but otherwise the Board may invite such Stakeholders to attend Endeavour Council Meetings as the Board determines appropriate after such consultation as the Board determines appropriate. Endeavour Council Meetings are a consultative meeting of Stakeholders and do not constitute a formal meeting of Members. Stakeholders, other than the Delegates, shall not be entitled to vote at such meetings.

### 25. **Area Committees**

25.1 An Area Committee shall be formed and maintained for each Area.

25.2 Each Area Committee shall consist of not more than 12 persons ("**Area Committee Members**"), or such other number determined from time to time by ordinary resolution of the Members at a General Meeting.

25.3 The role and functions of the Area Committee shall be to:

- (1) meet on an as needs basis, but at least 4 times in each year, to discharge its functions;
- (2) communicate effectively with the Board through the Endeavour Council and, subject to the directions of the Board from time to time, with all Stakeholders of the Foundation;
- (3) provide to the Board comment and recommendations as to the development of all areas of policy for the Foundation;
- (4) consult regularly with all Stakeholders as relevant on issues affecting people with intellectual disability and their families;
- (5) monitor the provision of services and support by the Foundation within the Area;
- (6) educate, inform and provide feedback to the Stakeholders within the Area;
- (7) form active networks of advocacy and linkage within the Area;
- (8) advance the Foundation's image;

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- (9) assist the Board in identifying, allocating and enlisting financial resources for the provision of services and support within the Area;
  - (10) provide to the Board information on the needs for services and support in the Area; and
  - (11) such other things as the Board may from time to time determine.

## **26. Election of Area Committees**

26.1 To be eligible for election and appointment to an Area Committee, a person:

- (1) must be a Member of the Foundation in the relevant Area; and
- (2) must not be currently, or at any time in the 24 months prior to the date of appointment, engaged on a fulltime basis or employed by the Foundation.

26.2 Except as provided otherwise in this Constitution, all Area Committee Members shall hold their position for terms of 3 years on a rotational basis in accordance with Rule 26.4.

26.3 The Area Committees shall consist initially of the persons ("**Initial Area Committee Members**") appointed for that purpose by the Board on or before the date on which this Constitution is adopted by the Foundation.

26.4 The rotation of elections of the Area Committee Members for each Area shall take place in the following manner:

- (1) one-third of the Initial Area Committee Members (rounded to the nearest whole number), shall hold their position for the period of approximately 1 year from the adoption of this Constitution and shall then retire from the Area Committee;
- (2) one-third of the Initial Area Committee Members (rounded to the nearest whole number), shall hold their position for the period of approximately 2 years from the adoption of this Constitution and shall then retire from the Area Committee;
- (3) the balance of the Initial Area Committee Members shall hold their position for the period of approximately 3 years from the adoption of this Constitution and shall then retire from the Area Committee;
- (4) the Board shall determine which of the Area Committee Members shall retire, and in which order, under sub-Rules (1), (2) and (3) of this Rule 26.4, or shall determine a method by which the relevant Area Committee shall make such determination;
- (5) thereafter, unless provided otherwise in this Constitution, all Area Committee Members shall hold their position for the period of approximately 3 years following his or her election to the Area Committee;
- (6) elections shall be held in accordance with Rule 26.5 to fill all vacancies on the Area Committees; and
- (7) all retiring Area Committee Members are eligible for re-election.

26.5 The election of Area Committees shall take place at the times and in the manner and subject to all other requirements directed by the Board from time to time, provided that all Members in an Area shall:

- (1) be given reasonable notice of all calls for nomination for the Area Committee in that Area;
  - (2) be entitled to stand for election to the Area Committee in that Area; and
  - (3) be given reasonable notice of all meetings (if any) for the conduct of any such election.
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- 26.6 Each Area Committee shall elect a Chairperson from amongst their number as soon as reasonably practicable after each election of the Area Committee. Such Chairperson shall chair, and be responsible to convene, all meetings of the Area Committee until the next election for that Area Committee.
- 26.7 Each Area Committee may determine the quorum for its Area Committee meetings. The quorum must be present at all times during the meeting.
- 26A Casual Vacancies, Additional Area Committee Members and Insufficient Area Committee Members**
- 26A.1 The Area Committee may at any time appoint a person eligible to be appointed to an Area Committee to fill a casual vacancy so that the total number of Area Committee Members does not at any time exceed the number fixed by the Members in General Meeting for that Area under Rule 25.2.
- 26A.2 Any Area Committee Member appointed under Rule 26A.1 holds office until the next Area Committee election. That Member is then eligible to be elected to fill the vacancy in accordance with Rule 26.4(6). However, the Member who fills that vacancy at that Area Committee election only holds office until the Area Committee election at which the place of the Area Committee Member who created the vacancy would be, if not for the election, up for election.
- 26A.3 In the event of a vacancy or vacancies in any Area Committee, the remaining Area Committee Members may act, but if the number of remaining Area Committee Members is not sufficient to constitute a quorum at a meeting of that Area Committee, they may act only for the purpose of increasing the number of Area Committee Members to a number sufficient to constitute a quorum.

## DIRECTORS

### **27. Composition of the Board**

*[compare section 201A]*

- 27.1 The number of the Directors must be not less than 3 nor more than 9.
- 27.2 The Foundation in General Meeting may by resolution increase or reduce the number of Directors but the number may not be reduced below 3.
- 27.3 The Board shall comprise:
- (1) not more than 5 Elected Directors elected and appointed in accordance with Rule 29; and
  - (2) not more than 4 Independent Directors appointed in accordance with Rule 28.5.
- 27.4 No person may be a Director unless that person is a Member of the Foundation or is the Nominated Representative of a Corporate Member.

### **28. Tenure of the Directors**

- 28.1 Unless otherwise provided in this Constitution, subject to Rule 29, each of the Elected Directors shall hold office for a term of 3 years.
- 28.2 Not Used.
- 28.3 Not Used.
- 28.4 The Elected Directors shall be elected in accordance with Rule 29 and appointed at the relevant Annual General Meeting of the Foundation, occurring after the relevant election.

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- 28.5 The 4 Independent Directors shall be selected and appointed by the Board in its absolute discretion from time to time and shall hold office for a term of 3 years or until they resign or are removed from office by the Board or otherwise in accordance with this Constitution, whichever is earlier.
- 28.6 The selection and appointment of each Independent Director shall be approved by the Foundation in General Meeting at the Annual General Meeting of the Foundation following the appointment of the relevant Independent Director. If such approval is not given the relevant Independent Director shall forthwith cease to be a Director and the Board shall select and appoint a substitute Independent Director as soon as reasonably practicable thereafter in accordance with Rule 28.5 to fill that position.
- 28.7 Notwithstanding any other provision, an Independent Director selected and appointed in accordance with Rule 28.5 shall from the date they are appointed by the Board until the date they cease to hold office, be a Director of the Foundation and able to exercise all powers able to be exercised by a Director.
- 28.8 Subject to Rules 28.5 to 28.7, following the completion of a 3 year term, the Board may, at its absolute discretion, re-appoint an Independent Director.

## **29. Election of Elected Directors**

- 29.1 Unless provided otherwise in this Constitution, all Elected Directors shall hold their position until the end of the third Annual General Meeting following his or her election as an Elected Director.
- 29.2 If an Elected Director would otherwise, by virtue of Rule 29.1, serve on the Board for a term which exceeds their term on the relevant Area Committee, then that Elected Director shall be deemed to retire from the Board at the expiry of their term on the relevant Area Committee. A replacement Elected Director shall be elected, in accordance with Rule 29.3, for the balance of the term for which the retiring Elected Director would, but for this clause, have held office.
- 29.3 The election of the Elected Directors shall take place at the times and in the manner and adopting the procedures directed by the Board from time to time provided that, in each case, the election shall take place in the following manner:
- (1) a postal ballot shall be held amongst the Area Committees for all elections of Elected Directors;
  - (2) each Area Committee may nominate no more than 1 Area Committee Member from its own number for any election of an Elected Director's position;
  - (3) all nominations for election as an Elected Director must be in writing and signed by 2 Members of the relevant Area Committee and also signed by the nominee consenting to such nomination and shall be delivered to and lodged with the Secretary not less than 21 days prior to the date fixed for the holding of the Annual General Meeting at which the election of the Elected Directors is to be made effective;
  - (4) the Board must ensure that the postal ballot is conducted in such a fashion as to enable all Members of all of the Area Committees sufficient opportunity to consider all nominations and to vote accordingly to enable the appointment of the Elected Director to take effect as from the next Annual General Meeting;
  - (5) the Board must ensure that a sufficient period is allowed to complete the postal ballot at least 7 days prior to the holding of the Annual General Meeting at which the results of the election are to be announced and become effective; and
  - (6) the Board must ensure that the results of the election of Elected Directors are announced at the relevant Annual General Meeting.
- 29.4 For the purposes of Rule 29.3(3) a nomination may be delivered to and lodged with the Secretary by:
- (1) delivery to the Foundation's registered office;

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- (2) sending it to a facsimile number at the Foundation's registered office; or
  - (3) delivering it to a place, facsimile number or electronic mail address specified for the purpose of such nominations.

29.5 Elections shall be held in accordance with this Rule 29 to fill vacancies of Elected Directors.

### **30. Office Bearers**

30.1 The Office Bearers of the Foundation are:

- (1) the Chairperson;
- (2) the Deputy Chairperson.

30.2 Not Used.

30.3 Office Bearers are elected by the Directors from amongst their number at the first meeting of the Board held after each Annual General Meeting of the Foundation.

30.4 The Directors present must appoint one of their number to act as Chair of the meeting for the purpose of the election.

30.5 The election of Office Bearers shall take place in the following manner:

- (1) Each Director standing for election as an Office Bearer must be proposed orally or in writing by another Director.
- (2) If a Director stands for election for more than 1 position as an Office Bearer separate nominations must be received in respect of each position.
- (3) If there is only 1 candidate for election to any Office Bearer position that person is declared elected to that position.
- (4) If there is more than 1 candidate for election to any Office Bearer position a vote by show of hands must be held among the candidates. The candidate receiving the greatest number of votes cast in his or her favour is declared elected to that position.
- (5) In the case of an equality of votes in respect of any position a further vote by show of hands must be held immediately but if there is still an equality of votes the successful candidate must be determined by lot.

## **APPOINTMENT OF DIRECTORS BETWEEN ANNUAL GENERAL MEETINGS**

### **31. Casual Vacancies, Additional Directors and Insufficient Directors**

*[compare replaceable rules 201G and 201H]*

31.1 The Foundation in General Meeting may by resolution and the Directors may at any time appoint a person qualified to be an Elected Director to fill a casual vacancy so that the total number of Elected Directors does not at any time exceed the number fixed in accordance with this Constitution.

31.2 Any Elected Director appointed under Rule 31.1 holds office until the end of the next Annual General Meeting of the Foundation. The casual vacancy is then to be filled by election in accordance with Rule 29.3 and the person elected shall hold office until the end of the next Annual General Meeting of the

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Foundation at which the place of the Elected Director who created the casual vacancy would be, if not for the election, up for election.

- 31.3 In the event of a vacancy or vacancies in the office of a Director or offices of Directors, the remaining Directors may act, but if the number of remaining Directors is not sufficient to constitute a quorum at a meeting of Directors, they may act only for the purpose of increasing the number of Directors to a number sufficient to constitute a quorum or convening a General Meeting of the Foundation.

**ALTERNATE DIRECTORS**  
*[compare replaceable rule 201K]*

**32. Appointment**

- 32.1 A Director may appoint any person who is qualified to be a Director and who is approved by a majority of the other Directors to act as an Alternate Director in place of the appointing Director for a meeting or for a specified period.
- 32.2 An Alternate Director is entitled to receive notice of meetings of the Directors and, if the appointor is not present at a meeting, is entitled to attend and vote in his or her stead.
- 32.3 When an Alternate Director exercises the Director's powers, the exercise of the power is just as effective as if the powers were exercised by the Director.

**33. Suspension or Revocation of Appointment**

- 33.1 A Director may revoke or suspend the appointment of an Alternate Director appointed by him or her.
- 33.2 The Directors may suspend or remove an Alternate Director by resolution after giving the appointor reasonable notice of their intention to do so.

**34. Form of Appointment, Suspension or Revocation**

- 34.1 Every appointment, revocation or suspension under Rules 32 or 33.1 must be in writing and a copy must be given to the Foundation. The notice may be given by facsimile.

**35. Termination of Appointment**

- 35.1 The appointment of an Alternate Director automatically determines:
- (1) if the appointor ceases to hold office as Director;
  - (2) on the happening in respect of the Alternate Director of any event which causes a Director to vacate the office of Director; or
  - (3) if the Alternate Director resigns from the appointment by written notice left at the registered office of the Foundation.

**36. Power to Act as Alternate for More than 1 Director**

- 36.1 A Director or any other person may act as Alternate Director to represent more than 1 Director and therefore may exercise more than one deliberative vote.

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## POWERS OF DIRECTORS

### **37. Validation of Acts of Directors and Secretaries**

*[compare sections 201M and 204E]*

- 37.1 The acts of a Director or Secretary of the Foundation are valid despite any defect that may afterwards be discovered in his or her appointment or qualification.
- 37.2 Where a person whose office as Director of the Foundation is vacated under a provision of the Law purports to do an act as a Director of the Foundation, that act is as valid, in relation to a person dealing with the Foundation in good faith and for value and without actual knowledge of the matter because of which the office was vacated, as if the office had not been vacated.

### **38. General Business Management**

*[compare replaceable rule 198A]*

- 38.1 The business of the Foundation is to be managed by or under the direction of the Board.
- 38.2 The Board may exercise all the powers of the Foundation except any powers that the Law or this Constitution requires the Foundation to exercise in General Meeting.
- 38.3 No Rule made or resolution passed by the Foundation in General Meeting can invalidate any prior act of the Directors which would have been valid if that Rule or resolution had not been made or passed.
- 38.4 The Board may pay all expenses incurred in promoting and forming the Foundation.
- 38.5 Without limiting the generality of this Rule 38, but subject to Law, the Directors may exercise all the powers of the Foundation to borrow money, to charge any property or business of the Foundation and to issue debentures or give any other security for a debt, liability or obligation of the Foundation or of any other person.
- 38.6 The Board may make, amend or repeal By-Laws and regulations not inconsistent with this Constitution for the general conduct and management of the Foundation and the business of the Board.

### **39. Appointment of Attorney**

- 39.1 The Directors may appoint any person or persons to be the Attorney or Attorneys of the Foundation for the purposes, with the powers and discretions (being powers and discretions vested in or exercisable by the Directors), for the period and subject to the conditions they see fit.
- 39.2 A Power of Attorney may contain those provisions for the protection and convenience of persons dealing with the Attorney that the Directors see fit.

### **40. Negotiable Instruments**

*[compare replaceable rule 198B]*

- 40.1 Any 2 Directors may sign, draw, accept, endorse or otherwise execute a negotiable instrument.
- 40.2 The Directors may determine that a negotiable instrument, including a class of negotiable instrument, may be signed, drawn, accepted, endorsed or otherwise executed in a different way.

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**CHIEF EXECUTIVE OFFICER**  
*[compare replaceable rule 201J]*

**41. Appointment and Powers**

- 41.1 The Directors may appoint any person, to the position of Chief Executive Officer (the “**Chief Executive Officer**”) for the period and on the terms (including as to remuneration) the Directors see fit.
- 41.2 The Directors may, upon terms and conditions and with any restrictions they see fit, confer on a Chief Executive Officer any of the powers that the Directors can exercise.
- 41.3 The Directors may revoke or vary:
- (1) an appointment; or
  - (2) any of the powers conferred on an Executive Officer.
- 41.4 If the Chief Executive Officer becomes incapable of acting in that capacity the Directors may appoint any other person, not being a Director, to act temporarily as Chief Executive Officer.

**DIRECTORS’ MEETINGS**  
*[compare sections 248A to 248G]*

**42. Circulating Resolutions**

*[compare replaceable rule 248A]*

- 42.1 The Directors may pass a resolution without a Directors’ meeting being held if all the Directors entitled to vote on the resolution, except a Director absent from Australia who has not left a facsimile number or electronic mail address at which he or she may be given notice, sign a document containing a statement that he or she is in favour of the resolution set out in the document.
- 42.2 Separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 42.3 The resolution is passed when the last Director signs.
- 42.4 A facsimile or electronic mail addressed to or received by the Foundation and purporting to be signed or sent by a Director for the purpose of this Rule 42 must be treated as a document in writing signed by that Director.

**43. Meetings of Board**

- 43.1 The Board must meet on an as needs basis, but at least 6 times in each year, for the discharge of their role and duties and may otherwise adjourn and otherwise regulate their meetings as they see fit.
- 43.2 The minutes of any meeting of the Board must state the method of meeting and the persons present.
- 43.3 A Director may at any time, and a Secretary must on the requisition of a Director, call a meeting of the Board.
- 43.4 Reasonable notice of every Board meeting and the nature of business to be addressed must be given to each Director and Alternate Director except that it is not necessary to give notice of a meeting of Directors to any Director who:

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- (1) has been given special leave of absence; or
  - (2) is absent from Australia and has not left a facsimile number or electronic mail address at which he or she may be given notice.

43.5 Any notice of a meeting of the Board must be given in writing, whether by facsimile, electronic mail or other accepted means of visual communication.

#### **44. Technology Meeting of Directors**

*[compare section 248D]*

44.1 A Directors' meeting may be held using any telephone, teleconference or any other technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw the consent within a reasonable period before the meeting.

44.2 If a Directors' meeting is held using any technology and all the Directors take part in the meeting, they shall be deemed to have consented to the use of the technology for that meeting.

44.3 The following provisions apply to a technology meeting:

- (1) each of the Directors taking part in the meeting must be able to hear and be heard by each of the other Directors taking part in the meeting; and
- (2) at the commencement of the meeting each Director must announce his or her presence to all the other Directors taking part in the meeting.

44.4 If the Secretary is not present at a technology meeting one of the Directors present must take minutes of the meeting.

44.5 A Director may not leave a technology meeting by disconnecting his or her link to the meeting unless that Director has previously notified the Chair of the meeting.

44.6 A Director is conclusively presumed to have been present and to have formed part of a quorum at all times during a technology meeting unless that Director has previously obtained the express consent of the Chair to leave the meeting.

#### **45. Chairing Directors' Meetings**

*[compare replaceable rule 248E]*

45.1 The Chairperson is the Chair of all meetings of the Board.

45.2 At a meeting of the Board if:

- (1) no Chairperson has been elected as provided by Rule 30.5; or
- (2) the Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Deputy Chairperson is the Chair of the meeting, but if:

- (3) no Deputy Chairperson has been elected as provided by Rule 30.5; or
- (4) the Deputy Chairperson is not present within 10 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Directors present must elect a Director present to chair the meeting.

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**46. Quorum**

*[compare replaceable rule 248F]*

- 46.1 The quorum for a Directors' meeting is half the number of then current Board rounded up to the nearest whole number of Directors entitled to vote or a greater number determined by the Directors. The quorum must be present at all times during the meeting.
- 46.2 An Alternate Director is counted in a quorum at a meeting at which the Director who appointed the Alternate Director is not present (so long as the Alternate Director is, under the Law, entitled to vote).

**47. Passing of Directors' Resolutions**

*[compare replaceable rule 248G]*

- 47.1 A resolution of the Directors must be passed by a majority of the votes cast by Directors entitled to vote on the resolution.
- 47.2 The Chair has a casting vote if necessary in addition to any vote he or she has as a Director. The Chair has a discretion both as to whether or not to use the casting vote and as to the way in which it is used.
- 47.3 A person who is an Alternate Director is entitled (in addition to his or her own vote if he or she is a Director) to 1 vote on behalf of each Director whom he or she represents as an Alternate Director at the meeting and who is not present at the meeting.

**COMMITTEES OF DIRECTORS**

**48. Committees of Directors**

*[compare replaceable rule 198D]*

- 48.1 The Directors may delegate any of their powers to a Committee of Directors.
- 48.2 A Committee must exercise the powers delegated to it in accordance with any directions of the Directors. The effect of the Committee exercising a power in this way is the same as if the Directors exercised it.
- 48.3 The meetings and proceedings of any Committee consisting of 2 or more Directors are governed by the provisions in this Constitution regulating the meetings and proceedings of the Directors.

**REMOVAL AND RESIGNATION OF DIRECTORS**

**49. Removal and Resignation of Directors**

*[compare section 203D]*

- 49.1 Subject to the Law the Foundation may by resolution remove a Director from office.
- 49.2 A Director may resign as a Director of the Foundation by giving a written notice of resignation to the Foundation at its registered office.

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## **50. Vacation of Office of Director**

*[compare section 206B]*

50.1 In addition to any other circumstances in which the office of a Director becomes vacant under the Law, the office of a Director becomes vacant if the Director:

- (1) becomes bankrupt or suspends payment or compounds with his or her creditors;
- (2) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the Law relating to mental health;
- (3) is absent from 3 consecutive meetings of Directors without special leave of absence from the Directors and the Directors declare his or her seat to be vacant;
- (4) ceases to be qualified as Director under Rule 27.4;
- (5) becomes prohibited from being a Director under or by reason of any order made under the Law; or
- (6) is removed or resigns by resolution in accordance with Rule 49.

## **DIRECTORS' INTERESTS**

## **51. Prohibition on Being Present or Voting**

*[compare section 195]*

51.1 Except where permitted by the Law a Director who has a material personal interest in a matter that is being considered at a meeting of Directors:

- (1) must not be counted in a quorum;
- (2) must not vote on the matter; and
- (3) must not be present while the matter is being considered at the meeting.

51.2 If a Director who has a material personal interest in a matter that is being considered at a meeting of the Directors is not prohibited by the Law from being present at the meeting and voting, the Director may be present, be counted in the quorum and may be heard but may not vote on the matter.

## **52. Director to Disclose Interests**

*[compare section 191]*

52.1 A Director who is in any way, whether directly or indirectly, interested in a contract or proposed contract with the Foundation must, as soon as practicable after the relevant facts have come to the Director's knowledge, declare the nature of the interest at a meeting of the Directors or by written notice to the Secretary of the Foundation.

52.2 A Director who holds any office or possesses any property by which, whether directly or indirectly, duties or interests might be created in conflict with his or her duties or interests as Director must declare at a meeting of the Directors of the Foundation or by written notice to the Secretary of the Foundation the fact and the nature, character and extent of the conflict.

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52.3 For the purposes of Rules 52.1 and 52.2, a Director's interest or any conflict must be disregarded if it arises from or relates solely to:

- (1) a guarantee to be given by the Director (or by persons including the Director or by a body corporate of which the Director is a member or officer) in respect of a loan to the Foundation; or
- (2) the position of the Director as a Director of a related body corporate.

### **53. Effect of Interest in Contract**

*[compare replaceable rule 194]*

53.1 If a Director has an interest in a contract or proposed contract with the Foundation (other than as a Member), or a conflicting interest or duty in relation to any other matter being considered by the Directors, and the Director discloses the nature and extent of the interest or duty at a meeting of the Directors or by written notice to the Secretary of the Foundation:

- (1) the contract may be entered into; and
- (2) if the disclosure is made before the contract is entered into:
  - (a) the Director may retain benefits under the contract even though the Director has an interest in the contract;
  - (b) the Foundation cannot avoid the contract merely because of the existence of the interest; and
  - (c) the Director is not disqualified from the office of Director.

53.2 For the purposes of Rule 53.1 "**contract**" includes an arrangement, dealing or other transaction.

### **54. Other Interests**

54.1 Without limiting Rule 52 or Rule 53 a Director may to the extent permitted by the Law:

- (1) hold any other office or place of profit under the Foundation (other than the office of auditor) in conjunction with the office of Director; and
- (2) be interested in any operation, undertaking or business undertaken or assisted by the Foundation or in which the Foundation is or may be interested.

## **REMUNERATION OF DIRECTORS**

### **55. No Directors' Remuneration**

*[compare section 150]*

55.1 Subject to Rule 55.2 a Director may receive any remuneration determined by the Board from time to time for his or her services in his or her capacity as a Director of the Foundation.

55.2 Subject to Rule 55.3, the remuneration referred to in Rule 55.1 is only effective if and when a resolution for such remuneration is passed by the Members by a majority of 2/3 of the votes cast by Members entitled to vote on the resolution.

55.3 For the avoidance of doubt, and notwithstanding any other provision, the Board may in its sole and absolute discretion determine the remuneration payable to the Chief Executive Officer.

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## **56. Directors' Expenses**

56.1 Despite Rule 55 the Foundation may pay the Directors' travelling and other expenses that they properly incur:

- (1) in attending Directors' meetings or any meetings of Committees of Directors;
- (2) in attending any General Meetings of the Foundation; and
- (3) in connection with the Foundation's business.

56.2 Subject to a resolution of the Members provided for in Rule 55.2 the Directors must approve all payments the Foundation makes to its Directors.

## **57. Financial Benefit**

*[compare Chapter 2E - sections 207 and following]*

57.1 To the extent, if any, required by the Law, a Director must ensure that the requirements of the Law are complied with in relation to any financial benefit given by the Foundation to the Director or to any other related party of the Director.

## **SECRETARY**

## **58. Terms of Office of Secretary**

*[compare replaceable rule 204F]*

58.1 The Board must appoint a Secretary of the Foundation to hold office on the terms and conditions (including as to remuneration) that the Directors determine.

## **INDEMNITY AND INSURANCE**

## **59. Indemnity**

*[compare section 199A]*

59.1 To the extent permitted by the Law, the Foundation indemnifies:

- (1) every person who is or has been an Officer of the Foundation; and
- (2) where the Board of Directors considers it appropriate to do so, any person who is or has been an officer of a related body corporate of the Foundation;

against any liability incurred by that person in his or her capacity as an Officer of the Foundation or of the related body corporate (as the case may be).

59.2 In accordance with section 199A of the Law, the Foundation must not indemnify a person against:

- (1) any of the following liabilities incurred as an Officer of the Foundation:
  - (a) a liability owed to the Foundation or a related body corporate;
  - (b) a liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law; or

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- (c) a liability that is owed to someone other than the Foundation or a related body corporate and did not arise out of conduct in good faith; or
  - (2) legal costs incurred in defending an action for a liability incurred as an Officer of the Foundation if the costs are incurred:
    - (a) in defending or resisting proceedings in which the person is found to have a liability for which they could not be indemnified under Rule 59.2(1);
    - (b) in defending or resisting criminal proceedings in which the person is found guilty;
    - (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the Court to have been established; or
    - (d) in connection with proceedings for relief to the person under the Law in which the Court denies the relief.
- Rule 59.2(2)(c) does not apply to costs incurred in responding to actions taken by the Australian Securities and Investment Commission or a liquidator as part of an investigation before commencing proceedings for a court order.
- (3) For the purposes of Rule 59.2(2) the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

## **60. Insurance**

*[compare section 241A]*

- 60.1 The Foundation may pay or agree to pay a premium in respect of a contract insuring a person who is or has been an Officer of the Foundation or a related body corporate of the Foundation against any liability incurred by the person as an Officer of the Foundation or a related body corporate except a liability (other than one for legal costs) arising out of:
  - (1) conduct involving a wilful breach of duty in relation to the Foundation; or
  - (2) a contravention of section 184 of the Law.
- 60.2 In the case of a Director, any premium paid under this Rule is not remuneration for the purpose of Rule 55.

## **61. Director Voting on Contract of Insurance**

*[compare section 191(2)(vi)]*

- 61.1 Despite anything in this Constitution, a Director is not precluded from voting in respect of any contract or proposed contract of insurance, merely because the contract insures or would insure the Director against a liability incurred by the Director as an Officer of the Foundation or of a related body corporate.

## **62. Liability**

- 62.1 No Officer of the Foundation is liable for the act, neglect or default of any other Officer or for joining in any act or for any other loss, expense or damage which arises in the execution of the duties of his or her office unless it arises through his or her own negligence, default, breach of duty or breach of trust.

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### **63. Meaning of “Officer”**

63.1 For the purposes of Rules 59, 60, 61 and 62, “**Officer**” means a Director, Secretary or Executive Officer.

## **INSPECTION OF RECORDS**

### **64. Rights of Inspection**

*[compare replaceable rule 247D and sections 173, 247A and 251B]*

64.1 The Directors of the Foundation, or the Foundation by a resolution passed at a General Meeting, may authorise a Member to inspect books of the Foundation.

64.2 A Member other than a Director does not have the right to inspect any document of the Foundation, other than the minute books for the meetings of its Members and for resolution of Members passed without meetings, except as provided by Law or authorised by the Directors or by the Foundation in General Meeting.

### **65. Confidential Information**

65.1 Except as provided by the Law, no Member (not being a Director) is entitled to require or receive any information concerning the business, trading or customers of the Foundation or any trade secret, secret process or other confidential information of or used by the Foundation.

## **MEETINGS OF MEMBERS**

### **66. General Meetings**

*[compare sections 250N, replaceable rule 249C and section 249D]*

66.1 A majority of Directors may call a General Meeting whenever they see fit.

66.2 Except as permitted by Law, a General Meeting, to be called the “**Annual General Meeting**”, must be held at least once in every calendar year.

66.3 Except as provided in the Law, no Member or Members may call a General Meeting.

66.4 No Member may at any meeting move any resolution except in accordance with the Law.

### **67. Business of an Annual General Meeting**

*[compare sections 250R, 250S and 250T]*

67.1 The business of an Annual General Meeting may include any of the following, even if not referred to in the Notice of Meeting:

- (1) the consideration of the annual financial report, Directors’ report and auditor’s report;
- (2) the announcement of the results of the election of Elected Directors;
- (3) the appointment of the auditor; and
- (4) the fixing of the auditor’s remuneration.

All other business transacted at an Annual General Meeting and all other business transacted at any other General Meeting is special business.

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- 67.2 The business of the Annual General Meeting also includes any other business which under this Constitution or the Law ought to be transacted at an Annual General Meeting.
- 67.3 The Chair of the Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask questions about or make comments on the management of the Foundation.
- 67.4 If the Foundation's auditor or the auditor's representative is at the meeting, the Chair of an Annual General Meeting must allow a reasonable opportunity for the Members as a whole at the meeting to ask the auditor or that representative questions relevant to the conduct of the audit and the preparation and content of the auditor's report.

## **68. Notice of General Meetings**

*[compare section 249H]*

- 68.1 Subject to the provisions of the Law as to short notice, at least 21 days' notice of a General Meeting must be given in writing to those persons who are entitled to receive notices from the Foundation.
- 68.2 Written notice of a meeting of the Foundation's Members must be given individually to:
- (1) each Member entitled to vote at the meeting;
  - (2) each Director; and
  - (3) the Foundation's auditor.
- 68.3 No other person is entitled to receive notice of General Meetings.
- 68.4 The Foundation may give the Notice of Meeting to a Member:
- (1) personally;
  - (2) by sending it by post to the address for the Member in the Register of Members or the alternative address (if any) nominated by the Member; or
  - (3) by sending it to the facsimile number or electronic address (if any) nominated by the Member.

## **69. When Notice is Given**

*[compare replaceable rule 249J(4)]*

- 69.1 A Notice of Meeting sent by post is taken to be given on the second business day after it is posted.
- 69.2 Except as provided by Rule 69.3, a Notice of Meeting sent by facsimile, or other electronic means, is taken to be given on the business day after it is sent.
- 69.3 Service by facsimile or electronic mail is not effective if:
- (1) in the case of service by facsimile, the Foundation's facsimile machine issues a transmission report which shows that the transmission was unsuccessful;
  - (2) in the case of service by electronic mail, the Foundation's computer reports that delivery has failed; or
  - (3) in either case the addressee notifies the Foundation immediately that the notice was not fully received in a legible form.
- 69.4 A certificate signed by any Manager, Secretary or other Officer of the Foundation that the notice was posted or given in accordance with this Rule 69 is conclusive evidence of the matter.
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## **70. Contents of Notice**

*[compare replaceable rule 249L]*

70.1 A notice of a General Meeting must:

- (1) set out the place, date and time for the meeting (and, if the meeting is to be held in 2 or more places, the technology that will be used to facilitate this);
- (2) state the general nature of the meeting's business;
- (3) if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and state the resolution; and
- (4) contain a statement setting out the following information:
  - (a) that the Member has a right to appoint a Proxy; and
  - (b) that the Proxy need not be a Member of the Foundation.

## **71. Notice of Adjourned Meeting**

*[replaceable rule 249M]*

71.1 When a meeting is adjourned, new notice of the resumed meeting must be given if the meeting is adjourned for 1 month or more.

## **72. Accidental Omission to Give Notice**

*[compare section 1322(3)]*

72.1 The accidental omission to give notice of any General Meeting to or the non-receipt of the notice by any person entitled to receive notice of a General Meeting under this Constitution does not invalidate the proceedings at or any resolution passed at the meeting.

## **73. Postponement of General Meeting**

73.1 The Directors may postpone the holding of any General Meeting whenever they see fit (other than a meeting requisitioned by Members as provided by the Law) for not more than 42 days after the date for which it was originally called.

73.2 Whenever any meeting is postponed (as distinct from being adjourned under Rule 75.3 or Rule 76.3) the same period of notice of the meeting must be given to persons entitled to receive notice of a meeting as if a new meeting were being called for the date to which the original meeting is postponed.

## **74. Technology**

*[section 249S]*

74.1 The Foundation may hold a meeting of its Members at multiple venues using any technology that gives the Members as a whole a reasonable opportunity to participate.

## **75. Quorum**

*[compare replaceable rule 249T]*

75.1 The quorum for a meeting of the Foundation's Members is 20 Members entitled to vote being personally present and present at all times during the meeting.

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75.2 In determining whether a quorum is present, individuals attending as Proxies or body corporate representatives are counted. If an individual is attending both as a Member and as a Proxy or body corporate representative, the individual is counted only once.

75.3 If a quorum is not present within 30 minutes after the time for the meeting set out in the Notice of Meeting:

- (1) where the meeting was called by the Members or upon the requisition of Members, the meeting is dissolved; or
- (2) in any other case, the meeting is adjourned to the date, time and place the Directors specify. If the Directors do not specify 1 or more of those things, the meeting is adjourned to:
  - (a) if the date is not specified - the same day in the next week;
  - (b) if the time is not specified - the same time; and
  - (c) if the place is not specified - the same place.

75.4 If no quorum is present at the resumed meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

## **76. Chair at General Meetings**

*[compare replaceable rule 249U]*

76.1 The Chairperson, if present, presides as Chair at every General Meeting.

76.2 Where a General Meeting is held and:

- (1) there is no Chairperson; or
- (2) the Chairperson is not present within 30 minutes after the time appointed for the holding of the meeting or is unwilling to act;

the Deputy Chairperson if present presides as Chair of the meeting or, if the Deputy Chairperson is not present or is unwilling to act, the Directors present may appoint 1 of their number to be Chair of the meeting and in default of their doing so the Members present may appoint any 1 of their number to be Chair of the meeting.

76.3 The Chair must adjourn a meeting of the Foundation's Members if the Members present with a majority of votes at the meeting agree or direct that the Chair must do so.

## **77. Business at Adjourned Meetings**

*[replaceable rule 249W(2)]*

77.1 Only unfinished business is to be transacted at a meeting resumed after an adjournment.

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## PROXIES AND BODY CORPORATE REPRESENTATIVES

### **78. Who Can Appoint a Proxy**

*[compare mandatory rule 249X]*

78.1 A Member who is entitled to attend and cast a vote at a meeting of the Foundation's Members may appoint a person as the Member's Proxy to attend and vote for the Member at the meeting. The Proxy need not be a Member.

### **79. Rights of Proxies**

*[compare section 249Y]*

79.1 A Proxy appointed to attend and vote for a Member has the same rights as the Member:

- (1) to speak at the meeting;
- (2) to vote (but only to the extent allowed by the appointment); and
- (3) to join in a demand for a poll.

79.2 If a Proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the Proxy states otherwise.

79.3 A Proxy's authority to speak and vote for a Member at a meeting is suspended while the Member is present at the meeting.

79.4 A Proxy may be revoked at any time by notice in writing to the Foundation.

### **80. When Proxy Form Must Be Sent to All Members**

*[section 249Z]*

80.1 If the Foundation sends a Member a Proxy appointment form for a meeting or a list of persons willing to act as Proxies at a meeting:

- (1) if the Member requested the form or list - the Foundation must send the form or list to all Members who ask for it and who are entitled to appoint a Proxy to attend and vote at the meeting; or
- (2) otherwise - the Foundation must send the form or list to all its Members entitled to appoint a Proxy to attend and vote at the meeting.

### **81. Appointing a Proxy**

*[compare section 250A]*

81.1 An appointment of a Proxy is valid if it is signed by the Member making the appointment and contains the following information:

- (1) the Member's name and address;
- (2) the Foundation's name;
- (3) the Proxy's name or the name of the office held by the Proxy; and
- (4) the meetings at which the appointment may be used.

An appointment may be a standing one.

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81.2 An undated appointment is taken to have been dated on the day it is given to the Foundation.

81.3 An appointment may specify the way the Proxy is to vote on a particular resolution. If it does:

- (1) the Proxy need not vote on a show of hands, but if the Proxy does so, the Proxy must vote that way;
- (2) if the Proxy has 2 or more appointments that specify different ways to vote on the resolution - the Proxy must not vote on a show of hands;
- (3) if the Proxy is the Chair - the Proxy must vote on a poll, and must vote that way;
- (4) if the Proxy is not the Chair - the Proxy need not vote on a poll, but if the Proxy does so, the Proxy must vote that way.

If a Proxy is also a Member, this Rule 81.3 does not affect the way that the person can cast any votes the person holds as a Member.

81.4 An appointment does not have to be witnessed.

81.5 A later appointment revokes an earlier one if both appointments could not be validly exercised at the meeting.

## **82. Form of Proxy Sent Out by Foundation**

82.1 A form of Proxy sent out by the Foundation may be in a form determined by the Directors but must:

- (1) enable the Member to specify the manner in which the Proxy must vote in respect of a particular transaction; and
- (2) leave a blank for the Member to fill in the name of the person primarily appointed as Proxy.

82.2 The form may provide that if the Member leaves it blank as to the person primarily appointed as Proxy or if the person or persons named as Proxy fails or fail to attend, the Chair of the meeting is appointed Proxy.

82.3 Despite Rule 82.1 an instrument appointing a Proxy may be in the following form or in a form that is as similar to the following form as the circumstances allow:

### **ENDEAVOUR FOUNDATION**

ACN 009 670 704

I/We, \_\_\_\_\_ of \_\_\_\_\_, being a Member/Members of the abovenamed Foundation, appoint \_\_\_\_\_ of \_\_\_\_\_ or, in his or her absence, \_\_\_\_\_ of \_\_\_\_\_ as my/our Proxy to vote for me/us on my/our behalf at the \*Annual General/\*General Meeting of the Foundation to be held on \_\_\_\_\_ and at any adjournment of that meeting.

† This form is to be used \*in favour of/\*against the resolution.

Signed on \_\_\_\_\_ .

\* Strike out whichever is not desired.

† To be inserted if desired.

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### **83. Receipt of Proxy Documents**

*[compare section 250B]*

83.1 For an appointment of a Proxy for a meeting of the Foundation's Members to be effective, the following documents must be received by the Foundation at least 48 hours before the meeting:

- (1) the Proxy's appointment; and
- (2) if the appointment is signed by the appointor's Attorney - the authority under which the appointment was signed or a certified copy of the authority.

83.2 If a meeting of the Foundation's Members has been adjourned, an appointment and any authority received by the Foundation at least 24 hours before the resumption of the meeting are effective for the resumed part of the meeting.

83.3 The Foundation receives an appointment or authority when it is received at any of the following:

- (1) the Foundation's registered office;
- (2) a facsimile number at the Foundation's registered office; or
- (3) a place, facsimile number or electronic mail address specified for the purpose in the Notice of Meeting.

83.4 An appointment of a Proxy is ineffective if:

- (1) the Foundation receives either or both the appointment or authority at a fax number or electronic address; and
- (2) a requirement (if any) in the Notice of Meeting that:
  - (a) the transmission be verified in a way specified in the notice; or
  - (b) the Proxy produce the appointment and authority (if any) at the meeting;is not complied with.

### **84. Validity of Proxy Vote**

*[section 250C(1) and compare replaceable rule 250C(2)]*

84.1 A Proxy who is not entitled to vote on a resolution as a Member may vote as a Proxy for another Member who can vote if the appointment specifies the way the Proxy is to vote on the resolution and the Proxy votes that way.

84.2 Unless the Foundation has received written notice of the matter before the start or resumption of the meeting at which a Proxy votes, a vote cast by the Proxy will be valid even if, before the Proxy votes:

- (1) the appointing Member dies;
- (2) the Member is mentally incapacitated;
- (3) the Member revokes the Proxy's appointment; or
- (4) the Member revokes the authority under which the Proxy was appointed by a 3rd party.

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## **85. Body Corporate Representative**

*[section 250D]*

85.1 A body corporate may appoint an individual as a representative to exercise all or any of the powers the body corporate may exercise:

- (1) at meetings of the Foundation's Members;
- (2) at meetings of creditors or debenture holders; or
- (3) relating to resolutions to be passed without meetings.

The appointment may be a standing one.

85.2 The appointment may set out restrictions on the representative's powers. If the appointment is to be by reference to a position held, the appointment must identify the position.

85.3 A body corporate may appoint more than 1 representative but only 1 representative may exercise the body's powers at any one time.

85.4 Unless otherwise specified in the appointment, the representative may exercise, on the body corporate's behalf, all of the powers that the body could exercise at a meeting or in voting on a resolution.

## **86. Attorney of Member**

86.1 An Attorney for a Member may do whatever the Member could do personally as a Member, but if the Attorney is to vote at a meeting of Members or a class of Members the instrument conferring the Power of Attorney or a certified copy of the authority must be produced to the Foundation at least 24 hours before the meeting, in the same way as the appointment of a Proxy.

### **VOTING AT MEETINGS OF MEMBERS**

## **87. How Vote May Be Exercised**

87.1 Subject to Rules 88 and 89 at any General Meeting of Members, each Ordinary Member, each Life Member and each Honorary Life Member present has 1 vote on a show of hands and on a poll.

87.2 The vote may be exercised in person or by Proxy, body corporate representative or Attorney.

87.3 Notwithstanding any other provision, the Board may allow postal votes on any matter for which Members are entitled to vote and, if so, shall direct the manner in which the postal vote is to be conducted so as to ensure all Members have an equal right to vote on the matter being determined.

## **88. Voting Disqualification**

88.1 A Member is not entitled to vote at a General Meeting if:

- (1) the Membership Fee of the Member; or
- (2) in the case of a person who is a Nominated Representative, the Membership Fee of the Corporate Member for which he or she is the Nominated Representative;

is more than 1 month in arrears at the date of the meeting or the postponed or adjourned meeting.

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## **89. Objections to Right to Vote**

*[compare replaceable rule 250G]*

89.1 A challenge to a right to vote at a meeting of Members:

- (1) may only be made at the meeting; and
- (2) must be determined by the Chair, whose decision is final.

89.2 A vote not disallowed following the challenge is valid for all purposes.

## **90. How Voting is Carried Out**

*[compare replaceable rule 250J, section 251A]*

90.1 A resolution put to the vote at a meeting of the Foundation's Members must be decided on a show of hands unless a poll is demanded.

90.2 On a show of hands, a declaration by the Chair is conclusive evidence of the result. Neither the Chair nor the minutes need to state the number or proportion of the votes recorded in favour or against.

## **91. Matters on Which a Poll May Be Demanded**

*[compare section 250K]*

91.1 A poll may be demanded on any resolution.

91.2 A demand for a poll may be withdrawn.

## **92. When a Poll is Effectively Demanded**

*[compare section 250L]*

92.1 At a meeting of the Foundation's Members, a poll may be demanded by:

- (1) at least 3 Members entitled to vote on the resolution; or
- (2) the Chair.

92.2 The poll may be demanded:

- (1) before a vote is taken;
- (2) before the voting results on a show of hands are declared; or
- (3) immediately after the voting results on a show of hands are declared.

## **93. When and How Polls Must Be Taken**

*[compare replaceable rule 250M]*

93.1 A poll demanded on a matter other than the election of a Chair or the question of an adjournment must be taken when and in the manner the Chair directs.

93.2 A poll on the election of a Chair or on the question of an adjournment must be taken immediately.

93.3 The demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

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93.4 The result of the poll is the resolution of the meeting at which the poll was demanded.

**94. Chair's Casting Vote**

*[compare replaceable rule 250E(3)]*

94.1 In the case of an equality of votes, whether on a show of hands or on a poll, the Chair of the meeting has a casting vote in addition to any vote he or she may have in his or her capacity as a Member or Proxy.

94.2 The Chair has a discretion both as to use of the casting vote and as to the way in which it is used.

## MINUTES

**95. Minutes to be Kept**

*[compare section 251A]*

95.1 The Directors must keep minute books in which they record within 1 month:

- (1) proceedings and resolutions of meetings of the Foundation's Members;
- (2) proceedings and resolutions of Directors' meetings (including meetings of a Committee of Directors);
- (3) resolutions passed by Members without a meeting; and
- (4) resolutions passed by Directors without a meeting.

95.2 The Directors must ensure that minutes of a meeting are signed within a reasonable time after the meeting by 1 of the following:

- (1) the Chair of the meeting; or
- (2) the Chair of the next meeting.

95.3 The Directors must ensure that minutes of the passing of a resolution without a meeting are signed by a Director within a reasonable time after the resolution is passed.

95.4 Without limiting Rule 95.1 the Directors must record in the minute books:

- (1) all appointments of Officers and executive employees;
- (2) the names of the Directors and Alternate Directors present at all meetings of Directors and the Foundation; and
- (3) the method by which a meeting of Directors was held.

## ACCOUNTS, AUDIT AND RECORDS

**96. Accounts**

*[compare sections 285-297, 314-317]*

96.1 The Directors must cause proper accounting and other records to be kept in accordance with the Law.

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96.2 The Directors must distribute copies of every profit and loss account, balance sheet and statement of cash flows (including every document required by Law to be attached to them) as required by the Law.

**97. Audit**

*[compare sections 301, 327-331]*

97.1 A registered company auditor must be appointed.

97.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Law.

## EXECUTION OF DOCUMENTS

**98. Common Seal**

98.1 The Foundation may, but need not, have a Common Seal.

**99. Use of Common Seal**

*[compare sections 127(2) and 129(6)]*

99.1 If the Foundation has a Common Seal the Directors must provide for its safe custody.

99.2 The Common Seal may not be fixed to any document except by the authority of a resolution of the Directors or of a Committee of the Directors duly authorised by the Directors.

99.3 The Foundation executes a document with its Common Seal if the fixing of the seal is witnessed by:

- (1) 2 Directors of the Foundation; or
- (2) a Director and a Secretary of the Foundation.

**100. Execution - General**

*[compare sections 129(5), 129(6) and 127(4)]*

100.1 The Foundation may execute a document without using a Common Seal if the document is signed by:

- (1) 2 Directors of the Foundation; or
- (2) a Director and a Secretary of the Foundation.

100.2 The same person may not sign in the dual capacities of Director and Secretary.

100.3 A Director may sign any document as Director, with or without the Common Seal, although the document relates to a contract, arrangement, dealing or other transaction in which he or she is interested and his or her signature complies with the requirements of this Constitution as to execution despite his or her interest.

100.4 Rules 99 and 100.1 do not limit the ways in which the Directors may authorise documents (including deeds) to be executed on behalf of the Foundation.

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## INADVERTENT OMISSIONS

### 101. Formalities Omitted

*[compare section 1322]*

- 101.1 If some formality required by this Constitution is inadvertently omitted or is not carried out the omission does not invalidate anything, including any resolution, which but for the omission would have been valid unless it is proved to the satisfaction of the Directors that the omission has directly prejudiced any Member financially. The decision of the Directors is final and binding on all Members.

## WINDING UP

### 102. Alterations

- 102.1 The Australian Taxation Office and if required by Law, the Australian Securities & Investments Commission, and any other regulated authority must be notified in writing of any alterations to this Constitution.

### 103. Winding Up

- 103.1 If the Foundation is wound up or if the endorsement of the Foundation as a Deductible Gift Recipient is revoked, the following assets remaining after payment of the Foundation's liabilities shall be transferred to a fund, authority or institution to which income tax deductible gifts can be made:
- (a) Gifts of money or property for the principal purpose of the Foundation;
  - (b) Contributions made in relation to an eligible fundraising event held for the principal purpose of the Foundation; and
  - (c) Money received by the Foundation because of such gifts and contributions.
- 103.2 The Board may determine the identity of the institution or institutions for the purpose of Rule 103.1 at the time of dissolution.
- 103.3 If the Board fails to determine the identity of the institution or institutions under Rule 103.2, the Supreme Court of Queensland may make that determination.

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